



Housing (Scotland) Act 2006

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PART 5

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

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.

Status: This is the original version (as it was originally enacted).

- (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,
 - (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.
- (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).

Status: This is the original version (as it was originally enacted).

- (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), 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.