

Housing Rights

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Policy Briefing

Landlord Licensing in the Private Rented Sector

November 2016

when everyone has a home

INTRODUCTION

Housing Rights is the leading provider of specialist housing advice, support and representation in Northern Ireland. We work to help people in housing need, and make client focused contributions to the development of public policy in this area.

The private rented sector is *the* growing sector in Northern Ireland. The sector now accounts for 21% of Northern Irish households¹, with an increasing number of families and working households renting privately, and intending to stay in the sector for the long term.² Due to pressures on the supply of social housing, Housing Rights has also witnessed a growing number of vulnerable households and clients living in the private rented sector.

This sector is now the largest area of Housing Rights' advice work; with a disproportionate level of our enquiries generated from a sector which accounts for 21% of Northern Irish households. Key concerns for our clients living in the private rented sector include property conditions; affordability; and security of tenure. In the experience of Housing Rights' clients and advisers, it can often be challenging to enforce the rights and responsibilities of private landlords.

This briefing considers the need for increased landlord regulation in the private rented sector, examining the need for licensing, best practice experience elsewhere and concludes with key principles which should inform the development of any such proposals.

THE NEED FOR LICENSING

Under the Landlord Registration Scheme Regulations (Northern Ireland) 2012, all private landlords must now provide accurate and up to date information about themselves and their properties to a Registrar. Whilst this has been an important first step in compiling information on private tenancies and those landlords operating in the sector, the Scheme has limited potential in delivering tangible improvements for both landlords who wish to see greater professionalism in the sector, and tenants who seek improved conditions and greater regulation.

The introduction of mandatory and statutory landlord licensing, for all private landlords in Northern Ireland, would help to ensure that landlords meet an agreed and impartial standard of diligence in the discharge of their duties. This would ensure that tenants across Northern Ireland are guaranteed a consistent and satisfactory minimum standard of housing.

¹ Department for Social Development (2015) 'Family Resources Survey 2013/14', p ii

² See Gray P, McNulty U & Shanks P (2014) 'Living in the Private Rented Sector: Experiences of tenants' Northern Ireland Housing Executive/University of Ulster

Landlord licensing can also have positive effects in other areas, by:

- Impartially verifying good practice amongst existing, reputable landlords
- Driving behavioural change on the part of non-compliant landlords, or removing these landlords from the market – resulting in improved property and landlord standards
- Acting as a framework through which to enforce relevant regulation of the Private Rented Sector

Critically, in order for licensing to be effective, adequate resources must be provided to bodies with responsibility for enforcement. Evidence from existing schemes across Great Britain indicates that licensing schemes can be introduced with a small and reasonable fee to the landlord. These fees can fund the relevant authorities to administer the licensing scheme, disseminate guidance and prosecute landlords who do not fulfil their legal obligations.

LICENSING SCHEMES ELSEWHERE

There are currently national licensing schemes for all private landlords in operation in Scotland and Wales, and for some HMO landlords in England; there are also multiple licensing schemes operated at Local Authority level in England. The Houses in Multiple Occupation Act (Northern Ireland) 2016 will also introduce a system of licensing specifically for HMO landlords in Northern Ireland.

The table below details these schemes more fully.

Licensing in England, Case Study: Newham Council	<p>The Housing Act 2004 requires particular types of HMOs to be licensed by all local authorities across England – known as “mandatory licensing.” It also permitted local authorities in England to establish licensing schemes for all private landlords, provided certain conditions are met – this is known as “selective licensing.”</p> <p>In 2015, the UK Government passed Regulations introducing stringent new conditions for any “selective” licensing scheme (applying to all private landlords) to continue in England beyond 2018. Conditions include high inward migration, deprivation and crime, and poor property conditions.³ Any local authority seeking to operate a licensing scheme covering more than 20% of private properties in their area will need to get specific approval from the Secretary of State.</p> <p>This means that English councils who currently have selective licensing schemes – such as Newham, Liverpool, Southwark and Brent – will have to re-apply to the Government if they want to continue beyond 2018.⁴</p>
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³ See ‘The Selective Licensing of Houses (Additional Conditions) (England) Order 2015’

⁴ See <http://www.insidehousing.co.uk/newham-prepares-to-fight-for-licensing-scheme/7017571.article>

Case study: Newham Borough Council

Newham Council introduced a licensing scheme, covering all private rented properties in the borough, in January 2013. The aims of the scheme are to ensure that:

- Anti social behaviour is dealt with effectively
- Tenants' health, safety and welfare are safeguarded
- Landlords are 'fit and proper persons' or employ agents who are
- Adequate property and tenancy management arrangements are in place
- Accommodation is suitable for the number of occupiers.
- All landlords and managing agents operate at the same minimum level of professional standards⁵

Newham's scheme is tiered: there are two forms of licenses for different types of HMOs, and a "selective licence" which applies to all other private rented properties in the borough.

Anyone can apply for a licence, whether a landlord or agent: however, they must be 'the most appropriate person to do so' – the person receiving the rent or managing the property. In order to be awarded a licence, applicants must:

- Have a registered address in the United Kingdom
- Be a 'fit and proper person' (the Council assesses this, taking into account any previous offences in particular relevant areas of law)
- Demonstrate satisfactory management and financial arrangements⁶

Selective licences, lasting 5 years, cost £500; HMO licences cost £850.

Failure to apply for a licence can result in prosecution, and a fine of up to £20,000. Landlord or managing agents can be subjected to an 'Interim Management Order' – essentially taking away control of their properties – and can also be subjected to a Rent Repayment Order, whereby they must repay up to 1 year's rent to tenants in any unlicensed properties.⁷

Anthony Quinn, from Newham Council's Environmental Health department which enforces the scheme, contributed to Housing Rights' 2015 Private Rented Sector conference.⁸ Mr Quinn

⁵ Newham Borough Council (2013) 'Private Rented Property Licensing: Guide for Landlords & Managing Agents', p2

⁶ Ibid., pp9-11

⁷ Ibid., pp2-3

⁸ Presentation available here: housingrights.org.uk/news/prs-conference-2015-fit-future-report

	<p>informed attendees how the scheme was intended to be “light-touch” for compliant landlords, with a focus on simplicity and convenience and the offer of an early-bird licence fee of £150.⁹ The focus of the scheme to date has been on ensuring landlords meet their legal obligations, and driving those landlords who persistently fail out of the market. The Newham scheme is self-financing, with licence fees used only for administration and enforcement.¹⁰</p> <p>In the first 3 years of the scheme, Newham licensed 24,400 landlords, issued 779 prosecutions and 338 simple cautions. 28 landlords have been barred from holding a licence; 125 Rent Repayment Orders totaling over £500,000 have been issues; and the Council has collected an additional £1.3m council tax from evasive landlords. The scheme has also proven effective in addressing anti-social behaviour, with incidences of anti-social behaviour falling significantly since the scheme began.¹¹</p>
<p>Landlord Registration and Licensing in Wales: “Rent Smart Wales”</p>	<p>Landlord registration and licensing, for all privately rented homes was introduced to Wales by the Housing (Wales) Act 2014. This scheme works in a two-step process, whereby landlords or managing agents must first register, and then gain a licence to let or continue to let their properties; the deadline for all landlords/agents to be registered was 23 November 2016.</p> <p>The aims of the scheme are to:</p> <ul style="list-style-type: none"> • Improving standards in the private rented sector • Making more information on landlords available for local authorities & tenants • Raising landlords’ awareness of their rights and responsibilities¹² <p>The licensing scheme is operated by Rent Smart Wales.</p> <p>A licence for a private rented property can be held by either a landlord or a managing agent, meaning landlords can have their agent hold a licence. In order to receive and maintain their licence, landlords/agents must attend a 1-day training course (also available online)¹³, and abide by the Rent Smart Wales ‘Code of Practice for Landlords & Agents.’¹⁴ The Code of Practice establishes minimum standards of conduct on activities including:</p>

⁹ Quinn A (2015) ‘Property Licensing and Smart Enforcement in Newham’ [Newham Borough Council](#), p15

¹⁰ Ibid., p17 & p20

¹¹ Moffett R (2016) ‘Property Licensing in Newham, London’ [Newham Borough Council](#), pp13-15

¹² Sargeant C (2013) ‘Statement: Introduction of the Housing (Wales) Bill’ [National Assembly for Wales](#)

¹³ See <https://www.rentsmart.gov.wales/en/faqs/#16>

¹⁴ Rent Smart Wales (2015) ‘Code of Practice for Landlords and Agents Licensed under Part 1 of the Housing (Wales) Act 2014’

	<ul style="list-style-type: none"> • Marketing & advertising • Tenancy agreements & supplementary documentation • Deposits • Property conditions • Ending a tenancy <p>The Code ties pre-existing legal requirements in these areas to the award of a licence, which aims to enable better and more consistent enforcement of landlords' and agents' legal obligations. Failure to fulfil these conditions results in the landlord or agent potentially losing their licence, meaning they would be unable to let or manage any residential properties.¹⁵</p> <p>A licence applications costs £144 if submitted online, and £186 if submitted in paper form. Each licence lasts for 5 years. All landlords and/or agents must be registered by 23rd November 2016. The fees collected are used to administer and enforce the scheme, by investigating tenant complaints and ensuring landlords comply with their obligations.¹⁶</p>
Landlord Registration in Scotland	<p>Scotland operates a system of landlord “registration”: however, the requirements and enforcement of this mean that it is effectively a licensing scheme. This scheme was introduced across the country in 2006.</p> <p>The scheme in Scotland aims to:</p> <ul style="list-style-type: none"> • Provide a register of all private landlords for public inspection; • Provide a regularly updated register that can be used to assist dialogue between local authorities and landlords, and to disseminate best practice information; and • Ensure that enforcement action is targeted on tackling the worst landlords in the sector¹⁷ <p>In order to be registered, the landlord must pass a “fit and proper person” test carried out by their local authority, which takes into account previous offences or failure in particular areas of law, including housing.¹⁸ The registration process costs £55 for each landlord, plus £11 for each property.</p> <p>It is an offence to let any house without being registered, for which landlords can be fined up to £50,000. Unregistered landlords can also be issued with a Rent Penalty Notice, meaning they are unable to receive rent from their tenants.</p>

¹⁵ Ibid., p2

¹⁶ See <https://www.rentsmart.gov.wales/en/faqs/#7>

¹⁷ See gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/registration

¹⁸ See gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/registration/leaflet

	<p>A 2011 review of the Scottish scheme found that whilst it had achieved some impact in raising standards in the private rented sector, with landlords demonstrating increased awareness of their obligations and improved compliance; however, this review noted that the fees charged do not cover the costs of the scheme, resulting in resources being focused on administration instead of landlord advice and enforcement.¹⁹ The authors also found that there was no clear understanding of the total costs of administering and enforcing the scheme, meaning that these costs were not reflected in the fees charged to landlords.</p>
<p>Northern Ireland: Houses in Multiple Occupation</p>	<p>Currently, licensing exists for all HMOs in Scotland and Wales, and particular HMOs in England. The Houses in Multiple Occupation Act (Northern Ireland) 2016 will introduce a requirement for landlords and/or agents of HMOs in Northern Ireland to be licensed.</p> <p>The HMO Act was introduced to ‘enable the better regulation of HMOs [. . .] by ensuring that landlords and managing agents meet important obligations about the quality and safety of HMO accommodation.’²⁰</p> <p>The Act requires Councils to award licences and administer the scheme. Before awarding a licence, a Council must be satisfied that:</p> <ul style="list-style-type: none"> - The landlord, or the landlord’s agent, is a “fit and proper person” - There are suitable management arrangements in place for the HMO - The accommodation is suitable, or could be made suitable for use as a HMO for the specified number of persons.²¹ <p>In deciding whether a landlord or their agents is a “fit and proper person”, Councils must have regard to whether the landlord or agent has committed offences relating to fraud, violence, drugs, human trafficking, firearms or certain sexual offences; practiced unlawful discrimination; incidents involving anti-social behaviour; or contravened housing law, or landlord and tenant law.²²</p> <p>The landlord can nominate an agent to hold the licence for their HMO. However, if the HMO is not licensed, this is a criminal offence by the landlord, leading to fines of up to £20,000, plus £50 per day for every day on which a HMO fails to be licensed.²³</p>

¹⁹ See Lees F & Boyle J (2011) ‘Evaluation of the Impact and Operation of Landlord Registration in Scotland’ The Scottish Government, pp9-11

²⁰ Northern Ireland Assembly (2015) ‘Official Report: Monday 7 December 2015’, p6

²¹ Department for Communities (2016) ‘Houses in Multiple Occupation Act (Northern Ireland) 2016: Explanatory Note’, pp3-4

²² Ibid.

²³ Northern Ireland Assembly (2016) ‘Houses in Multiple Occupation (Northern Ireland) Act 2016’, p18

	<p>Councils can revoke a licence if a landlord/agent no longer meets their requirements, or issue “rectification notices” requiring the landlord/agent to fix problems in order to keep their licence.²⁴</p> <p>Fees for licence applications have yet to be decided; however, the Act specifies that in setting fees, Councils may take into account the costs of operating HMO licensing – essentially meaning fees should be set to cover the costs of operating the licensing scheme.²⁵ The Department have previously suggested that the fee will be set at £25 per tenant, per year.²⁶</p>
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²⁴ Ibid., p14 & pp20-23

²⁵ Ibid., p48

²⁶ Northern Ireland Assembly Committee for Social Development (2015) ‘Houses in Multiple Occupation Bill: Department for Social Development’, p15

PRINCIPLES TO INFORM LANDLORD LICENSING IN N.IRELAND

Evidence from existing licensing schemes suggest that licensing can act as a framework to improve standards and enforce existing regulation in the private rented sector, driving improvements amongst non-compliant landlords and removing “rogue landlords” from the market. This has been achieved with a minimal financial impact on the landlord, with fees calculated so as to cover only the costs of the scheme: the most expensive scheme discussed equates to a cost to the landlord of £1.92 per week for a 5-year licence.²⁷

Housing Rights believes that, in order to ensure any landlord licensing scheme is effective in ensuring compliance and improving standards across the entire private rented sector, certain key principles should inform any proposed scheme.

Key Principles

License conditions. Licenses should have at least the following conditions:

1. The application of a **“fit and proper person” test**, which has regard to any history of particular criminal offences, discrimination, anti-social behaviour or breaches of housing and landlord/tenant law.
2. A requirement for **suitable management and financial management** arrangements.
3. Compliance with any relevant existing or newly introduced legislation: **licences should be conditional on compliance with all existing and future landlord and tenant law.** The Welsh licensing scheme is based upon a Code of Practice which ties all existing landlord obligations to the licence. A similar system in Northern Ireland, which includes *all* existing requirements – for example protecting a tenancy deposit, or providing a rent book – to holding a licence, could enable more pro-active and streamlined enforcement of existing legal rights and obligations.

Fees & enforcement. Any fees charged should be calculated so as to cover the costs of the licensing scheme, including pro-active and effective enforcement. As enforcement bodies, Councils should be supported with the resources for these purposes. This would ensure that any scheme is self-sufficient, and demonstrate to landlords that their fees are being used to verify good practice, improve compliance and ultimately drive “rogue landlords” out of the market.

Additional support. The effectiveness of a licensing scheme could be enhanced with access to support for landlords. This support has commonly been interpreted in terms of access to training and may also include access to information on the law.

For further details on this briefing, please contact Stephen Orme, Policy & Public Affairs Officer by email: stepheno@housingrights.org.uk or by telephone: 028 90645640

²⁷ A 5-year landlord license from Newham Council costs £500

APPENDIX 1: LANDLORD LICENSING IN PRACTICE: A SUMMARY

Country	Aims of licensing	License requirements	Sanctions	Licence cost
England (Case study: Newham Council) ²⁸	<ul style="list-style-type: none"> Dealing with anti-social behaviour Protecting tenants' health, safety and wellbeing Ensuring landlords/agents are "fit and proper persons" Ensuring adequate property & tenancy management Accommodation is suitable for number of occupiers 	<p>Landlords or agents can apply. Applicants must:</p> <ul style="list-style-type: none"> Have a UK address Be a "fit and proper person" Demonstrate satisfactory management & financial arrangements 	<ul style="list-style-type: none"> Failure to apply for licence can result in fine of £20,000 "Interim Management Order" – losing control of property "Rent Repayment Orders" – up to 1 year's rent returned to tenants in unlicensed properties 	<ul style="list-style-type: none"> 5 year HMO licences cost £850 5 year licences for non-HMOs cost £500 ("early-bird" price of £150) <p>Fees are used solely for the administration and enforcement of the licensing scheme; the Newham scheme is entirely self-financing.</p>
Wales	<ul style="list-style-type: none"> Improving standards in the private rented sector Making more landlord information available to local authorities and tenants Raising landlord awareness of rights & responsibilities 	<p>Landlords or agents can apply.</p> <p>Applicants must attend a 1-day training course (also available online). They must also abide by a "Code of Practice", which contains minimum legal standards of conduct across beginning, maintaining and ending a tenancy.</p>	<p>Failure to meet the Code's obligations can result in the licence being revoked, meaning that person can no longer let or manage any residential properties.</p>	<ul style="list-style-type: none"> 5 year licence application submitted online costs £144 Submitted in paper costs £186 <p>Fees are used to administer and enforce the scheme.</p>
Scotland ²⁹	<ul style="list-style-type: none"> Provide a register of all private landlords for public 	<p>Landlords must register with their local authority and pass a "fit and</p>	<p>Letting a house whilst not registered is an offence.</p>	<p>Registration, lasting 3 years, costs a flat £55 for</p>

Country	Aims of licensing	License requirements	Sanctions	Licence cost
	<p>inspection;</p> <ul style="list-style-type: none"> • Provide a regularly updated register that can be used to assist dialogue between local authorities and landlords, and to disseminate best practice information; and • Ensure that enforcement action is targeted on tackling the worst landlords in the sector 	<p>proper person” test, which takes into account previous offences or failures in specific areas of law, including housing and landlord/tenant law.</p>	<p>Landlords can:</p> <ul style="list-style-type: none"> • Be fined up to £50,000 • Receive a “Rent Penalty Notice”, meaning they cannot receive rent from their tenants 	<p>each landlord, plus £11 per property.</p> <p>Fees are used to administer and enforce the scheme; however, a 2011 review found that fees do not cover the scheme’s costs, resulting in resources being focused on administration over enforcement.</p>
<p>Northern Ireland (HMOs only)</p>	<p>To ‘enable the better regulation of HMOs [. . .] by ensuring that landlords and managing agents meet important obligations about the quality and safety of HMO accommodation.’</p> <p>HMO licensing was contained in the HMO (NI) Act 2016; however, it has yet to be introduced in practice.</p>	<p>Landlords or agents can apply. Councils must be satisfied of the following before issuing a licence:</p> <ul style="list-style-type: none"> • The landlord/agent is a “fit and proper person” • There are suitable management arrangements in place • The accommodation is suitable, or could be made suitable for use as a HMO, for the specified number of persons 	<p>Landlords can nominate agents to hold the licence. However if HMO is unlicensed, this is an offence by the landlord.</p> <ul style="list-style-type: none"> • Unlicensed HMO: fines of up to £20,000, plus £50 per day <p>Breach of licence:</p> <ul style="list-style-type: none"> • “Rectification notice”, requiring remedial action, or • Licence revoked 	<p>Yet to be decided; the HMO (NI) Act specifies that when setting fees, Councils may take into account the costs of administration and enforcement. It has previously been suggested that the licence fee will be £25 per tenant per year.</p> <p>HMO licenses will last for 5 years, unless otherwise specified.</p>

