SOCIAL JUSTICE COMMITTEE

AGENDA

9th Meeting, 2002 (Session 1)

Thursday 23 May 2002

The Committee will meet at 2.00 pm in Committee Room 1

1. **Items in private:** The Committee will consider whether to take items 4 and 5 in private.

2. **Licensing of Houses in Multiple Occupation:** The Committee will take evidence from Hugh Henry MSP, Deputy Minister for Social Justice.

3. **Debt Arrangement and Attachment (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from Scottish Executive officials—

   Alisdair McIntosh, Head of Access to Justice Division
   Laura Dolan, Bill Team Leader, Head of Diligence Branch, Access to Justice Division
   Marieke Dwarshuis, Team Leader, Financial and Economic Inclusion Branch, Social Inclusion Division
   Robert Cockburn, Head of Branch 3, Civil Justice and International Division
   Gordon McNicoll, Office of the Solicitor to the Scottish Executive
   Neil Taylor, Office of the Solicitor to the Scottish Executive

4. **Scottish Executive’s draft Consultative Statement on Fuel Poverty:** The Committee will consider a draft response.

5. **Licensing of Houses in Multiple Occupation:** The Committee will consider further its approach to the Scottish Executive’s response to its Interim Report.

Jim Johnston
Clerk to the Committee
Tel. 0131 348 5211
email: james.johnston@scottish.parliament.uk

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The following papers relate to the meeting:

**Agenda Item 2**

SJ/02/9/2 - Paper by the Clerk

SJ/02/9/2A - Scottish Executive response to the Committee’s Interim Report on the Licensing of Houses in Multiple Occupation

**Agenda Item 4**

SJ/02/9/4 (P) - Private paper on a draft response to the Scottish Executive’s draft Consultative Statement on Fuel Poverty

**Agenda Item 5**

SJ/02/9/5 (P) - Private paper by the Clerk
SOCIAL JUSTICE COMMITTEE

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

1. At its meeting on 20 March 2002, the Committee considered the Scottish Executive’s response (which is attached to this paper) to the Committee’s Interim Report on the Licensing of Houses in Multiple Occupation and agreed to seek further information from the Executive.

2. At its meeting on 23 May, the Committee will take evidence from Hugh Henry MSP, Deputy Minister for Social Justice.

Jim Johnston
Clerk to the Committee
May 2002
SOCIAL JUSTICE COMMITTEE: INTERIM REPORT ON THE LICENSING OF HOUSES IN MULTIPLE OCCUPATION

On 20 December 2001 the Social Justice Committee published its interim report on the licensing of houses in multiple occupation. We have read this with particular interest not least because, as you know, we hope to review the detailed operation of the scheme later in the year when independent research which we have commissioned from Heriot Watt University is to hand. We will obviously want to take account of your own comments and suggestions, both in the interim report and any further report by the Committee, when this review is undertaken.

I think it is important to bear in mind that the mandatory licensing scheme was only introduced in October 2000 and, as a result, our experience of its operation is necessarily relatively limited. The evidence taken so far by the Social Justice Committee (both oral and written) provides useful information on the initial impact of the scheme but the number of bodies invited to provide evidence was relatively limited and it is possible that you may wish to seek views from a wider range of housing interests and other relevant organisations. In any event research will seek to build on your work by seeking information from a wide range of interested parties including organisations, landlords and tenants.

The Scottish Executive’s HMO licensing scheme was introduced following wide ranging consultation by the former Scottish Office both on the principle of licensing HMOs and on the details of the scheme itself. At that time, there was widespread support for licensing as a way of raising standards in this type of housing and also for the view that exemptions should be restricted to those HMOs which were already subject to a parallel form of regulation.
We are pleased to note that the Committee strongly supports the policy motivation and need for statutory regulation of HMOs, but we have noted that the Committee recommends that the classes of property exempted should be extended to include public sector organisations and certain other bodies so that it focuses on the private sector. We agree that the targeting of the licensing scheme is important and exemptions is one way of achieving this. But it is necessary to have a principled basis for any exemptions and to balance the desire of landlords not to be subject to licensing against the likely level of risk for tenants. In the light of the Committee’s recommendations, we will consult on possible changes to the exemptions with a view to considering the results of this consultation alongside the research we have commissioned.

We have also noted the point made in your interim report about the possibility of integrating the HMO licensing scheme into any broader measures that might be recommended for the private rented sector as a whole by the Housing Improvement Task Force. However, the Housing Improvement Task Force has not yet reached the stage in its work where it is bringing forward recommendations either for legislation or for other measures. It is, therefore, not possible at this stage to say whether this might be a way forward in the longer term and our view is that the current scheme is likely to be required for some time to come. The Committee will no doubt wish to keep closely in touch with the work of the HITF and copies of all its papers can be viewed on the Executive’s website (www.scotland.gov.uk/hitf).

The licensing scheme is being progressively extended to a wider range of HMOs through the reduction in the size threshold which, in line with the provisions of the current order, takes place each October. In October 2001, the scope of the scheme was extended to include HMOs containing more than 4 persons. The purpose of this phasing is to ensure that the largest HMOs are brought into the scheme and to allow local authorities to plan properly for the increased numbers brought into the scheme as the size threshold is reduced. We believe that there may be a case for a time limited moratorium on the reduction in the size threshold due in October 2002 so that the results of the research, any further consultation on exemptions and further consideration by the Committee, can be taken into account before the scheme is extended further. We will be discussing this further with local authority representatives involved in implementing the scheme.

As you will be aware, the Department published guidance in 2000 on the mandatory licensing scheme which included advice on the statutory provisions together with suggestions for how the scheme should be administered at the local level and the standards that might be set. This guidance was developed in consultation with representatives from a range of relevant bodies. The guidance on procedures and standards can only be guidance since, under the relevant legislation, local authorities have the discretion to administer the licensing scheme and to set standards as they see fit. Nevertheless, we will consider if there is a need to augment or elaborate on the guidance in light of the Committee’s report and any subsequent work undertaken by the Committee and we will want to discuss this initially with local authority representatives.

I would like to also mention 2 specific points in relation to the HMO licensing scheme:

- We have recently tabled an Amendment Order which makes some technical changes to the exemptions in the scheme. These are largely a result of changes that will result from the commencement of parts of the Regulation of Care (Scotland) Act 2001 from the beginning of April.
Cathie Craigie asked my officials, when they gave evidence to the Committee, if it was possible for local authorities to use housing benefit records to identify possible HMOs. Local authorities may wish to take their own legal advice on this, but our understanding is that using information supplied by housing benefit claimants in this way could be considered to be a breach of data protection legislation unless prior consent was obtained.

I attach an annex which briefly sets out our comments on the main points in the interim report.

MARGARET CURRAN
### Key Points

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<th>Paragraph 3</th>
<th>Executive's Response</th>
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<td>The Committee strongly supports the policy and need for statutory regulation of HMOs, but concerned that it is not tackling problematic landlords.</td>
<td>Owners of all HMOs who fall in the specified categories are required to obtain licenses since it is not possible, in advance of a proper inspection and assessment to know whether the physical standards or the management of the HMO require to be improved. Nevertheless, the Executive would encourage local authorities to seek to target their enforcement action as potentially “problematic landlords” if they are able to identify who these are likely to be and this should be possible within the existing scheme.</td>
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<td>Committee urges Scottish Executive to consider how those landlords who were the target of the order could be brought up to acceptable standards.</td>
<td>In relation to paragraph 5, the Committee report implies that all these types of HMOs are in the social rented sector and, therefore, subject to a separate form of regulation. However, only RSLs and local authorities are regulated by Communities Scotland and this regulation is concerned primarily with management not physical standards. Certain categories of HMOs may however be relatively “low risk” and we are prepared to consider the case for changes to the current exemptions (see letter).</td>
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<td>Committee recommends that public sector organisations, universities and voluntary organisations should be exempt for licensing so that the scheme focuses exclusively on the private sector.</td>
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**Paragraph 18**

The Committee is sympathetic to the view that local authority officers should have the power to immediately close an illegally operating premises on safety grounds.

As the Committee recognises, fire authorities already have the power to take emergency action when there are serious fire safety concerns and local authorities themselves can take emergency action if there is a danger to the public as a result of building structure faults. These powers can be used in relation to any building but, in addition, under the Housing (Scotland) Act 1987, local authorities have specific powers in relation to HMOs to make control orders. The control order comes into effect when it is made and allows the local authority to close the premises and take any steps necessary to protect the safety, welfare or health of the persons living there.

Given the availability of these powers, it is not clear what additional powers the Committee have in mind but any additional powers would be likely to require primary legislation.

**Paragraph 21**

The Committee is of the view that the bureaucracy involved in the inspection regime is disproportionate to the objectives of the Order.

The Executive agrees that local authorities should seek to minimise the bureaucracy involved in their inspection regimes. The guidance issued by the Scottish Executive makes a number of suggestions for minimising the number of inspections and suggests that staff effort should be concentrated on problem HMOs. It also suggests that where agents who are members of professional organisations are employed by HMO owners then local authorities should consider allowing such agents to provide certificates confirming that the relevant standards are met.
Paragraph 27

The Committee is of the view that local authorities should continue to have discretion to set fees to reflect local circumstances.

Paragraphs 28, 29 and 30

The Committee notes that some HMO landlords may be faced with considerable costs in meeting the necessary standards and that costs of compliance could be passed to tenants in the form of rent increases and tenants may be forced to look for cheaper housing let illegally outside of the scheme.

The Executive agrees that local authorities should have the discretion to set fees locally as provided for by the Civic Government Act, but it was surprised and concerned by the relatively high levels of fees charged by Glasgow Council in comparison with the other authorities.

The Committee notes that some HMO landlords may be faced with considerable costs in meeting the necessary standards and that costs of compliance could be passed to tenants in the form of rent increases and tenants may be forced to look for cheaper housing let illegally outside of the scheme.

The Executive agrees that there could be significant compliance costs for landlords if the HMOs in questions are seriously below standard. It is not clear if the Committee considers that the standards being imposed by local authorities are too high. The Executive would welcome views of the Committee on whether the benchmark standards in the Executive’s published guidance are too high and, if so, which standards in particular should be removed or reduced.

The extent to which landlords can pass on increased costs as rents will depend on the market for private rented housing in the area in question. The purpose of HMO licensing is to set a common standard for all properties and local authorities have powers to take action against landlords who continue to operate illegally without a licence.

Paragraph 32

The Committee notes that Glasgow would prefer discretion to target sub-standard or poorly managed HMOs.

Paragraph 33

The Committee also notes that phased introduction of mandatory licensing means many smaller sub-standard HMOs continue to operate legitimately.

The Executive’s view is that to be fair, any system of licensing needs to be based on common principles which should underpin the scheme and identify those categories of HMOs to be included in the licensing scheme.

In relation to paragraph 33, it is generally recognised that larger HMOs present higher risks. Phased implementation also ensures that local authorities are not overwhelmed by having to deal, all at once, with large numbers of applicants.
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<th>Paragraph 37</th>
<th>The Executive would also be concerned if this was the case since the purpose of HMO licensing is to improve standards not to drive landlords out of business. We note that the Committee thinks that there is no evidence of this at present.</th>
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<td>The Committee would be concerned to learn that there was a significant loss of properties available for rent.</td>
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