

SCHEDELE 4
(introduced by section 129)

APPLICATIONS FOR HMO LICENCES: PROCEDURE

Content of application

- 1 (1) An application for an HMO licence must be written in such form as the local authority may reasonably require.
- (2) Such an application must set out—
 - (a) the address of the living accommodation concerned,
 - (b) in the case of an application by an individual, the name and address of the applicant,
 - (c) in the case of an application by a body, the information set out in sub-paragraph (3),
 - (d) if the applicant wishes the HMO licence to authorise an agent to act for the applicant in relation to the occupation of the living accommodation—
 - (i) where the agent is an individual, the name and address of the agent, or
 - (ii) where the agent is a body, the information set out in sub-paragraph (3),
 - (e) any other information which the Scottish Ministers may by order require to be set out in such an application, and
 - (f) any other information which the local authority may reasonably require.
- (3) The information referred to in sub-paragraph (2)(c) and (d)(ii) is—
 - (a) the name of the body,
 - (b) the body's principal office, and
 - (c) the name and address of each of the directors, partners or other persons concerned in the management of the body.
- (4) The application must be—
 - (a) signed by or on behalf of the applicant, and
 - (b) accompanied by the application fee (see section 161).

Notice of application

- 2 (1) A “notice of HMO application” is a notice which—
 - (a) states that an application for an HMO licence has been made in respect of living accommodation,
 - (b) sets out the information described in paragraph 1(2) and (3) (excluding the information described in sub-paragraph (3)(c) of that provision),
 - (c) states the date of the notice,
 - (d) explains the procedure for making written representations about the application to the local authority.
- (2) The applicant must cause a notice of HMO application to be displayed on or near to the living accommodation concerned for 21 days from the date on which the application is made.

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- (3) The applicant must ensure that the notice of HMO application is designed and displayed so that it can be conveniently read by the public.
- (4) The removal, obscuring or defacement of a notice of HMO application does not affect compliance with sub-paragraphs (2) and (3) if the applicant—
 - (a) took reasonable steps to prevent (and did not cause) the removal, obscuring or defacement, and
 - (b) on becoming aware of such an event, replaced the notice.
- (5) An applicant who considers that sub-paragraphs (2) and (3) have been complied with must certify that fact to the local authority.
- (6) Where—
 - (a) a notice of HMO application is removed, obscured or defaced during the period for which it must be displayed, but
 - (b) the applicant considers that compliance with sub-paragraphs (2) and (3) is, because of sub-paragraph (4), unaffected,
 the certificate must state the relevant circumstances.
- (7) If the local authority is satisfied that sub-paragraph (2) or (3) has not been complied with in the manner certified by the applicant, it may require the applicant to cause a notice of HMO application to be displayed on or near the living accommodation concerned for 21 days from such date as the authority may specify.
- (8) Sub-paragraphs (3) to (7) apply in relation to a duty under sub-paragraph (7) as they apply in relation to a duty under sub-paragraph (2).
- (9) On receiving an application for an HMO licence, the local authority—
 - (a) must send a copy of the application to the chief officer of the fire and rescue authority and the chief constable, and
 - (b) may give a notice of HMO application in a newspaper circulating in its area.

Notices: exceptions

- 3 (1) This paragraph applies where the local authority considers, on the submission of any applicant—
 - (a) that the applicant has been unable to comply with paragraph 2(2) or (3) because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (b) that complying with paragraph 2(2) or (3) is likely to jeopardise—
 - (i) the safety or welfare of any persons, or
 - (ii) the security of any premises.
- (2) Where this paragraph applies the local authority must—
 - (a) disapply paragraph 2(2) to (8) in relation to the application concerned by serving notice of the disapplication to the applicant, and
 - (b) serve, or require the applicant to serve, notice of HMO application on the occupiers of such premises in the vicinity of the living accommodation concerned as the authority thinks fit.
- (3) The local authority must give notice under paragraph 2(9)(b) where this paragraph applies because of sub-paragraph (1)(a) of this paragraph.

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- (4) The local authority must not give notice under paragraph 2(9)(b) where this paragraph applies because of sub-paragraph (1)(b) of this paragraph.
- (5) The Scottish Ministers may give directions to local authorities about circumstances in which authorities must consider that compliance with paragraph 2(2) or (3) is likely to jeopardise—
 - (a) the safety or welfare of persons, or
 - (b) the security of premises.
- (6) Directions given under sub-paragraph 5 may be varied or revoked at any time.

Representations

- 4 (1) A written representation about an application for an HMO licence is valid only if it—
 - (a) sets out the name and address of the respondent,
 - (b) is signed by or on behalf of the respondent, and
 - (c) is made on or before the deadline for making written representations.

(2) The deadline for making written representations is—
 - (a) where one or more notices of HMO application has or have been—
 - (i) displayed in pursuance of paragraph 2(2) or (7), or
 - (ii) served under paragraph 2(9)(b) or 3(2)(b),the latest date specified in any such notice as the date by which written representations must be made, or
 - (b) where no such notice is given, the date which is 21 days after the date on which the application is made.

Inquiries

- 5 (1) The local authority may make such inquiries about the application as the authority thinks fit.
- (2) The local authority must make a report of any matter arising from any such inquiries which the local authority considers relevant to the determination of the application.

Applicant's opportunity to respond

- 6 (1) The local authority must give the applicant a copy of—
 - (a) any valid written representation,
 - (b) any late written representation which the authority intends to consider, and
 - (c) any report made under paragraph 5(2).

(2) A copy representation or report given under sub-paragraph (1) must be accompanied by a notice specifying the period (of not less than 7 days from the date on which the notice is given) during which the applicant may give a written response to the local authority on any matter set out in the copy representation or report.

Hearings

- 7 (1) The local authority may decide to hear oral representations about the application.
- (2) If the local authority decides to hold such a hearing, it must invite—

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- (a) the applicant,
 - (b) each respondent who has made a valid written representation or a late written representation which the authority intends to consider, and
 - (c) any other person it thinks fit,
to make oral representations.
- (3) An invitation under sub-paragraph (1) must be given not less than 7 days before the proposed hearing.

Consideration of application

- 8 (1) Before determining an application for an HMO licence, the local authority must consider any—
- (a) valid written representations (unless withdrawn),
 - (b) reports made under paragraph 5(2),
 - (c) written responses given by the applicant in pursuance of paragraph 6(2) (within the period specified in that paragraph), and
 - (d) oral representations made in pursuance of paragraph 7.
- (2) The local authority must not consider any written representation which is invalidated by paragraph (a) or (b) of paragraph 4(1).
- (3) But the local authority may consider a late written representation if it is satisfied that it was reasonable for the respondent to make the representation after the deadline for doing so.

Time limit for determining application

- 9 (1) The local authority must decide whether to grant or refuse an application for an HMO licence within 12 months of it receiving the application.
- (2) The period mentioned in sub-paragraph (1) may be extended by the sheriff, on summary application by the local authority, by such period as the sheriff thinks fit.
- (3) The sheriff may not extend a period unless the local authority applies for the extension before the period expires.
- (4) The applicant is entitled to be a party to any proceedings on such a summary application.
- (5) The sheriff's decision on such an application is final.
- (6) If the local authority does not determine an application for an HMO licence within the period mentioned in sub-paragraph (1) (or that period as extended), the authority is to be treated as having decided to grant the HMO licence unconditionally.
- (7) Sub-paragraph (6) does not affect the local authority's power to vary or revoke an HMO licence granted in pursuance of that sub-paragraph.