

**EXPLANATORY MEMORANDUM TO  
THE SELECTIVE LICENSING OF HOUSES (SPECIFIED EXEMPTIONS)  
(ENGLAND) ORDER 2006**

**2006 No. 370**

**1.** This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This instrument specifies the descriptions of tenancies and licences that are exempt from the licensing requirements described in Part 3 of the Housing Act 2004 (“the Act”). The effect of the Order is that no house that is subject to a tenancy or licence of a type described in the Order may be required by a local housing authority to be licensed under Part 3 of the Act.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Section 85 of the Act requires every house to which Part 3 of the Act applies to be licensed under Part 3 unless:

it is a house in multiple occupation (HMO) to which Part 2 applies<sup>1</sup>;

a temporary exemption notice is in force in relation to it under section 86 of the Act; or

a management order is in force in relation to it under Chapter 1 or 2 of Part 4 of the Act.

Under section 95 of the Act a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part 3 but is not so licensed

4.2 Under section 79(2) of the Act, Part 3 applies to a house if it is an area for the time being designated by a local housing authority as subject to selective licensing and the whole of it is occupied either under a single tenancy or licence that is not an exempt tenancy or licence, or it is occupied under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence.

4.3 A tenancy or licence is an exempt tenancy or licence if it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (section 79(3) of the Act); or if it falls within a description specified in an Order made by “the appropriate national authority” under section 79(4) of the Act. The Secretary of State is empowered to make such an order in relation to

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<sup>1</sup> For HMOs to which Part 2 of the Act applies see paragraph 4 of the Explanatory Memorandum in respect of The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (2006/ 371).

England.<sup>2</sup> . This is the first time the power in section 79(4) has been exercised in relation to England.

- 4.4 This Order is made simultaneously with other instruments being made under powers in Parts 2 to 4 and 7 of the Act relating to the licensing and management of HMOs, each of which has its own Explanatory Memorandum. The relevant instruments are:

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

The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372);

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006(SI 2006/373); and

The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006 (SI 2006/369).

## **5. Extent**

- 5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- 7.1 The Government committed in its 1997 and 2001 manifestos to introduce nationwide licensing of HMOs. At the same time, it committed to introduce a measure that would give local housing authorities the discretion to license landlords in areas of low housing demand and high incidence of anti-social behaviour where they are able to demonstrate that a particular problem exists with the private rented sector in such areas. Areas of low housing demand are the cause of serious and complex problems such as abandoned houses, boarded windows and doors, vandalism and litter. Such areas often attract bad landlords and anti-social tenants who together may force out law-abiding tenants and owner-occupiers from the area.
- 7.2 Many local authorities and other bodies spend much time and money trying to address these problems but their efforts are often undermined by the actions of some landlords and tenants in the private rented sector. Efforts to try and engage with private sector landlords are often thwarted by only being able to reach the reputable landlords that operate in these areas.
- 7.3 In October 2001 in the consultation paper “Selective Licensing of Private Landlords - A Consultation Paper” the Government sought views on proposals to introduce selective licensing in areas of low housing demand as part of a local strategy for tackling low demand and other serious issues in the area.

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<sup>2</sup> See section 261(1) of the Act.

Key stakeholders including all local authorities, police and fire authorities in England and landlords and tenants interest groups were consulted for their views on the proposal. A total of 134 responses were received, the majority of which were supportive of the proposal, with no strong opposition.

- 7.4 In March 2003, the selective licensing proposals were published along with other proposals in the “Housing Bill - Consultation on draft legislation” for public consultation and pre-legislative scrutiny. A total of 411 responses were received to the consultation and there was positive response to the selective licensing proposal, and no significant opposition.
- 7.5 The proposals for the implementation of the selective licensing provisions of the Bill were consulted on in July 2004 in the consultation paper “Implementation of Selective Licensing”. The consultation included the proposal to exempt specified types of properties from selective licensing. The same group of stakeholders in England as well as other interested groups were consulted. A total of 39 responses were received to the consultation and, again, the majority of those who responded welcomed the proposed list of exemptions, and there was no significant opposition.
- 7.6 Part 3 of the Act provides for the selective licensing of properties in areas designated by a local housing authority, with the primary aim of ensuring that landlords play their part in reducing levels of anti-social behaviour. For example, they will be expected to work with the local housing authority to ensure that references of prospective tenants are checked. Landlords will also be expected to address the behaviour of tenants who are proving a nuisance in the local community.
- 7.7 The decision to designate an area for licensing may have an effect on the housing market in the area and should therefore be justified and proportionate. This Order exempts from the licensing scheme those properties the Government considers should not be subject to licensing, either because they are already adequately regulated or because licensing is considered to be a disproportionate measure, taking account of the type of property and the likely anti-social behaviour or other nuisance that might emanate from such a property. The descriptions of properties exempted by this Order reflects those that were proposed in the consultation that took place in July 2004.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum

8.1 The impact on the public sector will be restricted to the costs to local authorities’ resources including start-up costs including initial training, running costs of the licensing regime covering administration and enforcement and further training costs. Start-up costs including the costs of training have to a large extent been covered by the £5m funding provided by government to the local government’s improvement arm, the Improvement and Development Agency to cover the impact of start up on resources for local authorities. Once the schemes have been set up, they will be self financing therefore running costs of licensing schemes including costs of further training and development and enforcement costs will be covered by licence fees.

## **9. Contact**

- 9.1 Robert Skeoch at the Office of the Deputy Prime Minister Tel: 020 7944 3568 or e-mail: Licensing @odpm.gsi.gov.uk can answer any queries regarding the instrument.

## FINAL REGULATORY IMPACT ASSESSMENT (RIA):

### **Statutory instruments to supplement the provisions in the Housing Act 2004 relating to the licensing of Houses in Multiple Occupation and Selective Licensing of other private rented accommodation, and Management Orders (Parts 2 and 3, and Chapter 1 of Part 4 of the Housing Act 2004)**

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## **Title of Proposal**

1. Statutory instruments to supplement the provisions in the Housing Act 2004 relating to the licensing of Houses in Multiple Occupation and Selective Licensing of other private rented accommodation, and Management Orders (Parts 2 and 3, and Chapter 1 of Part 4 of the Housing Act 2004)

## **Purpose and Intended Effect of Measure**

### **Objective**

2. This regulatory impact assessment relates to the development of secondary legislation required to give effect to the provisions relating to selective licensing, HMO licensing and management orders in the Act as they apply in England. Previous regulatory impact assessments were produced for the proposed measures when they were subject to consultation<sup>3</sup>. This regulatory impact assessment updates the earlier assessments and places the regulations within the context of HMO and selective licensing as a whole.
3. Separate instruments will be produced for Wales. A different regulatory regime applies in Scotland.
4. Part 2 of the Housing Act 2004 introduces the mandatory licensing of houses in multiple occupation (HMOs). The aim of the licensing regime is to raise the standard of accommodation available in the private rented sector and to work alongside Part 1 of the Act which provides for the Housing Health and Safety Rating System to help provide greater protection to the health, safety and welfare of the occupants of residential properties generally. HMO licensing will address poor management practice and should help to secure a reduction in death and injury from fire and other health and safety hazards, and ensure adequate provision of amenities.
5. Part 3 of the Act provides local housing authorities with powers to apply licensing selectively to the private rented sector in part or all of their area. These powers are primarily intended to address the adverse impact that poor management by a minority of private landlords, and anti-social behaviour by a few tenants, can have on other tenants and the wider community. These problems have been particularly significant in areas of low housing demand.
6. Chapter 1 of Part 4 of the Act brings in further powers for local authorities to take over the management of private rented properties in certain circumstances via Interim and Final Management Orders. These powers are intended to provide protection for tenants in properties with the worst management standards. They give extra strength to the HMO and selective licensing regimes by requiring local authorities to make Management Orders on properties which should be licensed but which are not likely to be suitable for licensing in the near future, or where an Order is necessary to protect the health, safety or welfare of the tenants or their neighbours.
7. The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006 builds on the provisions in the Act relating to management orders. The regulations enable Special Management Orders to be used to take over the management of individual properties which are experiencing a significant and persistent problem with anti-social behaviour and where the landlord is failing to take appropriate action to deal with the problem.
8. The Selective Licensing (Specified Exemptions) (England) Order 2006 exempts certain tenancies from the remit of selective licensing. This is intended to prevent excessive, unnecessary or conflicting regulation and to keep owner occupiers outside the scope of licensing.
9. The Management of Houses in Multiple Occupation (England) Regulations 2006 provide updated management regulations for all HMOs (regardless of whether they are licensable) apart from certain blocks of flats that were not converted in accordance with relevant building regulations (separate management regulations will be produced for the unique nature of these HMOs). The first HMO management regulations were introduced over 40 years ago, and were last updated in 1990. The new

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<sup>3</sup> Licensing in the Private Rented Sector: Consultation on the Implementation of Selective Licensing July 2004 and Licensing in the Private Rented Sector: Consultation on the Implementation of HMO Licensing November 2004

regulations simply re-enact the existing management regulations but have been strengthened to cover issues relating to gas and electrical safety.

10. The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 applies mandatory licensing to certain high-risk HMOs, namely those on 3 or more storeys with 5 or more occupants in 2 or more households.
11. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (hereafter referred to as “The Miscellaneous Regulations”) set out regulations governing a number of administrative aspects of both HMO and selective licensing. They add to the definition of a household and the treatment of migrant workers (both of which are necessary to define a house in multiple occupation). They also specify further buildings, in addition to those listed in the Act, which are not to be considered HMOs for the purposes of licensing.
12. The miscellaneous regulations specify certain information which licence application forms must contain and the means of consulting those people for whom there is a statutory duty to consult prior to granting a licence. The regulations also set out the national amenity standards which are the minimum standards local authorities should consider for determining the suitability of a house in multiple occupation for the number of occupants. The regulations also set out requirements for local authorities to publicise the designation of a selective or additionally licensed area and, in due course, the revocation of the designation. Finally they set out the information which must be kept on public registers of licences, temporary exemption notices and management orders.

## **Background**

13. The private rented sector plays an important role in providing housing options for those not wishing or not yet able to consider home ownership. However, three elements of the sector give rise to significant concerns. These are: the management standards of Houses in Multiple Occupation, the engagement of private landlords in the renewal of areas of low housing demand and engaging private landlords in a duty to deal appropriately with anti-social tenants. The Housing Act 2004 introduces HMO and selective licensing of private rented properties to deal with these areas of concern together with management orders to add strength to these regimes and deal with particular ‘problem’ properties on an individual basis.

### *HMO Licensing*

14. HMOs can provide affordable housing options for some of the most vulnerable and disadvantaged groups in society including benefit claimants or those on low incomes, students and asylum seekers. For many of these individuals HMOs represent the only housing option available. However, the rapid turnover and the vulnerable nature of tenants in HMOs means that poor standards and the minority of bad landlords can escape the attention of the local authority.
15. The English House Condition Survey found that there were almost 640,000 private rented HMOs in England (including buildings converted to self-contained flats). While standards are poorest in the private rented sector generally, the very worst standards can be found in HMOs. The most common problems associated with multiple occupancy relate to poor fire safety standards, overcrowding, inadequate facilities and poor or unscrupulous management.
16. Research indicates that certain types of HMOs present significantly greater health and safety risks to tenants than comparable single occupancy dwellings. Risk assessment carried out by ENTEC<sup>4</sup> for the Department of the Environment, Transport and the Regions on fire safety in HMOs concluded that in all houses converted into bedsits, the annual risk of death per person is 1 in 50,000 (six times higher than in comparable single occupancy houses). In the case of bedsit houses comprising three or more storeys the risk is 1 in 18,600 (sixteen times higher).

### *Selective Licensing*

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<sup>4</sup> DETR (1998) “Fire Risk in Houses in Multiple Occupation: Research Report”. Stationery Office, London: ISBN 0 11 753443 9.

17. Selective licensing is designed to enable local authorities to deal with the twin problems of engaging with private landlords in areas of low housing demand and engaging private landlords in dealing appropriately with anti-social behaviour.
18. Areas of low housing demand are found in many towns and cities, particularly in the north of England. There is no one simple definition of what low demand is. However, such areas tend to share a number of characteristics such as relatively low property prices and high rates of empty and difficult to sell/let properties.
19. The reasons for the emergence of the symptoms of low demand are complex, and include economic change, greater mobility and obsolete housing. As prices fall and owner-occupiers find it difficult to sell their properties there is often an increase in the private rented sector as landlords see the opportunity to purchase properties cheaply and therefore receive a good return on their investment through renting.
20. As prices fall further the area may become more attractive to less scrupulous property investors, who are less interested in proper management of the properties and tenancies, as well as novice investors who do not have proper knowledge of their management responsibilities. Furthermore, the efforts being made by the local authority to regenerate an area of low housing demand may be undermined by its inability to engage private landlords in the process. In many cases the landlord will live in a different area, often at the other end of the country, making it harder for the local authority to locate and engage with them.
21. Separately from the issue of low demand, problems are also known to arise when landlords let properties to anti-social tenants and then fail to take the action that is open to them to deal with the tenants' behaviour.
22. The problems of vandalism, empty properties, drugs, crime and general disorder have a significant impact on the quality of life of people living in the neighbourhood of these properties. The impacts are visible and the reputation of such areas quickly deteriorates.
23. Most good landlords do not want to house anti-social tenants as they cause damage to the property and aggravation to the landlord himself or herself. However some landlords can be less scrupulous about who they let to. It can also be the case in areas of low housing demand that landlords of difficult to let properties struggle to find good tenants and have less regard to who they let to than in other areas. Complaints about anti-social behaviour often also come from neighbours in areas heavily populated by students.

#### *Management Orders*

24. Under the 1985 Housing Act (as amended) local authorities have the right to use Control Orders on HMOs in which the physical conditions or management standards are unsatisfactory. Control Orders enable the local authority to take over the management of the property for up to five years. Following the making of a Control Order local authorities can also choose to use a Compulsory Purchase Order to allow it to take over ownership of the property.
25. However there is no statutory duty on the local authority to use control orders or compulsory purchase orders on HMOs and there can be a reluctance to do so because of the costs to the local authority in managing or owning the property and the risks of being unable to recover the full costs incurred. Furthermore Control Orders can only be used on HMOs and not on other types of private rented property that give rise to concerns.

## ***Rationale for Government intervention***

#### *HMO Licensing*

26. The rationale for licensing Houses in Multiple Occupation is that they are often in poor condition and represent a much higher risk to the safety and welfare of the occupants. Poor management and the presence of unscrupulous landlords can also increase the likelihood of health and safety risks developing for tenants, even when the HMO is in an acceptable state of repair. Many HMOs also house some of the most vulnerable members of society who most need protection from poor physical conditions.

27. All, or nearly all, local authority areas will have HMOs subject to mandatory licensing. However, HMOs tend to be concentrated in areas of medium or high demand housing and are less prevalent in low demand areas.
28. Under the 1985 Housing Act (as amended) local authorities already have the right to introduce registration schemes for HMOs in their area to help them drive up standards. However, there is no duty to introduce such a scheme and the Act allows for the operation of a variety of schemes. The result is 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.
29. The proposals for HMO licensing will standardise the enforcement of management standards in HMOs and ensure that those HMOs which are likely to present the most significant health and safety risks come to the attention of the local authority, placing a more direct obligation on landlords to provide acceptable standards. Licensing will focus on the management competency and the 'fitness' of those managing or providing HMO accommodation. Responsible landlords are less likely to exploit vulnerable or disadvantaged tenants and good management practice such as regular inspections can also reduce risks.
30. Licensing will work alongside HHSRS in Part 1 of the Act, helping to ensure that defects that may give rise to serious hazards are less likely to arise and also that authorities are able to identify such defects and apply proper enforcement of the HHSRS in the highest risk HMOs.

#### *Selective Licensing*

31. The introduction of selective licensing of private rented sector landlords will further two key Government objectives: regeneration of areas of low housing demand and the need to tackle anti-social behaviour. Private landlords already have certain limited powers to deal with anti-social tenants but some of them choose not to do so, either through fear, recklessness or a lack of awareness of their responsibilities.
32. Selective licensing will ensure that all landlords and managers of privately rented properties in a designated neighbourhood are identified to the local authority as 'fit and proper' persons and that satisfactory management standards are in place in the property. Licensing will enable local authorities to work with landlords to raise the standards of management in the properties, support them in tackling anti-social behaviour problems and engage them in the regeneration of the area.
33. Selective licensing is only one of a number of policy instruments and measures a local authority could adopt in helping tackle problems of decline and anti-social behaviour. The licensing of all private sector landlords in an area on its own would certainly not provide a complete solution. It would be most effective, and its benefits greatest, if combined with a range of other measures in an integrated multi-agency local strategy. Before introducing a selective licensing scheme the local authority will have to ensure that doing so will be consistent with its overall housing strategy and ensure that selective licensing is co-ordinated with its work on homelessness, empty properties and anti-social behaviour.

#### *Management Orders*

34. If HMO and selective licensing are to achieve their purpose of improving standards in the private rented sector there must be sufficiently robust measures which can be taken to protect tenants in properties which should be licensed but where the standards do not meet the criteria to grant a licence. This is the rationale for the introduction of management orders.
35. In addition to using management orders on licensable properties, the Act also allows regulations to be made to specify other circumstances in which local authorities may apply to Residential Property Tribunals to use management orders. Regulations are to be laid to allow Special Interim Management Orders to be used by the local authority to take over the management of individual properties with a significant anti-social behaviour problem which the landlord or manager is failing to tackle. By providing these powers to manage individual properties it should not be necessary for the local authority to designate a neighbourhood for a selective licensing scheme in order to deal with one or two specific properties which give rise to problems.

## **Consultation**



36. The proposals have been subject to extensive consultation at all stages of development of the legislation and the final outcome has reflected the views raised at appropriate stages. More details of the views expressed are given for the different options available for HMO and selective licensing, as well as special interim management orders, which are outlined below.
37. The Government's first consultation on its intentions to bring in HMO licensing schemes was undertaken in April 1999. This was followed in October 2001 by a similar consultation on the proposed introduction of selective licensing. Both consultations resulted in strong support for the intentions to introduce HMO and selective licensing.
38. Both measures, together with management orders, were subsequently included as part of the draft Housing Bill which was subject to extensive consultation, including scrutiny by the Select Committee of the Office of the Deputy Prime Minister, during 2003.
39. Further consultation with stakeholders on the specific nature of the regulations governing HMO and selective licensing took place during 2004 and early 2005.

## **Options**

### *HMO Licensing*

#### **Option 1: Rely on the continued use of existing powers**

40. Local authorities already have a wide range of powers to deal with problems in HMOs but these are now out of date and overly complex, often duplicating and conflicting with other legislation. Current powers are also largely discretionary and to date only a third of local authorities in England and Wales have exercised those powers in the form of HMO registration schemes. Even where these are applied, the scope varies widely and landlords face a wide variety of requirements in different parts of the country.
41. The Labour Party manifesto of 1997 included a commitment to introduce a proper system of licensing which would benefit tenants and responsible landlords. Responses to the 1999 licensing consultation paper confirmed the need for rationalisation and simplification of the current regime, which is proving ineffective in addressing the problems in parts of the HMO sector, and in particular the need for a better definition of HMO. Only 7% of the 579 responses disagreed with the principle of licensing. Option 1 was therefore not progressed.

#### **Option 2: Licence all HMOs**

42. The second option for HMO licensing would be for local authorities to have a duty to operate a licensing scheme for all HMOs - approximately 640,000 properties. This would include all higher-risk HMOs mentioned in Option 3, all shared houses and flats (including those with lodgers), certain houses converted into self-contained flats and purpose-built HMOs such as student halls of residence. This regime would be a massive and costly undertaking and such stringent regulation might represent an unacceptable threat to the supply of HMO accommodation.
43. If there were a requirement for all HMOs to be licensed the legislation would result in a duplication of regulation for operators of certain properties which are already regulated under different legislation. This would include, for example, care homes, bail hostels, immigration centres, and children's homes. This would present an unacceptable burden to the owner and manager of the property and could result in conflicts between requirements under the different regimes which would ultimately harm the tenants. It would also tie up local authority resources in licensing the lowest-risk properties and delay their efforts to licence unregulated properties and find landlords who had not complied with the duty to apply for a licence.
44. In the 1999 consultation a significant number (47%) of responses supported the idea that not all HMOs should be subject to licensing and even among landlords there was a 50:50 split in favour of the idea.

#### **Option 3: Licence some HMOs**

45. Based on the support for limited licensing of HMOs in the 1999 consultation paper, the Government's proposals are that regulations should exempt certain HMO properties from the requirement to be licensed. These would be properties which are already regulated under specified regulations, properties occupied by an owner-occupier with up to two tenants, and student accommodation managed or controlled by

specified educational establishments. (The proposals in this RIA do not deal with student accommodation) In the 2004 consultation on the scope of the regulations all these proposals received healthy support. Of the 61% respondents who responded to the proposals to exempt properties which are already regulated, 42% agreed with them. 49% agreed with the proposed exemption for properties housing 2 or fewer lodgers

46. The Act itself exempts certain other HMOs from licensing requirements, namely those owned by the police, fire and rescue and health service bodies, those where the local authority or a registered social landlord has control, and HMOs occupied principally for the purposes of a religious community (except certain blocks of flats that were not converted in accordance with relevant building regulations).
47. For the remaining HMOs the Government's proposals are for a mandatory national licensing scheme for properties of three storeys or more and accommodating five or more people in two or more households. Based on this we estimate that at least 100,000 properties would be subject to mandatory licensing. There will also be a discretionary power for local authorities to apply additional licensing schemes to other categories of HMOs in response to local conditions.
48. Licensing would require the licensee to be a fit and proper person and have adequate management arrangements in place, for example to ensure there is effective management of a property where the landlord does not live locally. The licence would also specify the maximum number of people that may occupy the HMO.
49. The proposals on the mandatory and discretionary licensing schemes first appeared in detail in the draft Housing Bill in 2003. Of those who responded on this particular proposal in the consultation 12% felt that the criteria for the mandatory scheme were too wide, while 60% believed it was not wide enough and that it should be extended. The Select Committee, in its recommendations on the draft Bill, stopped short of requiring that all HMOs be licensed but said that it was not convinced that mandatory licensing should be limited to the proposed criteria. It stated that the number of storeys and occupants are only two of the very high risk factors in HMOs.
50. The Government has always made clear, including in its response to the Committee's recommendations, that there is a need for balance between regulation and the burdens that it puts on landlords and local authorities. While the mandatory scheme will cover the highest risk HMOs it will be open to local authorities to introduce additional licensing for other categories of HMOs if they feel that there is a particular need.
51. The Government is also committed to reviewing the operation and implementation of the HMO regime, including the scope of the licensing system. If it becomes apparent that a wider scope for mandatory licensing is justifiable the licensing regime can be modified through secondary legislation.

## **Outcome**

52. Of the three options available for HMO licensing the third is the best way to raise standards without imposing excessive regulation on low-risk or well-managed HMOs. Combined with the discretionary power to extend licensing in response to local circumstances this option represents the most cost-effective way forward for all parties in tackling the problems of poor standards that persist at this end of the market, without threatening supply.
53. Acceptable quality well-managed HMOs are essential in providing affordable housing for an increasingly mobile workforce and for those people not able to consider home ownership. Although proposed HMO measures are primarily aimed at addressing the worst standards of physical condition and management, any legislative intervention should not conflict with the need to retain the many good landlords and generally encourage investment in the sector.

## *Selective Licensing*

### **Option 1: Do nothing and rely on the existing range of powers available to local authorities to deal with improving areas of low demand and anti-social behaviour.**

54. Local authorities already have powers to act against anti-social private tenants via measures such as ASBOs. They also already undertake regeneration initiatives (including improvements to existing housing stock) to make areas of low housing demand more attractive to live and work in. In undertaking

such initiatives it is desirable for them to work with local private landlords as a group of stakeholders who have a contribution to make and who will benefit from local improvements. Indeed successful co-working already takes place between local authorities and responsible landlords.

55. Problems arise with landlords who are less willing to deal with anti-social tenants, manage their properties well or engage with projects to improve the area. It is time-consuming and often difficult for the local authority to identify and locate the landlord for a property. In many cases the landlords won't live locally and may even live at the opposite end of the country, having taken the opportunity to purchase many cheap properties as local property prices have fallen.
56. In the 2001 consultation on selective licensing 71% of respondents said that existing powers available to local authorities were not adequate. Continuing to rely on them is clearly not a solution so Option 1 has not been progressed.

**Option 2: Give Local Authorities powers to establish licensing schemes in areas of low housing demand or areas where serious problems of anti-social behaviour in the PRS exist, covering all private landlords in the designated area apart from certain designated exceptions.**

57. This option would give local authorities the power to establish licensing schemes, primarily in areas of low demand, covering all private landlords where serious problems in the private rented sector exist. The power would also be available in areas subject to significant anti-social behaviour problems where landlords are failing to take the action that is available to them to deal with the problem in their properties. Licensing would require the licensee to be a fit and proper person and that the property is managed properly.
58. Landlords would be required to play their part in addressing the impact that the behaviour of their tenants can have on the wider community. This is not to say landlords would be held responsible for everything their tenant does - it would not be reasonable to hold landlords responsible for the criminal or anti-social actions of their tenants if it is not connected with the occupation of the property they manage. It would rather be the case, for example, that landlords would be expected to respond to complaints about behaviour impacting on others and explain that such behaviour is unacceptable.
59. Landlords would also be expected to take greater care as to whom they let to by asking for references from prospective tenants.
60. Certain types of tenancies would be exempted by regulations from the requirement for selective licensing. These include owner-occupiers on a long lease, business and agricultural tenancies, properties under the control of certain public sector bodies, holiday homes, properties let to members of the owner's family, and properties where the owner shares accommodation with the tenants. These types of tenancies are adequately regulated under other legislation.
61. 82% of respondents to the 2001 consultation supported the principle that selective licensing should be available both in areas of low demand and elsewhere. The proposed exemptions to the requirement for selective licensing were published in the consultation on regulations in 2004. 20% of respondents agreed with the proposed exemptions in full. 30% of respondents gave conditional agreement to the list and amendments were made in light of recommendations that were made.

**Option 3: Give Local Authorities powers to establish licensing schemes covering all private sector landlords in the same areas as for option 2, but based on same criteria as proposed for HMO licensing, namely that the physical condition of the property should be fit for the number of occupants.**

62. This option would give local authorities the power to establish a licensing scheme covering all private sector landlords in the same areas as for option 2 but based on the same criteria as proposed for licensing HMOs, namely that the physical condition of the property is satisfactory for the number of occupants in the dwelling. In addition, the licensee (who may or may not be the landlord) would need to abide by management regulations and be a fit and proper person to manage the property.
63. HMOs have to be licensed for a maximum number of occupants, based on the ratio of those sharing amenities. There is also a duty under HMO licensing for the local authority to satisfy themselves that no HHSRS category 1 hazards exist in the property within 5 years of receiving a licence application. Both these requirements are necessary for houses in multiple occupation where there is a significant risk of

overcrowding and where the risk from hazards can be higher because the premises are shared by unrelated tenants.

64. Neither of the requirements which apply specifically to HMO licensing are necessary for selective licensing. The problems that selective licensing is intended to deal with are largely associated with poor management of properties, not the physical condition. Where there is a problem with the physical condition of particular properties the HHSRS can still be used to inspect and enforce.
65. The requirements of option 3 would create extra costs and burdens on landlords and on local authorities without contributing significantly to the solution (ie involving landlords in improving an area and increasing demand, or involving them in tackling anti-social behaviour).

### **Outcome**

66. Option 2 presents the best balance between the need to regulate and the burden that such regulation represents. The proposed principles received overwhelming support and the proposed exemptions have been amended in light of recommendations from stakeholders. This is the option that was progressed in the Housing Act and is included in regulations.

### *Management Orders*

#### **Option 1: Rely on existing powers for the local authority to take over the management of properties.**

67. This would not provide a sufficiently robust method of dealing with properties which are not suitable to be licensed. Control Orders are designed only to be used on HMOs, so they could not be used on other private rented property which was subject to selective licensing but was not suitable to be licensed. Nor could Control Orders be used on individual properties which give rise to anti-social behaviour.
68. Furthermore under existing legislation there is no statutory duty on local authorities to use Control Orders. There had been a reluctance to use them because of the costs in managing a property and the risks of not being able to recover the full costs incurred.
69. For these reasons Option 1 is not one which the Government has progressed.

#### **Option 2: Gradually run down the letting of a property which is not suitable for licensing or one presenting significant problems of anti-social behaviour. This option would prevent any new tenancies being created in the property but allow existing tenancies to continue until the tenants have left in due course.**

70. This option could be unsatisfactory for existing tenants who would be faced with the choice of either continuing to live in a poorly managed property or facing the disruption of moving elsewhere to find better quality, safer accommodation. For this reason responses to the consultation rejected this option. For the local neighbourhood in areas of low demand or anti-social behaviour this option would be unsatisfactory because irresponsible landlords and any problem tenants would remain in place. It would not work effectively in support of the Government's agenda to tackle anti-social behaviour. For these reasons this option has not been progressed.

#### **Option 3: Introduce Management Orders to allow the local authority to take over management of a property which is not suitable to be licensed. In regulations allow local authorities to apply to the Residential Property Tribunal to use a Special Interim Management Order on properties which give rise to significant problems of anti-social behaviour.**

71. This would provide robust sanctions against landlords with the poorest management standards while enabling tenants to live in improved conditions in their own homes. It would benefit a neighbourhood subject to low housing demand or anti-social behaviour by enabling the local authority to take proper action to deal with landlords and tenants who are contributing to the problem. Of the three available options this has the most desirable outcomes.

### **Costs and Benefits**

72. Annex A displays a summary of options for HMO and selective licensing as well as management orders, with the associated costs and benefits of each. This section explores the costs and benefits in more depth.

## ***Sectors and groups affected***

73. The introduction of HMO and Selective licensing together with management orders will impact primarily on landlords in the private rented sector who will face costs both from the licence application fee and any work which needs to be undertaken on the property for it to be granted a licence.
74. The licensing fee represents an additional cost to both good and bad landlords alike. However, managing a property properly necessarily incurs costs in terms of time and money well beyond that associated with the licensing regime. The vast majority of landlords who are reputable already face such costs and often express concern that disreputable landlords are able to achieve greater returns on their investment because of their less responsible approach.
75. Local Housing Authorities will be managing the new regime so that the costs they will incur should be covered by the fee regime. Following consultation the Government has decided not to cap the fees which the local authority can charge for licensing. Instead local authorities are expected to set a transparent fee rate which is directly related to the actual cost of licensing a property. Fees cannot be used to raise extra revenue for the local authority.
76. Tenants will benefit from the raised quality of accommodation within the private rented sector as a result of licensing. However they may also see increases in costs as landlords seek to pass on some or all of the costs of licensing through higher rent levels. There may be limited scope for rent rises, however, as tenants in such accommodation tend to be on lower incomes and can move if they are faced with unaffordable rent increases.

## ***Race equality assessment***

77. When considering applications to grant a licence under either HMO licensing or selective licensing, Local Housing Authorities must consider any evidence of an applicant having practised discrimination (including on grounds of race or ethnicity) in determining whether they are 'fit and proper' to hold a licence.
78. HMO licensing will improve housing conditions for those living in the lowest end of the private rented sector. This will have a significant benefit for black and minority ethnic tenants. The 2001 Survey of English Housing shows that 39% of black private sector tenants and 64.6% of Asian private sector tenants live in non-decent housing.
79. It is not anticipated that HMO or Selective licensing nor management orders will have an impact on BME landlords which is different from the general landlord population.

## ***Rural considerations***

80. The impacts of HMO and Selective licensing and management orders are likely to be predominantly urban.

### *Selective Licensing*

81. Rural areas tend not to have the significant, concentrated problems of low demand or anti-social behaviour which selective licensing is intended to deal with.

### *HMO licensing*

82. HMOs, particularly the larger ones of 3 or more storeys, are predominantly found in urban areas. The 2001 English House Condition Survey shows that more than half of all HMO dwellings, fifty-six per cent, are located in city and other urban centres. Over one third, thirty-seven per cent, of all HMOs are in London and over half (fifty-three per cent) are in the South East, including London.

### *Management Orders*

83. Because HMO and Selective licensing are likely to have little impact on rural areas, management orders which are used on properties which are not suitable to be licensed are therefore unlikely to have a significant rural impact.
84. Special Interim Management Orders, which are intended to be used to deal with anti-social behaviour in individual properties instead of selective licensing, may be used in rural as well as urban areas. However, housing density and the greater reported crime and anti social behaviour in urban areas would suggest that they are less likely to be used in rural areas.

## ***Health Impact Assessment***

85. The entire purpose behind the introduction of the regime of licensing and management orders is to improve conditions in the worst parts of the private rented sector and improve health and welfare outcomes both for the tenants and the local neighbourhood.
86. Risk assessment carried out by ENTEC<sup>5</sup> for the Department of the Environment, Transport and the Regions on fire safety in HMOs concluded that in all houses converted into bedsits, the annual risk of death per person is 1 in 50,000 (six times higher than in comparable single occupancy houses). In the case of bedsit houses comprising three or more storeys the risk is 1 in 18,600 (sixteen times higher). It has been estimated by DETR that the licensing of high-risk HMOs could save 12-13 deaths a year from fire.
87. The improved management of HMOs and other properties will also have a positive impact on deaths and injuries from other causes although this is not quantifiable. In particular the association between HMO licensing and the Housing Health and Safety Rating System and a removal of the most serious hazards from physical conditions will lead directly to improvements in health outcomes for tenants. The Act places a duty on the local authority to satisfy itself that no category 1 hazards exist in a licensable HMO within 5 years of receiving a licence application.
88. Selective licensing will improve conditions in the property by imposing duties on the licence holder to manage the property properly. It will also bring health benefits to the neighbourhood as it is intended to require anti-social tenants to be dealt with appropriately. Neighbouring occupants should therefore be relieved from the stress brought on by problems of anti-social behaviour.

## ***Breakdown of costs and benefits***

89. The actual regimes for HMO and selective licensing are broadly similar and for that reason many of the costs and benefits of the two systems are the same. In the following breakdown of costs and benefits the two systems are treated together except in certain cases where one regime provides significantly different impacts from the other.
90. The costs and benefits of management regulations are treated as a separate category.

### ***Economic Benefits***

#### *General*

91. The benefits of HMO licensing have been identified, but have proved extremely difficult to quantify. In addition it is almost impossible to produce estimates of total economic benefits from selective licensing for two reasons. First, it is a power not a duty and total benefits will depend on the extent to which local authorities exercise their discretion. Secondly, licensing is conceived as only one ingredient in packages of local actions to tackle the problems of low demand areas or areas with significant anti-social behaviour problems, and it will not be possible to distinguish its contribution from that of the other components of these packages.

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<sup>5</sup> DETR (1998) "Fire Risk in Houses in Multiple Occupation: Research Report". Stationery Office, London: ISBN 0 11 753443 9.

92. That is not to say there will not be benefits from selective licensing, rather that licensing is unlikely to be successful, or indeed used, in isolation. It will form only a part of a wider approach, for example, to deal with crime and disorder or irresponsible letting in such areas. Therefore the important benefits to communities we would wish to see (reduced levels of anti-social behaviour, increased demand for housing, stabilised or rising house prices) can be monitored, but could only be attributed to the overall approach an authority has taken rather than one particular aspect of that approach.
93. More information on the likely number of properties to be affected by HMO or selective licensing is set out in the section on economic costs. The Government is committed to monitoring the introduction of licensing in the private rented sector and will review its impact three years after it is introduced. The programmes which are being put in place to monitor licensing should enable better assessment of costs and benefits to all stakeholders.

### HMO and selective licensing

#### *Economic Benefits to Landlords*

94. Under both HMO and selective licensing private landlords should benefit from improved rental incomes and property values as areas recover.
95. Landlords of all HMOs, whether or not they are licensable, will benefit from being aware of the requirements of the Management Regulations which should help them to manage their properties properly. Not all landlords who currently under-perform do so deliberately – many are simply lacking in competence. Better management will lead both to increased value of the asset from its improved quality, together with better rental income.
96. The “miscellaneous” HMO regulations will give rise to economic benefits for landlords from targetting licensing properly and avoiding unnecessary fees. The regulations specify that certain tenancies which are already regulated separately should not be treated as HMOs for the purpose of licensing. The miscellaneous regulations also clarify that domestic staff will be included in the household of their employer and therefore exclude properties from being HMOs (with all the attendant obligations) simply because, for example, a family has a carer or an au pair living with them.
97. Landlords with properties in areas which are subject to selective licensing should see economic benefits as those areas become more desirable. There should be greater demand for licensed rented property which will lead to shorter void periods and reduced tenant turnover, in turn leading to benefits of greater rental income and lower costs associated with turnover.
98. In an exercise by a local authority with areas of low demand they compared various data from an area suffering from low demand, the authority as a whole, and a more popular area in the same authority. Voids of greater than 6 months stood at 12.7% in the low demand area, compared with 6.4% in the popular area. If the cycle of low demand is broken by the package of measures, including selective licensing, then a subsequent fall in voids could lead to benefits to private landlords of approximately £600,000 a week<sup>6</sup>. If each of these properties would have been void for exactly 6 months of the year then that is approximately £15m a year.
99. In areas which are subject to selective licensing the regulations excepting certain types of tenancies from licensing will produce economic benefits for groups which would otherwise face fees for an inappropriate requirement to be licensed. This would include leasehold owner-occupiers and owners of holiday homes. For some of the excepted types of tenancies (such as those operated by local authorities and other public bodies, pubs and licensed premises, and other bodies regulated under separate legislation) there would otherwise be an economic cost from having to comply with a duplication of regulation.
100. Reputable landlords may also benefit from greater support from local authorities. In particular, where licensing is introduced as a tool to combat anti-social behaviour, local authorities and other bodies will be expected to give advice and practical support to licence holders where such problems arise.

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<sup>6</sup> This is based on an estimated 128,000 privately rented low demand dwellings, multiplied by the prospective reduction in voids of 6.3%, multiplied by £73pw – the average private rented sector weekly rent, 2001, of the Northern regions. For more details on how the estimated number of dwellings was calculated see the section on Costs.

101. Licensed landlords will be seen as more reputable which may make it easier to attract and retain tenants. Good private landlords would benefit from not having to compete with poor landlords who fail to incur the costs of appropriate management of their properties and undercut rents.
102. Local authorities may also be able to help landlords identify any assistance which may be available to improve their property or the local area, and this may enhance the value of their assets.
103. Local authorities will have a duty to operate a licensing system in the way defined in legislation and guidance. The “miscellaneous” regulations set out the information which must be included on all application forms. This will benefit landlords, especially those with properties in different local authority areas, by reducing confusion from a multiplicity of forms. The information specified has been subject to detailed consultation and the final result balances the needs of the local authority for useful information with the cost to the landlord of providing that information.
104. The “miscellaneous” regulations also specify the requirements that local authorities must follow for publicising their decision to designate an area for additional HMO licensing or selective licensing and for publicising their decision to revoke such a scheme in due course. By setting out these requirements landlords should be given every chance to comply with licensing and avoid the costs of the penalties they will face for not complying. They will also be made aware when their liability for licensing and its associated costs comes to an end.
105. The final benefit for landlords comes from the national minimum amenity standards set out in the miscellaneous regulations. These standards are the minimum to be used by local authorities to determine the suitability of a house in multiple occupation for the number of occupants. By enabling landlords to see the minimum standards with which they must comply they will be able to calculate the cost of bringing their properties up to standard and budget accordingly.
106. The minimum amenity standards have been designed to be as flexible as possible while ensuring decent quality accommodation for tenants. Consideration has been given to the needs of different types of HMOs (a flat share will be very different to a large hostel) and the different designs of amenities that exist. As a result landlords should not face inappropriate costs. Local authorities can use their own amenity standards if they are of at least an equivalent level to the national minimum standards. However, if a landlord believes that he has been denied a licence because amenity standards have been applied which are not appropriate to his property he will be able to appeal to the Residential Property Tribunal.
107. Local authorities are being encouraged to work together regionally and sub-regionally in setting plans for local implementation including the actual layout of application forms and setting fee levels. This should ensure a degree of consistency and save landlords time and effort in dealing with a range of regulatory regimes where they operate in different areas.

#### *Economic Benefits to Tenants*

108. Prospective tenants will be able to save time and effort in finding accommodation, as they will be able to easily identify properties run by reputable landlords by using the register of licences. The miscellaneous regulations increase ease of access to this information by ensuring that these registers will hold the same information on licensed properties as well as those subject to Temporary Exemption Notices and Management Orders.
109. Improved management standards (both from licensing and the management regulations which apply to all HMOs) should offer better value to tenants in HMOs. The licensing arrangements and the requirement for all HMO landlords to comply with updated management regulations will ensure that tenants will not have to face the costs of leaving their homes in order to escape poor management or fear of anti-social behaviour by neighbours. Responsible tenants in areas subject to selective licensing should see similar benefits.
110. Licensing may also save tenants money in taking action against a landlord for inadequate management if the local authority can instead take action through licensing.
111. The miscellaneous regulations include measures to ensure that HMOs used to house migrant or seasonal workers will not escape licensing or management regulations. To be an HMO a property has to be the only or main residence of the occupants and without these regulations it could be argued that the workers’ main home was elsewhere. As a result these tenants will particularly enjoy the economic benefits listed already from licensing.



112. The regulations excepting certain types of tenancies from selective licensing will have little economic impact on tenants beyond a potential economic benefit that those in excepted tenancies will not see an increase in rent to cover the costs of licensing fees.

### *Economic Benefits to Local Authorities*

#### HMO Licensing

113. The effect of HMO licensing should be to give local authorities a greater understanding of the HMO market which in turn should enable them to better understand the local housing market generally and to see what contribution HMOs can make to issues such as homelessness. They would also be able to target any available support towards landlords so that the sector can contribute to housing needs and deliver better value to tenants.
114. Authorities which have already made efforts to identify and improve conditions in HMOs should find that this work is made easier and possibly less costly by the improved definition of HMO and the clearer statutory basis of the new legislation. This will of course be balanced against the costs of changing from registration to licensing.
115. The management regulations which apply to all HMOs will provide economic benefits to the local authority from being able to prosecute individual landlords for failing to manage HMOs properly instead of having to introduce additional licensing for all HMOs in the area in order to catch one or two properties.
116. The miscellaneous regulations which set out the information to be included on licensing application forms and in the public registers of licences will prevent duplication of effort and save local authorities the resources that would have otherwise had to be used in developing their own application forms. The miscellaneous regulations also specify national minimum amenity standards which will save local authorities who may not already have such standards the cost of having to develop their own (unless they wish to).
117. The miscellaneous regulations which except certain types of property from being considered as HMOs for licensing purposes will save local authorities the cost of processing licence applications or enforcing management regulations on properties which are already regulated separately or which are inappropriate for licensing (such as properties occupied by a family with domestic staff). By targeting the HMO obligations appropriately the local authority can use their resources more effectively to ensure that standards in the worst properties can be raised.

#### Selective Licensing

118. In areas subject to selective licensing local authorities will benefit by reduced environmental costs and costs of crime and also by reducing the costs of work to regenerate areas subject to low demand.
119. The local authority study cited in 'benefits to landlords' shows that nearly all environmental and crime-related costs were higher in the low demand area. These included street cleaning, grounds maintenance, clearance of fly tipping, and clearing abandoned vehicles.
120. Identifying and involving private landlords in regeneration will make the process of reversing declining demand more effective and enable local authorities to benefit from being able to reduce the resources spent on dealing with the consequences of low demand, such as clearance schemes and compulsory purchase orders. Salford MBC estimate these to be in the region of £3m for an area of 4 to 5 streets.
121. A reduction in void periods and empty properties among private and social sector housing stock should also produce economic benefits to the local authority as it will lead to an increase in the number of properties eligible for council tax.
122. The regulations excepting certain types of tenancy from selective licensing will have an economic benefit for local authorities. Firstly their own housing stock is exempted from the licensing regime so they will not have to face fees or the enforcement work necessary. Nor will they face the inevitable duplication of work that this would present, given that there are already other methods of dealing with anti-social behaviour or low demand in local authority properties.

123. In addition these regulations will produce economic benefits for local authorities by enabling their resources to be targetted appropriately at licensing the properties that selective licensing was intended to deal with.

#### *Economic benefits to other groups*

124. Selective licensing in particular brings economic benefits to the wider community beyond the immediate landlord, tenant and local authority. All local residents should benefit from reductions in costs related to the incidence of anti-social behaviour by problem tenants in the private rented sector through landlords playing their part in seeking to tackle the problem.
125. Other housing providers which are excepted from selective licensing by the regulations will see the benefits of not having to pay fees for an inappropriate licensing application and, in some cases, not having to face duplicating and possibly conflicting regulatory regimes.
126. Service providers, such as the police, as well as local businesses would benefit from lower levels of crime and vandalism, which should lead to resource cost savings. The Home Office estimates the benefit from preventing one burglary to be around £2,300 and for preventing a robbery or mugging around £5,000 (the costs include stolen and damaged property, emotional and physical impact on victims and those to the criminal justice system).
127. Regeneration of an area of low housing demand should also result in increased demand for the services of local shops and businesses, bringing further direct economic benefits.
128. It is expected that selective licensing will bring economic benefits for owner-occupiers in the neighbourhood in which it operates as the downward spiral of decline comes to an end and their property values and demand for their properties begin to rise.
129. Although social housing landlords are excluded from the requirement to hold a licence, those with dwellings in the selectively licensed area would also benefit from an end to the decline of a neighbourhood as tenants choose to move into the area. Fewer voids means fewer resources would need to be devoted to the management and maintenance of void dwellings. There would also be fewer costs associated with anti-social behaviour. The local authority study cited earlier in this assessment, comparing the costs in its low demand area with the local authority average and a more popular area of the authority, found that the average cost of managing a social rented property was 47% higher in the low demand area than in the more popular area.

#### Management Orders and Special Interim Management Orders

##### *Economic benefits to Landlords*

130. The main economic benefit will be to responsible landlords who will no longer face unfair competition from those who would not exercise their management responsibilities seriously. Local authorities will have the power to take the management of such properties away from the owner. Landlords, along with other property owners in the neighbourhood, should also see an increase in their property value (together with shorter void periods and increased rental income) as the problem properties which blight a neighbourhood are tackled effectively.
131. Economic benefits also arise from the regulations enabling the use of Special Interim Management Orders to deal with individual properties which give rise to anti-social behaviour problems. The majority of responsible landlords will not face the costs of fees and compliance with a selective licensing scheme which would otherwise have to be introduced to deal with the problem.
132. There is potential for additional economic benefit to responsible landlords arising from how the local authority intends to manage those properties for which it is responsible. Local authority intentions are currently being finalised and the option is available for them to hand over the management to those who have the expertise in private sector renting. Responsible landlords may stand to benefit from this.

##### *Economic benefits to Tenants*

133. As with HMO and selective licensing tenants should benefit from better value for money from improved management. Management Orders will also ensure that tenants can stay in their own home and do not have to find alternative accommodation in order to enjoy well-managed property.

### *Economic benefits to Local Authority*

134. Instead of pursuing the landlord in a piecemeal fashion each time that person fails to carry out his responsibilities for the property, the local authority should face reduced costs of taking over the management and carrying out necessary work themselves. Under management orders the local authority will receive rent from the tenants and deduct its reasonable management costs before passing on what is left to the landlord.
135. As a result of Special Interim Management Orders the local authority will also see economic benefits from not having to go to the cost of introducing a selective licensing scheme simply in order to target one or two problem properties.

### **Economic costs**

#### Numbers likely to be affected

#### *HMO Licensing*

136. The economic costs of HMO licensing are limited by its being targeted only on those HMOs which pose the highest risk. Lower risk HMOs and those subject to other regulation, along with certain larger university halls of residence and properties run by RSLs will be exempted from the HMO definition for licencing purposes. Additional HMO licensing will then allow local authorities to focus licensing on particular circumstances and particular areas where there are problems for residents or local people.
137. Under our proposals on HMO licensing, an estimated minimum of 100,000 HMOs in England would be subject to mandatory licensing<sup>7</sup>. Assuming that these high-risk, three storey HMOs have on average six units of accommodation this gives an estimated number of licensable units of 600,000 in England. Around 10% of licensable HMOs in England are estimated to be registered under a registration scheme with control provisions and will be passported into licensing<sup>8</sup> without a fee. Fees are therefore likely to be payable for the first time on around 540,000 units.
138. We cannot be sure how many landlords will be affected by mandatory HMO licensing. The average (median) landlord in the private rented sector has 4 properties<sup>9</sup> and this would suggest that around 22,500 landlords might be required to pay fees under mandatory licensing along with the 2,500 already paying registration fees. On average each landlord would be paying fees on 24 units.
139. Our proposals on HMO licensing (as well as selective licensing) will involve work for landlords in order to get a licence. However, we have sought to minimise the impact of this as far as possible. We are setting out in regulations the mandatory information which must be included on an application form for a licence so as to ensure consistency across the country. The information which landlords will have to provide is that which they should already have (such as details relating to the property's age and size and location of amenities).
140. The Housing Act 2004 requires licences to be issued with certain mandatory conditions attached:
  - Production of an annual gas safety certificate (if gas is supplied to the property) but the requirement to undertake annual gas safety checks has been in law for 10 years.
  - The licence holder will have to keep smoke alarms in proper working order and submit on demand a declaration of their condition and location in the property.
  - A requirement to keep electrical equipment and furniture provided by the landlord safe and to submit a declaration of their safety on demand
  - A requirement to supply to the occupants a written statement of the terms on which they occupy it
  - As a condition of selective licences the landlord will have to seek written references from potential tenants.

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<sup>7</sup> Estimated figures drawn from responses by 50% of Local Authorities to requests for information by ODPM.

<sup>8</sup> Estimated figures drawn from responses by 50% of Local Authorities to requests for information by ODPM.

<sup>9</sup> English House Conditions Survey private landlord study.

141. We do not believe these conditions to be onerous on landlords and they represent good practice which the majority of responsible landlords will already be following. In particular for those landlords who have already been subject to regulation in the form of registration and should already be managing their properties properly, there should be no additional immediate costs on the introduction of this measure since their registrations will be passported into licensing.

#### *Selective Licensing*

142. Under selective licensing nearly all private rented sector landlords who operate in the low demand areas concerned and areas of anti-social behaviour would face costs. On the basis of returns made by local authorities, we estimate that there are around one million dwellings in low demand in parts of five regions in the north and midlands<sup>10</sup> in England. Of these approximately 640,000 are in the private sector. One in five of these are likely to be privately rented (estimated from 2001 HIP data<sup>11</sup>) giving a total of 128,000 privately rented dwellings subject to low demand. The average (median) number of lettings<sup>12</sup> per private sector landlord in 2001 was 4. This suggests around 32,000 landlords operating in areas of low demand.
143. This is a maximum estimate as not all areas of low housing demand are likely to be covered by licensing. If, for example, 75% of landlords operated within a licensed area the number affected would be approximately 24,000. However, these figures would be further reduced by landlords whose dwellings in the low demand area are all HMOs, and so would have a licence under the proposed HMO licensing regime (though the number of HMOs in areas of low demand is thought to be relatively small).
144. The Improvement and Development Agency (IDeA) asked local authorities in autumn 2005 about their intentions to use selective licensing. Only 44 local authorities said that they intend to introduce selective licensing. (206 did not intend to use it and 69 local authorities did not consider it applicable to their area.) Of the 44 who intend to use it, 6 intend to do so within 6 months of the commencement of the Act, 11 intend to use it within 12 months and 18 intend to use it within 18 months. Nine local authorities believe it will be more than 18 months before they implement selective licensing.

#### *Management Orders*

145. It is not possible to put figures on the number of lettings or landlords who would be subject to management orders. Such orders are intended to be used in the very worst properties and it is envisaged that this will be a minority of cases.

#### Economic Costs of HMO and Selective Licensing

##### *Costs to the Landlord*

146. Landlords of all HMOs, regardless of whether or not they are licensable, will incur costs arising from the updated management regulations. Since management regulations have been in existence for 40 years and the regulations simply update them, the costs should not be substantially in excess of those borne by reputable landlords who are engaging in good management practice already. Those who are found not to be complying with the regulations will be committing a criminal offence and will face a fine of up to level 5 on the standard scale (currently £5000). Furthermore, if the HMO is licensable and the management regulations are breached the landlord will face the prospect of his licence being revoked and an Interim Management Order being applied.
147. Landlords of properties subject to licensing will incur costs relating to obtaining a licence, including the payment of a licence fee every 5 years and costs associated with producing evidence to pass the fit and proper person test. As outlined in the summary of costs above, we envisage that fees for HMO licensing are likely to be payable by around 22,500 landlords. We have decided following consultation not to set a fee level or a cap but instead to allow local authorities the discretion to set fees which cover their costs.
148. Anecdotal evidence, based on discussions with 3 or 4 local authorities in different areas of the country, suggests that their costs may result in fees for an average 3 storey 5 bedroom property of around £500. Averaged out over the 5 year life of a licence this would result in annual fee costs of £100. With an

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<sup>10</sup> The five regions referred to consist of the North East, Yorkshire and Humberside, North West, East Midlands and West Midlands.

<sup>11</sup> 2001 Housing Investment Programme returns submitted annually to Government by local authorities

<sup>12</sup> EHCS 2001 Private Landlords Survey

anticipated 100,000 properties subject to mandatory licensing<sup>13</sup> this would result in a total annual cost of £10,000,000. Assuming 22,500 landlords paying fees for an average 4 properties the cost of fees to a landlord could be just over £400. However there will be variation across the country because of the differences in local authority costs and the types of properties affected. More detail of our proposals for the fee regime is set out in the section below on Costs to Local Authorities.

149. Local authorities will have the discretion to offer discounts on licences, for example to landlords who are accredited under a local authority scheme. Discounts may also be available for licence renewal applications or applications by landlords who have bought a new property but are already licensed for other properties by the local authority. In both examples the applications should require less work than the initial licence application and fees can reflect this.
150. Where registration schemes with control measures are already in place, HMOs which are licensable will be passported into licensing without charge for the duration of the registration.
151. Some landlords will also incur further costs including
  - preparation of written statements of tenancy obligations and inventories for all new lettings
  - providing gas safety certificates and declaration of electrical and furniture safety
  - checking references of prospective tenants
  - in the case of HMO licences, installation of extra amenities to make the property suitable for the number of occupants
  - Responding appropriately to complaints of tenants' anti-social behaviour
  - Generally taking more proactive and responsible management.

These costs of improved management would be over and above the costs of repairs or the safety measures associated with HHSRS. These are particularly difficult to quantify since they will be different for each landlord.
152. The miscellaneous regulations set out national minimum amenity standards for HMO licensing which should enable the landlord to identify the amenities he needs to install in his property and allow him to budget accordingly. The regulations also minimise the cost to landlords by setting out the information which will be common to all application forms. This information is balanced between the local authority's need for useful information on which to make a decision and the cost to the landlord of providing that information. By setting out common information standards the risk of a confusing multiplicity of forms is avoided.
153. Some landlords, who would themselves be unable to pass the fit and proper person test or whose current agents would not be able to pass the test, will also incur other costs in terms of identifying and employing a suitable person to take on the management of the HMO.
154. Some of the costs associated with both HMO and selective licensing would be annual costs or determined by the number of new lettings and tenants' behaviour. Many are likely to involve little or no additional costs to the majority of reputable private landlords who will undertake the activities already. For example, information from a survey of private landlords undertaken as part of the 2001 English House Condition Survey indicated that, for recent lettings, 96% of landlords provided a written tenancy agreement and 70% required references. Annual gas safety checks have been mandatory for nearly 10 years now.
155. Less professional landlords will face greater additional costs, as they will need to provide information and undertake tasks that they previously did not. We would expect local authorities to offer practical support and advice to landlords to manage their property properly. In this way the impact on those landlords to whom licensing will potentially be the greatest burden will be minimised, for example, by avoiding having to pay fees for professional advice on managing their property. The way in which the local authority works with landlords will be a key area to consider when formulating their plans for a selective licensing regime before seeking the Secretary of State's approval for the designation if approval is necessary.
156. We have not identified any additional economic costs arising from the regulations excepting certain tenancies from selective licensing, either for the tenancies which are excepted or those which are liable for licensing.

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<sup>13</sup> Estimated figures drawn from responses by 50% of Local Authorities to requests for information by ODPM.

### *Costs To Tenants*

157. Landlords may seek to pass the additional costs of licensing on to tenants through higher rents. However, given that the fees can be divided among the total number of letting units, significantly increased costs are unlikely to be associated with the cost of the licence itself. Where there is a need for improvements to be made in order to reach the standard required for licensing, costs may be higher and might be passed on into rents, but should be accompanied by improvements in conditions.

### HMO Licensing

158. Landlords with properties which are not subject to HMO licensing will still be expected to abide by the updated management regulations and, as with licensing, there is scope for them to pass on the costs of better management to tenants. If properties are better managed and competition for the accommodation increases as a result of its better quality, this also gives scope to landlords to ask for higher rents.
159. Against the risk of licence fees leading to higher rents, it is important to remember that tenants in HMO accommodation are likely to be those on low incomes – students and housing benefit claimants - with restricted allocated funds for housing costs. If a landlord tries to increase the rent too sharply these tenants will move to other properties which are affordable.
160. The HMO management regulations place duties on the occupants to enable the manager to carry out his responsibilities. The occupants may not frustrate the manager in performing his duties, must provide information necessary for the management of the property on request, and must allow the manager to enter the living accommodation at reasonable times for any purpose associated with management duties. In particular, the occupants must follow the arrangements made by the manager for storing and disposal of litter and must comply with reasonable instructions on the means of escape from fire, prevention of fire and use of fire equipment. If the occupants breach these regulations they will be committing a criminal offence and will face a fine of up to £5000. Responsible tenants should not face this cost.

### Selective Licensing

161. Where selective licensing is introduced in areas of low demand, the scope for landlords to pass on their increased costs in rent should be greatly reduced by targeting licensing schemes on areas where excess supply exists, offering tenants a choice of home and so exerting downward pressure on rents. We have not identified any additional economic costs to tenants arising from the regulations excepting certain tenancies from selective licensing, either for the tenancies which are excepted or those which are liable for licensing.

### *Costs To Local Authorities*

162. Local authorities will incur the costs of implementing and enforcing HMO and selective licensing schemes. These costs will include initial costs associated with implementing the scheme such as recruiting and training staff in new and different duties and implementing administrative systems. There are additional ongoing costs associated with running and enforcing the scheme, including: the costs of processing the licence applications, site visits as necessary and legal action against those in breach of the scheme.
163. The regulations excepting certain tenancies from selective licensing could represent an economic cost to local authorities from the potential lost fee income that they could have charged. The fees for these tenancies could also be easier to collect because they would be for applications from larger and higher-profile bodies (such as RSLs). However, since fees should not be set at a level above the actual cost of licensing the potential loss of income has to be compared to the work involved in processing inappropriate licensing applications and, in some cases, licensing properties which are already regulated separately.
164. The miscellaneous regulations which allow certain properties to be excepted from HMO regulations and licensing also represent a potential cost to local authorities from lost fee income. However, as for the exceptions from selective licensing, the fees should only cover the costs of licensing and the loss of income should be set against the cost of processing applications if these properties were not excepted.

165. The miscellaneous regulations add to local authority costs by ensuring that owners and managers of properties used to house migrant and seasonal workers will not be able to avoid compliance with HMO licensing and management regulations.
166. Local Authorities Start-up costs: Costs to start up licensing schemes will vary between authorities, given the intentions of different local authorities, the variation in housing stock, and the existing level of regulation which they apply.
167. In the case of HMO licensing those authorities which already have a registration scheme should face relatively limited costs in converting their resources to dealing with licensing. They will already have staff in place, dealing with applications and action on HMOs. They will have identified most of their HMOs and taken action in many cases where necessary. They will also be able to passport registered HMOs into licences and will not therefore face a large number of new applications to process at the outset. There will be some administrative costs in setting up the register of licences if records are not currently kept in that format and in advising registered landlords of the new arrangements. Adjustments may also be needed in their administrative procedures and application forms. However, the burden on such authorities will be quite light.
168. At the opposite end of the spectrum some authorities that have not taken up registration schemes and have not identified HMOs or taken any action in relation to HMOs may face a much greater burden. They will need to recruit and train staff and set in place administrative systems. They will also need to try to identify HMOs so that they are able to meet their duty to secure applications. The level of effort and cost required will vary with the number of HMOs and with other factors such as the level of demand and supply of suitable staff in particular areas.
169. The miscellaneous regulations which set out national minimum amenity standards, and specify the information to be requested on all application forms and held on all registers are intended to minimise some of the start-up costs of licensing.
170. Although central Government will be undertaking a publicity campaign nationally about licensing, local authorities are also undertaking a role in publicising the forthcoming regime to landlords and tenants at a local level. This adds to their start-up costs but should save them money in the longer term by alerting responsible landlords to the need to be licensed so the local authority can focus its resources on finding and, in due course, prosecuting those who do not apply.
171. For the introduction of selective licensing and additional HMO licensing local authorities will face additional start-up costs. If they intend to introduce such a scheme they are required to consult anyone who may be affected. Once they have decided to designate an area for a licensing scheme the local authority are also required to publicise the forthcoming scheme in the manner governed by the miscellaneous regulations. The regulations specify the information which must be included in a notice and require that the notices are published at municipal buildings, on the local authority's internet site and in 6 editions of at least 2 local newspapers circulating in or around the designated area. Two notices must also be sent to people who responded to the consultation on designating an area for licensing, as well as associations of landlords, tenants and residents which have members in the designated area and those which represent the interests of landlords, tenants, estate agents and managing agents in the designated area. Centres which are known to provide advice on landlord and tenant matters must also receive two notices. While this could represent a significant demand on local authority resources, it is necessary in order to raise maximum awareness and ensure that landlords are given every chance to comply with the duty to apply for a licence.
172. The miscellaneous regulations also include requirements on the local authority to publicise the revocation of a selective or additional licensing scheme. These requirements are not as onerous as those for publicising the start of a scheme and simply require a notice to be put on a public notice board at at least one municipal building in the designated area (or close to it if there are none in the designated area itself). The notice must also be published in the next edition of at least 2 local newspapers circulating in the designated area. Although this duty will place a burden on local authority resources it is important for landlords to be aware at all times of the licensing duties which they have to comply with.
173. Local Authority On-going Costs: After the initial start-up costs, the proposed licensing fees associated with licensing applications would provide for a self-financing licensing scheme, a principle accepted by the Local Government Association.

174. The fact that the two types of licensing regime can run alongside one another should help to minimise the costs of the system to local authorities.

#### *Fee Levels*

175. It will be for local authorities to set fees which cover their costs. Fees must reflect solely the cost of licensing individual properties but be sufficient to cover local authorities' costs in running the scheme as a whole.
176. Discussions have previously been held with the Local Government Association regarding reasonable fee levels. The intention had previously been that fees should be flexible and transparent but that a cap should be set on the maximum fee that could be charged.
177. Following the discussions and consultation it became clear that the best way forward was not to set a cap on the fee level.
178. The policy intention is that licensing should be self-financing with a fee structure which is fair and transparent, reflecting the actual costs of licensing. It was felt that a cap would work against this policy since local authorities would be tempted to charge to the maximum permitted level, regardless of the actual costs of licensing. It would be difficult to set a national cap level that would reflect accurately the costs of each local authority because of the many regional variations in prices and properties. Some local authorities will have few HMOs, which require very little enforcement, and others will have many HMOs, which pose a range of problems and require significant enforcement action.
179. In some areas the actual cost of licensing would be higher than the national average and a capped fee would result in council tax payers subsidising the licensing regime. In other areas the capped fee would be more than the cost of licensing yet the local authorities might be tempted to charge to the maximum and use the profit for other projects.
180. It is not possible, therefore, to predict accurate fee levels for the purposes of this document. Local authorities are currently estimating their likely costs and fees, in consultation with landlords and their representative associations. Anecdotal evidence, based on discussions with 3 or 4 local authorities in different areas of the country, suggests that their costs may result in fees for an average 3 storey 5 bedroom property of around £500. Averaged out over the 5 year life of a licence this would result in annual fee costs of £100. With an anticipated 100,000 properties subject to mandatory licensing<sup>14</sup> this would result in a total annual cost of £10,000,000. Many local authorities, particularly in urban areas, are working together with neighbouring authorities regionally and sub-regionally to devise similar implementation plans which will reduce costs further for both landlords and local authorities. Work is also underway with the Local Government Association to establish a toolkit for local authorities to use to identify the work involved in granting a licence and the likely costs associated with that work.
181. Local authorities will have the discretion to offer discounts on licences, for example to landlords who are accredited under a local authority scheme. Discounts may also be available for licence renewal applications or applications by landlords who have bought a new property but are already licensed for other properties by the local authority. In both examples the applications should require less work than the initial licence application and fees can reflect this.
182. Where registration schemes with control measures are already in place, registrations of mandatorily-licensable HMOs will be passported into licensing without charge for the duration of the registration. When the registration period expires the fee for a new licence may be different from that required for registration.
183. Even where a landlord is required to pay the maximum fee, the cost of the licence itself will be low in comparison with other costs of running an HMO. For example, if the maximum licensing fee were set at £180 per unit, this would amount to only 70 pence per unit per week during a five-year licence.

#### Management Orders and Special Interim Management Orders

##### *Economic Costs to Landlords*

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<sup>14</sup> Estimated figures drawn from responses by 50% of Local Authorities to requests for information by ODPM.



184. The significant cost to landlords whose properties are subject to a management order will come from the fact that the rent will be collected by the local authority who will deduct its reasonable management costs before passing on the remainder to the landlord. Any costs which are in excess of the rent can be recovered from the landlord in the form of a charge on the property.
185. The local authority will apply to a residential property tribunal for authorisation to make a Special Interim Management Order which lasts for a year. If the problem has not cleared up by the end of that time, or if the property is still not suitable for licensing, the local authority has to apply for a Final Management Order.
186. Under a Final Management Order the local authority will have to keep records of its expenditure which the landlord can check at any time. The local authority will also have to compile a plan of work to be carried out on the property together with estimates of expenditure. It will have to outline the amount of rent it expects to obtain from tenants, how any leftover rent will be repaid to the landlord once management costs have been deducted, how any remaining rent will be repaid to the landlord when the Order comes to an end. Finally it will have to outline how any expenditure which is not covered by the rent will be recovered from the landlord.

#### *Economic Costs to Tenants*

187. There should not be any increased costs to responsible tenants from a management order. Their tenancies remain in place unaffected by the change of management.
188. Since the proposal is for Special Interim Management Orders to be made in respect of a property which is giving rise to particular concerns about anti-social behaviour then there may be costs to the tenants whose behaviour is causing the problem. This could go so far as the costs of eviction and finding new accommodation.

#### *Economic Costs to Local Authorities*

189. Local authorities will bear the costs of managing the property. This will include carrying out any necessary work to improve physical conditions. They can recover these costs from the rents that they receive from tenants in the property. They can also recover any costs in excess of the rent from the landlord in the form of a charge on the property.

### **Social benefits**

#### HMO and Selective Licensing

190. Improved management practice and clarity of responsibility will be key features of both HMO and selective licensing. The revised management regulations for HMOs will provide local authorities, private landlords and agents, and tenants with greater guidance and direction on what constitutes responsible management. This will help weaker landlords to raise their standards.
191. The inclusion of further regulations governing the treatment of properties housing migrant and seasonal workers will bring social benefits to the community, to tenants and to responsible landlords by ensuring that owners and managers of these properties (which are often in the worst condition) cannot evade their obligations under management regulations or licensing.
192. For both selective and HMO licences, conditions will require a statement of responsibilities to be given to the tenant so that both landlord and tenant are clear about what is expected of them. In the case of selective licensing, conditions will also require the landlord to take up written references on potential tenants which is intended to lead to an end to irresponsible letting.
193. Tenants whose landlords employ poor management practice should benefit from better conditions in their homes as a result of the updated management regulations. Vulnerable tenants, who are least able to represent their own interests, should benefit most from these changes and local authorities will be able to assist such tenants by enforcing the requirements of licensing. The management regulations will enable better targeted enforcement by local authorities.
194. The amenity standards in the miscellaneous regulations will ensure that standards in licensed HMOs are sufficiently high and tenants will be aware of the standards that they can expect to find in shared accommodation.

195. A critical assessment of the study done by consultants from ENTEC on case studies of HMO fires, has provided estimates of the numbers of deaths that might be avoided. This analysis includes both lives saved as a result of the introduction of licensing and the better regulation of these properties in terms of fire safety. It had been estimated in the critical assessment that the number of deaths saved under the proposals in Option 3 might be 20%<sup>15</sup>. Assuming 63 deaths per year this would lead to 12-13 lives being saved per year.<sup>16</sup> Applying a standard statistical value of life this would imply savings of £13.75m. Further deaths and injuries relating to other risks are likely to be saved by improving management in HMOs but these are more difficult to quantify.
196. The miscellaneous regulations also set out the information which all local authorities must hold on the public registers of licences, temporary exemption notices, and Management Orders. This will provide the benefit to tenants and others in the community of improving ease of access to information about privately rented properties in the neighbourhood.
197. The community will also benefit from the requirements on the local authority to publicise notices concerning the introduction of additional or selective licensing. The widespread publicity will ensure not only that landlords are aware of their duty but also that tenants and others in the community are aware that measures are being taken to improve conditions in problem properties in their area.
198. Landlords could also be encouraged to become more involved with local authorities in initiatives to improve the sector and give rise to more sustainable communities. In particular, better management should help to lessen the impact of HMO usage and badly let properties on neighbourhoods. Better management should also mean that private rented properties are safer and more secure and as a result residents are less subject to and afraid of crime.
199. The regulations which except certain tenancies from selective licensing will offer social benefits to tenants because the intention behind the measure is to ensure that no loopholes or conflicts between different regimes arise which could be exploited by rogue landlords to avoid compliance. All tenants, including those in exempted tenancies will benefit as licensing is targetted appropriately at the problem properties it was designed to deal with. If it becomes evident that there is a need for some of the excepted tenancies to be included in selective licensing then the regulations can be revised as necessary.

#### Management Orders and Special Interim Management Orders

200. The social benefits of management orders accrue mainly to responsible tenants whose living conditions should be improved by responsible management. The wider community should also benefit from the improvement in conditions in individual properties which have blighted the neighbourhood.

### **Social Costs**

#### HMO and selective licensing

201. It is unlikely that there will be a noticeable reduction in the availability of HMO accommodation as a result of licensing. Licensing is targeted on a limited number of higher risk properties, partly in order to minimise the impact on the supply of affordable housing. The costs of licensing itself are also limited by comparison to the overall costs of running an HMO and would be unlikely to make the letting uneconomic. Where improvements are required it will, in the vast majority of cases, be worthwhile for the landlord to make the improvements rather than ceasing to operate the property as an HMO. There may be a very few cases where landlords will reduce the number of tenants in order to avoid licensing (from 5 to 4 perhaps) but the loss of income in most cases is likely to exceed the costs of licensing and therefore few will take this option.
202. There is a potential risk of increased eviction under selective licensing as some bad landlords come to realise that they will not be able to continue to operate in the local private rented sector and sell up. There might therefore be some tenants made homeless and possibly an increase in empty properties in areas of very low demand. However an essential part of the development of a selective licensing scheme will be

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<sup>15</sup> Full details of the calculations are available in DETR (1998) "Fire Risk in Houses in Multiple Occupation: Research Report". Stationery Office, London: ISBN 0 11 753443 9.

<sup>16</sup> Research included converted blocks which will not be subject to licensing under current proposals. However, these properties are at significantly lower risk than other HMOs in this regard.

that the scheme is placed within a strategy which takes account of the other housing issues including homelessness. Such effects should therefore be identified in advance and measures implemented to deal with them.

203. We have not been able to identify any social costs from excepting certain tenancies from selective licensing. If it subsequently becomes evident that there is a need for some of the excepted tenancies to be included in selective licensing then the regulations can be revised as necessary.
204. We also cannot identify any social costs arising from the miscellaneous regulations or the HMO management regulations.

#### Management Orders and Special Interim Management Orders

205. We have not been able to identify any social costs associated with Special Interim Management Orders. The landlord of the property will still be the owner and can do what he wishes with his interest in the property. This means that the property can be sold freely. If it is sold to another landlord that person will have to apply for the management order to be revoked and, if it is a property liable to licensing, they will have to apply for a licence. There is no risk of illegal eviction in order to comply with management orders or if the property is sold on.

### ***Environmental benefits***

#### HMO and Selective Licensing

206. Better management of HMOs, arising both from licensing and the management regulations for all HMOs, should reduce their adverse effects on the local environment in terms of matters such as cleanliness of common areas (including gardens and yards), litter and rubbish removal, noise pollution and possibly even improved efficiency of electrical and gas appliances which will require regular checks under the licensing regime.
207. Selective licensing should bring additional benefits to the neighbourhood including cleaner streets and public spaces, less litter and graffiti, less fly tipping and fewer abandoned vehicles. The regulations excepting certain tenancies from selective licensing should have a neutral impact on the environment - we can identify no benefits or costs arising from the proposals.

#### Management Orders and Special Interim Management Orders

208. The environmental benefits of Management Orders are broadly the same as for HMO and selective licensing.

### ***Environmental Costs***

#### HMO and Selective Licensing

209. We have not been able to identify environmental costs associated with any of the regulations which this impact assessment addresses. We are also unable to identify any environmental costs associated with HMO licensing as a whole.
210. Under selective licensing there is a potential risk of displacement of problem landlords and tenants to other areas which might then suffer some environmental deterioration while the selectively licensed area attracts reputable landlords and tenants.
211. This should not occur however if schemes take full account of these risks and address them before the scheme is introduced. This will entail looking at how the boundaries of schemes are defined to prevent displacement into neighbouring streets and the use of the scheme beyond currently low-demand areas where there is significant evidence that there is the potential for similar decline. It will be important for this aspect of the licensing regime to be one of the features that is closely monitored when assessing the operation of the schemes.
212. We have not been able to identify any environmental costs from excepting certain tenancies from selective licensing.

## Management Orders and Special Interim Management Orders

213. We have not been able to identify any environmental costs associated with the use of Management Orders or Special Interim Management Orders.

### **Small Firms' Impact Test (SFIT)**

214. The majority of HMO landlords would be regarded as small businesses. Many own only one or two properties often as a part-time business in addition to other business activity or employment. There has been consultation with a number of small landlord organisations such as the National Federation of Residential Landlords, the Small Landlords Association and the Residential Landlords Association in addition to other representative bodies such as the British Property Federation. Most landlords accept that the current regime is far from satisfactory and is inconsistent, and while most oppose licensing, landlord organisations have been kept fully informed and have been involved in the development of the licensing proposals. Their views have been actively sought at all stages of consultation. Their representatives appeared before the House of Commons Select Committee which scrutinised the draft Bill and they lobbied successfully for certain amendments to the legislation as it went through Parliament. In the further consultation on draft regulations they made an essential contribution in ensuring that the regulations struck a balance between protecting tenants and reflecting the reality of managing property.
215. We have consulted with the Small Business Service. They feel a licensing regime which is targeted at landlords of larger, higher-risk HMOs is the most favourable option for the small, responsible landlord with only a few units to let.

### **Competition Assessment**

216. We do not anticipate that there will be any significant impact on existing levels of competition in the affected market(s), even using the narrowest of possible market definition - that is the provision of private rented accommodation in areas of low housing demand (with each designated area forming a separate market) or the provision of privately rented HMOs in areas where HMOs are clustered.
217. Many smaller landlords employ professional agents to manage the property on their behalf. Where agents are employed in this way the licensing requirements to prove their fitness also applies to these companies. The proposed regulation will therefore affect landlords and the management agents employed by them.
218. Although the licence fee and additional paperwork involved in obtaining a licence may have a proportionately greater effect on smaller suppliers we believe that any differential effect would be small in light of the focus on low licence fees and a relatively straightforward licensing requirement. Therefore those landlords who have entered the market recently as part of the increase in "buy to let" should not be affected any more than more established landlords. It is unlikely that any effects would be sufficient to result in any change in the market structure. The introduction of a licence fee will not result in any additional or ongoing costs for firms seeking to enter the market that will not be faced by existing firms.
219. The introduction of minimum standards with which all suppliers must comply will raise the barriers to entry and will reduce the ability of suppliers to compete on quality. It will however ensure that poor landlords who provide badly managed accommodation can no longer compete unfairly by undercutting the majority of landlords who are responsible and provide reasonable conditions for their tenants.
220. It is possible that some small landlords/agents who are either not willing, or not able, to meet the basic standards that will be required may exit the market. However, we consider that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.
221. There may be an increase in rents as minimum standards are forced to rise and landlords seek to recoup costs of achieving these improvements. Where accommodation is occupied by low income groups (students or housing benefit tenants) their restricted available funds for housing costs could limit the potential for large rent increases. Landlords who provide student housing will also be competing for business against university-owned accommodation which will provide a further limit on rent increases. However, where HMOs are concentrated at the low rent end of the market in high demand areas it is probable that landlords would be able to increase their prices without losing tenants.

## **Enforcement, Sanctions and Monitoring**

222. The most important sanction will be refusal or revocation of a licence or the threat of such action – preventing the landlord from letting the property unless the local authority was satisfied that suitable alternative management was put in place. Landlords letting their property without a licence would be committing a criminal offence and subject to fines of up to £20,000. They will not be able to evict their tenants using the guaranteed possession procedure and the local authority and tenant can claim back any money which has been paid towards the rent.
223. Where a landlord is deemed not to be fit and proper or the property and a licence is not granted or has been revoked, the authority would be able to put an alternative manager in place, for example, a local management agent if they were satisfactory to the local authority. Where no licensee can be found or the property cannot be made suitable for licensing the local authority will have to make an interim management order to ensure the property is properly managed until a longer-term solution can be found – this order can last for up to 12 months. Where this is not possible they can make a final management order which places the longer-term management of the property in the hands of the local authority. The local authority can deduct reasonable management costs from the rental income that is passed on to the property owner. In practice, however, it is likely to be in the interests of both the landlord and local authority to find a suitable manager of the property without having to take action in this way.
224. Local authorities will also be able to place conditions on the management of the property in the licence. Such conditions would have to be reasonable and a landlord would be able to appeal to the Residential Property Tribunal against the imposition of a condition. Breach of conditions could lead to fines of up to £5,000.

## **Implementation and Delivery Plan**

225. On 6<sup>th</sup> April 2006 Parts 2, 3 and 4 of the Housing Act and the regulations to support them, will come into force with the exception of the sections applying penalties for operating a licensable property without a licence. Transitional arrangements for passporting existing registered HMOs into mandatory licensing will also be implemented at the same time as will the exemption from licensing for education establishments which sign up to an Approved Code of Practice.
226. The penalties for operating a licensable property without a licence will come into force 3 months later on 6<sup>th</sup> July 2006. The delay is intended to allow local authorities time to deal with an anticipated initial rush of applications before having to start to prosecute those who have not applied.
227. Although the powers to introduce selective licensing and additional licensing of smaller HMOs will come into force from April 2006 it is likely that designated schemes will not actually be implemented immediately because of the need to consult before designating a scheme and publicise the designated scheme in the required manner before it comes into force. Any selective or additional licensing scheme comes into force a minimum of 3 months after it has been designated.
228. A national publicity campaign, involving advertising and press articles to make landlords and managers aware of the new licensing regime, will begin in March. Local authorities are also undertaking publicity work locally and the Government is supporting them in this.
229. Local authorities have already begun to inform local landlords of the forthcoming legislation and have been discussing with them the details of how licensing should be implemented locally. Landlords associations and other representative groups have been informing their members of the requirements for licensing and management orders since the legislation began its passage through Parliament. We are supporting such organisations in their work to explain the new duties to their members.

## **Post-Implementation Review**

230. There will be a formal monitoring process of the implementation of the licensing system in the form of an evaluation within a three-year period after implementation. This would enable a proper assessment of the impact and effectiveness of the new system and allow changes to be made if necessary.
231. Any changes which are necessary to the coverage of the licensing scheme, if this were found to be justified for policy reasons, can be made by amending the secondary legislation which contains the detailed procedures.

## Summary and Recommendation

232. Annex A lists a summary of the nature of recognised costs and benefits associated with the different available options for HMO licensing, selective licensing and management orders.
233. The actual costs and benefits of the options for HMO and selective licensing and management orders can be identified but are hard to quantify. Many of the costs and benefits are intangible and cannot be put into figures while others are based on local circumstances. We are committed to monitoring the system as it is implemented and we intend to carry out a review at the end of a 3 year period. This should provide more quantified costs and benefits of the chosen options.
234. For HMO licensing the option that was followed was to licence high-risk HMOs and exempt certain HMOs altogether from licensing. There had been a Labour party manifesto commitment to improve the outdated system of HMO licensing so doing nothing was not an option that could be pursued. Of the three options for HMO licensing the option that was followed strikes the best balance between the need to regulate and the burden that falls on local authorities, landlords and tenants from the regulation.
235. For selective licensing the option that was followed was to give local authorities the power to establish licensing schemes in areas of low housing demand or areas where serious problems of anti-social behaviour in the PRS exist, covering all private landlords apart from certain designated exceptions. It was clear from consultation that existing powers to encourage landlords to deal with these problems are inadequate so doing nothing was not an option. It was also clear that more stringent regulation would increase the burden on landlords and local authorities without contributing significantly to the need for better management of private rented properties.
236. For management orders the option that was followed was to allow local authorities to take over management of properties which are not suitable to be licensed or which individually present problems of anti-social behaviour. This option presented the best way to deal immediately with problems of poor management, providing benefits to tenants, the neighbourhood and responsible landlords.

## Declaration and Publication

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

*Signed ...Kay Andrews.....*

**Date 15th February 2006**

Kay Andrews, Parliamentary Under Secretary of State, ODPM

**Minister's name, title, department**

**Contact point for enquiries and comments:**

## Annex A

### Summary Table of options for HMO and Selective Licensing and Management Orders

#### HMO Licensing

Option	Costs	Benefits
Continue to rely on existing powers to deal with problems in HMOs	<p>Existing powers are out of date, are discretionary and vary widely in the nature of their application across the country.</p> <p>Responsible landlords incur costs of compliance and unfair competition from others who avoid compliance.</p> <p>Tenants are at greater risk from poor quality properties.</p>	None
Licence all HMOs	<p>A duplication of regulation for HMOs which are already regulated under separate legislation.</p> <p>Economic costs for local authorities in regulating nearly all dwellings which are occupied by more than one household.</p> <p>Costs to tenants in terms of continuing risks in poor quality property as the local authority was tied up processing applications for low-risk dwellings and HMOs which were already regulated.</p>	<p>An absolute rule for landlords to comply with.</p> <p>Improved rental incomes as property values improve and with an end to unfair competition from poorly-managed properties.</p> <p>A single register for tenants to consult to ensure a property is licensed.</p>
Option 3: Licence high-risk HMOs and exempt	Licence fee for landlords at least every 5 years.	Costs to landlords of licensing limited to HMOs

## HMO Licensing

Option	Costs	Benefits
certain HMOs altogether from licensing	Costs to landlords of improved management and compliance with the licence conditions.	which are most likely to present problems.
	Costs of finding a licence holder (eg an agent) if the landlord is not suitable.	Improved rental incomes and a single register for tenants (as above).
	Start-up costs to local authorities implementing schemes.	Better value to tenants from improved management standards.
	Ongoing costs for local authorities of processing licence applications.	Savings to tenants from having to take action against the landlord for poor management.
	Limited scope for higher rents to tenants as landlords pass on licensing costs.	Improvements to local environment from improved litter removal, noise pollution.

## Selective Licensing

Option	Costs	Benefits
Do nothing and rely on existing powers to deal with anti-social behaviour and low housing demand	Cost to local authority in locating private landlords responsible for local properties.	Benefit to irresponsible landlords from cheap properties with no enforcement of management responsibilities.
	Costs to local authority of trying to make landlord take appropriate action on their tenants' behaviour.	
	Environmental cost as no requirement on landlords to engage with regeneration initiatives.	
	Environmental cost as anti-social behaviour continues while local authority locates the	



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	<p>landlord.</p> <p>Environmental cost as landlord may not take appropriate action to deal with replacement tenants if they become anti-social.</p> <p>Economic cost to good landlords of increased void periods as good tenants are reluctant to move to the area.</p>	
<p>Give local authorities the power to establish licensing schemes in areas of low housing demand or areas where serious problems of anti-social behaviour in the PRS exist, covering all private landlords apart from certain designated exceptions.</p>	<p>Economic cost to local authority of processing licence application and finding and prosecuting landlords who have not applied for a licence.</p> <p>Cost to landlord of obtaining a licence.</p> <p>Cost of good property management (this should not represent an extra cost to those who already manage their properties well).</p> <p>Cost of finding a licence holder (eg agent) if the landlord is not suitable.</p> <p>Scope for increased rents for tenants as landlords reclaim costs of management.</p> <p>Costs to anti-social tenants of eviction and finding new accommodation.</p>	<p>Responsible landlords will benefit from increased demand for their properties. Estimated benefit: £600,000 a week.</p> <p>Support to landlords from local authorities, particularly in tackling anti-social behaviour.</p> <p>Increased property values as the area improves.</p> <p>Tenants able to easily identify licensed properties via register.</p> <p>Tenants benefit from improved management of properties.</p> <p>Reduced environmental costs and costs of crime to neighbourhood.</p> <p>Increased demand for services from local shops and businesses as area becomes more desirable.</p>

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	<p>Scope for local authority costs from increased homelessness as anti-social tenants are evicted. However, local authority must have considered the decision to introduce selective licensing in association with their homelessness strategy so such costs can be managed.</p>	
	<p>Scope for costs to neighbouring areas as problem tenants are displaced elsewhere. Since selective licensing is intended to sit within the local authority's overall housing strategy this risk should be monitored and managed.</p>	
<p>Give local authorities the power to establish licensing schemes for all private rented properties (as for option 2) but based on the criteria for HMO licensing, namely that the property should be fit for number of occupants.</p>	<p>As for option 2 but also:</p> <p>Extra costs to local authority of having to satisfy themselves about category 1 HHSRS hazards for all selectively licensed properties within 5 years of receiving a licence application.</p>	<p>As for option 2.</p> <p>No extra benefit to local environment from requiring compliance with HMO licensing standards.</p>
	<p>Costs to landlord of having to gather extra information on amenities for the application form.</p>	
	<p>Costs to tenant as landlord passes on costs of application.</p>	

## Management Orders

Option	Costs	Benefits
Do nothing and rely on existing powers	<p>Cost to local authorities from having to repeatedly deal with poor management of private rented properties.</p> <p>Cost to responsible landlords from unfair competition.</p> <p>Cost to tenants from repeated poor management.</p>	Benefits to poor landlords because of lack of effective enforcement powers.
Gradually run down the letting of a property which is not suitable for licensing or which presents problems of anti-social behaviour	<p>Costs to tenants of having to move house to find well-managed property to rent.</p> <p>Cost to neighbourhood of property continuing to be let (and present problems) until tenants move out.</p>	Problems of poor management or anti-social behaviour would eventually come to an end.
Allow local authorities to take over management of properties which are not suitable to be licensed or which present problems of anti-social behaviour.	<p>Costs to local authority of managing the property (met partly through rent)</p> <p>Costs to landlord of reduced rent after local authority have covered their costs.</p> <p>Possible cost to landlord when management order comes to an end. If the management costs exceeded the rental income the local authority can put a charge on the property.</p> <p>Possible cost to anti-social tenants as enforcement against behaviour takes place.</p>	<p>Benefits to neighbourhood (including other responsible landlords) as the management of individual problem properties is improved.</p> <p>Benefits to responsible landlords from an end to unfair competition.</p> <p>Benefits to tenants as the management and quality of their homes improve.</p>

**Management Orders**  
**Option**

**Costs**

**Benefits**