



# Housing (Scotland) Act 2006

## 2006 asp 1

VALID FROM 31/08/2011

### PART 5

#### LICENSING OF HOUSES IN MULTIPLE OCCUPATION

##### *Introductory*

#### **124 Requirement for HMOs to be licensed**

- (1) Every house in multiple occupation (“HMO”) must be licensed under this Part unless it is exempted by or under section 126, 127 or 142.
- (2) A licence under this Part (an HMO licence) is a licence granted by a local authority authorising occupation of living accommodation as an HMO.

##### *Meaning of “house in multiple occupation”*

#### **125 Meaning of “house in multiple occupation”**

- (1) [<sup>F1</sup>HMO” means any living accommodation] occupied by 3 or more persons who are not all members of the same family or of one or other of two families [<sup>F2</sup>
  - (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.]

[<sup>F3</sup>(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—

- (a) local authorities, and

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- (b) such tenants (or tenants' representatives) and such landlords (or landlords' representatives) as they think fit.]
- (2) Living accommodation falls within this subsection if—
  - (a) it is a house, or
  - (b) it is, or forms part of, any premises or group of premises owned by the same person and its occupants share one or more of the basic amenities with each other.
- (3) The “basic amenities” are—
  - (a) a toilet,
  - (b) personal washing facilities, and
  - (c) facilities for the preparation or provision of cooked food.
- (4) For the purposes of this section—
  - <sup>F4</sup>(a) .....
  - (b) living accommodation occupied during term time by a person undertaking a full-time course of further or higher education is, at all times during that person's residence, to be treated as being that person's only or main residence,
  - (c) a patient in a health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29)) is not to be treated as occupying the hospital,
  - (d) a person is not to be treated as sharing a basic amenity if the living accommodation concerned has more than one of any such amenity and the person has exclusive use of at least one of them.

#### Textual Amendments

- F1** Words in s. 125(1) substituted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), [ss. 13\(1\)\(a\)\(i\)](#), 41(3); S.S.I. 2011/270, art. 2, Sch.
- F2** S. 125(1)(a)(b) and word inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), [ss. 13\(1\)\(a\)\(ii\)](#), 41(3); S.S.I. 2011/270, art. 2, Sch.
- F3** S. 125(1A) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), [ss. 13\(1\)\(b\)](#), 41(3); S.S.I. 2011/270, art. 2, Sch.
- F4** S. 125(4)(a) repealed (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), [ss. 13\(1\)\(c\)](#), 41(3); S.S.I. 2011/270, art. 2, Sch.

#### Commencement Information

- I1** S. 125 in force at 31.8.2011 by [S.S.I. 2010/159](#), [art. 3](#)

## 126 HMOs exempt from licensing requirement

- (1) An HMO is exempt from the requirement to be licensed under this Part if it is—
  - (a) occupied only by the owners of the HMO either alone or together with—
    - (i) any persons in the same family as any of those owners, and
    - (ii) any number of other persons who are unrelated to any of those owners but who are members of the same family or of one or other of two families,
  - (b) provided as part of—
    - (i) a care home service,

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- (ii) an independent health care service,
  - (iii) a school care accommodation service, or
  - (iv) a secure accommodation service,
- registered under <sup>F5</sup>Part 5 of the Public Services Reform (Scotland) Act 2010<sup>F6</sup> or, as the case may be, under section 10Q(1) of the National Health Service (Scotland) Act 1978 (c.29)]
- (c) owned by the Crown and occupied only by members of the armed forces of the Crown (either alone or together with any persons in the same family as any of those members),
  - (d) a prison, a young offenders institution or a remand centre,
  - (e) occupied only by—
    - (i) persons who are members of, and fully maintained by, a religious order the main occupation of which is prayer, contemplation, education or the relief of suffering, or
    - (ii) a group consisting of such persons and no more than two other persons,
  - (f) subject to a management control order made under section 74 (order transferring landlord's rights and obligations to local authority) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or
  - (g) owned by a co-operative housing association (within the meaning of section 300(1)(b) of the 1987 Act) the management of which is undertaken by general meeting.
- (2) The Scottish Ministers may by order amend subsection (1) by—
- (a) adding or removing the description of any type of HMO to or from those descriptions for the time being listed in that subsection, or
  - (b) varying any such description which is for the time being so listed.

#### Textual Amendments

- F5** Words in s. 126(1)(b) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [Sch. 1 para. 17](#)
- F6** Words in s. 126(1)(b) inserted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [Sch. 2 para. 10](#)

### 127 Power to designate HMOs capable of being exempted by local authorities

- (1) The Scottish Ministers may by order describe types of HMOs which may be exempted by a local authority from the requirement to be licensed under this Part.
- (2) A local authority may by order exempt from the requirement to be licensed under this Part any HMO of a type described in an order made under subsection (1) which is situated in—
  - (a) the authority's area, or
  - (b) any part of that area as may be specified in the order,and the local authority may vary or revoke such an order at any time.
- (3) The local authority must give notice of any order it makes, or of any variation or revocation, under subsection (2)—
  - (a) in a newspaper circulating in the authority's area, and

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- (b) to every person entered in the register maintained by the authority under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the “register of landlords”).
- (4) The local authority must serve a copy of any notice given under subsection (3)(b) on any other person who—
- (a) acts for the person to whom the notice is given, and
  - (b) is specified in the authority's register of landlords as being a person who so acts,
- but failure to comply with this subsection does not invalidate the related notice given under subsection (3)(b).
- (5) Where—
- (a) an order made by the Scottish Ministers under subsection (1) is revoked, or
  - (b) any description of a type of HMO set out in such an order is amended,
- an order made by a local authority under subsection (2) ceases to have effect in so far as it relates to any type of HMO which may no longer be exempted by an order under subsection (2).

## **128 Relationships**

- (1) Persons are to be treated as being in the same family as, and as being related to, each other for the purposes of this Part only if—
- (a) they are a couple,
  - (b) one of them is a relative of the other, or
  - (c) one of them is a relative of one member of a couple and the other is a relative of the other member of that couple.
- (2) For the purposes of subsection (1)—
- (a) a “couple” means two persons who—
    - (i) are married or are civil partners, or
    - (ii) live together as husband and wife or, where they are of the same sex, in an equivalent relationship,
  - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece,
  - (c) a relationship by the half-blood is to be treated as a relationship of the whole blood,
  - (d) the stepchild of a person is to be treated as that person's child, and
  - (e) a person brought up or treated by another person as if the person were that other person's child (including any person placed with that other person, or with that other person's family, under section 26(1)(a) of the Children (Scotland) Act 1995 (c. 36)) is to be treated as that other person's child.

### *Application for HMO licence*

## **129 Application for HMO licence**

- (1) An application to a local authority for an HMO licence may be made only by an owner of the living accommodation concerned.

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- (2) The local authority may determine an application for an HMO licence by—
  - (a) granting the HMO licence (with or without conditions), or
  - (b) refusing to grant the HMO licence.
- (3) Schedule 4 makes provision about procedural requirements relating to an application for an HMO licence.

### **130 Suitability of applicants and agents**

- (1) The local authority must refuse to grant an HMO licence if—
  - (a) any of the persons mentioned in subsection (2) is disqualified by an order made under section 157(2), or
  - (b) the authority considers that any of those persons is not a fit and proper person to be authorised to permit persons to occupy any living accommodation as an HMO.
- (2) Those persons are—
  - (a) the applicant,
  - (b) any agent specified in the application, and
  - (c) where the applicant or agent is not an individual, any director, partner or other person concerned in the management of the applicant or agent.
- (3) Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) applies to a local authority in deciding whether a person is a fit and proper person for the purposes of subsection (1)(b) as it applies to the authority when it is deciding whether a person is a fit and proper person for the purposes of section 84(3) or (4) of that Act.

### **131 Suitability of living accommodation**

- (1) The local authority may grant an HMO licence only if it considers that the living accommodation concerned—
  - (a) is suitable for occupation as an HMO, or
  - (b) can be made so suitable by including conditions in the HMO licence.
- (2) In determining whether any living accommodation is, or can be made to be, suitable for occupation as an HMO the local authority must consider—
  - (a) its location,
  - (b) its condition,
  - (c) any amenities it contains,
  - (d) the type and number of persons likely to occupy it,
  - (e) the safety and security of persons likely to occupy it, and
  - (f) the possibility of undue public nuisance.

### **132 Restriction on applications**

- (1) Where a local authority refuses to grant an HMO licence the local authority may not consider a further application for an HMO licence by the same applicant—
  - (a) in relation to the living accommodation concerned, or
  - (b) where the application was refused because of section 130(1)(b), in relation to any living accommodation,

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within one year of the date on which notice of the refusal is given to the applicant under section 158.

- (2) This section does not prevent the local authority from considering a further application for an HMO licence where it is satisfied that there has been a material change of circumstances.

### *Terms of HMO licence*

#### **133 Conditions**

- (1) An HMO licence may include such conditions as the local authority thinks fit.
- (2) The Scottish Ministers may by order require local authorities to include in HMO licences of such description as may be specified in the order such conditions as may be so specified.
- (3) A condition included in an HMO licence may specify a date from which that condition is to have effect (and section 134(1) or, as the case may be, 138(8) is of no effect in so far as it purports to bring any condition which specifies such a date into effect before that date).
- (4) Where an HMO licence includes, or is varied to include, a condition which requires work to be carried out in any living accommodation, the condition must also specify the date by which that work must be completed.
- (5) No date may be specified for the purposes of subsection (3) or (4) which would—
- (a) cause a condition of an HMO licence to have effect, or
  - (b) require the work required by such a condition to be completed,
- before the date by which the local authority reasonably considers that the licence holder can secure compliance with the condition or, as the case may be, complete the work.

#### **134 Duration of HMO licence**

- (1) An HMO licence—
- (a) has effect from, and
  - (b) expires 3 years (or such shorter period of not less than 6 months as may be specified in the licence) after,
- the latest of the dates set out in subsection (2).
- (2) Those dates are—
- (a) the date on which notice of the decision to grant it is served on the licence holder under section 158,
  - (b) where the local authority was required to consider a valid written representation, or decided to consider a late written representation, about the application for the HMO licence—
    - (i) the last date on which the decision to grant the HMO licence may be appealed to the sheriff by the respondent, or
    - (ii) where such an appeal is made, the date on which it is abandoned or finally determined other than by quashing the decision to grant the licence, and

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- (c) any later date as may be specified in the HMO licence.
- (3) Subsection (1) does not apply to an HMO licence granted in pursuance of paragraph 9(6) of schedule 4.
- (4) An HMO licence which is so granted—
  - (a) has effect from, and
  - (b) expires one year after,the date by which the local authority was required by sub-paragraph (1) of that paragraph to determine the application for that licence.
- (5) Sections 135 to 137 set out circumstances in which an HMO licence is to continue to have effect until a later date or, as the case may be, to expire early.

### **135 Application for new HMO licence: effect on existing HMO licence**

- (1) Where—
  - (a) an HMO licence has been granted (an “existing HMO licence”), and
  - (b) an application for a new HMO licence is made in relation to the living accommodation concerned before the existing HMO licence has expired,the existing HMO licence expires on the date set out in subsection (2).
- (2) That date is—
  - (a) where the new HMO licence is granted, the date from which the new HMO licence has effect, and
  - (b) where the local authority refuses to grant the new HMO licence, the latest of the following dates—
    - (i) the last date on which the decision to refuse to grant the new HMO licence may be appealed to the sheriff,
    - (ii) where such an appeal is made, the date on which it is abandoned or finally determined other than by quashing the decision to refuse to grant the new HMO licence, and
    - (iii) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made.

### **136 Change of ownership: effect on HMO licence**

- (1) Subsection (2) applies where—
  - (a) an HMO licence has effect on the date on which ownership of the living accommodation concerned is transferred by way of sale or otherwise from the licence holder to another person (the “new owner”), and
  - (b) the new owner is entered in the register maintained by the local authority under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (the “register of landlords”).
- (2) Where this subsection applies, the HMO licence—
  - (a) is to be treated as having been granted to the new owner, but
  - (b) subject to sections 135 and 137, expires one month after the date on which ownership of the living accommodation is transferred.



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- (3) Where the condition in subsection (1)(a) is satisfied but the new owner is not entered in the register of landlords, the HMO licence expires on the date on which ownership of the living accommodation is transferred.

**137 Death of licence holder: effect on HMO licence**

- (1) Where a sole licence holder dies, the HMO licence—
- (a) is to be treated as having been granted to the licence holder's executor, but
  - (b) expires 3 months after the date of the death.
- (2) The local authority may, on the application of a licence holder's executor, extend the period mentioned in subsection (1)(b) if it is satisfied that it is reasonable to do so for the purposes of winding up the licence holder's estate.

*Variation and revocation of HMO licence*

**138 Variation of HMO licence**

- (1) The local authority may vary an HMO licence at any time.
- (2) The local authority may do so on the application of the licence holder or of its own accord.
- (3) But an HMO licence may not be so varied so as to shorten the period for which the licence has effect.
- (4) The local authority must serve notice of any proposed variation on—
  - (a) where the local authority is proposing the variation, the licence holder,
  - (b) the chief officer of the fire and rescue authority, and
  - (c) the chief constable,
 and must invite each of them to make oral representations about the proposed variation.
- (5) Where the local authority is proposing the variation, the notice required by subsection (4) must give the authority's reasons for doing so.
- (6) The notice and invitation required by subsection (4) must be served not less than 7 days before the local authority proposes to hear any invited representation.
- (7) The local authority must consider any such representations made before it decides whether to vary the HMO licence.
- (8) A variation of an HMO licence has effect from the latest of the following dates—
  - (a) the date on which notice of the decision to vary the HMO licence is served on the licence holder under section 158,
  - (b) where the licence holder, the chief officer of the fire and rescue authority or the chief constable has objected to the variation—
    - (i) the last date on which the decision to vary the HMO licence may be appealed to the sheriff, or
    - (ii) where such an appeal is made, the date on which it is abandoned or finally determined other than by quashing the decision to vary, and



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- (c) any later date as may be specified in the notice of the decision to vary the HMO licence served on the licence holder under section 158.

### **139 Revocation of HMO licence**

- (1) The local authority may revoke an HMO licence at any time if it considers—
  - (a) that, if an application for that HMO licence were to be made at that time, it would be required by section 130 (suitability of applicants and agents) to refuse to grant it,
  - (b) that the living accommodation concerned is no longer suitable for occupation as an HMO and cannot be made so suitable by varying the conditions included in the HMO licence, or
  - (c) that any condition of an HMO licence has been breached (regardless of whether the local authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach).
- (2) The local authority must serve notice of a proposed revocation on—
  - (a) the licence holder,
  - (b) any person who has made a written representation which the local authority considers relevant to a proposed revocation,
  - (c) the chief officer of the fire and rescue authority, and
  - (d) the chief constable,inviting each of them to make oral representations about the proposal.
- (3) A notice under subsection (2) must—
  - (a) set out the ground on which the local authority proposes to revoke the HMO licence,
  - (b) be accompanied by a copy of any written representation which the local authority considers relevant to the proposed revocation, and
  - (c) be given not less than 21 days before the proposed hearing.
- (4) The local authority must consider any oral representations made at the hearing before it decides whether to revoke the HMO licence.
- (5) A revocation of an HMO licence has effect from—
  - (a) the last date on which the decision to revoke the HMO licence may be appealed to the sheriff, or
  - (b) where such an appeal is made, the date on which it is abandoned or finally determined other than by quashing the decision to revoke.

#### *Delivery and cancellation of HMO licence*

### **140 Delivery of HMO licence**

- (1) A notice under section 158 notifying the licence holder of a decision to grant or vary an HMO licence must be accompanied by the HMO licence or, as the case may be, by the HMO licence as varied.
- (2) A notice under section 164(3)(b)(ii) notifying a remaining licence holder of the variation of the HMO licence must be accompanied by the HMO licence as varied.

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- (3) A licence holder who requests the local authority to provide a certified copy of the HMO licence is, if the request is reasonable, entitled to be given such a certified copy.
- (4) Any such copy HMO licence which purports to be certified by a proper officer of the local authority is sufficient evidence of the terms of the HMO licence.

#### **141 Cancellation of HMO licence**

The licence holder may cancel the HMO licence at any time by returning it (and any certified copy issued under section 140(3)) to the local authority.

#### *Temporary exemptions*

#### **142 Temporary exemption orders**

- (1) The local authority may, on the application of the owner of any HMO which requires to be licensed under this Part but which is not so licensed, grant an order (“a temporary exemption order”) in respect of the HMO.
- (2) Such an application must specify the steps which the owner of the HMO intends to take with a view to securing that it stops being an HMO which requires to be licensed under this Part.
- (3) The local authority may grant a temporary exemption order only if satisfied that the steps specified in the application will have the intended effect.
- (4) An HMO does not require to be licensed under this Part during any period for which a temporary exemption order has effect in relation to it.
- (5) A temporary exemption order has effect for—
  - (a) 3 months from the date it is granted, or
  - (b) where that period is extended under subsection (6), the extended period.
- (6) The local authority may, on the application of the owner of any HMO in respect of which a temporary exemption order has effect, extend the period during which the order has effect by such period (not exceeding 3 months) as it thinks fit.
- (7) But the local authority may so extend a period only if satisfied that there are exceptional circumstances which justify the extension.
- (8) The 3 month period may not be extended more than once.

#### **143 Temporary exemption orders: requirement to improve safety or security**

- (1) A temporary exemption order may require the owner of the HMO concerned to carry out such work in the HMO as the local authority may specify in the order for the purpose of improving the safety or security of its occupants during the period for which the order has effect.
- (2) Any such work must be completed by such date as the local authority may specify in the order.
- (3) But a date so specified must be not earlier than the date by which the local authority reasonably considers that the work required can be completed.

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- (4) The local authority may revoke a temporary exemption order if it is satisfied that the owner of the HMO has failed to comply with any requirement included in it.
- (5) A revocation of a temporary exemption order has effect from—
  - (a) the last date on which the decision to revoke the order may be appealed to the sheriff, or
  - (b) where such an appeal is made, the date on which it is abandoned or finally determined other than by quashing the decision to revoke.

#### *Enforcement by local authority*

### **144 Suspension of rent etc.**

- (1) The local authority may, if satisfied—
  - (a) that an HMO which requires to be licensed under this Part is not so licensed, or
  - (b) that any condition included in an HMO licence has been breached (regardless of whether the local authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach),by order provide that no rent or other sums for occupation are to be payable under any tenancy or occupancy arrangement by virtue of which any person occupies the living accommodation concerned.
- (2) A notice under section 158 giving notice of the decision to make an order under subsection (1) must specify—
  - (a) the name of the owner of the living accommodation concerned (where the local authority is aware of it),
  - (b) the address of the living accommodation concerned,
  - (c) the effect of the order, and
  - (d) the date on which it is take effect (which must not be earlier than the date on which the notice is served on the owner).
- (3) Where the local authority is aware of the name and address of a person who acts for the owner on whom that notice is served the local authority must serve a copy of the notice (accompanied by a copy of the order) on that person.
- (4) The local authority must revoke an order under subsection (1) if—
  - (a) in the case of an order made in pursuance of paragraph (a) of that subsection, the local authority—
    - (i) subsequently grants an HMO licence to the owner of the living accommodation concerned, or
    - (ii) is subsequently satisfied, on the application of any person with an interest or otherwise, that the living accommodation concerned is no longer an HMO, or
  - (b) in the case of an order made in pursuance of paragraph (b) of that subsection, the local authority is subsequently satisfied, on the application of any person with an interest or otherwise—
    - (i) that the condition is no longer being breached, or
    - (ii) that the living accommodation concerned is no longer an HMO.

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- (5) The local authority must serve notice of any such revocation, as soon as practicable after doing so, on—
- (a) the owner of the living accommodation concerned,
  - (b) the occupiers of the living accommodation concerned, and
  - (c) where the local authority is aware of the name and address of a person who acts for the owner, that person,
- and the revocation is to have effect from the day on which notice is served under paragraph (a).
- (6) An order under subsection (1) does not affect the terms or validity of the tenancy or occupancy arrangement to which it relates (otherwise than by suspending the rent or other sums payable for occupation under that tenancy or occupancy arrangement).
- (7) Revocation of an order under subsection (1) does not make any person liable to pay any rent or sums which that person would, but for the order, have been liable to pay under the tenancy or occupancy arrangement concerned while the order had effect.
- (8) Failure to comply with—
- (a) section 158(6)(b), or
  - (b) subsection (3) or (5)(b) or (c),
- does not invalidate the order or, as the case may be, the revocation concerned.

#### **145 Power to require rectification of breach of HMO licence**

- (1) This section applies where the local authority considers that any condition included in an HMO licence has been, or is likely to be, breached (regardless of whether the local authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach).
- (2) Where this section applies the local authority may require the licence holder to take such action as the local authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach.
- (3) A requirement under subsection (2) has effect from the date on which notice of the decision to make the requirement is served on the licence holder under section 158.
- (4) That notice must specify—
- (a) the action required, and
  - (b) the period within which that action must be undertaken.
- (5) The period so specified must be the period within which the local authority reasonably considers that that action can be undertaken.
- (6) The local authority may revoke a requirement under subsection (2) by serving notice to that effect on the licence holder; and the local authority must do so if satisfied that the licence holder has complied with the requirement.

#### **146 HMO amenity notices**

- (1) This section applies to any living accommodation—
- (a) which is, or which the local authority believes to be, an HMO which requires to be licensed under this Part (whether or not so licensed), and

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- (b) which the local authority considers is not reasonably fit for occupation by the number of persons whom the authority knows or believes to be occupying it.
- (2) The local authority may require the owner of any living accommodation to which this section applies to carry out work in the living accommodation for the purposes of making it reasonably fit for occupation by—
  - (a) the number of persons whom the authority knows or believes to be occupying it, or
  - (b) such smaller number of persons which the authority considers could be reasonably accommodated in it if the work is carried out.
- (3) A requirement under subsection (2) must be made by serving a notice (an “HMO amenity notice”) in accordance with section 158.
- (4) The notice must specify, in addition to the matters specified in section 158(12)(a) and (b)—
  - (a) the work which requires to be carried out, and
  - (b) the period within which the work must be completed.
- (5) The period so specified must be a period of not less than 21 days from the date on which the notice takes effect within which the local authority reasonably considers that the work can be completed.
- (6) The HMO amenity notice may also specify particular steps which the local authority requires to be taken in carrying out the work required.
- (7) An HMO amenity notice may not require the owner to take any fire safety measures within the meaning of the Fire (Scotland) Act 2005 (asp 5).

#### **147 HMO amenity notices: relevant matters**

- (1) In reaching a decision for the purposes of section 146(1)(b) in relation to any living accommodation, the local authority must have regard to—
  - (a) the extent (if any) to which the living accommodation falls short of the provisions of building regulations, and
  - (b) any defects with respect to any of the matters mentioned in subsection (2).
- (2) Those matters are—
  - (a) natural and artificial lighting,
  - (b) ventilation,
  - (c) installations for the supply of water, gas and electricity and for sanitation, space heating and heating water,
  - (d) personal washing facilities, and
  - (e) facilities for the storage, preparation and provision of food.

#### **148 HMO amenity notices: revocation**

- (1) The local authority may revoke an HMO amenity notice if—
  - (a) the living accommodation to which it relates is demolished, or
  - (b) it considers that the work required by the notice is no longer necessary for the purpose for which the notice was served.

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- (2) The local authority must give notice of any such revocation in accordance with section 158.

**149 HMO amenity notices: extension of period for completion of work**

- (1) The local authority may, at any time, extend the period within which any work required by an HMO amenity notice must be completed by such period as it considers reasonable.
- (2) But such a period may be extended only where the local authority—
- (a) considers that satisfactory progress has been made in carrying out the work, or
  - (b) has received a written undertaking from the owner stating that the work will be completed by a later date which the authority considers satisfactory.
- (3) The local authority must give notice of any extension in accordance with section 158.

**150 HMO amenity notices: further provision**

Schedule 5 makes further provision about HMO amenity notices.

**151 Power of local authority to carry out or arrange work**

A local authority may carry out, or arrange for the carrying out of, any work which any other person is required under section 145(2) or 146(2) to carry out (but only by agreement with, and at the expense of, that other person).

**152 Effect of person moving from living accommodation**

- (1) Where—
- (a) a person moves from any living accommodation for the purposes of enabling any person to carry out any work required under section 145(2) or 146(2) (whether in pursuance of a requirement under paragraph 2(1) of schedule 5 or a warrant under paragraph 3(4) of that schedule or otherwise), and
  - (b) that person resides in the living accommodation under a tenancy or occupancy arrangement,
- the tenancy or occupancy arrangement, if that person so chooses, is to be taken not to have terminated, varied or altered by reason of that person moving.
- (2) If a person who has so moved resumes lawful occupation, the same terms apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.
- (3) In this section “lawful occupation” means occupation which is not an offence under paragraph 4 of schedule 5.

**153 Obstructions etc.**

- (1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under section 145(2), 146(2) or 151 or schedule 5 required, authorised or entitled to do.



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- (2) Where this section applies, the sheriff may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—
  - (a) complying with any requirement imposed under section 145(2) or 146(2) or schedule 5, or
  - (b) doing anything which that other person is by or under section 145(2), 146(2) or 151 or schedule 5 authorised or entitled to do.
- (3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section does not apply in relation to rights conferred by Part 9.

*Offences etc.*

#### **154 Offences relating to HMOs**

- (1) The owner of an HMO which requires to be licensed under this Part commits an offence if the HMO is not so licensed (unless the owner has a reasonable excuse for not holding an HMO licence).
- (2) A licence holder commits an offence if—
  - (a) any condition included in the HMO licence is, without reasonable excuse, breached at any time during which the living accommodation concerned is an HMO which requires to be licensed under this Part,
  - (b) the licence holder, without reasonable excuse, permits any person to occupy the living accommodation concerned at any time during which a requirement under section 145(2) (power to require rectification of breach) has effect in relation to it, or
  - (c) the licence holder authorises any person who is not specified as the licence holder's agent in the HMO licence to do anything which directly permits or facilitates the occupation of the living accommodation concerned as an HMO which requires to be licensed under this Part.
- (3) The owner of any living accommodation commits an offence by, without reasonable excuse, representing an HMO licence which has ceased to have effect as having effect in relation to the living accommodation.
- (4) A person commits an offence if the person, without reasonable excuse, does anything as agent for the owner of any living accommodation which directly permits or facilitates the occupation of the living accommodation—
  - (a) as an HMO which requires to be licensed under this Part at any time when—
    - (i) it is not so licensed, or
    - (ii) an HMO licence does not authorise the person to do so, or
  - (b) at any time during which a requirement under section 145(2) has effect in relation to it.
- (5) An agent specified in an HMO licence commits an offence if the agent, without reasonable excuse, causes any condition included in the HMO licence to be breached at any time during which the living accommodation concerned is an HMO which requires to be licensed under this Part.



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- (6) A person commits an offence by preventing or obstructing any person from exercising a power conferred by section 181(1)(e) (powers of entry).

## 155 Defences

- (1) The owner of an HMO which requires to be licensed under this Part but which is not so licensed has reasonable excuse for not holding an HMO licence if—
- (a) either of the circumstances mentioned in subsection (2) apply, and
  - (b) the owner—
    - (i) has taken reasonable steps with a view to securing that the living accommodation concerned stops being an HMO which requires to be licensed under this Part, but
    - (ii) despite having taken those steps, is unable to stop it from being such an HMO without breaching the terms of any tenancy or occupancy arrangement under which any person occupied it on the day on which the HMO licence was revoked or, as the case may be, on which the exemption ceased to have effect.
- (2) The circumstances mentioned in subsection (1)(a) are—
- (a) that an HMO licence held by the owner in respect of the HMO has been revoked,
  - (b) that the HMO requires to be licensed under this Part by virtue only of the fact that an exemption provided by an order by the local authority under section 127(2) has ceased to have effect.
- (3) A licence holder has reasonable excuse for breaching a condition of an HMO licence if the licence holder—
- (a) has taken reasonable steps with a view to securing that the condition is not breached, but
  - (b) despite having taken those steps, cannot secure compliance with the condition without breaching the terms of any tenancy or occupancy arrangement under which any person occupied the living accommodation concerned on the day on which the HMO licence was granted or, as the case may be, varied so as to include that condition.
- (4) Subsections (1) and (3) do not affect the generality of the defence of reasonable excuse.
- (5) It is not an offence under section 154(2)(b) or (4)(b) to permit or, as the case may be, to do anything which permits or facilitates the occupation by any person of the living accommodation concerned if that person occupied it on the day from which the requirement in question has effect.
- (6) Where—
- (a) the owner of living accommodation has applied for an HMO licence in respect of it, and
  - (b) the local authority has not determined the application,
- it is not an offence to do anything as agent for that owner which would otherwise be an offence under section 154(4)(a) if that act does not entitle a person to occupy the living accommodation before an HMO licence is granted in respect of it.

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## **156 Penalties etc.**

- (1) A person guilty of an offence under section 154 is liable, on summary conviction, to a fine not exceeding—
  - (a) in the case of an offence under subsection (1) or (4)(a) of that section, £20,000,
  - (b) in the case of an offence under subsection (2), (4)(b) or (5) of that section, £10,000,
  - (c) in the case of an offence under subsection (3) or (6) of that section, level 3 on the standard scale.
- (2) Within 6 days of the court convicting a person of an offence under section 154, the clerk of court must provide to the local authority which granted the HMO licence—
  - (a) an extract of the conviction and sentence (if any), and
  - (b) a note of any order made under section 157(2).

## **157 Disqualification orders etc.**

- (1) This section applies where a court convicts a person of an offence under section 154 (other than an offence under subsection (6) of that section committed by a person who is not the owner of the living accommodation concerned nor an agent acting for that owner).
- (2) Where this section applies, the court may, in addition to imposing a penalty under section 156, by order—
  - (a) revoke any HMO licence which has effect in relation to the living accommodation concerned,
  - (b) where the convicted person is the owner of the living accommodation concerned, disqualify the owner (and, where the owner is not an individual, any director, partner or other person concerned in the management of the owner) from holding an HMO licence for such period not exceeding 5 years as may be specified in the order,
  - (c) where the convicted person acted as agent for the owner of the living accommodation concerned, disqualify the convicted person (and, where the convicted person is not an individual, any director, partner or other person concerned in the management of the convicted person) from being able to act as agent for any licence holder for such period not exceeding 5 years as may be specified in the order.
- (3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.
- (4) The court which made an order under subsection (2) may suspend its effect pending such an appeal.
- (5) The court may, on summary application by a person disqualified by an order under subsection (2)(b), revoke the order with effect from such date as the court may specify.
- (6) But no such revocation may be made unless the court is satisfied that there has been a change in circumstances which justifies the revocation of the order.
- (7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.

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- (8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).

*Local authority decisions: notice and appeals*

**158 Notice of decisions**

- (1) This section applies to any decision by the local authority—
- (a) to grant an HMO licence (with or without conditions) or to refuse to do so,
  - (b) to vary an HMO licence or not to make a proposed variation,
  - (c) to revoke an HMO licence or not to make a proposed revocation,
  - (d) to grant a temporary exemption order (with or without a requirement such as mentioned in section 143) or to refuse to do so,
  - (e) to extend the period for which a temporary exemption order has effect or to refuse to do so,
  - (f) to revoke a temporary exemption order,
  - (g) to make an order under section 144(1) or to refuse, on the application of any person with an interest, to revoke the order,
  - (h) to make a requirement under section 145(2),
  - (i) to revoke a requirement under section 145(2),
  - (j) to serve an HMO amenity notice,
  - (k) to revoke an HMO amenity notice,
  - (l) to extend the period within which the work required by an HMO amenity notice must be completed,
  - (m) to demand recovery of expenses under paragraph 6 of schedule 5, or
  - (n) to refuse to grant a certificate under paragraph 7 of schedule 5.
- (2) The local authority must serve notice of a decision falling within paragraphs (a) to (c) of subsection (1) on—
- (a) the applicant or, as the case may be, the licence holder,
  - (b) the chief officer of the fire and rescue authority, and
  - (c) the chief constable.
- (3) The local authority must also either—
- (a) serve notice of a decision falling within paragraph (a) of that subsection on each person who made a valid written representation, or a late written representation considered by the authority, in relation to the application, or
  - (b) give notice of that decision in a newspaper circulating in its area.
- (4) The local authority must also serve notice of a decision falling with paragraph (c) of that subsection to any person from whom it heard evidence in pursuance of section 139(2)(b) (notice inviting respondent to be heard).
- (5) The local authority must serve notice of a decision falling within paragraphs (d) to (f) of that subsection on the owner and the occupiers of the living accommodation concerned.
- (6) The local authority must serve notice of a decision falling within paragraph (g) of that subsection on—
- (a) the owner of the living accommodation concerned,

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- (b) the occupiers of the living accommodation concerned, and
  - (c) in the case of a refusal on the application of any other person, that person.
- (7) The local authority must serve notice of a decision falling within paragraph (h) or (i) of that subsection on—
- (a) the licence holder,
  - (b) the occupiers of the living accommodation concerned,
  - (c) the chief officer of the fire and rescue authority, and
  - (d) the chief constable.
- (8) The local authority must serve notice of a decision falling within paragraph (j), (k) or (l) of that subsection on—
- (a) the owner and occupiers of the living accommodation concerned,
  - (b) the chief constable,
  - (c) the chief officer of the fire and rescue service,
  - (d) any creditor holding a standard security over the living accommodation,
  - (e) any person who, directly or indirectly, receives rent in respect of the living accommodation, and
  - (f) any other person appearing to the local authority to have an interest in the living accommodation.
- (9) Failure to comply with any of paragraphs (d) to (f) of subsection (8) does not invalidate a notice if the local authority, after exercising its powers under section 186(1), is not aware of the existence of the person on whom the notice should have been served.
- (10) The local authority must serve notice of a decision falling within paragraph (m) or (n) of subsection (1) on the owner of the living accommodation concerned.
- (11) A notice of a decision to which this section applies must be served within 7 days of the decision.
- (12) The notice must—
- (a) give the local authority's reasons for the decision,
  - (b) advise of the right to appeal against the decision and of the period within which such an appeal must be made,
  - (c) if an HMO licence is granted, narrate the effect of section 134 (which sets the date from which the HMO licence has effect and the date on which it expires),
  - (d) if an HMO licence is varied or revoked, narrate the effect of section 138 or, as the case may be, 139 (which sets the date from which the variation or, as the case may be, revocation has effect),
  - (e) if a temporary exemption order is granted, be accompanied by a copy of the order,
  - (f) if an order under section 144(1) is made, be accompanied by a copy of the order.

## 159 Part 5 appeals

- (1) Any decision of a local authority to which section 158 applies may be appealed by summary application to the sheriff.

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- (2) An appeal may be made only by a person on whom notice of the decision requires to be served under that section.
- (3) An appeal is not competent unless the person making it has followed every procedure made available under this Part for stating a case to the local authority in relation to the decision being appealed that it would be reasonable to have expected the person to follow.
- (4) An appeal must be made within 28 days of the person receiving notice of the decision.
- (5) But the sheriff may on cause shown hear an appeal made after the deadline set by subsection (4).
- (6) The sheriff may determine the appeal by—
  - (a) confirming the decision (and any HMO licence or order granted or varied, or requirement made, in consequence of it) with or without variations,
  - (b) remitting the decision, together with the sheriff's reasons for doing so, to the local authority for reconsideration, or
  - (c) quashing the decision (and any HMO licence or order granted, or variation or requirement made, in consequence of it).
- (7) The sheriff may not determine the appeal in a manner described in subsection (6)(b) where the decision appealed against is a decision to serve an HMO amenity notice.
- (8) On remitting a decision the sheriff may—
  - (a) set a date by which the local authority must, after reconsidering the decision, confirm, vary, reverse or revoke it,
  - (b) modify any procedural steps which would otherwise be required by or under any enactment (including this Act) in relation to the reconsideration.
- (9) A determination by the sheriff may be appealed to the sheriff principal within 28 days of the sheriff's determination.
- (10) The sheriff principal's decision on any such appeal is final.
- (11) The sheriff may make such order about the expenses of an appeal under subsection (1) as the sheriff thinks fit (and the sheriff principal may make such an order in relation to any subsequent appeal).
- (12) References in the other provisions of this Part to the date on which an appeal to the sheriff is finally determined are to be read as references—
  - (a) where the appeal is determined by the sheriff under subsection (6)(a) or (c)—
    - (i) to the last date on which the determination may be appealed to the sheriff principal under subsection (9), or
    - (ii) where such an appeal is made, to the date on which that appeal is abandoned or determined by the sheriff principal, or
  - (b) where the appeal is determined by the sheriff under subsection (6)(b), to the date of the determination.
- (13) Subsection (12)(b) does not affect any entitlement to appeal to the sheriff principal under subsection (9) against a determination by the sheriff under subsection (6)(b).
- (14) A reference in this Part to the last date on which a decision may be appealed under this section to the sheriff is, where that date is in any case changed under subsection (5),

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to be read as referring to the new date only if the change is made before the date on which the right to appeal would otherwise expire.

### *General and supplementary*

#### **160 HMO register**

- (1) A local authority must keep a register containing information about HMO licences for living accommodation situated in its area (and applications for them).
- (2) A local authority must enter in its HMO register—
  - (a) details of each application for an HMO licence including—
    - (i) the name of the applicant,
    - (ii) the address of the living accommodation concerned,
    - (iii) the name of any agent specified in the application,
    - (iv) a note of the date on which the application is made,
  - (b) a note of its decision on each such application,
  - (c) details of any HMO licence granted in pursuance of that decision including—
    - (i) a note of any conditions included in the HMO licence,
    - (ii) a note of any variation, revocation or cancellation of the HMO licence, and
  - (d) such other information as it thinks fit.
- (3) A local authority must exclude from its HMO register any information it would otherwise be required by subsection (2) to enter in the register if the authority considers that entering the information is likely to jeopardise—
  - (a) the safety or welfare of any person, or
  - (b) the security of any premises.
- (4) A local authority must make its HMO register available for public inspection at all reasonable times.
- (5) A person who requests a local authority to provide a certified copy of any entry in its HMO register is, if the request is reasonable, entitled to be given that certified copy.
- (6) Any such copy entry which purports to be certified by a proper officer of the local authority is sufficient evidence of the terms of the entry.

#### **161 Fees**

- (1) The local authority is entitled to charge a fee in relation to—
  - (a) an application for an HMO licence,
  - (b) the issue of a certified copy of an HMO licence under section 140(3),
  - (c) the issue of a certified copy of an entry in the authority's HMO register.
- (2) The Scottish Ministers may by order make provision about the charging of fees under subsection (1).
- (3) Such an order may, in particular—
  - (a) set the amount, or maximum amount, of any such fee,



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- (b) set out how such fees are to be arrived at,
- (c) specify circumstances in which no fee is payable,
- (d) specify circumstances in which fees are to be refunded.

## **162 Grants: exercise of functions in relation to HMOs**

The Scottish Ministers may pay to a local authority such sums as they think fit for the purpose of enabling or assisting the authority to exercise its functions under this Part.

## **163 Guidance**

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about the exercise of its functions under this Part [<sup>F7</sup>and section 186 (so far as that section relates to this Part)].
- (2) Such guidance may make different provision for different cases and, in particular, for different areas, different types of living accommodation, different types of person or different types of local authority.
- (3) Before issuing any such guidance the Scottish Ministers must consult—
  - (a) local authorities, and
  - (b) such other persons as they think fit.
- (4) The Scottish Ministers must issue any such guidance in such manner as they consider appropriate for the purpose of bringing it to the notice of local authorities generally or, as the case may be, the local authority concerned.
- (5) The Scottish Ministers may vary or revoke any guidance issued for the purposes of this section.

### **Textual Amendments**

- F7** Words in s. 163(1) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), ss. 16, 41(3); S.S.I. 2011/270, art. 2, Sch.

### **Commencement Information**

- I2** S. 163 in force at 31.8.2011 by [S.S.I. 2010/159](#), art. 3

## **164 Joint licence holders**

- (1) Where living accommodation is owned jointly by two or more persons, an application for an HMO licence for the living accommodation may be made by—
  - (a) any one of those owners, or
  - (b) any two or more of those owners jointly,
 and references in this Part to an “applicant” or a “licence holder” are to be construed accordingly.
- (2) Where one or more (but not all) of the joint licence holders ceases to be an owner of the living accommodation concerned, the HMO licence is to be treated as having been granted to any licence holder who remains an owner.



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- (3) Where one or more (but not all) of the joint licence holders applies to the local authority to be removed as licence holders, the local authority must—
- (a) vary the HMO licence accordingly, and
  - (b) serve notice of that variation on—
    - (i) the persons removed as licence holders,
    - (ii) the remaining licence holder,
    - (iii) the chief officer of the fire and rescue authority, and
    - (iv) the chief constable,within 7 days of the variation.
- (4) A variation under subsection (3) has effect from the day on which notice of the variation is served on the remaining licence holder.

#### **165 Agents**

- (1) Where the local authority serves a notice on an applicant or licence holder under this Part (except section 144), the local authority must serve a copy of the notice (and any documents accompanying it) on any agent specified in the application or, as the case may be, the HMO licence.
- (2) But service under subsection (1) does not entitle the agent to make representations or appeal any decision under this Part except on behalf of the applicant or licence holder.

#### **166 Interpretation of Part 5**

In this Part—

“applicant” means a person who applies for an HMO licence,

“chief constable”, when referred to in relation to any living accommodation, means the chief constable of the police force maintained for the area in which the living accommodation is situated,

“finally determined”, in relation to an appeal to the sheriff, has the meaning given in section 159(12),

“HMO register”, in relation to a local authority, means the register kept by it under section 160,

“licence holder” means a person who holds an HMO licence,

“proper officer”, in relation to a local authority, is to be construed in accordance with section 235(3) of the Local Government (Scotland) Act 1973 (c. 65).

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