1 Executive Summary

1.1 This paper provides an overview of:
   - Legislation covering private rented sector (PRS) licensing schemes;
   - Wider efforts to raise standards in the private rented sector; and
   - The current proliferation of different types of PRS licensing schemes across London.

1.2 Questions will be put to:
   - John Daley, Private Sector Housing Licensing Manager, LB Southwark;
   - Ian Dick, Head of Private Sector Housing, LB Newham; and
   - Richard Blanco, London Representative, National Landlords Association

2 Recommendation

2.1 That the Homes for London Board note this paper.

3 Introduction and Background

3.1 London’s PRS has grown dramatically in recent years and, according to the English Housing Survey, now accounts for 30% of London’s households. Although most tenants are satisfied with their private rented home, many local authorities are increasingly concerned with the problems posed by poor conditions and bad management in some parts of this sector. A wide range of measures are in place to improve standards in the PRS including:
   - Voluntary regulation and accreditation of letting agents and landlords via the London Rental Standard;
   - Local enforcement activity under the Housing Health and Safety Rating System as well as other regulations relating to offences with regard to rented residential property;
Multi-agency working between councils, trading standards, UK Border Agency, utilities companies, the Metropolitan Police, public health and others to target and crack down on criminal landlord behaviour and associated crime;

Setting up “social lettings agencies” to provide a better service to tenants without charging fees; and

Building new, high quality PRS homes under the Mayor’s Build-to-Rent fund and other initiatives.

Licensing in the private rented sector

3.2 In addition to the activities described above, the Housing Act 2004 makes a number of provisions for licensing private rented housing. These are:

- The mandatory licensing of certain types of houses in multiple occupation (HMO);
- The additional licensing of all HMOs; and
- The selective licensing of non-HMO private rented homes.

3.3 All local authorities have a statutory obligation to enforce mandatory HMO licensing, while additional and selective licensing schemes are not a statutory obligation. To introduce additional and selective licensing schemes, local authorities must provide an evidence base which meets the criteria set out in the Act, and they must consult local people and those likely to be affected. Since April 2010, local authorities have not been required to apply to the Secretary of State for permission to introduce a licensing scheme. Further detail on the three types of licensing schemes is set out below.

3.4 Under all three licensing schemes, the terms of a license may vary from borough to borough, but as a minimum they require landlords operating within an area covered by the scheme to demonstrate that they meet all their legal obligations as landlords, including ensuring tenants have written tenancy agreements and deposits are properly protected. They must certify that they are a “fit and proper person” with no relevant criminal convictions, that they meet the relevant management standards for their property and that it is not overcrowded or being used for any illegal activity. Landlords can be asked to submit copies of gas safety certificates and EPCs where applicable. Licensing is not able to control physical standards (bar fire detection), which are dealt with by part 1 of the Housing Act, however a property will not be licensed if it contravenes these standards, for instance if it contains Category One health and safety hazards.

3.5 The license fee can only be used to cover the cost of administering the licensing scheme itself, and not any additional activities. For instance, the license fee can fund enforcement officers to conduct inspections of licensed properties, but not to fund wider enforcement activity.

(i) Mandatory HMO licensing

3.6 The Housing Act 2004 defines a HMO as:

- A building in which more than one household shares a basic amenity e.g. a bathroom, toilet or cooking facilities;
A flat in which more than one household shares a basic amenity (all of which are in the flat) e.g. a bathroom, toilet or cooking facilities.

3.7 Buildings which have been converted for residential use and which do not meet certain standards for self-contained accommodation are also included. Mandatory licensing applies to all HMOs that are of three storeys or more and occupied by five or more persons who together do not all form a single household. Any occupation of a building not falling within the above will constitute ‘multiple occupation’. A single household is defined as:

- A family;
- An employer and certain specified domestic employees;
- A carer and the person receiving the care; and
- A foster parent and a foster child.

(ii) Additional HMO licensing

3.8 Local authorities can designate either an area within their district or the whole district as being subject to additional licensing, in which case case mandatory licensing can be applied to other HMOs outside of the definition in 3.6-3.7 above. A designation may be applied to certain descriptions of HMOs or to all HMOs (other than those subject to mandatory licensing) in the designated area. A local authority may not make an additional licensing scheme unless it can show that poor management of a significant proportion of the HMOs in question is causing, or has the potential to cause, particular problems for the tenants or members of the public.

3.9 Department for Communities and Local Government (DCLG) guidance makes clear that the Act did not intend for licensing schemes to apply to all HMOs across an entire borough. However, a number of London boroughs have used the legislation for exactly this purpose.

(iii) Selective licensing

3.10 A local authority may designate all or a part of their district as an area to which selective licensing under Part 3 of the 2004 Act applies. This enables the local authority to require the licensing of houses that are not HMOs. The circumstances in which a designation can be made are:

- The area is, or is likely to become, an area of low demand for housing; and/or
- The area is experiencing a significant and persistent problem caused by anti-social behaviour (ASB) that is attributable to occupiers of privately rented properties and that some or all of the private sector landlords are failing to take action that it would be appropriate for them to take to combat the problem.

3.11 It would be challenging for any local authority in London to make the case that there was “low demand” in the private rented sector. The majority of London Boroughs that have made the case for selective licensing have therefore done so on the basis of the anti-social behaviour condition. A number of local authorities have protested at these restrictive criteria.
3.12 An LHA must not make a selective licensing designation unless it has considered whether there are other courses of action available to it that might prove effective at dealing with the problems, such as a voluntary accreditation scheme, and that the designation, if made, will significantly help the authority in dealing with the problems, whether or not it takes the other courses of action too. Before making a designation an LHA must consult with persons likely to be affected by it and must consider those persons’ representations.

Recent changes to licensing regulations

3.13 The Government recently laid a draft Statutory Instrument (*The Selective Licensing of Houses (additional conditions) (England) order 2015*) to considerably broaden the conditions under which a licensing scheme can be introduced. If successfully passed, the order would effectively allow a licensing scheme to be introduced in any area with a high proportion of PRS properties. Schemes could be justified under any of the following conditions:

- Poor property conditions;
- High levels of in-migration;
- High levels of deprivation; and
- High level of crime.

3.14 A draft *explanatory memorandum* accompanies the draft Statutory Instrument, which explains more clearly the Government’s intentions in laying this Instrument.

3.15 On 11 March 2015, DCLG put out a press release confirming that if the Statutory Instrument above passes, the general approval for selective licensing schemes will be amended effective from 1 April 2015. This will mean that any borough wishing to introduce a selective licensing scheme covering more than 20% of the geographical area of their borough, or impacting more than 20% of their private rented sector housing stock will need to apply to the Secretary of State for permission. As the Statutory Instrument is not likely to pass before Parliament prorogues on 27 March 2015, it seems likely that neither the Statutory Instrument, nor the amendment to the general approval will be introduced.

4 Issues for Consideration

4.1 Since 2013, the number of London boroughs who have begun consulting on and introducing different types of non-mandatory licensing schemes has increased significantly (see appendix 1). Nine boroughs have begun consulting on, or have implemented, a borough-wide scheme, although only four of those schemes are proposing to license all private rented homes (as opposed to all HMOs). In addition a number of other boroughs are proposing or have introduced smaller-scale schemes which apply in only certain parts of the borough.

4.2 In total, there are currently sixteen local authorities who have introduced, are consulting on, or are are said to be exploring an additional and/or selective licensing scheme in at least some parts of their borough. There is a fairly even spread between inner and outer London boroughs and the different sub regions, although there is a strong concentration amongst the outer East London boroughs, with Newham, Waltham Forest, Barking and Dagenham and Redbridge all at some stage of introducing borough-wide schemes.
4.3 Most boroughs who are exploring licensing are doing so as a means of improving private rented sector enforcement in their area. The majority of London boroughs have experienced significant growth of the PRS in recent years and an attendant rise in problems perceived to be associated with this tenure. Many boroughs are concerned about concentrations of poorly maintained unlicensed HMOs and other types of rental property which may be sources of tenant exploitation and criminal activity of various kinds including benefit fraud, council tax evasion, planning and building offences, and organised crime. There are some boroughs who feel that the concentration of this type of activity is so widespread as to merit whole-borough schemes, whereas others can pinpoint these problems to specific areas.

4.4 In recent months, some landlord representatives have become more sympathetic to certain licensing schemes. Generally speaking, however, landlord organisations like the National Landlords Association (NLA) and the Residential Landlords Association (RLA) continue to oppose the introduction of selective and additional licensing schemes. They argue that:

- Local authorities already have sufficient powers to deal with rogue and criminal landlords;
- Criminal landlords will continue to operate under the radar, so licensing schemes are just a tax on good landlords;
- Local authorities do not put sufficient resource into enforcement against criminals and licensing will not change this as the terms of the license do not allow fees to be used for wider enforcement work;
- The proliferation of different schemes with different requirements across London is confusing and an additional burden for landlords who may operate across local authority boundaries; and
- Licensing may increase rents as landlords will pass the charges on to tenants.

4.5 Representatives from London Boroughs of Newham and Southwark have been invited to give a 10 minute presentation on licensing in London. A representative from the NLA has also been invited to provide the landlord perspective on licensing schemes. Speakers have been asked to address the following issues:

- Why has your borough chosen to implement the licensing scheme (i.e. additional/selective/borough-wide/specific areas)?
- What barriers have you faced in implementing your scheme?
- What outcomes have you seen from your licensing scheme, or what outcomes are you predicting?
- What do you see as the long term future of your scheme (i.e. after the five year license term has expired)?
- What is the impact on your scheme of the proliferation of licensing schemes in London?
- What, if anything, should the role of the GLA, London Councils and national government be in licensing schemes?

4.6 Appendix 2 contains summaries of licensing schemes or proposals in Newham and Southwark.
5 Risks Arising/Mitigation

5.1 None.

6 Financial Comments from the Executive Director Resources

6.1 None directly arising from the recommendations outlined in this report.

7 Legal Comments

7.1 Not applicable.

8 Next steps

8.1 The GLA will continue to monitor the introduction of license schemes across London and their impacts.

Appendices:

Appendix 1 – Table showing London borough licensing activity (updated March 2015)
Appendix 2 – Summary of Newham and Southwark licensing schemes or proposals.

Background Documents:
