

Department for Levelling Up, Housing & Communities consultation on Council tax valuation of Houses in Multiple Occupation (HMOs)
Response from Propertymark
March 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry leading training programme and mandatory Continuing Professional Development.

Overview

- The Department for Levelling Up, Housing and Communities is seeking views on proposed changes to council tax in Houses in Multiple Occupation (HMO) in England. All domestic properties, including HMOs, are given a council tax band by the Valuation Office Agency (VOA) which are used to calculate the amount due based on a number of factors including number of bedrooms and location. Historically HMOs have been valued as a whole property with one council tax band. The owner of the HMO is liable for the council tax in these situations.
- However, on the back of improvements to properties, some are being reassessed for council tax on a rate per room. The concern is that this could dissuade landlords from making improvements. The VOA is responsible for assessments but is not involved in setting rates or collection, which is the responsibility of the local authority. This opens up a disparity between the objectives of both organisations. Assessments are made under the Local Government Finance Act 1992, which can leave the definition of a “dwelling” open to interpretation, “When looking at a ‘property’, the VOA will consider whether it is a “hereditament”. If the test for a hereditament is satisfied, then each unit will be considered a “dwelling” and capable of having its own council tax band. This means each unit could have a separate council tax band even if it is not self-contained and shares some facilities with others.”¹
- The aim of the proposed changes is to provide clarity and consistency when assessing HMO properties under council tax bands. Subject to the outcome of the consultation, the UK Government is minded to introduce changes to the relevant regulations to ensure that, other than in exceptional circumstances, HMO properties should have one council tax band.

Questions

Question 1: What are your views on the way that HMOs are currently valued for council tax?

2. Propertymark disagrees with the current system of assessment. We believe that the current system does not work for two reasons:

¹ [Council tax valuation of Houses in Multiple Occupation \(HMOs\): consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/council-tax-valuation-of-houses-in-multiple-occupation-hmos)

- Firstly, the process is left open to the interpretation and discretion of the particular VOA locality and assessor. Whilst we recognise that all properties, including HMOs, must be assessed on a case-by-case basis, but the assessment criteria must be clear and concise in order to ensure equity across all HMOs. The VOA confirms that “the starting point is that each separately let part qualifies as a separate dwelling with its own band, whether or not it is self-contained.” Where there are very few adaptations to properties, in that rooms are let with no exclusive use of facilities, then the property is likely to be amalgamated into one council tax band. However, where there are adaptations made such as to include a kitchenette or shower/bath and WC, then they will be given an individual band.
- Secondly, it is disproportionate to rate and value a room in a shared house at the same level as a comparable Band A property such as a one-bedroom flat. The starting point of looking at each room as a separate dwelling can mean that some properties are incorrectly banded separately, thus putting a greater burden on the tenant letting the room despite them having minimal facilities. Council tax bandings are set from A – H, based on a number of factors including size, layout, character, location, change in use and value in 1991 (England) or 2003 (Wales). These factors usually mean that a one-bedroom flat would be Band A and a small house could be Band B etc, except in particularly high value areas. It seems incomparable to value a room in a shared house, with or without separate facilities, as the same as an entire flat or small house. The 1 April 1991 value of a Band A property was “up to £40,000”. This seems disproportionately high for a single room in a property, especially when compared to a one-bedroom self-contained flat which could be assessed as the same band.

Question 2: What are your views on the extent to which HMOs are currently not aggregated for council tax purposes?

3. There appears to be a national postcode lottery on whether or not an HMO will be aggregated for council tax purposes or not. We have seen evidence from our members that HMOs are generally aggregated in areas across the country such as Cornwall, Leicester and Leeds, yet in Somerset HMOs are banded by room. The discrepancy is concerning as a lack of consistency across the country leads to confusion and a mismatch in costs to tenants, who are penalised if the council tax is not aggregated.

Question 3: In your view, are there any particular types of HMOs that are more, or less, likely to not be aggregated? Please provide evidence where possible.

4. Larger HMOs, which are subject to licencing schemes, are more likely to be identified and, therefore, more likely to be reassessed as separate units. Councils can generally only identify HMOs that have licenses, those with five beds or more, or in areas with selective or additional licencing schemes. Therefore, properties with less than five bedrooms will be less likely to be picked up as a HMO by local authorities. The VOA will only reband a property which has been flagged as potential individual units, it is possible that in an area where many HMOs are banded by room, only the larger properties will be affected.

Question 4: What are your views on the government’s objective to deliver consistency of outcomes to the council tax valuation treatment of HMOs and to ensure that HMOs are banded as one property and have one council tax band, other than in exceptional circumstances?

5. Propertymark supports the objective to deliver consistency of outcomes in HMO banding assessments. We support this for two reasons:

- Firstly, the proposal will benefit landlords and tenants, as well as local authorities when collecting council tax. By having one, aggregated council tax band for an entire property it ensures fairness among tenants, having the landlord as the liable party can disincentivise empty properties, enables landlords to make improvements without penalty and ensures that the property remains affordable to tenants.
- Secondly, HMOs tend to be occupied by tenants on a lower income and in more transient circumstances, meaning that they are usually short-term lets. If council tax is banded per room, it could cause serious problems for the local authority to keep track of tenants and charge them appropriately, with the burden ultimately falling on the landlord if the tenant does not pay. One of our agents said that they were managing a seven-bedroom HMO which was being reassessed by the VOA. Band A council tax rate in the area is around £123 per month, if this property had been rebanded as individual units the council tax bill would have been around £860 per month, more than double a Band H property² in the same area. The landlord would not be able to absorb the additional £860 and £123 per month would be added to the tenant’s monthly rent which would be unaffordable.

Option 1

The government could change the Council Tax (Chargeable Dwellings) Order 1992. This would amend article 4 of that Order to require listing officers, where they are assessing an HMO, to treat the property as if it were a single property. This would mean that the VOA would always amalgamate council tax bands for HMOs. HMOs would, for the purposes of council tax, be considered as one property, and have one council tax band, other than in exceptional circumstances. Such circumstances might include, for example, where there is self-contained accommodation within the HMO.

Option 2

Alternatively, section 3(5) of the Local Government Finance Act 1992 provides that the Secretary of State may by order provide that anything which would be two or more dwellings shall be treated as one dwelling. The government could amend the Council Tax (Chargeable Dwellings) Order 1992 to specify that HMOs are treated as one dwelling and therefore subject to one council tax band, other than in exceptional circumstances.

Question 5: Do you have any preference as to how to deliver the government’s objective to ensure that HMOs are valued as one dwelling and, if so, why?

² <https://www.cornwall.gov.uk/council-tax/your-council-tax-bill/council-tax-2023/council-tax-bands-2023/>

6. Propertymark supports Option 1 of the proposal. Ensuring that the baseline is to amalgamate properties as one council tax band creates consistency and clarity for assessing officers. Propertymark sees this as the simpler of the two options presented and therefore less open to interpretation or discretion.

Question 6: What are your views on defining HMOs as set out in the Housing Act 2004?

7. Propertymark agrees with the definition set out in the Housing Act 2004. There are two main elements to the definition within the Act, firstly the 'Standard Test' presents a HMO as a building consisting of more than one living unit which is not a self-contained unit (i.e. a flat). Secondly, the accommodation is occupied by more than one household who share one or more of the basic amenities. Propertymark understands that there should be an element of nuance when making an assessment on an individual HMO. However, there should be more consistency, with clearer guidelines to define the difference between a HMO room and that of self-contained accommodation which should be rated as a separate dwelling. Under the Standard Test a room, even with some facilities, is not a self-contained unit if it is within shared accommodation.

Question 7: What are your views on defining HMOs using the definition in the Council Tax (Liability for Owners) Regulations 1992?

8. The definition under the 1992 regulations is not well defined. We think this for two reasons:
 - Firstly, the wording is ambiguous. In defining a dwelling as "adapted for occupation by persons who do not constitute a single household", this is not clear on the structure or make up of the accommodation, it could include both self-contained units and rooms with shared facilities.
 - Secondly, the definition under the 1992 regulations focuses on the inhabitants of the property which is vague and can be open to interpretation. For example, shared accommodation or a single dwelling (i.e. a house with a lodger) could be occupied by a tenant who occupies just part of a property and is not liable for rent of the property as a whole.

Question 8: In your view, is there any non-HMO accommodation that may be caught by either of the proposed definitions?

9. We believe there are three types of non-HMO accommodation that may be caught by either of the proposed definitions. Firstly, any accommodation which has some shared facilities on top of non-shared would be subject to scrutiny and could be caught in the definitions. Secondly, student accommodation could be caught in the proposals, as much student accommodation has both shared and individual facilities (such as their own bathroom but a shared kitchen). Furthermore, if a student drops out of their studies and wishes to end their tenancy part way through the year, in a HMO which is not amalgamated, the council tax burden could be imposed on the landlord. This would deter landlords from allowing former students to relinquish their tenancy early and would penalise the tenant who would now be liable for council tax on the room, plus rent. Thirdly, some self-contained flats or studio apartments may comprise entirely of independent facilities (i.e. have

their own bathroom and cooking facilities) but may also have a shared common room or communal area, this is particularly the case purpose-built in older persons' (retirement) accommodation and this should be noted within the definition. A property which is fully self-contained but has access to communal facilities should not be banded the same as a room with partial facilities (i.e. a bathroom) and more shared facilities (i.e. a kitchen).

Question 9: Are there any other definitions that may be more appropriate for the purposes of identifying HMOs in the context of establishing a council tax band?

10. The description under the Housing Act 2004 provides the clearest definition, the liability of a property which is defined as a shared property under the Act should lie with the owner, or overarching leaseholder, of the property as a whole. The waters are muddied by the confusing definitions of liability presented under further regulations such as the Council Tax (Liability for Owners) Regulations 1992. The definition should be clear, and guidelines provided to indicate that a room with one or more shared facilities is a HMO and therefore not liable for council tax independently. A room with its own entrance and separate facilities, which are not shared, is a unit which should be liable for council tax.

Question 10: Are there any exceptional circumstances or types of HMO accommodation that in your view should not be covered by these proposed changes and, if so, why would that be the case?

11. Propertymark agrees that accommodation which is clearly a self-contained unit should be liable for council tax in its own right. These are usually let in a different way to a room in a shared house and the tenant would be expected to cover bills individually rather than the landlord.

Question 11: Do you agree that, where separate areas of self-contained accommodation can be clearly determined within an HMO, the Listing Officer should be able to band each self-contained accommodation as having its own council tax band?

12. Yes, we agree that where there is a clear self-contained unit as an annexe or separate flat to a HMO then this should be banded individually. The VOA officer must be clear on which part is self-contained, for example by having its own entrance and facilities for its own use. There should be clear guidelines to identify these types of properties which cannot lead to discretion. The self-contained unit could be within the same building as an HMO and it should be clear which property is banded separately.

Question 12: Should the changes be limited to HMOs with fewer than a certain number of separately let rooms?

13. Propertymark agrees that a property with ten bedrooms would create a lot more refuse and other costs to the local authority than a HMO with only five bedrooms. However, these are still HMOs and should be aggregated for council tax purposes where there are shared facilities. The best course of action would be to redefine the council tax bands to more accurately distinguish properties of differing sizes, i.e. a ten bedroom HMO should have a higher council tax banding than a neighbouring HMO with only five beds. Under the current assessment a Band A property has a

1991 value of £40,000, this does not accurately represent a bedroom in a property with shared facilities, especially when compared with a one-bedroom flat or small house in a low value area which might also be banded as Band A with a 1991 value of £40,000. The banding system should be reviewed to effectively represent different types and sizes of properties as they are today.

Question 13: Are there other approaches that you think should be considered to achieve the same outcome?

14. The system should work as proposed as long as there are clear guidelines in place to ensure there is no discretion from each VOA locality office. A simplified approach is most effective in delivering consistency, clear outlines of what constitutes a self-contained unit and what is shared accommodation will ensure that rooms which have been improved to have some facilities are not penalised. A review of council tax bandings to bring them to modern standards, rather than using 1991 valuations will ensure better consistency and clarity as well, particularly where a property has been extensively renovated or improvements such as energy efficiency measures have been put in place.

Question 14: When implementing the changes, do you agree that this should be done through the formal proposal route so that HMO landlords have the opportunity to make a proposal to alter their band?

15. Yes, landlords should be able to appeal a council tax band decision and put in a proposal to alter the council tax band. If landlords are not given this opportunity, it is likely that they will leave the market and the property may be taken out of the private rented sector, thus removing an affordable property from the supply.