
To: Regulatory Functions Board
On: 6 June 2019

Report by: Director of Finance and Resources

Heading: Houses in multiple occupation (HMO): consultation on adding new categories to the definition of an HMO

1. Summary

- 1.1 The purpose of this report is to advise the Board of the above consultation and to seek the Board's approval of the proposed response at Appendix 1.

2. Recommendations

- 2.1 It is recommended that the Board approve the proposed response to the consultation attached at Appendix 1 to this report, and
- 2.2 Otherwise note the content of this report.

3. Background

- 3.1 The Scottish Government is carrying out a consultation on the draft "The Houses in Multiple Occupation (Scotland) Order 2019" ("the draft Order"). The draft Order seeks to add new categories to the definition of an HMO. The aim is to ensure that properties which accommodate contract workers on a long-term basis, are regulated by the HMO licensing regime. A copy of the draft Order is found in Appendix 2 and the full consultation document can be viewed at:-

<https://www.gov.scot/publications/houses-multiple-occupation-hmo-consultation-adding-new-categories-definition-hmo/>

- 3.2 Currently, for a property to be classed as an HMO it must be occupied by three or more persons, from three or more families, as their only or main residence. As such, accommodation for contract workers may not

fall within this definition as it may not be considered the only or main residence for the workers.

- 3.3 The draft Order sets out types of living accommodation that are proposed to be included within the definition of an HMO. These are:
- a) Bed & breakfast accommodation;
 - b) Hotel accommodation;
 - c) Backpackers' hostel;
 - d) Living accommodation in the same premises where the worker is employed;
 - e) A flat or house;
 - f) A serviced apartment;
 - g) Self-catering accommodation also used for tourism lets;
 - h) Lodgings consisting of rented room(s) in another person's house;
 - i) A non-traditional or temporary structure (which is not a caravan, tent, van, shed or similar structure).
- 3.4 For the accommodations listed (a) – (c) (B&Bs, hotels, and hostels) to be classed as an HMO, the property owner must have made a physical and/or operational change to the premises or the nature of the business to accommodate workers in a manner which differs from the use of the premises by tourists.
- 3.5 Accommodations listed (d) to (i) (other types of accommodation) will be classed as an HMO if it is engaged for seasonal agricultural work, other work or to accommodate workers before/after going off shore.
- 3.6 The Scottish Government proposes these criteria to allow local authorities to consider the manner in which a property is being used without taking into account whether or not an occupant has a main residence elsewhere. The aim is to address potential health and safety concerns in relation to the accommodation that contract and transient workers live in when they are working away from home.
- 3.7 The Board may consider it appropriate to extend the definition of an HMO if an accommodation is regularly used to accommodate contract and transient workers. Not only could this benefit workers; it will also allow regulation of these accommodations for the benefit of neighbouring properties. The Council has previously received complaints in relation to contract workers being housed in accommodation in residential areas. Complaints have included allegations of anti-social behaviour. Accordingly, the proposals from the Scottish Government may assist in better regulation of these properties to the benefit of the residents of Renfrewshire. Accordingly, the proposed response at Appendix 1 is largely supportive of the draft Order.

- 3.8 As stated, for hotels, B&Bs and hostels to be classed as an HMO, the property owner must have made a physical and/or operational change to the premises. This criteria will not capture all accommodations of this nature which are effectively used as an HMO property. For example, a hostel may accommodate a worker for a part of each week in a six-month period. Under the proposals, this hostel would not require an HMO licence if it also allows other non-worker occupants access to the same facilities (such as a kitchen) as the worker is allowed. Accordingly, the Board may consider it appropriate that local authorities also be able to assess, separately, the frequency such properties are used by contract and transient workers and/or the frequency of individual workers staying over a period of time. The proposed response has been drafted on this basis.
- 3.9 The Board's approval of the proposed consultation response is sought to enable the response to be submitted prior to the deadline of 8 July 2019.

Implications of the Report

1. **Financial – none**
2. **HR & Organisational Development - none**
3. **Community Planning –** *Building strong, safe and resilient communities* – The improvement of the licensing regime will help contribute to safer communities.
4. **Legal - none**
5. **Property/Assets – none**
6. **Information Technology – none.**
7. **Equality & Human Rights -**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report as the proposals in the consultation or the response do not negatively impact any group. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety – None.**
9. **Procurement – None**
10. **Risk - None**
11. **Privacy Impact – none**
12. **Cosla Policy Position – not applicable**

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Appendix 1

Proposed response to Houses in multiple occupation (HMO): consultation on adding new categories to the definition of an HMO

Question 1: Should holiday lets, hostels or B&Bs be licensed as HMOs, when contract and transient workers are residing in them and special arrangements have been made for the workers?

Response: Yes

Renfrewshire Council agrees that the categories of HMO accommodations should be extended to include holiday lets, hostels or B&B accommodations which are effectively being used as HMO accommodation by housing transient or contract workers. Renfrewshire Council agrees that this will benefit workers staying in such accommodation. Moreover, it will also allow regulation of these accommodations for the benefit of neighbouring properties. For example, if there were concerns in relation to anti-social behaviour then the licence holder could be referred to the relevant local authority for failing to adequately manage a licensed HMO.

Question 2: Do you agree with the policy approach to change the focus from the only or main residence test to instead focus on the type of accommodation and its manner of occupation for contract and transient workers?

Response: Yes

It is agreed that the current test of “only or main residence” allows many properties effectively used as HMO accommodation to go unlicensed. Accordingly, Renfrewshire Council agrees with the policy approach to allow local authorities to consider the manner in which a property is being used without taking account whether or not the occupant has a main residence elsewhere. This will allow proper regulation of properties used effectively as HMO accommodation for transient or contract workers.

Question 3: Do you agree with the types of living accommodation set out in article 2(1) of the draft Order?

Response: Yes

While the types of living accommodation are wide ranging, it is agreed that these types of accommodations can be used effectively as HMO accommodation to house transient or contract workers. At the same time, the assessment of the manner of occupation must be appropriate to ensure that holiday accommodation which infrequently houses contract or transient workers are not required to obtain an HMO licence. Renfrewshire Council’s view on the manner of occupations are detailed below.

Question 4: Do you agree with the policy approach outlined in article 2(2) of the draft Order?

Response: Yes

As previously stated, Renfrewshire Council agrees with the policy approach to allow local authorities to consider the manner in which a property is being used without taking account whether or not the occupant has a main residence elsewhere.

Question 5: Do you agree with the manners of occupation set out in article 2(2) of the draft Order?

Response: Yes

In relation to B&Bs, hotel accommodation and backpackers hostels, a physical/operational change by the property owner is wide ranging and should result in the licensing of a large portion of properties which are effectively being used as HMO accommodations for transient or contract workers. However, as detailed in the Response 6, consideration should be given to other criteria to assess manner of occupations to ensure the licensing of other properties effectively being used as HMO accommodations for transient or contract workers.

In relation to the type of accommodation mentioned in article 2(1)(d) to (i), Renfrewshire Council agrees that the defined manner of occupation will allow local authorities to consider, effectively, the manner in which a property is being used without taking into account whether or not the occupant has a main residence elsewhere.

Question 6: Are there other manners of occupation that should be described in the Order?

Response: Yes

Renfrewshire Council does not agree that the requirement for there to be a physical or operational change to the premises for accommodations listed (a) – (c) to be classed as an HMO should be the only criteria to determine whether an accommodation listed (a) – (c) should constitute a HMO (when it is not a worker's only main residence).

It is accepted that there must be a criteria to separate hotels, bed & breakfasts and hostels that are effectively used in the same manner as an HMO for workers. For example, it would not be appropriate to require an accommodation which infrequently houses workers to be licensed as an HMO. However, Renfrewshire Council considers that local authorities should be able to assess the manner in which a property is being used is by assessing the frequency such properties are used by contract and transient workers and/or the frequency of individual workers staying over a period of time. This should be separate to the criteria of whether there has been an operational or physical change. For example, a hostel may accommodate a worker for a part of each week in a six-month period. This hostel would not require an HMO licence if it also allows other non-worker occupants access to the same

facilities (such as a kitchen) as the worker is allowed. It is the view of Renfrewshire Council that a worker in this situation should be afforded the same benefits of the HMO licensing system as a worker who has a special arrangement in relation to accessing facilities.

Question 7: Do you agree with the time pattern approach outlined in article 2(3) of the draft Order, whereby there does not have to permanently be 3 or more persons living in the accommodation?

Response: Yes

It is agreed that this time pattern approach is necessary for ensuring protection of workers whose living pattern may change week to week.

Question 8: Are there any proposals in this consultation which impact on, or have implications for islands communities?

Response: N/A

Question 9: Are there any proposals in this consultation which impact on, or have implications for equality groups?

Response: No

It is not considered that there will be an adverse impact on equality groups. If transient or contract workers have large proportions of a particular group then it is considered that the proposals will have a beneficial impact on these groups.

Question 10: Do any of the proposals in this consultation have financial, regulatory or resource implications for you and/or your business (if applicable)?

Response: Yes

Increasing the categories of HMO accommodations will increase the workload for the different departments which process applications for HMO, which carry out inspections to assess the properties and which enforce the licensing standards.

The proposals should result in an increase of licensing fees received by the Local Authority which may help fund any increased work load.

Question 11: Over the coming months, would you be willing to take part in a short interview to expand further on your comments to Question 10?

Response: No

Appendix 2

Draft Order laid before the Scottish Parliament under section 191(4)(a) of the Housing (Scotland) Act 2006, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

HOUSING

The Houses in Multiple Occupation (Scotland) Order 2019

Laid before the Scottish Parliament 2019

Coming into force - - 2019

The Scottish Ministers make the following Order in exercise of the powers conferred by section 125(1)(b) of the Housing (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 125(1A) of that Act, they have consulted local authorities and such tenants (or tenants' representatives) and such landlords (or landlords' representatives) as they think fit.

In accordance with section 191(4)(a) of the Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This order may be cited as the Houses in Multiple Occupation (Scotland) Order 2019 and comes into force on 24 May 2019.

(2) In this Order—

“the 2006 Act” means the Housing (Scotland) Act 2006,

“backpackers’ hostel” means low-cost, dormitory-style accommodation, used by tourists or travellers,

“serviced apartment” means a house, flat or an apartment forming part of a hotel in relation to which concierge or cleaning services are supplied;

“tourist” means a visitor to Scotland, a person spending their holiday in Scotland or a person travelling for pleasure within Scotland, and “tourism” shall be construed accordingly, and

“worker” means a person who is employed or self-employed either under a contract or on a seasonal basis, or other ad-hoc basis, whose employment, due to its location or any other reason, requires them to live in accommodation which is not their only or main residence.

Meaning of “house in multiple occupation”

2.—(1) The following types of living accommodation for workers are specified for the purposes of section 125(1)(b) of the 2006 Act:—

(1) 2006 asp 1.

- (a) bed and breakfast accommodation occupied in the manner described in paragraph (2)(a),
- (b) hotel accommodation occupied in the manner described in paragraph (2)(b),
- (c) a backpackers' hostel occupied in the manner described in paragraph (2)(c),
- (d) living accommodation in the same premises where the worker is employed;
- (e) a flat or house,
- (f) a serviced apartment;
- (g) self-catering accommodation also used for tourism lets;
- (h) lodgings consisting of a rented room or rooms in another person's house;
- (i) a non-traditional or temporary structure designed or adapted for living accommodation, which is not—
 - (i) a "caravan" as defined by section 29 of the Caravan Sites and Control of Development Act 1960, or
 - (ii) a tent, van, shed or similar structure, used for human habitation.

(2) The following manners of occupation by workers are specified for the purposes of section 125(1)(b) of the 2006 Act:—

- (a) living in bed and breakfast accommodation where the property owner has made a physical and/or operational change to the premises or the nature of the business to accommodate workers in a manner which differs from the use of the premises by tourists,
- (b) living in hotel accommodation where the property owner has made a physical and/or operational change to the premises or the nature of the business to accommodate workers in a manner which differs from the use of the premises by tourists,
- (c) living in a backpackers' hostel where the property owner has made a physical and/or operational change to the premises or the nature of the business to accommodate workers in a manner which differs from the use of the premises by tourists,
- (d) living in any type of accommodation mentioned in article 2(1)(d) to (i) while engaged in seasonal agricultural or other work,
- (e) living in any type of accommodation mentioned in article 2(1)(d) to (i) either—
 - (i) before being transported offshore for employment, or
 - (ii) after being transported back from offshore,
- (f) living in any type of accommodation mentioned in article 2(1) with other persons who occupy the living accommodation as an only or main residence where the number of workers and other persons together amounts to the 3 or more persons mentioned in section 125(1) of the 2006 Act.

(3) The manners of occupation mentioned in paragraph (2) are deemed to take place where—

- (a) occupation takes place for only part of a week, or
- (b) the 3 or more persons mentioned in section 125(1) of the 2006 Act occupy the same living accommodation for a minimum period of one day in a 12-month period.

Name
 Authorised to sign by the Scottish Ministers

St Andrew's House,
 Edinburgh
 Date