

Selective licensing

APPLIES TO: ENGLAND
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Context

The Housing Act 2004 allows local authorities to apply for Selective licensing of privately rented properties in areas which are experiencing low housing demand and/or suffering from anti-social behaviour. The same Act also introduced a new licensing regime for Houses in Multiple Occupation (HMO).

The changes

A new General Approval for selective licencing schemes came into force on 23 December 2024, which removed the requirement to obtain confirmation from the Secretary of State before implementing a licensing scheme. Previously, from 1 April 2015 local authorities in England were required to obtain confirmation from the Secretary of State for Communities and Local Government 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. The General Approval means that this is no longer the case.

There are still statutory requirements that the local authority will have to fulfil before they can commence a new scheme and they must only introduce one where there are issues with housing stock, such as poor housing conditions and high levels of migration, crime or deprivation. The area must have a high proportion of private rented housing as well, which is 19% or more of the local housing stock.

The General Approval has given local authorities more autonomy to implement schemes, as they no longer need to make a request to the Secretary of State for a scheme to go ahead. However, authorities will be required to put out a public consultation on each proposed scheme for a period of at least 10 weeks.

NB: 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.

Who needs a licence?

Each privately rented property in a designated Selective licence area will be required to be licensed. A licensee can be the landlord or a letting agent.

NB: Selective licences do not apply to Registered Social Landlords, any property which is an HMO and is already licensed under Part Two of the Housing Act 2004 or for a property where a Temporary Exemption Notice or a Management Order is in force.

What does this mean?

When designating a Selective licence in an area experiencing low housing demand the local authority must believe that the designation, when combined with other measures, will improve the social and economic conditions in the area.

NB: The local authority may look at the value of residential premises in an area, the turnover of occupiers of residential premises or the number of properties available to buy or rent when judging if an area is experiencing low housing demand.

When designating a Selective Licencing scheme in an area to prevent antisocial behaviour, the local authority must believe that the designation, together with other measures, will help lead to a reduction in or elimination of the problem.

NB: There is no definition of anti-social behaviour in the Act but DCLG guidance suggests it relates to, for example, tenants engaged in criminal damage, rowdy and nuisance behaviour or fly-tipping.

Before making a decision to designate an area for Selective Licencing a local authority must consider whether there are alternative means of addressing the issues such as through the introduction of a voluntary accreditation scheme for landlords.

NB: The local authority must ensure that the proposed Licencing Scheme fits with its overall housing strategy and policies for homelessness and empty dwellings.

The Act requires local authorities considering designating an area for Selective licensing to consult persons who are likely to be affected by the designation (local residents, landlords, letting agents, owner-occupiers and tenants) and consider any representations made in accordance with the consultation.

Once a designation has been made the local authority must publish a notice within the designated area within seven days of the designation being confirmed. The local authority must also notify all those consulted on the proposed designation within two weeks of the designation being confirmed.

How long will a licence last?

A Selective licence must not last for more than five years. In certain circumstances Selective licences can be granted for a shorter period and the scheme can be withdrawn early if appropriate. During the designation period the local authority must review the operation of the scheme.

Licence conditions

Local authorities have discretion to set the precise conditions of the licence as regards anti-social behaviour and general management of the property. These can include conditions relating to the use and occupation of the property as well as measures to deal with anti-social behaviour of the tenants or those visiting the property.

NB: The conditions imposed must relate to the residential use of the property and they cannot, for example, limit the level of rent payable.

There are also certain mandatory conditions which the local authority must include in a Selective licence:

- Present a gas safety certificate annually to the local authority, if gas is supplied to the house
- Keep electrical appliances and furniture (supplied under the tenancy) in a safe condition
- Keep smoke alarms in proper working order
- Supply the occupier with a tenancy agreement
- Demand references from perspective tenants

What you need to do

When a Selective licensing scheme is launched landlords or letting agents will need to complete an application form and submit it to the local authority. They will be required to provide evidence that shows they are a 'fit and proper' person and that the proposed management and finance arrangements for the property are satisfactory.

NB: In order to determine whether someone is 'fit and proper' the local authority must take into consideration any previous convictions relating to violence, sexual offences, drugs or fraud; whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues; and whether the person has been found guilty of unlawful discrimination.

A licence may not be transferred to another person. If the holder of the licence dies while the licence is in force the licence ceases to be in force. However, during the period of three months beginning with the date of the licence holder's death the house is to be treated as if on a Temporary Exemption Notice.

How much will a licence cost?

Like the HMO Licensing system, a charge for Selective licences also applies. Local authorities can set the level of the fee, but it should be transparent and cover the actual cost of administering the scheme

Enforcement

If the local authority determines that the landlord or agent is not 'fit and proper' it can refuse to grant a licence. It must give 14 days' notice of its intention, during which time the landlord or letting agent can appeal. The local authority can also withdraw a licence after issue if the licensee is no longer considered a 'fit and proper' person.

If a local authority believes that a landlord or letting agent has breached licence conditions they can issue a fine of up to £5,000 for each offence or summary conviction in a Magistrates Court.

Landlords and letting agents operating a property without a licence in a designated area can receive an unlimited fine or a Fixed Penalty Notice of £30,000.

Further Information

Housing Act 2004: www.legislation.gov.uk/ukpga/2004/34/contents

The Selective licensing of Houses (Additional Conditions) (England) Order 2015:
www.legislation.gov.uk/uksi/2015/977/made

Licensing of Houses in Multiple Occupation and Selective licensing of Other Residential Accommodation (England) General Approval 2024:
<https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/the-housing-act-2004-licensing-of-houses-in-multiple-occupation-and-selective-licensing-of-other-residential-accommodation-england-general-approval--2>