

Cabinet

15 January 2020

Selective Licencing Scheme

Key Decision No. REAL/05/19



Report of Corporate Management Team

Ian Thompson, Corporate Director of Regeneration and Local Services

Councillor Kevin Shaw, Cabinet Portfolio Holder for Strategic Housing and Assets

Electoral division(s) affected:

Countywide.

Purpose of the Report

- 1 This report will propose a Selective Licencing Scheme (SLS) for homes which are privately rented in parts of County Durham. The proposed scheme currently covers 64% of the private rented sector (PRS) in the county and, as this is over 20%, it is a legislative requirement to obtain Government approval. Prior to the application being made to Government, the Council is required to consult on the proposals and take account of that consultation.
- 2 The percentage of PRS covered is subject to change as data continues to be analysed prior to consultation.
- 3 Details of the reasons for implementing the scheme, the proposed scope of the scheme, the costs of licencing, the high-level operational structure of the scheme and the proposed timetable are contained in the report. Subject to Cabinet approval these will form the basis of a statutory consultation exercise.

Executive Summary

- 4 The County Durham Housing Strategy 2019 to 2024 has four objectives:
 - (a) to provide housing advice, assistance and support for vulnerable people;
 - (b) to improve access to housing;

- (c) to deliver homes to meet housing need and demand; and
 - (d) to maintain and improve standards across County Durham's housing stock and the wider housing environment.
- 5 The fourth objective detailed above specifically includes raising standards in the PRS, developing an approach to selective licencing, addressing empty homes, improving energy efficiency of properties and supporting and maintaining communities.
- 6 Table 1 detailed below provides a summary of the increase in numbers of households in the county since 2001. It also clearly indicates the significant increase in the size and strategic importance of the PRS in the county.

Table 1

	Population	Households	Social Rented	Private Rented	Private rented as a % of Households
2001 Census ¹	493,470	207,438	52,757	10,452	5.0%
2011 Census ²	513,242	223,803	45,004	28,142	12.6%
Current Estimates ³	523,662	241,506	42,303	56,232	23.3%
% change since 2001	6.1%	16.4%	-19.8%	438.0%	-
% change since 2011	2.0%	7.9%	-6.0%	99.8%	-

1. Office for National Statistics 2001

2. Office for National Statistics 2011

3. Office for National Statistics 2017 population estimates; DCC Household and PRS estimates (further details in the PRS section below).

- 7 In County Durham the PRS is significant with a total of 56,232 properties representing 22.7% of the total homes in the county.
- 8 Whilst there are a number of good quality homes available in the PRS the current market is dominated by smaller terraced properties offering two to three bedrooms. Much of this stock is older, thermally inefficient and in need of repair or refurbishment. As a consequence, low demand in some communities exists.
- 9 In addition, the lack of access to good quality housing is known to be a contributing factor to inequalities in health, educational attainment and disposable income (poverty).

- 10 The Council's aim is to raise the standard and quality of housing available in the PRS. A SLS would provide a significant opportunity for the Council to introduce quality standards to be met by landlords in the PRS and would complement a wider range of initiatives in other sectors seeking to achieve the same housing and community outcomes.
- 11 There are many benefits linked to selective licencing including:
- providing tenants with a greater choice of safe, good quality and well managed homes; and
 - better community and cross tenure relations, reduced anti-social behaviour and help to stabilise and improve local neighbourhoods.
- 12 Management standards of PRS properties will improve through establishing clear minimum physical and management standards which can be controlled through the licencing framework. Proactive enforcement action will be taken against both unlicensed properties and/or where there are breaches to the licencing conditions.
- 13 The SLS will make a significant contribution to a wider strategy of improving the county's towns and villages by improving both housing conditions and access to quality housing. Other initiatives including Registered Social Landlords (RSL) new development, Local Lettings Agency (LLA), Buy to Lease Scheme, Rough Sleepers Initiative (RSI) and Houses in Multiple Occupation (HMO) Licencing are closely aligned to the ambition to improve the ability to access a good quality home in the county.
- 14 The key elements of the SLS in Durham will be:
- 36,119 properties covering 64% of the PRS stock meet the Government criteria and will be included in the scheme;
 - licence designed to promote good landlord practice and be capable of being enforced;
 - mandatory licence application for every PRS property within the defined scheme;
 - landlords must pass a 'fit and proper person' test in advance of receiving a licence;
 - appropriate staffing structure in place to support scheme administration, inspection and enforcement;
 - property inspection regime in place;

- support for landlords to comply with the licence; and
 - enforcement in cases where appropriate.
- 15 Under the Housing Act 2004 Part 3 (Selective Licencing of other Residential Accommodation), the Council can designate an area, or areas, within which the SLS will operate. All private landlords operating within the designated area are required to obtain a licence from the Council for each property which is rented out. The conditions of the licence ensure that the property is managed effectively, and tenants will have added protection against poor landlords. When applying, proposed licence holders will be required to prove that they are 'fit and proper persons' to hold a licence, and that they have satisfactory management arrangements in place including for dealing with anti-social behaviour.
- 16 There are areas within the county that do not form part of the proposal for selective licencing. At this point in time they do not meet the guidance criteria set out by the Secretary of State. Officers will monitor various datasets relating to these areas and, should any meet the criteria in the future, Cabinet will be asked to consider a separate application to the Secretary of State to extend the scheme in the county.
- 17 The licence will last for five years and the Council will set a charge that the landlord must pay for each property in ownership that is rented. A licence fee of between £390-590 is proposed (expected to be around £500) and based on a SLS of 36,119 properties an income of £16,000,000-18,000,000 is estimated over a five-year period.
- 18 The income received from the SLS will fund the staffing infrastructure and associated costs that will be put in place to ensure the scheme operates successfully. The body of the report will provide a high-level understanding of the staffing and support infrastructure that will be put in place.
- 19 The process for declaring a SLS in an area(s) is determined within legislation.
- 20 Part 3 of the Housing Act 2004 gives local authorities the powers to designate either part or the whole of their area as selective licencing providing certain conditions are met. A SLS applies to private rented properties and those managing or in control of private rented accommodation will need to obtain a licence.
- 21 The Selective Licencing of Houses (Additional Conditions) (England) Order 2015 advises that a selective licencing designation may only be made if the area satisfies one or more conditions.

- 22 The proposed SLS will be subject to a 10-week statutory consultation exercise and the Council must finalise its submission to the Secretary of State. The SLS will then consider the application and make a determination.
- 23 If the Council makes a designation covering 20% or more of its geographical area or affects more than 20% of the private rented stock, then an application will need to be submitted to the Secretary of State for approval.
- 24 The application to the Secretary of State must be robust and clearly demonstrate the tests and criteria set out in the Government guidance have been met:
- 25 The application must include:
- introduction:
 - (i) strategic significance; and
 - (ii) details of the proposed area (including the number and types of properties affected, and a map of the area);
 - confirmation that the Council's proposal affects more than 20% of privately rented homes in the area and how this was calculated;
 - rationale for adopting a large-scale scheme i.e. over 20%;
 - current position in Durham with regards to tackling:
 - (i) low housing demand;
 - (ii) anti-social behaviour;
 - (iii) poor property conditions;
 - (iv) an influx of migration;
 - (v) a high level of deprivation
 - (vi) high levels of crime; and
 - (vii) demonstrating how the area would benefit from the combination of existing policies and selective licencing.
 - conclusion:
 - (i) addressing the relevant issues that were raised in the stakeholder consultation and details regarding what the

long-term impact of the scheme will be on the proposed area;

- in addition, the Council must include with the application:
 - (i) a copy of the consultation document and the published summary of the responses;
 - (ii) details of the fees that will be charged;
 - (iii) a copy of the designation and minutes of the Council meeting resolving to make the designation;
 - (iv) a copy of the local housing authority's strategy to ensure compliance with the scheme and enforcement against those who do not comply; and
 - (v) information on the level of compliance with other licencing schemes it operates, including mandatory House of Multiple Occupation licencing.

26 Significant work has been undertaken to establish what areas within the county fall into the criteria within the Government guidance.

27 Middle Super Output Areas (MSOAs) have been used as the basis for data collection and analysis. There are 66 MSOAs in the county.

28 To help analyse areas within the county it was decided to use the Office for National Statistics Middle Super Output Area (MSOA), Census defined geographical areas, as this would provide a robust and stable basis against which analysis and future monitoring could be applied. Within County Durham there are 66 MSOAs.

29 It will not be possible to achieve selective licensing across 100% of the private rented sector in County Durham, as some MSOAs do not meet the criteria stipulated by central government; and other areas would not benefit from selective licensing as although they may indicate some issues, they do not relate to management within the private rented sector.

30 Subject to authorisation from Cabinet, the information detailed below represents an achievable implementation timetable. It is important to note that the Council is not in control of all the elements and that the Ministry of Housing and Local Communities (MHCLG) is responsible for determining the application.

Issue	Responsibility	Period	Date
Statutory consultation	DCC	10 weeks	Late January 2020 to early Apr 2020
Consultation analysis & review	DCC	3 weeks	End of April 2020
Cabinet review of consultation and agree final scheme then submission to MHCLG	DCC	-	May 2020
Determination of application	MHCLG	8 to 16 weeks	Aug 2020 to October 2020
SLS Go Live and operational	DCC	-	Sept 2020 to November 2020
Implementation preparations: scope of service, structure, appointments, accommodation, service standards and policies, IT, staff training, landlord training and support, partnership arrangements and communications plan etc.			
Implementation Preparations	DCC	10 months	December 2019 to September/ December 2020

- 31 It should be noted that some of the detailed implementation work will be at risk as it will have been started significantly in advance of final determination by the Secretary of State.
- 32 The scheme will benefit from close partnership working both internally (HMO licencing, private sector housing, etc.) and externally (Safe Durham Partnership, Police, Fire & Rescue Service, Probation Service and housing providers etc.).

Recommendations

- 33 Cabinet are recommended to authorise:
- (a) the proposed areas to be designated within the SLS as detailed in the report;
 - (b) the proposed licence fee of £390 to £590 (expected to be around £500);
 - (c) the SLS service proposals outlined in the report;
 - (d) to formally consult on these proposals over a 10-week period;

- (e) the commencement of work to prepare for the introduction of the SLS in advance of formal approval from the Secretary of State; and
- (f) to receive a further report detailing the results of the consultation exercise with a view to reviewing the proposals and submitting a formal application to the Secretary of State to set up a SLS in Durham.

Background

- 34 This report will propose a SLS for homes which are privately rented in parts of County Durham. The proposed scheme covers 64% of the PRS in the county and, as this is over 20%, it is a legislative requirement to obtain Government approval. Prior to the application being made to Government the Council is required to consult on the proposals and take account of that consultation.
- 35 The report will address the following:
- demographic change and tenure;
 - strategic context;
 - benefits of introducing SLS;
 - Government guidance and consultation;
 - the proposed designated area;
 - SLS operational structure;
 - SLS operational costs and proposed licence fee;
 - consultation process; and
 - implementation timetable.

Demographic Change and Tenure

- 36 The PRS in Durham is significant and continues to grow. It is an important tenure choice for many households.
- 37 Since 2001, as predicted in Office for National Statistics (ONS) population projections and in line with neighbouring authorities, there has been an increase in both the county's population and number of households. However, as detailed in the table below, most of the population growth in the last 18 years was between 2001 and 2011 (6.1%) with only 2% growth since 2011.
- 38 This contrasts with the steady growth in residential properties in the county of 16.4% from 2001, with half of this growth (7.9%) since 2011. This indicates that the number of smaller household units (single or couples only) has increased over this time period.
- 39 During the same period the rental market has changed significantly. The number of socially rented properties has fallen by nearly one fifth (19.8%) since 2001 which is in part due to properties being sold under

the 'Right to Buy' legislation, the selling of properties to private companies and the transfer of housing stock to registered social housing providers.

- 40 The take up and volume of privately rented stock has grown significantly since 2001 with growth of over 400%. Between the two census periods the number of privately rented stock nearly trebled with some of this growth likely to be from the sale of socially rented stock under the schemes detailed above.
- 41 The PRS is now a significant tenure within the county and many households rely on the PRS to meet their housing needs.
- 42 These changes are detailed in the table below and the estimated distribution of the PRS in County Durham is detailed in the maps below.

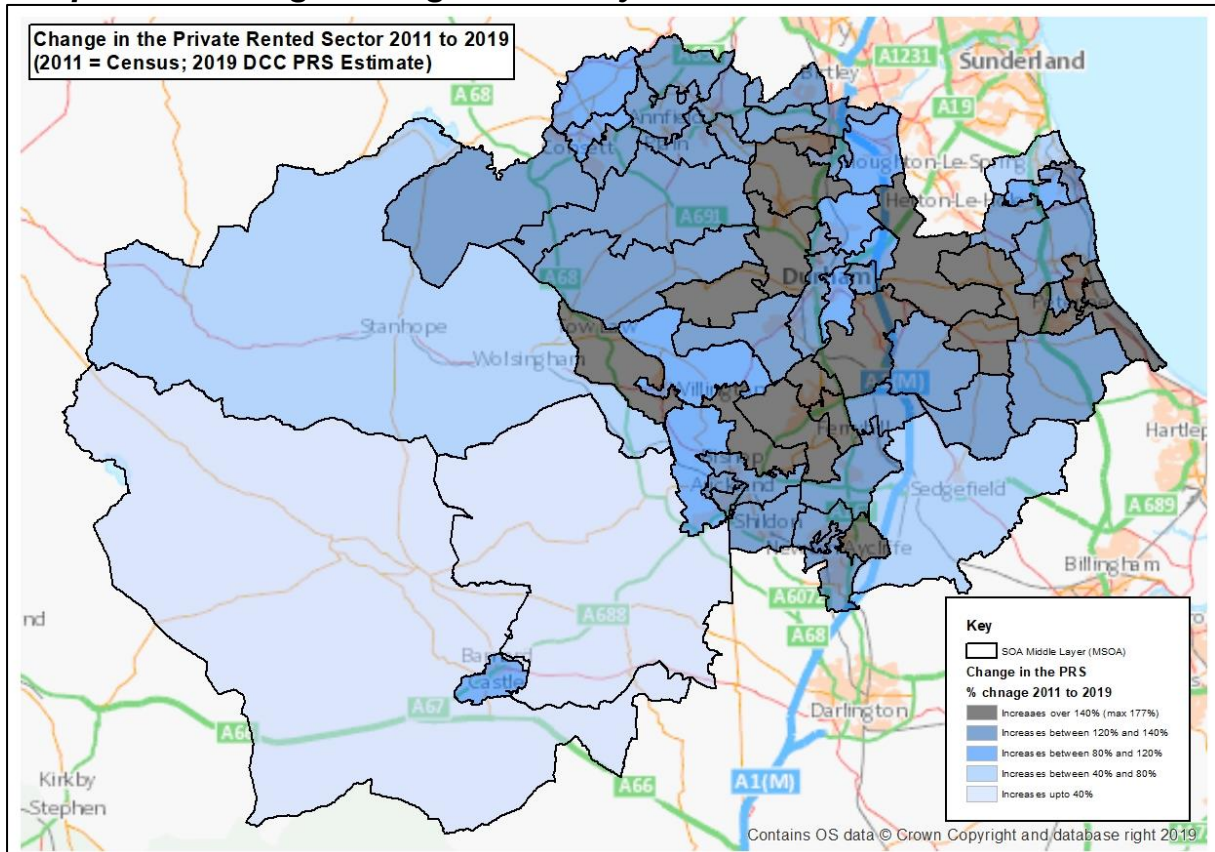
Change in Population, Households and the PRS in County Durham since 2001

	Population	Households	Social Rented	Private Rented	Private rented as a % of Households
2001 Census ¹	493,470	207,438	52,757	10,452	5.0%
2011 Census ²	513,242	223,803	45,004	28,142	12.6%
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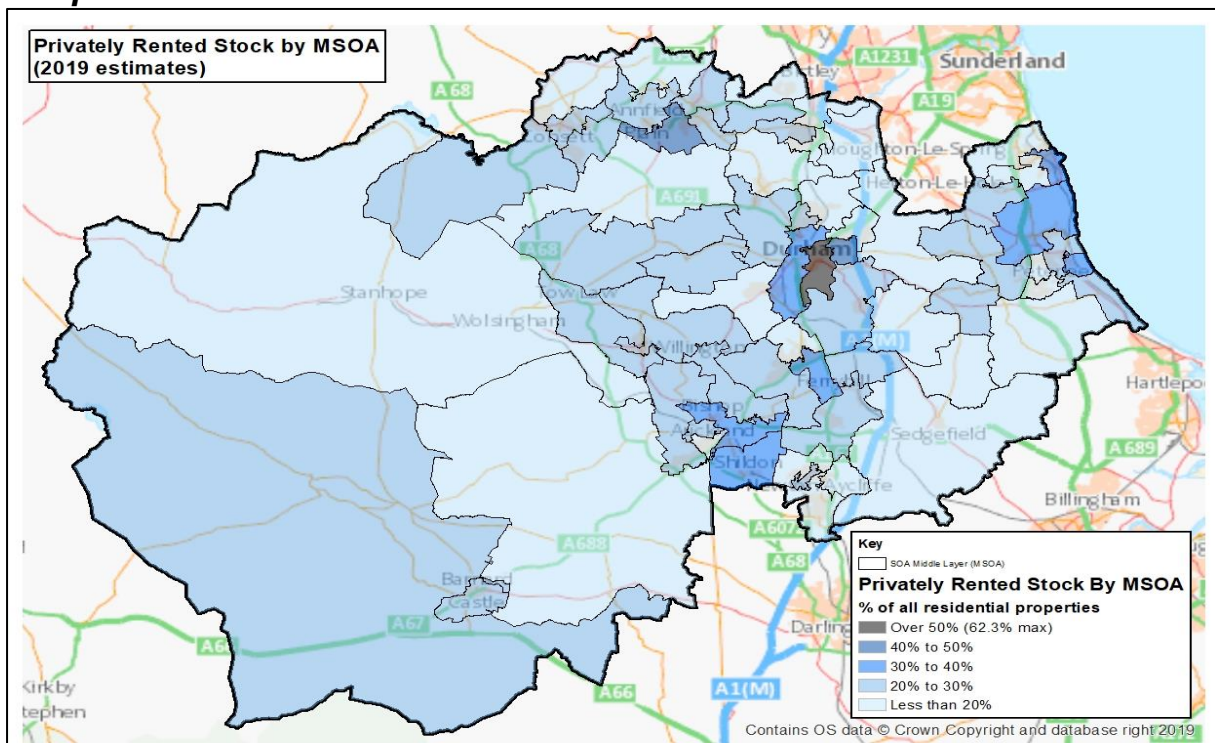
- 43 The map detailed below shows the percentage change in the PRS by MSOAs across the whole of the county. The darker the shading for the MSOA indicates the higher the percentage change. As can be seen the most of MSOAs have increases of over 40% with a majority experiencing an increase of over 80%. 51 out of 66 MSOAs have experienced an increase of over 120% of homes in the PRS.

Map 1: Percentage Change in PRS by MSOAs



44 Table 3 below detailed the estimated distribution of private rented stock by MSOA.

Map 3: Distribution of PRS Stock



- 45 In summary the estimated number of households within the county has increased steadily by 34,068 since 2001. This is a 16.4% increase over the period. During the same timeframe there has been a 19.8% (10,454) reduction in social rented homes however the PRS has increased by a massive 438% to 56,232.
- 46 This increase in the numbers of properties being let in the private sector is not uniform across the county and the maps above provide a graphical depiction of the distribution of properties in the PRA by MSOA.

Strategic Context

- 47 The County Durham Housing Strategy 2019 to 2024 has been developed in partnership to consider and address a range of housing issues across County Durham. There are four objectives included within the strategy:
- (a) to provide housing advice, assistance and support for vulnerable people;
 - (b) to improve access to housing;
 - (c) to deliver homes to meet housing need and demand; and
 - (d) to maintain and improve standards across County Durham's housing stock and the wider housing environment. This aim addresses raising standards in the PRS, developing an approach to selective licencing, addressing empty homes, improving energy efficiency of properties and supporting and maintaining communities.
- 48 The proposal to introduce selective licencing is a significant practical policy intervention and is complimentary to other actions in the strategy. The scale and nature of the proposal will operate alongside other initiatives to address homelessness, poverty, health and community development. This will be achieved by working with key partners including the Police, Fire & Rescue Service, health, housing providers, private landlords and the voluntary sector.
- 49 One of the biggest challenges for the Council relates to the limited number of good quality homes available in the PRS. The current growing market is dominated by smaller terraced properties offering two to three bedrooms. Much of the existing stock is older, thermally inefficient and in need of repair or refurbishment.

- 50 Despite household numbers increasing this poor housing stock is, in many instances, often not providing the right housing offer and consequently low demand exists in some villages.
- 51 This can lead to empty, abandoned and neglected dwellings in communities and these tend to be concentrated in areas of deprivation and where the housing market is weak. This is difficult to address, with housing renewal funding being reduced considerably over the last few years and funding available to tackle poor conditions being limited.
- 52 In addition, the lack of access to good quality housing is accepted to be a contributing factor to inequalities in health, educational attainment and disposable income (poverty).
- 53 The introduction of a SLS directly supports several Council priorities included in several plans, strategies and existing actions, as detailed in the evidence report.
- 54 With growth of 438% in the PRS since 2001 and indications that the sector will continue to grow the recently approved Housing Strategy for County Durham recognises the strategic importance of the PRS. One of the aims/outcomes in the strategy is to raise standards in the PRS and a SLS will make a significant contribution to this.
- 55 Its direct value will be enhanced by ensuring synergy with strategies such as homelessness, empty homes and other activities leading to mixed, balanced and sustainable communities.
- 56 The Council will encourage the development of a more professional PRS through advice, guidance and negotiation and the introduction of initiatives including:
- advice and information: this is provided to both landlords and tenants regarding their rights and responsibilities of renting a property;
 - empty homes: working with property owners through engagement and encouragement including the provision of financial assistance such as targeted loans and grants to bring empty properties back into use;
 - financial assistance: currently under review;
 - accreditation: voluntary scheme whereby landlords state that they are of good character and sign up to a code of conduct, they are offered benefits such as advice and support, tenant referencing, training, landlords forum and quarterly newsletters as well as template documentation;

- targeted intervention: time limited projects incorporating regular multi-agency intervention through the Safe Durham Partnership and Community Action Team. This includes a range of Council services and partners working together to address specific ongoing problems or where an area needs some additional support and focus. This is a mixture of engagement and targeted enforcement; and
- support services: both low level and intense support is available to tenants whose behaviour impacts on their tenancy or the surrounding neighbourhood, providing help with managing tenancies, help with finances, substance misuse and homelessness.

57 In addition, the Council have several initiatives currently being introduced that will assist with some of the challenges in local communities; these measures will work in conjunction with the Council's selective licencing proposals. These include:

- local lettings agency;
- buy to lease;
- tenant training; and
- rough sleepers' initiative.

58 The Council's aim is to raise the standard and quality of housing available in the PRS. A SLS would provide the opportunity for the Council to introduce quality standards than can be effectively regulated. Landlords would be required and given support to comply with the terms of the licence and an inspection and enforcement service would ensure compliance.

59 There are many benefits linked to selective licencing including:

- providing tenants with a greater choice of safe;
- good quality and well managed homes;
- better community and cross tenure relations;
- reduced anti-social behaviour; and
- help to stabilise and improve local neighbourhoods.

60 The standards of PRS properties will improve through establishing clear minimum physical and management standards which can be controlled

through the licencing framework. Proactive enforcement action will be taken against both unlicensed properties and/or where there are breaches to the licencing conditions.

- 61 The SLS will make a significant contribution to a wider strategy of improving the county's towns and villages by improving both housing conditions and access to quality housing.
- 62 The key elements of the SLS in Durham will be:
- 36,119 properties covering 64% of the PRS stock meet the Government criteria and will be included in the scheme;
 - licence is designed to promote good landlord practice in terms of management and maintenance and is capable of being enforced;
 - mandatory licence application for every PRS property within the defined scheme;
 - landlords must pass a 'fit and proper person' test in advance of receiving a licence;
 - appropriate staffing structure will be put in place to support scheme administration, inspection and enforcement;
 - property inspection regime in place;
 - support for landlords to comply with licence; and
 - enforcement in cases where appropriate.

Co-ordinating Services / Optimising Partnership Work

- 63 The Council has several initiatives currently being introduced that will assist with some of the challenges in our local communities. These measures will work in conjunction with the Council's selective licencing proposals.

Local Lettings Agency

- 64 In July 2019, Cabinet gave permission for the Council to establish an LLA to provide general needs for housing to rough sleepers and those unable to access mainstream housing. An LLA is a general term applied to schemes that secure access to decent, affordable private rental accommodation for households in need and on low incomes who would previously have been unlikely to access housing. The Council has been successful in obtaining funding of £252,538 from MHCLG

under the Rapid Rehousing Pathway (RRP) to support the setup of a LLAs.

- 65 The LLA must provide 70 properties by July 2020. This will be done via a leasehold scheme with the LLA leasing properties from owners assuming full management then renting to those in need.

Buy to Lease

- 66 The Council will provide at least 20 properties via funding from Homes England and capital funding totalling £1,200,000 by March 2021. Properties will be purchased and refurbished via the funding with the LLA managing the properties as part of a rental scheme. These properties will be used specifically to free up supported accommodation providing homes with support for those ready for semi-independent living.

Tenant Training

- 67 The Council's adult learning service have developed a tenancy skills course aimed at helping those unable to access, manage or starting a first-time tenancy to develop the necessary skills. This will be available to DKO applicants and LLA tenants. In addition, the Council is working with Crisis to provide a tenancy skill course to excluded groups, including those in prison. Both courses will run as pilots and be evaluated for future development.

Rough Sleepers Initiative

- 68 The Council received £700,000 from MHCLG to co-ordinate services to:
- support rough sleepers across the North East region; as part of this, 2 rough sleeper co-ordinators have been employed;
 - establish a Housing First Provision in Gateshead, Sunderland and South Tyneside; and
 - employ three outreach workers for Northumberland and North Tyneside and one outreach worker for Sunderland.
- 69 Durham has benefited through RSI funding by providing an outreach worker via Changing Lives to engage with rough sleepers across the county. There are now accommodation officers based in HMP Durham and Holme House to provide housing assistance while offenders are serving sentences/on remand increasing housing options on release. In addition, three substance misuse workers are being provided across Durham & Tees Valley to engage with rough sleepers, homeless and those at risk of homelessness that have substance misuse issues.

- 70 The funding will allow the Council and other North East local authorities to target and engage with rough sleepers more effectively allowing options and housing pathways to be developed.
- 71 All these projects will work in conjunction with selective licencing, assisting in the development of sustainable communities and providing additional support to tenants who need it, enabling them to manage a tenancy independently and reducing the impact on the tenancy and local community.

Legislation: Statutory Provisions

- 72 The Housing Act 2004 introduced licencing in relation to privately rented properties.
- 73 There are three different types of schemes; one mandatory, a national scheme that applies to certain HMOs and two discretionary schemes that allow local authorities to designate at local level.

Mandatory HMO Licencing

- 74 Part 2 of the Housing Act 2004 provides for licencing of HMOs if they meet the definition of an HMO as prescribed under Section 55 of the Act.
- 75 The original mandatory licencing scheme introduced in April 2006 applied to HMOs with three or more storeys and five or more persons forming two or more households. From October 2018 licencing was extended to all HMOs occupied by five persons or more in two or more households, regardless of the number of storeys, and where the householders lack or share amenities such as a toilet, personal washing facilities or cooking facilities. It also applies to purpose-built flats where there are up to two flats in the block and one or both are occupied as an HMO.

Additional HMO Licencing (Discretionary)

- 76 Part 2 also makes provision to introduce additional licencing where local authorities believe that a significant proportion of HMOs that do not fall into mandatory HMO licencing, are not being managed effectively and causing problems for either the occupants or members of the public. In 2012 the Council engaged the Building Research Establishment to survey, review and report on the physical condition and management standards in non-licenced HMO's within the county. Its conclusion was that additional licencing was not justified.

Option Appraisal

- 77 The evidence report details alternative measures that are available to deliver the scheme objectives. It also indicates where the additional powers of selective licencing will help to achieve improvements to local communities. There is no single intervention that will achieve an overall solution to a problem and each will have its limitations. Selective licencing will provide improved interventions by introducing a co-ordinated partnership approach.
- 78 Following review of the options detailed above, it is not considered that they would achieve the same outcome as selective licencing for the reasons highlighted. The alternative options would not meet the Council's objectives in the Housing Strategy and achieve the improvements required for residents living in the PRS.

Government Guidance & Consultation

- 79 The legal powers to set up a scheme for the licencing of properties in the PRS is contained in Part 3 of the Housing Act 2004. This allows a local housing authority the ability to designate an area which will be subject to selective licencing. The scheme will last for five years.
- 80 Since April 2015 it is required to apply to the Secretary of State for approval of any scheme which covers more than 20% of the privately rented homes in the local authority area. This is the case in Durham and, in order to introduce the scheme proposed in this report, Secretary of State approval is required.
- 81 A Guide for local authorities "Selective Licencing in the Private Rented Sector" was published by DCLG in March 2015. It is important that the Council's application to the Secretary of State closely aligns with the published guidance. The guide is detailed at Appendix 2.
- 82 A SLS for an area can be made if it satisfies one or more of the following criteria:
- low housing demand;
 - a significant and persistent problem caused by ASB;
 - poor property conditions*;
 - high levels of migration*;
 - high levels of deprivation*; and
 - high levels of crime*.

- 83 If an authority wishes to make a designation for those criteria detailed above highlighted with an asterix it can only do so if the designated area has a high proportion of property in the PRS. Guidance indicates that as at March 2014 the benchmark for this is 19.46%.
- 84 The local authority must be clear on its objectives for introducing a SLS and must also consider options to achieve the outcomes other than a SLS. Only where there is no practical and beneficial alternative to a designation should a scheme be made.
- 85 It is important that the proposed designation is consistent with the Council's Housing Strategy and is supported by a co-ordinated partnership approach to dealing with homelessness, empty properties and ASB.
- 86 The guidance requires a local authority to provide robust evidence in relation to the grounds it is seeking designation, to support their application. It is also required to assess what outcomes will be delivered by the SLS and coordinated partnership working.
- 87 For each of the criteria identified above the guidance provides more details of the evidence that is required.
- 88 In advance of applying to the Secretary of State the guidance requires that the Council must take reasonable steps to undertake a full consultation exercise to consult people likely to be affected by the SLS designation.
- 89 The consultation should include local residents including tenants, landlords and managing agents. It should also include other members of the community who live or operate or provide services within the proposed designated area.
- 90 The proposed consultation exercise will use the following channels of communication:
- online information webpage;
 - online consultation questionnaire;
 - hard copies of consultation questionnaire to be made available in various Council customer access points and libraries;
 - specific events to target relevant groups (i.e. landlords);
 - drop-in sessions in various geographic locations across the county; and

- direct correspondence to stakeholders including Town and Parish Councils, registered housing providers, neighbouring local authorities and Members of Parliament.

91 At the end of the consultation, which must take at least 10 weeks, the Council is required to consider any representations made as part of the consultation.

92 Once the Council has considered the consultation results and, if appropriate, reviewed the proposed scheme, it can then make an application to the Secretary of State for confirmation.

93 The application must include:

- introduction:
 - (i) strategic significance; and
 - (ii) details of the proposed area (including the number and types of properties affected, and a map of the area);
- confirmation that the Council's proposal affects more than 20% of privately rented homes in the area and how this was calculated;
- rationale for adopting a large-scale scheme i.e. over 20%;
- current position in Durham with regards to tackling:
 - (i) low housing demand;
 - (ii) anti-social behaviour;
 - (iii) poor property conditions;
 - (iv) an influx of migration;
 - (v) a high level of deprivation;
 - (vi) high levels of crime; and
 - (vii) demonstrating how the area would benefit from the combination of existing policies and selective licencing;
- conclusion addressing the relevant issues that were raised in the stakeholder consultation and details regarding what the long-term impact of the scheme will be on the proposed area;
- in addition, the Council must include with the application:

- (i) a copy of the consultation document and the published summary of the responses;
- (ii) details of the fees that will be charged;
- (iii) a copy of the designation and minutes of the Council meeting resolving to make the designation;
- (iv) a copy of the local housing authority's strategy to ensure compliance with the scheme and enforcement against those who do not comply; and
- (v) information on the level of compliance with other licencing schemes it operated including mandatory HMO licencing.

94 The guidance states that MHCLG will aim to decide on the application within eight weeks. Experience of other local authorities that have made such applications indicates that a longer period may be needed to deal with the application.

95 Should Cabinet approve the proposals in this report the consultation process will commence within a short period of time.

Proposed Designated Area

96 We propose all PRS properties in the following areas be designated under the stated condition:

Low Demand

- Annfield Plain South and South Moor
- Langley Park, Cornsay and Satley
- Esh Winning and Ushaw Moor West
- Sacriston and Waldrige
- Annfield Plain North and Dipton South
- Leadgate North and Consett East
- Pelton and Grange Villa
- Cornforth and Ferryhill
- Crook North, Howden-le-Wear and Tow Law
- Crook South and Willington North
- Cockton Hill and Etherley Dene
- St Helens Auckland and West Auckland
- Henknowle and Woodhouse Close
- Stanley North and Kip Hill
- Delves and Leadgate South
- Bearpark and Witton Gilbert
- Cassop and Coxhoe
- Fishburn and Trimdon

- Byers Green and Spennymoor

Anti-social behaviour (ASB)

- Chester-le-Street and Pelton Fell
- Dalton-le-Dale and Deneside
- Acre Rigg and Peterlee Central
- Passfield and Shotton
- Craghead and South Stanley
- Sherburn and West Rainton
- Gilesgate Moor
- Aycliffe Village, Newton Aycliffe South
- Consett West and Castleside

Low Demand and ASB – both

- Dawdon and Seaham Harbour
- Murton South and South Hetton
- Easington Colliery North
- Thornley Deaf Hill and Wheatley Hill
- Bishop Auckland and South Church
- Chilton and Ferryhill Station
- Hutton Henry and Wingate

Deprivation

- Shotton Colliery
- Easington Colliery South and Eden Hill
- Blackhalls
- Horden
- Coundon and Willington South
- Newton Aycliffe Central
- Spennymoor Green Lane and Dean Bank
- Shildon

97 In the two designations of low demand and ASB there is a small number of MSOAs that are weaker than others in terms of meeting the criteria set out by Government. MHCLG have stated that if any one area within a designation fails to meet the criteria set out in the Government's guidance the whole designation will be rejected. This represents a significant risk to the success of the Council's application to the Secretary of State. The final decision on the areas to be included in the application will not be taken until after the statutory consultation in the spring of 2020. In advance of this final decision by Cabinet the following will be put in place:

- continued discussions with MHCLG officials;
- review any decisions made by MHCLG on current applications by other Local Authorities (e.g. Liverpool City Council);
- continued analysis of data and relevant intelligence; and
- specific review of any consultation feedback relating to the areas in question.

98 In view of the complex nature of the data analysis and the need to satisfy compliance with legislation and government guidance associated with the application process, a barrister has been commissioned to provide advice and support.

99 There are areas within the county that do not form part of the proposal for selective licensing. At this point in time they do not meet the guidance criteria set out by the Secretary of State. Officers will monitor various datasets relating to these areas and, should any meet the criteria in the future, Cabinet will be asked to consider a separate application to the Secretary of State to extend the scheme in the county.

Selective Licencing Scheme Operational Costs and Proposed Licence Fee

100 The scale of the proposed scheme requires a robust operational infrastructure, and this will include:

- staffing;
- office accommodation;
- IT software and hardware;
- professional support (legal, financial and marketing etc.); and
- associated close down costs.

101 Detailed work on the operational costs of the service is ongoing, however initial indications show that it will be in the region of £16,000,000 to £18,000,000 over 5 years.

102 The scheme costs can be met from the fees paid for the licences granted. The Council is unable to make a profit from the licence fees but can fully fund the operational costs.

Implementation Timetable

103 Subject to authorisation at Cabinet the table detailed below represents an achievable implementation timetable. It is important to note that the

Council is not in control of all the elements and that the MHCLG is responsible for determining the application.

Issue	Responsibility	Period	Date
Statutory consultation	DCC	10 weeks	Late January 2020 to early April 2020
Consultation analysis and review	DCC	3 weeks	End of April 2020
Cabinet review of consultation and agree final scheme then submission to MHCLG	DCC	-	May 2020
Determination of application	MHCLG	8 to 16 weeks	August 2020 to October 2020
SLS Go Live and operational	DCC	-	September 2020 to November 2020
Implementation preparations: scope of service, structure, appointments, accommodation, service standards and policies, IT, staff training, landlord training and support, partnership arrangements and communications plan etc.			
Implementation preparations	DCC	10 months	December 2019 to September/December 2020

- 104 It should be noted that, in order to achieve the targeted go live date some of the detailed implementation work will be undertaken at risk as it will have been started significantly in advance of final determination by the Secretary of State.

Conclusion

- 105 The introduction of a SLS across significant geographic areas of County Durham provides the opportunity to introduce regulation into this sector and, as a result, lead to long term improvements in the quality of life for private sector tenants and improvements to our communities in our towns and villages.
- 106 The final decision to apply to MHCLG will be made by Cabinet following a 10-week consultation process which will take place during February 2020 and March 2020.
- 107 As the proposed area represents more than 20% of the PRS the final decision on the declaration of the scheme must be made by the Secretary of State.

108 The staffing infrastructure will be significant to enable the scheme to operate successfully and the costs will be met in full by the income received from licence fees associated with the scheme.

Background papers

- Selective Licensing Evidence Report (including Appendices A and B)
- EqlA for Selective Licensing consultation

Other useful documents

- None.

Contact

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Appendix 1: Implications

Legal Implications

The legislation supporting the introduction of the SLS is detailed in paragraph 14 of the report. Prior to applying to the Secretary of State the Council must undertake a consultation process in accordance with guidance issued by MHCLG.

Finance

Licence fee income over the period of the scheme will fully cover the operational costs.

Consultation

There is a 10-week statutory consultation period prior to submission of the Council's final proposals to MHCLG.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

The scheme aims to ensure that private sector tenants benefit from the protection offered in their tenancy agreements.

Crime and Disorder

By introducing this scheme, it is anticipated that there will be positive benefits in relation to crime and disorder and antisocial behaviour.

Staffing

A new staffing structure will require to be agreed and implemented in advance of the scheme commencing.

Accommodation

Accommodation for the new staff will be required during 2020.

Risk

Cabinet will be asked to consider risks in advance of making the final decision to submit a proposal to the Secretary of State.

Procurement

There is a requirement to procure a bespoke IT system to support the operation of the scheme.

Appendix 2: Department for Communities and Local Government Selective Licensing in the Private Rented Sector Guide for Local Authorities



Department for
Communities and
Local Government

Selective licensing in the private rented sector

A Guide for local authorities



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Introduction

The Government values the private rented sector and wants to see a strong, healthy and vibrant market. Its aim is a bigger and better private rented sector that offers security, stability and decency. We are increasing the supply of private rented sector housing through the £1 billion Build to Rent fund and a £3.5 billion Private Rented Sector Guarantee scheme to underpin investment in the private rented sector. We are also educating tenants so that they understand their rights, and their responsibilities. We want landlords to treat their tenants as valued customers, not just someone who they can extract rent from without providing any kind of service.

The Government is keen to ensure that the sector is encouraged to meet, in a professional way and with decent quality accommodation, the demands placed upon it by the housing needs of the wide range of tenants it services. It strongly supports voluntary arrangements such as accreditation and landlords' forums.

Currently local authorities have powers to introduce selective licensing of privately rented homes in order to tackle problems in their areas, or any part or parts of them, caused by low housing demand and/or significant anti-social behaviour. Local residents, landlords and tenants (and any other person likely to be affected by the selective licensing designation) must be consulted prior to the introduction of a licensing scheme. Landlords who rent out properties in an area that is subject to selective licensing are required to obtain a licence from the local authority for each of their properties.

With effect from 1 April, a new General Approval will come into force. Local authorities will be required to obtain confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area. Additional criteria for making a scheme are also now in force. A designation may be made to combat problems in an area experiencing poor property conditions, an influx of migration, a high level of deprivation or high levels of crime.

Together these new rules will enable local authorities to make effective licensing schemes to address specific problems arising in particular areas.

This (non-statutory) guidance explains the criteria for making a selective licensing scheme and discusses the type of evidence needed to support a designation. It sets out what a local authority would expect a scheme to deliver in terms of the economic and social conditions of the designated area and how during the period of the designation this will be evaluated. It also explains the processes that need to be complied with before a designation can be brought into force. This Guidance applies to both designations made under the General Approval 2015 and those which require confirmation by the Secretary of State.

Overview

1. Part 3 of the Housing Act 2004 (the Act) sets out the scheme for licensing private rented properties¹ in a local housing authority area. Under section 80 of the Act a local housing authority can designate the whole or any part or parts of its area as subject to selective licensing. Where a selective licensing designation is made it applies to privately rented property in the area. Subject to certain exemptions specified in the Selective licensing of Houses (Specified Exemptions)(England) Order 2006², all properties in the private rented sector which are let or occupied under a licence, are required to be licensed by the local housing authority, unless the property is a House in Multiple Occupation and is required to be licensed under Part 2 of the Act³. With effect from 1 April 2015 a local housing authority will now need to apply to the Secretary of State for Communities and Local Government (Secretary of State) for confirmation of any scheme which would cover more than 20% of their geographical area or that would affect more than 20% of privately rented homes in the local authority area.
2. Under the new arrangements if a local housing authority makes a designation that covers 20% or less of its geographical area or privately rented properties, the scheme will not need to be submitted to the Secretary of State, provided the authority has consulted for at least 10 weeks on the proposed designation. However, if the local housing authority makes one or more designations that are in force partly concurrent to an existing scheme, and cumulatively all the designations cover more than 20% of the area or the private rented stock, those new designations will need to be submitted to the Secretary of State for approval. Likewise if the local housing authority makes two or more designations at the same time, each of which account for less than 20% of the area or private rented stock, but cumulatively account for more than 20% of either, all of the schemes will need to be submitted to the Secretary of State for confirmation.
3. In deciding the number of privately rented properties a scheme would apply to the local housing authority may want to consider data it holds on sector, including housing benefit and council tax records.

¹ Private rented properties do not include accommodation where the tenancy is granted by a non-profit registered provider of social housing or a profit-making registered provider of social housing, within the meaning of Part 2 of the Housing and Regeneration Act 2008.

² SI 2006/370

³ Housing Act 2004 Section 85 (1)(a).

Conditions applying to Selective licensing

4. A selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is one experiencing:
 - low housing demand (or is likely to become such an area)⁴;
 - a significant and persistent problem caused by anti-social behavior⁵;
 - poor property conditions⁶;
 - high levels of migration⁷;
 - high level of deprivation⁸;
 - high levels of crime⁹.
5. In considering whether to designate an area for selective licensing on the grounds above on property conditions, migration, deprivation and crime the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector¹⁰. Nationally the private rented sector currently makes up 19% of the total housing stock in England¹¹. The actual number of privately rented properties in a given area may be more or less than this, and if it is more than 19%, the area can be considered as having a high proportion of privately rented properties. 19% is the figure as of March 2014. This figure will vary from time to time, so local authorities are strongly advised to consult the latest available English Housing Survey when considering whether an area has a high proportion of privately rented properties.
6. When considering whether to make a selective licensing designation a local housing authority must first identify the objective or objectives that a designation will help it achieve. In other words it must identify whether the area is suffering problems that are caused by or attributable to any of the criteria for making the designation and what it expects the designation to achieve - for example, an improvement in property conditions in the designated area.
7. Secondly, it must also consider whether there are any other courses of action available to it that would achieve the same objective or objectives as the proposed scheme without the need for the designation to be made. For example, if the area is suffering from poor property conditions, is a programme of renewal a viable alternative to making the designation? In areas with Anti-Social Behaviour,

⁴ Housing Act 2004 Section 80(3)

⁵ Housing Act 2004, Section 80(6)

⁶ The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 – Article 4

⁷ The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 – Article 5

⁸ The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 – Article 6

⁹ The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 – Article 7

¹⁰ The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 - Article 3 (1) (a)

¹¹ English Housing Survey 2013/2014

where landlords are not taking appropriate action, could an education programme or a voluntary accreditation scheme achieve the same objective as a selective licensing designation?

8. If the problems of anti-social behavior are only associated with a small number of properties a local housing authority should consider making a Special Interim Management Order, rather than a selective licensing designation covering properties with regard to anti-social behaviour (see Annex below).
9. Only where there is no practical and beneficial alternative to a designation should a scheme be made.
10. If the local housing authority decides there is no practical and beneficial alternative to the scheme, it must only make the designation if it is satisfied that the scheme will significantly assist it in achieving its objective or objectives, with other actions the local housing authority may be taking.
11. Any designation made must:
 - ensure that the exercise of the power is consistent with their overall housing strategy¹²; and
 - seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.¹³

¹² Housing Act 2004, Sections 81(2)

¹³ Housing Act 2004, Sections 81(3)

Making a scheme – identifying the factors affecting an area, assessing impacts of schemes and measuring their outcomes

Introduction:

12. Before proposing a designation and embarking on a consultation the local housing authority must identify the problems affecting the area to which the designation will apply and provide evidence to support the existence of the problems. It must also decide what other measures it, or other persons together with the local housing authority, will take together with the selective licensing scheme to eliminate or mitigate those problems and how they will work together. The local housing authority must also assess what outcomes will be delivered through the making of a scheme and taking the other measures¹⁴.

Low Housing Demand

13. When deciding if an area is suffering from, or likely to become, an area of low housing demand, it is recommended that local housing authorities consider the following factors:

- The value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority considers to be comparable (whether in terms of type of housing, local amenities, availability of transport).
- The turnover of occupiers of residential premises (in both rented and owner occupied properties).
- The number of residential premises which are available to buy or rent, and the length of time for which they remain unoccupied.
- The general appearance of the locality and the number of boarded up shops and properties.

14. The scheme should state how it will help address the problems associated with low demand in the designated area, for example, through imposing conditions relating to the management of properties. It must identify how the scheme will work in combination with other specified measures that the local housing authority is taking to combat those problems.

15. The outcome of the scheme should be a reduction in or elimination of the blight of low demand which has led to improvements of the social and economic conditions of the sector, which are identifiable.

¹⁴ It should be noted that in making a selective licensing designation, the local housing authority must also take other measures to help address the problems. A scheme cannot be made unless those other measures are to be introduced (or continued in force).

Anti-Social Behaviour

16. In deciding whether an area suffers from anti-social behavior, it is recommended that local housing authorities consider whether private sector landlords in the designated area are not effectively managing their properties so as to combat incidences of anti-social behaviour caused by their tenants or people visiting their properties and in particular the area suffers from anti-social behaviour as a result of this failure or because that failure significantly contributes to that problem.
17. In considering whether the area is suffering from anti-social behaviour which a landlord should address regard must be had as to whether the behaviour is being conducted within the curtilage of the rented property or in its' immediate vicinity and includes acts of (but not limited to):
 - intimidation and harassment of tenants or neighbours;
 - noise, rowdy and nuisance behaviour affecting persons living in or visiting the vicinity;
 - animal related problems;
 - vehicle related nuisance;
 - anti-social drinking or prostitution;
 - illegal drug taking or dealing;
 - graffiti and fly posting;
 - and litter and waste within the curtilage of the property.
18. The scheme should state what measures will be taken to address the problems associated with anti-social behaviour, for example by including conditions in licences requiring landlords to take action to deal with such behaviour, to ensure that properties are not let to persons with a known record of anti-social behaviour and relating to the use of the property. It should also make clear how the measures taken in the scheme when combined with other specified measures will work together to combat the problems caused by anti-social behaviour.
19. The outcome of the scheme should be a reduction in, or elimination, of anti-social behaviour (caused by tenants in the private sector) in the designated area.

Poor property conditions

20. Local housing authorities can address poor property conditions through their powers in Part 1 of the Act, which are extensive. As mentioned below a local housing authority should not use its Part 3 powers (selective licensing) where it is appropriate to tackle small numbers of properties which are in disrepair directly and immediately under Part 1. There may, however, be circumstances in which a significant number of properties in the private rented sector are in poor condition and are adversely affecting the character of the area and/ or the health and safety of their occupants. In that case, as part of wider strategy to tackle housing conditions, the local housing authority may consider it appropriate to make a selective licensing scheme so that it can prioritise enforcement action under Part 1 of the Act, whilst ensuring through licence conditions under Part 3 that the properties are properly managed to prevent further deterioration.
21. It is recommended that local housing authorities consider the following factors to help determine whether there are poor property conditions in their area:
- The age and visual appearance of properties in the area and that a high proportion of those properties are in the private rented sector¹⁵ ;
 - Whether following a review of housing conditions under section 3(1) of the Act¹⁶, the authority considers a significant number of properties in the private rented sector need to be inspected in order to determine whether any of those properties contain category 1 or 2 hazards. In this context “significant” means more than a small number, although it does not have to be a majority of the private rented stock in the sector. It would not be appropriate to make a scheme if only a few individual properties needed attention.
22. The scheme should state what action the authority intends to take under Part 1 of the Act if it identifies there are serious deficiencies with properties, including the timescale for taking the appropriate action and its enforcement plan for non-compliance with improvement notices or prohibition orders it serves.
23. The outcome of the designation would be a general improvement of property conditions in the designated area within the lifetime of the designation.

High levels of migration

24. Migration refers to the movement of people from one area to another. It includes migration within a country and is not restricted to migration from overseas. A selective licensing designation can be made, as part of wider strategy, to preserve or improve the economic conditions of the area to which migrants have moved and ensure people (including migrants) occupying private rented

¹⁵ The proportion of properties is a statutory requirement- see The Selective Licensing of Houses (Additional Conditions)(England) Order 2015- Article 3 (1) (a)

¹⁶ It is a prerequisite to making a scheme that such a review has been carried out. The Selective Licensing of Houses (Additional Conditions)(England) Order 2015 – Article 4 (a)

properties do not live in poorly managed housing or unacceptable conditions.

25. In considering whether an area is experiencing, or has experienced, high levels of migration: the local housing authority will want to consider whether the area has experienced a relatively large increase in the size of the population over a relatively short period of time. In assessing this, the local housing authority should consider whether net migration into the designated area has increased the population of the area. We suggest a population increase of around 15% or more over a 12 month period would be indicative that the area has or is experiencing a high level of migration into it.
26. The designated area must contain a high proportion of privately rented properties with a significant number of migrants to the area occupying them. In assessing whether the area is experiencing or has experienced significant migration the local housing authority will want to have regard to such information it holds on households in the area; any significant increase in the call for, or in the provision of, local authority services in the area; any increase in local authority or police intervention in the area and any changes to the socio- economic character of the area.
27. The scheme should state what actions the local housing authority intends to take to ensure the preservation or improvements to the social or economic conditions of the area. It should also state what it would put in place through licensing, to ensure proper standards of management of privately rented properties in the area are maintained, and to prevent properties becoming overcrowded.
28. The outcome of the designation should be to preserve or improve the economic or social conditions of the area during the lifetime of the designation and ensure that a proper standard of management of privately rented property is maintained and that properties do not become overcrowded.

High levels of deprivation

29. A local housing authority may make a designation if the area is experiencing a high level of deprivation. It must, however, be clear that by making the scheme it will, together with other measures as part of a wider strategy, improve housing conditions in the private rented sector in that area.
30. In deciding whether to make a designation because the local authority considers the area suffers from a high level of deprivation we recommend that the local housing authority considers the following factors when compared to other similar neighbourhoods in the local authority area or within the region:
 - the employment status of adults;
 - the average income of households;
 - the health of households;
 - the availability and ease of access to education, training and other services

for households;

- housing conditions;
- the physical environment;
- levels of crime.

31. Although it is a matter for the local housing authority to determine, whether having regard to the above factors, the area is one that is suffering from a high level of deprivation, the local housing authority may only make a designation if a high proportion of housing in the area is in the private rented sector.
32. The scheme should state what actions the local housing authority intends to take to combat housing problems associated with the deprivation; including, for example, through licence conditions to ensure properties are managed properly, and can contribute to an improvement in the well-being of the occupants and wider community.
33. The outcome of the designation should be (together with other measures) a reduction of the problems with housing in the private rented sector contributing to the high level of deprivation.

High levels of crime

34. In considering whether an area suffers from a high level of crime the local housing authority may wish to have regard to whether the area has displayed a noticeable increase in crime over a relatively short period, such as in the previous 12 months; whether the crime rate in the area is significantly higher than in other parts of the local authority area or that the crime rate is higher than the national average. In particular the local housing authority may want to consider whether the impact of crime in the area affects the local community and the extent to which a selective licensing scheme can address the problems.
35. The licensing scheme must be part of a wider strategy to address crime in the designated area and can only be made if a high proportion of properties in that area are in the private rented sector. In particular the local housing authority should consider:
- whether the criminal activities impact on some people living in privately rented accommodation as well as others living in the areas and businesses therein;
 - the nature of the criminal activity, e.g. theft, burglary, arson, criminal damage, graffiti;
 - whether some of the criminal activity is the responsibility of some people living in privately rented accommodation.

36. The scheme should show what measures the local housing authority will be able to take through licensing (and such other measures as are being taken), to reduce criminal activity in the area, such as by imposing conditions in licences to ensure properties are safe from intruders.
37. The outcome of the designation (together with the other measures) should lead to a reduction in crime in the area.

Selective licensing as part of the overall housing strategy

38. Selective licensing is not a tool that can be used in isolation. The local housing authority will have to show how such a designation will be part of the overall strategic borough wide approach¹⁷, and how it fits with existing policies on:

- Homelessness
- Empty Homes
- Regeneration
- Anti-social behaviour associated with privately renting tenants

39. Local housing authorities must also ensure that selective licensing complements other measures. It should only be used where existing measures alone are not sufficient to tackle the underlying housing problems of a specific area. Local authorities should also carefully consider any potential negative economic impact that licensing may have on their area – particularly the risk of increased costs to landlords who are already fully compliant with their obligations. These additional costs can reduce further investment and are frequently passed on to tenants through higher rents.

40. The selective licensing scheme must be consistent with the overall housing strategy and co-ordinated with procedures for homelessness, empty properties, anti-social behaviour in the private rented sector, and housing market renewal activity.

41. Local housing authorities will also have to demonstrate the role of other partners (if any), such as the Police or Social Services, in ensuring the designation reaches its goal.

42. The local housing authority must show:

- it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and;
- how the making of the designation will significantly assist the local housing authority in achieving its' objectives (whether or not in conjunction with those other measures).

43. It is important for local housing authorities to demonstrate how licensing will work in conjunction with existing initiatives (such as landlord accreditation) and partnerships. Licensing in itself is not a stand-alone tool, and local housing authorities should take account of this. For example, landlords will need adequate

¹⁷ Housing Act 2004, Section 81

support to help them deal with problem tenants. Local housing authorities should ensure that their schemes are adequately resourced and include services such as active outreach support programmes to engage with landlords and tenants who need their assistance.

44. It is also important for local housing authorities to consider some of the possible effects of making a designation, and to include any risk assessment they may have carried out. For example, has there been an assessment of the likelihood of possible displacement of unprofessional landlords to other areas within the local authority's jurisdiction, or to neighbouring local authorities.

Consultation requirements

45. Section 80 (9) of the Act states that when considering designating an area the local housing authority must:

- take reasonable steps to consult persons who are likely to be affected by the designation, and,
- consider any representations made in accordance with the consultation.

46. Local housing authorities will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation that will be affected. Local housing authorities should ensure that the consultation is widely publicised using various channels of communication.

47. If the designation does not require the confirmation of the Secretary of State because of its extent the local housing authority must consult on the proposed scheme for at least 10 weeks. We recommend that if the scheme requires confirmation the local housing authority should aim to consult for at least 10 weeks unless there are special reasons for not doing so.

48. The consultation should be informative, clear and to the point, so the proposal is readily understood. It should inform local residents, landlords, letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems together with other specified measures, and describing the proposed outcome of the designation. It should also set out the proposed fee structure and level of fees the authority is minded to charge (if any). Consultees should be invited to give their views, and these should all be considered and responded to.

49. Once the consultation has been completed the results should then be published and made available to the local community. This should be in the form of a summary of the responses received and should demonstrate how these have either been acted on or not, giving reasons.

Application to the Secretary of State for Confirmation

50. Applications for confirmation of Selective licensing designations should be submitted to the Department for Communities and Local Government and should use the following structure.

- Introduction. This should cover the strategic significance of the proposed area and provide a detailed description of the proposed area (including the number and types of properties affected, and a map of the area).
- An explanation of whether the designation is for more than 20% of the local authority's geographical area; or affects more than 20% of privately rented homes in the area and how this was calculated or where the scheme is for less than 20% of the area or homes, how it together with other schemes affects more than 20% cumulatively.
- Where the designation would cover over 20% of the area or 20% of properties the application should set out what the rationale for adopting a large scale scheme is.
- Current position with regards to tackling:
 - low housing demand;
 - anti-social behaviour;
 - poor property conditions;
 - an influx of migration;
 - a high level of deprivation;
 - high levels of crime;

demonstrating how the area would benefit from the combination of existing policies and selective licensing.

- Conclusion, addressing the relevant issues that were raised in the stakeholder consultation and details as to what the long term impact of the scheme will be on the proposed area.

51. In addition the local housing authority must include with the application:

- A copy of the consultation document and the published summary of the responses;
- Details of the fees that will be charged;

- A copy of the Designation and minutes of the Council meeting resolving to make the designation;
- A copy of the local housing authority's strategy to ensure compliance with the scheme and enforcement against those who do not comply. It must also supply the level of compliance with other licensing schemes it operates, including mandatory House of Multiple Occupation licensing.

52. Applications should be e-mailed to: selectivelicensing@communities.gsi.gov.uk

Hard copies should be sent to:

The Department for Communities and Local Government

Private Sector Property

Fry Building

2 Marsham Street

London SW1P 4DF

Department's role in the confirmation process

53. The Secretary of State's role in confirmation will be exercised by officials in the Private Sector Property Division and the final decision whether to confirm or refuse to confirm the designation will be made by a senior official of the division.
54. The decision will be in writing and where appropriate, will give reasons where the Secretary of State declines to give consent. There is no appeal against the Secretary of State's decision, although it can be subject to judicial review.
55. We aim to make a decision in relation to an application within 8 weeks from receipt, but processing applications may take longer if we have not been given all the information required, or we require further information or research, or if the case is complex.
56. We may request further information relating to the application and supporting documentation, including clarification of matters which are unclear and we may seek further evidence of certain matters. If we do not have sufficient information to make a decision we will let you know.
57. The role of the Secretary of State is not about second-guessing the local housing authority's reasons for making the decision. As this guidance makes clear local housing authorities will know their local housing market conditions better than the Department. The approval system is concerned with ensuring that the local housing authority has carried out the requirements imposed on it through the legislation before making the designation and can sufficiently demonstrate,

where a scheme will impact on a large geographical area or number of privately rented properties, that there is robust evidence to support the reasons for making the designation.

58. There is no presumption towards refusal or acceptance. All applications will be considered impartially on a case by case basis balancing the views and interest of all parties and we will consider representations in support of the application from Government Departments and agencies, such as the Home Office.
59. However, the Secretary of State will take into account in deciding whether to confirm a scheme, the robustness of the proposed measures to ensure compliance¹⁸. In particular, the Secretary of State will expect to be assured there are systems in place to monitor compliance, and enforcement measures are in place where there is non-compliance. He will also take account when considering confirmation of a new scheme whether there has been sufficient compliance with other licensing schemes operating in the local housing authority area.
60. It is important that licensing schemes that exist are robustly enforced and if a local housing authority is unable to show compliance this will cast doubt on its ability to ensure compliance with the application scheme.

¹⁸ A local housing authority that has designated an area subject to selective licensing is under a general duty to ensure the scheme is complied with: Housing Act 2004, section 79 (5)(a)

Duration and Notification of a Selective licensing Scheme

61. Where a designation does not require confirmation, it cannot come into force until three months after it is made. Where it requires confirmation, it cannot come into force until three months after it has been confirmed by the Secretary of State¹⁹.

62. A designation may be made for up to 5 years²⁰.

63. Section 83 of the Act requires local housing authorities to publish a notice of the designation once it has been confirmed. A local housing authority must:

- publish a notice within the designated area within seven days of the designation being confirmed.
- notify all those consulted on the proposed designation within two weeks of the designation being confirmed.

64. Further information on the publication requirements relating to additional and selective licensing designations can be found in Statutory Instrument No. 373 "The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006" which can be found on the Office of Public Sector Information website www.opsi.gov.uk.

¹⁹ Housing Act 2004, section 82 (3) and (7)

²⁰ Housing Act 2004, section 84 (2)

Local Authority Review of a Selective licensing Scheme

65. Sections 84 of the Act require local housing authorities to:

- Review the operation of a designation made by them from time to time, and;
- If following a review they consider it appropriate to do so, they may revoke the designation.

66. Selective licensing is not intended to be an end in itself. It is a means to an end. It is about improving management standards in the private sector in areas where those standards are sorely needed to be improved, for the benefit of occupiers and the wider community. Therefore after making a designation local housing authorities must continue to monitor designations to show that they are achieving the desired effect. For example, if a selective licensing designation is deemed to have worked, and the problems of low demand and/or anti-social behaviour have been resolved in an area, the local housing authority may consider that the designation is no longer needed and should be revised or revoked. Alternatively, if a designation is failing to tackle the issues it is meant to address, the local housing authority may consider that the designation should be revised or revoked and alternative measures considered addressing the issues. The Government recognises that licensing may have to be a long term strategy and that it will not provide instant solutions. It also appreciates that, if in the initial phase there has been little improvement in an area, this does not necessarily mean that a designation is a failure.

Renewal of a Selective licensing Scheme which requires confirmation

67. When considering whether a local housing authority should renew a selective licensing scheme which requires confirmation by the Secretary of State, consideration will be given as to whether the existing schemes have met or not met their objectives, and whether they were properly made. The Secretary of State will only confirm a renewal if he is satisfied there is a continuing need for a scheme in the area and the consultation and other processes have been gone through.

68. Any existing scheme that covers more than 20% of the geographical area of the authority or 20% of private rented homes in the area will require confirmation on any proposed renewal as will any scheme which covers less than 20% but cumulatively with other schemes would include more than 20% of the area of stock.

Annex

Special Interim Management Order

It will not be appropriate to make a selective licensing designation to address isolated individual problems of anti-social behaviour which nevertheless seriously impact upon the local community. In such cases local housing authorities should consider making a Special Interim Management Order (SIMO) under part 4 of the Act²¹.

A Special Interim Management Order transfers the management of a residential property to the local housing authority for a period of up to twelve months and can only be made if approved by the First Tier Tribunal (Residential Property). The tribunal may not authorise a Special Interim Management Order in respect of a property unless, in the case of non-Houses of Multiple Occupation, there is **anti-social behaviour** emanating from the property, the landlord is failing to take appropriate action to deal with the problem, and, that it is necessary to make the order to protect the health, safety or welfare of persons occupying, visiting or engaged in lawful activities in the locality of the house.

²¹ The criteria for making such an order is set out in SI 2006/369- The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006