

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 5 – Licensing of Houses in Multiple Occupation

Introductory

151. **Section 124** requires every house in multiple occupation (HMO) that is not exempted to be licensed. A licence for an HMO authorises its holder and any agent named on the licence to allow the HMO to be occupied in accordance with the licence conditions.

Meaning of “house in multiple occupation”

152. An HMO is defined in **section 125**. The first requirement is that it is living accommodation occupied by three or more people, who are members of more than two families. The second is that those people share a house, or in other accommodation are required to share a toilet, personal washing facilities or facilities for the preparation or provision of cooked food. “Living accommodation” may include accommodation where the shared facilities are in different buildings, for example where there is a central refectory for several blocks. People count as occupants only if the accommodation is their only or main residence. However, accommodation occupied by a student during term time is regarded as that person’s only or main residence. Patients in hospital are not counted as occupants of the hospital.
153. **Section 126** sets out seven types of exemption from the licensing requirement. The first relates to owner occupiers. An HMO is exempted if it is occupied only by the owners, members of their families, and any other persons who are not related to the owners and are members of no more than two other families. The second exemption applies where the HMO is provided as part of a service registered in certain categories under Part 1 of the Regulation of Care (Scotland) Act 2001. This excludes those categories of care accommodation where the Care Commission is responsible for inspecting the property as well as the service. The third exempts forces accommodation, and the fourth exempts prisons and related institutions. The fifth exemption is where the occupants are members of a religious order, mainly occupied in prayer, contemplation, education or the relief of suffering, plus no more than two people who are not members of the order. The sixth exemption is where the landlord’s rights and duties have been transferred to a local authority under section 74 of the Antisocial Behaviour etc (Scotland) Act 2004, in order that the local authority can take steps to prevent antisocial behaviour by the tenants. The final exemption is where the HMO is owned by a small housing co-operative. This removes an anomaly where, if a group of people own the house they occupy jointly, they are exempt from licensing, but if they form a corporate body which owns the house, they would otherwise require to be licensed. Ministers can by order add, remove or vary the descriptions of categories of HMOs which are to be exempt.
154. **Section 127** allows Ministers to define by order specified types of HMOs which can be exempted from licensing by a local authority, on a discretionary basis. This would

allow individual local authorities to continue licensing certain types of HMO if there was a particular problem with that type of HMO in particular areas.

155. **Section 128** defines the meaning of “related” for the purposes of HMO licensing. The definition includes married, unmarried and same-sex couples, and stepchildren and foster children, as well as blood relatives.

Application for HMO licence

156. **Section 129** and **schedule 4** describe the procedure for applying for an HMO licence. The schedule specifies the information to be contained in an application for a licence. It provides a detailed description of the requirement to give public notification of an application, including provisions to limit notification where it could put people at risk, for example for women’s refuges. It sets out how people can make written representations about the application, the local authority’s powers to make inquiries about the application, and the applicant’s right to see and respond to written representations and the local authority’s report on any inquiries it has made. The applicant and others may also be invited to make representations about the application at a hearing. In considering the application, the authority must take into account valid written representations, the report of its own inquiries, written responses from the applicant and oral representations at the hearing. It may consider late written representations if satisfied that it was reasonable for the deadline for representations to be exceeded.
157. The authority must decide whether to grant or refuse an application within 12 months of its receipt. It may apply to the sheriff for an extension to this period. If a decision is not made within the requisite period, the licence is granted unconditionally.
158. Under **section 130**, the authority must refuse an application if the applicant or their agent is disqualified by court order from holding an HMO licence or the authority considers either of them to be not a fit and proper person. The factors to which the local authority must have regard in determining whether the applicant and agent are “fit and proper” are as in the Antisocial Behaviour etc (Scotland) Act 2004. Where an applicant or agent is not an individual, these tests apply to any director, partner or other person involved in the management of the company, trust or organisation.
159. **Section 131** states that an authority may only grant a licence if the accommodation is suitable for use as an HMO or could be made so by including conditions in the licence. The criteria that an authority must consider are given.
160. **Section 132** prevents an authority from considering an application from the same applicant for the same accommodation, or for any accommodation if refusal was on the grounds of the applicant not being a fit and proper person, within a year of refusal of an application. This restriction does not apply if the local authority is satisfied that there has been a material change of circumstances, for example if a physical feature which made the property unsuitable for licensing has been altered.

Terms of HMO licence

161. **Section 133** deals with the conditions contained in licences. A local authority may include any conditions that it considers appropriate. The Scottish Ministers may also specify in regulations conditions which must be included. Conditions can include dates by which they come into effect. A condition requiring work to be carried out to the property must not come into effect sooner than the local authority reasonably considers the work can be completed.
162. **Section 134** states that an HMO licence lasts for three years, or a shorter period which cannot be less than six months. It starts on the date when notice of the decision to grant the licence is served on the owner, or another date specified in the licence. If anyone has made a representation about the licence application, time is allowed for an appeal to

be brought before the licence comes into force. In the case of a licence granted because a local authority did not come to a decision within the period required, the licence will last for one year from the end of that period.

163. **Section 135** deals with the expiry date of an HMO licence when an application is made for a new licence for the same HMO before the existing licence has expired. If the new licence is granted, the existing one expires when that comes into effect. If the new licence is refused, the existing licence expires on the latest of three dates. These are the last date on which an appeal may be made against refusal, the date on which an appeal is abandoned or finally refused, and the date on which the existing licence would have expired under its original terms.
164. **Section 136** states that an existing HMO licence transfers to the new owner of a licensed property and lasts for one month from the date of purchase, provided that the new owner is already entered on the local authority's register of landlords. If the new owner submits a licence application before the end of that month, the licence will continue in force until that application is determined, as for renewals. If the new owner is not a registered landlord, the licence expires on the date that ownership transfers.
165. **Section 137** transfers the licence of a deceased sole licence-holder to that person's executor. The licence expires three months after the date of death, unless the authority is satisfied that it is reasonable to extend it in order to wind up the holder's estate.

Variation and revocation of HMO licence

166. **Section 138** sets out the procedure for varying a licence, which a local authority may do for its own reasons or at the request of the licence holder. If the local authority proposes the variation, it must give its reasons. The variation process does not permit the period of the licence to be shortened. The authority must consider oral representations at a hearing before deciding whether to vary the licence. The variation comes into force on a date calculated in the same way as for the start of a licence.
167. **Section 139** allows a local authority to revoke a licence at any time. The three possible grounds are that the licence holder or agent is no longer a suitable person under **section 130**; that the accommodation is no longer suitable for use as an HMO and cannot be made suitable; or that a condition of the licence has been breached. The authority must consider oral representations at a hearing before deciding whether to revoke the licence. A revocation comes into force on the date by which the decision to revoke the licence may be appealed, or on the date when such an appeal is finally abandoned or determined other than by quashing the decision to revoke.

Delivery and cancellation of HMO licence

168. **Section 140** makes clear that the local authority must send the licence to the licence holder with any notification that the licence is being granted or varied. A licence holder is also entitled to be given a certified copy of the licence, on any reasonable request.
169. **Section 141** allows a licence holder to cancel the licence at any time by returning it to the local authority.

Temporary exemptions

170. **Section 142** allows a local authority to grant a temporary exemption order if the owner of an unlicensed HMO that requires to be licensed applies. The owner must explain the steps to be taken to stop the premises from being an HMO, and the local authority must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the order, which is three months unless extended in exceptional circumstances. Under **section 143**, the order may require the owner to carry out work to improve the safety or security of the occupants for the duration of the order. This could

include minor works or the provision of removable equipment where licence conditions would normally require permanent, fixed items.

Enforcement by local authority

171. **Section 144** gives a local authority power to order that no rent or other payments are due from occupants of an HMO under any tenancy or occupancy arrangement. This may be done if a licensable HMO is not licensed or a condition in a licence has been breached. Procedures for notification and revocation are set out. An order does not affect any other terms of the tenancy or occupancy arrangement. Rent and other sums not paid while the order has effect do not become payable subsequently.
172. Under **section 145** a local authority can serve a notice on a licence holder requiring action to be taken to rectify or prevent a breach of a condition in an HMO licence. While such a notice is in force, no new occupiers should be permitted to move in. Such action would result in an offence being committed (**section 154(2)(b)** and **(4)(b)**). Existing occupiers will be notified of the requirement (**section 158(7)**).
173. **Sections 146 to 150** and **schedule 5** make arrangements about HMO amenity notices. Such a notice can be served on any living accommodation which the local authority believes to be an HMO which requires to be licensed, and which the local authority considers is not reasonably fit for occupation by the number of persons occupying it. **Section 147** sets out the issues the local authority must have regard to in deciding whether the accommodation is reasonably fit for occupation. By serving an HMO amenity notice the local authority may require the owner to carry out work to make the accommodation reasonably fit for occupation. The notice must specify the work to be carried out and the period in which it must be done (not less than 21 days), and may specify particular steps to be taken in carrying out the work. An HMO amenity notice may not require the owner to take any fire safety measures within the meaning of the Fire (Scotland) Act 2005, since enforcing such matters is the responsibility of the Fire and Rescue Service.
174. **Section 148** provides that the local authority may revoke the HMO amenity notice if the living accommodation is demolished or the work is no longer considered necessary. **Section 149** allows the authority to extend the period for the work to be carried out, if it considers that it will be completed within a satisfactory period.
175. **Schedule 5** sets out arrangements for enforcement of HMO amenity notices. If the owner fails to comply with the notice, the local authority may carry out the work and recover its costs. Before carrying out any work on a listed building, the authority must consult appropriate bodies. If the authority proposes to do the work but considers that doing so is likely to endanger occupiers, it can require them to move out, and can if necessary obtain a warrant for ejection. It is an offence for any person to move into any land or premises from which occupiers have been required to move. The authority must grant a certificate of completion that the work has been carried out, if requested. The local authority must record HMO amenity notices in the Building Standards Register, or keep a written record if the HMO is not a building.
176. **Section 151** allows the local authority to carry out work required by an HMO amenity notice, or arrange for it to be carried out, by agreement with the owner and at the owner's expense.
177. **Section 152** applies where an occupier moves from a house to allow work required by an HMO amenity notice, whether moving was required by the local authority, in terms of a warrant of ejection or otherwise. The tenancy or occupancy agreement is not taken to be terminated, varied or altered as a result (if the occupier chooses). That person can resume lawful occupation on the same terms and conditions as he or she enjoyed before leaving.

178. **Section 153** deals with people who are authorised or entitled to do anything under an HMO amenity notice. If anyone, having received notice of the intended action, prevents or obstructs a person from doing something they are authorised or entitled to do, the sheriff can order the person causing the obstruction to allow access. If they fail to comply with the order from the sheriff, then they are guilty of an offence and on summary conviction liable to a fine of up to level 3 on the standard scale. This does not apply to any rights conferred by Part 9.

Offences etc.

179. **Section 154** lists the criminal offences relating to HMO licensing. An owner of a licensable HMO without a licence is committing an offence (unless the owner has a reasonable excuse). It is also an offence to claim that an HMO licence that has ceased to have effect is valid. A licence holder commits an offence by using an agent not specified on the licence, breaching a condition in a licence or allowing an HMO to be occupied in contravention of a requirement under **section 145(2)**. An agent commits an offence if he or she acts for a licence-holder without being named on that licence, causes a condition of the licence to be breached, or does anything which permits or facilitates occupation of a licensable HMO that either does not have a licence or is occupied in contravention of a requirement under **section 145(2)**. It is an offence to prevent or obstruct any person exercising powers of entry under **section 181(1)(e)**. **Section 155** defines circumstances in which offences are not committed, or where there is a defence of reasonable excuse. **Section 156** sets penalties for these offences.
180. **Section 157** gives a court powers to revoke an HMO licence and disqualify an owner from holding a licence, or an agent from being named on a licence, for a period not exceeding five years. These powers can be used on conviction of an offence under **section 154**. A person other than the owner of the HMO or agent, who is convicted of preventing or obstructing an officer from exercising a power of entry, cannot be disqualified (but any such conviction would be taken into account if they subsequently applied for an HMO licence).

Local authority decisions: notice and appeals

181. **Section 158** sets out the procedures for the service of notice of decisions on HMO licensing made by local authorities. Such notices must give the local authority's reasons for its decision, and set out the effect of the decision, when it comes into effect, and the arrangements for appeal. **Section 159** deals with procedures for appeals against the decisions referred to in **section 158**. Any person on whom the local authority is required to serve notice of a decision has the right to appeal against the decision to the sheriff. They must do so within 28 days, although the sheriff may decide to hear a late appeal. The sheriff may confirm, vary or quash the decision of the local authority, or (except for a decision to make an HMO amenity notice) may remit it back to the authority for reconsideration. The sheriff's decision may be appealed to the sheriff principal. The decision of the sheriff principal is final.

General and supplementary

182. **Section 160** requires a local authority to keep an HMO register containing details of each application for an HMO licence, the decision made on the application and subsequent progress of the licence. The register is to be publicly available, but the local authority must exclude any information that it considers could put any person or premises at risk.
183. **Section 161** entitles local authorities to charge fees for an application for a licence and for issuing a certified copy of a licence or of an entry in the HMO register. The Scottish Ministers may make regulations about fees, including maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable, or in which fees are to be refunded.

*These notes relate to the Housing (Scotland) Act 2006
(asp 1) which received Royal Assent on 5 January 2006*

184. **Section 162** allows Ministers to make payments to local authorities to enable or assist them to exercise their functions in connection with HMO licensing.
185. Under **section 163**, a local authority must have regard to guidance issued by Ministers about the exercise of its HMO licensing functions.
186. **Section 164** deals with the situation where an HMO is owned jointly by more than one person. The application for a licence may be made by one owner or jointly by more than one. Any joint licence holders can request to be removed from the licence at any time, provided one owner continues to hold the licence.
187. **Section 165** requires that any notice served on an applicant or licence holder must be copied to any specified agent of that owner. Unlike notifications under **section 158**, the provision of a copy of the notice to any agent does not entitle the agent to make representations or appeal decisions on his or her own behalf, but only on behalf of the applicant or licence holder.
188. **Section 166** provides definitions of terms used in this Part.