



Rented Property Licensing
Draft proposal for consultation

September 2017

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Foreword

Hackney Council has long campaigned for better housing standards in the Private Rented Sector (PRS), to make sure its households have a home they can afford, that is safe, secure and high quality. Our recent *Better Renting* campaign built on the 2015 and 2016 *Ten Steps* campaign, calling for fairness for tenants, outlining a range of measures that, taken together, can begin to deliver this for the almost one-third of Hackney residents who rent privately.

The number of Hackney households privately renting continues to rise and has doubled in the last decade. 30% of households in Hackney are now in the PRS, around 34,000 homes. Over the past few years, rents have increased massively. A two-bedroom home now costs £1,820 per month on average – over £300 more than it did in 2011 – meaning residents need to earn over £65,000 a year to afford it. And that's before deposits are taken into account.

Many of the improvements to the PRS the Council has called for from Government have been introduced; such as compulsory smoke alarms for all privately rented homes.

Despite this, private sector renters are too often forgotten and neglected in the national debate about social housing and home ownership. The current and previous administration in Hackney have long campaigned so that real, actionable measures are put in place to redress the balance for tenants, often on low incomes, who feel they have no alternative than to put up with bad housing conditions. Action is needed on their behalf to move towards a truly affordable, safe and secure PRS that works for tenants as well as landlords and our wider community.

The introduction of discretionary licensing in the PRS could make a real difference to Hackney tenants' lives, by requiring that all privately rented properties that fall under the schemes are registered and licensed, that landlords are 'fit and proper', and that poor conditions are addressed. It will also benefit good landlords, by enabling the Council to target more effectively the rogue landlords who unjustifiably tarnish the reputation of the sector.

We believe now is the time to explore whether the introduction of discretionary licensing in the PRS should be introduced in Hackney. That is why we are consulting on proposals for new rented property licensing schemes in Hackney that would start in the summer of 2018.

This consultation provides an opportunity to consider and provide an informed response to our proposals.

1. Introduction and context

Consultation on options for licensing in the PRS delivers on the manifesto pledge to “use all legal powers available to address poor standards in the private rented sector, including enforcement measures to improve the sector, such as the introduction of a licensing scheme to enforce high standards”. A Living in Hackney Scrutiny Commission investigation in 2014 recommended that the Council should consider introducing a discretionary licensing scheme.

Following these commitments we commissioned independent, wide-ranging research on the profile of the PRS in Hackney, and its findings led to the proposals in this paper on which we are consulting.

There are 33,923 homes in Hackney’s PRS and our commissioned research¹ indicates that:

- 4,269 are Houses in Multiple Occupation (HMOs)²,
- 11% contain serious hazards.
- 17% of households are on low incomes and,
- 11% suffer fuel poverty due to poorly heated and/or insulated homes.

More detailed data on the PRS in Hackney is contained in Appendix 1.

Our aim is to work with good landlords, but to bear down on the rogue landlords who make their tenants’ lives a misery with poor conditions and other unacceptable behaviours. This report is the basis of our consultation on proposals to introduce discretionary property licensing schemes to help tackle rogue landlords and poor conditions, focused on the worst conditions in Hackney’s PRS. This approach will also support the public health agenda in reducing the negative health outcomes from poor housing, for example the effects of cold homes, and inadequate amenities in shared housing, which can result in poor diet and ill-health. It will also support the homelessness prevention agenda by leading to tenants wanting to remain in their rented homes through improved housing conditions and management.

2. Our draft proposals

We are consulting on the following proposals; to introduce:

1. A Borough-wide *Additional Licensing Scheme* for all Houses in Multiple Occupation (HMOs)² that are not covered by the national mandatory scheme.
2. A *Selective Licensing Scheme* for all privately rented dwellings, excluding HMOs, in Brownswood, Cazenove and Stoke Newington wards.

¹ Integrated Dwelling Level Stock Modelling and Database: BRE Ltd; September 2017

² See Appendix 4 for definition of HMO and exemptions

3. Overview of property licensing schemes

There are three types of licensing scheme available for the PRS:

- *Mandatory Licensing* of HMOs: this currently applies nationally but currently only to the largest HMOs; those of three or more storeys height, occupied by five or more unrelated persons who share amenities such as a kitchen, bathroom or toilet. The Government has consulted on proposals to widen the scope of this type of scheme to include more, but not all, HMOs. Smaller HMOs, which often contain equally poor conditions, are only subject to licensing control where the Local Authority designates an *Additional Licensing* scheme.
- *Additional Licensing* of HMOs: this is a discretionary power for Councils to introduce licensing for a wider range of HMOs than those covered by the national mandatory scheme. The Council can specify what type of HMO will be covered by an *Additional Licensing* scheme based on housing conditions in its area. Proposal 1 in this document is to introduce an *Additional* scheme that would license all HMOs throughout the Borough, other than the exemptions listed in Appendix 4 and those already covered by the *Mandatory* scheme.
- *Selective Licensing*: this is a discretionary power for Councils to introduce licensing schemes for all private rented housing apart from those already covered by either of the two HMO schemes outlined above. Proposal 2 in this document is to introduce a scheme that would licence all PRS dwellings in three wards, Brownswood, Cazenove and Stoke Newington, other than the exemptions listed in Appendix 4.

The meaning of “HMO” is given in Appendix 4.

Licensing ensures landlords and property managers are “fit and proper persons” to be in the business. Licenses include legally binding conditions preventing overcrowding and ensuring adequate amenities, decent housing conditions and proper standards of management. There are serious penalties for letting a property covered by any of the schemes and for failing to comply with licence conditions (see Paragraph 9).

4. Why are we considering discretionary licensing schemes in Hackney?

Our recent research¹ has provided the following data:

- There are approximately 4,269 HMOs in Hackney and they are found in all parts of the Borough.
- On average across Hackney, HMOs comprise approximately 13% of PRS dwellings with 20% - 30% in some wards.
- Approximately 45% of HMOs contain serious (Category 1) hazards or are in disrepair.
- 13% of non-HMO rented dwellings in the Borough contain serious (Category 1) hazards or are in disrepair. This figure varies by ward but is highest in Brownswood, Stoke Newington and Cazenove wards, at 20%.
- More than 1,800 PRS dwellings are cold homes (i.e. contain a Category 1 excess cold hazard) and more than 600 households in the PRS are considered to be in fuel poverty.

A ward by ward analysis of the PRS profile in Hackney is given in Appendix 1.

Poor housing leads to poor health³. Improving housing conditions reduces ill health among residents and produces a quantifiable cost saving to health care and social care budgets.

Poor housing not only impacts on health and well-being but also has a detrimental impact on the neighbourhood environment and on the sense of overall well-being in a local area. HMOs often contain a range of housing hazards and poor conditions including excess cold, damp and mould, poor fire safety, overcrowding, inadequate facilities and poor or unscrupulous management. Externally, poor upkeep such as lack of external maintenance, absence of adequate refuse storage facilities, and overgrown gardens has a detrimental effect on the local area.

Hackney's current approach to dealing with poor conditions and management in the PRS is a reactive complaints service. While this has brought improvements in housing conditions, the increase in the size of the PRS over recent years and changes in demand mean it is no longer the most efficient service model.

Relying on tenants' complaints is inefficient, because then service delivery is not based on risk but dependent upon tenants' willingness and ability to lodge a service request. A significant proportion of HMO occupants are transient and may have limited or no knowledge of the legislation governing landlord/tenant relations or housing conditions. They are often unaware of their rights or alternatively may be reluctant to exercise them in order to maintain their relationship with their landlord or managing agent, or for fear of retaliatory eviction. With 33,923 dwellings in the

³ The real cost of poor housing; BRE Electronic Publications, February 2010

PRS (30%), the existing enforcement model cannot deal with the problem parts of the sector in a focused, risk-based way and within reasonable timescales.

In order to protect and improve the health and safety of these residents and improve housing conditions and management in the PRS, the Council needs to take a more proactive approach to enforcement. This can be achieved through discretionary licensing scheme(s) backed up with intelligence-based targeted enforcement for problem homes not covered by the licensing scheme(s).

Currently Hackney operates only the *Mandatory Licensing* scheme covering larger HMOs. The Council has not designated any of its area as subject to Additional or Selective Licensing.

Table 1: Estimated numbers¹ of HMOs by licensing scheme type in Hackney

All HMOs	4269	
HMOs within the scope of the current Mandatory Licensing Scheme	668	15.7%
HMOs within the scope of the Government's proposed wider Mandatory Licensing Scheme	1003	23.5%
HMOs not covered by current or proposed wider Mandatory scheme	3266	76.5%

Under the current licensing framework 84.4% (3,601) of all HMOs in Hackney are not subject to licensing. When the Government's proposed expanded mandatory scheme is introduced, 76.5% (3,266) will still remain outside the scope of licensing. A detailed distribution of HMOs by ward is shown in Appendix 1.

Poorly converted flats (Section 257 HMOs)

Many buildings in the borough have been converted into self-contained units without the necessary Building Regulations approval. Conditions are often poor, with inadequate fire separation between units, unprotected fire escape routes, absence of adequate fire alarm systems and poor management. Services such as gas, electricity and heating systems are often inadequate and may be communal but with no access to their controls for some or all of the occupiers.

For these reasons Proposal 1 is for a Borough-wide *Additional Licensing Scheme* for all HMOs including section 257 HMOs where all the units within them are rented. Buildings containing one or more owner-occupied flats are excluded from the proposal.

Single family (non-HMO) homes

An estimated 20% of non-HMO, PRS dwellings in Brownswood, Cazenove and Stoke Newington wards are in poor condition¹ in that they contain serious (Category 1) hazards and/or are in disrepair. The number of complaints of poor housing conditions received from residents in the three proposed selective licensing during the five year period from 1st April 2012 to 31st March 2017 are shown in Table 2 below:

Table 2: Number of complaints⁴ received during period 1st April 2012 to 31st March 2017

Ward	Total Complaints	HMO complaints	Single Family Dwelling Complaints
Brownswood	199	72	127
Cazenove	261	48	213
Stoke Newington/Stoke Newington Central	173	31	142

For these reasons Proposal 2 is for a limited *Selective Licensing Scheme* for all privately rented dwellings, excluding HMOs, in Brownswood, Cazenove and Stoke Newington wards. The proposal is for a limited pilot scheme in the three wards where data predicts that housing conditions overall are the worst in the Borough. The scheme's outcomes would be monitored to determine whether the scheme's coverage should be extended to other wards in the future. The incidences of predicted poor housing conditions by ward are given in Appendix 1.

5. Strategic context

Housing Strategy 2017-22

The demand for HMOs is growing due to reasons of housing supply and affordability. Welfare reform including changes to Local Housing Allowance and Universal Credit, and increasing private sector rents, have made self-contained accommodation unaffordable for many residents. The median rent⁵ for a studio is £972 per month and for a one-bedroom flat £1300 per month - whereas for a room in an HMO it is £600.

22% of Hackney residents are earning less than the London Living Wage and, if they depend on housing benefit to help pay their housing costs, the Shared Accommodation Rate is only £442 per month. HMO accommodation is therefore either the accommodation of choice or the only housing option for many Hackney residents.

One of five key themes in Hackney's emerging Housing Strategy 2017-22, is to address standards and affordability in the private rented sector. Within this, the Council is committed to expand its enforcement action, to improve management and physical standards in the PRS.

The current private sector housing enforcement service is largely reactive, with action taken in response to tenants' complaints. This is the case because the Council has not previously had comprehensive data on private rented property

⁴ Northgate M3PP database; LB Hackney

⁵ GLA London Rents Map: January 2017

addresses, housing conditions or landlord details. The introduction of discretionary licensing schemes, as recommended in Proposals 1 and 2, combined with targeted intelligence-led enforcement, would enable the Council to proactively target the worst housing conditions and the rogue landlords who are neglecting their properties or otherwise behaving illegally in their treatment of tenants.

At the same time, licensing schemes will enable the Council to communicate and offer advice and support to landlords who might not necessarily be aware of their responsibilities, as well as to warn of the consequences of not meeting legal requirements. As well as improving property conditions, this would also have benefits for tackling anti-social behaviour arising in privately rented properties, and help address the Council's overarching strategic policies in relation to community safety and sustainable communities.

Homelessness Prevention

With a shortage of social homes in the borough relative to housing need, the number of households on the Council's waiting list and in temporary accommodation is growing. At the same time, a growing proportion of homes in the borough are in the PRS (around a third of all homes). The PRS is therefore an increasingly important part of the Council's homelessness prevention strategy, with homeless or potentially homeless households accommodated within the sector. Licensing schemes will help ensure that homes in the sector meet high standards and will enable the Council to communicate directly with landlords. It will also enable the Council to identify and help bring back into use empty properties, including for the purpose of accommodating households referred by the Council.

The designation of *Additional* and *Selective Licensing* schemes would provide additional protection for assured short-hold tenants in unlicensed properties. It would, for example, preclude a landlord from serving a notice under section 21 of the Housing Act 1988 (notice requiring possession) so long as the property remains unlicensed and would help to mitigate the risk of unlawful eviction by improving the management practices of PRS landlords.

In the discharge of the Council's homelessness prevention duty, it offers housing options and advice to residents facing homelessness to help them explore the options available to them in relation to alternative, affordable accommodation. The Council also operates a Private Sector Leasing Scheme, which increases the number of units of accommodation available for direct rent. Homelessness is an increasing issue, particularly in the light of the Council's homeless prevention and relief duties under the Homelessness Reduction Act 2017. Future demand will increasingly be met through greater reliance on the PRS. Licensing schemes will complement this function, by helping improve the quality and management the PRS and by identifying landlords who may be willing to work alongside the council's homelessness team to enable easier access to PRS housing.

Fuel Poverty

The new Housing Strategy 2017-22 includes a commitment to improve energy efficiency in all housing sectors, to help reduce fuel poverty. Inspection and

enforcement of standards within the proposed licensing schemes will contribute significantly to this aim.

Anti-Social behaviour

While the main reasons for the proposals to introduce discretionary licensing schemes are poor housing conditions and management, the schemes will support existing anti-social behaviour policies by requiring landlords to take action to tackle any cases of persistent anti-social behaviour that occur in licensed properties through specific licence conditions (see Appendix 7) . The Anti-social Behaviour, Crime & Policing Act 2014 introduced a new mandatory ground for possession, where the Court is satisfied that one of the applicable clauses applies. Private landlords will also be encouraged to use this ground for eviction in the case of tenants who blatantly and persistently breach this policy.

6. Potential benefits and risks of discretionary licensing schemes

Benefits

We anticipate that the proposals for discretionary licensing schemes will bring improved regulatory control to the PRS including:

- improvement in the physical condition, management and overall quality of HMO accommodation in the borough through licensing conditions, inspection and enforcement;
- reduction in rogue landlord activity through a “*fit and proper person*” requirement for landlords and agents, and through greater proactive enforcement activity;
- promotion and development of good quality HMO units, helping to meet the local demand for single person accommodation;
- enhanced protection for vulnerable tenants living in HMO accommodation, by ensuring, for example, that the accommodation has adequate amenities, space standards and fire safety;
- creation of a level trading environment for PRS landlords through the proactive enforcement of housing conditions and management standards;
- economic benefits for tenants as a result of better landlord management practices and greater protection from unlawful eviction;
- environmental benefits through licensing in relation to refuse storage and disposal and maintenance of yards, gardens and external space;
- identifying landlords who are not paying the appropriate Council Tax for their properties;
- improved engagement with PRS landlords and managing agents;
- requirement for absentee or unprofessional landlords to use professional managing agents to manage their properties;
- promotion of landlord accreditation schemes thereby encouraging more professional management practices and a better reputation for private landlords in the borough;

- support for landlords in managing their properties and dealing with anti-social tenants more effectively;
- better informed tenants, regarding their own tenancy management and the standards they can expect in their accommodation;
- more effective means for tackling anti-social behaviour and crime in the PRS.

Risks

An assessment of the potential risks associated with the proposed discretionary licensing schemes and how they have been considered and managed is given in Appendix 8.

7. Draft licensing conditions

All licences under both *Additional* and *Selective Licensing* schemes have conditions attached, which are legally binding and have penalties attached for non-compliance. Some conditions are mandatory and specified in law, others are being proposed to improve management standards in the PRS. A schedule of proposed conditions under each of our Proposals are given in Appendix 7.

8. Licensing fees

The Council can require, as part of a valid licence application, the payment of a fee fixed by them. When fixing fees the Council may take into account all costs incurred in setting up and running the scheme(s) and this may include the monitoring and enforcement costs of the scheme.

Under the provisions of European Services Directive 2006/123/EC (ESD) and subsequent European Court judgments, the council must set the licence fee in two parts.

The council therefore proposes to adopt a two-stage fee structure, as follows:

Part A - payment of a fee at the point of licence application. This will cover the costs of setting up the schemes and processing and administering the licence application up to the point of granting or refusing a licence. The payment will be made on-line as part of the application process;

Part B - the payment of a further fee which becomes payable when the Council issues a notice to the applicant stating that licensing requirements have been met (except for payment of the Part B fee) and that it proposes to issue a licence to the applicant. The applicant will then have 28 days to pay the Part B fee on receipt of which the applicant will be issued with the licence. This element of the fee will include the cost of functions undertaken after the grant of a licence; i.e. ongoing monitoring of compliance with, and enforcement of the scheme. The Part B fee will not be payable if an application for a licence is refused.

The level of fees set will depend on the extent and scope of the licensing scheme(s) finally adopted following full consideration of the responses to this consultation. Estimated costs of the schemes and fees are given in Appendix 6 as a guide.

The council will review the fees annually and may adjust them to reflect changes in costs.

9. Penalties for non-compliance

It is a criminal offence to let out a property in a designated licensing area without a licence, or for failure to comply with any condition of the licence. Failure to apply for or obtain a licence could lead to prosecution and an unlimited fine or, as an alternative to prosecution, the issue of a fixed penalty notice with a financial penalty of up to £30,000.

The level of any financial penalty issued will be based on factors including:

- Severity of the offence,
- Culpability and track record of the offender,
- Harm caused, or the potential for harm to be caused, to the tenant(s),
- An appropriate and proportionate punishment of the offender,
- A suitable deterrent to committing the offence,
- Removal of any financial benefit the offender may have obtained as a result of committing the offence.

In addition, the Council or the tenants of the property could apply to the First Tier Tribunal (Property Chamber) for a Rent Repayment Order, requiring the landlord to repay an amount equivalent to up to twelve months of any rent received in respect of a property.

The Council will publish its enforcement policy on civil penalties and prosecutions prior to the declaration of any licensing scheme(s).

If a license applicant or property manager has been convicted of a specified criminal offence or issued with a financial penalty, s/he may be considered as not *'fit and proper'* to hold a licence and may be refused a licence. Similarly in such cases, an existing licensee may have their licence revoked. In cases where the person applying for the licence is not considered fit and proper and the property is to continue to be rented, an alternative, unrelated person will have to apply to be the licence holder. If a suitable licence holder cannot be found then the council may have to take over management of the property itself by, for example, making an interim management order under Part 4 of the Housing Act 2004.

10. How we meet the criteria for discretionary licensing schemes

Proposal 1: Additional Licensing of HMOs

Before making an additional HMO licensing designation the Council must:

- Consider that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public; On average across Hackney, HMOs comprise approximately 13% of PRS dwellings with 20% - 30% in some wards. Approximately 21% of HMOs contain serious (Category 1) hazards or are in disrepair. See Appendix 1.
- Consider whether there are any other courses of action available to them that might provide an effective method of dealing with the problems in question; See section 12 and Appendix 5.
- Be satisfied that making the designation will significantly assist them to deal with the problem or problems; See section 6.
- Consult persons likely to be affected by the designation; See section 13.

Proposal 2: Selective Licensing Scheme

On 27th March 2015, the Selective Licensing of Houses (Additional Conditions) Order 2015 came into force. The Order imposed a number of additional conditions for the purposes of section 80(2)(b) of the 2004 Act, which a local housing authority must consider are satisfied in relation to the area before making a selective licensing designation under this provision. A selective licensing designation may now be made if the area to which it relates meets one or more of the following criteria:

Is experiencing poor housing conditions

The Council has carried out a review of housing conditions under section 3(1) of the Housing Act 2004.

The findings are that an average 13% of non-HMO rented homes in the Borough contain serious (Category 1) hazards or are in disrepair. This figure is highest in Brownswood, Stoke Newington and Cazenove wards, at 20%. See Appendix 1.

The Council therefore considers it would be appropriate for a significant number of the properties in these three wards to be inspected, with a view to determining where any category 1 or category 2 hazards exist on the premises;

The Council intends to carry out such inspections and take any necessary enforcement action in respect of the hazards found.

It is of the view that the introduction of a *Selective Licensing Scheme* in the areas specified will, when combined with other measures including licence conditions imposed under the scheme, contribute to an improvement in general housing conditions in the area.

A high proportion of property in the proposed licensing area is in the PRS (more than 19%)

The proportion of homes that are in the PRS significantly exceeds this threshold as follows: All Hackney 30%, Brownswood ward 45%, Cazenove ward 28%, Stoke Newington ward 26%¹.

Low housing demand, or is likely to become such an area

There are no areas of low housing demand in Hackney and there are unlikely to be in the future.

A significant and persistent problem caused by anti-social behaviour (ASB)

The proportion of reported ASB associated with the PRS in Hackney is on average 1.42% with only 3 wards exceeding 2%. This does not represent a significant and persistent problem and can be dealt with under existing Environmental Enforcement and Safer Communities Services but this would be supplemented by licensing conditions under the proposed schemes.

High levels of migration

Data on migration is only available at a Borough-wide level. It shows that Hackney ranks 13th amongst all London Boroughs for domestic migration and 14th for international migration.

High level of deprivation

There are high levels of deprivation across Hackney with the highest levels seen in central and eastern wards.

High levels of crime

Hackney has an above average rate of crime in comparison with London as a whole. However, there is no reliable data to link crime with the PRS on either a borough-wide basis or at ward level. There is currently no statistically meaningful data on criminal landlord activity.

11. Regional context

Hackney is part of the seven-borough East London Housing Partnership. All six other member boroughs along with neighbouring Islington and Haringey have either implemented some form of discretionary licensing or are consulting on proposals to do so. A licensing summary for each borough is given in Appendix 3.⁶

12. Alternative courses of action

Alternative courses of action for dealing with poor housing conditions in the PRS generally and with poor management in HMOs include the following:

- (i) Part 1 of the Housing Act 2004 (The Act); The Housing Health and Safety Rating System
- (ii) Part 4 of the Act, Interim Management Orders (IMOs)

⁶ Source: www.londonpropertylicensing.co.uk

- (iii) The Management of Houses in Multiple Occupation (England) Regulations 2006
- (iv) Landlord Accreditation Schemes
- (v) Powers under the Housing and Planning Act 2016

These alternative powers are examined in Appendix 5. They do not on their own offer an effective alternative to licensing for the reasons stated there. However, using these powers in conjunction with a licensing scheme will provide an effective and comprehensive regulatory framework for the PRS and bring about improvements in property conditions and property management. Licensing requires the landlord and managing agent to meet “*fit and proper person*” criteria in order to obtain or retain a licence. The Council would make checks to ensure this is the case and could exclude criminal landlords from the market. The outcome of any licensing scheme would be a general improvement of property conditions in the designated area within the five-year lifetime of the designation.

13. How are we consulting on our proposals?

Before introducing the proposals the Council is conducting a borough-wide consultation taking place over 10 weeks between 19 September and 3 December 2017. The consultation will aim to reach residents across the borough, with a particular focus on private tenants, landlords and landlord associations. We will also seek the views of residents and stakeholders in neighbouring boroughs.

The consultation incorporates a survey which will be open to everyone in the borough and those in the surrounding areas. The consultation will be available online from 19 September and as a paper version in public locations around the borough from 25 September.

All key stakeholder forums and bodies - such as the tenants' groups and the landlord forum and leaseholder forum - will be sent copies of the survey to complete themselves, and more will be available on request for those who cannot complete the survey online.

The survey will be promoted through the following channels:

- Hackney Today (the Council's fortnightly newspaper) accompanied by a press release to the local newspapers.
- The Council's e-panel 'Hackney Matters'.
- The Council's website and social media channels
- The Council's consultation website Citizen Space
- Direct mailings to the Council's stakeholder networks
- The Council's landlord mailing list.

14. Reviewing the proposed schemes

Outcomes from the schemes in terms of compliance rates, improved housing conditions and management, any effect on PRS market supply or homelessness would be monitored throughout its operation.

For the Selective Licensing scheme the review would determine whether the scheme should be rolled out to other wards with significant levels of poor housing conditions; although this would be conditional on the approval of the Secretary of State.

15. How to respond to this consultation

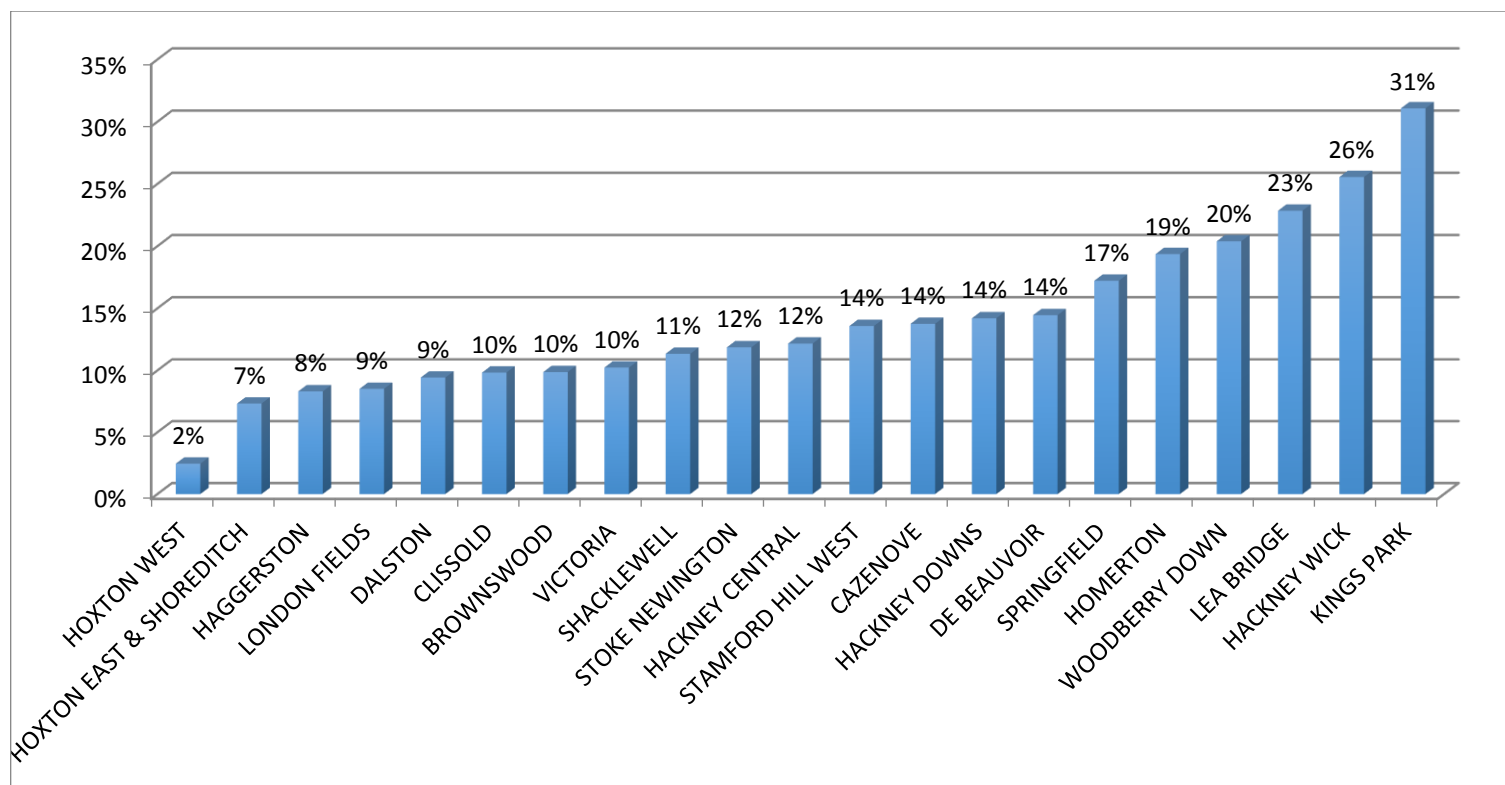
The consultation survey can be completed online until 3 December 2017 at <https://consultation.hackney.gov.uk/communications-and-consultation/private-rented-sector-licensing-consultation>.

Physical copies of the survey with return envelopes can be found at the following locations from 25 September:

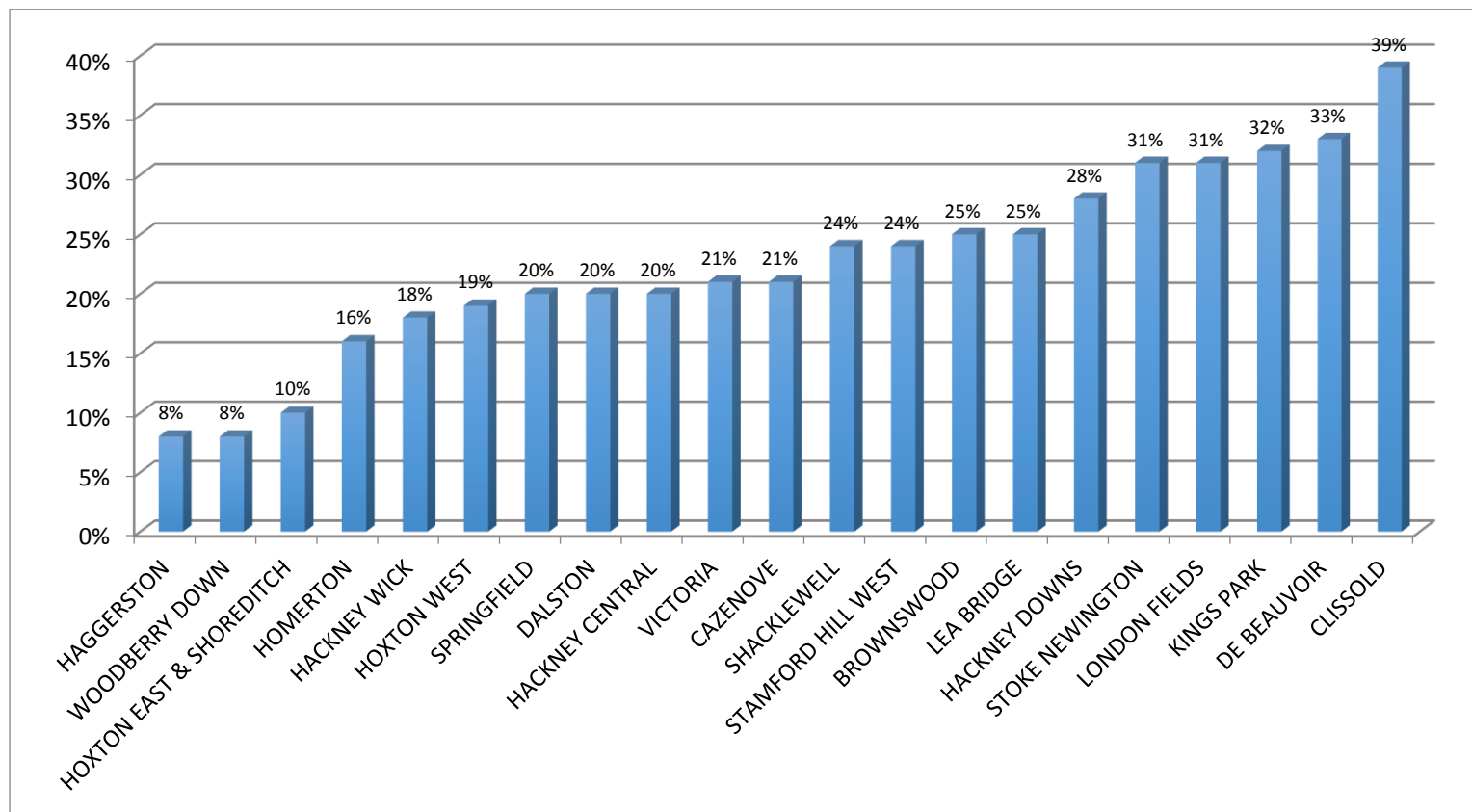
- The Hackney Service Centre, 1 Hillman Street; E8 1DY
- Christopher Addison House, 72 Wilton Way, Hackney, E8 1BJ
- North East Neighbourhood Housing Office, Clock House, 149 Stamford Hill, London, N16 5LG
- Homerton Neighbourhood Housing Office, 92 Well Street, London, E9 7JA
- North West Neighbourhood Housing Office, Stoke Newington Church Street, London, N16 0JR
- Queensbridge and De Beauvoir Neighbourhood Housing Office, 31 De Beauvoir Road, London, N1 5SJ
- Shoreditch Neighbourhood Housing Office, 1 Cropley Street, London, N1 7PT
- Clapton Library, Northwold Road, E5 8RA
- Dalston CLR James Library, Dalston Square, E8 3BQ
- Hackney Central Library, Technology and Learning Centre, 1 Reading Lane, E8 1GQ
- Homerton Library, Homerton High Street, E9 6AS
- Shoreditch Library, 80 Hoxton Street, N1 6LP
- Stamford Hill Library, Portland Avenue, N16 6SB
- Stoke Newington Library, Stoke Newington Church Street, N16 0JS

Appendix 1: Key data on profile and housing conditions in the PRS

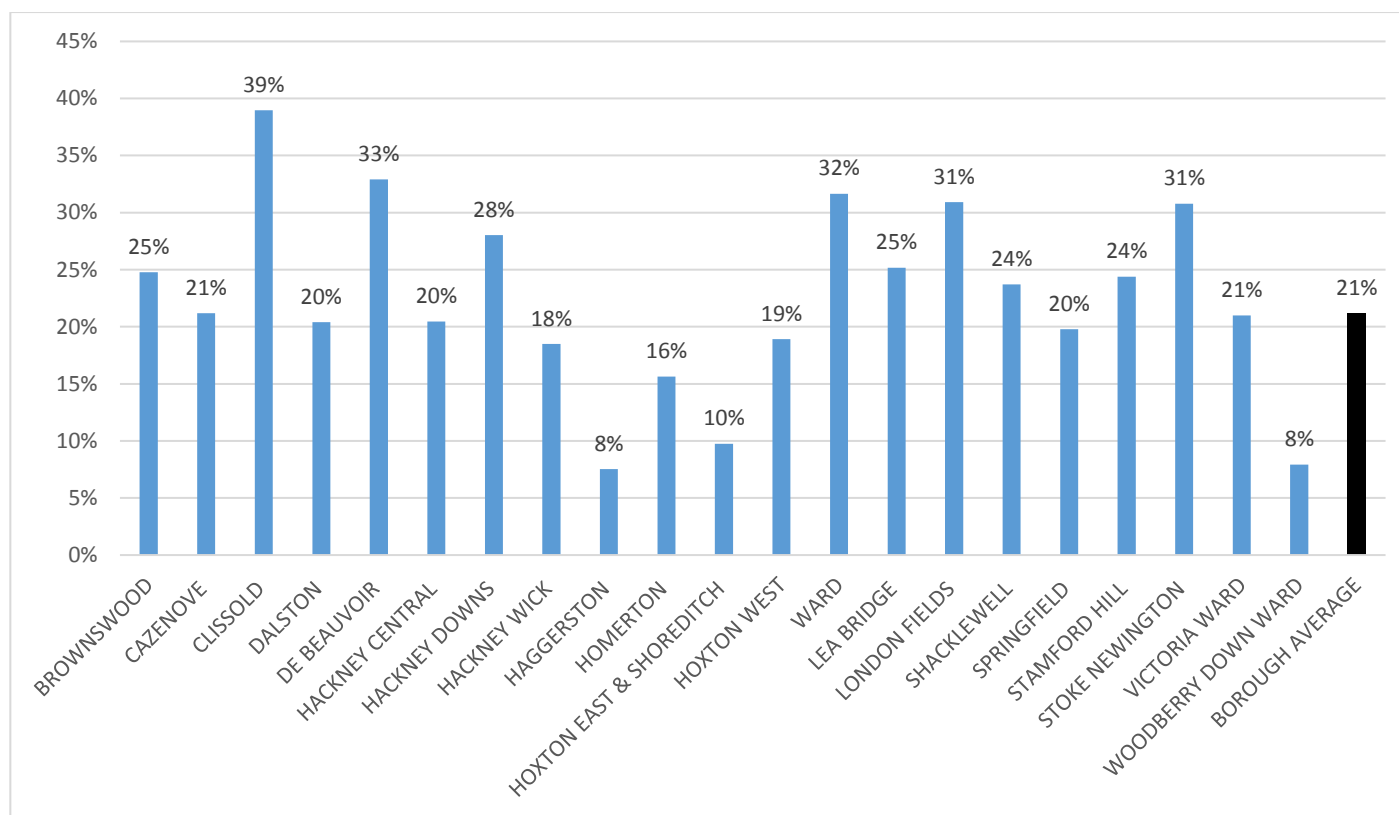
1. HMOs as a proportion of all PRS dwellings by ward



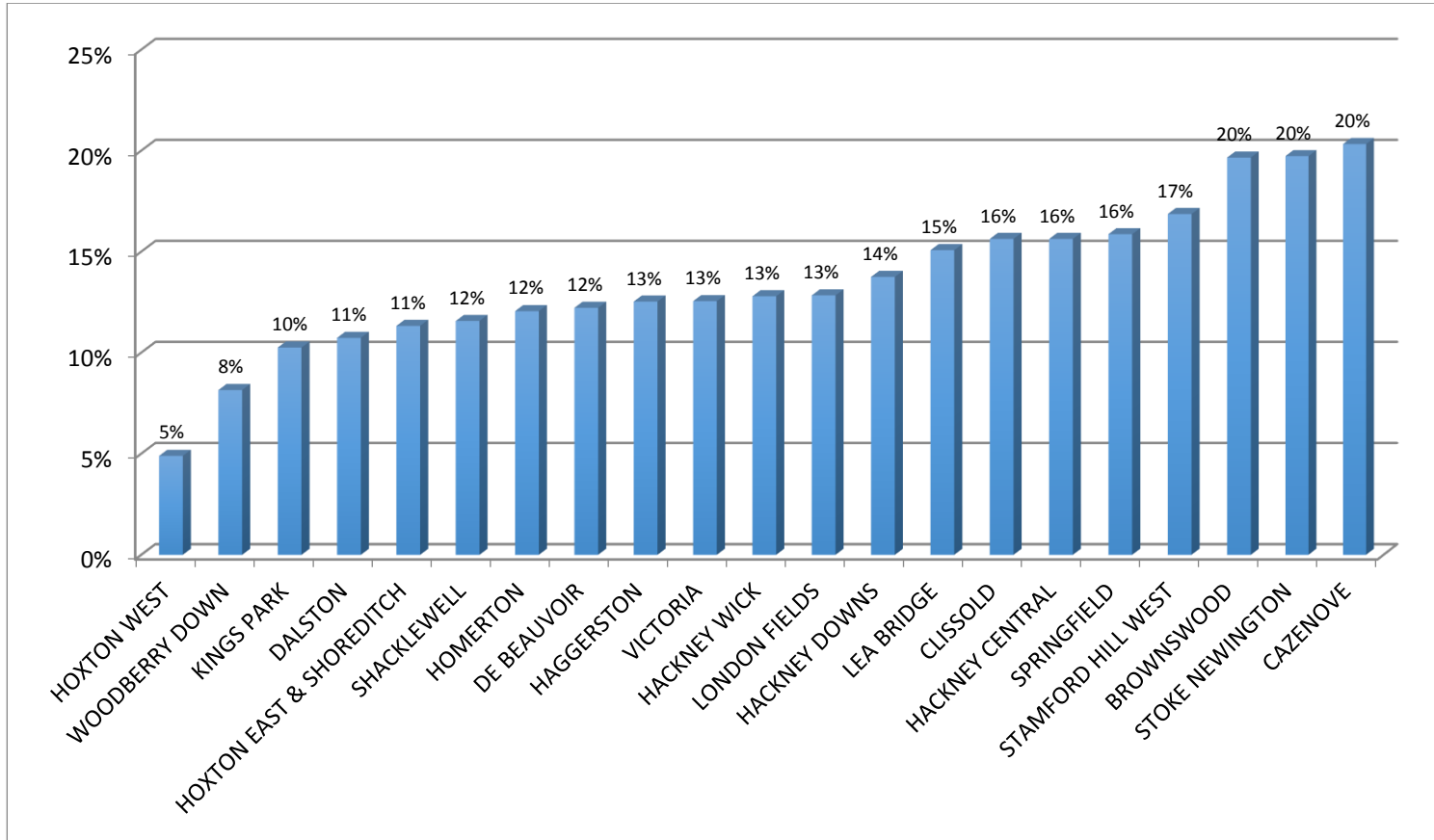
2. Proportion of HMOs not covered by Mandatory Licensing scheme and containing serious (Category 1) hazards or in disrepair (Scheme parameters as per government consultation proposals)



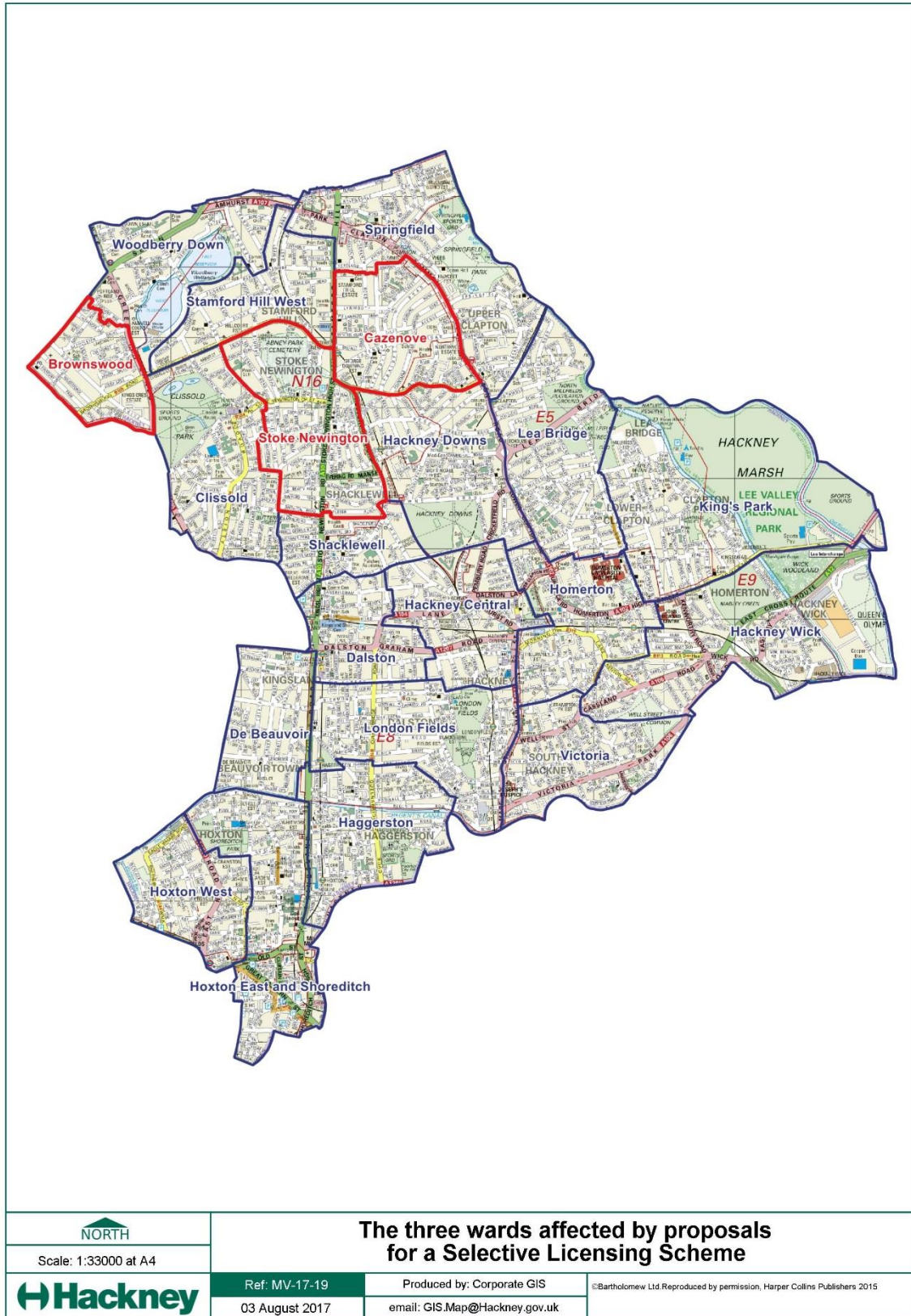
3. Proportion of HMOs containing serious (Category 1) hazards or in disrepair



4. Proportion of non-HMOs containing serious (Category 1) hazards or in disrepair



Appendix 2: Wards affected by Proposal 2 (Selective licensing)



Appendix 3: Property licensing regional context

Borough	Licensing status
Barking & Dagenham	Additional Licensing borough-wide Selective Licensing borough-wide
Hackney	Mandatory HMO licensing only. No Selective Licensing
Haringey	Additional Licensing covering part of the borough No Selective Licensing
Havering	Additional Licensing consultation in respect of part of the borough – closed 28 th July 2017 No Selective Licensing
Islington	Additional Licensing covering part of the borough No Selective Licensing
Newham	Additional Licensing borough-wide Selective Licensing borough-wide Both schemes due to expire 31 st December 2017 and to be renewed (subject to Secretary of State approval re: the Selective Scheme)
Redbridge	Additional Licensing borough-wide Selective Licensing borough-wide
Tower Hamlets	No Additional Licensing Selective Licensing covering part of the borough
Waltham Forest	No Additional Licensing Selective Licensing borough-wide

Appendix 4: Definition of HMO and exemptions from Additional and Selective Licensing Schemes

1.0 Houses in Multiple Occupation (HMOs) are:

- Houses, including flats, occupied by two or more households who share amenities such as kitchens, bathrooms or WCs,
- Buildings converted entirely into self-contained flats where the conversion did not meet, and still does not meet, 1991 Building Regulations standards and more than one-third of the flats are let on short-term tenancies.

The detailed definition is contained in section 254 of the Housing Act 2004.

2.0 For the purposes of this definition, persons are to be regarded as **not** forming a single household **unless** they are all members of the same family:

Family means persons who:

- are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);
- one of them is a relative of the other; or
- one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple;
- *Relative* means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- A relationship of the half-blood shall be treated as a relationship of the whole blood; and
- The stepchild of a person shall be treated as his child;
- Persons who provide work of a domestic nature e.g. carer, au-pair, nanny, chauffeur, gardener etc. are regarded as members of the family.

3.0 The following types of premises are exempt from the HMO definition and Additional Licensing Scheme:

- Buildings controlled or managed by public sector bodies etc;
- Buildings regulated by other specified Acts;
Buildings occupied by solely or principally by *students* who occupy it for the purpose of undertaking a full-time course of further or higher education at a specified educational establishment or at an educational establishment of a specified description, and where the person managing or having control of it is the educational establishment in question. To be exempt from HMO status the management of the building must also be in conformity with any code of practice for the time being approved under section 233 of the Housing Act 2004;
- Buildings occupied by certain religious communities -this exemption does not apply buildings within the section 257 HMO definition;
- Buildings occupied by owners with no more than two lodgers;
- Buildings occupied by two person of whatever relationships.

4.0 The following types of letting are exempt from the Selective Licensing Scheme:

- Where the tenancy or licence is granted by a non-profit registered provider of social housing;
- Where the tenancy or licence is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of Part 2 of the Housing and Regeneration Act 2008), or
- Where the tenancy or licence is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996.

Appendix 5: Alternative courses of action

Alternative courses of action for dealing with poor housing conditions and poor management in the PRS include the following:

- Part 1 of the Housing Act 2004 (The Act); The Housing Health and Safety Rating System
 - Part 4 of the Act, Interim Management Orders (IMOs)
 - The Management of Houses in Multiple Occupation (England) Regulations 2006
 - Landlord Accreditation Schemes
 - Powers under the Housing and Planning Act 2016
- (i) **The Housing Health and Safety Rating System (HHSRS)** under Part 1 of The Act is the main tool for enforcing housing conditions in the PRS. However, it is resource intensive and can only be applied to dwellings on an individual case-by-case basis. It is generally a reactive process and does not place a legal duty on landlords to “register” with the Council in the way licensing does. It does not impose standards in relation to management or housing conditions. In practical terms the legal requirement on landlords to improve dwellings only comes into force when the Council takes action against them. That action does not impose a penalty for hitherto failing to comply with housing standards but merely requires matters to be rectified. It does not provide an incentive to comply or an effective deterrent to non-compliance.
- Conversely, licensing schemes require the landlord to come forward and obtain a licence and apply conditions that must be met, including housing conditions and property management. The penalty for failure to obtain a licence or for breach of licence conditions can be the imposition of a fixed penalty, a criminal prosecution leading to an unlimited fine, and/or a Rent Repayment Order requiring the landlord to repay up to twelve months’ rent.
- (ii) **Interim Management Orders (IMOs)** have been considered in a number of individual cases but there are significant disadvantages to their use as they are very resource intensive, deal only with individual properties on a case-by-case basis, and do not address the general lack of professional management expertise in the local housing market. Where a licensing scheme is in operation, if a property is unlicensed and there is no reasonable prospect of it being licensed the Council must make an Interim Management Order under Part 4 of the Housing Act 2004, thereby taking control of the property away from the landlord.
- (iii) **The Management of Houses in Multiple Occupation (England) Regulations 2006** can be enforced to require HMO landlords to remedy certain housing defects and failures of management. However, these can only be used to remedy certain specified failings in the existing provisions and cannot be used to bring about improvements such as the provision of additional amenities. The penalty for contraventions can be the imposition of a fixed penalty, a criminal prosecution leading to an unlimited fine, and/or a Rent Repayment Order requiring the landlord to repay up to twelve months’ rent. These provisions can be used alongside *Additional Licensing* conditions in enforcing good management standards in HMOs.

- (iv) Hackney actively promotes the **London Landlord Accreditation Scheme (LLAS)**⁷. This is a voluntary scheme where landlords undergo training and sign up to a Code of Conduct, which applies certain standards of management and maintenance. The LLAS is a valuable scheme for engaging with well-meaning landlords. It provides support and imparts the knowledge necessary for them to run their businesses effectively, comply with the law and provide safe, decent quality homes. There are currently 646 accredited landlords in Hackney under the LLAS. However, experience has shown that whilst good landlords are willing to participate in accreditation, a significant proportion of landlords are not and this includes rogue landlords at the bottom end of the market with whom there is most concern. For this part of the sector, effective enforcement is the appropriate course of action. The Council is consulting on whether to require as a licence condition, that licensees become accredited under the LLAS or other accredited scheme; either all licensees and property managers or those who have given cause for concern in terms of management practices. Such a requirement cannot be introduced outside of licensing schemes.
- (v) New powers under the **Housing and Planning Act 2016** came into force in March 2017. They provide for Civil Penalties and Rent Repayment Orders as a sanction - see (i) and (iii) above. In October 2017 Banning Orders are to be introduced, which prevent rogue landlords and agents trading when they have committed certain serious offences, and a Register of Rogue Landlords. These new powers will be more effectively used within licensing schemes than is possible through individual reactive work.

⁷ www.londonlandlords.org.uk

Appendix 6: Proposed fees and charges

Landlords will be expected to apply via an on-line application and payment system accessed through the Council's website. The fees charged are designed to take into account costs incurred in setting up and running the scheme(s) over a five year period. The fee levels will depend on the extent and scope of the licensing scheme(s) finally adopted following this consultation. Estimates of the costs and fees are given below, as a guide only and will be published in full when the extent of the schemes is known:

Estimated cost of the schemes

<u>Operational Cost</u>	
Staff operational costs	£2,932,642
Overheads	£ 879,793
<u>Set up Cost</u>	
IT	£116,506
Consultation and Communication	£ 50,000
Staff set up costs	£279,792
Total Costs	£4,258,733

Estimated fees

Borough-wide Additional Licensing Scheme for Houses in Multiple Occupation	£900 - £1,150
Three ward Selective Licensing Scheme	£450 - £500

Appendix 7: Proposed licensing conditions

If the two licensing schemes are introduced, all landlords will be required to obtain a license from the Council before letting out any property covered by the scheme. By obtaining a license, the landlord is agreeing to comply with the following conditions.

All property types:

1. Gas and electrical installations to be fitted only by certified operatives
2. All facilities and equipment within the property, including all electrical appliances supplied by the landlord, are safe and maintained
3. Adequate fire safety precautions, including all furnishings meeting fire safety requirements
4. Adequate provision of cooking facilities, bath/shower rooms and toilets
5. Good standards of cleanliness, repair and general conditions
6. Repairs, maintenance and improvements to be carried out only by competent persons employed directly by the licensee or managing agent.
7. Pest control measures taken where necessary
8. Proper tenancy agreements for tenants and a restriction on the ability to create new tenancies to the licensee or managing agent
9. Tenancy deposits lodged with approved schemes and notified to tenants
10. Rent collection may only be carried out by licensee or managing agent
11. Maximum permitted levels of occupation not exceeded
12. License holder details notified to tenants and the Council
13. Emergency contact details provided to tenants
14. Provision and management of refuse/waste storage and disposal
15. Adequate home security
16. Yards, gardens, fences and outdoor space kept in good condition
17. Measures to tackle anti-social behaviour relating to the property where necessary
18. Certain information to be provided to the Council on demand;
19. The Council notified of changes in ownership; management, property layout, provision of amenities

20. Minimum six-monthly inspections of the property
21. Requirement for landlords/agents to demonstrate competency in property management through membership of an approved Accreditation Scheme e.g. London Landlord Accreditation Scheme or similar approved scheme, where required by the Local Authority.
22. Exclusion of landlords/agents from being license holder or manager, where there is a history of criminal offences, unlawful discrimination, or contraventions of housing, or landlord and tenant law.

Further conditions for selective licensing (Brownswood, Cazenove and Stoke Newington):

23. Requirement on landlord/agent to obtain tenant references.
24. Requirement on landlord/agent to obtain Energy Performance Certificates.

Appendix 8: Assessment of risks related to the proposed discretionary licensing schemes

Description of Risk	Description of impact	Probability of risk	Level of Impact	Risk prevention, management or mitigation
1. Challenge to the Selective Licensing proposals and/or Additional Licensing proposals from Landlords (or Landlords Associations) via Judicial Review.	<p>Delay to implementation of scheme.</p> <p>Staff resources in policy team, private sector housing team and legal services taken up in defending the Judicial Review.</p> <p>Proposed scheme may be declared unlawful in which case:</p> <ul style="list-style-type: none"> - Scheme does not proceed - Costs incurred in setting up the scheme lost - Reputational risk to the Council - Housing conditions in the 3 wards not improved 	Medium	High	<p>Proposals for the schemes have been made on the basis of comprehensive evidence commissioned by the Council from an expert independent body.</p> <p>Criteria for the schemes meet the legal requirements of the Housing Act 2004 and associated legislation.</p> <p>The proposal for the Selective Licensing scheme comprises less than 20% of the total PRS in Hackney and as such does not require Secretary of State approval.</p> <p>The proposals have been developed in accordance with DCLG guidance and best practice implemented by other Local Authorities, including those whose schemes had been the subject of Judicial Review applications.</p> <p>The proposals are broadly in line with existing schemes in neighbouring Boroughs and Boroughs in the East London Housing Partnership.</p> <p>A comprehensive Public Consultation Plan is in place which is fully in accordance with legal requirements.</p>
2. After designation there is a low level of licence applications/compliance.	<p>Landlords operate illegally.</p> <p>Housing conditions are not improved.</p>	Medium	High	<p>Proposals for the scheme will be subject to wide ranging public consultation and publicity leading to a high level of public awareness.</p> <p>Ease of application via an on-line application and</p>

	<p>Local Authority resources are devoted to enforcement and prosecutions.</p> <p>Licence fee income is insufficient to sustain the scheme(s).</p>			<p>payment system.</p> <p>A well-publicised, robust enforcement programme including mainstream use of civil penalties for failure to licence and criminal prosecutions in appropriate cases based on a refreshed PSH enforcement policy. Continued failure to licence following successful enforcement action will place an obligation on the Council to make a Management Order, thereby removing control of the property from the landlord and passing it to the Council.</p> <p>Experience from schemes in neighbouring and ELHP Boroughs has seen higher than anticipated compliance rates.</p>
<p>3. Landlords may revert HMOs to single family use to avoid the Additional Licensing Scheme.</p>	<p>Loss of affordable, shared accommodation.</p>	<p>Medium</p>	<p>Medium</p>	<p>High performing HMO rental market in Hackney with high demand provides financial incentive to continue use.</p> <p>Fees will be set at a level which will not be punitive over the life of a five year licence.</p> <p>The Public Consultation will assess the likelihood of this phenomenon prior to declaration of any scheme.</p> <p>Experience of operating the Mandatory Licensing Scheme in Hackney and experience from Additional HMO licensing schemes in neighbouring and ELHP Boroughs has not seen this risk materialise significantly.</p>
<p>4. Some landlords may leave the rental market in the proposed Selective Licensing area.</p>	<p>Reduction of PRS units in the three proposed wards.</p> <p>Increase in abandoned and vacant</p>	<p>Low</p>	<p>Medium</p>	<p>Fees will be set at a level which will not be punitive over the life of a five year licence.</p> <p>Any abandoned properties will be managed through</p>

	properties. Increased homelessness.			the Council's Empty Properties strategy. Any potential homelessness cases will be managed through the work of the Council's Housing Options and Advice service.
5. Displacement of criminal landlords by proposed Selective Licensing scheme.	Effect of displacement on neighbouring areas.	Low	Medium	Neighbouring authorities will be fully consulted on the proposals and their representations considered in deciding the final proposals. Within Hackney the Selective Licensing scheme will be continuously reviewed with the option to extend it to additional wards considered if this risk materialises.
6. Local Authority inadequately manages the scheme(s).	Failure of the scheme leads to revocation of the designation before the end of the five year period. Failure to improve housing conditions. Reputational to the Council.	Low	High	An experienced Head of Service will oversee the scheme and engage with stakeholders to develop a detailed business model for the licensing proposals. A Licensing Project Board will be established including all key stakeholders and partners to provide effective governance of the scheme(s).
7. Local Authority inadequately resources the scheme(s).	Financial loss due to failure to recoup the costs of setting up and implementing the scheme(s).	Low	High	Detailed cost analysis to be carried out and included in the resource plan to ensure adequate licensing fees. Fees will re-coup set up costs as well as sustain longer term running costs. Governance structure to be in place to review resources.
8. Local Authority is unable to recruit suitable staff to deliver the schemes.	Low staff numbers leading to low morale and incomplete work processes.	Medium	Medium	An experienced Programme Manager has been recruited and is working with the Private Sector Housing Head of Service, the team and other stakeholders to develop a detailed business model for the licensing proposals. Business model will include recruitment planning and

	<p>Reputational damage to the Council and internally reflecting negatively on the PSH team.</p> <p>Failure to implement the scheme and keep up with work flow.</p>			<p>implementation; training and development; managing change.</p> <p>This will be in place prior to the designation and will be continually reviewed.</p>
<p>9. Failure of the IT system to effectively manage the on-line applications and payment systems.</p>	<p>Landlords unable to apply for licences and operate illegally.</p> <p>Reduced fee income.</p> <p>Failure to deliver the scheme(s).</p> <p>Failure to improve housing conditions.</p> <p>Reputational damage to the Council.</p> <p>Financial loss due to failure to recoup the costs of setting up and implementing the scheme(s)</p>	<p>Low</p>	<p>High</p>	<p>An experienced Senior Business Analyst/Project Manager has been recruited and is working with the Council's ICT team and IT database provider (Northgate) to develop the on-line licensing and back office systems. Weekly Project Team meetings on-going. Extensive user testing of systems is scheduled prior to introduction of the live scheme, in conjunction with the Supplier and Financial Systems Team. ICT project risks and issues are monitored and managed regularly, as part of standard ICT project management in Hackney. An ICT Change Advisory Board sign off will ensure all council standards have been applied and the system works as required before go live.</p>