



Housing (Scotland) Act 2006

2006 asp 1

PART 5

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

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

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- (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.
- (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 taking 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.

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.

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- (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.
- (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).