

Chief Fire Officers (Scotland)

1 September 2011

Dear Chief Officer

**DEAR CHIEF OFFICER (SCOTLAND) LETTER 12/2011**

**LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

1. This letter contains information relevant to fire safety enforcement and advises of changes to the licensing of Houses in Multiple Occupation (HMO) and the provision of new guidance. I should be grateful if you would bring this information to the attention of relevant personnel as necessary.
2. Changes to the statutory licensing of HMOs were brought into force on 31 August 2011. The HMO licensing scheme previously imposed by the *Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000*, has been replaced by the licensing scheme contained in *Part 5 of the Housing (Scotland) Act 2006*.

**Statutory Guidance for local authorities**

3. New Statutory Guidance has been issued by Scottish Ministers under Part 5 of the Housing (Scotland) Act 2006 ("the 2006 Act"). A copy of the guidance can be downloaded at [www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/hmo](http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/hmo)
4. The statutory guidance is intended predominantly for local authorities. It is issued under section 163 of the 2006 Act which means that local authorities must have regard to it in the exercise of their functions. The guidance will also be helpful to fire and rescue services and other organisations which work with local authorities on HMO issues. Part 3 of the guidance includes advice on fire safety.

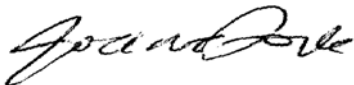
## Fire (Scotland) Act 2005

5. Consequential amendments have been made to the Fire (Scotland) Act 2005 (“the 2005 Act”).
  - Section 78(5)(f), which referred to premises subject to a control order, has been repealed.
  - The text in section 78(5)(a) has been amended. Section 78(5)(a) now reads:

*(a) a house which requires to be licensed under Part 5 of the Housing (Scotland) Act 2006 (asp 1);*
6. Subsection 125(2) of the 2006 Act introduced two separate categories of HMO, being living accommodation which is either a house (s125(2)(a)); or is or forms part of any premises or group of premises (125(2)(b)). (See the annex to this letter for the text of section 125).
7. The change to section 78(5)(a) of the 2005 Act maintains the position that an HMO which has or requires a licence is ‘relevant premises’ and subject to the provisions of Part 3 of the 2005 Act provided the HMO matches the description in s125(2)(a) of the 2006 Act. However, an unintended consequence is that a licensable HMO which matches the description in s125(2)(b) may potentially not now be ‘relevant premises’ if, in other respects, it falls within the definition of domestic premises in section 78(4) of the 2005 Act.

A further legislative change will be necessary to bring section 125(2)(b) HMOs within the definition of ‘relevant premises’. Fire and rescue services should take this into account if contemplating formal enforcement action in respect of these types of premises during the interim period.

Yours sincerely



**JOANNE BOYLE**

Fire and Rescue Services Division

### **125 Meaning of “house in multiple occupation”**

(1) Any living accommodation falling within subsection (2) 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) Living accommodation falls within this subsection if—

(a) it is a house, or

(b) it is, or forms part of, any premises or group of premises owned by the same person and its occupants share one or more of the basic amenities with each other.

(3) The “basic amenities” are—

(a) a toilet,

(b) personal washing facilities, and

(c) facilities for the preparation or provision of cooked food.

(4) For the purposes of this section—

(a) a person is to be treated as occupying living accommodation only if it is that person's only or main residence,

(b) living accommodation occupied during term time by a person undertaking a full-time course of further or higher education is, at all times during that person's residence, to be treated as being that person's only or main residence,

(c) a patient in a health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29)) is not to be treated as occupying the hospital,

(d) a person is not to be treated as sharing a basic amenity if the living accommodation concerned has more than one of any such amenity and the person has exclusive use of at least one of them.