



Private Rented Housing (Scotland) Act 2011

2011 asp 14

PART 2

HOUSES IN MULTIPLE OCCUPATION

13 Amendment of HMO licensing regime

- (1) In section 125 of the 2006 Act (meaning of “house in multiple occupation”)—
- (a) in subsection (1)—
 - (i) for the words from “Any” to second “is” substitute ““HMO” means any living accommodation”, and
 - (ii) after “families” insert “—
 - (a) which—
 - (i) falls within subsection (2), and
 - (ii) is occupied by those 3 or more persons as an only or main residence, or
 - (b) which is of such type, or which is occupied in such manner, as the Scottish Ministers may by order specify.”,
 - (b) after subsection (1) insert—

“(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—

 - (a) local authorities, and
 - (b) such tenants (or tenants’ representatives) and such landlords (or landlords’ representatives) as they think fit.”,
 - (c) subsection (4)(a) is repealed.
- (2) After section 129 of the 2006 Act insert—

Status: This is the original version (as it was originally enacted).

“129A Preliminary refusal: breach of planning control

- (1) The local authority may, within 21 days of an application for an HMO licence, refuse to consider the application if it considers that occupation of the living accommodation concerned as an HMO would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (c. 8) (“the 1997 Act”) by virtue of section 123(a) or (b) of that Act.
 - (2) The local authority must, within 7 days of deciding to refuse to consider an HMO application, serve notice of its decision on—
 - (a) the applicant,
 - (b) the enforcing authority, and
 - (c) the chief constable.
 - (3) The notice must—
 - (a) give the local authority’s reason for refusing to consider the HMO application, and
 - (b) inform the applicant of the effect of subsection (4).
 - (4) No fee may be charged in respect of a further application for an HMO licence in relation to the living accommodation concerned made within 28 days of the applicant subsequently obtaining—
 - (a) planning permission under Part 3 of the 1997 Act, or
 - (b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,
 in respect of the occupation of the living accommodation as an HMO.
 - (5) This section applies regardless of whether the local authority is the planning authority for the area in which the living accommodation concerned is situated.
 - (6) For the purposes of this Part, a refusal to consider an application under subsection (1) is not to be treated as a refusal to grant an HMO licence under section 129(2)(b).”.
- (3) In section 131 of the 2006 Act (suitability of living accommodation), after subsection (2)(d) insert—
- “(da) whether any rooms within it have been subdivided,
 - (db) whether any rooms within it have been adapted and that has resulted in an alteration to the situation of the water and drainage pipes within it.”.
- (4) After section 131 of the 2006 Act insert—

“131A Overprovision

- (1) The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

Status: This is the original version (as it was originally enacted).

- (2) In considering whether to refuse to grant an HMO licence under subsection (1), the local authority must have regard to—
 - (a) whether there is an existing HMO licence in effect in respect of the living accommodation,
 - (b) the views (if known) of—
 - (i) the applicant, and
 - (ii) if applicable, any occupant of the living accommodation,
 - (c) such other matters as the Scottish Ministers may by order specify.
 - (3) It is for the local authority to determine the localities within its area for the purpose of this section.
 - (4) In considering whether there is or would be overprovision for the purposes of subsection (1) in any locality, the local authority must have regard to—
 - (a) the number and capacity of licensed HMOs in the locality,
 - (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need,
 - (c) such other matters as the Scottish Ministers may by order specify.
 - (5) Before making an order under subsection (2)(c) or (4)(c), the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).”.
- (5) In section 135 of the 2006 Act (application for new HMO licence: effect on existing HMO licence)—
- (a) in subsection (2)—
 - (i) the word “and” immediately following paragraph (a) is repealed,
 - (ii) after that paragraph insert—
 - “(aa) where the local authority refuses to consider the application for the new HMO licence—
 - (i) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made, or
 - (ii) such later date as the local authority considers reasonable in the circumstances, and”,
 - (b) after subsection (2) insert—
 - “(3) The local authority must serve notice of a decision under subsection (2)(aa)(ii) to extend (or further extend) the duration of an existing HMO licence on—
 - (a) the licence holder,
 - (b) the enforcing authority, and
 - (c) the chief constable.”.

- (6) In section 191(4)(a) of the 2006 Act (orders and regulations), after “section” insert “125(1)(b).”.

14 Penalty for certain offences in relation to houses in multiple occupation

In section 156(1)(a) of the 2006 Act (penalties etc.), for “£20,000” substitute “£50,000”.

15 Reasons for decisions

- (1) In section 158 of the 2006 Act (notice of decisions)—
- (a) in subsection (12)(a), for “give” substitute “subject to subsection (17), advise of the right to request”,
 - (b) after that subsection insert—
 - “(13) A person on whom a notice of a decision to which this section applies has been served may request the local authority to give its reasons for the decision.
 - (14) A request under subsection (13) must be made within 14 days of the person receiving notice of the decision.
 - (15) Where a local authority receives such a request it must notify the person of its reasons for the decision within 14 days of receiving the request.
 - (16) A local authority must, at the same time as notifying the person under subsection (15), so notify any other person on whom a notice of the decision has been served.
 - (17) The requirement for the notice to advise of the right to request the local authority’s reasons does not apply where the reasons are included in the notice (or accompany it in writing).”.
- (2) In section 159 of the 2006 Act (Part 5 appeals), after subsection (5) insert—
- “(5A) For the purposes of an appeal, the sheriff may require the local authority to give reasons for the decision (if the authority has not already done so), and the authority must comply with such a requirement.”.

16 Guidance

In section 163(1) of the 2006 Act (guidance), after “Part” insert “and section 186 (so far as that section relates to this Part)”.