



Houses in multiple occupation and possible planning responses – consultation

Summary of Responses



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The analysis and summary of responses contained in this report have been produced by Arup for Communities and Local Government. The document also contains a statement on next steps and the Government response to the consultation.

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Chapter 1

Executive summary

- 1.1 Problems caused by high concentrations of houses in multiple occupation (HMOs) have been highlighted as an issue in a number of towns and cities across the country. These problems range from increased anti-social behaviour to environmental impacts, plus impacts on areas social cohesion and local services. Communities and Local Government (CLG) commissioned ECOTEC to prepare an evidence gathering report to identify good practice in areas that manage to cope relatively well with high concentrations of houses in multiple occupation; to test whether these could have a wider application; and to determine whether (and if so what) planning policy is a suitable lever to tackle these problems. The research highlighted two possible responses to the problems:
 - to tackle the social and environmental symptoms (non planning led approach)
 - to stop the symptoms from emerging by restricting (through) control (planning led approach).
- 1.2 The report suggested that CLG undertake a wider consultation on proposed amendments to the current Town and Country Planning (Use Classes) Order 1987 (as amended), and that consideration be given to providing a definition of an HMO, potentially along the same lines as the Housing Act 2004. This report summarises the results of that consultation.
- 1.3 A total of 948 responses were received. Individuals (members of the public) accounted for three-quarters of all responses with local authorities accounting for over 9 per cent of responses and residents' associations 6 per cent.
- 1.4 The majority of respondents were in favour of the second option outlined in the consultation. This option was to amend the Use Classes Order and offered two mechanisms for change. Firstly, to amend the threshold in Class C3 to refer to 'not more than three residents living together as a single household' thereby lowering the 'trigger' for considering whether planning permission is needed (currently at six people); or secondly, to provide a specific definition of an HMO (either by introducing a new Use Class or taking HMOs out of the UCO) with a definition along the lines of that in the Housing Act 2004 focusing on properties where three or more people are occupying a property (who are not all members of the same family) and who share a bathroom, kitchen or toilet.
- 1.5 The first option, which would promote best practice in those areas suffering from concentrations of HMOs, and the third option, an amendment to the UCO to define an HMO in a new use class (with a definition based on that in the Housing Act) and amendments to General Permitted Development Order to

allow changes between a dwelling house and an HMO to be permitted development, were generally unpopular. From the qualitative responses received, many of which were detailed, Option 1 was felt to be insufficient on its own in tackling the problems experienced whilst Option 3 was deemed to be overly bureaucratic and ran the risk of local authorities being subject to compensation payments to developers. Option 2 contained two sub-options but most respondents did not differentiate between the two. Some respondents highlighted the difficulties that may be faced when implementing a change to the UCO but nevertheless felt that it was the only option that would have sufficient effect on those areas currently experiencing problems from a concentration of HMOs. There was a general feeling that HMOs should be given their own Use Class or be taken out of the UCO altogether.

Chapter 2

Introduction

Background

- 2.1 Problems caused by high concentrations of houses in multiple occupation (HMOs) have been highlighted as an issue in a number of towns and cities across the country.
- 2.2 The impacts highlighted include:
 - reduced levels of social cohesion
 - imbalanced and unsustainable communities
 - anti-social behaviour and increased crime
 - negative impacts on the physical environment and streetscape (litter/rubbish escalation and fly-tipping; poorly maintained properties; large numbers of letting signs, etc.)
 - pressure on parking provision
 - loss of family homes and consequent impact on community provision such as schools.
- 2.3 In January 2008, the Communities and Local Government (CLG) commissioned ECOTEC to prepare an evidence gathering report to identify good practice in areas that manage to cope relatively well with high concentrations of HMOs (particularly those occupied by students); test whether these could have a wider application; and determine whether (and if so what) planning policy is a suitable lever to tackle these problems.
- 2.4 The report highlighted two possible responses to the problems:
 - to tackle the social and environmental symptoms (non planning-led approach)
 - to stop the symptoms from emerging by restricting (through) control (planning-led approach).
- 2.5 The report concludes that a range of good practice measures have the potential for wider application; can be adapted to address the needs arising in particular localities in the short to medium-term (to tackle symptoms) and should be

promoted. However, it was felt that these processes have limited impact on the longer term issues surrounding HMOs. The report suggested that CLG undertake a wider consultation on proposed amendments to the current Town and Country Planning (Use Classes) Order 1987 (as amended), and that consideration be given to providing a definition of an HMO, potentially along the same lines as the Housing Act 2004. In addition to the specific research undertaken by ECOTEC the Rugg Review into *The Private Rented Sector: its contribution and potential* also addressed the issue of HMOs and student housing.

The consultation

- 2.6 The consultation *Houses in multiple occupation and possible planning responses* was issued by CLG on 13 May 2009. The consultation closed on 7 August 2009.

Summary of consultation paper

- 2.7 The consultation paper aimed to test the validity of concerns raised regarding concentrations of houses in multiple occupation and to explore what, if anything, might be proposed as a solution.
- 2.8 The paper highlighted three possible options, which in summary are as follows:
- **Option 1:** promotion of best practise (non-legislative, focus on local management)
 - **Option 2:** amend the Town & Country Planning (Use Classes) Order, 1987 (as amended) (UCO) to allow tighter planning controls over houses in multiple occupation. When combined with the use of planning policies this would enable local planning authorities to better manage HMO development. Two alternatives for amending the UCO were put forward (for ease of reference these are referred to within this report as 2.1 and 2.2):
 - **2.1:** amend the threshold in Class C3 to refer to 'not more than three residents living together as a single household' thereby lowering the 'trigger' for considering whether planning permission is needed (currently at six people); or
 - **2.2:** provide a specific definition of an HMO (either by introducing a new Use Class or taking HMOs out of the UCO) with a definition along the lines of that in the Housing Act 2004 focusing on properties where three or more people were occupying a property (who are not all members of the same family) and who share a bathroom, kitchen or toilet. At the same time the definition of class C3 would be amended so it provides for 'use as a dwelling house by not more than six residents living together as a single household where care is provided for residents'

- **Option 3:** amendment to the UCO to define an HMO in a new use class (with a definition based on that in the Housing Act) **and** amendments to General Permitted Development Order to allow changes between a dwelling house and an HMO to be permitted development. Local Authorities would then be able to use existing powers to issue an Article 4 Direction removing permitted development rights for a defined area

2.9 The consultation paper included a series of 16 substantive questions addressing respondents' experiences of HMOs; the adequacy of the current planning framework and various questions relating to the alternative options.

2.10 An impact assessment for each option was also included, with a further set of three questions relating to the adequacy of these assessments.

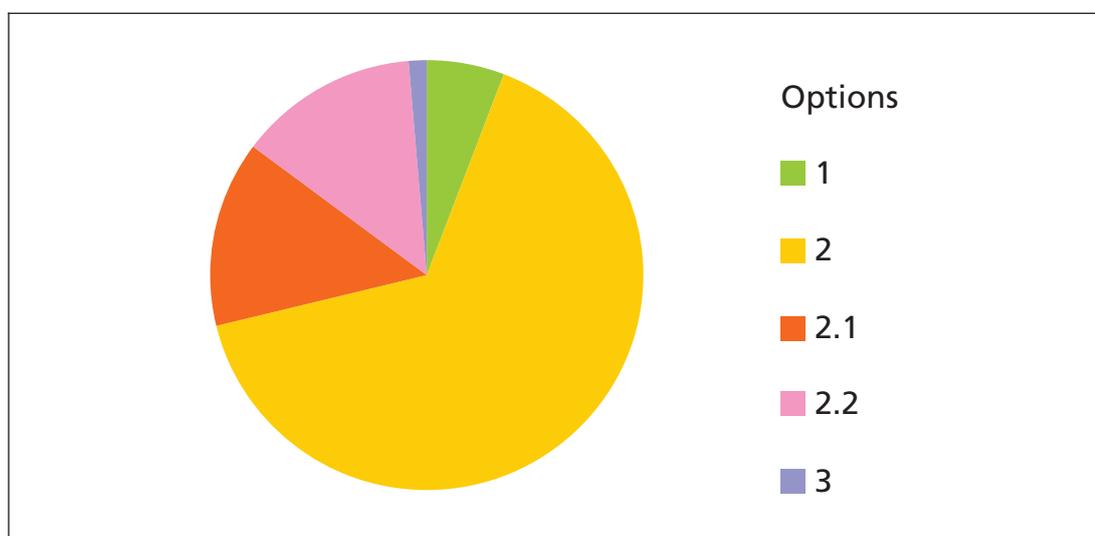
Responses

2.11 We received 948 replies, comprising:

- individuals (75%)
- local authorities (9%)
- residents' associations (6%)
- environmental and community groups (2%)
- professionals and academics (2%)
- students including unions (1%)
- government bodies (1%)
- universities (1%)
- businesses (<1%)
- other organisations (2%).

2.12 The responses from individuals were largely (but not exclusively) comprised of standard letter (campaign) responses. These accounted for 58 per cent of all responses.

Overall preference (by weight of responses)



- 2.13 An explicit preference for one of the options presented was provided by 94 per cent of overall respondents.
- 2.14 Of those that expressed a preference, a combined total of 92 per cent expressed a preference for some form of Option 2. This was split into 65 per cent of those answering the question that had a general preference for Option 2 (a general desire to change the UCO), 14 per cent that expressed a preference for the first option presented under Option 2 (labelled 2.1, to amend the UCO to alter the C3 threshold), and 13 per cent that expressed a preference for the second option presented under Option 2 (labelled 2.2, to insert a definition of an HMO into the UCO).
- 2.15 Option 1 (no legislative change and use of good practice) was preferred by 6 per cent of those respondents expressing an overall preference.
- 2.16 Option 3 (use of an Article 4 Direction to remove the PD rights to create an HMO) was preferred by 1 per cent of those respondents expressing an overall preference.
- 2.17 During the consultation process CLG met with representatives from the HMO Lobby, National Landlords Association, Residential Landlords Association, British Property Federation, Local Government Association (LGA)/Local Authorities Coordinating Office on Regulatory Services (LACORS), National Union of Students, Universities UK and the Planning Officers Society.
- 2.18 CLG has also received separate correspondence that raises similar issues.
- 2.19 The overriding popular option was Option 2 with strong support from the large number of respondents using standard letters. Within the local authorities, Option 2, largely Option 2.2, was the most supported. It is fair to say that even if the standard responses were to be given less weight, Option 2.2 would still be the most popular.

Chapter 3

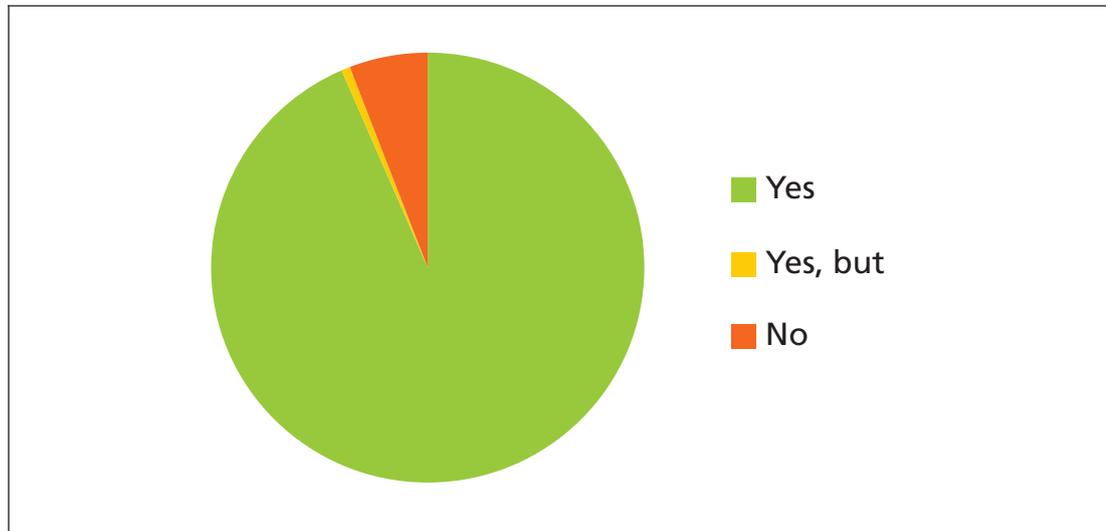
Analysis of responses

Introduction

- 3.1 This section of the report provides some quantitative assessment of the responses received against the questions posed by the consultation. Where appropriate this assessment is supplemented with additional material provided by respondents, so that the general trend of answers can be better understood and interpreted. Key themes are drawn out at the end of this section that are not explicitly covered by discussion of individual question responses.
- 3.2 Within the consultation paper, Option 2 is presented as having two components to it, which are:
 - amending the threshold of C3 within the Use Classes Order (UCO). This is referred to hereafter as Option 2.1; and alternatively
 - providing a specific planning definition of HMOs and an additional element of C3 in the UCO (as C3b) to address the issue of households where care is provided for residents. This is referred to as Option 2.2.
- 3.3 This presentation of results has endeavoured to retain the sentiments expressed by respondents as far as possible.
- 3.4 From Question 5 onwards, as the consultation questions became more technical and specific, the level of overall response for each question fell away. However, there was significant non-quantitative data to be drawn from the responses with not only suggestions on the definition of an HMO but also some suggestions regarding alternative options, description of the significant issues residents face with a concentration of HMOs in their area and considerations of the impact a change in the UCO may or may not have on the perceived issues. The three impact assessment questions did not attract a high response rate.

Question 1:

Do you experience problems/effects which you attribute to high concentrations of HMOs?



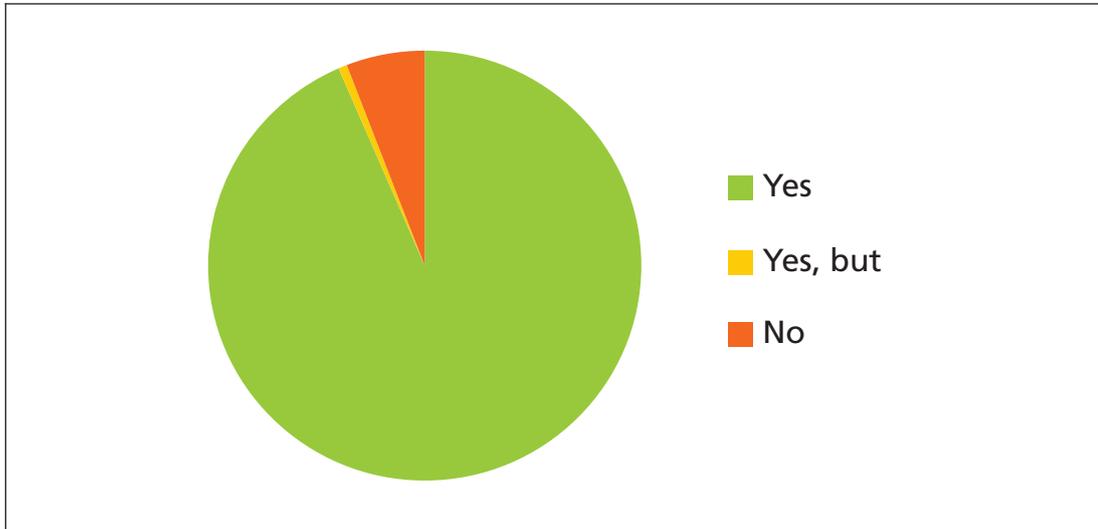
3.5 This question was addressed by 95 per cent of respondents. The vast majority (94%) of respondents said that they had experienced problems or effects (yes/yes but responses).

3.6 Specific points raised by respondents included:

- both positive and negative references were made to the role HMOs have in shaping community or neighbourhood characteristics, though most comments were generally negative. This also mentioned the balance in areas between family and student/other occupancy rates/local availability
- numerous mentions were made of anti-social behaviour or the undesirable characteristics associated with HMOs, such as litter, noise, parking problems, and proper rubbish storage and disposal
- issues around periodic (holiday/term) occupancy trends and knock-on retail, school, health, and service impacts
- respondents referred to the comparatively poor maintenance level of HMOs by landlords.

Question 2:

Do you consider the current planning framework to be a barrier to effective management of HMOs by local planning authorities?



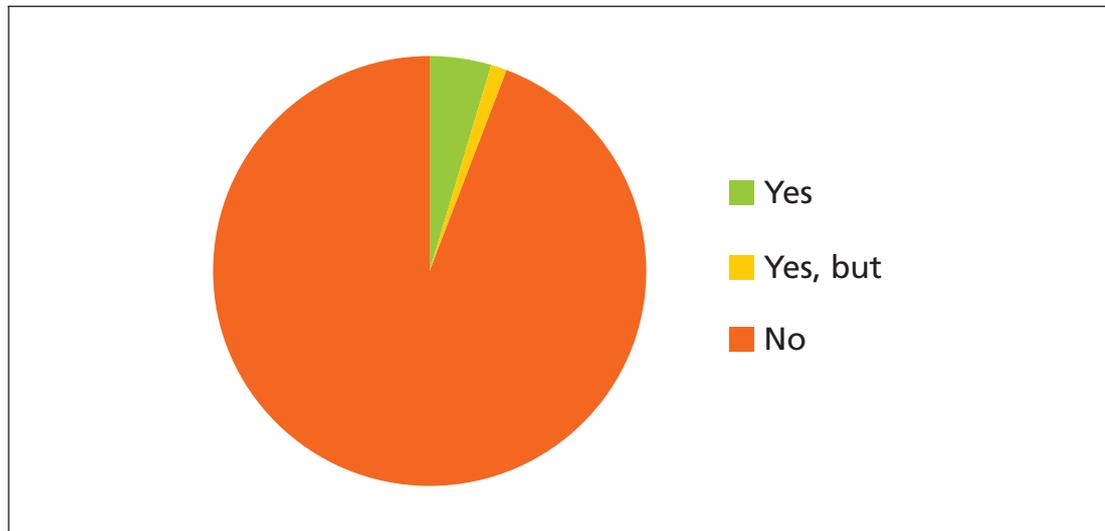
3.7 Around 90 per cent of those replying overall expressed an opinion, of which 93 per cent said that they considered the current planning framework to be a barrier.

3.8 Specific points raised by respondents included:

- the management of HMOs being handled predominantly outside of the local planning control framework, manifested by the dominance of HMOs in certain streets and areas
- the challenge of establishing when a material change of use has occurred, and the operational decision of whether it is expedient to pursue in planning enforcement terms
- perceptions of both helpful local officers limited by current regulations, and the need to try and do more within the current framework – both resulting in an ineffective current planning framework
- problems around definitions and the lack of a clear or consistent definition of HMOs and the C3 Use Class.

Question 3:

Could promotion of best practice measures as opposed to changes in the planning framework sufficiently deal with the problems associated with HMOs, in particular those problems often associated with high concentrations of HMOs with student occupants?



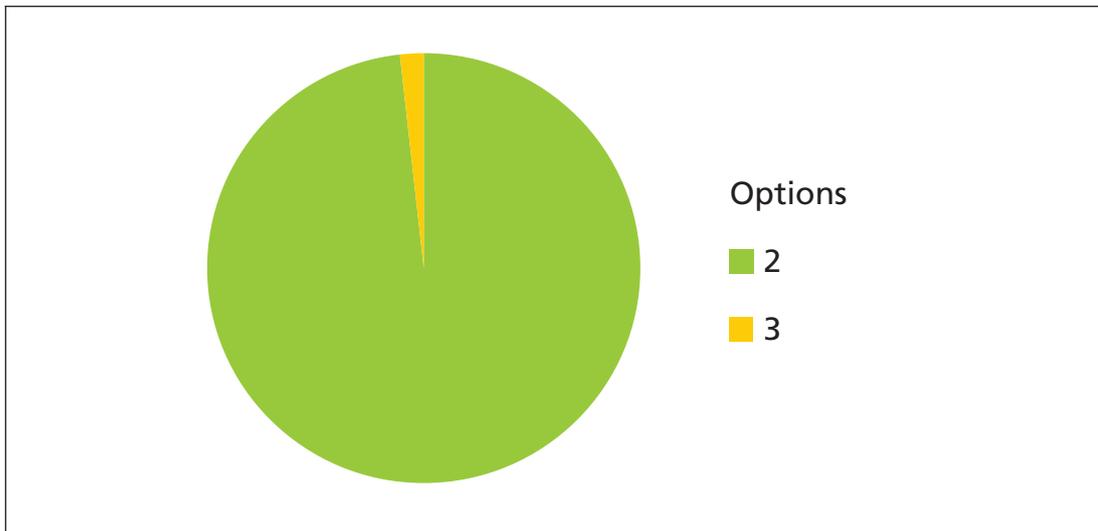
3.9 Over 92 per cent of overall respondents provided an answer, though for those sending in standard letters this was an implied answer. Around 94 per cent of those commenting felt that the promotion of best practice could not sufficiently deal with the problems associated with high concentrations of HMOs with student occupations.

3.10 Specific points raised by respondents included:

- the inconsistency presented by the planning system via conflicting enforcement action and appeals decisions
- the ability that good practice and guidance to students could help limit some of the major negative effects and perceptions. This includes education and student dispersment practices
- the challenge of using good practice in the face of market trends and demands for HMOs in higher concentrations in some areas, including coastal zones and student populations
- the lack of definitive control afforded by the current legislative framework.

Question 4:

If planning legislation is seen as a barrier to the effective management of HMOs in an area, how should planning legislation be amended – along the lines of Option 2 (introduce a definition along the lines of the Housing Act 2004) or Option 3?



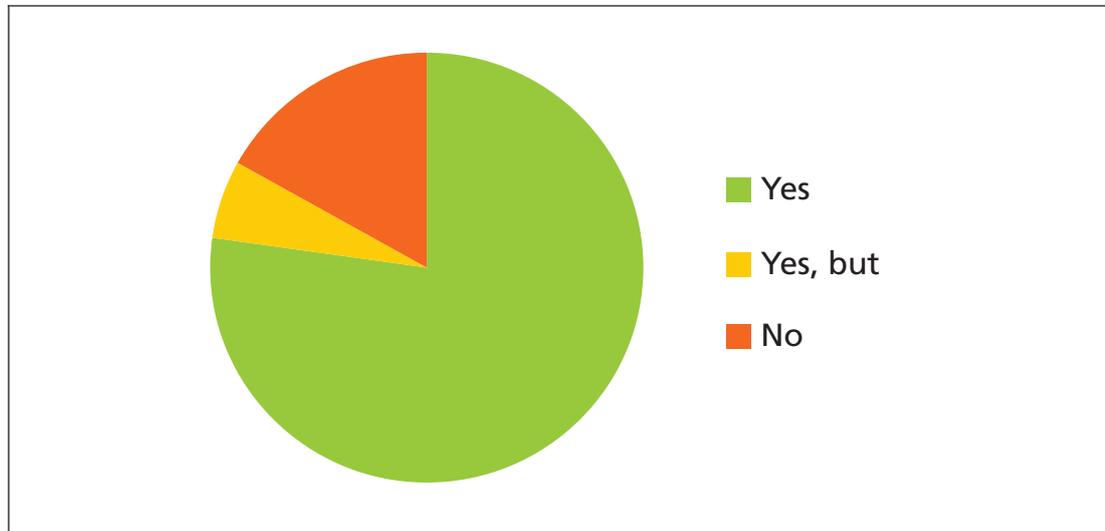
3.11 Eighty-eight per cent of overall respondents commented that planning legislation should be amended if it is seen as a barrier to the effective management of HMOs. Around 98 per cent of those responding favoured the introduction of a definition or lowering the threshold number of occupants (Option 2).

3.12 Specific points raised by respondents included:

- respondents recognised the power of a 'sui generis' or Use-Class based definition
- a need to resolve the potential conflict of a unit being classified as an HMO under housing legislation but a dwelling house under planning legislation
- some were uncertain that options suggested would definitively address issues of concentration or 'ghettoisation'
- a general feeling that Option 2 would be better placed to address issues of definition, discretion and enforceability
- the challenge in terms of permitted development rights and local authority workload associated with Option 3.

Question 5:

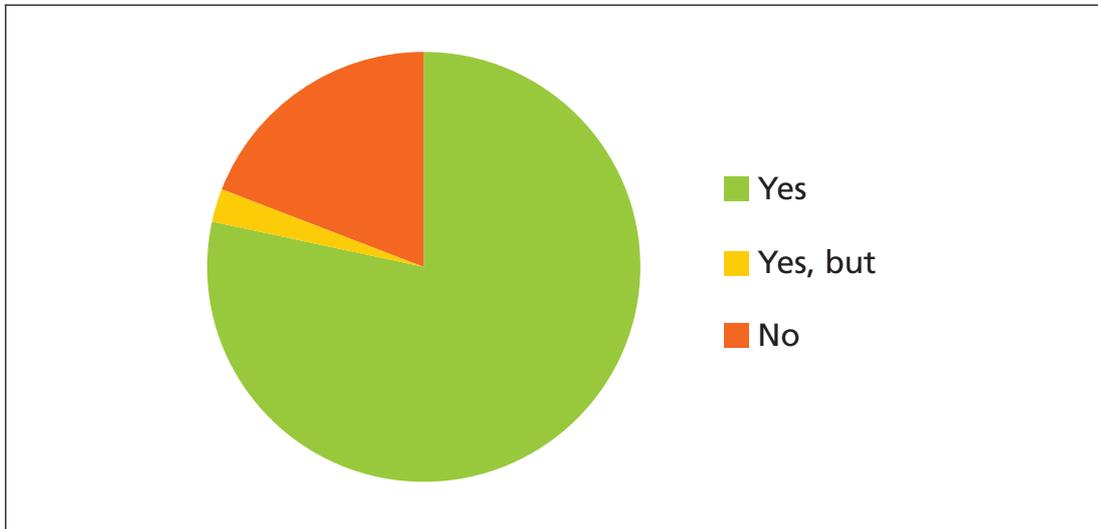
Do practitioners have a preference for one approach listed as part of Option 2 over the other?



- 3.13 As already outlined in the introduction (section 3.1), a number of respondents expressed support for Option 2, without breaking this down further to either Option 2.1 or 2.2. Overall, 13 per cent of respondents replied specifically to this question providing a preference between the two options.
- 3.14 If the conditional 'yes, but' responses are included, 84 per cent of question respondents had a preference for one approach listed as part of Option 2 over the other.
- 3.15 Specific points raised by respondents included:
- of those that expressed a specific preference, Option 2.2 was more popular. A large number of responses only went as far as to state a explicit preference for Option 2, but in the detail of their responses implicitly favoured Option 2.2
 - the general feeling was that the preferred approach would offer a sounder definitional basis for working
 - a desire to retain flexibility and discretion so that common sense application remains possible
 - those that had no preference (and opposed both options) tended to feel that the Housing Act 2004 definition would reduce flexibility or workability in practice.

Question 6:

What effect would a change to the Use Classes Order as described in Option 2 have on those local planning authorities that do not encounter problems with high concentrations of HMOs?

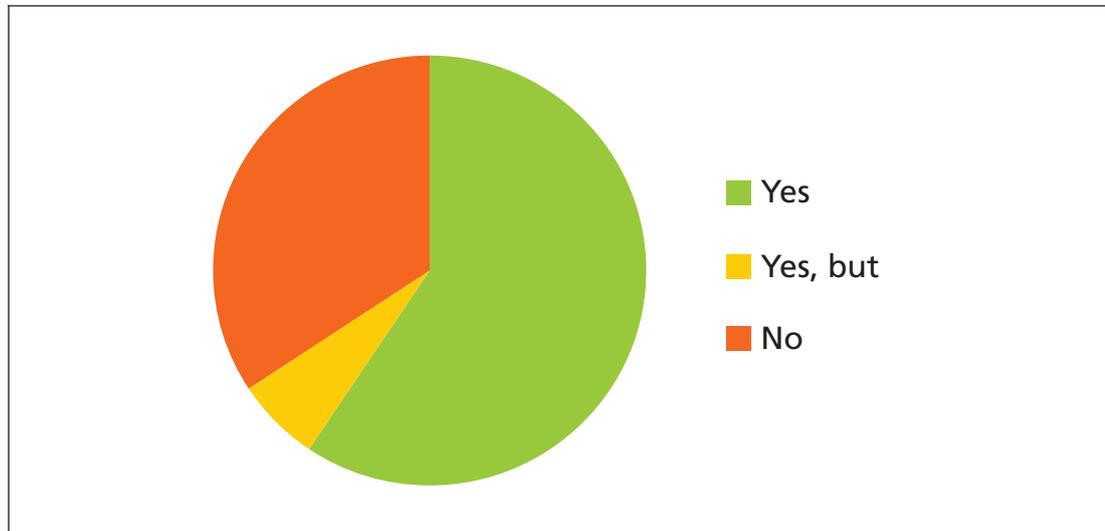


3.16 Question 6 received an overall response of 10 per cent. Within this, 77 per cent felt that the effect would be positive or desirable.

3.17 Specific points raised by respondents included:

- local authorities could exercise discretion by encouraging or expressly approving HMOs where desired
- some concerns about the resulting burden faced by local authorities in creating policy, handling applications, monitoring compliance etc. If there were less flexibility or discretion then a greater number of planning applications would result
- additional workload should be covered by corresponding increase in planning application fee income. However, some questioned the 'value' associated with the increased workload
- some considered that this option might have potentially little impact in areas of current concentration as would not apply retrospectively.

Question 7:
Would a change to the Use Classes Order as described in Option 2 or 3 have an impact on the homeless and other vulnerable groups?



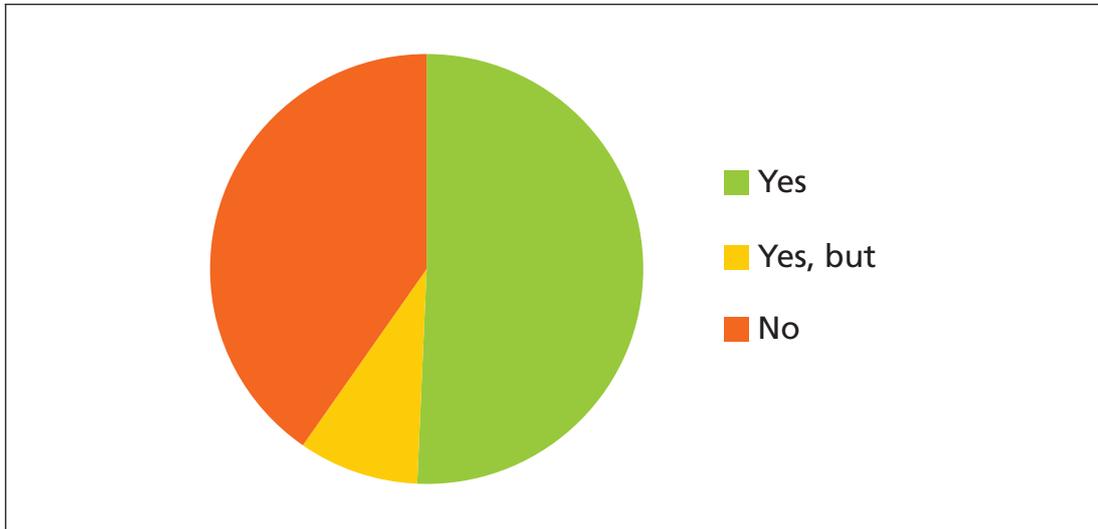
3.18 This question had a response rate of 13 per cent. Around 57 per cent of question respondents felt that a change to the UCO as suggested by Option 2 or 3 would have an impact on the homeless and other vulnerable groups, either positive or negative. Over a third (34%) felt that it would not have an impact on these groups.

3.19 Specific points raised by respondents included:

- general agreement that HMOs are not just concerned with student accommodation but also about young people, key workers, the vulnerable (those with a mental illness or learning disability, those between homes etc) and those on low incomes
- some schemes might be required to apply for planning permission that would not otherwise have to do so, such as Independent Living Schemes that have shared householders. This could affect viability or serve as a disincentive
- that the impact might require or encourage a higher or better standard of local government provision – and help vulnerable people find a home. In turn, this might also increase the average quality of housing in the longer term. This was felt to apply to vulnerable (non-student) groups most in coastal locations
- danger that increased legislation or patrolling drives illegal or unregulated activity underground. This would most likely not favour vulnerable groups
- conversely, it might also encourage more responsible behaviour by landlords. And the local authority could recognise, control, inspect and manage HMOs.

Question 8:

Would a change to the Use Classes Order as described in Option 2 or 3 have any unintended consequences, for example an impact on small scale care homes or children’s homes, which are currently classed as C3 dwelling houses?



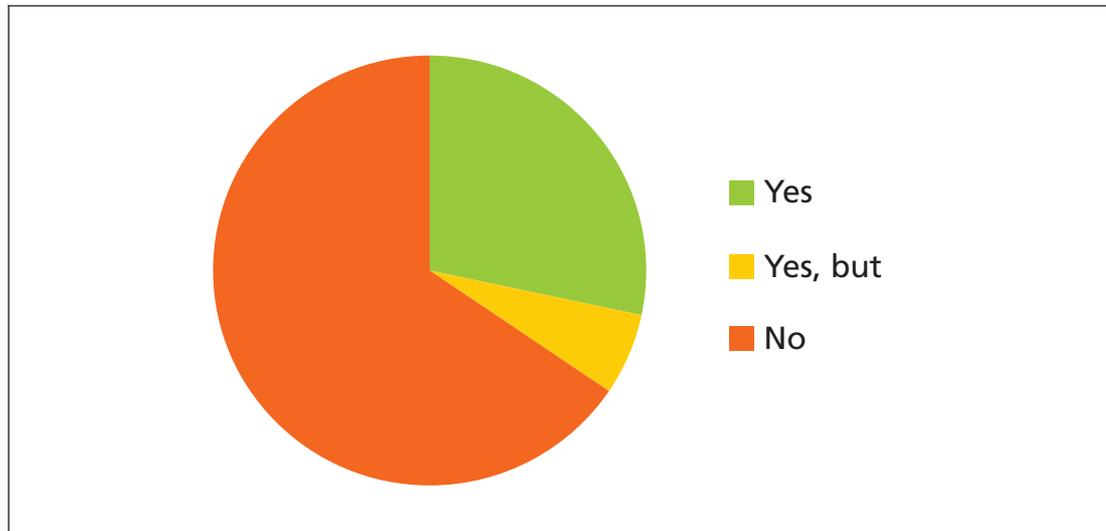
3.20 Question 8 had a response from 11 per cent of overall respondents. Just under half (47%) of question respondents felt that a change to the UCO as suggested by Options 2 or 3 would have some unintended consequences. If the ‘yes, but’ category is added in, then 57 per cent felt that there would be unintended consequences. Some 42 per cent of question respondents disagreed and felt that there would not be any unintended consequences. This question was amongst the most evenly split responses within the consultation.

3.21 Specific points raised by respondents included:

- small scale care homes or non-student environments could be adversely affected as measures could prove prohibitive
- potential response by landlord could be to reduce the size of their homes rather than incur planning charges. This might mean a shift to either fewer occupants or letting to families
- conversely, to make planning charges worth their while, a landlord could ‘lock’ a dwelling house into HMO use
- Option 3 would make it easier for a dwelling house to become a HMO without planning permission.

Question 9:

Would a change to the Use Classes Order as described in Option 2 or 3 impact unfairly – directly or indirectly – on any equality strands?

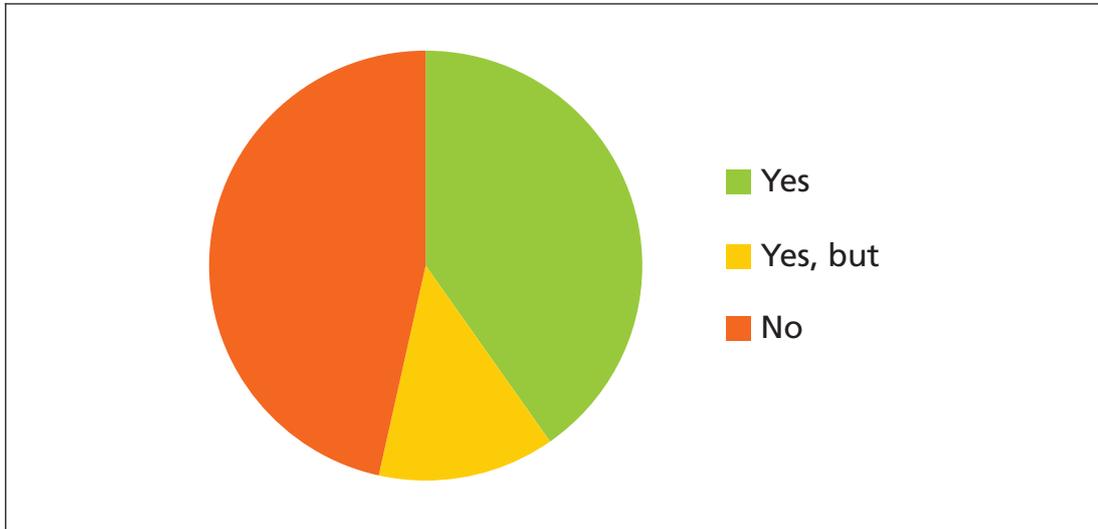


3.22 This question elicited an overall response from 11 per cent of respondents. Around two-thirds of question respondents felt that a change to the UCO as described in Options 2 or 3 would not impact unfairly (directly or indirectly) upon any equality strands.

3.23 Specific points raised by respondents included:

- Options 2 and 3 could be 'discriminatory' as they are intended to use the planning system to decide where certain types of people can or cannot live. Conversely, changes to the UCO might better empower local authorities to encourage mixed use housing development protecting the rights of existing residents
- possible impact on black and minority ethnic households which have larger extended families co-residing. Lowering the threshold might increase variation in local authority interpretations
- potential impacts on those minority groups who wish to let out space in their homes though it was felt that existing legislation might already cover most issues already.

Question 10:
Would a change to the Use Classes Order reduce the supply of HMO accommodation in your area?



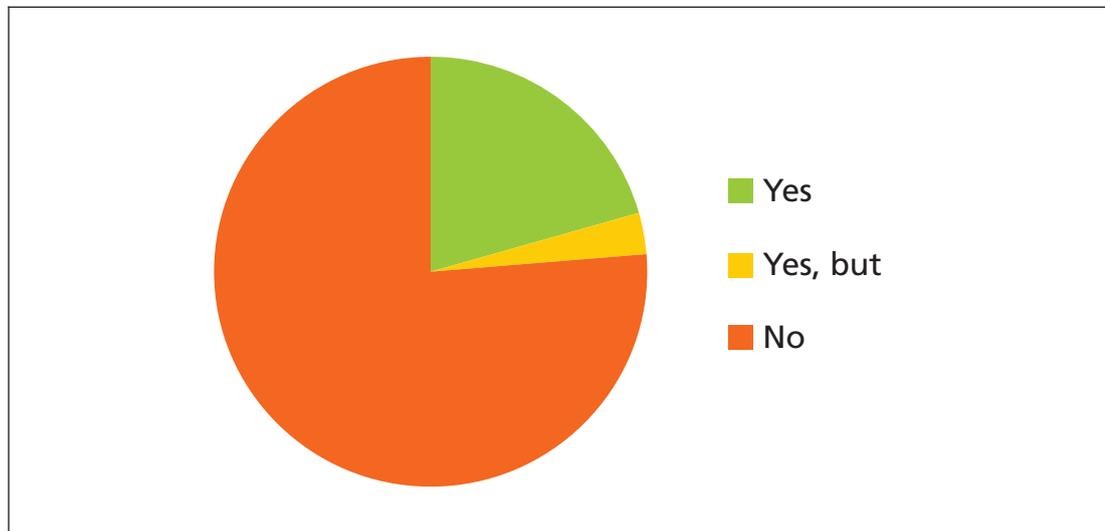
3.24 Around 12 per cent of all respondents answered this question. The opinion of those answering was relatively evenly split between the main choices. Some 40 per cent of question respondents felt that a change to the UCO would reduce the supply of HMO accommodation in their areas, whilst 45 per cent felt that a change in the UCO would not reduce the supply.

3.25 Specific points raised by respondents included:

- uncertain impact on current supplies, with a perception that a UCO change could negatively impact future supply
- the main factor that would reduce current supply would be if any change applied retrospectively
- moving forwards, landlord investors might be deterred or only make purchases where there is greater certainty that HMO status can be achieved. There would be a general increase in costs to landlords which might discourage supply
- might enable local authorities to better regulate the supply and manage the stock to disperse supply where appropriate. This would remove ambiguity and make living conditions better overall.

Question 11:

If amendments are made to the Use Classes Order, should a property that has obtained planning permission for use as an HMO require planning permission to revert back to a C3 dwelling house?



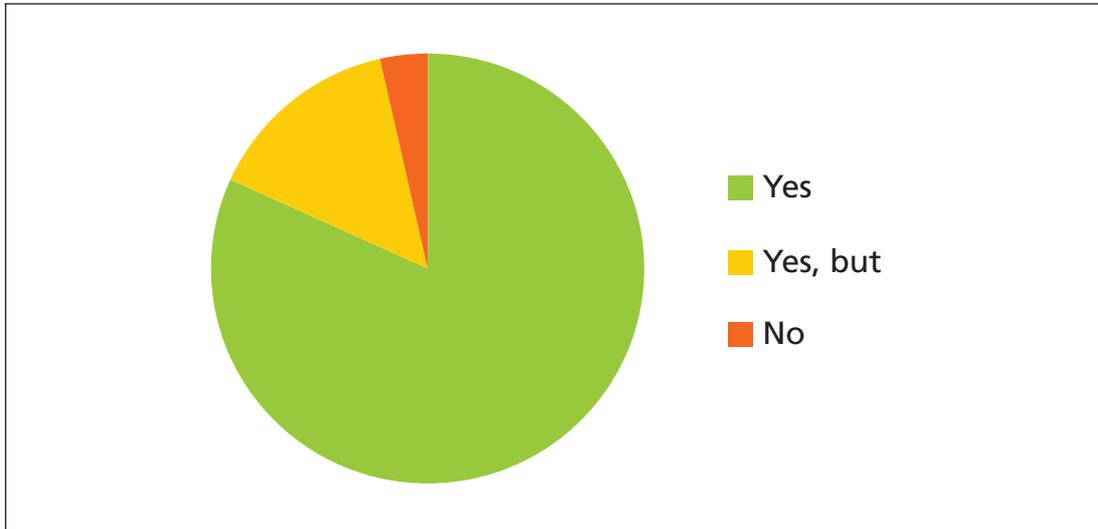
3.26 14 per cent of all respondents expressed an opinion - over three-quarters of question respondents (77%) said that a property that has obtained planning permission for use as an HMO should not require planning permission to revert back to C3 use as a dwelling house.

3.27 Specific points raised by respondents included:

- general feeling that the decision to revert back to C3 should be relatively simple, possibly involving a fast track (or low cost) process. Although some feeling that if the process is to be managed then it should be managed in both directions
- needs an appropriate monitoring system or registration process in place, so that the reversion can be recorded and status updated. This could also enable it to remain as permitted development, or might require a decision on the scale of reversion that would trigger the need for a planning application
- irrespective of outcome, any subsequent return to HMO status should again require planning permission. However, this would also present a burden to landlords if a given property slips in and out of HMO status. An unintended consequence might be a landlord avoiding letting to a family to avoid reversion.

Question 12:

Would a change to the Use Classes Order as described in Option 3 place a new burden on local planning authorities?



3.28 This question was answered by 13 per cent of overall respondents. Around 80 per cent of question respondents said that a change to the UCO as described in Option 3 would place a new burden on local planning authorities. If the 'yes, but' responses are added in then this figure rises to 95 per cent that felt it would place a new burden.

3.29 Specific points raised by respondents included:

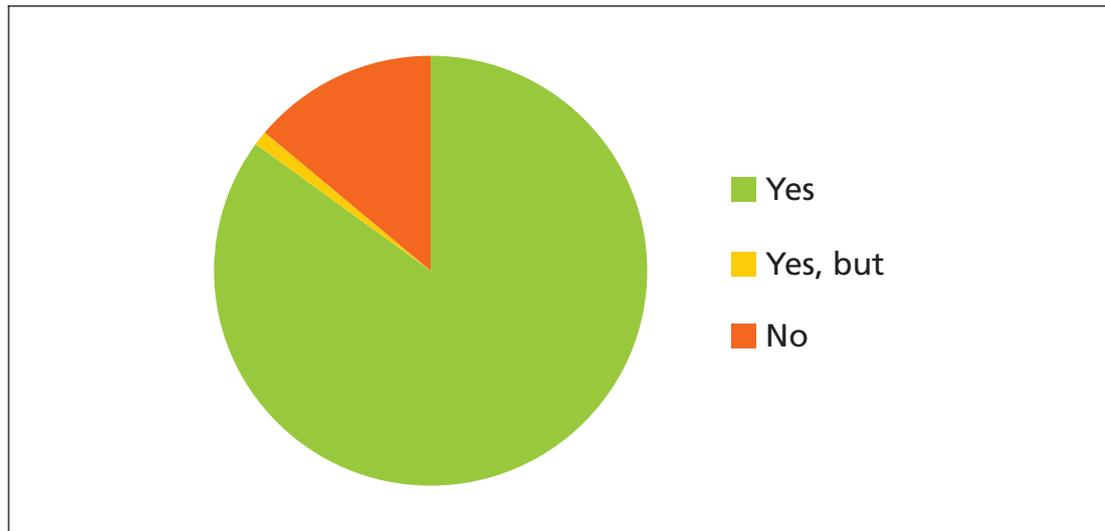
- general response (especially from local authorities) highlighted that the implementation of an Article 4 Direction includes consultation and procedural elements, and as such is not normally taken lightly. Thus, a greater overall burden would be placed on local authorities without a commensurate increase in planning fee income
- authorities already resource constrained
- some suggestion that this might lower other costs associated with dealing with HMOs, or that authorities would adjust to the new workload
- a knock on burden might be placed on planning enforcement via complaints, monitoring and actions. Mention also made of potential compensation liability
- some overall judgement that the burden would be minimal where HMOs were not an issue, and that where it was the benefits of management would be greater than the burden.

3.30 Overall, it was felt that Option 3 would introduce a new, unnecessary burden on local authorities who would be forced to undergo the expense of an Article 4 direction without a commensurate return in planning application fees.

3.31 The general feeling was that Option 3 would be more burdensome than Option 2, because of costs of implementing Article 4 direction whilst losing planning application fees.

Question 13:

Under Option 3, would the removal of the current requirement for HMOs to seek planning permission pose a problem for practitioners in managing land use impacts in their area?

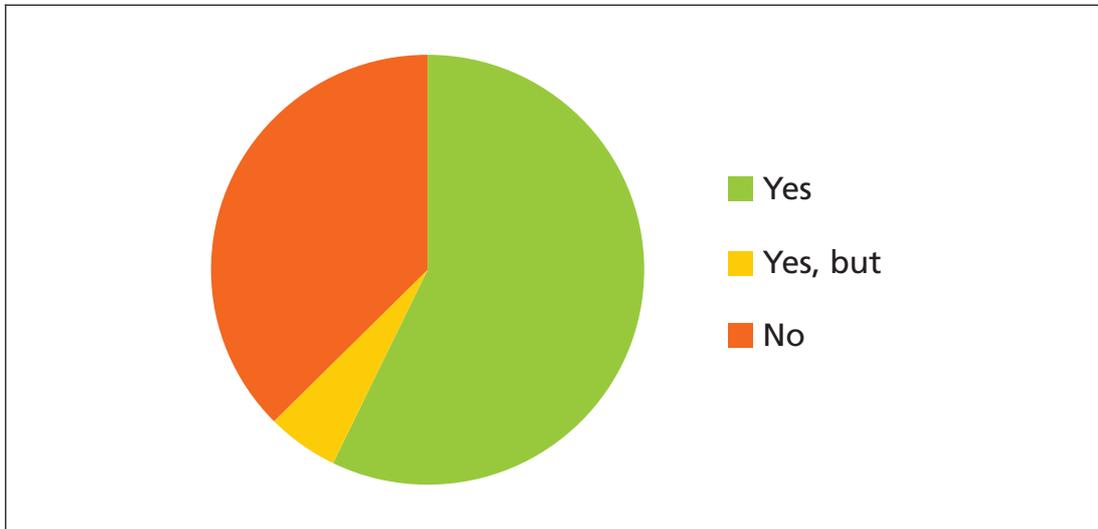


3.32 Around 10 per cent answered this question. Approximately 85 per cent of question respondents felt that (under Option 3) the removal of the current requirement for HMOs to seek planning permission would pose a problem for practitioners in managing land use impacts in their area.

3.33 Specific points raised by respondents included:

- removal of planning control might result in potential delay (in HMO management) or burden whilst authorities gather the necessary evidence base in order to change policy or facilitate Article 4 Directions
- the use of Article 4 Direction could create a 'two-tier system'. It would also create more work for the Secretary of State
- problems for practitioners might be felt most in university towns or areas with other HMO concentrations
- one authority outlined that it currently limited HMOs to houses with more than four bedrooms, that do not share party walls, and do not allow more than two adjoining properties to convert. Removal of the need for planning permission would prevent authority control – a theme mentioned by many respondents.

Question 14:
Should the compensation provisions included in Section 189 of the Planning Act 2008 be applied to change of use between C3 dwelling house and an HMO if Option 3 were to be implemented?



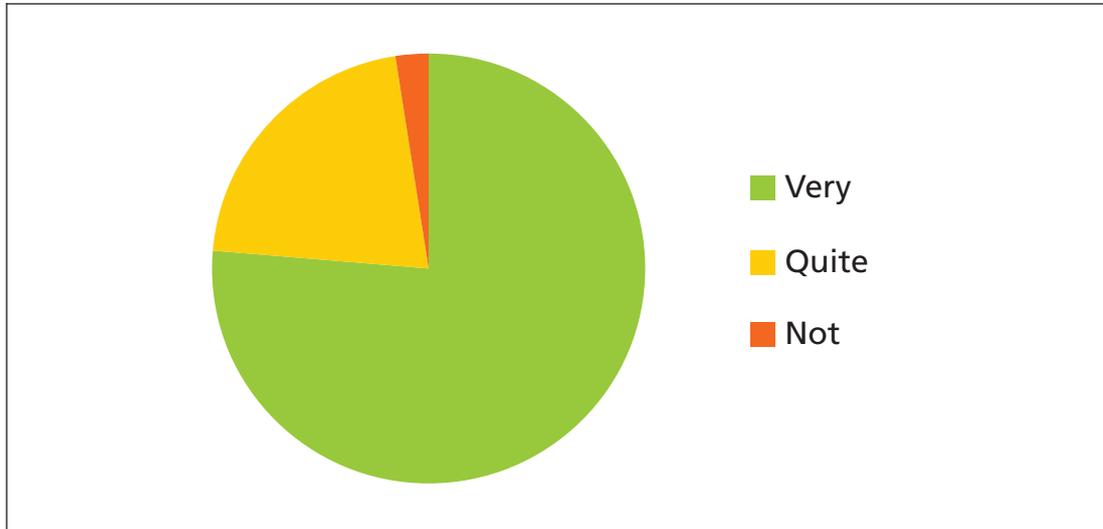
3.34 This question elicited responses from 10 per cent of overall respondents. Some 57 per cent of question respondents agreed that the compensation provisions from the Planning Act 2008 should be applied to a change of use from C3 to HMO, if Option 3 were to be implemented.

3.35 Specific points raised by respondents included:

- concern that a local authority might be less likely to refuse an application if it were to be liable for compensation. This in turn might make authorities less likely to make use of Article 4 Directions
- a mix of opinions as to whether compensation should be payable, but a general lack of support for Option 3
- possible unintended consequences of a surge in HMOs during any consultation or procedural notice time period prior to an Article 4 Direction coming into force.

Question 15:

How important would the risk of compensation be in the decision to use Article 4 directions under Option 3?

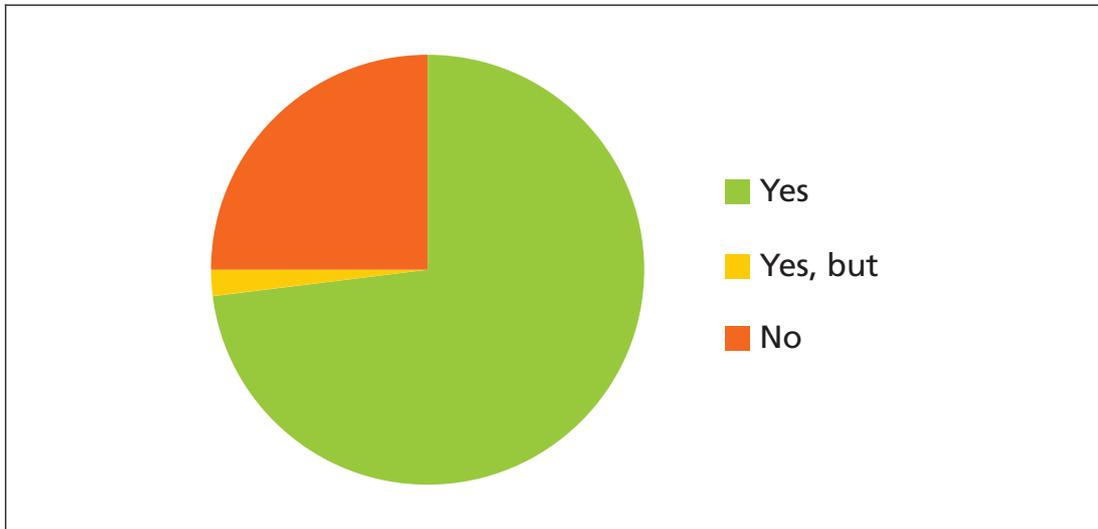


3.36 Question 15 was answered by only 9 per cent of the overall respondents. Almost three-quarters (73%) of question respondents felt that the risk of compensation would be very important in the decision to use an Article 4 direction under the suggested Option 3. If those with reservations ('quite') are added in, then 97 per cent of question respondents felt that this risk was important.

3.37 Specific points raised by respondents included:

- an authority would be likely to consider the risk of compensation at the outset of deciding the costs and benefits of whether to use an Article 4 Direction
- general feeling that compensation costs would serve to disincentivise the use of Article 4 Directions, although opinions ranged from 'important' to 'negligible'
- risk of compensation a main factor in those that view Option 3 as undesirable. Many feel that the level of compensation could be significant but that use of Section 189 to limit compensation might still not be justifiable
- wider context of tight local authority resources, and falling planning fee incomes.

Question 16:
Would the extra certainty of greater control bring benefits that outweigh the burdens placed by the need to process more planning applications?



3.38 Around 12 per cent of overall respondents answered this question. Almost three-quarters (73%) of question respondents said that the extra certainty of greater control would bring benefits that would outweigh the burdens placed by the need to process more planning applications. A quarter of question respondents disagreed, believing that the burden of an increased number of planning applications would outweigh the extra certainty of greater control.

3.39 Specific points raised by respondents included:

- the planning application costs would be covered by the planning application fees. However the additional caseload was recognised as a significant burden
- unclear to what extent the benefits might be realised based on the degree of discretion in implementing the options, whereas the burdens seem more definitive and likely to be realised
- similarly, some queried the 'certainty' used in the question.

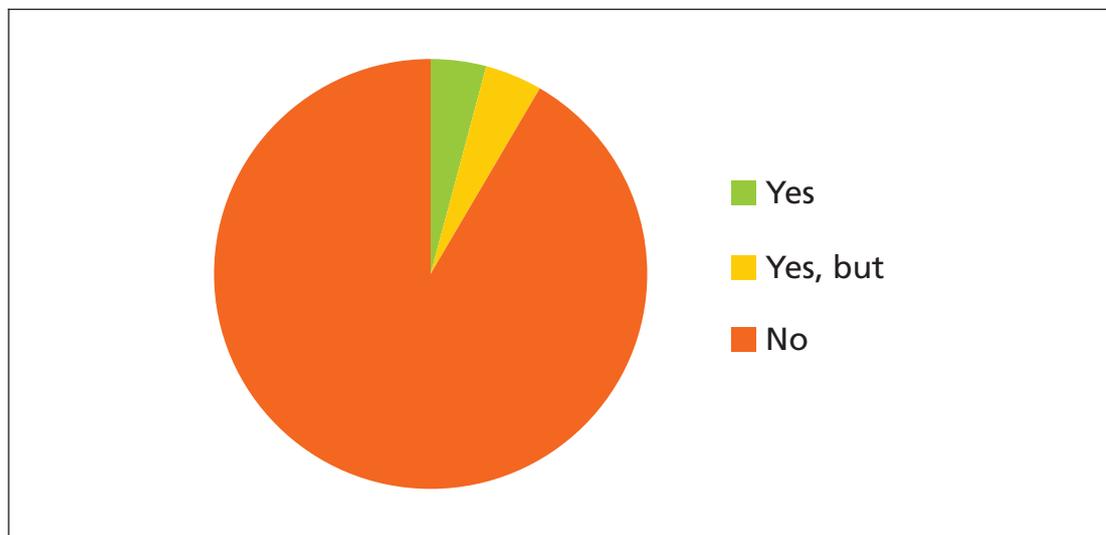
Overall, both points of view were expressed. But generally most felt that the greater certainty would outweigh the burdens.

Impact assessment

3.40 As part of the consultation respondents were asked to comment on the impact assessment of the consultation options that was carried out. Only 24 respondents gave an answer to the first impact assessment question and even fewer to the remaining two. Generally answers accorded with a respondent's overall view so that if they were supportive of Option 2 they felt that costs had been overestimated and benefits underestimated for this particular option and vice versa.

Question IA1:

Do you think that the impact assessment broadly captures the types and levels of costs associated with the policy options? If not, why?



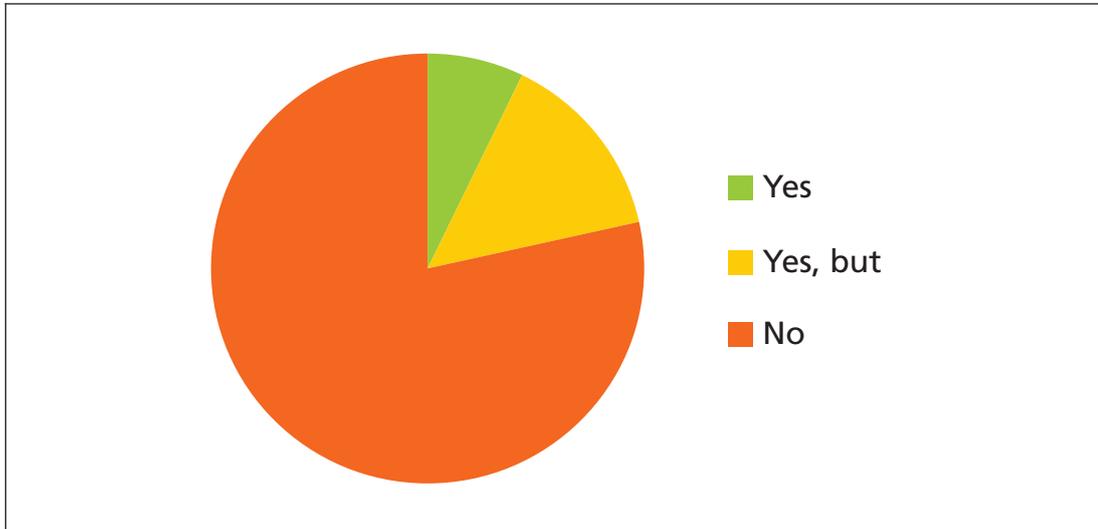
3.41 Impact assessment Question 1 was answered by 2 per cent of overall respondents, therefore some caution should be exercised over the validity of the following analysis. Eighty-seven per cent of question respondents felt that the impact assessment did not broadly capture the types and levels of costs associated with the policy options.

3.42 Specific points raised by respondents included:

- it was accepted that it is difficult to estimate future costs and benefits of such interventions
- the costs of Options 1 and 3 are likely to have been underestimated, and the cost of Option 2 is likely to have been overestimated.

Question IA2:

Do you think that the impact assessment broadly captures the types and levels of benefits associated with the policy options? If not, why?



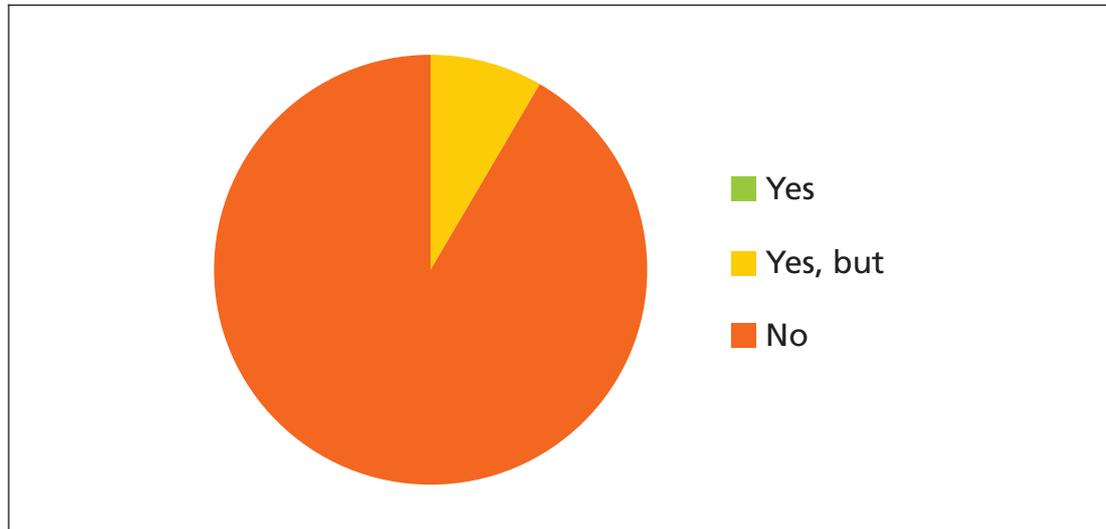
3.43 Impact assessment Question 2 was answered by around 2 per cent of overall respondents. Almost three-quarters (73% of question respondents) said that the impact assessment did not broadly capture the types and levels of benefits associated with the policy options.

3.44 Specific points raised by respondents included:

- the benefits of Option 1 are likely to have been overestimated
- the benefits of Option 2 were not monetised
- the benefits of Option 3 would depend on the uptake of Article 4 Directions by local authorities.

Question IA3:

Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options? If not, why not?



3.45 Around 2 per cent of overall respondents answered impact assessment Question 3. Around 88 per cent of question respondents did not agree that the impact assessment reflected the main impacts that particular sectors and groups are likely to experience as a result of the policy options.

3.46 Specific points raised by respondents included:

- poor consideration of potential impacts or effects on areas such as health, community cohesion, the elderly, those with disabilities and the sustainability of options
- Option 1 would tackle the effects of problems, but not the causes
- one respondent saw HMOs as the single most significant barrier to coastal resort regeneration.

3.47 Concern was expressed that if planning permission were required for newly defined HMOs, LPAs would be open to additional pressure from lobbies looking to exclude particular groups from living in certain areas

3.48 Students unions also raised concerns regarding the potential impact of Option 2 on equality suggesting that control on the location of HMOs is for all intents and purposes a control on the location of particular social groups. On the other hand, reference is also made by some councils and residents groups that creating more balanced communities is consistent with equality objectives.

3.49 In summary, there were two divergent schools of thought. Many individuals and organisations responding felt that the proposals could be discriminatory, particularly in terms of reducing the supply of appropriate accommodation for

disadvantaged groups and in controlling where certain sections of the population, who are particularly concentrated in this type of housing, can live. On the other hand, there were those who were supportive of Option 2 precisely because they felt that it would help to provide more balanced communities, enabling a broader cross-section of the population to live in more harmonious circumstances. Overall, the majority view is that none of the options would have a significant discriminatory effect.

Other considerations

- 3.50 Those from coastal areas felt that the consultation paper had focused too strongly on the studentification of areas and ignored the issues prevalent in former resorts where hotel and guesthouse accommodation has been increasingly given over to HMO accommodation.

Themes emerging from the consultation

- 3.51 Of the responses received, 58 per cent were standard responses so that whilst due weight should be given to the opinions of these consultees, clearly the amount and depth of their non-quantitative response was more limited. It was clear from all the standard letters that the respondents very much supported Option 2 though most made no differential between the two alternatives within Option 2 unless it was to say 'reduce the threshold' from six people sharing a house not as a family to three, or use the Housing Act definition. There were a great deal of considered, comprehensive responses and it is mainly from this type of response that more discursive analysis has been taken. Many of the local authorities and professional organisations who responded gave detailed responses in terms of the advantages and disadvantages of the different options. Most of those responding as individuals tended to focus on the problems manifested in their local areas by the concentration of HMOs.

Quantitative evidence on HMOs

- 3.52 Just under 40 respondents offered some quantitative evidence relating to HMOs, most particularly the concentrations of HMOs in various cities. These ranged from 10 per cent of all households being occupied by students in Liverpool, according to a 2007 City Council survey, to 90-95 per cent of stock being student-occupied in Jesmond, Newcastle. Various statistics were offered for Nottingham (Lenton 39.5% student occupation, Dunkirk 41%), Leeds (possibly 90% student occupation in some streets), Southampton, York, Bath, Birmingham and Manchester. Nearly all statistical information offered concerned the high concentration of students in some roads/neighbourhoods. In addition, statistical evidence was offered to suggest that the concentration of students at a finer level of analysis is higher than the Rugg Report might suggest.

Alternative options or solutions suggested

- 3.53 There were a limited number of alternative options suggested – only 38 respondents out of a total of 948 had suggestions to make for alternatives to those proposed in the consultation paper and of those some were variants on the best practice model.

Option 1: non-legislative option (local management option)

- 3.54 It is clear from the responses that organisations representing students and landlords are generally against further legislative revision. Student organisations cite their existing involvement in good practice schemes and the positive impact students can bring to local areas. They also raise equality concerns regarding tighter planning control (either in relation to Option 2 or Option 3 where an Article 4 Direction is in place) because of the potential for displacement of social groups normally resident within HMOs. There is also a less but nevertheless significant concern that tighter controls may lead to a reduction in the supply of HMOs which could create a significant problem in housing large numbers of students and other sections of the population near to their places of study or work.
- 3.55 All of the councils who currently experience problems relating to high concentrations of HMOs recognise the advantages of best practice measures (and some consider themselves at the forefront of devising best practise precisely because they face such intense levels of impact). Of those councils not currently experiencing problems, opinions are divided. Some argue that they do not feel the need for further planning controls and that best practise should be sufficient. Others recognise the need for greater planning control and argue against Option 1. Some have no problems with high concentrations of HMOs but are finding it difficult to actively encourage them, and they also argue against Option 1, seeking greater planning control.
- 3.56 What is clear however is that there is no evidence of best practise measures being considered sufficient by any council currently experiencing problems relating to high concentrations of HMOs.

Option 2.1: amend threshold in Use Class Order C3 from 6 to 3

- 3.57 A significant proportion of respondents using a standard letter supported changing the definition to match that in the Housing Act which was interpreted as being Option 2.2. Most professional or local authority respondents who expressed a preference preferred Option 2.2 over 2.1.
- 3.58 The only advantage of Option 2.1 that was cited was that it was easier to apply. It is fair to say that most respondents were unspecific about the differences between the two alternatives within Option 2, and merely talked about how a reduction in the threshold would solve problems where HMOs exist with three or more residents.

3.59 By far the most common argument against Option 2.1 is that it retains the ambiguity of the term 'living together as a single household'. The key problem with the UCO was said to be not the number of occupants but their relationships – *"if planning Inspectors have no problems with accepting eight as a single household then it seems unlikely that a smaller number would pose any problems. 2.1 makes no contribution to improving effectiveness of UCO."* This option does not remove ambiguity over what constitutes a 'single household'.

Option 2.2: Use Classes Order amended to provide a specific definition of an HMO along similar lines to that in the Housing Act 2004, focusing on properties where three or more people (who are not all members of the same family) share a bathroom, kitchen or toilet

3.60 Most respondents advocating Option 2.2 were professionals or local authorities who had considered the consultation paper in some detail.

3.61 A view widely expressed by many was that Option 2 addresses the inadequacies of the Use Classes Order by removing ambiguity over meaning of 'single household' and uses the structural definition of the Housing Act 2004 which prioritises relationships within the household. It also explicitly removes all HMOs from residential Use Class C3 so planning permission would be needed for development or change of use. It was stated that *"the combination of these two steps provides LPAs with powers to manage provision of HMOs positively OR negatively or not at all, as they choose and allows residents to be alerted to proposals for HMOs"*. Other benefits cited included the securing of application fees through need for planning permission, facilitating the conversion of family housing in areas where this would be favoured and making residents aware of when changes were occurring. LPAs could adopt supplementary planning documents to allow them to implement policy in their area - whether to encourage or curtail the development of HMOs as appropriate.

3.62 A number of respondents raised the practical problem of enforcement as well as others including the problem of conflicting outcomes if the planning definition does not accord exactly with the Housing Act definition. Another downside raised was that the change to planning use classes could be burdensome on LAs who do not face problems from over-concentration.

Option 3: use of Article 4 Direction to remove powers for properties to convert to HMOs

3.63 Option 3 was the least popular option, being preferred by only 1 per cent of respondents. These were mainly individuals or landlords, although a few local authorities who were not experiencing problems with the concentration of HMOs were supportive of this option. It was felt that this option could give LPAs the highest level of control to manage the problems locally.

3.64 The key drawbacks outlined with Option 3 were:

- the impact of permitting development of all HMOs, even those that currently require planning permission

- the cumbersome and time consuming process for LAs of applying for an Article 4 Direction given lack of certainty about its outcome
- the risk of compensation; and
- if the 12 months notification period was used to avoid the risk of compensation, the scope during this time for significant applications to be submitted, somewhat circumventing the control.

3.65 Many felt that Option 3 would be overly bureaucratic and were concerned about where the boundary for the Article 4 area would be drawn. There were significant concerns that HMOs would spring up just outside any boundary, thus negating the effects of the Article 4 direction in endeavouring to bring more control to HMO proliferation. Overall, it was felt that the disadvantages of this approach significantly outweighed the advantages.

HMO definition

3.66 There is widespread support for aligning a planning definition of HMOs with the Housing Act to maintain consistency. It has been suggested that rather than being 'along similar lines to the Housing Act 2004' the definition should in fact be the same as that in the Housing Act. However, there were other respondents who cautioned against simply taking the Housing Act definition given that the Housing Act and planning laws are designed for different regulatory uses. Many suggested alternative definitions including those relating to overcrowding, individual rent books, locked doors etc. Some local authorities felt that the definition in the Housing Act would be ineffective in their situation given the nature of their housing stock, which generally comprised of fairly small HMO properties with no more than three bedrooms. There were divergent views about shared facilities within houses, given that some problems arise from those properties who do not share facilities e.g. small self-contained flats, and that using the trigger of shared facilities may not resolve all of the problems currently being manifested in some areas. Some suggestions on definitions to be used stemmed from confusion between the Housing Act definition of an HMO and where HMOs are required to be licensed under the requirements of the Act. Some felt that a more useful way of approaching the problem would be to trigger planning permission requirements when properties ceased to become single family dwellings. The general feeling was that HMOs should be defined in their own Use Class, whatever this definition might result in being.

Conclusions

3.67 Option 2 – to amend the UCO with a specific definition of HMOs along the lines of the Housing Act 2004 – is by far the most favoured option. The significant number of responses received from individuals highlights the concerns of people living in areas of high concentrations of HMOs. Best practice measures as currently being implemented are generally not considered sufficient on their own.

Chapter 4

Government response and next steps

The Government recognises the important contribution HMOs make to the private rented sector by providing housing to meet the needs of specific groups and households and by making a contribution to the overall provision of affordable housing stock.

However, both the research work undertaken by ECOTEC and the results of this consultation have highlighted the problems that are very often associated with high concentrations of HMOs.

In light of the responses to this consultation we have decided to amend the Town and Country Planning (Use Classes) order 1987 as amended to provide for a specific definition of an HMO. Planning permission will then be required, where a material change of use has occurred, for properties changing use from C3 (dwelling house) to the new use class.

We have also decided that at the same time as making this change we will amend the Town and Country Planning (General Permitted Development) Order 1995 to provide that movement between the new HMO Use Class back to the C3 class (dwelling house) will not require planning permission.

The consultation indicated that any definition introduced would be based on that contained in the Housing Act 2004 and in the interests of clarity and consistency we have decided to align the definition in planning legislation and housing legislation as closely as is appropriate.

We recognise that this change will lead to an inevitable rise in planning applications but we believe there is a real need to intervene in this specific problem. The consultation responses and research work have indicated that good practice alone cannot solve the problems encountered in a number of communities. We believe this measure will enable local planning authorities to identify new HMOs with more certainty and target specific areas where there is a need to restore community balance.

The legislation will not apply retrospectively, but landlords who seek to establish a HMO within the terms of the new definition will need to seek advice from the Local Planning Authority on whether a material change of use will occur and thus whether a planning application will therefore be required.

Once the legislation is in place it will be for local planning authorities to ensure that they appropriate planning policies in place to help them manage HMO development in their area.

Next steps

The Government intends to bring forward the necessary secondary legislation to come into effect on the Common commencement date of 6 April 2010.

Annex A

Method

The process used in undertaking the analysis of consultation responses included the following stages:

<i>Stage</i>	<i>Description</i>
Inception	Agree the overall approach and discuss main issues to be addressed by the analysis.
Database design and review	Check database and adapted to meet the issues decided at Inception.
Coding schema	Cross-check undertaken in designing the coding schema to ensure both a consistency of approach and interpretation of responses.
Response preparation	All responses were allocated a unique identifier and went through an initial sift to determine whether it was part of a standard response, whether it was sent by an organisation (representing a wider number of people) or an individual (again checking for wider representation).
Data entry	Summary of longer responses included.
Data analysis	Setting up and running aggregating, averaging, response coding for the final report, including graphical outputs as appropriate.
Concluding themes	Peer discussion, challenge and review to agree the emerging picture as represented by consultation responses.
Reporting	The final task was to document the work undertaken and to make suggestions as to how this could be further developed.

Coding

Responses were read and coding for entry within the database based on the initial schema set up. Where questions asked for a specific answer (i.e. a preference for one option over another) this was reflected in the coding schema – in this case using 1 – 2 – 2.1 – 2.2 – 3 as appropriate. Other (more open-ended) questions were coded using the following options:

- YES – the respondent agreed with the question
- YES BUT – the respondent agreed with the question but this was conditional. This is to distinguish between a position of support, and a position of support subject to concerned or preconditions
- NO – the respondent actively disagreed with the question
- DON'T KNOW – only used if a respondent explicitly answered a question by indicating that they were unable to provide a response. Rarely used

- (BLANK) – the respondent didn't answer the question or mention relevant material
- Comments – all questions also had space for open-ended free text to summarise the response.

The use of a schema, along with regular discussions amongst coders was essential to ensuring consistency and thoroughness.

Annex B

Detailed response data

<i>Consultation Options</i>	<i>1</i>	<i>2</i>	<i>2.1</i>	<i>2.2</i>	<i>3</i>
Overall preference	6%	65%	14%	13%	1%

<i>Question</i>	<i>Yes</i>	<i>Yes, but</i>	<i>No</i>
Question 1: Do you experience problems/effects which you attribute to high concentrations of HMOs?	94%	0%	6%
Question 2: Do you consider the current planning framework to be a barrier to effective management of HMOs by local planning authorities?	93%	1%	6%
Question 3: Could promotion of best practice measures as opposed to changes in the planning framework sufficiently deal with the problems associated with HMOs, in particular those problems often associated with high concentrations of HMOs with student occupations?	5%	1%	94%
Question 4: If planning legislation is seen as a barrier to the effective management of HMOs in an area, how should planning legislation be amended – along the lines of Option 2 (introduce a definition along the lines of the Housing Act 2004) or Option 3?		<i>Option 2</i>	<i>Option 3</i>
		98%	2%
Question 5: Do practitioners have a preference for one approach listed as part of Option 2 over the other?	79%	5%	16%
Question 6: What effect would a change to the Use Classes Order as described in Option 2 have on those local planning authorities that do not encounter problems with high concentrations of HMOs?	77%	4%	19%
Question 7: Would a change to the Use Classes Order as described in Option 2 or 3 have an impact on the homeless and other vulnerable groups?	57%	11%	33%
Question 8: Would a change to the Use Classes Order as described in Option 2 or 3 have any unintended consequences, for example an impact on small scale care homes or children's homes, which are currently classed as C3 dwelling houses?	47%	10%	42%
Question 9: Would a change to the Use Classes Order as described in Option 2 or 3 impact unfairly – directly or indirectly – on any equality strands?	28%	6%	66%
Question 10: Would a change to the Use Classes Order reduce the supply of HMO accommodation in your area?	40%	15%	45%

<i>Question</i>	<i>Yes</i>	<i>Yes, but</i>	<i>No</i>
Question 11: If amendments are made to the Use Classes Order, should a property that has obtained planning permission for use as an HMO require planning permission to revert back to a C3 dwelling house?	20%	3%	77%
Question 12: Would a change to the Use Classes Order as described in Option 3 place a new burden on local planning authorities?	80%	15%	6%
Question 13: Under Option 3, would the removal of the current requirement for HMOs to seek planning permission pose a problem for practitioners in managing land use impacts in their area?	85%	2%	13%
Question 14: Should the compensation provisions included in Section 189 of the Planning Act 2008 be applied to change of use between C3 dwelling house and an HMO if Option 3 were to be implemented?	57%	5%	38%
Question 15: How important would the risk of compensation be in the decision to use Article 4 directions under Option 3?	<i>Very</i>	<i>Quite</i>	<i>Not</i>
	73%	20%	7%
Question 16: Would the extra certainty of greater control bring benefits that outweigh the burdens placed by the need to process more planning applications?	73%	2%	25%
Question IA1: Do you think that the impact assessment broadly captures the types and levels of costs associated with the policy options? If not why?	9%	4%	87%
Question IA2: Do you think that the impact assessment broadly captures the types and levels of benefits associated with the policy options? If not why?	13%	13%	73%
Question IA3: Do you agree that the impact assessment reflects the main impacts that particular sectors and groups are likely to experience as a result of the policy options? If not why not?	6%	6%	88%

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