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# *The Home Energy Conservation Bill*

**Bill 11 of 2001-02**

The *Home Energy Conservation Bill*, Bill 11, 2001-02 is sponsored by Desmond Turner who came fourth in the ballot for Private Members' Bills. It is due for Second Reading on 30 November 2001. The Bill deals with energy conservation and fuel poverty and provides for mandatory registration of certain houses in multiple occupation.

The Bill applies to England and Wales.

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## **Summary of main points**

The *Home Energy Conservation Bill*, Bill 11, 2001-02 is in three parts. Part 1 seeks to improve the operation of the *Home Energy Conservation Act 1995*. The government's new Fuel Poverty Strategy that results from the *Warm Homes and Energy Conservation Act 2000* is applied to the 1995 Act in Part 2. Part 3 provides for the mandatory registration of certain houses in multiple occupation (HMOs) in order that standards in these properties can be monitored and improved, including energy efficiency standards.

The Bill applies to England and Wales



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## I Introduction

The *Home Energy Conservation Bill* is sponsored by Desmond Turner who came fourth in the ballot for Private Members' Bills in session 2001-02. It received its first reading on 18 July 2001:

Dr. Desmond Turner, supported by Mr. Don Foster, Sir Sydney Chapman, Dr. Ian Gibson, Mr. Alan Simpson, Mr. David Drew, Mr. David Chaytor, Matthew Taylor, Joan Ruddock, Mr. David Lepper, Mr. Martin Salter and Llew Smith presented a Bill to make further provision about energy conservation in relation to residential housing; to make further provision about the eradication of fuel poverty; to provide for the establishment of registration and licensing schemes for houses in multiple occupation; and for connected purposes: And the same was read the First time; and ordered to be read a Second time on Friday 30 November, and to be printed.<sup>1</sup>

The Bill takes forward the provisions of the *Home Energy Conservation Act 1995* (HECA) and the *Warm Homes and Energy Conservation Act 2000* (WHECA), both of which resulted from Private Members' Bills. This Bill improves provisions for energy conservation with the aim of alleviating fuel poverty. It provides for a new HMO definition and the mandatory registration of certain HMOs by local authorities.

The Research Papers written at the time of the second readings of the above Acts contain background information. These are the *Home Energy Conservation Bill* RP 95/5<sup>2</sup> and the *Warm Homes and Energy Conservation Bill* RP 00/26<sup>3</sup>. This paper contains additional information of relevance to the new Bill.

The Bill, which applies to England and Wales, is due for second reading on 30 November 2001.

## II The *Home Energy Conservation Act 1995*

The HECA designated all UK local authorities with housing responsibilities as "energy conservation authorities" (ECAs) and established a number of requirements and duties.

The Act provides that each ECA prepares, publishes and sends to the Secretary of State a report identifying energy conservation measures which it considers practicable, cost-effective and likely to lead to significant improvements in the energy efficiency of residential housing within its area of responsibility.

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<sup>1</sup> HC Deb 18 July 2001, c 306

<sup>2</sup> <http://hcl1.hclibrary.parliament.uk/rp95/rp95-005.pdf>

<sup>3</sup> <http://hcl1.hclibrary.parliament.uk/rp2000/rp00-026.pdf>

On receipt of a report the Secretary of State is to notify the authority of a timetable for the submission of progress reports on the implementation of the measures in the report and take any necessary steps to assist and encourage the implementation of the measures.

A summary of the Act (as amended by the *Energy Conservation Act 1996*) is reproduced in Annex I.<sup>4</sup>

As mentioned, the Act refers to "significant" improvements in energy efficiency. In answer to a parliamentary question Michael Meacher said that there is no statutory target but "significant" has been defined as 30% and strategies are expected to make substantial progress towards this figure over 10 years.<sup>5</sup>

The first report by the Secretary of State to parliament under the Act was published in April 1999.<sup>6</sup> This indicates that local authority reports point to an improvement in energy efficiency of about 2-2.5% over the two years to the end of March 1998. The government is concerned that this is too low a rate of progress to achieve targets, and believes that ECAs need to increase their HECA related activity. In addition many of the early reports from ECAs were submitted long after deadlines, although many of the more recent reports were on schedule.

To identify early lessons that could be learnt from the operation of the HECA under the ECAs, research was carried out and published in September 1999.<sup>7</sup> It was based upon interviews with officials in 40 representative ECAs during June and July 1998 and a postal questionnaire in November 1998. One of the key findings of the research is that the ECAs do not believe that they are likely to achieve the 30% target. An important factor is that about half of the ECAs allocate less than one quarter of a person's time to the implementation of the HECA. The report recommends that each ECA be allocated an annual budget by government to pay for a dedicated HECA officer, regular assistance from a senior officer and substantial training. This is to be accompanied by an initial one-off capital budget.

Statistical information about improvements in energy efficiency identified by each ECA is available for the period 1 April 1996 until 31 March 2000 either for the whole period<sup>8</sup> or for each year.<sup>9</sup> A single figure for all ECAs is presented in the annual data for the last three years. These show improvements in energy efficiency of 2.3% from 1 April 1997 to 31 March 1998; 4.7% from 1 April 1998 to 31 March 1999; and 6.1% from 1 April 1999 to 31 March 2000.<sup>10</sup>

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<sup>4</sup> *Home Energy Conservation Act 1995*, DETR, April 1999, Annex A

<sup>5</sup> HC Deb 18 July 2001, cc 296-7W

<sup>6</sup> *Home Energy Conservation Act 1995*, DETR, April 1999

<sup>7</sup> *Monitoring the Implementation of The Home Energy Conservation Act*, DETR, September 1999

<sup>8</sup> Dep 00/1806

<sup>9</sup> Dep 01/696

<sup>10</sup> HC Deb 8 May 2001 c30W

In answer to a parliamentary question on 18 July 2001 about the effectiveness of the HECA Michael Meacher explained that a review of its operation is being undertaken:

I recently announced a review of the policy framework within which local authorities carry out their energy efficiency activities, to be completed by the end of the year. One of the issues that this will address is the operation of HECA, including its reporting requirements and how they might be improved. We will involve stakeholders in the review process and will actively seek the views of energy conservation authorities on how they can make greater progress in improving energy efficiency in the future.<sup>11</sup>

The government is also taking steps to encourage registered social landlords to improve the energy efficiency of their properties under the HECA, as set out in answer to the following parliamentary question:

**Mr. Gareth R. Thomas:** To ask the Secretary of State for Transport, Local Government and the Regions what plans he has to encourage housing associations to improve the energy efficiency of their (a) existing properties and (b) new build schemes; what plans he has to support district heating schemes; and what plans he has to encourage housing associations to use solar energy in new build social housing. [1112]

**Ms Keeble:** My Department, together with the Housing Corporation, is taking a number of measures to improve the energy efficiency of registered social landlords' (RSLs) properties.

For existing properties, the Housing Corporation's Performance Standards require RSLs to assess the energy efficiency of their housing stock and, through planned improvement work, to help local authorities to meet their obligations under the Home Energy Conservation Act 1995. The Housing Corporation is also promoting the adoption of sustainable development action plans in the RSL sector. These will require RSLs to adopt environmental good practice across a range of activities including refurbishment, management and maintenance of their existing stock. An environmental management system specifically designed for RSLs is being developed and will be launched later this year. In addition, the Housing Corporation's Innovation and Good Practice (IGP) programme will continue to fund projects that raise awareness of environmental considerations. A number of good practice guides and tools to help RSLs address energy management for affordable warmth and energy services has already been developed.

For new build schemes and the rehabilitation of existing dwellings, the Housing Corporation's Scheme Development Standards specify a minimum Standard

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<sup>11</sup> HC Deb 18 July 2001 cc 296-7W

Assessment Procedure (SAP)<sup>12</sup> energy rating which must be achieved. In its guidance the Corporation strongly encourages the achievement of SAP ratings above the minimum level.

In addition, from 1 April this year, RSLs have been required to use a recently developed system of Housing Quality Indicators (HQIs) in planning new schemes. HQIs provide a basis for assessing the quality of schemes against 10 key aspects of design, including energy efficiency and sustainability.

The Housing Corporation is investigating the potential for RSLs to use Combined Heat and Power (CHP) schemes as part of its wider promotion of energy efficiency. Most CHP schemes are on a scale which is not generally suitable for RSL properties but the Corporation is currently participating in an EU-wide project to scope the potential for micro-CHP systems. We will consider the scope for greater use of CHP in relation to RSL properties in the light of the fundings in this report.

The Housing Corporation is actively encouraging RSLs to consider the use of Photovoltaic (PV) roofs and solar water heating. A number of RSLs now use these systems and a network of RSLs with an interest in PV roofs is being established to address areas of concern and to develop good practice guidance on the use of PV roof and solar water heating systems within the sector. However, at present the costs are high with conventional systems.<sup>13</sup>

### **III Fuel poverty & the *Warm Homes and Energy Conservation Act 2000***

The purpose of the *Warm Homes and Energy Conservation Act* (WHECA) is to help eradicate fuel poverty in England and Wales. It requires the appropriate authority, the Secretary of State in England and the National Assembly for Wales, to prepare and publish a strategy setting out measures it will take with the aim of eradicating fuel poverty within twelve months of the Act coming into force. In England the strategy must be published by 22 November 2001 (see section V). In Wales the Act has not yet come into force but is expected early in 2002, with the strategy published within twelve months of that date. It must include a description of households to which it applies and specify a comprehensive package of measures for ensuring the efficient use of energy, such as the installation of appropriate equipment or insulation. The strategy must also set a target

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<sup>12</sup> The Government established a national home energy rating scheme, the standard assessment procedure or SAP rating. This rated houses from 1, or highly energy-inefficient, to 100, or highly energy-efficient. To advance the cause of energy efficiency, the idea was incorporated into the 1994 building regulations, under which builders were required to produce a SAP rating for all new houses and for conversions which constituted a material change of use under planning law. The intention was to ensure one standard rating and to make it available so that purchasers had information on the energy efficiency of a house before buying or renting.

<sup>13</sup> HC Deb 2 July 2001 cc 15-16W

date not more than fifteen years after publication for achieving, as far as reasonably practicable, its aim.

The most contentious issue is the definition of people living in 'fuel poverty' which determines those who will benefit from the measures in the Act. The Act specifies 'a person is to be regarded as living in fuel poverty if he is a member of a household living on a lower income in a home which cannot be kept warm at reasonable cost.' The Act, however, allows the appropriate authority to substitute a completely new definition in regulations following consultation subject only to negative resolution.

During his summing up at the end of the second reading in the Lords, the Parliamentary Under-Secretary of State, DETR, Lord Whitty, set out the government's intentions for the definition of fuel poverty.<sup>14</sup> He stated that the Inter-Ministerial Group on Fuel Poverty was addressing the definition of fuel poverty and attempted to allay fears about a radical change in its definition:

I am clearly implying that noble Lords should not be as concerned as some may be ... (about the) power to substitute the definition of fuel poverty. Once the strategy has been published, it is intended that there should not be further opportunity to amend the aim or goals established... We intend to ensure that that is achieved by a careful drafting of our aim and strategy and, in doing so, intend to prevent any future attempt to frustrate the aims of the Bill. As the noble Baroness, Lady Greengross, hinted, we intend to produce that strategy within a very few months.

The government published a draft UK Fuel Poverty Strategy for consultation on 23 February 2001.<sup>15</sup> The difficulty in defining fuel poverty is illustrated by the two proposed definitions set out in Annex D:

**1.** (...) The Ministerial Group on Fuel Poverty considered the definition of fuel poverty for England, taking account of the feedback received from the consultation exercise carried out for New HEES<sup>16</sup>. The Ministerial Group decided that the number of households in fuel poverty in England should be displayed on the basis of two definitions as follows:

**i) Definition to be focussed on for target setting**

A household is in fuel poverty if, in order to maintain a satisfactory heating regime, it would be required to spend more than 10% of its income (including Housing Benefit or Income Support for Mortgage Interest (ISMI)) on all household fuel use.

**ii) Additional definition**

A household is in fuel poverty if, in order to maintain a satisfactory heating regime, it would be required to spend more than 10% of its income (not including

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<sup>14</sup> HL Deb 13 October 2000 c 633

<sup>15</sup> *The UK Fuel Poverty Strategy: Consultation Paper*, DETR, 23 Feb 2001

<sup>16</sup> Home Energy Efficiency Scheme, now marketed as Warm Front Team

Housing Benefit or Income Support for Mortgage Interest (ISMI) on all household fuel use.

2. In coming to these definitions 3 main issues were considered:

- Fuel use to be included
- Definition of household income
- The 10% cut off point

Accompanying press notices summarised further details about government aims and the strategy:

Fuel poverty should be a thing of the past for vulnerable households in the UK by 2010 under new plans announced by the Government today. Around three million households - 4.5 million people - are set to benefit.

The Government will spend £1.5 billion a year over the next few years under the new draft Fuel Poverty Strategy unveiled by Michael Meacher (DETR) and Peter Hain (DTI) in a consultation paper today. Its overarching aim is to seek an end to fuel poverty and the first priority is to:

- ensure that by 2010 no vulnerable household (older people, families with young children, the disabled and those suffering long term illnesses) in the UK need risk ill health due to a cold home.

And it sets interim targets to:

- assist 800,000 vulnerable households in England under the Home Energy Efficiency Scheme and ensure a further nearly 400,000 social sector properties are brought up to a decent standard by 2004;
- Ensure that Scotland's 140,000 pensioner households and social sector tenants all live in centrally heated and well insulated homes by 2006;
- help 37,000 fuel poor households in Wales under the HEES scheme by 2003; and
- using the Domestic Energy Efficiency Scheme and partnership programmes, help at least 40,000 fuel poor households in Northern Ireland by 2006.

It also:

- brings together existing policies and budgets of central Government, local authorities and the devolved administrations to provide a more coherent, better focused package of help;
- sets up an external panel of experts to advise Ministers on the effectiveness of the programmes on the ground;
- commits the Government to monitor progress and publish regular reports;
- funds a pilot study into the impact on health of improving heating and insulation in homes;
- and crucially, new Warm Zone pilots will be set up to ensure that action to tackle fuel poverty is co-ordinated on the ground.

Since 1997 a wide range of policies and initiatives have been brought forward to reduce energy prices and tackle fuel poverty, from improving building standards for new homes, to massive investment in social housing, and advice and help to improve energy efficiency of older buildings.

The number of fuel poor households has already fallen, from around 5.5 million in 1996 to around 4.5 million in 1999. Three million of these households - with elderly residents, children, a disability or long term illness - are particularly vulnerable to cold.

The Fuel Poverty Strategy will pull policies and initiatives together, providing the momentum to ensure that vulnerable groups, the people who at present risk ill health because they cannot afford to heat their homes properly, do not miss out on the help available to them. It will also ensure progress in improving the energy efficiency and warmth of homes across the United Kingdom. (...)

The detail of the programmes differs between the four countries of the UK. This is because housing and energy efficiency are devolved matters which are the responsibility of the Devolved Administrations. They have devised their own separate approaches in the light of the resources available and the level of knowledge about the extent of the problem.<sup>17</sup>

The consultation closed on 31 May 2001.

## IV Responses to the draft Fuel Poverty Strategy

Two hundred and eighty two responses were received to the draft. The responses<sup>18</sup> and a summary document<sup>19</sup> are available on the DTI website. The following is an overview of the role of local authorities in energy efficiency policies from the responses.

The Department of Food Environment and Rural Affairs (DEFRA) is currently reviewing the role of local authorities in energy efficiency. The Review of Policy Framework for Local Authority Energy Efficiency Activity will seek to identify changes to the existing policy framework that will allow local authorities to pursue energy efficiency in a more coherent, strategic way. The review will examine, evaluate and make recommendations on:

- local authorities' role in delivering energy efficiency, and their powers, duties and responsibilities;
- whether the existing tools for delivering energy savings are adequate and how authorities could make better use of them;

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<sup>17</sup> DTI and DETR press notices 100, *Government seeks to end fuel poverty*, 23 February 2001

<sup>18</sup> <http://www.dti.gov.uk/energy/fuelpoverty/responses.htm>

<sup>19</sup> Responses to consultation on the Draft UK Fuel Poverty Strategy Summary. DTI. November 2001. [http://www.dti.gov.uk/energy/fuelpoverty/responses\\_summary.pdf](http://www.dti.gov.uk/energy/fuelpoverty/responses_summary.pdf)

- whether authorities could develop further partnerships to achieve greater savings;
- how to improve HECA, to deliver greater
- domestic energy savings;
- how improvements in energy efficiency should be monitored and reported.

The review will conclude at the end of this year, and DEFRA will bring forward proposals early next year. It is too early to say what the review will conclude, but it is clear that there would be benefits to building on the synergies between authorities' Affordable Warmth and HECA strategies and potential for further integrating fuel poverty and HECA policy.<sup>20</sup>

The Energy Savings Trust (EST) published a strategy document, which includes its views and the following recommendations about local authority policy on energy efficiency.<sup>21</sup> These are broadly in line with the measures in the *Home Energy Efficiency Bill* 2001-02.

Local authorities (LAs) are key influencers of their local communities, and are also housing providers. Of the total 469 LAs, 409 of these are Energy Conservation Authorities and have a clear commitment to improve energy conservation in their areas.

Most LAs need to do much more to improve the energy efficiency of their own housing stock. This will require LAs to set aside more funds for investing in energy efficiency, but LAs often have little incentive to do this. Experience with the Energy Efficiency Commitment (EEC) has proved that energy suppliers are taking it seriously now that it is a serious business issue. The same would apply to LAs, and Government would do well to consider ways of incentivising LAs to give energy efficiency priority while it is reviewing LA energy efficiency activity.

LAs transfer housing stock to housing associations and charities, and this is a good time for energy efficiency improvements to be made. Housing landlords should make energy efficiency a priority and offer it to the tenants as an important and attractive part of the transfer deal. Most tenants would be keen to reduce their energy bills if they were aware that they could benefit in this way.

*We recommend:*

- *That the Government develops incentives for LAs to encourage them to make energy efficiency a priority in their own properties.*
- *That LAs participate fully in energy efficiency awareness-raising campaigns and work with energy suppliers, retailers and other local stakeholders to encourage householders to buy energy efficiency goods and services.*

However, in its response to the draft strategy, EST noted:

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<sup>20</sup> The UK Fuel Poverty Strategy. DTI. November 2001. Box 4.2  
<http://www.dti.gov.uk/energy/fuelpoverty/Chp4.pdf>

<sup>21</sup> *The Energy Efficiency Strategy – A Real Plan for a sustainable future*, Energy Savings Trust, 9 November 2001.

We believe that the reporting obligations placed on local authorities in relation to energy efficiency– from HECA to Best Value to housing investment strategies – need to be streamlined, and linked to other reporting. There is a need for Government to feed back on reports and take action where appropriate. These changes will ensure that the process is credible and useful, while minimising the reporting burden.<sup>22</sup>

Eleven respondents to the draft strategy felt that local authority HECA on functions and networks provided a good basis for developing work on fuel poverty. However, some felt that the HECA framework and resourcing was weak and already discredited. Age Concern Scotland reported critical feedback from the Scottish HECA Officers Network:

Although HECA requires local authorities to identify measures to improve all stock and report on progress, owners and private landlords are under no obligation to provide information. Feed back from Scottish HECA Officers Network shows uneven resourcing and prioritising amongst local authorities of their HECA responsibilities. There is a real need for national guidance, dissemination good practice, and standardised information gathering and reporting.<sup>23</sup>

Energy Action Scotland (EAS) also felt that the draft strategy lacked a commitment to HECA objectives:

There is no link to the Home Energy Conservation Act (HECA) and its objectives. EAS has sought the introduction of a full time HECA officer in each local authority who could act as a co-ordinator for all initiatives at a local level.<sup>24</sup>

EAS, along with sixty-three other respondents, were also of the opinion that the variety of schemes and programmes was confusing and there was a need for greater co-ordination.

There is no formal co-ordination of initiatives or suggested co-ordinating body, except for the piloting of Warm Zones in England. For example, there is no indication of how housing/energy efficiency initiatives can interact with health authorities and their plans. EAS believes co-ordination should be Government led.

Unison, the trade union representing mainly local government and health workers, noted:

Local authorities have an important co-ordinating and integrating role in the reduction of fuel poverty within the context of a devolved UK political structure. Devolved government has shown the need for a consistent application of the measures designed to tackle fuel poverty. Local authorities have obligations

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<sup>22</sup> Energy Savings Trust response to UK Fuel Poverty Strategy Consultation Draft

<sup>23</sup> Age Concern Scotland. The UK Fuel Poverty Strategy. May 2001.

<sup>24</sup> Energy Action Scotland. The UK Fuel Poverty Strategy. May 2001.

under the Home Energy Conservation Act (HECA) 1995 to identify the measures needed to improve the energy efficiency of the housing stock in their area, but only about one-third have met them so far. Swifter progress needs to be made if all vulnerable households are to be helped by 2010. Once the measures have been identified all households in England, as in Wales, should be eligible for the maximum available package.<sup>25</sup>

Friends of the Earth Scotland made similar points regarding resourcing and the need for additional powers.

We support calls for national and regional co-ordination of the various measures effective upon fuel poverty. We believe that HECA officers would be well placed to provide this co-ordination. However, for these to be effective they would require additional, and ring-fenced, resources and additional powers. We would suggest that a minimum number of HECA officers be required for a specific number of households, making allowances for sparsely populated areas. We would also suggest that there is national co-ordination of this network of officers either through a Ministerial post for energy efficiency and fuel poverty, or via a dedicated HECA unit within the Executive.

It is also apparent from HECA reports that most local authorities are currently unable to reach their targets. There are many causes of this failure. Poor information on housing outwith council control and lack of powers over it are major drawbacks. We recommend this situation is remedied by ensuring all housing is energy audited at change of occupation, and that the private rented sector is regulated with guidelines setting minimum requirements in relation to the energy efficiency of the property. We recommend that HECA responsibilities are placed upon RSLs<sup>26</sup> over a certain size, this is particularly important in the case of large scale stock transfers (7.15).

Warm Zones Ltd commented on the varying approaches by authorities to their fuel poverty remit:

Exhortation as a government policy tool to stimulate greater local authority commitment to solving fuel poverty appears to be inadequate. Our experience shows the ten local authorities with which we have direct and detailed contact on this matter have approaches ranging from un-funded *laissez faire* to well-resourced/highly proactive. HECA returns vary widely in quality and reliability and, in any event, are primarily concerned with energy efficiency. The Fuel Poverty return has been ignored by many local authorities. The consistency, adequacy, monitoring and enforcement of local authority performance on both fuel poverty and energy efficiency appear to need thorough review.<sup>27</sup>

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<sup>25</sup> The UK Fuel Poverty Strategy A Unison response. May 2001.

<sup>26</sup> Registered Social Landlords

<sup>27</sup> Warm Homes Ltd response to Fuel Poverty Strategy

The elimination of energy-inefficient buildings, and the upgrading of other properties, was viewed by some respondents as the permanent solution to eradicating fuel poverty. The government strategy is to upgrade all social housing to a decent standard by 2010, but some felt that the strategy should be extended to private sector housing as well, with local authority targets to achieve this, reinforcing their HECA responsibilities.

This view is supported by National Energy Action in its response:

Recommendation: Priority should be given to improving the energy efficiency of difficult-to-improve properties in preference to subsidising the energy costs of the low-income households who occupy them.

3.4.8 For some properties it may have to be accepted that the most cost effective solution is demolition and replacement. In some cases, it may be possible to combine this with the production of smaller dwellings which could contribute to the reduction of fuel poverty resulting from under-occupation. For NEA, this is another convincing argument for the need to link the strategy to eradicate fuel poverty with wider housing policies.<sup>28</sup>

One respondent suggested that local authorities be given a duty to ‘eradicate’ all properties of a given Standard Assessment Procedure<sup>29</sup> rating by a certain date.

All these initiatives are welcome, but there should be some detail about the impact that is expected. The 1996 English House Condition Survey showed that the Standard Assessment Procedure rating for the average house was 44 points, in comparison with 42 points in 1991: an increase of 2%, out of the maximum score of 100 points. The figures for the poorest 30% of households (p124) appears to show a similar increase from 39-41 SAP points. This indicates that the effect of the several programmes in existence then has been negligible and barely sufficient to offset the natural deterioration in the housing stock. If the benefits of these expenditures cannot be identified in terms of energy efficiency improvements to the vulnerable fuel poor, it is not possible to have confidence that the strategy will solve the problem in the next 9 years.

The best way to identify many of these households is to have a policy that is based on the energy inefficiency of the dwelling. For instance, under HECA and the McAllion Option, require local authorities to eradicate all houses which are below a:

SAP 10 by 2003  
 SAP 20 by 2004  
 SAP 30 by 2006  
 SAP 40 by 2008  
 SAP 50 by 2010

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<sup>28</sup> UK Fuel Poverty Strategy response. National Energy Action

<sup>29</sup> See Footnote 12

This would ensure that not only were there no fuel poor living in these dwellings, but no-one could move in and become fuel poor. The cost of improvements would be paid for (by the local authority, with utility support, etc) with fuel poor households, but not others.

This targeted, comprehensive, local-authority based approach is the policy being developed through the Warm Zones. It appears to be an excellent initiative and will be watched with interest. Tackling the worst housing, in a phased manner (over 3-5 years) is probably the way in which future policy should be framed. It is then clear, that in this geographical area, everyone is warm and all homes have a minimum level of energy efficiency. This builds on the precedent of the Clean Air Act 1956, where all houses in a smokeless zone had to be converted, within a 5 year period, and the poorest families received a grant. Before too long, an address-specific approach is required to fuel poverty. The Warm Zones could be providing that example. The success of the Strategy could be monitored through HECA.<sup>30</sup>

Age Concern England also felt that eradication of fuel poverty could not be achieved solely through energy efficiency measures. In its view, old people should be helped to move to smaller more energy efficient households if they are to be taken out of fuel poverty. They also suggest the use of targets based on SAP ratings:

We therefore think that, in addition to monitoring the numbers of households receiving HEES grants, information should also be collected on what improvements in Standard Assessment Procedure (SAP) HEES achieves. Consideration should also be given on setting a target SAP rating for fuel poor households.

Similarly we think that local authorities should be given a target SAP rating that they must achieve when improving their housing stock. At the moment there is only a target that all social housing will be of a decent standard by 2010 (para 4.20). However, the part of the definition of 'decent' relating to energy efficiency is that 'it should provide a reasonable degree of thermal comfort where this is defined as a household not being fuel poor'. Given that there are non-energy efficiency factors that contribute to fuel poverty which the local authority cannot control, we think they should be given a target SAP rating that their properties should achieve by 2010.<sup>31</sup>

These views are also shared by the Public Utilities Access Forum:

The most practical might be a target for the minimum SAP rating in previously fuel poor households. This would be consistent in approach to the setting of

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<sup>30</sup> UK Fuel Poverty Strategy response. Brenda Boardman. Leader of Energy and Environment Programme at the Environmental Change.

<sup>31</sup> Age Concern England. The UK Fuel Poverty Strategy. May 2001.

affordable warmth targets and HECA targets by local authorities (and other social landlords).<sup>32</sup>

National Energy Action (NEA), a campaigning group for warmer homes, makes a number of recommendations about the role of local authorities in making energy efficiency gains and eradicating fuel poverty:<sup>33</sup>

Local authorities have a role in using their links with health authorities, primary care groups, voluntary organisations and tenant and community groups to help to identify vulnerable households most in need of assistance. The wider role of local authorities to promote improvements in energy efficiency across all housing sectors in their area under the Home Energy Conservation Act 1995 (HECA) is also mentioned. (...) It is difficult to see how initiatives to combat fuel poverty can be successfully delivered at a local level without the full and enthusiastic support and commitment of local authorities

The lead role in co-ordinating schemes should be given to the Government Regional Offices in England and the devolved administrations in Scotland, Wales and Northern Ireland. Local co-ordination should be the responsibility of local authorities in England, Scotland and Wales and the Northern Ireland Housing Executive (NIHE) in Northern Ireland.

Recommendation: The Government should identify local authorities as the key agents to co-ordinate the delivery of strategies to eradicate fuel poverty at the local level, promote this role and provide examples of good practice in this area.

Local authorities are major landlords, although this role is being reduced as a result of large-scale voluntary stock transfer of their housing to registered social landlords (RSLs) and other housing companies. They have an important role as major investors of capital in their own stock and also in private sector properties through renewal grants. In England, this capital investment will amount to £2 billion per year over the next three years. The document estimates that approximately one third of this amount will be invested in energy efficiency improvements.

Recommendation: The Government should ensure that sufficient local authority capital expenditure is devoted to energy efficiency improvements to their own housing stock to ensure that the thermal comfort requirements of the decent housing standard are achieved within the required timescale.

Recommendation: The DETR should make the adoption of the provision of reasonable thermal comfort by the new landlords a requirement for voluntary stock transfers.

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<sup>32</sup> PUAFA response to the UK Fuel Poverty Strategy. Public Utilities Access Forum.

<sup>33</sup> UK Fuel Poverty Strategy response. National Energy Action.

Recommendation: The DETR should ensure that sufficient funds are allocated by local authorities to housing renewal grants to ensure that necessary repair and improvement work can be funded alongside energy efficiency improvements. Consideration should also be given to making such grants mandatory in cases of unfitness or serious disrepair.

The area based approach was also favoured by the National Right to Fuel Campaign, provided that local authorities are given the powers and resources to fulfil their role.<sup>34</sup>

Local authorities also have a key role in developing such initiatives, possibly through the mechanism of local strategic partnerships. In as such, Warm Zones should not seek to replicate existing local activity but rather integrate with it.

HECA also provides a mechanism for establishing local fuel poverty targets and monitoring mechanisms, as well as energy efficiency targets (current powers only require authorities to describe anti-fuel poverty activity). This will require local authorities having the powers and resources to enable them to fulfil this role.

The Local Government Association stress:<sup>35</sup>

It is the fundamental need for local authorities to be active partners in solutions to tackle fuel poverty at the local level.

(...)

The emphasis here is on the duty on the Home Energy Conservation Act 1995 (HECA) to:

- (a) prepare a report identifying measures to improve significantly the energy efficiency of all residential accommodation in their area and
- (b) to report on progress on implementing the measures.

Paragraph 5.11 then refers to the Government's initiative in asking local authorities in England (last year) to strengthen their involvement in combating fuel poverty - both through their own housing programmes, and by linking up with the new HEES scheme, and other initiatives. The point here (which was underlined on many occasions at the OFGEM/LGA conference is that enabling schemes such as new HEES and the Energy Efficiency Commitment (EEC) must, if they are to operate effectively, work in close co-operation with local authorities.

## **V The UK Fuel Poverty Strategy**

The Fuel Poverty Strategy was published on 21 November 2001.<sup>36</sup>

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<sup>34</sup> National Right to Fuel Campaign response to UK Fuel Poverty Strategy.

<sup>35</sup> Local Government Association response to UK Fuel Poverty Strategy

<sup>36</sup> UK Fuel Poverty Strategy, DTI, 21 November 2001

New elements of the strategy include:

Ensuring that low-income households will soon be able to offer their children a warm home from the day they are born;

A £10 million micro-scale combined heat and power pilot involving up to 6000 households across England and Wales;

A £5 million pilot to test the potential for using renewable energy to heat homes not connected to the gas network;

Investigation into a possible extension to the gas network to reach rural and non-connected urban areas;

More training for young people to become gas fitters.<sup>37</sup>

The first of these depends upon the definition of fuel poverty. This is defined in the strategy as a household that needs to spend more than 10% of its income on fuel in order to maintain a satisfactory heating regime. All household fuel use including heating, cooking and cleaning etc is used in the definition. The government intends to publish the number of fuel poor according to both main definitions of income:

(a) On the basis of all household income after tax, including benefits.

(b) On the basis of all household income after tax, including all benefits except for Housing Benefit and Income Support for Mortgage Interest.<sup>38</sup>

For the purposes of target setting, however, it is proposed to use definition (a).

The strategy sets an overall target that no vulnerable household will be in fuel poverty by 2010, and sets interim national targets as follows:

England - By 2004, to have assisted 800,000 vulnerable households through the Home Energy Efficiency Scheme (HEES), now marketed as the Warm Front Team (WFT) and to reduce the number of non-decent social sector homes by one third;

Scotland - By 2006, to ensure that all pensioner households and tenants in the social rented sector live in a centrally heated and well insulated home;

Wales - By March 2004, to have assisted 38,000 households likely to be in fuel poverty through the Home Energy Efficiency Scheme for Wales;

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<sup>37</sup> DTI press notice P/2001/650, *Government launches strategy to make winter heating easier to afford*, 21 November 2001

<sup>38</sup> *ibid*

Northern Ireland - By 2006, to have assisted at least 40,000 households in fuel poverty through the new Warm Homes Scheme and partnership programmes.<sup>39</sup>

The targets will be achieved through a number of policies and programmes addressing the main causes of fuel poverty, including:

Programmes to improve the energy efficiency of fuel poor households, for example the Warm Front Team (based on the Home Energy Efficiency Scheme) and investment by local authorities and registered social landlords.

Continuing action to maintain the downward pressure on fuel bills, ensuring fair treatment for the less well off, and supporting the development of energy industry initiatives to combat fuel poverty.<sup>40</sup>

## **VI Other government initiatives on fuel poverty**

The government has already initiated a number of other measures to address fuel poverty. Michael Meacher presented a summary in answer to a parliamentary question from Ian Davidson:

The Government have already taken action to tackle the main causes of fuel poverty--low income and poor energy efficiency--to help those suffering from fuel poverty.

The Winter Fuel Payment, which has been increased to £200 for this winter, will help many older households in, or at risk from, fuel poverty. For the poorest pensioners we have introduced the Minimum Income Guarantee, which is already helping 1.6 million pensioner households.

We have also reduced the level of VAT on fuel and on the installation of energy saving materials, so that people can more easily afford to keep warm. Further reductions in energy bills have resulted from the reform of the energy market.

But the permanent solution is to provide better insulation and heating. We have made available substantial additional capital funds for housing investment by local authorities. We have also launched our radical new Home Energy Efficiency Scheme (HEES). The scheme now provides grants for packages of heating and insulation improvement measures, including high efficiency central heating systems for low-income households aged 60 years or more. With a budget of over £600 million, HEES is expected to have reached some 800,000 vulnerable households by 2004, 480,000 being over-60s.

In addition, the Energy Efficiency Standards of Performance schemes (EESOPs) run by the energy suppliers have been doubled to some £50 million a year.

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<sup>39</sup> *ibid*

<sup>40</sup> *ibid*

Around two-thirds of this help is going to pensioner and low-income families. From 2002 the Government are proposing to increase the scale of the scheme, to around £150 million a year, continuing its focus on disadvantaged consumers.

As this is a devolved matter, it is the responsibility of the respective Parliament and Assemblies to comment on the situation in Scotland, Wales and Northern Ireland.<sup>41</sup>

The government has summarised information about increases in expenditure on the various measures to relieve fuel poverty during a five-year period in answer to another parliamentary question on 6 April 2000. This is reproduced in Annex II:

## VII Energy related clauses in the Bill

The Bill is accompanied by Explanatory Notes that cover it in detail. This section is an overview of the energy related clauses.

Part 1 of the Bill aims to improve the operation of the *Home Energy Conservation Act 1995* (HECA). The government's new Fuel Poverty Strategy that results from the *Warm Homes and Energy Conservation Act 2000* (WHECA) is applied to the 1995 Act in Part 2. The registration and licensing of HMOs for energy efficiency and other purposes is dealt with in Part 3 (see section IX).

### Part 1

At present there is no duty upon Energy Conservation Authorities (ECAs) to achieve energy efficiency targets in residential housing under the HECA 1995. **Clause 1(1)** sets out the measures ECAs shall take to achieve, as far as reasonably practicable, their targets. The measures include monitoring of other bodies, such as utilities, carrying out energy efficiency schemes in their area (**clause 1(1)a**); encouraging and co-ordinating other bodies to implement schemes (**clause 1(1)b & c** respectively); and an authority itself carrying out measures to meet the targets (**clause 1(1)d**).

The Secretary of State may make regulations that require Registered Social Landlords (RSLs) and managers of government energy efficiency programmes to report their progress on energy efficiency improvements to each ECA (**clause 1(2)**).

**Clause 1(3)** sets out arrangements when RSLs take over ownership of property from ECAs to ensure energy efficiency programmes are carried out. **Clause 1(3)a** requires an RSL to agree how it will contribute to the ECA's programme under the HECA. Resources to achieve the targets must be included in the take over, and RSLs must take steps to achieve the targets (**clause 1(3)b**).

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<sup>41</sup> HC Deb 2 April 2001 cc 14-15W

The Secretary of State may stipulate the way in which assessments in the ECA reports are made and the way in which the reports are prepared (**clause 1(4)**).

**Clause 1(5)** provides that the regulations under Part 1 of the Bill are subject to the negative procedure.

**Clause 2** places a duty upon on each ECA to appoint a designated officer to implement the HECA in their area.

**Clause 3** allows the Secretary of State to take the steps he believes necessary to ensure that ECAs achieve their targets.

## Part 2

Under **clause 4(1)** the Secretary of State may give guidance to ECAs, or bodies acting for them, about how to carry out their functions under the HECA to aid implementation of the Fuel Poverty Strategy resulting from the WHECA. In particular this may be about arranging partnerships with other bodies (**clause 4(2)**).

**Clause 4(3)** requires ECAs to carry out their functions under the HECA according to this guidance. The aim is that guidance will achieve the correct balance between over prescription and lack of co-ordination.

## VIII Views on energy related clauses

Warm Homes Ltd has concerns about the standardised reporting system for the HECA returns:

Warm Zones, in developing a systematic and consolidated approach to fuel poverty in five pilot local authority areas in England, would particularly like to comment on the requirement in the Bill that a standardised reporting system for HECA returns should be set up by the Secretary of State (SoS).

We believe this to be the most critical and important aspect of the Bill, there being a variety of (optional) indicators, measuring systems and standards which can be used by local authorities and by anyone in the energy efficiency/fuel poverty business.

However, the SoS should bear in mind, when establishing such indicators, that income and energy cost (tariff) are, in many cases, as important in determining the extent of fuel poverty as thermal efficiency measures and provide for a standardised method of assessing energy cost and income for a household.<sup>42</sup>

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<sup>42</sup> Richard Adams for Warm Homes Ltd

The Local Government Association (LGA) stressed that it has always been supportive of the strategy and objectives of government energy efficiency policies and the Climate Change Programme. Although it sees local authorities as integral to the eradication of fuel poverty it has some concerns about the Bill. It believes the Bill is well-intentioned in vision but that it may be an inappropriate way to go about achieving the result. In particular it may be over-prescriptive. The following points were made:

- The current philosophy is for local and central government partnerships. The Bill may run contrary to this and not allow sufficient freedom and flexibility.
- It has already been agreed that the bureaucracy associated with the HECA reporting needs to be rationalised. The Bill may add another layer, contrary to this.
- The appointment of a designated officer to implement the HECA is over-prescriptive because it may be possible to meet requirements within an existing staff compliment and job description.<sup>43</sup>

National Energy Action (NEA) sets out its views in a briefing note.<sup>44</sup> The past five years have illuminated the weaknesses of the HECA, and NEA makes the following points about improvements that are needed:

- There has been insufficient guidance to ECAs on measurement of progress in energy efficiency. Data published by different ECAs is not comparable because strategy and reporting techniques differ. It recommends that the Secretary of State sets standards and performance indicators about progress in energy efficiency by ECAs and others.
- There is fragmentation and a piecemeal approach to energy efficiency programmes which may be funded through many bodies. NEA believes that local authorities are best placed to co-ordinate and advance programmes.
- It is essential when properties are transferred from local authorities that the new controlling body is required to ensure that it meets specified energy-related standards.
- The NEA approves of a concession to allow a reduced improvement target, but believes it should be demanding and progress monitored.
- NEA's view is that each ECA should have a minimum of one full-time officer with sufficient status and authority dedicated to the HECA requirements.

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<sup>43</sup> John Austin Locke for the LGA

<sup>44</sup> The Home Energy Conservation Bill 2<sup>nd</sup> Reading Stage: a briefing note from NEA, NEA, undated.

- NEA believes that the provisions of the Bill encourage the Secretary of State to develop "joined -up thinking" as advocated by government.

Following a conference on fuel poverty and climate change held in Cornwall on 16<sup>th</sup> February 2001, a partnership of local authorities and environmental and social issue campaigners, came together to press to make the HECA more effective.<sup>45</sup> They raised support amongst MPs to address their concerns, which resulted in two Early Day Motions;<sup>46</sup> they have also enlisted the support of the All Party Warm Homes Group,<sup>47</sup> and nearly 100 local authorities have also supported the Bill.

The partnership sees a clear need for the HECA changes in the Bill. Much of the detail of their argument is set out in the Explanatory Notes to the Bill, and has been voiced at consultation sessions during drafting stages of the Bill. They suggest that local authorities are already behind in meeting the 30% improvement in energy efficiency by 2010 as envisaged by the HECA; energy conservation authorities should have achieved about 8% by the end of 1999.

Michael Meacher has described the overall increase of 6% as 'wholly inadequate' and has talked of making the target 'more robust' and of giving local authorities 'the tools and support that they need'. The Bill makes the target a statutory duty: 'unless it becomes a duty there is no hope of achieving the target.' The Bill also gives councils more tools with which to achieve the target, by enhancing their role as co-ordinators.<sup>48</sup>

The partnership feels that a dedicated member of staff with HECA responsibilities will be more effective in achieving the HECA targets than meeting the role within existing staff resources.

Clause 2, relating to the identification of a HECA officer would enact what was another constant point made at all our consultations: HECA officers often with six or more other jobs and little or no time or influence. This is demoralising for officers whom, we have found, are very committed to reaching the targets. An officer with enhanced influence will be more able to negotiate arrangements with outside bodies, thus bringing in more resources to help reach the target.

Specifically on fuel poverty, the partnership welcomes Clause 4:

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<sup>45</sup> The Partnership Steering Committee consists of representatives from The Association for the Conservation of Energy, Friends of the Earth, The National HECA Forum, NEA – National Energy Action, the Local Authority Support Programme, the National Right to Fuel Campaign, Help the Aged, UNISON, the National Housing Federation, SERA, the Green Liberal Democrats, the Tory Green Initiative, the Green Party, and British Energy Efficiency Federation.

<sup>46</sup> *Partnership to achieve energy efficiency targets* EDM 20 2001-02; *Energy Efficiency* EDM 375 2000-01

<sup>47</sup> The All Party Warm Homes Group has 70 members in both Houses. They have actively been campaigning for the Bill.

<sup>48</sup> Parliamentary Warm Homes Group Briefing

Clause 4 deals specifically with fuel poverty. It aims to ensure proper co-ordination in order to achieve the Government's duty under the Warm Homes Act to end fuel poverty by 2010 for 'vulnerable' households and within 15 years for all households. (...) The reference to 'partnerships' with other agencies also arose repeatedly at our consultation meetings: a united approach by local authorities, health bodies, utilities and NGOs was called for: the guidance would help to achieve that.

## **IX Houses in Multiple Occupation (HMOs)**

### **A. Introduction**

#### **1. Numbers and types of HMOs**

The English House Condition Survey (EHCS) of 1996 found that there were some 550,000 properties in England in the private rented sector that would be commonly regarded as meeting the existing HMO definition: namely a house which is occupied by more than one household. This figure includes houses comprising bedsits, all shared houses, all houses with lodgers and houses converted into self-contained flats. These HMOs provide accommodation for just over one and a half million people.

Excluded from these figures are purpose built HMOs such as student halls of residence and sheltered accommodation for the elderly. Also excluded are hostels, B&B establishments and other similar types of property which may meet the definition of an HMO if they provide accommodation for some permanent residents: these properties are commercially rated and the EHCS only collects information on domestic dwellings.

Shared houses and houses with lodgers are the most common form of HMO in the private rented sector, each accounting for about 35 per cent of the total number of properties. Just under 20 per cent are houses converted into self-contained flats, and about 10 per cent are houses comprising bedsits. Shared houses tend to be the preserve of younger people; over half of all occupants are under 30 years old.<sup>49</sup>

#### **2. Risks in HMOs**

The Government's consultation paper, *Licensing of Houses in Multiple Occupation*,<sup>50</sup> identified the following risks associated with HMOs:

10. HMOs can present a number of risks to the health and safety of those who live in them. Firstly, there are the risks associated with deficiencies that can occur in any type of housing - such as structural instability, disrepair, damp, inadequate

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<sup>49</sup> Further information on HMOs in the private rented sector can be found in *The English House Condition Survey 1996: Houses in Multiple Occupation in the Private Rented Sector*, April 1999

<sup>50</sup> Department of Environment, Transport and the Regions (DETR), April 1999

heating, lighting or ventilation and unsatisfactory kitchen, washing and toilet facilities. All these matters are covered by the existing housing fitness standard, which applies to all dwellings. Authorities have a variety of options for action in houses which do not meet the standard. Although the EHCS<sup>51</sup> found that just under 10 per cent of all HMOs in the private rented sector failed the fitness standard, a higher rate of around 20 per cent was recorded in two particular types of HMO - houses converted into self-contained flats and houses comprising bedsits. They were most likely to be unfit as a result of disrepair and a lack of satisfactory heating.

11. There are additional health and safety risks associated with HMOs arising from multiple occupancy. For example, although kitchen, washing and toilet facilities are present, they may be insufficient for multiple occupancy. There has been widespread public concern about fire safety standards in HMOs. The EHCS found that a further 40 per cent of houses comprising bedsits were unfit for the number of occupants. In over 40 per cent of cases this was a result of inadequate kitchen facilities, but around 80 per cent also lacked adequate means of escape from fire and other fire precautions.

12. Research for the Department by Entec Ltd<sup>52</sup> identified several factors, in addition to the number of occupants, which influence the risk from fire in HMOs. These include: the number of storeys - HMOs of three or more pose a significantly higher risk; the nature of the occupancy - HMOs housing dependant or vulnerable persons pose a higher risk than those housing the able bodied and cognisant; the quality of management in the HMO; and a number factors relating to the internal design of the HMO, such as the degree of self-containment of the units of accommodation, and the number of escape routes and their fire rating.

13. The risk of death from fire in HMOs will vary considerably, as all these factors will interact differently in each individual case. However, Entec found that in several types of HMO the risk is considerably higher than in comparable single occupancy dwellings. For example, occupants of houses comprising bedsits are about six times more likely to die as a result of fire than adults in an ordinary house. But in other cases, for example two storey shared houses and houses with lodgers, there may be little or no additional risk.

Factors that have been identified as making the existing law regulating HMOs difficult to enforce include the mobile nature of HMO residents and their lack of security of tenure. Assured shorthold tenants who complain about disrepair and poor management can be vulnerable to losing their home as they have limited security of tenure.

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<sup>51</sup> English House Condition Survey 1996

### 3. Desmond Turner's Bill

Desmond Turner's Private Member's Bill is intended to deal with some of the issues associated with HMOs. Part 3 of this Bill would replace the existing definition of an HMO and would introduce mandatory registration for certain types of HMO.

The following reasons have been given for the inclusion of clauses affecting HMOs in Part 3 of the Bill:<sup>53</sup>

1. It would help the Government deliver its pledge to introduce mandatory licensing.
2. It is essential to enable the Government to succeed with its fuel poverty strategy by requiring private landlords to play their part in improving the housing stock.
3. It is essential to help energy conservation authorities achieve their HECA<sup>54</sup> targets. Currently local authorities have few powers to require private landlords to insulate their properties.
4. It is essential to enable the UK to reach its CO2 reduction targets both in the short and long term. Labour's 2001 Manifesto recognised the importance of the Royal Commission on Environmental Pollution's call for up to 60% reductions by 2050.

## B. What is an HMO?

### 1. Background

Part XI of the *1985 Housing Act*<sup>55</sup> contains the main duties and powers of local authorities with regard to HMOs. The definition of an HMO is contained in section 345 of the 1985 Act. The definition is crucial: if the property is not an HMO an authority cannot use its powers to take enforcement action over standards. Section 345 defines an HMO as a house occupied by persons who do not form a single household. This definition was extended by the *Local Government and Housing Act 1989* to include parts of buildings, ie flats in multiple occupation. There are three elements to the definition; there must be:

- a house or flat
- which is occupied
- by persons who do not form a single household

The most problematic aspect of deciding whether a property constitutes an HMO has usually concerned the issue of whether the occupants form a single household; there are no certain criteria for this. Whether occupiers of a dwelling make up a single household is a question of fact and degree that depends on the circumstances of each case.

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<sup>53</sup> Taken from a consultation draft of the current Bill.

<sup>54</sup> *Home Energy Conservation Act 1995*

<sup>55</sup> As amended by the *1996 Housing Act*

Guidance on what factors should be taken into account by a local authority when considering whether a household forms a single household is contained in paragraph 2.2.2 of Department of the Environment (DoE) Circular 12/93:

- whether cooking facilities are separated or shared;
- whether washing facilities are separate or shared;
- whether the occupants eat together;
- whether cleaning is shared or carried out individually;
- whether the occupants have separate contracts;
- whether vacancies are filled by occupants or the landlord;
- whether the occupants come and go frequently.

In the case of *Simmons v Pizzey*<sup>56</sup> the House of Lords held that section 15 and section 19 of the *Housing Act 1961* (now sections 352 and 354 respectively of the *1985 Housing Act*) applied to a hostel for battered wives. Lord Hailsham said that both the expression “household” and “membership of it” is a question of fact and degree. He took three factors into account in deciding that the establishment in question was beyond the limits of what could be called a single household:

- (a) The size was beyond what in that area "can ordinarily and reasonably be regarded as a single household";
- (b) The fluctuating character of the resident population "both as regards the fact of fluctuation and of the extent of it";
- (c) Its temporary character as a place of refuge for fortuitous arrivals could not be regarded as ordinarily forming a household at all.

More recently, in *Barnes v Sheffield City Council*<sup>57</sup> the court said that although it would be wrong to suggest that there was a litmus test that could be applied to the question whether a group of students formed separate households, the following factors were helpful indicators:

- (a) whether the persons living in the house came to it as a single group or whether they were independently recruited;
- (b) what facilities were shared;
- (c) whether the occupiers were responsible for the whole house or just their particular rooms;
- (d) whether the individual tenants were able to, or did, lock other occupiers out of their rooms;
- (e) whose responsibility it was to recruit new occupiers when individuals left;
- (f) who allocated rooms;
- (g) the size of the property;

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<sup>56</sup> [1979] AC 37

<sup>57</sup> (1995) 27 H.L.R. 719, CA

- (h) how stable the group composition was; and
- (i) whether the mode of living was communal.

In *Barnes v Sheffield CC* the court held that a property let to a group of students did not constitute an HMO. The Court of Appeal in *Rogers v Islington London Borough Council*<sup>58</sup> held that the facts were distinguishable from *Barnes* and upheld the council's claim that a property housing 9 young adults who had completed their further education was an HMO. Islington argued that there was no connection between the people living in the house before they moved in and that the ratio of bedrooms to other rooms was high; the judges agreed that these points were relevant to the case. Local authorities and various other housing organisations welcomed the outcome of *Rogers* but *Barnes* is still relevant in cases where small groups of students enter into a tenancy agreement as a pre-formed group.

The question whether or not a property amounts to a "house" for the purposes of section 345 has also exercised the courts. *Reed v Hastings Corporation*<sup>59</sup> established that a house is merely "a place fitted and used and adapted for human habitation." The term is broad enough to have resulted in purpose built lodgings or hostels,<sup>60</sup> bed and breakfast hotels<sup>61</sup> and a mansion house converted into a Christian conference centre used for religious retreats<sup>62</sup> all being considered to be HMOs.

The 1999 Department of Environment, Transport and the Regions (now the Department of Transport, Local Government and the Regions, DTLR) consultation paper on the licensing of HMOs<sup>63</sup> noted that the existing definition of an HMO is unsatisfactory. On the one hand it was too wide in that it applies to types of buildings that do not require the same regulation as people's homes (eg tourist accommodation). It was also too narrow because it might, in some circumstances, not apply to shared student accommodation. The existing definition has been deemed to be too vague for the purposes of developing an HMO licensing scheme. The consultation paper suggested two alternatives for a more precise definition:

- To define specifically each of the categories to be included. Secondary legislation would allow this list to be added to over time, or
- To have a very wide but precise definition and then specifically exempt the types of properties that would be outside the scope of the scheme. This is the approach favoured by the Government.<sup>64</sup> The Government also favours the approach adopted in Scotland when discretionary licensing of HMOs was introduced in 1991; those

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<sup>58</sup> *The Times Law Report*, 30 August 1999

<sup>59</sup> (1964) 190 EG 961, CA

<sup>60</sup> *R V Southwark LBC* (1983)267 EG 1041

<sup>61</sup> *Okereke v Brent LBC* (1967) 1 QB 42

<sup>62</sup> *Living Waters Christian Centres Ltd v Conwy County BC* (1998)

<sup>63</sup> DETR, *Licensing of Houses in Multiple Occupation – England*, April 1999

<sup>64</sup> *ibid* para 8

powers applied to houses that were occupied by persons who were not all members of either the same family or of one or other of two families. There was an additional limitation that the powers only applied to houses occupied by more than four persons.<sup>65</sup>

The term family is capable of precise definition<sup>66</sup> and overcomes problems associated with the term “household.”

## 2. The Bill: HMO definition

**Clause 5(1)** of Desmond Turner's Bill would repeal the section 345 of the 1985 Act and replace it with a new HMO definition. An HMO would be defined as a building occupied by adult members of more than two families. Occupation of a property would be defined as use by a person as their "only or principal home." Temporary occupation by students in further or higher education for periods of three months or more would count as occupation for the purposes of **clause 5(1)**. Also included would be temporary occupation of accommodation secured by a local authority for a homeless person. Certain buildings would be specifically exempted from the definition under **clause 5(2)**, ie:

- (a) Hospitals, nursing homes, care homes, boarding schools, prisons, bail hostels and other buildings whose purpose is not primarily that of providing accommodation.
- (b) HMOs occupied by religious communities whose principal occupation is prayer, contemplation or education.
- (c) Jointly owned houses or flats including housing co-operatives and houses owned by companies in which all the occupants are shareholders, provided that this shall not apply to such houses in which any one person has a controlling interest.
- (d) blocks of self-contained flats.

## C. Registering HMOs

### 1. Background

#### a. *Existing powers*

Since 3 March 1997 local authorities have had discretion to adopt a model registration scheme for HMOs.<sup>67</sup> Once an authority establishes a scheme the owners of those HMOs covered by the scheme must register their properties; a model registration scheme may not cover certain properties, eg any house occupied by persons who form only two households and any house which is occupied by no more than four persons who form more than two

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<sup>65</sup> *ibid* para 6

<sup>66</sup> Section 186 of the *1985 Housing Act*

<sup>67</sup> Details of the two model schemes are set out in Annex C to DoE Circular 3/97.

households.<sup>68</sup> If an authority wishes to vary the excluded categories it must demonstrate that the new group of HMOs proposed for inclusion constitute a serious health and safety risk to the occupants and that these problems could not adequately or effectively be dealt with using the authority's discretionary powers to take enforcement action against any of its HMOs. Registration lasts for a period of five years after which an application for renewal must be made.

The "simple notification" model scheme requires landlords of properties covered by the scheme to apply for registration with the local authority and provide certain particulars for insertion in the HMO register. The other model scheme incorporates the control provisions that were inserted in the 1985 *Housing Act*<sup>69</sup> by section 66 of the 1996 Act. These provisions allow the local authority to refuse or revoke registration if certain conditions relating to the standard and occupancy level of the house are not met. Local authorities may also impose conditions in relation to the management of HMOs. HMOs can be closed down if acceptable standards are not achieved or if a landlord or manager is deemed not to be a fit and proper person. There is no guidance as to who is a "fit and proper person." In Andrew Dymond's book, *Houses in Multiple Occupation: Law and Practice in the Management of Social Housing*,<sup>70</sup> he notes:

Those who have convictions for unlawful eviction or housing benefit fraud would potentially fall within the category of unfit persons. The situation is less clear if the authority's own concerns about the applicant are related to matters which do not go directly to a person's record as a landlord. Much will turn on the facts of each case and the strength of the evidence before the authority about the person's character.

If a local authority wishes to draw up a registration scheme for HMOs that differs from either of the two model schemes, the approval of the Secretary of State must be sought before it can come into force. In particular, any scheme that seeks to incorporate the special control provisions contained in section 67 of the 1996 Act must obtain the Secretary of State's approval. Section 67 gave local authorities various powers to enable them to tackle the proliferation of "benefit hostels."

Information on the local authorities that have adopted registration schemes is given in the parliamentary answer below:

**Ms Buck:** To ask the Secretary of State for the Environment, Transport and the Regions which local authorities operate registration schemes for houses in multiple occupation; how many properties are on the list; and what proportion are estimated to be high risk.

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<sup>68</sup> The full list of exempt properties is set out in Annex C of DoE Circular 3/97.

<sup>69</sup> Sections 347-348A

<sup>70</sup> Arden's Housing Library, 2000

**Mr. Mullin:** The latest information my Department has on such schemes, based on local authority returns made in July 1999, indicated that 81 authorities, as listed, had schemes, and had registered approximately 10,000 houses in multiple occupation in the private rented sector. A number of these schemes, notably in London boroughs, are ward-based, although the majority are authority-wide: Darlington, Gateshead, Middlesbrough, Newcastle-upon-Tyne, Stockton-on-Tees, North Tyneside, Barnsley, Calderdale, East Riding of Yorkshire, Harrogate, North East Lincolnshire, North Lincolnshire, Rotherham, Scarborough, York, Derby, Kettering, Mansfield, Newark and Sherwood, South Kesteven, Basildon, Cambridge, Colchester, Kings Lynn and West Norfolk, Luton, Mid Bedfordshire, North Norfolk, Peterborough, South Norfolk, St. Albans, Tendring, Watford, Waveney, Barking and Dagenham, Bromley, Brent, Camden, Croydon, Ealing, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Hillingdon, Kingston-upon-Thames, Lewisham, Newham, Islington, Hounslow, Sutton, Tower Hamlets, Westminster, Chiltern, Dover, Gravesham, Canterbury, Guildford, Portsmouth, Rushmoor, Southampton, Thanet, Bournemouth, Bristol, Cheltenham, Mid Devon, North Somerset, Torbay, West Devon, Weymouth and Portland, Birmingham, Coventry, Redditch, Wyre Forest, Blackpool, Bury, Carlisle, Chester, Lancaster, Preston, Warrington, West Lancashire, Wirral.

Authorities are not required to notify new schemes to my Department, but we are aware of several in the past year, including: Kingston-upon-Hull, Sheffield, Bexley, Harrow, Lambeth, Southwark, Eastbourne, North Warwickshire, Brighton and Hove, Doncaster, Oxford, Herefordshire.

All the schemes are based upon my Department's 1997 model, which exempts certain lower-risk categories in the private rented sector, including houses occupied by: persons who form only two households; no more than four persons who form more than two households; no more than three persons in addition to the responsible person and any other member of their household.<sup>71</sup>

Further information on existing powers of local authorities in relation to standards in HMOs can be found in a Library standard note, *Houses in Multiple Occupation*.<sup>72</sup>

**b. Government policy**

The Government consulted on the introduction of a licensing scheme for HMOs in 1999<sup>73</sup> and is committed to the introduction of such a scheme as soon as parliamentary time allows. In the forward to the 1999 consultation paper Hilary Armstrong, then Minister for Housing, wrote:

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<sup>71</sup> HC Deb 21 June 2000 c 197W

<sup>72</sup> Available online at: <http://hcl1.hclibrary.parliament.uk/notes/sps/HMOs.pdf>

<sup>73</sup> Department of Environment, Transport and the Regions, *Licensing of Houses in Multiple Occupation – England*, April 1999

Current HMO legislation is inadequate, in parts unworkable, and failing to deliver better conditions or reducing risk. Our objective must be to raise standards, without reducing the supply of rented accommodation. HMO licensing should be effectively and consistently enforced by local authorities, setting clear standards proportionate to risks. It must complement, not duplicate, other regulatory regimes, and be cost effective, avoiding unnecessary red tape for landlords.

The Government's key proposal is that local authorities will be given a statutory duty to introduce a licensing scheme for HMOs in their areas. This will be the main mechanism for regulating standards in HMOs and will provide local authorities with powers to ensure appropriate standards through licensing conditions.

Other key proposals contained in the consultation paper included:

- A proposal that there should be a duty on the person managing and/or the person having control to ensure a HMO is licensed and to nominate a single individual licensee, resident in this country, who would be responsible for ensuring compliance with licensing conditions. There would be powers to refuse a licence if the licensee, the person managing, or the person having control was not considered to be a fit and proper person.
- Proposals to amend the definition of HMOs and to adopt a wide but precise definition which would exclude certain specific types of properties.
- Proposals for licences to specify a maximum number of occupants to reflect the condition of the premises and standards of management, and a discretionary power (as now) to set a lower number of occupants as an alternative to carrying out certain improvements. The option of a condition prohibiting the use of parts of a house (e.g. an attic bedroom with inadequate means of escape) would also be provided.
- Proposals to provide for the refusal or revocation of a licence as the final sanction. It is believed that this would prevent a business starting or require it to close and would, thus, be sufficient to persuade licensees to remedy matters that are capable of being remedied. This is the main rationale behind the introduction of such a scheme. The Government's consultation paper proposed that compliance with appropriate standards would be made a condition of any licence issued and that failure to comply would, after due warnings, lead to revocation or non-renewal.

It appears that the Government intends that mandatory licensing will be introduced alongside a new housing health and safety rating system. The latter will replace the existing "pass or fail" housing fitness standard.<sup>74</sup> Chris Mullin explained that the rating system would be used to assess the physical condition of HMOs:

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<sup>74</sup> Section 604 of the *Housing Act 1985*

All assessment and enforcement of physical standards in houses in multiple occupation will eventually be done using the housing health and safety rating system, with further risk based guidance on fire, overcrowding and amenity standards.<sup>75</sup>

Speaking at a national HMO conference in Liverpool on 7 November 2001 the current Parliamentary Under-Secretary of State for Transport, Local Government and the Regions, Sally Keeble, reportedly said that Desmond Turner's Bill did not contain all the measures the Government wanted to implement in this area.<sup>76</sup> However, she stated in an adjournment debate on 15 November 2001 that officials in the DTLR had been working closely with Dr Turner on his Private Member's Bill and that the Government "welcome the fact that it has helped to push the problems of houses in multiple occupation right up the political agenda."<sup>77</sup>

## 2. Mandatory registration in the Bill

**Clause 6(1)** of the Bill would repeal section 346 of the 1985 Act under which local authorities currently have the power to set up HMO registration schemes.

**Clause 6(2)** (subject to clause 9<sup>78</sup>) would place a duty on all local authorities to compile and maintain a register of HMOs in their areas. Local authorities would be able to compile a register on their own or with neighbouring authorities.

**Clause 7(1)** would place a duty on the Secretary of State to revoke (by Order<sup>79</sup>) all registration schemes made under Part XI of the 1985 Act within one year of the Bill receiving Royal Assent. Such an Order would require all authorities to set up registration schemes that would contain control provisions. It is intended that the Secretary of State would introduce new control provisions to replace those currently set out in section 347 of the 1985 Act.<sup>80</sup> Under these registration schemes authorities would be obliged to prevent multiple occupation of a property unless:

- (a) the house is registered; and
- (b) the number of households or persons occupying it does not exceed the number registered for it; and
- (c) the house conforms to such energy efficiency requirements as specified by the registration scheme; and
- (d) the house complies with such fire safety requirements as specified by the registration scheme; and

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<sup>75</sup> HC Deb 8 November 2000 c 108WH

<sup>76</sup> "Keeble reluctant to support HMO Bill", *Inside Housing*, 16 November 2001

<sup>77</sup> HC Deb 15 November 2001 c 357WH

<sup>78</sup> Clause 9 provides for costs arising out of the Bill to be met by public expenditure.

<sup>79</sup> Subject to the affirmative resolution procedure.

<sup>80</sup> Existing control provisions are discussed on pages 31-32.

- (e) the house complies with current furniture and furnishings fire safety regulations;
- (f) the house has a current safety certificate for all electric and gas appliances;
- (g) the house conforms to such amenity standards as specified by the registration scheme; and
- (h) there is a scheme of management for the house in force with the minimum requirements of this scheme specified by the registration scheme.

The Secretary of State would have discretion to include provisions in the Order relating to the administration and enforcement of registration scheme provisions (clause 7(2)).

**Clause 8(1)** provides that an HMO would not be registrable unless it:

- (a) consists of more than two storeys, for which purpose an attic or basement shall be considered a storey unless used solely for purposes other than accommodation, and
- (b) is occupied by more than four adults.

HMOs under the sole management of a registered social landlord or local housing authority would be exempt.

The Bill does not propose, therefore, that all HMOs covered by the definition in clause 5(1)<sup>81</sup> would be affected by the mandatory registration requirements. **Clause 8(1)** of the Bill would provide for a “sub-set” of HMOs occupied by more than four adults and consisting of more than two storeys to be subject to mandatory registration. This definition is similar to that used for discretionary licensing of HMOs in Scotland when it was introduced in 1991 and for which the Government expressed a preference in its 1999 consultation paper. The Scottish definition specified that properties containing four or more adults would be exempt where the adults were members of the same or no more than two families.

The Secretary of State would be able to make regulations to require the registration of other HMOs not covered by the clause 8(1) definition (**clause 8(2)**). In addition, a local authority would have discretion to require the registration of other types of HMOs not covered by the clause 8(1) definition, ie:

- (a) HMOs consisting of one or two storeys used for the purposes of occupation;  
or
- (b) Blocks of pre 1991 converted self contained flats; or
- (c) HMOs shared by no more than four adults.

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<sup>81</sup> See page 31 above.

## D. Responses

### 1. HMO Definition

Amongst landlords there is support for a narrower definition of an HMO than that favoured by the Government and, therefore, the definition proposed in clause 5(1) of this Bill. The British Property Federation (BPF) believes that the majority of the lettings industry would support the use of the Scottish definition<sup>82</sup> of a house occupied by at least four people who are members of more than two families.<sup>83</sup>

However, as stated above, the HMOs that would be affected by the mandatory registration aspects of this Bill would not include all HMOs covered by the definition in clause 5(1). Clause 8(1) would provide for a “sub-set” of HMOs occupied by more than four adults and consisting of more than two storeys to be subject to mandatory registration.

Responding to the Government's proposals on the definition of an HMO the Chartered Institute of Housing (CIH) said:

The important thing is to ensure that those properties which are in the worst condition are included within the definition, rather than trying to come up with an exact and academic definition of a house in multiple occupation.<sup>84</sup>

The CIH agrees with a “catch-all” approach together with a list of exemptions. It would include properties containing four people or more from at least two different families in the catch-all definition. It would exclude purpose built blocks of self-contained flats but would include all shared houses. The CIH said it would prefer that legislation would apply to hotels, guest houses and other tourist accommodation that is occupied by persons who do not have a residence elsewhere.

Like the current Bill, the Government's proposals included an exemption for registered social landlords (RSLs). In response, the Independent Housing Ombudsman stated that Housing Corporation regulation alone could not ensure proper management of associations' homes.<sup>85</sup> The CIH supports the exclusion of RSLs, as does the National Housing Federation (NHF), but the CIH recommended a review of the existing regulatory mechanisms over RSL owned HMOs to ensure that they produce adequate standards. Likewise, the CIH supports a review and revision of the regulations governing university accommodation.

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<sup>82</sup> Note that mandatory licensing of HMOs was introduced in Scotland on 1 October 2000 and this system uses a different HMO definition.

<sup>83</sup> British Property Federation responds on licensing of houses in multiple occupation, 16 July 1999

<sup>84</sup> Licensing houses in multiple occupation: response by the CIH, July 1999

<sup>85</sup> “RSLs must be licensed,” *Housing Today*, 8 July 1999

The British Property Federation has argued that the same regulatory regime should apply to HMOs irrespective of the sector in which they are based. Malcolm Harrison, spokesperson for the Association of Residential Letting Agents, has reportedly said that the impact of Bill will depend on how it defines an HMO.<sup>86</sup>

## 2. Mandatory registration

There is general support from local authorities and bodies such as the Chartered Institute of Environmental Health, Shelter, the National HMO Network and the Campaign for Bedsit Rights for the introduction of mandatory registration of HMOs. The Local Government Association (LGA), although in favour of mandatory registration, would have preferred the HMO provisions not to have been "tagged on" to a Bill that primarily concerns energy conservation.<sup>87</sup>

Support for registration of HMOs is based on the need to drive up standards in multi-occupied accommodation. The National Union of Students (NUS) is also in favour of legislation that will cover student dwellings. The NUS's Housing and Health Survey 2001 reportedly found that almost one in six students live in vermin infested accommodation and one in eight claimed that their housing had caused health problems. Half the students surveyed had not seen copies of gas safety certificates despite having asked for them.<sup>88</sup>

On the other hand, landlords and letting agents are not persuaded about the need to extend local authority registration powers over HMOs. The National Federation of Residential Landlords (NFRL) believes that the experience of mandatory licensing of HMOs in Scotland provides a salutary lesson. Mandatory licensing of HMOs was introduced in Scotland from 1 October 2000 by an Order under the *Civic Government (Scotland) Act 1982*. Since that date owners of HMOs have been required to apply for a licence and councils have been able to refuse a licence where there are concerns over factors such as fire safety, physical conditions and poor management standards. Initially the threshold for licensing was properties with more than five occupants; this was reduced in October 2001 to properties with more than four occupants. The phasing will continue until 2003 by which time properties with more than two occupants will require a licence. The only HMOs exempt from the provisions are those already subject to an equivalent regulatory regime, such as residential and nursing homes registered by councils or health boards.<sup>89</sup>

The National Federation of Residential Landlords (NFRL) November 2001 Journal<sup>90</sup> states that the new licensing arrangements in Scotland have been met with "massive non-compliance:"

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<sup>86</sup> "A licence to improve housing standards," *The Independent*, 20 November 2001

<sup>87</sup> Comments submitted by telephone to the House of Commons Library by John Austin Locke of the LGA, 27 November 2001

<sup>88</sup> "Digs give cold comfort to many students", *The Times Higher*, 26 October 2001

<sup>89</sup> Scottish Executive Press Release, "End of road for slum landlords", 2 May 2000

<sup>90</sup> Residential Renting, Issue 18, November 2001 pp 30-31

The experience in Scotland shows that once licensing starts, its purpose, scope and method of implementation broadens wildly. Landlords have to confront new and unforeseen problems and deterrents. Enforcers pronounce and threaten in efforts to overcome the massive non-compliance. The latent anti-landlord culture becomes inflamed as the confrontational, adversarial regime reasserts itself. Thus the compliance bill rockets well beyond anything originally contemplated and the supply side is massively disenchanted. Is all this really the way to raise safety and physical standards in the HMO market?

The NFRL believes that insufficient attention has been paid to the way in which "the activities and actions of some tenants contribute to problems" in HMOs. On fire risks in HMOs the NFRL lists the following points as relevant:

- Over the period covered by independent research into fire risks in HMOs<sup>91</sup> (the mid-1990s) the presence of foam furniture contributed greatly to the severity of some fatal fires. Such furniture is now virtually gone from the system.
- Most fires are caused by people and in HMOs the careless disposal of cigarettes and matches, use of candles, the chip pan fire and drying clothes too close to heaters, are major causes.
- Arson and suicides are not insignificant.
- Incapacity caused by drunkenness or drugs (including medication) figures prominently among the causes of fatalities.
- Since the mid-1990s fire fatalities in all dwellings have come down by some 20% and there is no reason to believe that it has not declined in *pari passu* in HMOs.
- Nor is there any evidence of any significant difference between the HMO fire risk in private and public sector HMOs.
- Local authorities in England and Wales already have a duty to secure appropriate fire precautions in all HMOs of three storeys and above.<sup>92</sup>

The NFRL emphasises that low rental income (exacerbated by housing benefit delays) is a crucial factor behind poor conditions and standards of management in HMOs:

The conclusion of landlords is that the proposed licensing solution is misconceived and is likely to backfire in practice. Moreover, the problems in HMOs are largely a function of the lowish levels of rental income, the age of the dwellings and the nature, attitude and behaviour of some of the tenants. Overall however, 78% of all private tenants are very or fairly satisfied with their landlord, against 73% of housing association tenants and 67% of council tenants.<sup>93</sup>

The approach favoured by the NFRL is to tackle fire problems in HMOs by "harnessing technology in the installation of safety equipment and other measures and by education

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<sup>91</sup> Which found that the additional risk of fire in HMOs was double that in other rented accommodation.

<sup>92</sup> Residential Renting, Issue 18, November 2001 pp 30-31

<sup>93</sup> *ibid*

programmes to teach private tenants and their landlords about the bad practices which cause fire and what to do in the event of fire".

Letting agencies are reportedly concerned that compulsory registration will be bureaucratic and expensive and could result in the development of a "black market economy of unlicensed rented properties."<sup>94</sup>

The British Property Federation would like a statutory scheme to act as a backup to voluntary regulation schemes that some landlords have already developed: "those landlords who can and will self-regulate should be permitted to so; those who cannot or will not should fall under the statutory scheme."

Shelter's briefing for the Second Reading of the Bill expresses the belief that only unscrupulous landlords have anything to fear from mandatory registration. Shelter suggests that the costs to landlords and tenants should be minimised by:

- keeping fees for obtaining a licence as low as possible;
- ensuring that local authorities have the resources to administer the new scheme efficiently; and
- ensuring that financial assistance is available to responsible landlords to improve their properties through renovation grants and tax allowances.<sup>95</sup>

In addition to the Government's commitment to introduce mandatory licensing of HMOs, the Conservative Party Housing Spokesperson, Geoffrey Clifton-Brown, stated that his Party supported moves to licence HMOs during the debate on Third Reading of the *Homelessness Bill*.<sup>96</sup> Baroness Hamwee confirmed the support of the Liberal Democrats for mandatory licensing during the same Bill's debate on Second Reading in the Lords.<sup>97</sup>

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<sup>94</sup> "A licence to improve housing standards", *The Independent*, 20 November 2001

<sup>95</sup> Home Energy Conservation Bill (Part III), Shelter Briefing for Second Reading Debate, November 2001

<sup>96</sup> HC Deb 22 October 2001 c 117

<sup>97</sup> HL Deb 12 November 2001 c 401

## **X Annex I**

A summary of the *Home Energy Conservation Act 1995* (as amended by the *Energy Conservation Act 1996*) is reproduced from the *Home Energy Conservation Act 1995*, DETR, April 1999. N.B. This should be taken as a guide not an authoritative interpretation:

**It is the duty of every conservation authority to prepare an energy conservation report which shall:**

- set out energy conservation measures that the authority considers practicable, cost-effective and likely to result in significant improvement in the energy efficiency of residential accommodation in its area.
- include an assessment of the cost of the measures
- include an assessment of the extent to which emissions of carbon dioxide will be reduced as a result of the measures; and
- include a statement of any policy the authority has for taking into account the personal circumstances of any person.

**An energy conservation authority shall:**

- publish the report and send a copy to the Secretary of State
- prepare, publish and send to the Secretary of State reports on the progress in implementing measures set out in the energy conservation report.
- have regard to any guidance given by the Secretary of State; and
- modify their energy conservation report or prepare further reports setting out additional or modified energy conservation measures, if so directed by the Secretary of State.

**The Secretary of State shall:**

- give directions as to the date by which energy conservation reports are to be sent to him.
- notify an authority of a timetable in accordance with which the authority shall prepare, publish and send to the Secretary of State reports on the progress in implementing measures set out in the report.
- take such steps as he considers desirable in order to assist with and to encourage others to assist with the measures set out in any such report; and
- from time to time prepare a report on
  - a) the progress made by energy conservation authorities in implementing the measures set out in the reports; and
  - b) any steps he has taken to assist with the measures and lay any such report before Parliament.

There are also a number of discretionary/optional items:

**The energy conservation report may include, if an authority considers it desirable:**

- an assessment of the extent to which emissions of oxides of nitrogen and sulphur dioxide will be reduced as a result of the measures

- an assessment of the number of jobs which would result from the measures
- an assessment of the average savings in fuel bills and in kilowatt hours of fuel that might be expected to result from the measures; and
- such other matters as the authority considers appropriate.

**An energy conservation authority may:**

- modify their energy conservation report or prepare further reports setting out additional or modified energy conservation measures.

**The Secretary of State may:**

- from time to time, give to energy conservation authorities such guidance as he considers appropriate in relation to the preparation of reports, in particular as to what improvements are to be regarded as significant
- adapt sections 2 to 4 of the Home Energy Conservation Act 1995 as necessary to enable an energy conservation authority to prepare a separate energy conservation report on houses in multiple occupation or house-boats.

## **XI Annex II**

The government has summarised information about increases in expenditure on the various measures to relieve fuel poverty during a five-year period in answer to a parliamentary question on 6 April 2000:

**Mrs. Gilroy:** To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement on the allocation of resources to tackle fuel poverty in the five years from April 1997. [116611]

**Mr. Meacher:** This Government are committed to tackling fuel poverty, particularly among those households most at risk to ill health due to cold homes; the old, children, the disabled and the chronically sick. The two main causes of fuel poverty are low income and poor energy efficiency in the home.

The Government's main measures to help households more easily meet their heating costs are as follows.

Winter Fuel Payments were introduced in the winter of 1997. They provide help to eligible older households towards their winter fuel costs. The total expenditure allocated is as follows.

Winter Fuel Payments <i>Financial year</i>	<i>£ million</i>
1997-98	200
1998-99	200
1999-2000	760
2000-01 <sup>(1)</sup>	1,400
2001-02 <sup>(1)</sup>	1,200

<sup>(1)</sup> Estimated

Cold Weather Payments provide help towards additional heating costs to eligible people when there is a spell of cold weather in their local area. Since 1997 to date the amount spent on Cold Weather Payments is estimated to be around £1.7 million. As the amount spent is purely dependent on the weather it is not possible to provide an estimate of future expenditure.

Reduction in the level of VAT on domestic fuel to 5 per cent. from September 1997. The estimated cost of this measure is £450 million a year, so that by 2002 the total cost is likely to be about £2,025 million. The benefit to a typical customer is a reduction in their energy bills of £16.50 a year.

In addition the measures taken to liberalise energy markets have contributed to reduced energy prices for households, and are expected to continue to do so. Electricity prices paid by domestic consumers fell, in real terms, by 14 per cent. between the 2nd quarter of 1997 and the last quarter of 1999, while gas prices fell, in real terms, by 12 per cent. over the same period. Lower energy prices have significantly helped low income households with the cost of keeping warm. However it is not possible to quantify the resources used in this work.

The energy efficiency of homes is improved through both specific programmes such as the Home Energy Efficiency Scheme, and also as part of wider housing programmes. The details of each programme are as shown.

#### *Specific energy efficiency programmes*

The Home Energy Efficiency Scheme (HEES) provides energy efficiency improvements to the homes of eligible households. The scheme was devolved to the Scottish Executive on 1 July 1999 and to the Welsh Executive from 1 April 2000. The scheme in England is due to be radically overhauled from 1 June, with New HEES providing packages of heating and insulation improvements to households and focusing on the private sector where nearly 70 per cent. of the fuel poor in England are found. The total gross budget for HEES, after allowing for moneys to the devolved administrations, is as shown.

Home Energy Efficiency Scheme <i>Financial year</i>	<i>£ million</i>
1997-98	76.1
1998-99	76.2
1999-2000	<sup>(1)</sup> 75.3
2000-01 <sup>(4)</sup>	<sup>(2)</sup> 122.8
2001-02 <sup>(4)</sup>	<sup>(3)</sup> 153.8

<sup>(1)</sup> This includes about £1.5 million spent under the scheme in Scotland from 1 April to 30 June 1999. It excludes the further £4.4 million transferred to the Scottish Executive in respect of the period 1 July 1999 to 31 March 2000.

<sup>(2)</sup> In addition, £9.6 million and £6.3 million have been transferred to the Scottish and Welsh Executives.

<sup>(3)</sup> In addition, £13.3 million and £8.9 million have been transferred to the Scottish and Welsh Executives.

<sup>(4)</sup> Allocated

Government funded programmes operated by the Energy Saving Trust also improve the energy efficiency of both fuel poor households and others. The expenditure on such programmes is as shown.

DETR funded programmes operated by the Energy Saving Trust <i>Financial year</i>	<i>£ million</i>
1997-98	12.0
1998-99	10.6
1999-2000	12.5
2000-01 <sup>(1)</sup>	15.1
2001-02	<sup>(2)</sup> --

<sup>(1)</sup> Allocated

<sup>(2)</sup> Under consideration

### *Main housing programmes*

The Government have also substantially increased the resources available to local authorities over the lifetime of this Parliament, reversing the reductions planned by previous government. The extra resources in the first three years, 1997-98 to 1999-2000, were allocated through the Capital Receipts Initiative (CRI). Information collected to monitor the impact of the CRI found that around a quarter to a third of the work on local authorities' own stock financed from this initiative lead either directly or indirectly to improvements in energy efficiency. If this were replicated across all local authority housing capital expenditure on its own stock this would equate to around £400-500 million per annum. The total housing capital allocations to local authorities through the Housing Investment Programme (HIP) and Capital Receipts Initiative, are as shown.

Housing capital allocations to local authorities <i>Financial year</i>	<i>£ million</i>
1997-98	<sup>(1)</sup> 1,050
1998-99	<sup>(2)</sup> 1,338
1999-2000	<sup>(3)</sup> 1,408
2000-01	2,090
2001-02 <sup>(5)</sup>	<sup>(4)</sup> 2,300

<sup>(1)</sup> This includes £174 million through the Capital Receipts Initiative.

<sup>(2)</sup> This includes £569 million through the Capital Receipts Initiative.

<sup>(3)</sup> This includes £570 million through the Capital Receipts Initiative.

<sup>(4)</sup> This is planned credit approvals total announced in the CSR in July 1998. Resources for 2001-02 will be allocated in December 2000.

<sup>(5)</sup> Allocated

HIP allocations are the aggregate of housing annual capital guidelines and allocations for Private Sector Renewal and Disabled Facilities Grants.

The energy efficiency of low income households is also likely to be improved through some of the regeneration schemes funded by DETR. These cover a wide range of activities depending on local need, and it is not

possible to quantify the precise expenditure on energy efficiency improvements.

To support the installation of energy efficiency measures, the Government also reduced the level of VAT from 1 July 1998 on work carried out on low income households through eligible schemes such as HEES. The revenue cost of the reduction was £8.5 million a year. This year's Budget extended the reduced rate at a total cost of £35 million a year. By 2002, the total cost is estimated at £85 million.

The Government are also introducing provisions to enable lessors to claim capital allowances on their investment in boilers, radiators and controls installed in residential properties under the Affordable Warmth Programme. The Programme will operate from 2000 to 2007, with the aim of helping up to one million low income households benefit from improved energy efficiency. Estimate that Government assistance from this measure up to April 2002 will be approximately £10 million.

In addition to Government energy efficiency programmes, the Director General for Electricity, and now Director General of the Office of Gas and Electricity Markets, has, since 1994, set Energy Efficiency Standards of Performance requiring the public energy suppliers to encourage and assist customers with energy efficiency measures. Around two thirds of this help has gone to pensioner and low income families. From this year the total size of the programme has been doubled to £50 million a year with the obligation placed on both the public gas and electricity suppliers.<sup>98</sup>

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<sup>98</sup> HC Deb 6 April 2000 cc 548-50W