

PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 2 - Houses in Multiple Occupation

19. The provisions in this Part make amendments to the legislation concerning the licensing of houses in multiple occupation under the Housing (Scotland) Act 2006 (the “2006 Act”).

Section 13 – Amendment of HMO licensing regime

20. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.
21. **Section 13** also inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.
22. Section 131 of the 2006 Act provides that a local authority may only grant an HMO licence if it considers that the accommodation is suitable or can be made suitable for occupation as an HMO. Section 13(3) inserts new paragraphs (da) and (db) into section 131(2) requiring a local authority, when carrying out this assessment, to consider whether any rooms have been subdivided, and whether any have been adapted where this has resulted in the moving of water and drainage pipes.
23. This section also inserts new section 131A into Part 5 of the 2006 Act to give a local authority the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of the licence could result in, overprovision of HMOs in the locality. It is for the local authority to determine the locality. In considering whether to refuse to grant a licence on this ground, the authority must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation, the views of the applicant and any occupants, and any other matters specified by the Scottish

Ministers by order. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality and any other matters specified by the Scottish Ministers by order. Before making an order under section 131A, the Scottish Ministers must consult local authorities, representatives of landlords and occupiers, and any other persons or bodies whom they consider appropriate.

Section 14 - Penalties for certain HMO offences

24. In line with the provision outlined above for landlord registration offences, section 14 of the Act gives powers to the Courts to impose tougher penalties for HMO offences by increasing the maximum fine in section 156(1)(a) of the 2006 Act to £50,000.

Section 15 – Statement of reasons for decisions

25. Under the HMO licensing regime a local authority must provide a statement of reasons for an HMO decision. Local authorities have raised concerns that this may cause significant costs, and be unnecessary in many cases. For example, where a licence is granted without any concerns having been raised or identified, an applicant may neither need nor wish reasons. Section 15 therefore amends Part 5 of the 2006 Act at section 158(12)(a) so that a statement of reasons need only be provided when this is requested by any person who receives the decision. The Act outlines the time periods for local authorities to issue the statement of reasons and for the person to request that they be provided. Where such a request is made, reasons must be provided.

Section 16 - Guidance

26. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale. Section 16 of the Act amends section 163(1) of the 2006 Act to enable the Scottish Ministers to give guidance over the use of the information gathering powers contained in section 186. Such guidance may be used to inform local authorities how best to deal with vulnerable persons who are reluctant or unwilling to provide information for fear of reprisals.