

**REPORT TO:** HOUSING COMMITTEE – 26 AUGUST 2002

**REPORT ON:** MANDATORY LICENSING OF HOUSES IN MULTIPLE  
OCCUPATION  
RESPONSE TO CONSULTATION PAPER ON POSSIBLE  
CHANGES TO EXEMPTIONS

**REPORT BY:** DIRECTOR OF HOUSING

**REPORT NO:** 601-2002

**1. PURPOSE OF REPORT**

- 1.1 To advise the Committee on the above Consultation Paper and to submit a draft response from Dundee City Council to the Paper.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that the Housing Committee approves the draft response (Appendix 1) and agrees to its submission as Dundee City Council's response to the Consultation Paper.

**3. FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications from this report

**4. LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 Retention of the existing occupancy thresholds and existing exemptions will help ensure access to safe, good quality accommodation in a housing sector where many of the most vulnerable members of society live.

**5. EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 It is recognised that many of the most vulnerable members of society live in accommodation currently classified as Houses in Multiple Occupation (HMOs). Retention of the existing occupancy thresholds and existing exemptions, tailored to suit their use, will ensure that the majority of residents living in HMOs are protected from poorly managed and maintained, sub-standard accommodation.

## 6. BACKGROUND

- 6.1 This Consultation Paper seeks views on possible changes to the types of houses in multiple occupation (HMOs) that might be exempt from the mandatory licensing scheme that was introduced in October 2000. Any changes to current exemptions would require suitable amendments to the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 which sets out the statutory basis for the current scheme.
- 6.2 The consultation is being held now in order to inform the review of the scheme as a whole which has been initiated and to allow timely action on exemptions should Ministers consider that action is necessary. There is currently no commitment to extend the range of exemptions and the decision on whether or not to extend exemptions will be informed by the responses to this consultation and research on the initial operation of the scheme that has been commissioned from Heriot Watt University/Edinburgh College of Art.
- 6.3 The current mandatory licensing scheme was introduced in October 2000 using the powers available to require certain activities to be licensed under the Civic Government (Scotland) Act 1982. The scheme is set out in the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 and requires all owners of HMOs over specified size thresholds to obtain a licence from the local authority if they “give permission for that house to be occupied” ie if they let the house or rooms to tenants including lets on a rent free basis. The specified size threshold was set at 6 or more persons at the introduction of the scheme in October 2000 and reduces by one person each year until it becomes 3 or more persons in October 2003. To qualify as an HMO, the house must be occupied by persons who are not all members of the same family or of one or other of 2 families. The scheme is based on the licensing procedures set out in the 1982 Act, but certain aspects of these have been modified by the 2000 Order. Failure to obtain a licence is a criminal offence. More detailed information on the mandatory licensing scheme is set out in “Guidance on the Mandatory Licensing of Houses in Multiple Occupation” published by The Stationery Office on behalf of the Scottish Executive.
- 6.4 The detailed design of the mandatory licensing scheme took account of responses to a Consultation Paper that was issued by the Scottish Office in May 1998, and the results of research on the former discretionary licensing schemes introduced by an Order in 1991. The 1998 Consultation Paper, in particular, sought views on whether the scheme should be targeted specifically at the private rented sector or, alternatively, focus on HMOs irrespective of tenure. It set out a list of types of property that might be classified as HMOs and sought views on which, if any, types of HMOs should be exempt from the proposed licensing scheme. The Consultation Paper discussed the principle of risk assessment and sought views on whether the scheme should require risk assessments to be undertaken for all potentially licensable HMOs with an exemption given to those who are assessed as low risk. It also sought views on whether there should be a minimum size threshold (in terms of number of occupants) for HMO licensing with properties falling below this threshold being exempt.

6.5 In the light of the responses to the 1998 Consultation Paper, it was decided that::

- the scheme should include all HMOs (irrespective of tenure) unless the properties in question were already covered by a comprehensive alternative system of regulation which achieved the same objectives;
- there should be no minimum size threshold other than that implied by the basic definition of an HMO itself which requires at least 3 persons;
- the requirement to obtain a licence itself should not be based on initial risk assessment since this would require primary legislation and, in addition, there was no established methodology for undertaking risk assessments in HMOs.<sup>1</sup>

6.6 The 2000 Order, as amended in 2002 in response to the Regulation of Care (Scotland) Act 2001, therefore exempts HMOs which are regulated by the Scottish Commission for the Regulation of Care. This includes residential care homes and nursing homes, boarding accommodation linked to schools and secure accommodation for children. In addition the 2000 Order specifically exempts HMOs occupied by religious communities (on the grounds that people joining such communities have consciously chosen to accept the conditions imposed). Properties occupied by persons from different families who are joint owners are also exempt since the aim was to focus on let accommodation.

6.7 When the 2000 Order was introduced Scottish Ministers gave a commitment to the Social Justice Committee of the Scottish Parliament to review the mandatory HMO licensing scheme in the light of its first year of operation. In order to gather evidence for that review the Scottish Executive has commissioned research which is currently in progress and is expected to report in the summer. The Executive has also received comment from a number of parties, which will be taken into account. In addition, the Social Justice Committee has taken evidence on the operation of the scheme from a variety of organisations. Its interim report (Report No 8 dated 4 December 2001) included a specific recommendation that the classes of property currently exempted should be extended to include "public sector organisations and others such as the Abbeyfield Society, Scottish Women's Aid, university accommodation and similar for which a clear definition will be required". As part of their response to the report of the Social Justice Committee, Scottish Ministers have undertaken to consult on possible changes to the current exemptions. This is being done before the commissioned research has been completed in order to provide another strand of evidence for the review and to minimise the delay in exempting additional categories of HMO should that be the Minister's decision.

## 7. CONSULTATION

7.1 The Chief Executive, Director of Support Services, Director of Finance, Director of Environmental and Consumer Protection, Director of Planning and Transportation, The Firemaster and Chief Constable have been consulted in the preparation of this report.

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<sup>1</sup> The Scottish Executive commissioned research from the Building Research Establishment on the feasibility of establishing a risk assessment approach to licensing of HMOs in Scotland. This work concluded that this was not feasible and instead the Building Research Establishment used information available on a UK basis to draw up "A Priority Planning System to Determine the Frequency of Inspection and Period of Licence for Scottish HMOs" which has been circulated in draft form to Scottish local authorities.

**8. BACKGROUND PAPERS**

- 8.1 Civic Government (Scotland) Act 1982.
- 8.2 Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.
- 8.3 Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002.
- 8.4 Scottish Executive Guidance on the Mandatory Licensing of Houses in Multiple Occupation.
- 8.5 Copy of Consultation Paper in Members' Lounge.

**ELAINE ZWIRLEIN**  
**DIRECTOR OF HOUSING**

**SIGNATURE** \_\_\_\_\_

**DATE** \_\_\_\_\_

**DUNDEE CITY COUNCIL RESPONSE  
TO  
MANDATORY LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMOs)  
SCOTTISH EXECUTIVE CONSULTATION ON POSSIBLE CHANGES TO EXEMPTIONS**

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1. **General Comments**

Dundee City Council welcomes the opportunity to comment on the consultation paper but are concerned at the timing of the consultation.

The current timetable requires HMOs with an occupancy level of 4 persons to be licensed by 1 October 2002 and we have already begun to receive, process and licence HMOs with this occupancy level. The Council has also already licensed properties which fall within categories now being considered for exemption the majority of which failed to meet the minimum standards required.

The Council is further concerned that at this time there is little or no evidence available to support the views expressed by some that many operators are leaving the market.

In respect of the quality of the HMOs currently requiring mandatory licensing, the Council's experience is that the vast majority of properties which have been the subject of licence applications to date have failed to meet a combination of both management and physical standards. In particular nearly all have failed to meet the required standards for fire detection and means of escape. The relatively high costs incurred by operators reflects the failure of their properties to comply.

The licence fee charged by this authority, when spread over the three years of the licence, is not considered to be particularly onerous. The additional cost of compliance with the standards may be considered to be high, however this ultimately reflects the condition of the property and its failure to comply with the minimum standards laid down in the Guidance issued by the Scottish Executive. If these standards are considered reasonable, there is little room for complaint in the cost to the owner in ensuring compliance.

2. The Council would respond to the specific questions in the Consultation Paper as follows.

2.1 **Q1 Criteria for Considering Possible Exemptions**

In general the Council agrees with criteria a) and d) but not b) and c).

**Criteria (a)** *The physical and management standards are largely regulated or controlled by other means.*

It is considered that where the physical and management standards are controlled by other means, it is essential that there is a consistency of standard with and between the regulating authorities. Significant criticism of the Licensing scheme relates to the lack of uniformity of standards between Local Authorities. Exemption by separate regulation to different standards can only lead to further comparisons and complaints. If a standard is deemed to be the minimum acceptable, then it should be acceptable and enforceable for all tenants of all forms of HMO. The Council also qualifies its agreement to this principle in that we would seek clarification of the definition of “other means”.

**Criteria (d)** *The standards which the licensing regime seeks to achieve are inappropriate to the particular users of that type of HMO.*

As far as standards being “inappropriate to a particular user” are concerned, the clear and concise definition of these users and their status is critical to the application of this criteria. There is already debate about the definition of Religious Communities who are currently exempt because of their spiritual and voluntary nature as well as the status of foreign and migrant or seasonal workers.

**Criteria (b)** *The level of risk or poor physical and management standards is sufficiently low that intervention is not justified* **and (c)** *Some standards are already regulated or controlled by other means and there is a low risk associated with remaining standards, so that the combined effect is that HMO licensing is not necessary.*

The footnote to page 2 of the Consultation Document identifies that research carried out by The Building Research Establishment concluded that a Risk Assessment approach to Licensing of HMOs in Scotland was not feasible, yet criteria b) and c) relates exemptions to risk categories. Any risk assessment would likely involve a substantial workload and raises the following questions:

- a. What will be included in the risk assessment?
- b. What will be defined as “low” and “high” risk?
- c. How and when will the necessary information for risk assessment be gathered?
- d. Who will pay for the risk assessment?

An HMO previously identified as low risk could easily become high risk. Equally the application of such an assessment could lead to similar types and sizes of HMO being both licensed and exempt. Notwithstanding the above it must be recognised that without regular maintenance and monitoring, conditions will deteriorate.

The current approach provides a system of assessment and monitoring to ensure continued compliance with recognised physical and management standards. The Council consider that any risk assessment based approach would be a weaker approach as would any approach which did not equally take account of both physical and management standards. Furthermore the inclusion of criteria b) and c) is seen as a dilution of the regulations.

## **Q2 HMOs Owned by Bodies Subject to Regulation by Communities Scotland**

### **Communities Scotland**

As indicated above it is essential to ensure consistency of approach. If one of the criteria for deciding exemption is that both the physical and management standards are regulated, then to exempt properties regulated by Communities Scotland without a physical inspection does not meet this criteria. The Council would therefore be opposed to exemption of such premises from HMO Licensing.

### **Newly Built HMOs (Regulated by Communities Scotland)**

Whilst accepting that newly built and converted property should comply with the physical standards, there is a need to ensure that deterioration is prevented. Once built, it would appear that the property will not be subject to future monitoring of physical standards by Communities Scotland. If a decision to exempt newly built or converted premises, regulated by Communities Scotland, is taken, it is suggested that, on application, an initial, automatic, three year licence is granted subject to standard HMO Licensing renewal procedures thereafter.

This of course is providing that the standards of management imposed by Communities Scotland are harmonised with the requirements of HMO Legislation and are monitored for compliance. A letter of confirmation/Certificate of Compliance from Communities Scotland may then be acceptable.

### **Newly Built HMOs (Not Regulated by Communities Scotland)**

Whilst accepting that new build and converted properties will comply with current Building Regulations and therefore the physical standards of HMO Licensing, there is still a need to ensure that the relevant management standards, which are an equally important aspect of HMO Licensing, are also complied with. There is a further need to monitor and ensure that deterioration is prevented. It is therefore considered that newly built or converted HMOs should be subject to licensing.

In accepting that the required physical standards will be met as a result of obtaining a Certificate of Completion but that there would still be a need to ensure the fitness and appropriateness of the owner/operator, the adequacy of the management standards and insurances, it may be that a reduced fee scale could be applied to reflect the need not to carry out full physical inspections.

### **Inspection and Monitoring**

The issue of a licence would also afford access, if necessary, to the property by Authorised Officers to monitor compliance. Authorised Officers have no right of access to unlicensed premises without first obtaining a Warrant.

## **Building Standards (Scotland) Regulations/Benchmarking Standards**

Critical to this approach is the need to ensure that both the Building Standards (Scotland) Regulations and the Benchmarking Standards are harmonised. This would be essential if the operator of a new build was not to find themselves having to subsequently change physical standards to comply with HMO Licensing. There may be merit in considering a Purpose Group for HMOs within the Building Regulations although this in turn would probably require a more definitive approach to the HMO Benchmarking Standards.

### **Q3 HMOs Owned by Other Publicly Funded Bodies**

The Council do not consider that publicly funded bodies should be exempt simply because they are publicly funded.

The implication that publicly funded bodies operate low risk accommodation is not the experience of this Council. Inspections of principally large occupancy properties, operated by publicly funded bodies has revealed poor levels of maintenance, most likely as a result of lack of investment, and significant shortcomings in such areas as electrical maintenance, fire safety, falls from height and the health effects of either actual or potential dampness issues, all of which are considered as high risk factors for residents. As an indication of the level of non-compliance, we are aware that some older properties have been withdrawn from use as a result of cost of compliance and future maintenance costs being considered. It is the Council's belief that these properties would likely have continued to suffer from lack of investment and continued use, with the resultant potential risk to residents, but for the introduction of the licensing scheme.

If the standards identified in the Guidance are considered to be an acceptable minimum standard then the evidence indicated above can only either indicate that these properties fail to meet that standard or that the Guidance is too onerous. This Council supports the former view rather than the latter.

### **Q4 & 5 HMOs Owned or Managed by Charities or Other Voluntary Bodies**

Again the evidence gained by this Council is contrary to the view that properties operated by such bodies are low risk. Whilst often providing essential services in well managed accommodation, evidence of significant failures in electrical and fire safety together with poor levels of general maintenance are perhaps indicative of the funding difficulties of such bodies.

In one charitable refuge leased from the Council, the Council have paid the licence fee and carried out external repairs in accordance with the lease, however the operators have had funding difficulties in dealing with electrical safety and fire safety issues as well as in the provision of additional sanitary facilities.

In the case of a large, 19th century, charitable refuge for the homeless, again suffering from significant failures in fire safety, electrical safety, general maintenance and space standards, a proposal to carry out a major rebuild has been brought forward as a result of the licensing scheme.

In both these examples the operators are providing an essential service which would benefit from a safe and secure environment. Consideration should perhaps be given to providing Mandatory Grant assistance to charitable and voluntary bodies to



comply with the Mandatory Licensing Scheme. The users of these services should be entitled to the same levels of safety and security as other HMO users.

#### **Q6 HMOs Which Are Owned by Co-ownership Bodies**

Co-ownership bodies should not all be exempt from licensing. Concerns include accountability, management procedures, constitutions, funding difficulties and potential for use as a loophole to avoid licensing. Unlike occupants with a heritable right to the property, the members may be remote from the management of the property and there is no guarantee that the members will have adequate control over use, management or maintenance of the property. However, if the occupants are the same people who are behind the co-ownership body, there would be sense in exempting such premises from the need to apply for a licence. If the co-ownership body is run/operated by individuals other than the occupants, then there should be no exemption for the reasons outlined above.

#### **Q7 HMOs Which Are Already Subject to Some Form of Regulation**

The Council do not consider that HMOs subject to partial regulation should be exempt from HMO Licensing.

The introduction of the Mandatory Licensing scheme has had the benefit of bringing together under one regulatory body (Local Authority) the multifarious regulations which may affect an HMO depending upon its category. This single regulatory body therefore has the ability to ensure that the relevant category of HMO is compliant with all pertinent regulations.

Some of the premises that have been covered by “partial legislation” have had the poorest standards of accommodation. Whilst the “partial legislation” has dealt with a specific issue, be that food hygiene, health and safety or fire safety, it is only by their collective use within the Mandatory Licensing Scheme that they can be used to ensure the provision of safe and secure accommodation compliant with both physical and tenancy management standards.

It should be noted that the Codes of Practice, which risk rate food premises for frequency of inspection by the Food Authority (Local Authority Environmental Health), are being reviewed with the possibility that low risk premises may be removed from inspection programmes. If this was to happen, HMOs, whilst still being obliged to comply with food legislation, might not be subject to inspection. They may be classed as low risk if they offer very limited catering. Obviously, anyone concerned about the level of hygiene in such places is still able to complain to their local Environmental Health Officers, but this means that these premises will be dealt with reactively rather than proactively.

The application of Mandatory Licensing ensures a proactive approach to many other separate areas of “partial legislation”, including fire safety and gas safety which were previously difficult to police.

### **Q8 HMOs which are particular types of houses**

The Council do not consider that there is any significant difference between houses and flats which would merit exemption of houses from the scheme. The occupants of a house used as an HMO and the neighbours of such houses should be afforded the same level of protection as those occupying neighbouring flats.

Houses potentially offer much higher occupancy levels than flats and experience in this Authority indicates that they suffer from similar failures both in terms of physical and tenancy management standards. Where objections have been received from neighbours they have been commonly about maintenance, noise and loss of amenity and all but one of these objections have related to houses rather than flats. It is arguable that lack of maintenance in the case of a house has as great an impact, if not a greater visual impact, on adjoining owners, as the non-cooperation of a flat owner in respect of common repairs.

Tayside Fire Brigade advise that the majority of multiple fire deaths in Tayside have been in houses rather than flats.

### **Q9 HMOs Which Are Below a Specified Threshold**

#### **Existing Threshold**

The Council would agree with the current guidance, that HMOs below a threshold of 3 should be exempt from the licensing scheme. The justification for selecting an occupancy level is difficult, however problems encountered in the larger HMOs have equally been encountered in the smaller ones (fire detection, means of escape and electrical maintenance). Whilst the consequences of this may be multiple fatalities in a larger HMO, three fatalities in a smaller one are three too many. It should be borne in mind that the fatal HMO fire in Glasgow was in a flat occupied by three residents.

#### **Consequences of an Increased Threshold**

The primary reason for the introduction of mandatory licensing of HMOs was to increase the protection given to tenants in such establishments, by ensuring that the accommodation provided is safe and of good quality. It recognised that many of the most vulnerable members of society live in accommodation within this sector.

Perceptions are that many of the smaller HMOs, which are predominantly likely to be flats, are operated by investment orientated landlords, interested in the income being generated rather than the capital investment in the property. There is concern that the potentially vulnerable occupants of these HMOs will find themselves living in poorly maintained sub-standard accommodation. Those in receipt of Housing Benefit are more likely to occupy such accommodation. Without adequate regulation such landlords may be tempted to maximise the income from small flats by ensuring occupancy to the exemption level.

There is evidence already that some landlords have delayed complying with the legislation by reducing the occupancy level of their properties to one below the current threshold. There is therefore likely to be a further temptation to reduce the occupancy threshold to one below the lower limit to permanently avoid the licensing scheme. If for example the threshold was increased to four, there is serious concern that this would result in the loss of many "fours" as a result of the landlord reducing

occupancy to three. This may also result in increased rents, to compensate for the loss of tenants, as the loss of one rental income at the lower occupancy levels will be a significant percentage of the total income.

Within this Authority, with a high university population, it is considered that the majority of HMOs will be smaller flats and the consequences of such an approach by landlords would be to remove the majority of residents from the protection of the legislation.

Some landlords within this Authority have already begun the process of improving their flats with an occupancy of four, based on their experience with higher occupancy levels. Some fall-out might be expected from those who have tried to comply and who subsequently find that they could have alternatively reduced the occupancy level by one and avoided the scheme and the expense incurred.

This Authority's application of an aggregate bed space fee, offering cost savings to institutional providers such as the universities, may also be seen to have been detrimental to the universities if the occupancy threshold is reduced.

### **Effect on the Market**

There is little evidence, within this Authority, that landlords are leaving the market as a result of the introduction of this legislation nor that rents are being increased. The reality is that since licensing has not yet impacted on the lower occupancy levels, there is little evidence either way. What evidence exists appears to be anecdotal and orientated around the Edinburgh market. The majority of landlords in Dundee renting HMOs are consistently and specifically targeting the non-family market, presumably because it is more lucrative than the family market. The initial capital expenditure involved in complying with the standards can therefore be recovered over a longer period.

### **Housing (Scotland) Act 1987**

Sections 161 and 162 of the Housing (Scotland) Act 1987 give a Local authority powers to serve Notices requiring work to be executed in respect of the condition of a house and the provision of means of escape to a house in multiple occupation. Effectively there would then be two separate approaches to HMOs. One approach for those HMOs exempt from mandatory licensing and another for those subject to mandatory licensing.

### **Alternative to an Increased Threshold**

A major concern with the licensing of HMOs at the lower occupancy levels, from the operators of these properties, appears to be with the level of provision of means of escape and fire detection. A strong view has been expressed by some officers of the Council that a more appropriate approach to HMOs with an occupancy level of three is to recognise the "domestic" nature of these premises and to ensure that physical and management standards applied to such premises reflects this fact. This would be helped by greater clarity of the Benchmarking Standards from The Scottish Executive and supports the view that the Guidance should have been less open to interpretation and more specific as well as being in harmony with the Building Regulations. Those supporting such an approach consider that this would ensure adequate regulation without the need to comply with perceived onerous physical standards. In applying such an approach a combination of occupancy and size of the premises should be taken into account.

The remaining requirements of HMO Legislation are not considered to be too onerous and much should already be in place under separate existing legislation.

### **Q10 HMOs With Resident Landlords**

Whilst agreeing that there are potentially benefits from a resident landlord, the exemption of properties with a resident landlord does not guarantee that the landlord will ensure that the property is managed or maintained to an appropriate standard. Neither will it ensure that such a landlord will comply with the minimum space standards or facilities provision applicable to other licensable HMOs.

There may also be difficulties in identifying and tracking resident landlords.

The current policy allows a resident landlord to let to one tenant. There is a view that to let to more than one makes it a commercial undertaking which should be subject to licensing.

The application of “domestic” standards as outlined in the response to question 9 above, may however ensure that compliance is both affordable and safe at the lower occupancy levels.

### **Q11 HMOs where licensing is inappropriate**

The Council has no additions to suggest to this exemption category. However, as indicated in the response to Question 1 above, the clear and concise definition of any category of HMO where licensing is considered inappropriate is essential.

As well as the ongoing debate regarding Religious Communities, there is also debate as to the status of overseas workers, migrant and seasonal workers and people attending training courses, in respect of the interpretation of “only or principal residence”. Interpretation varies between Authorities and effectively creates category exemptions in some Authorities but not others.

This Authority's approach is that if an individual has a permanent address elsewhere, no matter the length of stay in local accommodation, they would not be included in the initial calculation of occupancy level for a potential HMO. Initially this was not applied to foreign residents as it was considered that their address in the UK was their only or principal residence. Subsequent legal advice indicated that the legislation did not indicate “only or principal residence in the UK” and as a result a foreign resident who has a permanent address overseas is also now discounted for HMO occupancy level purposes. As well as foreign workers this approach has been applied to building tradesmen, hotel workers and other migrant workers.

Lack of clarity in the current Guidance and a lack of Case Law in this area is unhelpful to the application of the legislation. The Council Strongly feel that the current position leaves certain categories of residents exposed to poor and potentially dangerous accommodation. These categories would include migrant and seasonal workers as well as those attending training courses including overseas workers who are considered to be particularly vulnerable.

The Council believe that the criteria of "Only or Principal Residence" is the key to this problem. In the case of overseas workers this issue could be addressed by changing the criteria to "Only or Principal Residence in the UK" however it would not address this Council's concerns for other categories of migrant and seasonal workers. It may be that consideration could be given to deleting reference to "only or principal residence" concentrating on the relationship of the occupants to each other and the use of shared facilities. Such an approach coupled with greater guidance on the physical and management standards applicable to specific categories of accommodation (i.e. Seasonal, Construction, Backpackers, Training etc.) whilst more complex may prove beneficial.

Clarification of approach to this area of the legislation would be welcomed.