

CONSULTATION DRAFT

Technical Note 3

Houses in Multiple Occupation

Planning and Regulatory Services Guidance



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1.0 INTRODUCTION

1.1 Background

1.2 In many parts of Scotland, there has been a steady demand for Houses in Multiple Occupation (HMOs). Typically, HMOs exist within the private rented sector and can play a vital role in accommodating various household types including young working people, students, lower income households, economic migrants and those who are at risk of homelessness.

1.3 HMOs are an important part of the housing offer in Argyll and Bute, in particular in relation to student accommodation and workers in the tourism industry and connected to the naval bases. These are the areas that have seen growth and are liable to continue to grow into the future with the development of Oban as a University Town and the Maritime Change project in the Helensburgh and Lomond area.

1.4 Argyll and Bute Council is committed to ensuring that a balance is maintained across the housing system and within different tenures. Whilst recognising that HMOs provide a valuable source of accommodation and a crucial housing option for many people, it is also noted that higher concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community.

1.5 The range of potential problems associated with high concentrations of HMOs can include:

- changes in demand for services, altering the availability and nature of services provided;
- increased competition for private houses, consequential rises in house prices, and reduced availability for non-HMO residents;
- areas of high HMO concentrations can become unpopular with non-HMO residents, altering the community;
- potential physical deterioration caused by lack of investment by absentee landlords;
- increased population density, resulting in increased demand on services, infrastructure and on-street parking provision;
- a high number of transient residents potentially leading to reduced community cohesion.

1.6 Status of the Technical Note

1.7 This Technical Note is proposed to be adopted by the Council as non-statutory planning guidance for use as a material consideration in the determination of planning applications for HMO. This provides detailed guidance for a specific type of accommodation where the main principles for residential development and associated parking are already established in the Adopted Local Development Plan and in its associated Supplementary Guidance and require to be taken into consideration in the assessment of planning applications. The Technical Note has been prepared to tackle a growing issue within Argyll and Bute with an increase in the number of HMO in particular areas. It takes into account the policy advice given in Scottish Planning Policy, Circular 2/2012 and the provisions of the Housing (Scotland) Act 2006 with regard to the licensing of houses in Multiple Occupation.

- 1.8 The Technical Note will apply to all planning applications for either the development of a purpose built HMO or any change of use to an HMO from a house, flat or other building in the Argyll and Bute Council area (excluding the Loch Lomond and the Trossachs National Park).
- 1.9 This Technical Note relates to the determination of planning applications, however, a House in Multiple Occupation will also require an HMO Licence. The licence is dealt with by Regulatory Services under section 129A of the Housing (Scotland) Act 2006. The Council will use this power to refuse to consider licence applications for HMOs which require, and have not obtained, planning permission for use as an HMO. The Technical Note provides guidance for the determination of HMO Licence applications.
- 1.10 HMO will be monitored and the information used to review this Technical Note in 12 months to assess if a revision to this guidance is required.
- 1.11 **Who deals with Houses in Multiple Occupation?**
- 1.12 The Planning and HMO licensing systems are two separate regimes with distinct functions and objectives. Scottish Government Planning Circular 2/2012 Houses in Multiple Occupation: Guidance on Planning Control and Licensing encourages local authorities to take a co-ordinated approach to the planning and licensing of HMOs, with joint working between planning and licensing teams and other relevant departments. Therefore, this Technical Note has been jointly developed by Planning, Housing and Environmental Health. Its implementation will be administered through joint working between the three sections within Planning, Housing and Regulatory Services to ensure consistency and that relevant information regarding HMOs is shared.
- 1.13 The discretionary power conferred by Section 129A of the Housing (Scotland) Act 2006 allows Local Authorities to refuse to consider HMO licence applications where a property requires, and does not have, planning permission for use as a HMO. This promotes a co-ordinated approach to HMOs by the Local Authority.
- 1.14 **When is Planning Permission needed?**
- 1.15 Planning permission for an HMO is generally required where a material change of use has occurred. This is a matter of fact and degree and varies between different circumstances, for example whether the property is a house or a flat. The formation of an HMO in the following circumstances will be deemed to represent a material change of use for which planning permission will be required.

Formation of an HMO in Houses - The Town and Country Planning (Use Classes) (Scotland) Order 1997 defines a house (Class 9) as being the sole or main residence of a single person, or any number of persons living together as a family, or not more than 5 residents living together as a single household. By encompassing 'households' of less than 6 people, Class 9 includes people living together under arrangements for providing care and support within the

community and other groups of people including students, not necessarily related to each other, but who choose to live on a communal basis as a single household.

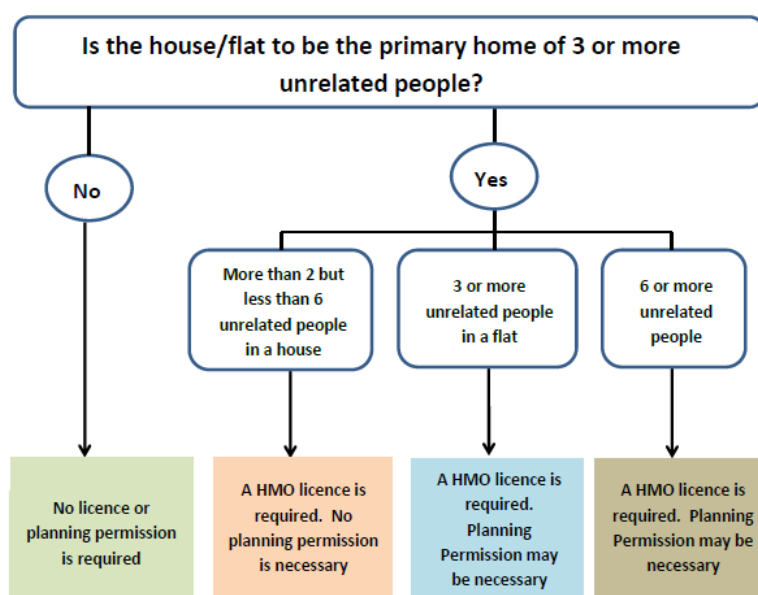
Where there is an increase in the number of residents, resulting in six or more residents living within a house falling within the definition of an HMO under the Housing (Scotland) Act 2006 a material change of use of the property will be deemed to have taken place and the property will no longer be considered to fall under Class 9 of the Use Classes Order. Planning permission for the formation of an HMO will therefore be required.

Formation of HMOs in Flats - The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 defines a flat as a separate and self-contained set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally. Flats are distinct from houses and are classed as Sui Generis within the Use Classes Order.

In determining the use of a flat as an HMO, it is a matter of fact and degree whether the nature of the use is materially different from that of a family flat. It is considered that 3 or more unrelated people living together in a flat is materially different from family use on account of the more independent lifestyles of occupants which, can have an adverse impact on residential amenity. Planning permission is therefore required where new HMO are to be created in flats that will be occupied by 3 or more unrelated people from 3 or more families as this is considered to constitute a change of use.

Formation of HMOs in other buildings - The conversion of hotels and hostels class (Class 7), including hotels and boarding or guest houses; residential institutions (Class 8); or buildings used for any other use to an HMO will require planning permission.

- 1.16 The flow chart below sets out the differences between planning permission and HMO licence requirements. In either a flat or a house if the owner of an HMO lives there and lets out rooms, or shares with friends, the owner is not counted.



2.0 PLANNING GUIDANCE

2.1 Policy approach to HMO

2.2 When assessing planning applications for HMO it should be recognised that HMO are an important part of the housing offer in Argyll and Bute but that they can have significant impacts on amenity. To achieve an appropriate balance the principles below should guide the approach taken. Applications must be in accordance with all relevant policies of the Local Development Plan. Listed Building Consent may also be required if any alterations are required to be made to a Listed Building, including in order to meet licensing requirements.

HMO 1 – Guiding Principles

These 4 principles guide the approach to HMO in Argyll and Bute.

- To support the provision of HMO in appropriate locations
- To ensure that Houses in Multiple Occupation are of a good quality;
- To manage the potential amenity impacts, including cumulative, of Houses in Multiple Occupation; and
- To promote a co-ordinated partnership approach to dealing with the wider issues related to Houses in Multiple Occupation.

2.3 The key consideration for planners is the impact that the proposed change of use to an HMO would have on the residential amenity of the surrounding area. Higher levels of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Such changes can be positive and negative, and may be perceived differently from community to community. A House in Multiple Occupation can intensify the pressure on amenity, particularly communal areas and parking and it can increase the prospect of disturbance and nuisance. Relevant considerations include: parking and road safety; the management and storage of waste; and the maintenance of external spaces including garden ground. A decision on the granting of planning permission must only take account of the relevant planning issues and should make no assumptions about the potential behaviour of tenants. These other issues, however, may be assessed through the licensing system.

2.4 When assessing the potential impacts of HMOs the following should be considered.

- Is adequate car parking provided for residents and visitors?

The parking needs for HMO are liable to be higher than for a house or flat and should be assessed based on the number of bed places within the HMO (1 per bed place). It is preferable to accommodate parking off street. However, on street parking may be considered where it does not exacerbate existing road safety or parking issues. It is important to consider the cumulative impact of HMO on parking issues.

- Is sufficient cycle parking provided for residents and visitors?

The need for cycle parking should be accommodated. This will be a greater issue in flats where space for cycle storage may be more limited. Considering the needs of cycle parking can contribute to green travel planning solutions in the area.

- Is the proposal within walking/cycling distance of social and community facilities?

The nature/type of HMO is relevant. The needs of the HMO occupants to access different facilities should be assessed. Walking and cycling can contribute to green travel planning solutions.

- Is sufficient off-street waste and recycling storage space available?

An HMO is liable to generate a greater level of waste and recycling than a house or flat.

- Is adequate communal outdoor amenity space provided within the site or available near by?

An HMO can increase the population density and pressure on amenity facilities. It is important to also consider the cumulative impact on communal outdoor amenity space where there are a number of HMO.

- Will the proposal have an adverse cumulative effect on any of the above considerations?

Additional HMO within an area may lead to cumulative impacts and therefore existing HMO require to be taken into account in the assessment of cumulative impact. The impacts may

HMO2 – Assessment of HMO applications

The formation of Houses in Multiple Occupation (HMOs), including new-build and changes of use, will be controlled in order to protect residential amenity.

Proposals will only be supported where:

- Negative impact both individually and cumulatively to traffic or pedestrian safety on account of increased parking pressures is avoided; and
- Public transport connections, social and community facilities are within close proximity; and
- Negative impact on residential and/or business amenity both individually and cumulatively is avoided. In this regard, each proposal
 - must not lead to excessive noise and disturbance
 - will provide adequate in-curtilage waste and recycling storage space and garden ground.
 - will provide adequate Car*/cycle parking (*one space per bed place) and must not exacerbate or create parking problems in the local area.; and
- Appropriate maintenance arrangements are in place for any external spaces / garden ground associated with the HMO; and
- It avoids materially altering the character of the area

vary according to the type of HMO proposed, for example purpose built student accommodation will have a different effect to HMO within the existing housing stock.

- 2.5 On 31st January 2012 new powers were introduced that allow the local authority as the local licensing authority for Houses in Multiple Occupation (HMOs) to refuse to grant an HMO licence where it considers there is overprovision in an area. These new powers were included in the Private Rented Housing (Scotland) Act 2011. Therefore where concentrations of HMOs are considered to be having a negative effect on the amenity of a community, or where it is considered likely that such a situation may arise, planning authorities may adopt policies to manage HMO concentrations. This Technical Note sets out Argyll and Bute Council's policy for managing the concentration of HMOs.
- 2.6 Argyll and Bute has a wide variety of settlements, with small towns in remote rural settings, large rural towns and large towns on the edge of the Glasgow conurbation. Therefore the approach to management of concentrations of HMOs requires to take this variety of circumstance into account in combination with the differing nature of HMOs and range of potential management solutions. This complex situation is best dealt with through a responsive rather than mechanistic approach. This should support the growth of mixed and balanced communities whilst preventing the creation or intensification of high concentrations of HMO in circumstances where the local authority is not satisfied that the impacts can be appropriately managed. HMO2 takes cumulative impact into account but the specific issue of overprovision is addressed through HMO3. It will be important to ascertain the level of licensed HMO in an area from existing monitoring when assessing an application.
- 2.7 The following factors will be taken into consideration to assess whether there is overprovision of HMO in an area, i.e. the formation of a cluster of HMO that the local authority consider has a detrimental impact on the amenity of the area which is not offset by mitigating factors.

Identifying a cluster

- Number and capacity of existing HMO in the immediate area
- Scale, location and nature of the settlement

Identifying the impacts of that cluster

- Number, type and capacity of existing HMO in the immediate area
- Ability of the locality to absorb HMO –open/communal spaces, parking, density of development
- Availability of public transport, community facilities and services
- The need for housing accommodation in the locality - will increasing HMO provision impact on general housing supply.
- The circumstances of the cluster in relation to the locality – is it a self-contained cluster or does it isolate or adversely fragment existing residential properties? How does the cluster impact on the character of the area
- Cumulative impacts on the character of the area

Mitigating factors to be taken into consideration

- The extent to which HMO accommodation is required to meet identified housing need
- The extent to which the HMO accommodation supports identified Community Planning Partnership projects, in particular the Oban as a University Town Project set up to promote the Oban area as home to over 800 students and a number of Higher Education campuses, including the Scottish Association for Marine Science (SAMS), Ballet West, and Argyll College UHI, which along with SAMS is a partner of the University of the Highlands and Islands; and the Maritime Change Project in the Helensburgh and Lomond area, which will see £1.3bn invested over the next 10 years at Faslane and Coulport and will result in another 1,700 military personnel being based in the area.
- The mechanisms to mitigate adverse impacts of the HMO e.g. provision of parking, travel plans, appropriate maintenance arrangements are in place for any external spaces / garden ground associated with the HMO.

HMO 3 - Overprovision

First time applications for HMO, regardless of the need for planning permission, that are judged by the Local Authority to result in overprovision i.e. the formation of a cluster of HMO that the local authority consider has a detrimental impact on the amenity of the area and which is not offset by mitigating factors, will be refused.

This does not apply to purpose built student accommodation.

3.0 LICENSING

3.1 What Conditions Apply to Licensing of HMOS?

3.2 The licensing of HMOs operates under the Housing (Scotland) Act 2006, Part 5, which came into effect in August 2011. The purpose of HMO licensing is to ensure that accommodation is safe, well managed and of good quality.

3.3 A licence may be granted for any period up to 3 years. It is a criminal offence to operate an HMO without a licence. The licensing of HMOs throughout Argyll and Bute is the responsibility of Environmental Health which sits within Planning, Housing and Regulatory Services, but other services contribute to the assessment (see Table 1).

3.4 Before granting a licence the local authority must be satisfied that:

- the owner and any manager of the property is fit and proper to hold a licence;
- the property meets required physical standards and provision of amenities;
- the property meets the required fire safety standards;
- there is effective day to day management arrangements in place; and
- that it is suitable for use as an HMO or could be made so by including conditions in the licence.

The local authority can also include any other conditions to the granting of a licence as deemed appropriate. Therefore in order to ensure the varying aspects are dealt with in a co-ordinated manner Argyll and Bute Council will:

- refuse to consider licence applications for HMOs which require, and have not obtained, planning permission for use as an HMO or where there is a failure to comply with a condition or limitation of an existing planning permission;
- consider whether there is an overprovision of HMOs in any particular locality before granting a licence (see HMO 3).

3.5 A “house” in the context of an HMO licence includes any part of a building occupied as a separate dwelling and therefore covers flats, bedsits and houses. Licensing provides that a house/flat is classed as a HMO if it is the only or principal residence of 3 or more unrelated persons or 3 or more families.

3.6 Licences for Houses in Multiple Occupation are always subject to conditions. Guidance on these conditions and general information on how to apply for a licence is available at: <https://www.argyll-bute.gov.uk/licences/house-multiple-occupancy-licence>

3.7 The Scottish Government has issued statutory guidance to local authorities on licensing of houses in multiple occupation under the Housing (Scotland) Act 2006, part 5 and is available here: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/hmo>.

Table 1 : Who is responsible for each duty considered for an HMO licence	
Who	What they consider
Argyll and Bute Council – Environmental Health	<ul style="list-style-type: none"> • Heating, space & lighting • Electrical safety • Cooking & sanitary facilities • Water supply and drainage • General standards or repair maintenance • Determine the licence application and regulation
Argyll and Bute Council – Building Standards	<ul style="list-style-type: none"> • Approved use of the property • Structural fire precautions and means of escape and related matters • Whether the property has/requires to have permission to be a HMO under the Building (Scotland) Act and associated legislation
Scottish Fire and Rescue	<ul style="list-style-type: none"> • Fire risk assessments • Means of detection and warning • Means of escape and fighting fire • Formulation of an emergency plan • Enforcement of fire safety precautions
Argyll and Bute Council - Environmental Health in partnership with Police Scotland	<ul style="list-style-type: none"> • “Fit and proper person” test for landlord (and agents acting on behalf of landlords). All relevant information on the applicant and third party agent is taken into account. In particular, they must consider evidence of: <ul style="list-style-type: none"> ➤ Offences involving fraud, dishonesty or drugs ➤ Unlawful discrimination ➤ Breaches of law relating to housing and letting ➤ Failure to act in relation to anti-social behaviour

3.8 What are the Responsibilities of Owners and Landlords?

3.9 There are a range of legal duties and responsibilities which must be adhered to by HMO owners, landlords and tenants. If those responsibilities are not carried out, action can be taken through enforcement powers.

3.10 Argyll and Bute Council has policies and approaches in place to manage complaints related to HMOs. This includes issues related to anti-social behaviour which fall under the Argyll and Bute Community Safety Strategy 2016-2020 available:

<https://www.argyll-bute.gov.uk/community-life-and-leisure/antisocial-behaviour>

There is also Scottish Government information on HMOs and private renting is available through their website: <https://rentingscotland.org/>

3.11 The Private Rented Sector (Scotland) Act 2011

3.12 Under this Act, local authorities have a number of powers in relation to HMOs. This includes taking action against poor landlords and supporting good management in private rented housing and taking action against poor landlords. Information on HMOs is available on the Council's website: <https://www.argyll-bute.gov.uk/licences/house-multiple-occupancy-licence>

3.13 Houses in Multiple Occupation in Argyll and Bute

3.14 There is an expectation by the Scottish Government that local authorities ensure that there is an adequate supply of HMOs to meet demand and therefore, there is a small, yet, significant proportion of HMO accommodation throughout Argyll and Bute.

3.15 There are currently 46 HMOs (November, 2018) in Argyll and Bute. 16 of these are licensed for less than 6 occupants. The majority of HMOs are used as staff or student accommodation.

3.16 Argyll and Bute's Housing Need and Demand Assessment reported an increase in HMOs in the period from 2008 to 2015 which was mainly due to an increase in the numbers of licences issued for flats or houses let as a whole.

3.17 Whilst the overall numbers of HMOs are currently not particularly high within Argyll and Bute there are concentrations developing that may present issues, for example within Taynuilt linked to Ballet West. There is also the potential for more significant growth in the near future in relation to the development of Oban as a University Town and the Maritime Change Project in the Helensburgh and Lomond area.

3.18 Specialist HMO accommodation

3.19 Some HMOs are for specialist use such as temporary homeless accommodation. In 2018 of the 46 HMOs in Argyll and Bute, 1 HMO is used by the Council's Housing Services to provide temporary homeless accommodation, 1 is used as a Women's Aid Hostel and 12 premises are operated by a Housing Association or similar to provide accommodation which may also be supported accommodation.

3.20 Appeals

3.21 An HMO applicant has the right to appeal to the Sheriff if an HMO licence application is refused or if granted, the applicant can appeal against any conditions attached to the granting of a licence. The HMO applicant must first exhaust any appeals process with Argyll and Bute Council before lodging an appeal with the Sheriff within 28 days of the local authority's final determination being made. The decision of the Sheriff can be further appealed to the Sheriff principal within 28 days of the Sheriff's decision

4.0 MONITORING

- 4.1 Expressing the HMO as a number proportionate to the total number of households that exist in an area enables the concentration of HMO to be monitored. Census Output Areas can be used to measure concentrations as they are easily identifiable and generally small enough to reflect localised issues. These are areas defined by the General Register Office for Scotland for the purposes of producing and publishing census results. They are the smallest area for which census data is freely available, and are built up from postcodes to include around 50 households. These areas will be used as an indicator only to inform assessment given the complexities of the issues.
- 4.2 The locations of existing licensed HMO in the Argyll and Bute area have been studied to provide a basis for assessing current levels of concentration. This demonstrates that the geographic concentration of HMOs are mostly located within Argyll and Bute's larger towns. However, concentrations of HMOs also exist in smaller settlements such as Taynuilt related to student and staff accommodation.
- 4.3 In the future there are liable to be increases in the number of HMO linked to student accommodation (in particular in the Oban/Dunbeg area linked to the promotion of the University Town and in Taynuilt linked to Ballet West); military personnel (in Helensburgh and Lomond linked to the Maritime Change Project); and workers accommodation (in the Oban – Dalmally Growth corridor related to the proposed National Planning Framework project at Cruachan Dam). Monitoring will focus on these areas.
- 4.4 Numbers, capacity, type and location of the HMOs will be monitored. This information is required to inform the overprovision policy HMO3. If there are other issues arising related to the HMO developments these will also be noted. This information will inform a review 12 months after the adoption of this policy. Should it be necessary the policy will be revised in light of this review.
- 4.5 Planning authorities may provide guidance as to occupancy level(s) for individual HMOs that would be considered to be a material change of use, and above which they would normally seek a planning application. Setting occupancy rates too low may result in too few HMOs being granted planning permission or disproportionate numbers of applications; setting occupancy rates too high may undermine the effectiveness of the policy. The effectiveness of the occupancy levels identified in this Technical Note will be monitored.
- 4.6 The Oban Strategic Development Framework will examine the issues of student accommodation in the Oban area. The Helensburgh Strategic Development Framework will examine the accommodation issues related to the Maritime Change Project. Available information will feed into the HMO technical note review.