

# **WEST DUNBARTONSHIRE COUNCIL**

## **Report by the Head of Legal, Democratic & Regulatory Services**

**Licensing Committee: 12 June 2012**

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**Subject: Licensing of Houses in Multiple Occupation (HMO) – Changes to legislation and guidance.**

### **1 Purpose**

- 1.1 To inform the Committee of the new legislative provisions and statutory guidance relating to HMO licensing and seek approval of the new licence conditions and implementation dates where applicable.

### **2 Background**

- 2.1 A house is an HMO if it is occupied by 3 or more persons who are not all members of the same family or of one or other of two families.
- 2.2 On the 31 August 2011 HMO licences changed from being issued under the Civic Government (Scotland) Act 1982 to the Housing (Scotland) Act 2006.
- 2.3 West Dunbartonshire Council currently has a set of licence conditions for HMOs, it was approved by the Environmental Protection and Leisure Service Committee on 11 October 2000 following the introduction of licensing controls under the Civic Government (Scotland) Act 1982.
- 2.4 The change of the licensing regime to the 2006 Act brings with it, new statutory requirements which are in force for all new licences and for existing licences issued after 31 August 2011. These are contained in the Scottish Government's "Statutory Guidance for Scottish Local Authorities" issued on 19 August 2011.
- 2.5 The new regime is broadly similar to the previous regime with the main changes being:
- More enforcement options for local authorities (LAs)
  - LAs must now take account of the new statutory guidance
  - Increased penalty for operating unlicensed HMOs.
- 2.6 This legislative change is not intended to be an undue burden on either LAs or landlords.
- 2.7 There are 16 HMOs currently licensed within the West Dunbartonshire area.

### **3 Main issues**

#### Administrative changes to HMO licensing regime

- 3.1 On 31 August 2011 Civic Government (Scotland) Act 1982 HMO licences changed to The Housing (Scotland) Act 2006 licences with the same expiry date and conditions as the original.
- 3.2 There was no fee associated with this change.
- 3.3 All 16 HMO licence holders in the area were pre notified of the proposed changes, the date of the change, and where additional advice could be sourced.
- 3.4 The current HMO licence conditions have to be amended to reflect the new statutory guidance for all licences issued after 31 August 2011.
- 3.5 Renewal licences are no longer available; each licence application is treated as a new application.
- 3.6 Variations to licences are no longer available. If a material change of licence is made then an application for a new licence would be necessary which would operate for the remainder of the period of the previously held 3 year licence.
- 3.7 Where such a shorter term licence is issued due to material change in an existing licence, a fee of £128.96 is proposed.
- 3.8 HMO applications can be refused on the grounds of overprovision in an area, though this is not foreseen as a problem relevant to West Dunbartonshire.

#### Changes to HMO physical conditions

- 3.9 The Statutory Guidance has replaced the previously issued 'Benchmark Standards' Guidance issued in 2000.
- 3.10 The Benchmark Standards guidance had been adopted in its entirety as a West Dunbartonshire Council HMO licence condition. It is proposed that the new Statutory Guidance is adopted in its place.

3.11 The main changes to licence conditions contained in the new Statutory HMO Guidance are:

- All rooms with a gas appliance must now have a battery powered carbon monoxide detector.
- All bedrooms and living rooms must now have 6 available power sockets (increased from 4),
- Each kitchen shall have 1 sink and 1 cooker per 5 persons (decreased from 6 persons),
- Each HMO shall have 1 bath or shower per 5 persons (decreased from 6 persons)
- Electrical Safety – Portable Appliance Testing is now annual and Periodic Inspection Report for the Electrical Installation is now 5 yearly (previously both were 3 yearly).

3.12 The standard pest control condition has also been amended to provide more clarity to licence holders on their responsibilities.

New Enforcement Powers to address issues of disrepair in HMO's.

3.13 Under part 5 of the Housing Scotland Act 2006 there are the following new powers relating to disrepair issues.

- Suspension of rent

A suspension of rent order can be applied by the LA on the owner of an HMO where there is no licence in place or where the HMO fails to meet a licence condition. Such an order provides that no rent or other sums for occupation are to be payable under any tenancy or occupancy arrangement by virtue of which any person occupies the living accommodation concerned.

- Power to require rectification of breach of licence.

Where a licence condition has been breached, notice can be served by the LA requiring the matter to be rectified. It is an offence not to comply with this notice.

- HMO Amenity Notices

These can be served on the owners of HMO's whether they are licensed or not. Where the notice is not complied with the LA can carry out the necessary work and recover their expenses.

Relevant amenities include failure to meet building regulations; natural and artificial lighting; ventilation; provision of gas, electricity, water, sanitation, heating etc; personal washing facilities; facilities for storage, preparation and provision of food.

### Implementation timeline for changes.

- 3.14. The Statutory Guidance recommends a flexible approach is adopted to the implementation of the new conditions although those conditions which relate directly to safety are in immediate effect as of 31 August 2011. For non safety related provisions, the small number of possible implementation times for introducing new conditions are:
- With immediate effect
  - At a pre determined date
  - At the next issue of licence
  - Only for brand new licences.

### Recommended implementation timescale

- 3.15. Matters directly affecting safety came into force on 31 August 2011; however LAs should take a flexible approach towards enforcement and allow a 'reasonable length of time' for HMOs to meet the new standard. Within West Dunbartonshire, based on assessment of local provision and HMO stock, the recommended timescale for implementation in all HMOs is from 1 April 2012. This would include provision of carbon monoxide detectors and additional electrical sockets where a room falls below the prescribed number of sockets for that room.
- 3.16 All other matters should be implemented at the next licence issue i.e. expiry of the existing 3 year licence or where a new licence is issued due to a material change in use.

## **4 People Implications**

- 4.1 There are no personnel issues.

## **5 Financial Implications**

- 5.1 The current licence fees for a 3 year HMO licence is £886.08. No change to this fee is suggested.
- 5.2 The suggested fee where a material change in an existing licence requires issue of a new licence running for the remainder of the term of the existing licence is £128.96.

## **6 Risk Analysis**

- 6.1 All local authorities have a statutory duty under Part 5 of the Housing (Scotland) Act 2006 to licence HMOs. Failure to approve and implement the revised licence conditions would prevent the Council from fulfilling its statutory duty. This could also potentially expose residents of HMO accommodation to adverse risks to their health and safety.

## **7 Equalities Impact Assessment (EIA)**

- 7.1** An Equalities Impact Screening was undertaken, which noted no relevance to any of the protected groups or characteristics defined by the Equality Act and public sector equality duty. An Equality Impact Assessment is therefore not required or justified.

## **8 Strategic Assessment**

- 8.1** The approval of the new licence conditions will lead to an improvement in housing standards of safety and fitness within the HMO sector which contributes to the Council's Social and Economic Regeneration priority in relation to high quality housing and health and wellbeing.

## **9 Conclusions and Recommendations**

- 9.1** The introduction of the HMO provisions of the Housing (Scotland) Act 2006 requires the Committee to revise its existing HMO licence conditions.
- 9.2** It is recommended that the Committee approve the new licence conditions as attached at appendix 1
- 9.3** It is recommended that the Committee approve an implementation date of 1 April 2012 for all local HMOs to meet the statutory safety related provisions as explained in Section 3.15 of this report.
- 9.4** It is recommended that the Committee approve the implementation date of non safety related provisions for existing HMOs as being the date of application for a new licence or expiry of the existing licence, whichever is sooner.
- 9.5** It is recommended that the Committee approve no change to the existing licence fee but a fee of £128.96 for the processing of a new licence where a material change in an existing licence requires a new licence.

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Date: 30 April 2012

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**Appendices:** Appendix 1 : WDC Proposed HMO Licence Conditions.

**Background Papers:** Housing (Scotland) Act 2006 – Part 5  
Scottish Governments Statutory Guidance for Scottish  
Local Authorities – Part 4, Standards and Licensing  
Conditions.

**Wards Affected:** All

## **Appendix 1**

### **SCHEDULE 1**

#### **HOUSES IN MULTIPLE OCCUPATION** **SCHEDULE OF CONDITIONS**

This licence is granted by West Dunbartonshire Council in its capacity as Licensing Authority under Part 5 of the Housing (Scotland) Act 2006.

It does not bind, preclude or interfere with the requirements, directions, orders or demands by West Dunbartonshire Council in any other capacity.

## **SCHEDULE 2**

### **HOUSES IN MULTIPLE OCCUPATION SCHEDULE OF CONDITIONS**

1. The Licence Holder must ensure that the standards and licensing conditions contained within the Scottish Government's "Statutory Guidance for Scottish Local Authorities" issued in August 2011 are complied with at all times.
2. The number of Tenants residing in the premises at any one time shall not exceed ..... persons.
3. The Licence Holder shall allow access to the premises to any person authorised by West Dunbartonshire Council, hereinafter referred to as the Council, the Chief Constable of Strathclyde Police or the Fire master of Strathclyde Fire Brigade.
4. The Licence Holder shall not make or cause or permit to be made any material change to the premises (being the structure and contents of same), licensed activity or any occupancy agreement without the prior written consent of the Council.
5. The Licence Holder shall notify the Council immediately of any material change affecting the licensed premises or licensed activity or the circumstances of the Licence Holder (or any agent appointed by him/her to manage part or all of the licensed activity), including details of any criminal convictions incurred by such persons since the granting or renewal of the licence.
6. The Licence Holder shall notify the Council as soon as is reasonably practicable, of the details of any incident affecting, or within, the licence premises which resulted in:-
  - (i) structural damage to, or structural collapse within, the premises
  - (ii) a gas leak, fire or explosion necessitating the call out of the emergency services.
7. The Licence Holder shall not permit the use or storage on the premises of liquid petroleum gas (LPG) room heaters. Liquid petroleum gas (LPG) or any highly inflammable liquid, gas or substance shall not be stored on the premises without the prior authority of the Council.
8. The Licence Holder shall maintain and keep in proper working order, to the satisfaction of the Council, and in compliance with any statutory requirements, any installation provided for space heating or water heating or ventilation or sanitation of the supply of water, gas, oil or electricity and ensure that the premises are fit for human habitation at all times.



9. The Licence Holder shall ensure that any appliance, provided by him/her in terms of this licence or any occupancy agreement, functions properly and safely.

10. Inspection and Certification of Installations

(i) The Licence Holder shall ensure that any solid fuel appliances used in space heating have been approved by the Council. There shall be an annual inspection and cleaning of chimneys and flues by a competent person and the Licence Holder shall require to obtain from that person an annual certificate stating that the system is functioning properly and safely. The Licence Holder shall comply with the directions of the person carrying out the annual inspection.

(ii) The Licence Holder shall ensure that any oil fired appliances used in space heating have been approved by the Council. There shall be an annual inspection by a competent person and the Licence Holder shall require from that person an annual certificate stating that the system is functioning properly and safely. The Licence Holder shall comply with the directions of the person carrying out the annual inspection.

(iii) The Licence Holder shall ensure that any gas fired appliances used in space heating have been approved by the Council. There shall be an annual inspection and cleaning of chimneys and flues by a qualified person (that is a person registered with Gas Safe for inspection of installations, appliances or premises of that nature) and the Licence Holder shall require from that person an annual certificate stating that the system is functioning properly and safely. The Licence Holder shall comply with the directions of the person carrying out the annual inspection. The Gas Safety (Installation and Use) Regulations 1998 and any amendment thereto must be applied in any inspection.

(iv) The Licence Holder shall ensure that the electrical installation and any appliances provided by him/her are maintained in a safe working condition and routinely checked.

(a) An inspection of the electrical installations must be carried out every five years by a qualified person (a member of the Electrical Contractors' Association, ECA or ECAS or a certificate holder of the National Inspection Council for Electrical Installation Contracting). The Licence Holder must obtain from the qualified person a satisfactory periodic inspection report for electrical installation.

(b) The Licence Holder shall ensure that a routine check/inspection is carried out by a competent person at least annually on all electrical appliances provided by the Licence Holder and shall obtain a certificate from that person which:-

- (i) details the appliances checked and/or repaired or replaced; and
- (ii) confirms that following checks all remaining appliances are functioning properly and safely.

11. Any repairs or works found necessary during the course of any inspection of an electrical, solid fuel, oil fired, gas fired installation/appliance or fire alarm/automatic detection systems shall be carried out immediately where such repair is required to ensure the safety or health of any person.
12. The Licence Holder shall keep in repair the structure and exterior of the house and keep it fit for human habitation including:-
  - (i) drains, gutters and external pipes (this does not include the clearance of blockages caused by the Tenant's negligence);
  - (ii) the roof;
  - (iii) outside walls, outside doors, windowsills, window catches, sash cords and window frames including external painting and decoration;
  - (iv) internal walls, floors and ceilings, doors, door frames and internal staircases and landings (including painting and decoration);
  - (v) chimneys, chimney stacks and flues;
  - (vi) pathways, steps or other means of access;
  - (vii) plasterwork;
  - (viii) integral garages and stores;
  - (ix) boundary walls and fences;
  - (x) making good damage caused by acts of vandalism/criminal activity by person or persons other than the Tenant, any member of his/her household or Tenant's visitors provided they have been notified to the Police within 24 hours of occurring, or as soon as is reasonably practicable, by the Tenant or by someone acting on the Tenant's behalf.
13. The Licence Holder shall ensure that adequate facilities, to the satisfaction of the Council, are provided for the disposal of all rubbish and shall ensure that all common areas of the premises and all common external areas within the curtilage of the premises are kept in a clean, tidy and well maintained condition to the satisfaction of the Council. The Licence Holder shall be responsible for advising residents of the refuse collection day.

14. The Licence-holder shall ensure that the premises are kept in such a manner and state of repair as to prevent infestation by pests.

The Licence-holder shall be responsible for ensuring that before renting a property that the unit is pest-free.

The Licence-Holder shall engage the services of a competent pest control contractor within 5 days of notification of a possible infestation to identify the pest species and shall take reasonable measures to ensure that any infestation identified is treated as determined by the appointed contractor.

*(A competent pest control contractor would be considered to be one who has current public liability insurance and is a member of the British Pest Control Association (BPCA) or the National Pest Technicians Association (NPTA).)*

15. The Licence Holder requires to deal without delay with any other matter which in the opinion of an authorised person renders the premises to be unsuitable for use as a House in Multiple Occupation or which presents an unacceptable risk to any resident.
16. The Licence Holder shall during the period of the Licence hold third party liability insurance giving a minimum level of indemnity of £2million in respect of the premises and the licensed activity. The Licence Holder shall also maintain comprehensive buildings insurance.
17. The Licence Holder shall keep adequate and up-to-date records of all individuals resident within a House in Multiple Occupation. These records may be kept in a paper or electronic form.
18. The Licence Holder or his or her agent shall require to record, date and sign all payments of rent in a rent book which shall be provided to and retained by the resident or shall issue a signed and dated written receipt to any resident who makes a rental payment.
19. The Licence Holder shall issue signed and dated written receipts for any rental deposit received and shall refund to the resident within 14 days of any agreed occupancy termination date any rental deposit or part thereof due to the resident. The Licence Holder shall provide within 14 days written confirmation of any agreement made by him/her regarding an occupancy termination date on being requested to do so in writing by any resident. The Licence Holder shall ensure that a telephone in working order is available at all times and suitably located on the premises in an accessible position for use by residents to call the emergency services at any time.

20. The Licence Holder shall at all times display within the premises in a prominent and accessible position a copy of:-
- (i) the licence;
  - (ii) a copy of the licence conditions;
  - (iii) a copy of any current safety certificate, insurance certificate or policy required by any condition of this licence or by statute, in terms of the Scottish Executive's "Guidance on the Management of Licensing of Houses in Multiple Occupation" as adopted by the Council.
21. All residents must be provided with written occupancy agreements which meet the approval of the Council. The Licence Holder must not alter the contents of same without the prior written approval of the Council.
22. The Licence Holder shall require to produce on demand to any authorised person any policy, certificate, document, record, certificate of inspection or safety, the licence or plan required by or issued in terms of or pursuant to any condition of this licence.

**Additional Conditions**