

ABERDEEN CITY COUNCIL

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COMMITTEE: Housing & Environment  
DATE: 25 August 2011  
DIRECTOR: Pete Leonard  
TITLE OF REPORT: Licensing of Houses in Multiple Occupation – New Powers  
REPORT NUMBER: H&E/11/70

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1. PURPOSE OF REPORT

This report seeks to inform Members of the provisions of Part 5 of the Housing (Scotland) Act 2006, concerning licensing of Houses in Multiple Occupation (HMO), which will come into effect on 31 August 2011. The report also advises on further changes to be introduced by the Private Rented Housing (Scotland) Act 2011, and seeks delegated authority to enable officers to deal with a number of the new powers arising from the legislative changes.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- (i) Delegate authority to the Director of Housing and Environment, the Private Sector Housing Manager and the Senior Private Sector Housing Officer (Rented Sector) to:
  - 1) grant temporary exemption orders and extensions to same
  - 2) make orders under Section 144 (suspension of rent, etc)
  - 3) make requirements under Section 145 (power to require rectification of breach of HMO Licence)
  - 4) sign, and serve (or arrange for or instruct the service of) HMO amenity notices and all notices of the above types of decision and take, or arrange for or instruct the taking of, any action necessary in connection with doing any of the foregoing,

all in terms of the provisions of Part 5 of the Housing (Scotland) Act 2006, and to instruct that this be added to the Scheme of Delegation documents.

- (ii) Instruct the Director of Housing & Environment to submit a further report to the Housing & Environment Committee prior to the coming into force of Sections 129A & 131A of the Private Rented Housing (Scotland) Act 2011, on the implications to the Council of these two Sections.
- (iii) Remit this report to the meeting of the Licensing Committee on 14 September 2011, for noting.
- (iv) Otherwise note the content of this report.

### 3. FINANCIAL IMPLICATIONS

The Council's HMO Licensing activity is funded solely from the HMO Licence application fees. The income covers all costs involved in processing applications, granting Licences and investigating unlicensed HMOs.

HMO Licence fees were last reviewed by the Housing & Environment Committee at its meeting on 24 August 2010. Following ratification by the Finance & Resources Committee at its meeting on 28 September 2010, a new, lower Licence fee structure came into effect at midnight on 28 September 2010.

### 4. OTHER IMPLICATIONS

The Private Sector Housing Unit (PSHU) has been given authorisation from the Housing & Environment Committee to employ additional staff, specifically to enforce against Landlords of unlicensed HMOs. As a result of this, the PSHU is undergoing restructure by way of the preparation of a business case with the intention of providing a better service by more flexible use of staff. All costs, however, will be covered by the HMO Licence application fees.

### 5. BACKGROUND/MAIN ISSUES

- 5.1 HMO Licensing in Scotland is currently legislated for by the Civic Government (Scotland) Act 1982 and the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000. From 31 August 2011, HMO Licensing will fall under Part 5 of the Housing (Scotland) Act 2006, and most of Part 2 of the Private Rented Housing (Scotland) Act 2011.

The new legislation is similar to the current legislation in terms of how the Council deals with HMO Licence applications however the new legislation is different in a number of areas, especially in the provision of enforcement powers. Several key areas of the new legislation are summarised as follows:

**Section 125** – Defines an HMO to be living accommodation

- occupied by 3 or more people as their only or main residence, who are members of 3 or more families, and
- which is a house or is, or forms part of, any premises or group of premises owned by the same person and its occupants share kitchen and/or bathroom facilities

Other than clarifying the position in relation to students and hospital patients, there is no definition of ‘main residence’.

**Section 129A** – The Private Rented Housing (Scotland) Act 2011 will introduce this Section in January 2012, allowing local authorities to refuse to consider an HMO Licence application if it considers that the occupation of the living accommodation as an HMO would constitute a breach of planning control. Should the applicant subsequently apply for and obtain Planning Permission, then resubmit the HMO Licence application within 28 days of obtaining such permission, no further Licence fee is payable.

**Section 130** – States that the local authority must refuse to grant an HMO Licence if it considers that any of the applicant/s, agent, Director/s, Partner/s, etc, named on the application are:

- i) Not ‘*fit and proper persons*’ to hold such a Licence. In considering whether or not a person is “fit and proper”, the local authority must apply the criteria set out in Section 85 of the Antisocial Behaviour (Scotland) Act 2004.
- ii) Disqualified from holding an HMO Licence, by a Court.

**Section 131** – States that the local authority may only grant an HMO Licence if the living accommodation is either suitable for occupation as an HMO or can be made suitable by imposing conditions in the HMO Licence. In determining the suitability of the accommodation, the local authority must consider:

- a) Its location.
- b) Its condition.
- c) Any amenities it contains.
- d) The type and number of the persons likely to live in it.
- da) Whether any rooms within it have been subdivided.
- db) Whether any rooms within it have been adapted and that has resulted in an alteration to the situation of the water and drainage pipes within it.
- e) The safety and security of the persons likely to live in it.
- f) The possibility of undue public nuisance.

**Section 131A** - The Private Rented Housing (Scotland) Act 2011 will introduce this Section in January 2012, allowing local authorities to refuse to grant HMO licences if it considers that there is (or would be if a new Licence was granted) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

**Section 136** – States that where an HMO changes ownership and the new owner is a Registered Landlord, the existing HMO Licence is to be treated as having been granted to the new owner for a period of one month from the date of sale. The new owner must then submit an HMO Licence renewal application prior to the expiry of the one-month period.

**Section 139** – Allows local authorities to revoke an HMO Licence at any time if it considers that:

- a) the Licence-holder is no longer a 'fit & proper' person to hold a Licence, or
- b) the living accommodation is no longer suitable for use as an HMO and cannot be made suitable by varying conditions, or
- c) a condition of the Licence has been breached.

Any proposed revocation must be determined at a hearing (the Licensing Committee), and a Sheriff Court appeal is available following the decision taken at the hearing.

**Section 142** – Introduces Temporary Exemption Orders. Where accommodation requires an HMO Licence, the owner can apply to the local authority for a Temporary Exemption Order. The owner must specify the measures that he/she will take to ensure that the accommodation ceases to be an HMO, and the Local Authority can only grant the Order if it is satisfied that these measures will have the intended effect. The Order will last for 3 months and, if necessary, the Local Authority can extend it for a further 3 months but only under exceptional circumstances. The local authority is not entitled to charge a fee for an application for a Temporary Exemption Order.

Delegated authority is requested for officers to deal with this new power.

**Section 144** – Introduces Rent Suspension Orders. If an HMO that requires a Licence is not licensed, or if a condition of an existing HMO Licence has been breached, the local authority can order that no rent is payable by the tenants. The local authority must revoke the Order if it subsequently grants an HMO Licence, or the Licence condition is no longer being breached, or the property is no longer being operated as an HMO.

Delegated authority is requested for officers to deal with this new power

**Section 145** – Introduces ‘Breach of Condition/s’ Notices. If a local authority considers that there has been a breach of HMO Licence condition/s, or a breach is likely, it can serve Notice on the Licence-holder requiring him/her to take the necessary action to rectify the breach or prevent it from happening.

Delegated authority is requested for officers to deal with this new power.

**Section 146** – Introduces HMO Amenity Notices. If a local authority believes that living accommodation is an unlicensed HMO, which is not reasonably fit for occupation by the number of persons occupying it, the local authority can serve an HMO Amenity Notice. The Notice must specify the work required and the deadline for completion of the work.

Delegated authority is requested for officers to deal with this new power.

**Section 154** – Makes it an offence to own an unlicensed HMO without a reasonable excuse. It is also an offence to act for an owner of an unlicensed HMO, without a reasonable excuse. Where the Landlord already holds an HMO Licence, it is an offence to breach a Licensing condition, or allow a person to occupy the accommodation while a Notice concerning a breach has effect, or allow a person not specified on the licence as the licence-holder’s agent to act on the Landlords behalf, all without a reasonable excuse. The maximum fines available to the Courts for these offences range from £1,000 to £50,000. In addition to any fine for conviction of any offence detailed in Section 154 of the Act, the Court may also revoke the HMO licence and disqualify the owner, agent, Director, etc, from holding an HMO Licence for up to 5 years.

**Section 160** – The local authority must keep a public register detailing information about HMO applications and HMO Licences in its area, and make the register available for public inspection at all reasonable times. There is a current requirement to keep a public register, but the new legislation increases the amount of detail to be held on it.

**Section 161** – The local authority is entitled to charge a fee in relation to:

- a) an application for an HMO licence,
- b) the issue of a certified copy of an HMO licence,
- c) the issue of a certified copy of an entry in the authority’s public register.

The local authority is not entitled to charge a fee in relation to any other aspect of HMO licensing such as applications for Temporary Exemption Orders and licence variations.

- 5.2 Section 163 of the 2006 Act refers to guidance issued by Scottish Ministers, to which local authorities must have regard when dealing with HMO Licensing. This Council was represented on the Scottish Houses in Multiple Occupation Network Group (SHMONG) Guidance Subgroup which drafted the guidance over winter 2010/11 prior to the draft guidance being consulted upon. Unfortunately the 'final' version of the guidance has not yet been published, and it is not expected to be available until some time in August 2011. The guidance, when available, will be used by HMO Officers and administration staff to assist determination of HMO Licence applications.
- 5.3 The enforcement provisions contained within the new legislation are much more comprehensive than what is currently available, and will provide the HMO Unit with a range of new powers for enforcement against Landlords of unlicensed HMOs. These new enforcement provisions will require powers to be delegated to officers to enable the service of the various Notices and Orders referred to above.
- 5.4 Currently, HMO Officers have delegated powers to grant HMO Licences where the applicant/s is considered to be a fit & proper person, no letters of objection have been submitted, all work & certification requirements have been carried out satisfactorily and there is no other area of concern. All HMO Licence applications where these criteria have not been met are currently referred to the Licensing Committee for its consideration and determination. This procedure will continue for applications dealt with under the new legislation.
- 5.5 For the new legislation to work effectively, it must be publicised so that existing or prospective HMO-Licence holders are aware of the new requirements, and Landlords of unlicensed HMOs are aware of the sanctions open to local authorities and the courts. At this time it is unknown as to whether or not the Scottish Government will conduct a publicity campaign to promote the new legislation, however the Council can take certain steps to increase awareness in Aberdeen city. Under the transitional arrangements, local authorities are required to write to all HMO Licence-holders and pending Licence-applicants prior to 31 August 2011, advising them of the changes that the new legislation will introduce.
- 5.6 As mentioned in paragraph 5.1, Part 2 of the Private Rented Housing (Scotland) Act 2011 comes into effect on 31 August 2011, with the exceptions of Sections 129A & 131A which are scheduled to come into effect in January 2012. Both Sections allow local authorities discretion in whether or not to exercise the powers contained therein. The reason for the delay is that Section 131A (Overprovision) was introduced as a 'last-minute' amendment to the Bill and was never consulted upon. The Scottish Government has now started a limited consultation with local authorities with the intention of developing guidance on both Sections, and a further report will be presented to the Housing & Environment Committee prior to their introduction.

## 6. IMPACT

One of the stated aims contained within the *Vibrant, Dynamic & Forward Looking* document is to:

Ensure that landlords of houses in multiple occupation adhere to the licensing laws.

This report is likely to be of particular interest to certain members of the public who have a connection with HMO Licensing. In particular, landlords of licensed HMOs may be interested in the new legislation when they come to renew their HMO Licences, and landlords of unlicensed HMOs may be interested in the enforcement powers which will be available to the Council, and the fines which a Court can impose, together with disqualification from holding an HMO Licence.

## 7. BACKGROUND PAPERS

Civic Government (Scotland) Act 1982

Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000

Housing (Scotland) Act 2006

Private Rented Housing (Scotland) Act 2011

## 8. REPORT AUTHOR DETAILS

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