



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 5

#### LICENSING OF HOUSES IN MULTIPLE OCCUPATION

##### *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.
- (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.

#### **Commencement Information**

**II** S. 129 in force at 31.8.2011 by [S.S.I. 2010/159, art. 3](#)

#### **[<sup>F1</sup>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

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*Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2006, Cross Heading: Application for HMO licence. (See end of Document for details)*

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- (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).]

#### Textual Amendments

- F1** S. 129A inserted (31.1.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 13(2)**, 41(3); S.S.I. 2012/2, **art. 2, Sch.** (with **art. 3**)

### 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.

#### Commencement Information

- I2** S. 130 in force at 31.8.2011 by [S.S.I. 2010/159](#), **art. 3**

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### 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,
  - [<sup>F2</sup>(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,]
  - (e) the safety and security of persons likely to occupy it, and
  - (f) the possibility of undue public nuisance.

#### Textual Amendments

**F2** S. 131(2)(da)(db) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), ss. **13(3)**, **41(3)**; [S.S.I. 2011/270](#), art. 2, Sch.

#### Commencement Information

**I3** S. 131 in force at 31.8.2011 by [S.S.I. 2010/159](#), art. 3

### [<sup>F3</sup>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.
- (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,

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- (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).]

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**Textual Amendments**

- F3** S. 131A inserted (31.1.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 13(4)**, **41(3)**; [S.S.I. 2012/2](#), **art. 2**, **Sch.** (with **art. 3**)

**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,
- 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.

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**Commencement Information**

- I4** S. 132 in force at 31.8.2011 by [S.S.I. 2010/159](#), **art. 3**

**Changes to legislation:**

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