Houses in Multiple Occupation Taighean le Iomadh Neach-còmhnaidh



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1 Introduction Ro-ràdh

Purpose of this Supplementary Guidance

- 1.1 The Council is committed to ensuring a balance in housing tenures across the Highlands. It recognises that the private rented housing market which includes Houses in Multiple Occupation (HMO) is an important element of the area's housing stock as well as helping to support the sustainable economic growth of the area. The purpose of this Supplementary Guidance is to support HMO accommodation in appropriate locations and, in order to ensure mixed and balanced communities, to prevent the creation or exacerbation of concentrations in particular areas.
- 1.2 Section 1 of this document provides the background and context within which this document has been prepared. Section 2 looks at the role of Licensing for HMO, while Section 3 deals with the role of the Planning system. Section 4 sets out details of the Council's approach to HMO. Section 5 sets out how The Council will monitor the guidance.

Status of this Draft Supplementary Guidance

- 1.3 The adopted version of the guidance has been adopted as statutory Supplementary Guidance under the Planning Etc. (Scotland) Act 2006. This Supplementary Guidance reflects the policy advice given in Scottish Planning Policy and the provisions of the Housing (Scotland) Act 2006 with regard to the licensing of Houses in Multiple Occupation.
- 1.4 This document will apply to all planning applications for either the erection of a purpose built House in Multiple Occupation or any change of use to a House in Multiple Occupation within the Highland Council area, except that covered by the Cairngorms National Park Authority.
- 1.5 While this guidance relates to the determination of planning applications and not directly to the determination of HMO licence applications, the Council will exercise its power under section 129A of the Housing (Scotland) Act 2006 to refuse to consider licence applications for HMOs which require, and have not obtained, planning permission for use as an HMO, whether as a result of applying these Development Guidelines or for any other reason.

Background

- 1.6 The private rented sector, including Houses in Multiple Occupation, plays a vital role in Highland's housing system. It provides housing for a wide range of households including young working people, students, lower income households and economic migrants as well as people who need support and those who are at risk of homelessness. It is particularly important in communities such as Inverness where there is a very large demand and need for housing alongside a limited housing supply and a consequent shortage of housing which people can afford to live in. Houses in Multiple Occupation (HMO) provide a good and valuable source of housing.
- 1.7 In recognising this demand the Highland-wide Local Development Plan includes the following policy to facilitate the management of HMO concentrations and the potential issues related to them.

Policy 33 Houses in Multiple Occupation

Planning Permission may be required for the occupation of a house by six or more people and occupation of a flat by three or more people, if it is deemed a material change of use.

Planning applications for HMO, outwith Inverness City Centre, that would result in the proportion of licensed HMO in any single census output area becoming excessive (as defined in Houses in Multiple Occupation: *Supplementary Guidance*) will not be supported unless there are clear *material consideration*s which would justify permission being granted.

The preparation of the supplementary guidance will be guided by the following principles:

Ensure the provision of high quality Houses in Multiple Occupation across Highland;

Manage the provision and potential amenity impacts of Houses in Multiple Occupation; and

Promote a partnership approach to dealing with the wider issues related to Houses in Multiple Occupation.

The role of Planning and Licensing in HMO

1.8 The planning and HMO licensing systems are two separate regimes with distinct functions and objectives. Scottish Government Circular 2/2012 - Planning Control and Licensing recognises the distinctive roles of the Planning and Licensing systems but advocates a joint approach to the licensing and planning of HMOs. The discretionary power conferred by Section 129A of the Housing

(Scotland) Act 2006 allowing Local Authorities to refuse to consider HMO licence applications where a property requires, and does not have, planning permission for use as a HMO ensures that this joint approach is easier to bring forward than it would have been in the past.

- 1.9 This processes described in this Supplementary Guidance will be administered through joint working between the Planning and Licensing teams at the Council to ensure that it is implemented consistently, and that information on the location of HMOs is shared.
- **1.10** Figure 1 demonstrates the difference between the two regimes and when planning permission is required in addition to an HMO licence.

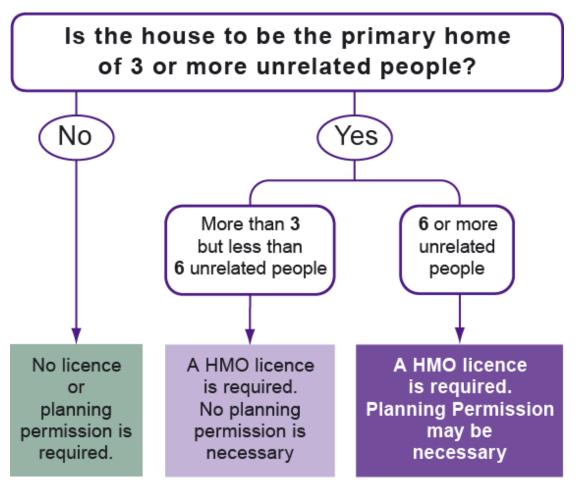


Figure 1: The differences between planning and licensing and when each system is applicable. This diagram relates to a house only. In the case of a flat, planning permission may be necessary (in addition to a HMO licence) if the flat is to be occupied by 3 or more unrelated people.

2 Houses in Multiple Occupation and Licensing Conditions Taighean le Iomadh Neach-còmhnaidh agus Cumhaichean Ceadachd

- 2.1 Part 5 of the Housing (Scotland) Act 2006 dictates that a house in multiple occupation (HMO) must be licensed unless exempt from licensing requirements under section 126 of the Act. A license for an HMO allows the property to be occupied in accordance with the license conditions 1. A "house" in this context includes any part of a building occupied as a separate dwelling and therefore covers flats, bedsits and houses.
- 2.2 Licensing provides that a house/flat is classed as an HMO if it is the only or principal residence of 3 or more unrelated persons or 3 or more families. The purpose of HMO licensing is to control standards in 3 main areas:
 - The suitability of the property owner to be an HMO landlord and the suitability of any agent of the owner;
 - management of the premises; and
 - the physical condition and facilities of the accommodation.
- 2.3 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 HMO in the Highland Council area is carried out by the Chief Executive's Service in each of the operational areas, with other Council departments and external bodies involved in the decision making process. The table below sets out who is involved in assessing an applications for new and renewed HMO Licences and describes which elements of the application they assess:

¹ http://www.legislation.gov.uk/asp/2006/1/notes/contents

Who?	What they consider?
Highland Council TEC Services	Heating, space and lighting
	Electrical safety
	Cooking and sanitary facilities
	Water supply and drainage
	General standards of repair and maintenance
Highland Council Building Standards	Approved use of the property
	Structural fire precautions and means of escape and related matters
	Whether the property has/requires to have planning permission to be a HMO
The Fire Brigade	Fire Risk Assessments
	Means of fire detection and warning
	Means of escape and fighting fire
	Formulation of an emergency plan
The Highland Council in partnership with the Police	If the landlord (and any agent of the landlord) is a "fit and proper" person. Any available and relevant information on the applicant and his/her agent will be taken into account. In particular they must consider evidence of:
	Offences involving fraud, dishonesty or drugs
	Unlawful discrimination
	Breaches of law relating to housing and letting; and
	Failure to act in relation to anti-social behaviour

- **2.4** 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:
 - http://www.highland.gov.uk/businessinformation/licensing/civicgovernmentlicensing/civ-gov-lic-hmo.htm.
- 2.5 The Scottish Government has issued statutory guidance to local authorities on licensing of houses in multiple occupation (HMOs) under the Housing (Scotland) Act 2006, part 5

http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/hmo. 2.6 In addition to the matters listed above, in assessing licence applications Local Authorities may also consider whether there is overprovision of HMO accommodation in any particular locality. However, in such cases Local Authorities must take account of a number of issues before refusing an application, including the number and capacity of HMO in the locality, the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need. Local Authorities may also refuse to consider applications for HMO licences where the property requires, but does not have, planning permission for use as an HMO.

Houses in Multiple Occupation Owners and Landlords

- 2.7 HMO owners, landlords and tenants have a range of legal duties, responsibilities and rights. These can help to prevent and manage problems including anti-social behaviour, repair and maintenance. If landlords do not fulfil their responsibilities, enforcement powers enable action to be taken.
- 2.8 Scottish Government information on HMOs and private renting is available through their Better Renting website www.betterrentingscotland.com
- 2.9 The 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 Highland Anti-social Behaviour Strategy:

 http://www.highland.gov.uk/livinghere/housing/anti-socialbehaviourandneighbourhood/.

The Private Rented Sector (Scotland) Act 2011

- 2.10 This Act gives local authorities a number of new powers in relation to HMOs including supporting good management in private rented housing and taking action against poor landlords. Information on HMOs is available on the Council's website. http://www.highland.gov.uk/livinghere/housing/privatesectorhousing/housingin multipleoccupation/
- **2.11** The Act is available at http://www.legislation.gov.uk/asp/2011/14/contents. Several parts came into force on 31st August 2011. More information on these can be found at http://www.legislation.gov.uk/ssi/2011/270/made?view=plain.

Houses in Multiple Occupation and Housing

2.12 The Scottish Government recognises that HMO provide a vital source of accommodation, and expect planning authorities to ensure that an adequate supply is available to meet demand. HMOs make up a small but significant part of Highland's housing. There are currently (January 2013) 242 licensed HMO

- across Highland. 6 out of 10 of these are licenced for less than 6 occupants. The majority of HMOs are used as staff accommodation.
- **2.13** An assessment of housing identified a continuing and increasing need and demand for HMOs across Highland. The following factors contribute:
 - Worker accommodation will continue to be required to support tourism and other low income industries.
 - Shared housing, such as that provided by HMOs, can provide housing which is more affordable to people on lower incomes, such as young or single people particularly in areas where housing supply is limited and rents are high.
 - Many households in Highland are on low incomes.
 - Recent benefit changes are expected to increase the need for shared housing as single people aged between 25 to 35 years can only access the housing benefit 'shared room rate'.
 - There is projected to be a continuing growth in single person households.
- **2.14** Demand is considered to be higher in Inverness as it has a comparatively young population, is an economic growth area with high levels of migration from incoming workers and has is a limited supply of smaller housing compared to larger, family sized housing.
- 2.15 Moreover there is a desire to further develop city centre living as part of the policy vision to regenerate and renew Inverness by bringing back, for example, empty properties into use as housing. With the expected growth of the UHI increasing numbers of students and graduates will result in demand for private rented housing including shared housing.

Specialist HMO accommodation

- 2.16 Of the 242 HMOs in Highland, a small proportion (20 HMOs) are contracted by the Council for use as temporary homeless accommodation. Three of these HMOs (and one more which is used if required) are in Inverness city centre. In order to provide good quality and well managed accommodation, these HMOs require to meet set additional standards. Council Officers provide an additional property management service.
- 2.17 Whilst the majority of Highland's temporary homeless accommodation is self-contained housing, its limited supply results in a need to use shared housing. Whilst the Council's prevention activities are reducing the number of homeless households who legally require to be accommodated, some need is expected to continue.
- **2.18** From time to time the Council works with charitable organisations to facilitate the provision of quality shared housing with support for those with community care

needs. It is expected that the Council will continue to support such projects if new opportunities become available.

- 3 Houses in Multiple Occupation and the Planning System Taighean le Iomadh Neach-còmhnaidh agus an Siostam Dealbhaidh
- 3.1 While Houses in Multiple Occupation are not specifically mentioned in planning legislation, Circular 2/2012 deals with the interface between Planning and Licensing. HMO accommodation is usually provided within existing buildings and therefore the main planning permission which is required is for material change of use of a property.
- 3.2 In land use planning terms, there may be a material change to the use of a property where a house is occupied by six or more unrelated people including a household where care is provided for the residents and the occupation of a flat by three or more people. 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.
- 3.3 Applicants should note that in addition to planning permission, they may also require Listed Building Consent if any alterations are required to be made to a Listed Building in order to meet HMO licensing requirements.

Securing the need for planning permission for change of use to HMO

3.4 To ensure that in future any change of use from a hotel, hostel, guest house or bed and breakfast to a house in multiple occupation is fully considered in the terms of this supplementary guidance a planning condition will be applied to any permission granted for a new bed and breakfast, boarding house, guest house, hostel or hotel. The purpose of this condition is to ensure that the impacts of the HMO are considered in line with Development Guideline HMO-02 and that a high concentration of HMO which may have an impact on amenity is avoided. To ensure consistency a standard condition will be used, in the following terms:

Condition: Notwithstanding the provisions of Class 7 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, or any Order revoking and re enacting that Order, with or without modification, the approval hereby granted relates only to the use of the premises as a bed and breakfast/boarding house/guest house/hostel/hotel (delete as appropriate) and for no other use or purpose including any other activity falling within Class 7 of the said Order.

Reason: In order to allow the Planning Authority to retain effective control over the use of the site, in the interests of the amenity of adjacent occupiers.

The land use issues associated with Houses in Multiple Occupation

- 3.5 This guidance provides a basis for assessing the suitability of an individual property as an HMO and the approach is in line with Scottish Government guidance. The flexibility for assessing the adequacy of parking, and garden provision in each case reflects the diverse range of residential environments across the Highlands.
- 3.6 The locations of existing licensed HMO in the Highland Council area have been studied to provide a basis for assessing concentration. This clearly demonstrates that the geographic concentration of HMOs is in and around the centre of Inverness with pockets of moderate concentrations located elsewhere in larger settlements throughout the Highlands. Expressing this as a number proportionate to the total number of dwellings that exist in an area enables the concentration of HMO to be monitored.
- 3.7 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. 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.

Building Standards

3.8 If you need to carry out any building work to make a property suitable for use as an HMO, you may require a building warrant. Even if a warrant is not required, the work may still have to meet building regulations. Advice should be sought from Highland Council Building Standards Office on this matter. Contact details are on page 25 of this Supplementary Guidance.

4 Development Guidelines Stiùiridhean Leasachaidh

HMO1 - HMO provision outwith Inverness City Centre

Planning applications for HMO outwith Inverness City Centre (as shown on Map 1) which would result in the proportion of licensed HMO in any census output area exceeding 10% of the total residential stock will not be supported unless there are clear material considerations which would justify permission being granted.

- **4.1** High concentrations of HMO 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. Some of these changes, particularly related to the behaviour of HMO tenants, are not matters for Planning Authorities. However, they can be looked at through the licensing system.
- **4.2** The range of potential issues associated with high concentrations of HMO 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 leading to less community cohesion.
- **4.3** In bringing forward this guidance the Highland Council have also taken the following into consideration:
 - The number and capacity of licensed HMO in the localities of Highland;
 - The need for housing accommodation in those localities; and
 - The extent to which HMO accommodation is required to meet that need.
- 4.4 These are the same considerations which require to be taken into account in the assessment of overprovision of licensed HMO. The assessment of housing need and HMO need in Highland has confirmed that there is expected to be a continuing and increasing need for HMO accommodation across Highland, and particularly in Inverness. This means that there is currently no evidential basis on which the Council could adopt a policy under which it might refuse applications for

HMO licences on grounds of overprovision under section 131A of the Housing (Scotland) Act 2006. However, given the aims of these Development Guidelines in respect of controlling concentrations of HMO in particular localities, the Council will exercise its discretionary power to refuse to consider HMO licence applications where, as a result of application of the provisions of these Development Guidelines, any required planning permission is not obtained. This would ensure the coordinated approach to the licensing and planning of HMO which is advocated by Scottish Government.

- 4.5 It should be noted that while HMO licence applications for proposals which meet these Development Guidelines (and which therefore obtain planning permission for HMO use where required) will be accepted for consideration and will not be refused on grounds of overprovision. However, such applications will still require be assessed against the criteria summarised on page 5 to determine the suitability of owners and agents and the suitability of the accommodation. Acceptance of such HMO licence applications for consideration does not therefore guarantee that they will be granted.
- 4.6 Exception to HMO1 will be made where the building is to be built or converted for use as student accommodation and is considered acceptable under policy HMO2 and a planning obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) has been entered in to restricting occupation of the building to occupation by students 2 only.

Houses in Multiple Occupation and Inverness City Centre

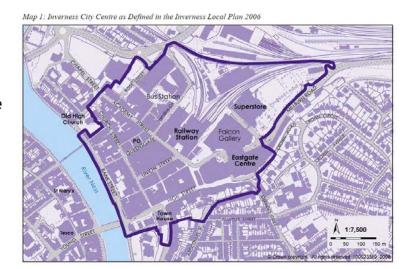
HMO2 - HMO provision within Inverness City Centre

Planning applications within Inverness City Centre (as defined by the Inverness Local Plan (As Continued in Force 2012) or as re-defined by the emerging Inner Moray Firth Local Development Plan), will be assessed on their individual planning merits and supported where they meet the criteria set out in Development Guideline HMO3 of this Supplementary Guidance and other relevant policies of the Local Development Plan.

To ensure that HMO provision does not have an adverse effect on the character and amenity of the City Centre, this development guideline will be reviewed if the concentration of HMO properties across the City Centre reaches 10% of all residential units in Inverness City Centre.

² "student", for the purposes of these Guidelines, shall mean a person enrolled in a full time or part time course of education at an establishment accredited as having college or university status.

- **4.7** Within Inverness City Centre the future number of HMO applications (both licensing and planning) will be influenced by many factors, including:
 - Future student numbers at the University of the Highlands and Islands, Beechwood Campus;
 - Future demand of students and others seeking to share accommodation;
 - The needs of incoming workers; and
 - The needs of those requiring supported shared accommodation.
- 4.8 Local planning policies seek to strengthen and enhance the city centre and encourage residential accommodation, of all types and tenures, above the shops and businesses at street level. This can help to meet the aspirations for a vibrant City Centre by promoting varied, well-used environments which will enhance community safety and security while reducing the risk of crime.



Assessing the land use amenity issues related to HMO accommodation

4.9 This development guideline sets out what planning officers will use to assess the land use amenity issues related to proposals for the erection of new HMO accommodation and/or change of use of existing buildings to a HMO.

HMO3: Assessing HMO Proposals

Proposals for multiple occupation of a dwelling that requires planning permission will only be supported where:

- It will avoid negative impact both individually and cumulatively to traffic or pedestrian safety on account of increased parking pressures;
- It is within close proximity to public transport connections, social and community facilities; and
- It will avoid negative impact on residential and/or business amenity both individually and cumulatively. In this regard, each proposal must not lead to excessive noise and disturbance and provide adequate refuse storage space, garden ground and car/cycle parking.
- It will avoid materially altering the character of the area.

Where dedicated car parking cannot be provided the proposal must not exacerbate existing parking problems in the local area.

Key Considerations

- Is adequate car parking provided for residents and visitors?
- Is sufficient cycle parking provided for residents and visitors?
- Is the proposal within walking/cycling distance of social and community facilities?
- Is sufficient off-street waste and recycling storage space available?
- Is adequate communal outdoor amenity space provided within the site or available near by?
- Will the proposal exacerbate existing parking problems in the local area?
- Will the proposal lead to the unacceptable intensification of land use?
- Will the proposal have an adverse cumulative effect on any of the above considerations?
- 4.10 Management and maintenance of houses in multiple occupation are controlled by licensing. However, in the interests of community amenity, any large house in multiple occupation (6 or more occupants) which receives planning permission will be required to submit the agreed details of the management and maintenance procedures for the house in multiple occupation prior to the occupation of the development.

Monitoring of this Supplementary Guidance A' Cumail Sùil air an Stiùireadh

- 5.1 The concentration of HMO in Highland has been monitored since November 2008. By doing so the Council are able to keep track of the concentration of HMO across the area and identify specific areas where HMO concentrations are becoming close to being considered too high.
- 5.2 Following the adoption of this guidance an HMO Sensitive Areas map will be produced to show where concentrations are above 8% and also areas where the 10% threshold has been exceeded. Through close monitoring it is not anticipated that there will be an increase in the areas which are currently considered to have high concentrations of HMO.
- 5.3 In order to assess high concentrations of HMO accommodation, Census Output Areas have been identified as a measurable planning unit. Census output areas are only subject to boundary changes when new census information is released (approximately every 10 years) and are small enough to reflect localised issues.
- **5.4** The monitoring of HMO concentration uses the following data:
 - number of licensed HMO in any one census output area;
 - number of residential properties (as defined in the Corporate Address Gazateer) in any one census output area;
 - population of the census output area;
 - licensed occupancy capacity of all HMO in any one census output area.
- When assessing the level of HMO concentration in an area both existing and pending HMO licences are taken into account to assess whether by granting planning permission this would lead to what could be considered to high a concentration of HMO in an area. This with the total number of residential properties in a census output area.

Appendix 1 - Glossary

Houses in Multiple Occupation (HMO)

The Town and Country Planning (Use Classes) (Scotland) Order 1997 defines a house as being the sole or main residence of not more than 5 residents living together, including a household where care is provided for residents. In planning terms therefore, it is only where more than 5 unrelated people are living together in a house that it is considered development i.e. a change of use. In such instances, is considered that planning permission for the formation of an HMO would be required.

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, it is considered, 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. Flats are defined as a separate 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 (The Town and Country Planning (General Permitted Development)(Scotland) Order 1992).

Where an owner of an HMO lives there and lets out rooms, or shares with friends, the owner is not counted.

For the purposes of calculating HMO concentrations in Census Output Areas and stairwells etc., all properties defined as an HMO by either planning or licensing will be counted, with the exception of purpose built-student accommodation.

Census Output Areas

Areas defined by 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. Current output areas in use were generated for the 2001 census. These will be updated for the 2011 census results, but where possible, will be very similar to previous versions. Output area boundaries can be viewed using the Office for National Statistics Boundary Viewer.. This SPG will use the boundaries of the output areas from the 2001 census.

House (use):

As a house, other than a flat, whether or not as a sole or main residence by: a single person or by people living together as a family.

or

not more than 5 residents living together including a household where care is provided for residents;

As a bed and breakfast establishment or guesthouse, not in either case being carried out in a flat where at any one time not more than 2 bedrooms are, or in the case of premises having less than 4 bedrooms 1 bedroom is, used for that purpose. The Town and Country Planning (Use Classes) (Scotland) Order 1997

Material Change of use-

The change in the use of any land or existing building may need planning permission. The "Use Classes Order" categorises many common uses into groups.

Material Consideration-

Matters which must be considered when making a decision on a planning application.

Flat

A separate 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 (The Town and Country Planning (General Permitted Development)(Scotland) Order 1992).

Multiple Occupancy

The only, or principle, residence of more than 2 persons who are not all members either of the same family or of one or other of 2 families (Guidance to the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupancy) Order 2000).

Family

A person is a member of the same family, if married to each other or living together as a couple, or one of them is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other (including step and half relations) (Article 2(5) of The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000).

Homelessness

The term 'homelessness' is used to describe a number of housing situations:

Being without any accommodation at all - 'rooflessness';

Living in unreasonable housing (e.g. overcrowded or a danger to health);

Being houseless - living in emergency or temporary accommodation;

Staying in institutions as there is nowhere else;

Living in insecure accommodation (such as people likely to be evicted; no longer able to stay in the family home; or have only short-term permission to stay with friends and families).

Appendix 2 - Contacts

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http://www.surveymonkey.com/s/X89YVTY