

Factsheet 5: Selective licensing of other residential accommodation

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Summary

Part 3 of the Bill provides that a local housing authority (LHA) may make a licensing scheme for privately rented accommodation in its area, or any part of it, providing certain conditions are met.

Conditions for schemes

A scheme may be made if the area satisfies one of the following conditions:

- **An area has low housing demand (or is likely to become such an area)** with a significant stock of privately owned houses let on short term arrangements and the LHA is satisfied the introduction of licensing, when combined with other measures taken by the LHA, solely, or in conjunction with others, would lead to an improvement in the social or economic conditions of the area.
- **An area is experiencing a significant and persistent problem caused by anti-social behaviour** and that some or all private sector landlords in the area are not taking appropriate action to combat the problem and the LHA is satisfied the introduction of licensing, when combined with other measures taken by the LHA or in conjunction with others, will lead to a reduction or elimination of the problem.
- **A scheme has been made in accordance with regulations made by the appropriate national authority to deal with other challenges in the private rented sector**, for example to deal with strategic regeneration, high housing benefit levels, or high levels of complaints and enforcement actions.

Before making a selective licensing scheme the LHA must:

- Consider whether there are other courses of action available to them that might provide an effective means of dealing with the issues which the scheme is intended to address, and whether the scheme will significantly help them in dealing with those issues.
- Ensure the making of a scheme is consistent with its overall housing strategy and is co-ordinated with its approach to dealing with homelessness, empty properties and anti social behaviour in the private rented sector.
- Consult on the proposed scheme with those persons likely to be affected by it, including landlords, tenants and local recognised resident associations, and consider and take account of their representations.

A scheme requires the consent of the appropriate national authority. The Secretary of State or the National Assembly for Wales may grant general approvals to LHAs to make schemes, where this is considered appropriate. In all other circumstances an individual scheme will require confirmation from the appropriate national authority.

A scheme that requires confirmation from the appropriate national authority does not come into effect earlier than three months from the date that confirmation is given. Where a scheme is made under a general approval it does not come into force until three months after the scheme has been made.

A scheme will normally be in force for a maximum period of five years and LHAs are required to keep them under review during that period.

Requirement to be licensed

Most private landlords will be required to obtain a licence (either for themselves or for their managing agents) in order to let or manage residential property in an area where a licensing scheme exists.

Certain tenancies and other lettings will be excluded by regulations from licensing, such as tenancies under a long lease, business tenancies or where the local authority has taken action to close the property down.

If the property is a House in Multiple Occupation (HMO) and is required to be licensed under Part 2 of the Bill (*see Factsheet 3*) no licence is required under a selective licensing scheme.

The property will also be exempted from licensing if a temporary exemption notice is in force (*see Factsheet 3 for details*).

A licence fee is payable, subject to a maximum set by the Secretary of State.

Controlling or managing a house which ought to be licensed, but is not licensed, without a reasonable excuse for doing so will be a criminal offence, subject to a maximum fine of £20,000. A person will not be guilty of such an offence if there is an effective application outstanding with the LHA for the grant of a licence or a temporary exemption notice.

During any period in which an offence of controlling or managing a house which ought to be licensed, but is not licensed, is committed no rent is payable for occupation of the property.

Conditions for obtaining a licence

The LHA must grant a licence if it is satisfied the licence holder would be a fit and proper person. In deciding whether the person is fit & proper, the LHA must have regard, amongst other matters:

- to any previous convictions relating to violence, sexual offences, drugs or fraud; and
- whether the proposed licence holder has contravened any laws relating to housing or landlord & tenant issues; and
- whether the person has been found guilty of unlawful discrimination practices

It is, however, a matter for the LHA to determine the relevance of these considerations (or other matters it considers to be relevant) in deciding whether or not the person is fit and proper.

The proposed licence holder must be the most appropriate person to hold the licence.

The proposed manager, if he/ she is not the licence holder, is also fit and proper and that other persons involved in the management of the house must also be fit and proper. Additionally the LHA must be satisfied that the proposed management arrangements are acceptable; including that the person involved in the management of the house is competent and the structures and funding for the management are suitable.

If the LHA is not satisfied that it can grant a licence under the above conditions it must refuse to grant the licence and make an Interim Management Order (*see Factsheet 6 for details*). However, before refusing to grant a licence it must give its reasons for proposing to do so, in advance, and give the applicant 14 days in which to make representations about that proposal. The applicant has a right to appeal if the refusal to grant a licence is confirmed.

Contents of a licence

A Part 3 licence may include conditions relating to:

- The management of the house, including taking such steps as are reasonable to deal with anti social behaviour of the occupants and people visiting it;
- The use and occupation of the house.

A Part 3 licence may also include conditions relating to the contents and conditions of the house, but only in so far as these have been prescribed by the appropriate national authority.

A Part 3 licence must include conditions requiring the licence holder to:

- Present a gas safety certificate annually to the LHA, if gas is supplied to the house;
- Keep electrical appliances and furniture (supplied under the tenancy) in a safe condition;
- Keep smoke alarms in proper working order;
- Supply the occupier with a written statement of the terms of occupation;
- Demand references from persons wishing to occupy the house.

Breaches of licence conditions

The licence holder or manager commits an offence if he is in breach or fails to comply with a condition of the licence and may be fined up to a maximum of £5,000 for each offence.

Prosecution of the offences is without prejudice to the LHA's power to revoke the licence.

Duration of licences

A licence will normally last for 5 years (and cannot be granted for a longer period), but may be granted for a lesser period.

Variation of licences

A licence may be varied by the LHA with the agreement of the licence holder.

It may vary the licence without agreement if there has been change of circumstance. However, in deciding whether to vary a licence the LHA may not impose higher, or otherwise different, standards than applied when it originally granted the licence. However, where the original standards met those prescribed in regulations made by the appropriate national authority and those standards have been superseded by newly prescribed ones the LHA must vary the standards in the licence to meet those.

Revocation/Cessation of licences

A licence may be revoked with the agreement of the licence holder, such as when a property ceases to be rented out. It also expires automatically after 5 years or after the period specified in the licence (if that is different) or at any time if the house becomes licensed as an HMO.

A licence ceases to be in force on the death of a licence holder and for the first three months following the death of that person no licence is required, as if a temporary exemption notice had been issued and was in force. Unless the house ceases to be licensable within that period or the LHA grants a temporary notice to take effect on the expiry of that period, the house must be relicensed or an interim management order made in respect of it (*see Factsheet 3 for details on temporary exemption notices and Factsheet 6 for details on management orders*).

Other than in the above circumstances, a licence may only be revoked:

- if there has been a significant breach of the licence conditions; Or
- if the LHA no longer considers the licence holder or manager to be a fit or proper person; Or,
- if the LHA would not have granted a new licence for the house at the time it expires because of reasons relating to the structure of the house which renders it unsuitable for licensing on similar terms.

An LHA may not revoke a licence, in these circumstances, unless it can grant another licence on suitable terms following the revocation, or, it must make an Interim Management Order.

Appeals against licensing decisions

An appeal may be made to the residential property tribunal against a decision of the LHA to:

- Refuse to grant a licence.
- Grant a licence, including any conditions imposed.
- Vary a licence.
- Revoke a licence.
- Refuse to vary or revoke a licence.

An appeal must normally be made within 28 days of a decision being made, but if the tribunal thinks there are good reasons to do so, it may extend the period for appeal. In considering an appeal the tribunal re-hears the LHA decision, but is able to take account of new evidence put forward by the appellant. In its decision the tribunal may confirm, vary or reverse the LHA's decision.

Further information

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