

## NORTH LANARKSHIRE COUNCIL

## REPORT

TO: ENVIRONMENTAL SERVICES COMMITTEE.	SUBJECT: Scottish Office Consultation Paper - Mandatory Licensing of Houses in Multiple Occupation.
FROM: DIRECTOR OF HOUSING DIRECTOR OF ENVIRONMENTAL SERVICES.	
DATE: 4TH SEPTEMBER, 1998 REF: EH/13/7 GC/JR	

1. **INTRODUCTION**

The purpose of this joint report is to consider the consultation paper received from the Scottish Office on the Government's proposals for the introduction of a mandatory licensing scheme for houses in multiple occupation (H.M.O.'s) in Scotland.

2. **BACKGROUND**

2.1. Multiple occupancy is a common form of living for a number of groups such as students, other young people and mobile workers. Detailed information on H.M.O.'s is limited at the moment, but national figures indicate there has been a growth in shared flats in the private sector. There has also been a growth of shared housing, including supported housing for people with community care needs and other vulnerable groups.

2.2 In broad terms, six main types of H.M.O. can be identified:

- dwellings that have been partially sub-divided to provide some separate accommodation along with certain shared facilities, for example, a bath and WC or a kitchen/cooking area - e.g. bedsits;
- lodging or boarding accommodation with the owner in residence where the lodger or boarder is not part of the owner's household;
- houses or flats occupied by a number of unrelated adults who live together as a household;
- hotel, guest house or bed and breakfast accommodation which is used as a main residence;

- large communal accommodation such as hostels, lodging houses, and halls of residence for students or nurses;
- supported housing such as group homes which includes communal facilities.

**2.3** The provision of multiple occupancy accommodation provides a valuable service in that it often provides perfectly acceptable accommodation of a type which is well suited for a variety of groups. However, some H.M.O. accommodation does give cause for concern. This is usually in relation to the privately rented sector where there are undoubtedly problems regarding:-

- fire safety;
- the physical condition of H.M.O.'s, including disrepair, lack of adequate sanitary, cooking or other facilities, and cleanliness;
- the management of H.M.O.'s, including a lack of control of noise or other anti-social behaviour by residents; and
- a lack of co-ordination between different departments within some local authorities regarding action on H.M.O.'s creating extra costs for landlords and also confusion and less effective enforcement of the existing legislation, which can affect landlords and tenants.

**2.4** The current view of the Government is that although the existing powers are wide-ranging, the statutory procedures are often complex and, therefore, relatively time-consuming and expensive. It is also felt that statutory controls focus mainly on the control of the physical condition of H.M.O.'s rather than the way in which they are managed. The most important weakness of the existing regulatory powers is that they foster a piecemeal and fragmented approach.

**2.5** Statutory powers are already currently available under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 1991 whereby Local Authorities have discretion to introduce a licensing scheme for H.M.O.'s. However, very few authorities have taken up those powers. Furthermore, concern has been expressed regarding those Authorities which have introduced schemes in that they have each adopted different policies for administering the schemes. This has attracted adverse responses from various sources including landlords, particularly regarding issues such as wide variations in licensing fees.

**2.6** In the light of these difficulties the Government view is that the introduction of a mandatory licensing scheme has a number of important potential advantages:-

- it enables local authorities to take a co-ordinated approach to H.M.O.'s across all their various department which should in turn help to avoid duplication and inconsistency in, for example, standards required and enforcement action;
- this co-ordinated approach can permit the provision of a single point of contact within a local authority on H.M.O.'s for landlords and tenants;
- since the Civic Government (Scotland) Act 1982 requires licensing authorities to refuse applications if in their opinion the applicant is not a fit and proper person to be a holder of a licence, it provides a powerful mechanism for eliminating or avoiding cases of exploitation in the H.M.O. sector;

- it also provides local authorities with wider and more flexible powers to improve the physical condition, and management of H.M.O.'s through the specification of conditions attached to the granting of licences. However, depending on the outcome of the current consultation on fire safety legislation, it may be that licensing authorities would no longer have the power to impose fire safety measures through licensing conditions. But this is only one of the enforcement options under consideration and, even if this is the outcome, licensing would be in the context of close co-operation between local authorities and fire authorities;
- a co-ordinated and strategic approach to the regulation of H.M.O.'s through licensing can in turn contribute to a more strategic approach to the privately rented sector as a whole which might help, for example, in making decisions on the targeting of improvement and repair grants and the possible use of rent deposits and rent guarantees to give low income tenants access to this sector.

### 3.0 **DISCUSSION**

- 3.1 The Scottish Office have indicated that they would prefer responses to be given to specific questions contained in the consultation paper and that any response should therefore be structured accordingly.

The purpose of this is so that the Scottish Office can focus on issues of particular interest to them. It will also assist in the compilation of whatever responses are received from other Local Authorities.

The following proposed response, therefore, reflects the majority view following an internal consultation process and in accordance with the format suggested by the Scottish Office.

- i. Question: The merits of making it mandatory for all Local Authorities in Scotland to introduce licensing of H.M.O.'s.
- Response: The Council supports the introduction of a mandatory licensing scheme for all Local Authorities in Scotland. It is believed that this initiative should provide the opportunity for a more effective and consistent approach in relation to the regulation of these premises, particularly for those in the private sector.
- ii. Question: Whether mandatory licensing should be introduced either through an order under the Civic Government (Scotland) Act 1982 or by primary legislation.
- Response: It is felt that the potential advantages of introducing mandatory licensing relatively quickly through an order under the Civic Government (Scotland) Act 1982 far outweigh the more lengthy process of opting for the introduction of new primary legislation. Thereafter once the Licensing Scheme is operational, the opportunity can be taken to consider whether it would be appropriate to adopt further legislative changes.
- iii. Question: Whether the activity to be licensed should be defined as "the letting of premises as an H.M.O."
- Response: The discretionary powers granted to Local Authorities in 1991 allowed them to introduce licensing schemes for H.M.O.'s. The activity for which any such licence is required relates to "the use of premises as a

house in multiple occupation". It is considered that it would be beneficial and more appropriate if "use" was replaced by "letting" as this more accurately reflects the activity of an H.M.O. and is understood in terms of law. It is also likely to reduce the possibility of a conflict between licensing decisions and the statutory rights of security of tenure.

iv. Question: Whether the basic definition in the 1991 Order should be adopted; or whether this definition should be varied either to allow for a different threshold, for example a threshold which is more or less than the proposed four persons, or for the threshold to be expressed in terms of a different yardstick such as bed spaces.

Response: The 1991 Order defines an H.M.O. as "a house which is the only principal residence of more than four people, being persons who are not all members either of the same family or of one or two other families."

The difficulty with the definition so far as this Authority is concerned is that the majority of premises used for H.M.O. purposes are relatively modern 2 and 3 bedroom properties which were formerly owned by the Local Authority or the Development Corporation. Many of these premises only have 3 or 4 residents, most of whom are in receipt of housing benefit. The premises can be acquired relatively cheaply by individuals who go on to operate several of these premises as H.M.O.'s. Quite often, apart from collecting benefit payments, managerial controls are negligible and residents are left to their own devices, which can lead to considerable aggravation for others living nearby. Clearly if the threshold level for residents is too high, most of the H.M.O.'s in North Lanarkshire would remain outwith the proposed Licensing Scheme. Accordingly it is recommended that the threshold level should be set at three or more residents.

So far as the issue on how to express the threshold size is concerned, this Authority believes that it would be more beneficial to consider the number of residents rather than other options such as bedspaces. Local Authorities should be able to determine those people resident during inspections and thereafter cross check Housing Benefit payments and Council Tax records.

v. Question: Whether the proposed size threshold should be introduced in stages, and if so what these stages should be.

Response: The introduction of the proposed Licensing Scheme will undoubtedly have financial implications for landlords and, therefore, a staged size threshold scheme would assist them with any additional costs they may incur. However, so far as the residents are concerned, any delay in implementing contracts may have a detrimental affect in some instances. The Council believe that the interests of the residents should be paramount and therefore this Authority would not support a staged size threshold plan. Notwithstanding this, in order for the proposed licensing scheme to be a success, proper account has to be taken of the interests of all parties,

including responsible landlords. The introduction of a mandatory licensing scheme will undoubtedly result in additional costs for them. It is believed that this issue can be tackled by appropriate amendments in grants entitlements. This issue is addressed more fully further on within this response.

- vi. Question: Whether in principle, there should be provision for exemptions.  
Response: Yes.
- vii. Question: If exemptions are to be allowed, whether exemptions should be made in terms of categories of H.M.O.'s adequately covered by other means or alternatively through requiring risk assessments to be completed of each licensable H.M.O. and exempting low risk H.M.O.'s (which would require primary legislation).  
Response: The majority of problems regarding H.M.O.'s relate to those found in the private sector. Premises operated by the public sector and other groups such as housing associations are already properly regulated. The Council therefore believes it would be unnecessary and wasteful of resources to target these categories of premises and recommends that they should be exempted.
- So far as the remainder of the premises are concerned, the Council supports the proposed initiative to introduce a risk assessment scheme, as this would permit Local Authorities to target scarce resources more effectively. Perhaps this concept could initially be utilised in association with the introduction of a Code of Practice giving clear guidance on scoring mechanisms, frequencies of inspections and other relevant issues.
- viii. Question: Whether there are any provisions as to conditions which should or should not be included in licence conditions which consultees would wish to be specified in an order under the 1982 Act (if legally possible) or primary legislation?  
Response: It is essential that conditions relating to fire safety are included, if possible, as part of licence conditions. It would also be desirable to consider the inclusion of controls relating to the fabric and amenities of the premises.
- ix. Question: The need for any order introducing mandatory licensing to include the modifications to the 1982 Act provisions, and other procedural requirements.  
Response: The Consultation Paper refers to Section 3 of the 1982 Act which lays down the statutory timescale for reaching a final decision on an application. It is quite clear that the timescale laid down (i.e. six months for reaching a final decision) did not envisage the complexities which will be associated with the licensing of H.M.O.'s. An extension of that time limit in all cases for new applications should now be considered appropriate. In addition, the obligation to consider an application within three months should be removed at least in respect of new applications. In many cases the consultation process (which is administrative in nature) would not be complete within three months;

Paragraph 6 of the First Schedule imposes a restriction on subsequent applications where the licensing authority have refused an application by the same applicant within the preceding twelve months. In respect of H.M.O.'s, licence applications will be made in respect of existing premises which have existing tenants. Refusal of a new grant application will therefore have a drastic affect on both the landlord and also potentially the tenants. Whilst a subsequent application can be made within twelve months if there is "a material change in circumstances" given the ambiguity of this phrase, it is suggested that the general restriction on subsequent applications should be lifted in respect of H.M.O.'s;

Paragraph 14 of the First Schedule imposes a duty on the licensing authority to keep a register of all applications for licences made in terms of the Schedule. It is generally the case that the administration and processing of Civic Government licence applications are dealt with centrally, e.g. by the Licensing Authority's Department of Administration or similar department. It is not anticipated that this will be the case with the licensing of H.M.O.'s. Whilst there should still be a requirement to keep a register in respect of the licensing of H.M.O.'s, such a register should be kept by the specific department dealing with the processing of the applications. To avoid any ambiguity or confusion, there is an argument that paragraph 14 should be amended along the lines that a separate register is to be kept in respect of H.M.O.'s.

x. Question: Whether any other modifications and procedures should be introduced for H.M.O. licensing (if legally possible).

Response: One of the practical difficulties in dealing with H.M.O.'s is trying to establish the identity of the landlord. It is recommended that proposed licensing procedures should include the submission of a photograph of the landlord. This procedure would be in accordance with current routine licensing arrangements under the Civic Government (Scotland) Act 1982, whereby applicants are requested to submit photographs along with the licence application form.

Another initiative to try and establish the identity of landlords would be for Local Authorities to be linked up to the Register of Sasines. North Lanarkshire Council is currently piloting a scheme in the Housing Benefits section.

xi. Question: The likely costs of introducing mandatory licensing of H.M.O.'s in Scotland and on the figures and calculations set out in the Regulatory Assessment, particularly on the validity of the assumptions made.

Response: It is difficult to predict costs for Local Authorities until further details become available not least the level set for numbers of residents whereby premises would require to be licensed.

However, it is likely that there will be initial non-recurring costs sustained by the Local Authority for the introduction of H.M.O. licensing arrangements. These costs will be dependent on the number of local H.M.O.'s and the existing H.M.O. knowledge in the authority. There will also be a cost incurred by any improvement and repair grants sought by landlords for property upgrades.

Costs will also be borne by landlords who will have recurring costs such as the license fee, costs from local authority inspections etc. They will also have costs for maintenance work in bringing the property up to licensing standard and recurring management costs. If these costs, particularly in bringing the property up to standard are high, this may have an affect on landlords who will leave the private rented sector if costs become prohibitive. It may lead to an increased avoidance by deceitful landlords, thus relying on the investigative and enforcement abilities of the Licensing Authority. Alternatively, landlords may be eligible to claim improvement and repair grants and benefit from the simplification of H.M.O. regulation.

In summary, therefore, it is difficult to estimate costs with any degree of accuracy because of the unreliability of information on the numbers of H.M.O.'s involved or what kind of costs landlords would incur in bringing their properties up to licensing standard. The licence fee would have to be pitched at a flat rate, but fees may vary reflecting the numbers of residents and therefore the income generated by the landlord.

#### 4.0 RECOMMENDATIONS

It is recommended that Committee:

- 4.1 Approves the comments contained in Section 3 of this Report as the basis of the Council's response to the discussion papers.
- 4.2 Remits this Report to the Housing Committee for consideration.

#### 5.0 BACKGROUND INFORMATION

- 5.1 Available in the Environmental Services Department.

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