

Explanatory Memorandum to the Houses in Multiple Occupation (Certain Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for Section 257 HMOs) (Wales) Regulations 2007

1. This explanatory memorandum has been prepared by the Welsh Assembly Government's Housing Directorate - Private Sector Unit and is laid before the National Assembly for Wales.

Description

2. These Regulations make special provisions in respect of the licensing and management of certain types of houses in multiple occupation ("HMOs"). These are converted blocks of self-contained flats, where the building work undertaken in connection with the conversion does not comply with certain building standards and where less than two thirds of the flats are owner-occupied. These are known as "section 257 HMOs".
3. The Modifications Regulations amend Parts 2 and 4 and section 263 (in its operation in respect of those Parts) of the Housing Act 2004 ("the Act") in respect of such HMOs.

Matters of special interest to the Subordinate Legislation Committee

4. None.

Legislative Background

5. The power to make these regulations is contained within the Housing Act 2004 and has been transferred to the Welsh Ministers following the implementation of the Government of Wales Act 2006. This SI is to be made using the negative resolution procedure.
6. Sections 254 to 257 of the Act define a "house in multiple occupation". The definition under section 257 encompasses converted blocks of self-contained flats, where the building work undertaken in connection with the conversion does not comply with "appropriate building standards" and where less than two thirds of the flats are "owner-occupied". The definitions of "appropriate building standards" and "owner occupied" are contained in sections 257(3) and (4) of the Act.
7. Part 2 of the Act introduces the licensing of HMOs, which authorise the occupation of a particular HMO by a number of persons or households specified in the licence. Section 61 of the Act requires every HMO to which Part 2 of the Act applies to be licensed under Part 2, unless a temporary exemption notice is in force under section 62, or an interim or

final management order is in force under Chapter 1 of Part 4 of the Act. . Under section 72 of the Act a person who has control of, or is managing a HMO that is required to be licensed under Part 2 commits an offence if that HMO is not licensed. Section 263 of the Act defines who is the “person having control” and “person managing” the premises

8. There are two ways in which Part 2 of the Act may apply to a HMO under section 57. Firstly, it applies to HMOs that fall within a description prescribed in an order made by “the appropriate national authority”¹ under section 55(3) of the Act². Secondly, Part 2 applies to areas designated by the local housing authority under section 56 of the Act.
9. Section 61(5) provides that the Welsh Ministers may make regulations modifying the effect of any provision of Part 2 or section 263 of the Act on a section 257 HMO. Similarly section 146(3) of the Act allows the Welsh Ministers to make regulations modifying the effect of Part 4 or section 263 of the Act on a section 257 HMO.
10. These Regulations make modifications to Parts 2 and 4 and to section 263 of the Act (in its operation for the purpose of provisions in Parts 2 and 4). This is the first time that these powers have been exercised in Wales.
11. Section 250(2) of the Act empowers the appropriate national authority, when making an order or regulations under the Act, to make such incidental, supplementary, transitory, transitional or saving provision as it considers appropriate.
12. The Housing Act 2004 (Commencement No 3 and Transitional Provisions and Savings) (Wales) Order 2006 (“the third commencement order”)³ commenced Parts 2 and 4 of the Act, with savings. It also commenced section 266 in so far as it related to certain repeals, including the repeals in Part 11 of the Housing Act 1985 concerning HMO registration schemes, which are replaced by the licensing provisions. Part 2 of the Schedule to the third commencement order provides that the repeal of certain sections of the Housing Act 1985 does not have effect in respect of a relevant converted block of flats⁴ until regulations made under section 61(5) of the Housing Act 2004 come into force. These Regulations, therefore, trigger the repeal of the Housing Act 1985 provisions that are saved in relation to relevant converted blocks of flats. These Regulations make further savings provisions in relation to relevant converted blocks of flats.

¹ Under section 261 of the Housing Act 2004, “the appropriate national authority” in relation to Wales means the National Assembly for Wales. These powers have now been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

² The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 (S.I. No 2006/1717) (W.174) prescribed HMOs under section 55(3) of the Act but does not apply to section 257 HMOs. Consequently such HMOs are only licensable if they are designated by a local housing authority as being licensable.

³ The Housing Act 2004 (Commencement No.3 and Transitional Provisions and Savings) (Wales) Order 2006 (S.I. No. 2006/1535) (W.152)

⁴ A relevant converted block of flats is a building or part of a building to which section 257 of the Act applies and which is a house in multiple occupation for the purposes of Part 11 of the 1985 Act.

13. Under Section 234 of the Act the Welsh Ministers may make regulations for the purpose of ensuring that satisfactory management arrangements and satisfactory standards of management are observed in respect of every HMO of a description specified in the regulations. In 2006 the National Assembly for Wales made regulations⁵ under section 234 of the Act in respect of all HMOs other than section 257 HMOs. The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007 now make such provisions in respect of section 257 HMOs.
14. Section 63 of the Act requires applications for licences in respect of HMO's under Part 2, to be made to a local housing authority. Section 63 gives power for regulations to be made regarding the making of applications, including the manner and form in which they are to be made, the information that they should contain, requirements for copies of the application or other information to be provided to other persons, and the circumstances when fees may be charged or refunded.
15. Section 64 of the Act states that where an application is made to a local housing authority under section 63, the authority must either grant, or refuse to grant the licence. It may grant a licence if it is satisfied that the house is reasonably suitable for occupation by not more than the maximum number of households or persons that is either specified in the application, or decided by the authority, or that it can be made so suitable by the imposition of conditions. The authority must also be satisfied that the proposed licence holder is a fit and proper person to hold a licence and is, out of all the persons reasonably available to hold a licence in respect of the house, the most appropriate person to be the licence holder. The authority must be satisfied that the proposed manager of the house is a fit and proper person to be the manager and that the proposed management arrangements are otherwise satisfactory.

Purpose and Intended Effect of the Legislation

16. The Welsh Assembly Government is committed to introducing nationwide licensing of HMOs by local housing authorities as part of the National Housing Strategy 'Better Homes for People in Wales'. The intention is to raise the standards in such housing, which is often of poor quality and badly managed. The Welsh Assembly Government's overall policy is to enable better quality homes for all, and particularly to secure a larger, better quality, better managed private rented sector.
17. The majority of instruments concerning the licensing and management of HMOs, which supplemented the provisions of the Act, came into force in Wales in June 2006.

⁵ See the Management of Houses in Multiple Occupation (Wales) Regulations 2006 SI No 2006/1713 W.175.

18. There are two categories of licensing - mandatory and additional. Both types came into force in June 2006. Mandatory licensing applies to HMOs of three storeys or more which are occupied by five or more persons (who form two or more households), but not HMOs that comprise entirely of self contained flats. Additional licensing applies to any other type of HMO where the local housing authority has identified a significant problem with the management of that type of HMO. Before making a scheme the authority must consult with local stakeholders and consider their representations. The National Assembly for Wales issued a General Approval to local authorities in Wales covering the introduction of Additional HMO licensing schemes in April 2007 in order to reduce bureaucracy.
19. The purpose of the Modifications Regulations is to bring section 257 HMOs within the scope of additional licensing and management regulations under the Act. These Regulations modify the provisions in the Housing Act 2004 and provide for transitional arrangements in connection with the repeal of Part 11 of the Housing Act 1985 in connection with section 257 HMOs.
20. The policy intention is to enable local housing authorities to apply additional licensing to Section 257 HMOs that fall within designations made by them, but without such licensing having an invasive impact on the owner-occupier leasehold sector.

Implementation

21. It is proposed that the draft Statutory Instrument be laid on 13 November 2007 with a coming into force date of 05 December 2007. The same legislation came into force in England on 01 October 2007. They are made later in Wales due to the different legislative procedures. If the regulations do not come into force on 05 December there is likely to be criticism from local authorities and other interested parties as the regulations are eagerly awaited by authorities that have a high proportion of section 257 HMOs in their areas.

Consultation

22. In April 1999, the former Welsh Office sought views on a number of strategic issues on the scope and operation of HMO licensing in Wales in the consultation paper, "Licensing of Houses in Multiple Occupation - Wales". Key stakeholders were consulted including all local, police and fire authorities in Wales, landlords' and tenants' interest groups, other interested groups including mortgage lenders, the Law Society. The Royal Institution of Chartered Surveyors and the Local Government Ombudsman. The majority of responses supported the proposals. However, some landlords groups were against them.
23. In March 2003, the HMO licensing proposals were published along with other proposals in "The Housing Bill - Consultation on draft legislation" for

public consultation and pre-legislative scrutiny. This covered both England and Wales. The same group of stakeholders in Wales were consulted on this occasion.

24. Details of the implementation of the proposals were published in the consultation document "Licensing in the Private Rented Sector - Consultation on the implementation of HMO Licensing in Wales" in January 2005. The same group of stakeholders were consulted in Wales.
25. There has been overwhelming support for the proposals to license HMOs, with the majority of respondents to the consultation exercises welcoming the licensing proposals as an effective way of regulating the sector.
26. Further consultation with stakeholders on the specific nature of the regulations governing HMO took place during early 2005. Housing Directorate officials sat on a specific working group which contained DCLG officials, landlord organisations, letting agents, the HMO network and local authorities from England and Wales who specifically studied and revised the section 257 regulations. There has been extensive consultation throughout the introduction of HMO licensing.

Regulatory Impact Assessment

27. A full regulatory impact assessment on the statutory instruments to supplement the provisions of the Housing Act 2004 in relation to the licensing of HMOs and the selective licensing of other private rented accommodation and management orders (Parts 2, 3 and Chapter 1 of Part 4 of the Housing Act 2004) was produced in February 2006 in preparation for the introduction of SIs in June 2006.

Related regulations are:

The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 (S.I. No. 2006/1712) (W.174);

The Management of Houses in Multiple Occupation (Wales) Regulations 2006 (S.I. No. 2006/1713) (W.175); and

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006 (S.I. No. 2006/1715) (W.177).

28. The full regulatory impact assessment explains the impact of the legislation on all HMOs, including section 257 HMOs. A copy of that assessment is available from the contact below.
29. These Regulations have no direct impact on the public sector, since local housing authorities can recover their costs of setting up and administering an additional licensing scheme through the fees it can charge for licensing applications.

30. Copies of the 2006 Regulatory Impact Assessment are available from the Private Sector Unit, Housing Directorate, Welsh Assembly Government, Merthyr Tydfil Office, Rhyd-y-car, Merthyr Tydfil, CF48 1UZ. Tel: 01685 729193 or e-mail: hpsu@wales.gsi.gov.uk.

Options

31. (a) Do nothing and continue to rely on existing powers to deal with problems in HMOs; (b) licence all HMOs or (c) licence high-risk HMOs and exempt certain HMOs altogether from licensing.

Benefits of each option

32. (a) none; (b) an absolute rule for landlords to comply with, improved rental incomes as property values improve and with an end to unfair competition from poorly managed properties and a single register for tenants to consult to ensure a property is licensed; or (c) costs to landlords limited to HMOs which are most likely to present problems; improved rental income [as (b)]; better value to tenants from improved management standards; savings to tenants from having to take action against the landlord for poor management and improvements to local environment from improved litter removal, noise pollution.

Costs of each option

33. (a) existing powers out of date, discretionary and vary widely in the nature of their application across the country, responsible landlords incur costs of compliance and unfair competition from others who avoid compliance and tenants are at greater risk from poor quality properties; (b) a duplication of regulation for HMOs which are already regulated under separate legislation, economic costs for local authorities in regulating nearly all dwellings which are occupied by more than one household and 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 are already regulated; (c) licence fee for landlords at least every 5 years, costs to landlords of improved management and compliance with the licence conditions, costs of finding a licence holder (e.g. an agent) if the landlord is not suitable, start-up costs to local authorities implementing schemes, ongoing costs for local authorities of processing licensing applications and limited scope for higher rents to tenants as landlords pass on licensing costs.

34. The Welsh Assembly Government placed £1.0 million a year in the Revenue Support Grant Settlement to cover start-up costs for HMO licensing from 2004-05. It is envisaged that HMO licensing will become self-financing from the licence fees that local authorities set in their own areas. For example if the maximum licensing fee was set at £180 per unit, this would amount to only 70 pence per week for a 5 year period.

Competition Assessment

35. It is not anticipated 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 privately rented accommodation in areas or the provision of privately rented HMOs in areas where HMOs are clustered.
36. 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.
37. 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.
38. 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.
39. 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, it is considered that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.
40. 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.

Post-Implementation Review

41. There will be a formal monitoring process of the effect of the licensing system in the form of an evaluation within a specified period after implementation (probably 3 years). This will enable a proper assessment of the impact and effectiveness of the new system and allow changes to be made if necessary.
42. 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

43. The actual costs and benefits of the options for HMO 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.
44. For HMO licensing the option that was followed was to licence high-risk HMOs and exempt certain HMOs altogether from licensing. 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.