

LICENSING OF HOUSES IN MULTIPLE OCCUPATION:

STATUTORY GUIDANCE FOR SCOTTISH LOCAL AUTHORITIES

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updated January 2012**

January 2012 – updated to reflect implementation of the remaining HMO provisions within the Private Rented Housing (Scotland) Act 2011, in relation to planning permission and overprovision.

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PART 1 INTRODUCTION

What is this guidance for ?

1.1.1 This guidance is intended predominantly for local authorities. It provides statutory guidance on the exercise of their functions in relation to HMO licensing under Part 5 of the Housing (Scotland) Act 2006. This guidance is issued under section 163 of the Housing (Scotland) Act 2006. That means that it is statutory, and local authorities must have regard to it on the exercise of their functions under Part 5. It may also be helpful to organisations working with local authorities on HMO issues.

1.1.2 This guidance should be read in conjunction with the relevant legislation, Part 5 of the 2006 Act and its explanatory notes. The guidance should not be interpreted as an authoritative statement as to the law in this area.

1.1.3 Separate, non-statutory guidance is available for local authorities on transitional arrangements from the previous regime under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, as amended, to Part 5 of the Housing (Scotland) Act 2006.

Interpretation

1.1.4 In this guidance:

- “the 2006 Act” means the Housing (Scotland) Act 2006, as at 31 January 2012.
- “the 2011 Act” means the Private Rented Housing (Scotland) Act 2011, as at 31 January 2012.
- “HMO” means house in multiple occupation, within the meaning of the 2006 Act.

Why is there regulation of HMOs?

1.1.5 Standards of physical accommodation and management in multiple occupied housing have been an issue of concern for many years, and a variety of schemes were implemented in an attempt to control and improve those standards. In 1991, local authorities in Scotland were given discretionary powers to introduce licensing of houses in multiple occupation (HMOs) under the Civic Government (Scotland) Act 1982. In 2000, a new Order under that Act was made, making it mandatory for all authorities to introduce an HMO licensing regime.

1.1.6 The 2006 Act moves the regulation of HMOs into the mainstream of housing legislation, ensuring it has better strategic links with other housing policy, locally as well as nationally. While aspects remain similar to the previous regime, there are notable differences such as additional enforcement powers for authorities and increased penalties for criminal offences. An

overview of the new regime, and specific guidance on enforcement powers, is provided within this guidance.

How was this guidance developed ?

1.1.7 Scottish Government officials worked with a subgroup of the Scottish Houses in Multiple Occupation Network Group (SHMONG), a national group of local authority staff working on HMO licensing.

1.1.8 Scottish Government officials agreed with SHMONG members to use the existing non statutory local authority guidance as a platform from which to prepare this statutory guidance. The draft guidance was the subject of a full public consultation between February and March 2011. The issues raised during the consultation and at a series of interviews with owners of HMOs were fully considered in finalising the guidance.

What does the guidance contain ?

1.1.9 The guidance relates to the procedures and activities involved in the exercise by local authorities of their functions under Part 5 of the 2006 Act in respect of HMO licensing.

Part 1 introduces the regime and the guidance

Part 2 outlines key provisions within Part 5 of the 2006 Act.

Part 3 deals with operation of the licensing regime by local authorities, offering guidance in areas such as internal co-ordination and fees.

Part 4 discusses the assessment of the applicant and the living accommodation, and imposing licence conditions.

Part 5 deals with the enforcement of the licensing regime.

Annex A contains specifications relating to physical standards.

Annex B gives details of membership of the SHMONG sub group.

PART 2 OVERVIEW OF THE LEGISLATION AND APPLYING FOR AN HMO LICENCE

2.1 OVERVIEW

What is the licensable activity?

2.1.1 A licence is required for the occupation of living accommodation as an HMO. The application for a licence must be made by the owner of the living accommodation. The details of any agent authorised to act for the owner in relation to the occupation of the living accommodation must be specified in the application.

2.1.2 Section 164 of the 2006 Act provides for situations of joint ownership. The licence may be applied for and held by any one of the owners or jointly.

2.1.3 Where there are joint owners but the application is made by only one of them, there is no requirement for the consent of other joint owners. Neither is there any requirement for other joint owners to be assessed as a fit and proper person.

What is the definition of an HMO?

2.1.4 Living accommodation is an HMO within the meaning of the 2006 Act if it is:

- occupied by three or more persons from three or more families, **and**
- occupied by them as their only or main residence **or** in some other manner specified by the Scottish Ministers by order, **and**
- **either** a house, premises or a group of premises owned by the same person with shared basic amenities, or some other type of accommodation specified by the Scottish Ministers by order.

2.1.5 The legislation covers not only ordinary houses, flats and bedsits, but also other types of residential accommodation including hostels, student halls of residence, and staff accommodation in hotels or hospitals. Accommodation within a building which, although otherwise separate, shares use of a toilet, personal washing facilities or cooking facilities, is taken to form part of a single HMO. The accommodation must be licensed regardless of the type of owner (e.g. private individual, Registered Social Landlord etc.) as long as it is not otherwise exempt (see section 2.1.8 below).

2.1.6 As referred to in 2.1.4 above, additional types of accommodation may be specified by the Scottish Ministers as HMOs by order, under section 125(1)(b) of the 2006 Act (inserted by section 13(1) of the Private Rented Housing (Scotland) Act 2011).

2.1.7 The definition of “family” is set out in full in section 128 of the 2006 Act. The definition includes married, unmarried and same-sex couples and stepchildren and foster children, as well as certain close blood relatives.

Are there any exemptions from licensing?

2.1.8 There are seven types of exemption from the licensing requirement (section 126 of the 2006 Act).

- where the property is occupied only by the owners, members of their families, and any other persons who are not related to the owners and are members of no more than two other families.
- where the HMO is provided as part of a service registered in certain categories under Part 5 of the Public Services Reform (Scotland) Act 2010 or section 10Q(1) of the National Health Service (Scotland) Act 1978.
- where the occupants are members of, and fully maintained by, a religious order, mainly occupied in prayer, contemplation, education or the relief of suffering, plus no more than two people who are not members of the order.
- where the owner's rights and obligations have been transferred to a local authority under section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004, in order that the local authority can take steps to prevent antisocial behaviour by the occupiers.
- Forces accommodation.
- Prisons and related institutions.
- where the HMO is owned by certain co-operative housing associations.

2.1.9 Order making powers also exist under sections 126 and 127 of the 2006 Act to add, remove, or vary descriptions of exemptions or allow certain local authority discretion.

What sanctions are there for owners who operate an HMO without a licence?

2.1.10 It is a criminal offence to operate an HMO without a licence. The maximum penalty is currently £50,000.

2.1.11 In addition, under section 144, the local authority may impose a suspension of rent order, so that no rent is payable by occupiers in relation to the HMO.

Are agents affected by licensing?

2.1.12 As noted above, where the owner of an HMO authorises an agent to act on his behalf, the agent's details must be included in the HMO licence application.

2.1.13 Agents should check that their clients (or prospective clients) are licensed where necessary. It is a criminal offence for anyone to act as an agent for an unlicensed owner of a licensable HMO, by doing anything "which directly permits or facilitates the occupation of the living accommodation" as an HMO. The maximum penalty is the same as for the unlicensed owner, £50,000.

2.1.14 In particular, the local authority should ensure that when it serves a notice, under section 144 covering suspension of rent, a copy of the notice and any accompanying documents should also be served on any agent specified on the licence application.

2.1.15 If a local authority suspects that living accommodation is an HMO, they may ask anyone who receives rent directly or indirectly, in respect of the premises, for information about the accommodation including the owner's name and address. This would, in many cases, include agents. It is an offence to fail to comply with such a request, liable on summary conviction to a fine not exceeding level 2 on the standard scale.

How do the Provision of Services Regulations 2009 affect HMO licensing?

2.1.16 The EU Services Directive aims to break down barriers to cross border trade in services between countries in the EU. The Directive has been implemented in the UK by the Provision of Services Regulations 2009 (S.I. 2009/2999).

2.1.17 Local authorities may wish to note guidance on the Directive, published by the Department for Business Innovation and Skills (<http://www.bis.gov.uk/files/file50026.PDF>).

2.1.18 While the Scottish Government is responsible for ensuring that Scottish legislation is compliant with the Directive, it is for local authorities to ensure that their practices are compliant. This guidance highlights some areas that authorities may wish to consider. For example, guidance on setting fees is provided at Part 3.4.

2.1.19 Local authorities should consider whether any special arrangements may be required for overseas applications e.g. in relation to the display of site notices. Furthermore, authorities may wish to note the need to ensure that service providers can obtain HMO licences through an online Point of Single Contact (PSC) and ensure that information is accurate and kept current.

2.1.20 Owners must be able to complete all HMO related transactions online.

2.1.21 Exemptions from the requirement to carry out transactions online are available for the inspection of premises and the physical examination of the capability or professional integrity of HMO providers.

How do you work out the delivery date for formal communications?

2.1.22 All formal communications required by the 2006 Act, including notices, requirements and applications, must comply with section 187 of the 2006 Act. This sets out that formal communications must be made in writing, and a communication is served on someone if it is delivered, or sent to their

address. A formal communication which is delivered, posted or sent in another manner which the sender reasonably considers likely to be delivered on the same or next day (for example by electronic means such as email), is, unless the contrary is proved, to be treated as having been delivered on the next working day.

What happens to existing HMO licences on the transition to Part 5?

2.1.23 The HMO licensing regime within Part 5 of the 2006 Act is commenced by *The Housing (Scotland) Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2010* which sets out that Part 5 comes into effect on 31 August 2011, and details the transitional provisions. In most cases licences already granted under the 2000 Order will become licences under the 2006 Act, with identical currency and conditions. The Commencement Order is available at <http://www.legislation.gov.uk/ssi/2010/159/contents/made>

2.1.24 The existing licence continues under the previous regime where a licence has been suspended or suspension of a licence is being considered by the local authority. The existing regime will also be retained for pending applications at 31 August, or for applications that have been initially refused under the previous regime, in order to allow existing appeal rights to continue.

2.1.25 More detailed guidance has already been provided for local authorities to assist them with the transition to Part 5.

2.2 APPLYING FOR AN HMO LICENCE

What is the process for applying for a licence?

2.2.1 The owner submits an application to the local authority, together with the appropriate fee. The application must contain the information set out in Schedule 4 to the 2006 Act, which means that it should include details of the living accommodation, the owner of the living accommodation (and any agent authorised to act for them), and “any other information which the local authority may reasonably require”. An example of such additional information might be details of any joint owners of the HMO (if not applying to be joint licence holders) and the day to day contact for the business.

2.2.2 The owner must also display a notice outside the property for 21 days (or arrange for such a notice to be displayed), informing the public of the application and how to submit objections to the local authority.

2.2.3 Under Schedule 4, paragraph 3 of the 2006 Act, where applicants believe that compliance with this requirement is likely to jeopardise the safety or welfare of any persons, or the security of any premises, they may apply to their local authority to be exempt from this requirement e.g. where the HMO will be used as a womens’ refuge. If the authority considers that there is such a risk, the applicant must be exempted from the requirement. It is recommended that any such application be considered with great care, given the risk that a failure to properly apply this provision to exempt an applicant could entail for vulnerable groups. In addition, the authority must arrange for a notice, as detailed in the above paragraph, to be served on occupiers of such premises in the vicinity as it thinks fit, for example near neighbours.

What does the local authority have to consider in deciding whether to grant a licence ?

2.2.3A Before it formally considers an HMO application, the local authority has the discretionary power to refuse to consider it, if it considers that occupation of the accommodation as an HMO would be a breach of planning control.

2.2.4 In considering the application the local authority has to satisfy itself:

- That the applicant, and their agent, is a fit and proper person to operate an HMO. The local authority must have regard to section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004, as amended
- That neither the applicant nor the agent is disqualified from holding a licence or acting as agent for a licence holder (by court order under section 157 of the 2006 Act).

2.2.5 If the authority is not so satisfied, the authority must refuse to grant the licence.

2.2.6 The authority must also satisfy itself:

- That the property is suitable for use as an HMO or could be made so by including conditions in the licence.

2.2.7 If the authority is not so satisfied, the authority has no power to grant the licence.

2.2.7A The authority may refuse to grant an HMO licence if it considers that there is, or that the grant of the licence would result in, overprovision of HMOs in the locality.

2.2.8 The local authority cannot consider an application from the same applicant for the same accommodation, or any accommodation where refusal was on the grounds of failing the fit and proper test, within one year of refusal. This does not prevent the local authority from considering a further application where it is satisfied that there has been a material change of circumstances.

2.2.9 The authority must copy the application to the Chief Constable for the area, so that he or she can inform the authority of any information they consider relevant to the authority's consideration of the application, e.g. if the applicant or agent have any relevant convictions. They may also provide information about any relevant complaints against the applicant or manager, or in relation to the property.

2.2.10 The authority must also copy the application to the chief officer of the appropriate fire and rescue authority. The fire and rescue authority has independent responsibility for enforcing fire safety legislation in HMOs through the Fire (Scotland) Act 2005 (see section 3.6).

Making the licensing decision

2.2.11 The local authority has rights of entry and inspection under section 181(1)(e) and section 182 of the 2006 Act to enable it to assess whether the living accommodation is suitable for occupation as an HMO. These rights may also be exercised at any stage to assist the authority in exercising its licensing functions e.g. enforcement of the licensing regime, revoking or varying licences. Any information gathered from such an inspection will provide evidence to support the authority's decision as to whether or not to grant the licence.

2.2.12 The local authority must also consider any objections to the application. The 2006 Act permits any person to make an objection to a licence application. The authority must copy any such objection to the applicant, and must notify the applicant of any other information they intend to take into account in considering the application. The applicant must at least be given an opportunity to comment in writing on any objections and other information, and the local authority may give the applicant and any objectors an opportunity to be heard in person.

2.2.13 In practice, decisions on licence applications are generally made either by the Licensing Committee of the local authority, or by an officer with

delegated powers. Authorities should give careful consideration to the possibility of granting licences subject to conditions, which may help to ensure that appropriate standards are maintained throughout the period of the licence.

2.2.14 The local authority must keep a register of applications and the decisions made on them. Information must be excluded from the register if it would jeopardise the safety or welfare of any person or the security of the premises. The register must be available for public inspection at all reasonable times.

Is there an appeals process?

2.2.15 Any person on whom the local authority is required to serve notice of a decision has the right to appeal against the decision, by summary application to the sheriff. The requirements to serve notice are set out in section 158 of the 2006 Act, and vary depending on the nature of the decision. Generally this includes the applicant, and anyone who has made a valid written representation. In some cases occupants of the premises must also be served a notice. For a decision to grant, refuse to grant, vary or not vary, revoke or not revoke an HMO licence, the chief officer of the fire and rescue authority and the chief constable must also be served with a notice and therefore have a right of appeal.

2.2.16 Any appeal must be made within 28 days of receiving notice, unless the sheriff exercises discretion to consider late applications on cause shown. The sheriff may confirm, or quash the original decision, or (except in the case of HMO amenity notices) return it to the local authority for reconsideration.

2.2.17 A determination by the sheriff may be appealed to the sheriff principal within 28 days of the sheriff's determination. The decision of the sheriff principal is final. It is for the sheriff and sheriff principal to determine liability for costs.

How long does it take for an application to be determined?

2.2.18 The local authority must process a licence application within a reasonable time. This should be within twelve months, although this may be extended by the sheriff, on summary application. If the local authority does not determine an application within the twelve month period, plus any period of extension granted by the court, then the licence will be deemed to be granted unconditionally.

2.2.19 Authorities should aim to determine applications in less than twelve months although it is appreciated that in certain cases, e.g. where physical changes to the living accommodation are to be made, the full twelve month period might be required. An extension should be sought from the sheriff only in exceptional circumstances.

How long is an HMO licence valid?

2.2.20 A licence may be granted for a maximum period of three years, and for no less than six months. It is suggested that general practice should be that licences are granted for a three year period, with licenses of a shorter duration being granted where the authority is satisfied that a justification for a shorter period exists.

2.2.21 Such a justification might relate to the standards of the living accommodation e.g. where it is considered suitable for occupation as an HMO at the time the application is granted, but is unlikely to remain suitable for an extended period due to (for example) the age or state of the fixtures and fittings. In such a case, the authority might wish to grant the licence for one year only, so as to provide for regular checks of the continuing suitability of the accommodation.

Can changes be made during the period of the licence?

2.2.22 The authority can vary the terms of the licence at any time, either at their own discretion or if the licence-holder asks them to do so (for example to make a material change to the property). The licence holder must be given notice and an opportunity to be heard before a variation is imposed, and can appeal a decision to vary or refuse to vary a licence by summary application to the sheriff.

2.2.23 It should be noted that, in contrast to applications for the grant of a licence, authorities are not entitled to charge a fee for the variation of an HMO licence. There may be cases in which the variation under consideration is so substantial as to amount, in effect, to the issue of a new licence. In such cases, local authorities may consider it appropriate to request the licence holder submit an application for a new licence (accompanied by the appropriate fee). Authorities should, however, take care not to request new applications unnecessarily, and bear in mind that the grounds on which a licence could be revoked (which could be relevant if the licence holder disputes the need to apply for a new licence) are limited. The ability to charge fees for licence applications (as opposed to licence variations) should not be a determining factor.

What happens when an owner sells their property or dies?

2.2.24 Section 136 of the 2006 Act states that an existing HMO licence transfers to the new owner of a licensed property and lasts for one month from the date of purchase, provided that the new owner is already entered on the local authority's register of landlords. If the new owner submits a licence application before the end of that month, the licence will continue in force until that application is determined. If the new owner is not a registered landlord, the licence expires on the date that ownership transfers.

2.2.25 Section 137 of the 2006 Act transfers the licence of a deceased sole licence holder to that person's executor. The licence expires three

months after the date of death, unless, on an application by the executor, the authority is satisfied that it is reasonable to extend it in order to wind up the licence holder's estate.

When can a licence be revoked?

2.2.26 A local authority may revoke a licence at any time. The three possible grounds are that the licence holder or agent is no longer a suitable person, that the accommodation is no longer suitable for occupation as an HMO and cannot be made suitable, or that a condition of the licence has been breached. The authority must propose a date for a hearing and invite representations from interested parties. The authority must consider any oral representations made before deciding whether to revoke the licence. A revocation comes into force on the date by which the decision to revoke the licence may be appealed, or on the date when such an appeal is abandoned or finally determined other than by quashing the decision to revoke.

2.2.27 The sheriff has powers to revoke an HMO licence and disqualify an owner from holding a licence (or an agent from being named on a licence) on conviction of an HMO offence under section 154, for a period not exceeding five years.

PART 3 ADMINISTRATION OF HMO LICENSING

3.1 OVERVIEW

3.1.1 Before considering a licence application a local authority may also consider whether occupation of the living accommodation as an HMO would be a breach of planning control. The purpose of HMO licensing is to achieve and maintain high standards of service in this part of the private rented sector by ensuring that the HMO owner and any agent is a fit and proper person, and ensuring the suitability of accommodation. An authority may also consider whether granting an HMO licence will result in an overprovision of HMOs in a locality.

3.1.2 HMOs provide an important supply of housing, particularly for some groups of people, such as students, mobile workers, and those who require support in a homely setting. However, many HMO occupiers are unaware of their rights, or have few housing choices, and are therefore vulnerable to exploitation.

3.1.3 The Scottish Government recognises the importance of HMO owners in providing flexible and affordable housing to occupiers, with HMO licensing ensuring that occupiers can enjoy accommodation that is safe and of a reasonable standard.

3.1.4 It is important that regulation of HMOs is effective but also proportionate and cost effective. Regulation that is disproportionate and unduly onerous could raise fees, increase rents, and ultimately deter some HMO owners from applying for HMO licences, putting occupiers at risk.

3.1.5 In administering the HMO licensing regime, local authorities should therefore seek to avoid placing unreasonable burdens on good owners and seek to robustly tackle poor practice and unscrupulous owners.

3.1.6 Consultation and interviews with HMO owners as part of the development of this guidance have generally reported good relations with local authorities and particularly praised practice in a number of areas:

- Effective joined up working by different local authority sections
- Good provision of information
- Publication of required physical standards and clear advice where these have changed
- Informal advice on standards, for example prior to a scheduled refurbishment

3.1.7 However this engagement has also raised concerns about:

- Physical standards not being communicated clearly and seeming to rise with every inspection
- Inflexible and at times unreasonable interpretation of rules
- Threats that a licence will be refused over a relatively minor matter
- Occasional aggressive or intimidating behaviour by inspecting officers or licensing committees

3.1.8 In order to address these concerns it is suggested that local authorities engage with HMO owners to ensure that they are operating the regulatory regime in a reasonable and proportionate manner. Setting up a forum including local HMO owners can be a useful way to discuss general issues of concern and agree on steps to address them, and it is suggested that larger local authorities should set up such forums.

3.1.9 Local authorities should also note that the standards and approaches adopted in respect of individual HMO owners, or other small HMO businesses, are likely to be inappropriate for large scale providers such as universities and commercial providers of student accommodation. Local authorities should therefore exercise flexibility and discretion in their assessment of applications from different types of providers to ensure that while occupiers remain protected, compliance costs for HMO owners are not unreasonable.

3.1.10 For example, need the standards adopted by the authority be strictly applied where a long-standing provider has effective alternative systems in place in relation to locks, heating and lighting controls? Authorities may also wish to consider, for example, whether there is a need to carry out an inspection of every dwelling in a block of identical flats? Where there are changes to standards, they should also consider a staged implementation plan with large providers that is consistent with their scheduled programmes of maintenance and refurbishment.

3.1.11 Whatever approach is adopted, authorities must ensure that their assessment processes enable them to be satisfied that the statutory requirements for a licence to be granted are met.

3.2 CO-ORDINATION AND PREVENTING DUPLICATION

3.2.1 Processing an application for an HMO licence requires the involvement of officers from several different local authority sections. The local authority officers involved are likely to represent:

- Legal services/licensing
- Landlord Registration
- Environmental Health
- Planning
- Building Standards
- Housing.

3.2.2 Processing an application will also require the consideration of external bodies. These will include:

- fire and rescue authority (a statutory consultee)
- chief constable (a statutory consultee)

3.2.3 It is important that the work of all interests is well co-ordinated, licensing committees will find it particularly difficult to form an accurate view

where they receive conflicting reports. Co-ordination therefore needs to take place at all levels.

Administration of HMO licensing

3.2.4 It is recommended that local authorities establish a clearly identified team as the single point of contact for HMO enquiries, applications, objections and complaints. Information from other council departments or partner agencies about suspected unlicensed HMOs, or suspected breaches of licence conditions, can feed into this team. The same team could provide a central point of co-ordination, with responsibility for distributing information about applications to the other officers whose views are required, organising joint visits to the property, collating reports, and organising action on complaints, as well as all correspondence with applicants and objectors.

3.2.5 Different sections within a local authority will hold information that can usefully inform decisions on licence applications. HMO licensing teams are encouraged to investigate the scope for sharing information, for example through memoranda of understanding with teams responsible for landlord registration, housing, housing benefit, homelessness services, antisocial behaviour, noise nuisance, planning, building standards, etc.

Technical Issues

3.2.6 Employment of varying standards and interpretations by HMO licensing officers and committees could impose additional compliance costs on HMO owners.

3.2.7 There must be a shared understanding among those officers involved in inspecting properties and processing applications. Authorities will wish to put procedures in place to ensure that any differences of view between the various disciplines involved, about the standards to be applied or methods of satisfying the standards, can be resolved centrally and the agreed position clearly communicated to all inspecting officers.

3.2.8 It is suggested that procedures are put in place to enable an approach to be agreed internally where new situations arise, for example a type of HMO which has not previously been encountered, or new technology or a new approach which may offer a different way of satisfying standards. It may be possible for both technical and management issues to be addressed by the same group.

Policy Development

3.2.9 The development of policy on HMO licensing should be considered by councillors and senior officers from the various relevant departments within the local authority. It is also likely to be helpful to involve a representative of

the Fire and Rescue Service. Policies to be applied should be clearly communicated to all officers involved in the assessment of HMO applications.

3.3 VERIFICATION OF COMPLIANCE WITH LICENSING REQUIREMENTS

3.3.1 A local authority may refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. A local authority has no power to grant an HMO licence unless it is satisfied that the living accommodation is suitable for occupation as an HMO, and is satisfied that the owner (and any agent acting for the owner) is a fit and proper person and is not disqualified from holding a licence. A local authority may refuse to grant an HMO licence if it considers that there is, or that the grant of the licence would result in, overprovision of HMOs in the area. Licence conditions may be imposed when granting a licence, to ensure that appropriate standards are maintained throughout the period of the licence.

3.3.2 There are various ways in which the local authority can obtain evidence to verify that the standards are met and licensing conditions complied with:

- **Direct inspection** involves officers of the local authority checking standards in person, by inspecting the property, gathering evidence from occupiers and neighbours about the management of the property.
- **Evidence from third parties** can confirm that certain requirements have been checked by an appropriate certifier or are controlled under other forms of regulation, and need not be checked again, or can provide a basis for further investigations.
- **Evidence from the applicant or licence holder** may also be taken into account, although its usefulness and the extent to which the authority is content to rely on it may vary.

3.4 FEES

3.4.1 Local authorities should ensure that their fees structure complies with the Housing (Scotland) Act 2006 and the Provision of Services Regulations 2009.

3.4.2 Under the Housing (Scotland) Act 2006, a local authority can only charge fees in relation to HMOs for an application for an HMO licence, the issue of a certified copy of an HMO licence, or the issue of a certified copy of an entry in the authority's HMO register. It cannot, for example, charge fees for inspections or variations to a licence.

3.4.3 The Provision of Services Regulations 2009 require that fees charged in relation to a licensing regime must be reasonable and proportionate to, but not exceed the costs of all the procedures required to carry out this function.

3.4.4 Income received by the local authority from HMO licence fees should not be used to subsidise any other public service, nor should charges levied by the local authority relating to any other public service be used to provide a subsidy for any work on HMO licensing. A periodic review, at the discretion of the local authority, should be sufficient for the purpose of reviewing costs and setting fee levels.

3.4.5 In order to protect the rights of occupiers, to ensure public confidence in the regime, and to ensure that good HMO owners are not put at a disadvantage, it is important that HMO licensing operates robustly. Local authorities should therefore ensure that fees are set at a level sufficient to ensure that they can be proactive in identifying unlicensed HMOs, that appropriate and proportionate enforcement action can be taken in relation to HMO related offences and that appropriate advice and support can be supplied to HMO occupiers and owners.

3.4.6 Typical elements of the cost of granting a licence could include:

- Administration – this could cover basic office administration to process the licence application, such as resource, copying, postage and the cost of handling fees.
- Visits to the premises – this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Authorities will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Authorities will need to consider whether 'on-costs' include travel costs and management time.
- Local democracy costs – Authorities may want to recover any necessary expenditure in arranging and holding committee meetings to consider applications.

3.4.7 Licence maintenance costs could include -

- Additional monitoring and inspection visits – Authorities may wish to include a notional charge for routine risk based visits to premises in between licensing inspections where this is standard for all premises.

As with the initial licensing visit, authorities can consider basing this figure on average officer time, travel and management costs as suggested above.

- Enforcement costs – Authorities will want to consider how enforcement costs associated with complaints and working with non-compliant businesses are funded. The majority of enforcement activity will be aimed at ensuring compliance with the licensing regime to protect both the public from rogue service providers and the trade from unregulated competition and as such can be considered a valid licence fee expense. Enforcement costs can include advice provided to businesses. Any calculations for ongoing enforcement action will need to consider that some cases may result in prosecution as a last resort, which is likely to incur costs to the authority, though an element of these costs may be recovered through the court processes.

3.4.8 As stated above, when setting their fees local authorities should be mindful of the requirements of the Provision of Services Regulations 2009 to set fees that are proportionate to the effective cost of the procedure in question. This means that it is no longer acceptable for an unsuccessful applicant for an HMO licence to be charged the same fee as a successful applicant. Although the local authority incurs certain authorisation costs for both the accepted and the refused applicant, it will not incur licence maintenance costs such as the further enforcement costs for the unsuccessful applicant.

3.4.9 It is for local authorities to take their own view on the appropriate action to achieve compliance with the EU Services Directive, but they may wish to consider the following approaches.

3.4.10 It is open to local authorities whether they wish to calculate the split between their authorisation and licence maintenance costs.

- If they do calculate the split between initial application and licence maintenance costs, then they could charge a combined initial application and maintenance fee, and refund the maintenance element to unsuccessful applicants,
- If they do not calculate the split between initial application and licence maintenance costs, then they could refund the entire fee to unsuccessful applicants.

3.4.11 Applicants must be able to complete all their transactions online. Local authorities need to ensure that service providers can obtain HMO licences through an online Point of Single Contact (PSC) and ensure that information is accurate and kept current. Details of fees should be made available online, either by utilising the Point of Single Contact (PSC) website established by UK Department of Business, Innovation and Skills (BIS) or on the local authority's own website. Further information is available on the BIS website.

<http://www.bis.gov.uk/policies/europe/eu-services-directive>

3.4.12 It is suggested that local authorities make available to the public information on the activities covered by the licensing fee, to make clear all the activities which are involved in operating the regime.

3.4.13 Local authorities may take different approaches to structuring their fee levels. Some may charge a flat fee, while others may use a sliding scale based on the number of occupants of the HMO.

3.4.14 Local authorities may consider a structure in which lower fees are charged for applications which require less work on the part of the authority.

3.4.15 Various discounts or methods of calculating fees can, if the local authority so wishes, be applied to HMO owners with large portfolios of property, such as universities, colleges and other large providers of student accommodation, particularly where the units are to a common design. Similarly, blocks of identical units and portfolios of property managed together are likely to bring economies of scale, and may be considered for discount arrangements.

3.4.16 Local authorities may wish to charge a lower fee for applications from persons who are already licensed. This option might reflect the likelihood that an application from a person who does not already hold an HMO licence requires more work by the local authority than consideration of an application by a person who is already licensed.

3.4.17 The local authority should be able to justify that any differential between application fees charged to different applicants reflects the difference in costs incurred by the authority.

3.5 CO-ORDINATION WITH OTHER RELEVANT REGULATION

3.5.1 HMO licensing covers a wide range of types of living accommodation, from a three-person shared flat to a 100-room hall of residence, hotel staff accommodation to sheltered housing, Victorian tenements to new, purpose-built group homes. HMO operators are therefore involved in a range of activities which are subject to other regulatory regimes in addition to HMO licensing.

3.5.2 Some of these other forms of regulation are clearly separate from the business of providing accommodation. There are, however, a few forms of regulation which interact more closely with HMO licensing. If these are not carefully handled, applicants and objectors may see them as duplicating the same controls, possibly with inconsistent results.

3.5.3 It is important to be clear that different regulatory regimes control different aspects of the activity, that each of them must be separately complied with, and that enforcement action can be taken if any one requirement is not met. It is helpful if HMO officers have a general understanding of the other regimes which may be involved, so that they can advise applicants as appropriate (e.g. to check that particular requirements which may apply to them are complied with). However, it is the individual HMO owner's responsibility to ensure that they comply with the law in all respects.

3.6 FIRE SAFETY

3.6.1 HMOs fall within the scope of the fire safety regime in Part 3 of the Fire (Scotland) Act 2005 (asp 5) and the Fire Safety (Scotland) Regulations 2006 (SSI 2006/456) which came into force on 1 October 2006. Under that legislation it is for the person or persons with duties under the legislation to determine what fire safety measures are appropriate to provide on the basis of an assessment of risk.

3.6.2 Although the fire and rescue chief officer is a statutory consultee for HMO licences under the Housing (Scotland) Act 2006, the fire and rescue authority has independent responsibility for enforcing the fire safety legislation in HMOs through the Fire (Scotland) Act 2005. This is separate from the HMO licensing regime. This enforcement is done on a risk assessed basis with resources targeted at higher risk premises.

3.6.3 The approach for fire safety in Scotland is to avoid overlapping regimes and duplication by operating a single fire safety regime. Fire safety is therefore principally dealt with through the Fire (Scotland) Act 2005. Section 71 of the Fire (Scotland) Act 2005 restricts the extent to which licensing regimes can deal with fire safety. As a consequence general fire safety measures cannot be imposed through the HMO licensing regime by way of licence conditions.

3.6.4 However the local authority has a duty to take into account the condition of living accommodation as well as the safety and security of persons likely to occupy it – the authority should therefore take into account the level of fire safety in the HMO and the extent of compliance with the Fire (Scotland) Act 2005, together with the advice or recommendations of the chief officer of the fire and rescue authority and may, if it sees fit, refuse to grant a licence on this basis.

3.6.5 The Scottish Government has produced a number of guidance documents to assist those with fire safety responsibilities. Two of the guides are relevant to HMOs:

- Practical fire safety guidance for small premises providing sleeping accommodation
- Practical fire safety guidance for medium and large premises providing sleeping accommodation

3.6.6 Further information on the legislation and the guidance is available on the FireLaw website at <http://www.firelawscotland.org/>

3.7 SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND AND LOCAL AUTHORITY SOCIAL CARE AND HOMELESSNESS SERVICES

Social Care and Social Work Improvement Scotland

3.7.1 From 1 April 2011, the regulatory functions of the Care Commission were transferred to two new scrutiny bodies: Social Care and Social Work Improvement Scotland (SCSWIS) and Health Improvement Scotland (HIS). The Public Services Reform (Scotland) Act 2010 ('the PSR Act') set up SCSWIS to regulate care services and HIS to regulate independent healthcare in Scotland.

3.7.2 Care services are defined in Schedule 12 of the PSR Act. They are regulated against the provisions in that Act, its associated regulations and taking account of the National Care Standards for each service type.

3.7.3 The National Care Standards are published by the Scottish Ministers and set out what people using care services can expect from their provider. Relevant accommodation is exempt from HMO licensing when it is provided as part of any one of the following care services registered under Part 5 or Part 6 of the PSR Act:

- Care home service
- School care accommodation service
- Secure accommodation service
- Independent health care service

3.7.4 These types of services are inevitably provided in dedicated accommodation. Other categories of care services are not necessarily provided in dedicated accommodation. In these cases SCSWIS regulates the service, and the standards of accommodation are, where appropriate, controlled by HMO licensing. The most common example is a Housing Support Service, which might be provided to people leaving institutional care or who have been homeless, to help them develop the skills to manage their own home.

3.7.5 They might start in hostel-type accommodation, move to a house shared with three or four other people, including support workers, and finally move to a home on their own, where support workers continue to visit for as long as necessary. This is a process in which the individual may have the same support worker throughout, but moves from dedicated HMO accommodation, to non-specialist HMO accommodation, to a mainstream, singly occupied house.

3.7.6 SCSWIS may raise issues with the service provider about, for example, the appropriateness of the accommodation or equipment in place, for the provision of the support service where this impacts on the quality of care provided. The local authority would not normally be party to such comments, unless they are mentioned by the licence holder. If licensing officers have any queries or concerns about HMO operators who are also providing care or

support, they should contact SCSWIS's local office and ask for the person dealing with housing support services. A list of contact details is available on SCSWIS's website at <http://www.scswis.com/>

Local authority social care and homelessness services

3.7.7 Care and support services regulated by the SCSWIS are often funded through contracts with local authorities, under a range of programmes which include social work services and services for homeless people.

3.7.8 HMO licensing officers should work with colleagues to ensure that all non-exempt HMOs used by such services are licensed. For example, three or more homeless people regularly staying within a Bed and Breakfast could trigger the need for the owner to licence the premises as an HMO.

3.8 PLANNING PERMISSION

3.8.1 The Scottish Planning Policy (para 89) sets out that planning authorities should consider the need for HMO accommodation as part of the housing requirement for the area.

3.8.2 Not every HMO requires planning permission. Landlords may wish to be aware of the Planning Circular in relation to *Houses in Multiple Occupation: Guidance on Planning Control and Licensing* which gives Scottish Government guidance on the provision and management of houses in multiple occupation through the planning systems, as well as advice on the interface between HMO licensing and the planning system.

3.8.3 This is a complicated area that depends on interpretation by the local planning authority. A potential landlord considering setting up an HMO should therefore be encouraged to contact their local authority planning department early on to establish the position.

3.8.4 High concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Planning authorities may wish to adopt policies to limit HMO concentrations where the residential amenity of a community is already adversely affected by high concentrations of HMOs, or in areas where this is likely to happen in future. Policies must be designed to safeguard community amenity, and must not be in response to perceived concerns about the behaviour of tenants. Any planning policy to manage HMO concentrations will apply only to properties being proposed for use as HMOs for the first time after the date on which the policy takes effect. Where a planning authority establishes a policy to manage HMO concentrations it should ensure that it is enforced.

3.8.5 The 2011 Act gives a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. Further details are provided at 4.1a.

3.8.6 The ability to refuse to consider an HMO licence application is separate from any planning enforcement powers, and is not intended to be an alternative to use of those powers. Both regimes should operate together. Prior to local authorities having the ability to refuse to consider an HMO licence application, local authorities could be faced with having to consider grant of a licence solely in terms of applicant fitness and suitability of premises. That had the potential to suggest that they were not concerned about breach of planning control, especially where the licensing authority was not the planning authority. A refusal to consider an application allows the licensing system to complement planning enforcement.

PART 4 STANDARDS AND LICENSING CONDITIONS

4.1 OVERVIEW

4.1.1 The 2011 Act gives a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. The licensing of HMOs seeks to ensure high standards in terms of; the suitability of a property owner (and their agent) to be an HMO owner (or to act for the owner) and the suitability of the living accommodation itself. And allows the local authority to consider overprovision. It should have regard to the factors set out in sections 129A, 130, 131 and 131A of the 2006 Act.

4.1a PRELIMINARY REFUSAL: BREACH OF PLANNING CONTROL

4.1a.1 A local authority has the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days of obtaining such permission or certificate then, no fee may be charged in relation to the further application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire on either its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.

4.1a.2 A local authority can decide how widely to consider planning status as a preliminary issue, depending on whether it has a problem with HMOs operating without planning permission. A local authority should not adopt a policy of requiring every applicant to prove the planning status of the HMO, but instead should come to a reasonable view based on evidence and capable of being justified. The local authority may, for example, decide to operate this approach only in areas with a planning policy in place. The power applies to all HMO licence applications, however it would be open to a local authority to apply their policy only to new applications if they feel that this is justified.

4.1a.3 If a local authority decides to consider planning status, the licensing section of the local authority should liaise with planning colleagues before dealing with a licence application. If time allows, local authorities may find it useful to issue a warning letter to applicants where they consider that premises are in breach of planning control and they intend to refuse to consider the licence, offering the applicant the opportunity to highlight if they feel that there has been an error.

4.1a.4 If there are no planning concerns, the application can be dealt with. If there are planning concerns, the applicant should go through the appropriate planning process. Having obtained either planning permission or

a certificate of lawful use, the applicant can reapply for an HMO licence and the application can then be dealt with in the normal way.

4.1a.5 This process should not be used to restrict the supply of HMOs where they are required. It should not affect the significant proportion of cases where an HMO is not a matter of planning concern, and should not impose any additional cost and burden for landlords and planning authorities of a formal certification process to confirm that this is the case. This approach, for example, allows a local authority to deal with licence applications from HMOs that were previously licensed and operating in active breach of a planning decision and with the anomaly that a person can obtain an HMO licence without having gone through any form of planning process.

4.1a.6 Where the local authority considers planning status, it may within 21 days of an application refuse to consider the application if it considers that there is or would be a breach of planning control and must within 7 days of refusing to consider an application serve notice of its decision. The local authority will have received an application fee at this stage. No further fee may be charged in respect of a further application for an HMO licence provided that it is made within 28 days of the applicant subsequently obtaining planning permission or a certificate of lawful use.

4.1a.7 If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date (had an application for a new HMO licence not been made) or on such later date as the local authority considers reasonable in the circumstances.

4.1a.8 Where the local authority has refused to consider an application on these grounds, the landlord should resolve their planning status and it would be open to them to appeal any planning decision via the normal planning appeal mechanisms. However it is not open to the landlord to appeal the refusal to consider the licensing application to the Sheriff as the local authority has not considered their application.

4.1a.9 The local authority should be mindful of the requirements of the Provision of Services Regulations 2009 and ensure that any HMO licensing fee charged is proportionate to the work carried out. It is for local authorities to take their own view on the appropriate action to achieve compliance, but they may wish to consider whether there should be any fee refund if planning permission is refused, thus preventing a further (successful) licensing application. Further guidance is also provided in section 2.4. It could be useful to make the intended approach clear to the landlord at the time of refusal to consider the licence application.

4.2 SUITABILITY OF THE APPLICANT AND AGENT

4.2.1 An essential part of considering a licence application is establishing whether the applicant, as well as any agent they wish to act for them in relation to the HMO, is a 'fit and proper' person.

4.2.2 It may prove useful to verify that the applicant is indeed the owner of the property, if it is suspected that the applicant is dishonestly applying on behalf of an unsuitable owner.

4.2.3 The local authority should consider whether the applicant has any relevant convictions. Not all convictions would be relevant to a person's prospective role as an operator of an HMO. For example, motoring offences would not normally be relevant, but a conviction for fraud or theft could be since the operator would be in a position of trust.

4.2.4 If the HMO operator is subject to any other form of regulation the local authority may also wish to approach the relevant regulatory authority, such as the SCSWIS or the environmental health service, for their comments. This would usually focus on the applicant's record of maintaining expected standards and their response if concerns are raised. In addition, the local authority should consider the advice of their fire and rescue authority on the applicant's approach to fire safety.

4.2.5 The local authority must refuse an application if it considers that either the applicant or their agent is not a fit and proper person. The factors which the local authority must have regard to in determining whether the applicant or agent are fit and proper are in section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004, as amended, which also applies to Landlord Registration. Where an applicant or agent is not an individual, these tests apply to any director, partner or other person involved in the management of the company, trust or organisation.

4.2.6 The local authority must have regard to whether the person has:

- committed certain types of offence, involving fraud or other acts of dishonesty, violence, or drugs
- practised unlawful discrimination
- contravened housing law or landlord and tenant law
- carried out actions or failures to act in relation to antisocial behaviour affecting a house let by the applicant or for which the applicant was an agent.
- The local authority must also consider any other material which it considers to be relevant.

4.2.7 There are clear benefits to administrative co-operation between local authority landlord registration teams and HMO licensing teams in obtaining and collating information to inform decisions on whether an applicant is fit and proper. Co-operation will avoid needless duplication of effort and ensure that all the relevant information is available. Ultimately however it is for the local authority, in its capacity as licensing authority, or for the delegated officer, to decide whether the applicant is a fit and proper person to act as an HMO owner or agent based on all the information available.

4.2.8 A local authority is obliged to maintain a public register, including details of its decision in relation to each application, as well as in relation to

variations, revocations and cancellations of licences, and any other information as it thinks fit. Local authorities might wish to include information about the grounds on which a licence was refused or revoked, which it is suggested might prove a useful resource for other licensing authorities.

4.3: SUITABILITY OF THE LIVING ACCOMMODATION

Introduction

4.3.1 One of the key aims of HMO licensing is to ensure that the accommodation provided is safe, of good quality, and has sufficient facilities for the number of occupants. This section sets out the factors which must be considered, together with examples of physical standards which it is recommended that local authorities apply in their assessment of living accommodation, on receipt of an application and as part of their enforcement activity. Technical details relating to the suggested standards are included in Annex A.

4.3.2 It should be noted that these standards are intended to provide reference points to help local authorities determine whether living accommodation in respect of which an HMO licence has been applied for, or has been granted, is suitable (or remains suitable) for occupation as an HMO. They should be applied flexibly, with the local authority taking into account whatever material it considers relevant in assessing the suitability of the accommodation in accordance with section 131 of the 2006 Act.

4.3.3 Appropriate standards may vary, depending on the circumstances of each case, and authorities should bear in mind the possibility of achieving the same level of accommodation or safety through different packages of measures. Licensing officers should always give consideration to alternative approaches proposed by the owner. In adopting and applying standards, licensing authorities should keep in mind the need to achieve a suitable level of accommodation which is safe and secure without placing a disproportionate burden on the owners of HMOs.

4.3.4 In general, local authorities should ensure that all licence applications are treated equally and fairly, regardless of whether the application is for accommodation which has not previously been licensed, or which has had a licence for some time. However, a flexible approach should be taken; in some cases, such as where an HMO has been operating with a licence for some time, it may be considered suitable for a new licence even if it does not meet certain of the standards which the authority would normally wish to apply to new accommodation or accommodation which has not previously been licensed.

4.3.5 It may be appropriate for the local authority to balance the likely expense of any work required and the contribution that it would make to the safety of occupiers. This is a matter for the local authority to determine what is appropriate or necessary in the context of a particular case. For example it may consider that it is more proportionate to require inexpensive work that

contributes to occupier safety, such as installing a CO detector, than expensive work that does not impact on occupier safety but may improve facilities such as requiring additional kitchen or bathroom facilities or electrical outlets, where the existing facilities are functioning and in reasonable condition.

4.3.6 In such cases, authorities may still decide to grant the licence, but may consider imposing licence conditions which would enable the accommodation to be upgraded during the period of the licence. Some examples of circumstances in which this might be desirable are included in the coverage of individual standards below.

Factors to be considered

4.3.7 The 2006 Act requires that local authorities are satisfied that the accommodation is suitable for occupation as an HMO (or can be made suitable by the inclusion of licence conditions). Section 131(2) sets out various factors that the authority must consider when coming to a decision on suitability of the accommodation. These are:

- the location of the accommodation
- the condition of the accommodation
- any amenities the accommodation contains
- the type and number of persons likely to occupy the accommodation
- whether any rooms have been subdivided
- whether any rooms have been adapted, resulting in an alteration to the situation of the water and drainage pipes within the accommodation
- the safety and security of persons likely to occupy the accommodation
- the possibility of undue public nuisance.

4.3.8 Section 131A, inserted by the 2011 Act, gives a local authority the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of the licence would result in, overprovision of HMOs in the locality.

4.4 SECTION 131(2)(a) - THE LOCATION OF THE ACCOMMODATION

4.4.1 The local authority is required to consider the location of the accommodation in assessing whether it is suitable for occupation as an HMO.

4.4.2 This would allow a local authority to take account of the locality, where it would be unsuitable for an HMO. For example there might be a lack of safe access, or other factors that could endanger residents.

4.5 SECTION 131(2)(b) - THE CONDITION OF THE ACCOMMODATION

4.5.1 Another factor which must be considered is the condition of the accommodation. In general terms, this is likely to cover the physical condition of the premises such as whether it is watertight, wind-tight, well ventilated, as well as any additional aspects which might make the accommodation unfit for occupation as an HMO e.g. lack of adequate heating, damp, missing treads on stairs, lack of sound-proofing or inadequate dividing walls between bedrooms. However, authorities should take into account any material they consider relevant to their assessment.

4.5.2 Suggested standards which authorities should consider in relation to this factor are as follows:

Space heating

4.5.3 Each bedroom and living room should have a fixed controllable space heating appliance.

4.5.4 Where there is a central heating system, which may include any system of warm air or under floor heating, it must be capable of maintaining a temperature of 18° Centigrade (in the bedrooms and living rooms) when the outside temperature is minus 1° Centigrade (a higher temperature may be specified where the HMO is intended to be occupied by older people or others who need additional heating).

4.5.5 In a smaller dwelling the boiler should be capable of being controlled from a communal area, alternatively in larger establishments such as university halls of residence, a centrally controlled system would be more appropriate.

4.5.6 There must be a certificate stating that the central heating system is working properly.

Detection of Carbon Monoxide

4.5.7 There must be installed a CO alarm which meets the requirements of BS EN 50291:2001 in the same room as any gas appliance. Alarms should be powered by a battery designed to operate for the working life of the alarm. Such alarms should incorporate a warning device to alert users when the

working life is due to pass. This type of alarm is easier to change when the working life has expired as it does not require a specialist electrician.

4.5.8 HSE has undertaken research into the long term reliability and use of carbon monoxide alarms, available via the link that follows:

<http://www.hse.gov.uk/research/rrhtm/index.htm>

4.5.9 This research indicated that the sensors within CO alarms which detect carbon monoxide have a lifetime of between 5 - 7 years. This may mean that a resident has a CO alarm in place, but it is beyond its lifetime and therefore may not be providing the level of protection that the resident may think they have.

4.5.10 The research report also found that on occasion carbon monoxide alarms, although fitted in the same room as a gas appliance, were not fitted in the correct location to detect carbon monoxide. Guidance on the installation of carbon monoxide alarms is available in BS EN 50292:2002 and in the manufacturers' instructions.

4.5.11 The CO alarm must therefore be fitted in the correct location and not have passed, or be shortly about to pass, beyond its lifetime. Where the CO alarm is likely to pass beyond its lifetime during the licence period, it is strongly suggested that authorities consider including a licence condition to the effect that the alarm must be replaced within a specified timescale.

Chimneys, Flues and Fuels

4.5.12 Any chimneys/flues that are in use must be cleaned annually.

4.5.13 Where the chimneys/flues will require to be cleaned during the licence period, it is strongly suggested that authorities consider including a licence condition to the effect that they must be cleaned within a specified timescale.

4.5.14 Liquid Petroleum Gas (LPG) heaters must not be used. Specifications for solid fuel, oil-fired or gas-fired heaters are as per the current relevant British Standards.

Lighting and ventilation

4.5.15 Every bedroom and living room should have natural lighting and ventilation from a window or windows situated in an external wall or roof, or in a wall between the room and a conservatory.

4.5.16 The aggregate glazed area must be equal to at least 1/15th of the floor area of the apartment, and the opening area should be at least 1/30th of the floor area.

4.5.17 Kitchens, bathrooms and toilets should have either natural ventilation as for bedrooms and living rooms, or adequate mechanical ventilation.

4.5.18 There should be an electric lighting system providing at least one lighting point to every circulation space, bedroom, living room, kitchen, bathroom, toilet and other space having a floor area of 2 square metres or more.

4.5.19 Any lighting point serving a stair within an HMO should have controlling switches adjacent to the staircase at each storey or a suitable alternative such as energy efficient PIR (passive infrared sensors) or central control via a timer

4.5.20 Any ceiling strip light unit within the HMO must be fitted with a proper diffuser/cover.

4.5.21 In order to prevent the risk of electric shock and damage to electrical wiring due to condensation all bathrooms and shower rooms should be provided with an IP44 rated light fitting if it is required in accordance with current regulations. Where an IP44 rated light fitting is required but is not present, it is strongly suggested that authorities consider the inclusion of a licence condition to the effect that one must be fitted within a specified timescale.

Relationship to compliance with the Building Regulations

4.5.22 The Physical Standards included in this guidance cover a range of issues, many of which are also addressed by Building Regulations. Guidance on Building Regulations is given in the new Technical Handbooks. www.scotland.gov.uk/bsd

4.5.23 It should be borne in mind that the HMO licensing regime involves different considerations from the regulation of Building Standards, so the fact that a building meets all relevant building standards does not necessarily mean that it is suitable for occupation as an HMO.

4.5.24 In cases where the local authority is considering requiring the applicant to carry out work on the living accommodation prior to granting the licence to make it suitable for use as an HMO, or as a licence condition, officials should liaise with building standards officers so that the applicant can be advised of any relevant permissions that may be required, in order that they may be sought and obtained prior to commencement of the works.

4.6 SECTION 131(2)(c) - ANY AMENITIES THE ACCOMMODATION CONTAINS

4.6.1 Local authorities must also consider any amenities the accommodation contains. This is likely to include matters such as whether there are appropriate cooking and sanitary facilities, white goods such as refrigerators

and washing machines, as well as adequate and appropriate storage for rubbish and recycling and facilities for drying clothes and bedding.

4.6.2 This should be considered in conjunction with the number and type of persons likely to occupy the dwelling. Acceptable levels of provision are indicated below, however a local authority should take be willing to take into account alternative proposals for provision to suit specific local circumstances.

4.6.3 The condition of the amenities should also be considered, e.g. are they in good working order and able to be kept clean and maintained.

4.6.4 Suggested standards which the authority should apply in considering this factor are as follows:

Kitchen facilities

4.6.5 Wherever possible, living accommodation should contain appropriate amenities to permit occupiers to prepare, or be provided with, meals in the accommodation as well as snacks at reasonable times. In most cases this would be achieved by provision of kitchen facilities for resident use but in some types of accommodation meals may be prepared by staff.

4.6.6 The requirements for kitchen facilities should take account of the needs of the occupants and the arrangements for meals (for example, meals cooked communally require less space and equipment than if each person cooks separately). Where kitchen facilities are provided for resident use they would be expected to have:

- one sink with integral drainer for a maximum of 5 persons. Every sink must be provided with an adequate piped supply of hot and cold water
- a cold water supply to every sink which is a wholesome water supply, direct from the rising main, suitable for drinking and other domestic purposes.
- a minimum of 1 cubic metre of storage for a maximum of 5 people. An additional 0.2 cubic metres of storage for each person above 5 people should be provided.
- sufficient drawer space for the storage of cutlery and other cooking utensils
- impervious work surface space of 2m length for three people, and for any people above that number an additional 60cm should be provided per person. This is an overall allocation which should provide appropriate space for items such as kettles or microwaves which are not specific to an individual.
- 1 reasonable size refrigerator and 1 reasonable size freezer for a maximum of 5 persons. The freezer need not be sited within the kitchen.
- 1 cooker with oven, grill and 4 cooking plates or rings for a maximum of 5 persons.
- cookers provided with the associated activity space shown in Annexe A and 300mm worktop width available on both sides.

- where cooking is carried out in a bedsitting room, a cooker, sink with drainer and adequate worktop. Adequate worktop in a bedsitting room with a cooker, sink and drainer should be based on a minimum of 900mm with a minimum of 300mm each side of the cooker.

4.6.7 Where any bedroom is provided with a cooker for the sole use of the occupants of that room, these persons should be discounted in determining how many cookers require to be provided in a communal kitchen.

4.6.8 Where all meals are provided to occupants, a facility would be expected to be available for making light snacks and hot drinks. This will include access to a wholesome, piped supply of drinking water.

4.6.9 Microwave ovens and 12 place automatic dishwashers may be provided where appropriate but these should not be considered to entirely replace cookers and sinks.

Sanitary facilities, water and drainage

4.6.10 All sanitary facilities would be expected to be provided within the accommodation and in calculating the number of facilities required, all persons living in the premises, including residents, staff and owners, should be taken into account.

4.6.11 There would be expected to be:

- one WC for a maximum of 5 persons
- one bath or shower for a maximum of 5 persons.

4.6.12 Sanitary facilities would be expected to be located in such a way that occupiers who are expected to have use of them are not required to pass through a bedroom other than their own in order to reach them.

4.6.13 No communal WC, bath or shower would be expected to be located more than one floor distant from the bedroom of the occupants who are to make use of the facility.

4.6.14 Any WC and wash hand basin would be expected to be separated at least by a door from any room or space used wholly or partly for the preparation or consumption of food. Where they are separated only by a door, the WC would be expected to be suitably ventilated.

4.6.15 Access doors to sanitary and bathing facilities would be expected to be fitted with a suitable locking mechanism to ensure privacy. Obscure glazing would be expected to be provided where relevant to ensure privacy.

4.6.16 Every WC would be expected to have a wash hand basin within the toilet itself or within an adjacent space providing the sole means of access to the toilet.

4.6.17 Every wash hand basin, bath and shower would be expected to be provided with an adequate piped supply of hot and cold water.

4.6.18 The building would be expected to be provided with a safe and hygienic drainage system which complies with the relevant British or European Standards.

4.7 SECTION 131(2)(d) - THE TYPE AND NUMBER OF PERSONS LIKELY TO OCCUPY THE ACCOMMODATION

4.7.1 The local authority must consider whether the accommodation is suitable for the particular number and type of persons likely to occupy it. The authority should therefore require the applicant to provide details of the proposed number of occupiers of the accommodation, and the nature of the accommodation to be provided. The local authority should consider imposing a licensing condition to specify the maximum number of occupants for the premises.

4.7.2 The number of persons is principally relevant to ascertain whether there are sufficient bedrooms and amenities and to avoid overcrowding, and the type of occupier is relevant to ascertain any special facilities that might be required and whether the accommodation is appropriate to the proposed occupiers' needs.

4.7.3 In some cases this may overlap to an extent with the authority's consideration of the safety and security of persons likely to occupy the accommodation. For example, if the accommodation is intended to provide womens' refuge accommodation, it is likely that a higher degree of security (e.g. secure entry, locks on bedrooms etc.) is required. If the accommodation is intended for those requiring additional support, particular adaptations for the elderly or disabled may be necessary.

Space and layout

4.7.4 The living accommodation should not be overcrowded. Sleeping accommodation would generally be expected to be in the form of single or double bedrooms, although other arrangements may be more appropriate depending on the type and number of likely occupiers. Every room used as a bedroom would be expected to be capable of accommodating at least:

- a bed,
- a wardrobe (except where a built-in wardrobe of equal size is provided), and
- a chest of drawers,

together with adequate activity space.

4.7.5 Minimum room dimensions expected are included in Annex A.

4.7.6 Suggested furniture and activity spaces are also given in Annex A.

4.7.7 All bedrooms would be expected to be located so that it is not necessary to pass through another bedroom to reach a bathroom, WC or circulation space.

4.7.8 Floor space would be expected to only be counted where there is a ceiling height of at least 1.5m. This means that, for example, attic bedrooms with coombed ceilings still need to provide a reasonable usable floorspace.

Treatment of children and resident owners

4.7.9 A number of these standards refer to the space and facilities required according to the number of occupants of the property. In general, this relates to the number of adults. It is suggested that, for these standards, children over 10 years should be treated as full adults, children between one and ten years as equivalent to half an adult, and children under one should not be counted.

4.7.10 It is relatively uncommon for children to be accommodated in an HMO. When this does occur it is often because emergency accommodation is required, either for the whole family or for a child who cannot stay with his or her usual carer. Local authorities will wish to take a sympathetic approach to requests for variation of a licence where this would lead to the HMO exceeding the permitted number of occupiers.

4.7.11 Local authorities should note that, when assessing the standards and facilities required, licensing officers should take account of all the likely occupiers of the property, including the applicant where the proposal is for the owner to be resident in the HMO. For example, a couple renting out spare rooms in their own home to five occupiers from three families will need facilities appropriate for 7 people.

4.8 SECTION 131(2)(da) - SUBDIVISION OF ANY ROOMS WITHIN THE ACCOMMODATION

4.8.1 Local authorities must consider whether any rooms within the property have been subdivided, as this may impact on their assessment of the suitability of the accommodation to be occupied as an HMO. In the case of rooms to be used for sleeping accommodation it is suggested that this should involve consideration of: whether the dividing walls are of adequate thickness and quality; the dimensions of the rooms created; whether each room created has adequate natural light and ventilation; whether each room created has its own space heating and electrical sockets.

4.9 SECTION 131(2)(db) - ADAPTATION OF ANY ROOMS WITHIN THE ACCOMMODATION, RESULTING IN AN ALTERATION TO THE SITUATION OF THE WATER AND DRAINAGE PIPES WITHIN IT

4.9.1 It is also necessary for authorities to consider any adaptations which have resulted in the displacement of the water and drainage pipes within the HMO. It is suggested that authorities should consider this in tandem with the possibility of public nuisance resulting from the HMO e.g. where the new

location of the water and drainage pipes could result in noise nuisance to neighbouring occupiers, or the possibility of flooding.

4.10 SECTION 131(2)(e) - THE SAFETY AND SECURITY OF PERSONS LIKELY TO OCCUPY THE ACCOMMODATION

4.10.1 The safety and security of occupiers is of utmost importance in assessing whether accommodation is suitable for occupation as an HMO. Local authorities are therefore required to consider this when deciding whether accommodation is suitable for use as an HMO. If it is considered that there are any risks to occupiers' safety and security, the licence should not be granted until remedial action has been taken and the authority is content that the risk has been removed.

4.10.2 In considering whether the accommodation is safe and secure, the authority should have regard to any material it thinks fit. There are links with consideration of the condition of the property, and perhaps its amenities and location. It is expected that in most cases a direct inspection of the accommodation will be required to check safety features and identify risks (unless there is a strong justification to the contrary), as well as verification by other means that appropriate standards are met, relevant certificates have been obtained, etc.

4.10.3 Examples of matters that should be considered include gas and electrical safety, whether appropriate secure entry and locking systems are in place, and wider issues such as whether fire safety requirements are met and that the structure of the building is safe. It may also be relevant to consider whether there are any identifiable risks in accessing the building.

4.10.4 Examples of suggested standards to be applied are as follows:

Gas and electrical safety

General

4.10.5 Any works to the gas or electrical installations must have been carried out in accordance with the relevant regulations and guidance.

4.10.6 Evidence must be supplied to the effect that an annual gas safety check has been carried out on all gas appliances by a Gas Safe registered engineer.

4.10.7 Appropriate certificates must be available to show that the electrical system (PIR or EICR) and any appliances provided by the HMO owner (PAT) have been examined by a competent person who has confirmed they are functioning properly and are safe.

4.10.8 Authorities should be satisfied that the PIR or EICR certificate is up to date (these must be renewed at least every five years, or earlier as directed by the approved electrical contractor).

4.10.9 Authorities should be satisfied that the PAT Certificate is up to date (these must be renewed at least annually, or earlier as directed by the approved electrical contractor).

4.10.10 The authority may also wish to be satisfied that information is displayed in the accommodation which highlights issues of electrical safety to occupiers, in terms of both maintenance of appliances and safe use of fused extension boards rather than adaptors, for example, or to prohibit use of any particular equipment which appeared to be unsafe, or, in certain types of accommodation (such as hostel-type accommodation), to prohibit the use of any electrical equipment not provided by the HMO owner.

4.10.11 Local authorities may wish to include a licence condition to the effect that where any relevant certificate is due to expire or must be renewed part way through a licence period, this must be renewed with no break in continuity of certification.

Gas

4.10.12 There must be evidence to demonstrate that all necessary checks of gas appliances have been carried out (e.g. an annual gas safety check under the Gas Safety (Installation and Use) Regulations 1998 or equivalent), and have been performed by a Gas Safe registered engineer.

4.10.13 The local authority should request a copy of the current gas safety certificate to confirm that this has been done. The Licensee is required to retain the current gas safety certificate and those of the previous two years.

Electricity

4.10.14 The number of electrical socket outlets available for occupier use would be expected to meet at least the following minimum requirements:

- 6 in each kitchen
- 6 in each bedroom and living room
- 4 additional sockets anywhere in the building.

4.10.15 These sockets should be easily accessible. Other outlets may be inaccessible, for example those for white goods.

4.10.16 Where the standard relating to the number of electrical socket outlets to be available is not met, the local authority may wish to consider granting the licence but including a licence condition to the effect that the number of outlets must be increased to a specified number over a specified period of time.

EICR Certification

4.10.17 Certification which meets the requirements of BS 7671 must be provided to confirm that the installed electrical system is functioning properly

and is safe. A currently valid copy of an “Electrical Installation Condition Report (EICR)” record must be held. The inspection should be carried out by a competent electrical engineer, preferably a member of an approved electrical trade body.

4.10.18 The EICR must meet the following minimum requirements:

- Thorough visual inspection of the complete electrical installation which is not concealed.
- At least a 20% sample of the internal condition of all fixtures and fittings
- Complete testing of all circuits (fittings and accessories)
- Schedule of Inspections and Schedule of Test Results must be fully completed and submitted.

4.10.19 Where a PIR or EICR licence expires part way through a licence period, the landlord should then obtain a fresh EICR licence. Local authorities may wish to monitor to ensure that this takes place, a failure to obtain appropriate certification could be taken into account when considering a subsequent licence application.

PAT Certification

4.10.20 A current Portable Appliance Test (PAT) Certificate must be held for all plug in appliances owned by the HMO owner. It should show whether the item passed or failed.

4.10.21 HMO owners do not have a duty to inspect electrical equipment belonging to the occupier. The local authority may, where it considers appropriate, wish to be satisfied that HMO owners offer to / seek permission to PAT test their occupier’s electrical equipment at the same time as carrying out their own annual portable appliance tests.

Security

4.10.22 The accommodation must have secure locks on all access doors and ground floor or accessible windows.

4.10.23 Where the local authority considers that additional safety or security features are required in light of the type of person likely to occupy the accommodation (e.g. as a womens’ refuge where additional secure entry arrangements may be required and/or locks on bedroom doors etc.), these would be expected to be installed prior to the authority granting the licence.

4.10.24 All door locks must be capable of being opened from the inside without recourse to a key, so that residents can escape in case of fire. HMO owners could be encouraged to consult the Crime Prevention Officer at the local Police Station for advice on security.

4.11 SECTION 131(2)(f) - THE POSSIBILITY OF UNDUE PUBLIC NUISANCE

4.11.1 When deciding whether accommodation is suitable for use as an HMO, authorities must consider whether such use of the property could result in undue public nuisance. It is likely that this will principally relate to matters such as the possibility of unacceptable levels of noise and disruption to neighbours.

4.11.2 An example of a suggested standard local authorities would be expected to apply in considering this factor is as follows:

Noise reduction

4.11.3 Noise is a significant source of complaints about HMOs from neighbours, and some physical aspects of the property can add to the problems. Local authorities should therefore be satisfied that appropriate measures have been taken to minimise noise nuisance, such as the installation of items such as door closers and extractor fans, and 'deafening' under the floors. For flats with downstairs neighbours the local authority should consider requiring that exposed wooden floor boards, laminate, hard wood floorings or tiled floor finishes be provided, in living areas, with a fitted carpet with good quality underlay and, in kitchen or bathroom areas, with good quality cushioned flooring such as vinyl.

4.11.4 Further guidance on available measures to address noise nuisance is available via the following link:

<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubtech/techhsi>

4.11A SECTION 131A – OVERPROVISION

4.11A.1 The local authority has the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of a licence would result in, overprovision of HMOs in the locality. It is for the local authority to determine the locality. In considering whether to refuse to grant a licence on this ground the local authority must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation and, where known, the views of the applicant and any occupants. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality.

4.11A.2 Generally an HMO licence is granted for three years. Where there are large numbers of HMOs it will be open to a local authority as to how it treats applications from existing owners. If it refuses an application from an existing owner it will reduce HMO numbers, but this will have an adverse impact on existing landlords and possibly tenants.

4.11A.3 It will be for local authorities to decide whether and how to apply this power. Scottish Ministers would however expect local authorities who wished to use this power to develop, and consult on, an explicit overprovision policy. Local authorities may wish to jointly develop best practice guidance to facilitate this process.

4.12 INSPECTIONS

4.12.1 It is recommended that the default position should be that a direct inspection of the accommodation is required, unless the authority considers that an alternative approach to be justified and it will not hinder its ability to be satisfied that the accommodation is suitable. As referred to above, at section 3.1, the authority should be flexible in considering its approach to assessment of applications from different types of HMO provider. It is strongly suggested that an alternative to direct inspection should not be considered justified or appropriate in the case of accommodation that has not previously been a licensed HMO, or where there has been a break since it was last licensed. Direct inspections are particularly important to check that the requirements of the local authority are complied with and to recommend any alterations. They also allow the assessment of the suitability of the dutyholder's fire risk assessment and the fire safety measures present in the property. Even after a licence has been granted, as part of the local authority's ongoing enforcement activity it is suggested that random checks and scheduled inspections at agreed intervals should be considered.

4.12.2 Local authorities should ensure that their procedures for assessing applications, including direct inspection where this takes place, are proportionate and cost-effective. In particular, an efficient and streamlined inspection process is likely to be welcomed by HMO owners and occupiers. HMO occupiers understandably prefer to minimise the number and frequency of officials visiting the accommodation. The cost and possibility of inconvenience for the owner should also be taken into account when arranging inspections or repeat inspections. If there appears to be duplication or a lack of co-ordination, those affected by the licensing regime may also feel that fees (and consequently rents) could be reduced by more efficient working.

4.12.3 There are three areas in which inspection and reporting processes can be streamlined: the number of visits made, the number of officers visiting the property, and the number of reports produced.

4.12.4 Council officers and other representatives are there to inspect and may offer guidance to the HMO owner, but the onus is on the applicant to comply and they should take independent advice where appropriate.

Reports

4.12.5 Where the inspection visit is undertaken by multiple officers, either a single report or individual reports may be produced. It is likely to be most helpful to the HMO owner to receive a single note of all officers' findings. This will avoid any confusion if, for example, both building standards and HMO licensing officers comment on the same issue. The form of reporting to the licensing committee will depend on the committee's wishes, but again it is suggested that a single report might be considered, thereby avoiding conflicting advice. This would draw together contributions from each discipline in a standard format, addressing each issue in turn.

Sensitivity in inspection visits

4.12.6 It is important for all inspecting officers to be aware that they are visiting someone's home, and to behave with sensitivity to that situation. Both the scheduling of visits and the behaviour of inspecting officers may need to take account of religious and cultural issues. Language issues may also arise, with either occupiers or HMO owners, and interpreting services (both for other languages and for special communication needs) should be made available where necessary.

4.12.7 Occupiers should have been made aware of the inspection by the HMO owner, but it may be necessary to explain again why officers need to enter their rooms. In some cases the HMO owner or occupiers may be distressed or angry if changes to the property are suggested, so officers should be trained to deal sensitively with difficult reactions. Where occupiers are particularly vulnerable, for example in a women's refuge or accommodation for people with community care needs, officers may wish to make special arrangements, being guided by the HMO owner or support workers. It may help, for example, to schedule extra time to meet with the occupiers in a communal area before inspecting their private rooms.

Dealing with queries from architects and property managers

4.12.8 Local authorities should ensure that they give consistent and useful advice to professionals such as architects and property managers who are thinking of converting or building premises expected to be licensable as HMOs. The detailed physical standards are set out in Annex A and the general physical standards are set out in Part 4.3. These are intended to provide reference points to help determine whether an HMO provides an acceptable level of accommodation and they should be applied flexibly. Local authorities should also advise of any standard licensing conditions for physical standards that they routinely apply. Professionals will benefit from early and clear advice on the desired standards, and this should assist in ongoing compliance.

Contact with occupiers

4.12.9 Local authorities are expected to make occupiers aware of the process of HMO licensing and the standards to be expected, and to offer a contact point to raise any concerns. Occupiers in HMOs often have little awareness of their rights, and may have low expectations of standards. At the same time they may be reluctant to express any concerns for fear of harassment or eviction. For this reason it is not appropriate to meet with occupiers and the HMO owner at the same time. It is suggested that trying to contact occupiers in person at the HMO is unlikely to have a high success rate so is unlikely to be a good use of resources. Equally, sending letters addressed to each occupier (where known) is a better approach than simply leaving leaflets at the property.

4.12.10 In addition, a passive approach may not be sufficient to elicit responses from occupiers dissatisfied with the accommodation or management. A more effective strategy may be to ask occupiers to return a questionnaire asking about key issues, which can help inform whether the HMO owner is a 'fit and proper' person to hold a licence. If any problems are identified through this process, the local authority should carefully consider how these are addressed with the HMO owner, with steps being taken to ensure that the HMO owner does not attach any blame to individual occupiers.

4.12.11 All contacts with occupiers must take account of possible barriers to communication such as first languages other than English, learning disabilities or literacy problems. Local authorities might wish to consider working in partnership with equalities and adult literacy groups in their area, who may be able to help both in providing suitable materials, interpreting, advocacy services, and in getting information about HMO licensing to their users, members or communities.

4.12.12 If occupiers express any concerns which require further investigation, they should be invited to discuss them. This discussion should normally be conducted by someone with an awareness of housing issues and the skills to deal with a client who may be distressed or nervous. It is usually best to conduct such discussions away from the HMO. Procedures should also be in place to refer occupiers to other sources of advice if they raise issues which are not directly connected with licensing, such as debt or mental health problems. If the occupier complains of criminal behaviour, either in connection with the management of the HMO or by residents or visitors to the property, the local authority should encourage them to report this to police and consider providing them with appropriate support.

4.13 POWER TO INCLUDE LICENCE CONDITIONS

4.13.1 Good management by the HMO owner is vital if the aims of HMO licensing are to be achieved. Physical standards must be maintained, occupiers' rights must be respected, and any problems which arise during the period of the licence must be effectively addressed. Good management is also key to tackling the issues which most concern neighbours of HMOs, such as building maintenance, cleaning, and noise or disturbance. For these reasons, it is suggested that local authorities should consider the implications of any management issues which come to their attention in deciding whether to grant (or later, to revoke or vary) an HMO licence. In particular, such information could be relevant to consideration of the suitability of the applicant or agent.

4.13.2 In addition, failure by the HMO owner or agent to comply with obligations to owners of neighbouring properties for communal maintenance and repair may result in action being taken against them by the local authority under housing, nuisance or building standards legislation. Local authorities may wish to consider whether their policy would be for this to be taken into consideration in assessing whether the HMO owner or agent is a 'fit and proper' person.

4.13.3 Local authorities have a power to impose such licence conditions as they think fit which may, for example, require certain standards to be maintained through the period of the licence (section 133 of the 2006 Act). As any failure to adhere to licensing conditions is an offence, and can result in the authority revoking the licence, these are an important tool in ensuring that HMO owners adhere to reasonable standards. However, given the gravity of the consequences for HMO owners of failing to comply, careful consideration should be given to any proposed condition before including it in a licence. Any condition included must be clearly drafted, so that it is clear as to what is expected of the licence-holder from the outset.

4.13.4 Part 4.14 of this guidance includes recommended licensing conditions (LC). These have been prepared following discussion with local authorities. Local authorities can consider incorporating these conditions in all licences granted. These conditions may not be appropriate in all cases, and while it is desirable to have consistency in the requirements for similar types of HMO, it is also necessary for authorities to be flexible in responding to the particular circumstances of each application. In some cases, additional or more tailored conditions reflecting local circumstances may be appropriate.

4.14 RECOMMENDED LICENSING CONDITIONS

4.14.1 The following key points are recommended as basic licensing conditions to be considered for inclusion in all HMO licences (numbered “LC” – Licensing Condition). The wording suggested here should be adapted as necessary depending on the circumstances of the application.

4.14.2 As set out above, the local authority should consider carefully the relevance and appropriateness of these, and any other proposed licence conditions, before including them in a licence. Authorities should give careful consideration to the inclusion of additional conditions where this could help to ensure the continuing suitability of the accommodation for occupation as an HMO.

4.14.3 Local authorities must be mindful of the fact that failure to comply with a licence condition is a criminal offence, and can also result in the licence being revoked. They should therefore consider whether it would be reasonable and proportionate to impose a particular policy as a licence condition, or whether alternative means of securing the same result exist which would not result in criminalising a failure to comply.

LC1 The licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing gas and electrical installations, are maintained throughout the period of the licence to the standard required. [Details may be listed in a schedule if required.] The HMO owner should hold all necessary certificates.

The HMO owner will be responsible for maintaining the structure of the house and fixtures and fittings for the supply and use of hot and cold water, gas and electricity. He will also be responsible for ensuring that other fixtures, furnishings and equipment provided by him for the use of occupiers are safe and fit for purpose. Specific legislation applies to gas appliances and soft furnishings. The local authority may wish to attach a schedule detailing its requirements in terms of physical standards and how these are to be maintained. Where the HMO is in a shared building, it may also wish to emphasise the shared responsibility of the HMO owner for the maintenance of common parts, and of the occupiers for their cleaning.

LC2 The licence holder must ensure that advice to occupiers on action to be taken in the event of an emergency is clearly and prominently displayed within the living accommodation.

In the event of an emergency, such as a fire, gas leak or injury, it is important that occupiers know what to do and who to contact. The HMO owner must provide this information, for example with the tenancy agreement and, permanently and prominently displayed within the property. In staffed accommodation it should state how to inform staff of an emergency. The information should also cover safety information such as the safe use of gas appliances, regular checking of smoke alarms, not tampering with fire doors, and so on.

HMO owners should consider providing guidance in alternate languages where appropriate.

LC3 The licence holder must ensure that the physical standards for HMO living accommodation assessed as suitable by the local authority when approving the licence application are met at all times.

LC4 The licence holder must ensure that the number of persons residing in the premises shall not exceed [*insert number*].

An HMO licence should generally be granted for a specific number of occupiers within the property. Exceeding this number would be an offence as a breach of this licensing condition. It is open to the HMO owner to apply to the local authority for a variation to their licence where the licence holder wishes to increase the number of occupiers.

LC5 The licence holder must make the Licence, including any conditions, available to occupiers, within the premises where it can be conveniently read by residents.

LC6 The licence holder must ensure that actions to secure repossession must be only by lawful means.

Where a local authority has grounds to believe that the HMO owner may attempt unlawful eviction, but these grounds are not sufficient to warrant the HMO owner failing the 'fit and proper' test, then it may be appropriate to include a licensing condition to ensure that repossession can only be by lawful means.

In the great majority of cases occupiers will leave the property at the end of their lease. Indeed, HMO occupiers generally stay for relatively short periods of time in any one property. However, if difficulties arise, it is important that HMO owners follow the law in acting to remove an occupier. Where a formal tenancy exists, it is usually necessary for the HMO owner to obtain a court order requiring the occupier to leave. For occupancy agreements, particularly where there is a resident HMO owner and in hostel accommodation, other arrangements will apply, but the HMO owner must always follow the procedure set out in the occupancy agreement. It is in all cases illegal to use any form of harassment to try to make an occupant leave. The illegal eviction or harassment of occupiers are police matters and should be reported to them.

LC7 The licence holder must ensure that Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.

LC8 The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.

LC9 The licence holder should ensure that let rooms are fitted with a lever latch and secured with a suitable lock and thumb turn mechanism or other appropriate locking mechanism.

Local authorities may wish to take account of the type of accommodation and, if relevant, the preferences of occupiers in considering whether to impose this condition

PART 5 IDENTIFICATION, ENFORCEMENT AND COMPLAINTS

5.1 IDENTIFYING UNLICENSED HMOs

5.1.1 Local authorities have various functions under the 2006 Act in relation to the enforcement of the HMO licensing regime, ranging from powers to vary and revoke licences, to powers to impose rent suspension orders in relation to unlicensed HMOs.

5.1.2 To assist in the exercise of these enforcement functions, it is suggested that local authorities should also take active steps to publicise the licensing regime to encourage all owners of HMOs to seek a licence as well as to increase the likelihood of unlicensed HMOs being brought to the authority's attention (e.g. by occupiers or neighbours). A wide range of methods and sources of information can be used. The most appropriate techniques will depend on the character of the local authority area and the types of HMOs found there. Licensing officers are encouraged to share their experiences with those from other authorities.

- Most HMO owners will be happy to comply with the law when they know about it. Advertising the regime and making sure that information is readily available from relevant information points is a primary way of reaching this group. Active engagement with HMO owners' groups or forums can also be helpful.
- Identifying individual HMOs is key to effective enforcement of the regime. Door-to-door surveys may be useful in urban areas, although they require a high level of resourcing. Various written and on-line sources may be available, including local advertising of rooms for rent, letting websites or approved lists of university accommodation.
- One of the best sources of information about unlicensed HMOs is people who live in and around or visit HMOs. Enquiries from current or prospective occupiers, complaints from neighbours and intelligence from other departments or partner agencies who visit the property in the course of their activities can all be harnessed to build up a database of possible unlicensed HMOs for further investigation.
- A local authority has the power under section 186 to serve a notice on occupiers of a property, and any person receiving rent in relation to it (such as agents) to provide information to assist it in determining whether the living accommodation is an HMO. Failure to provide information is an offence and liable on summary conviction to a fine. Local authorities should take account of potentially vulnerable occupiers who may fear retaliation from the HMO owner such as eviction or violence, and should carefully consider whether it is proportionate to serve a notice in those circumstances, and whether the information might be sought by an alternative means (e.g. requesting information from neighbours or other departments or partner agencies, or even inviting or requesting the occupier to volunteer information in a safe environment, without resorting to service of a formal notice under section 186).

5.1.3 In taking enforcement action to identify unlicensed HMOs, authorities should also take steps to identify any agent acting in relation to an unlicensed HMO - it is a criminal offence for anyone to act as such by doing anything “which directly permits or facilitates the occupation of that house” as an HMO. The maximum penalty is the same as for the unlicensed owner, £50,000.

5.2 ENFORCEMENT ACTION

5.2.1 There are a wide variety of enforcement options available to local authorities:

- A local authority can revoke a licence at any time, if the owner or agent are no longer suitable (e.g. as not fit and proper), the living accommodation is no longer suitable and cannot be made so by varying the licence conditions, or any condition of licence has been breached.
- A local authority can vary the terms of a licence at any time.
- When an HMO is not licensed or a condition is breached, the local authority can make a rent suspension order in relation to the HMO.
- The local authority may decide to require a licence holder to take action to rectify or prevent a breach of a licence condition.
- A local authority can serve an HMO amenity notice, whether the HMO is licensed or not, requiring work to make an HMO fit for occupation by a specified number of people.
- A local authority has a general power, in order to enable or assist it to exercise its functions under the Act, to require a person owning, occupying or receiving rent in respect of land or premises to provide information about the land or premises, including the nature of that person’s interest and the name and address of any other person with an interest. When this is done to establish whether there is a licensable HMO on the land or premises, the notice may also require the person to state their relationship to other occupants.
- A local authority has a right of entry to any land or premises for the purpose of enforcing the HMO licensing regime, which is enforceable by court warrant.

5.2.2 In addition to the authority’s own enforcement powers, authorities should compile evidence in relation to suspected unlicensed HMOs or other HMO offences to support any prosecution that may be initiated by the Crown Office and Procurator Fiscal Service (COPFS). The relevant penalties and offences are as follows:

- The maximum fine for operating an HMO without a licence (for the HMO owner or agent) is currently £50,000. In addition the court may disqualify the owner from holding a licence for up to five years, and may disqualify an agent from acting as an agent for a licence holder for up to five years.
- It is an offence for the licence holder or agent to permit any person to occupy the HMO while a requirement is in effect. The maximum fine is £10,000.

- The maximum fine for a licence holder who breaches a licence condition or authorises an agent who is not specified in the licence and for an agent who causes a licence condition to be breached, is set at £10,000.
- The maximum fine for an HMO owner who represents an expired HMO licence as still being in effect, and for a person who prevents or obstructs someone exercising the local authority's right of entry for various purposes is £1,000.
- Failure to provide information or providing false information is an offence with a maximum fine of Level 2 on the standard scale.

5.2.3 Local authorities may develop their own policies for enforcement of the HMO licensing regime. It is however suggested that the authority should take into account the suggestions that follow:

5.2.4 In many cases where an unlicensed HMO is identified, local authorities should consider contacting the owner to inform them of the licensing requirement and request that they submit a licence application within a set period of time e.g. 14 days.

5.2.5 Any additional enforcement action to be taken will depend on the circumstances, in particular whether there are any occupiers of the property and whether there are any risks to their safety and security or the property is otherwise unsuitable for them to occupy.

HMO Amenity Notice

5.2.6 The authority may inspect the living accommodation (using rights of entry under section 181 of the 2006 Act where necessary) to assess the state of the property and to ascertain whether there is any need to serve an HMO amenity notice. Such a notice would require the owner to carry out work in order to make it reasonably fit for occupation. If the owner fails to do so, the authority is entitled to carry out the work and recover any costs incurred from the owner. Sections 146 to 153 and schedule 5 of the 2006 Act relate to HMO amenity notices.

5.2.7 Where an amenity notice is served, or the authority otherwise requests that work is carried out in order for a licence to be granted (without considering that an amenity notice to be necessary) and the property is occupied prior to the grant of licence, the local authority should work closely with the owner to ensure that any necessary works are completed quickly and so as to allow swift grant of licence e.g. 3 months from time of application.

5.2.8 There will inevitably be some owners who do not respond to such approaches, and against whom enforcement action must be taken. There will also be some who apply for a licence but are refused and others who have their licences revoked or suspended. These cases must be monitored to ensure the property does not continue to operate without a licence.

5.2.9 An owner who is unwilling or unable to obtain a licence may agree to cease operating the premises as an HMO. However, it may not be possible to do this immediately, because of the terms of tenancy agreements, either statutory or contractual.

Temporary Exemption Order

5.2.10 A local authority can grant a temporary exemption order in response to an application by the owner of an unlicensed HMO that requires to be licensed. This could prevent the owner from committing an offence while they make arrangements to move the occupiers out of the premises. The owner must explain the steps to be taken to stop the premises from being an HMO, and the local authority must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the order, which is three months unless extended for no more than one further period of three months in exceptional circumstances. The order may require the owner to carry out work to improve the safety or security of the occupants for the duration of the order. This could involve minor works or the provision of removable equipment where licence conditions would normally require permanent, fixed items. No fee may be charged for a temporary exemption order.

Rent Suspension Order

5.2.11 When an HMO is not licensed, the local authority can make a rent suspension order, whereby the authority serves a notice so no rent is payable in relation to the HMO.

5.2.12 The local authority might also consider working with the owner to agree low-cost temporary measures to improve conditions in the property in the meantime. For example, an agreed type of portable heater provided in the absence of safe, fixed, space heaters. The Local Authority should also liaise with the Fire and Rescue Authority to ensure adequate safety systems are put in place.

Prosecution

5.2.13 The ultimate sanction in the licensing regime is prosecution. Licensing officers should take care, in carrying out inspections or investigations into suspected unlicensed HMOs, that any evidence is collected in such a way that it would be admissible in court, if necessary. For example, to demonstrate that living accommodation which is suspected to be an unlicensed HMO does indeed satisfy the definition of HMO in the 2006 Act. It may be helpful for officers to meet with the Procurator Fiscal to discuss what he or she would look for in preparing a case. *Reports to the Procurator Fiscal – a Guide for Specialist Reporting Agencies* (seventh edition, 2006) provides guidance on all the information to be included in reports to the Procurator Fiscal. Authorities should also have a note of the relevant charge codes and wording for the relevant offences.

5.2.14 Local authorities may also find it beneficial to verify ownership of a property. It is the owner who should apply for a licence, but where the HMO owner has a criminal record or would likely be considered not to be a 'fit and proper' person, they may seek to conceal themselves behind another applicant.

5.2.15 Prosecution can be a lengthy process, and occupiers should not be subject to dangerous or unfit conditions in the meantime. If necessary, local authorities should also consider using other powers, or asking the fire and rescue authority to use their powers, to require improvements to be made or that the property be closed down.

5.2.16 Local authorities should be careful to avoid real or perceived conflicts of interest, for example where a suspected unlicensed HMO is operated by the local authority itself, or in any dealings with former council staff. The local authority has a duty to enforce HMO licensing impartially.

5.2.17 The local authority should therefore ensure that it has appropriate mechanisms in place to ensure that it enforces HMO licensing for local authority owned properties as it would for any other HMO owner. It may therefore be useful to separate out the line management chains.

5.3 DEALING WITH COMPLAINTS

5.3.1 Serious complaints may lead directly to enforcement action against the owner. Alternatively, a record of more minor complaints about a particular HMO may have an effect on the local authority's decision when a subsequent application for a licence in respect of the premises is submitted. It may be helpful to establish liaison arrangements with anti-social behaviour teams or police. Similarly, some complaints made to HMO licensing officers may be more appropriately dealt with by anti-social behaviour teams or the police.

5.3.2 The local authority is likely to receive complaints about HMOs or suspected HMOs for a number of reasons. Occupiers may make complaints about the condition of the property or the actions of the owner. Neighbours may be concerned about the number of people in the property and their living conditions, or about noise and disturbance or anti-social behaviour attributed to the residents of the HMO or people visiting the property. In tenement situations, in particular, neighbours may also make complaints about maintenance, cleaning of common areas, accumulations of refuse and water ingress.

5.3.3 Local authorities should keep a record of complaints, and investigate where this is considered appropriate. Complaints may bring to light HMOs which the authority was not previously aware of. They may also lead to the discovery of breaches of licensing conditions.

ANNEX A

TECHNICAL SPECIFICATIONS FOR PHYSICAL STANDARDS

(see also SECTION 4.3)

SPACE AND LAYOUT

The space standard and occupancy of each room within the house shall be based on the use made of the room.

Floor space should only be counted where there is a ceiling height of at least 1.5m.

The minimum width of a bedroom should be 2.25m.

Standards for Bedrooms where there is a common living room and kitchen available. The common living room and kitchen comply fully with the HMO Standards

Single room (1 adult)	6.5 sq. metres
Double room (2 adults)	10.5 sq. metres
Triple room (3 adults)	16.5 sq. metres
Over 3 adults	16.5 sq. metres + 4.5 sq. metres per person over 3

Family room (2 adults + children under 10)	10.5 sq. metres + 4.5 sq. metres per child
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Standards for Bedrooms where there is no communal living area available. A common kitchen is available which complies fully with the HMO Standards

1 adult	10 sq. metres
2 adults	15 sq. metres
3 adults	19.5 sq. metres
Over 3 adults over 3	19.5 sq. metres + 6 sq. metres per person over 3

Family Room (2 adults + children under 10)	15 sq. metres + 7 sq. metres per child.
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Standards for Bedroom with cooker

1 adult	13 sq. metres
2 adults	19 sq. metres

(In normal circumstances children would not be accommodated in bedrooms with cookers. If, exceptionally, they are, appropriate measures must be taken to ensure their safety.)

Standards for Communal Living Room, excluding any area used as a kitchen

Local authorities will take account of the property layouts available in their area in arriving at what they consider to be reasonable space where rooms are combined. This should not just be an issue of size, but also consider shape and layout in considering what represents an adequate standard.

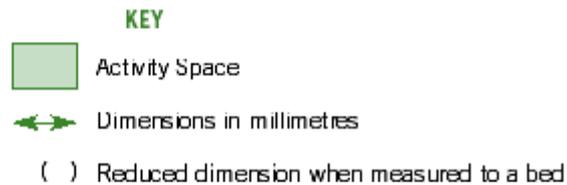
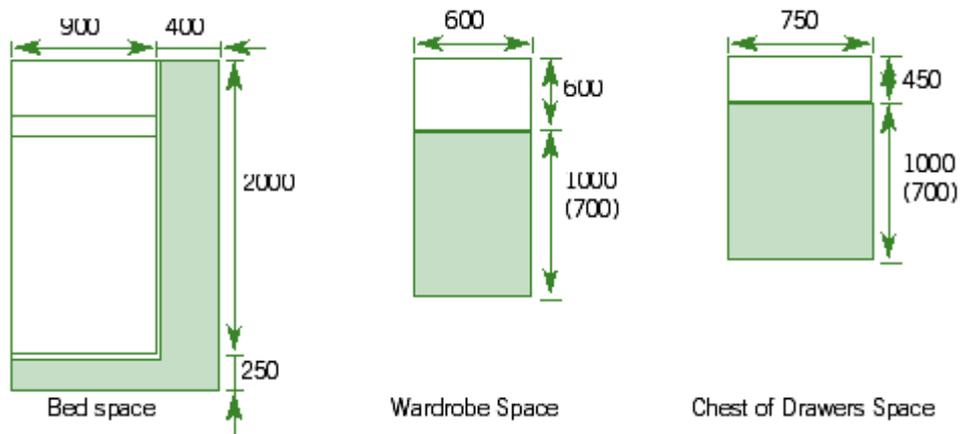
3 - 5 persons 8 sq. metres
And 1.5 sq. metres per person thereafter

Standards for Communal Living Room

3 – 6 persons	11 sq. metres
7-10 persons	16.5 sq. metres
11-15 persons	19.5 sq. metres

Where the amendments to space standards for ceiling heights, minimum bedroom widths and for Communal Living Room, excluding any area used as a kitchen, represent an increase in standards this is not viewed as a safety issue and should only be applied to new applications.

Activity Spaces for bedrooms

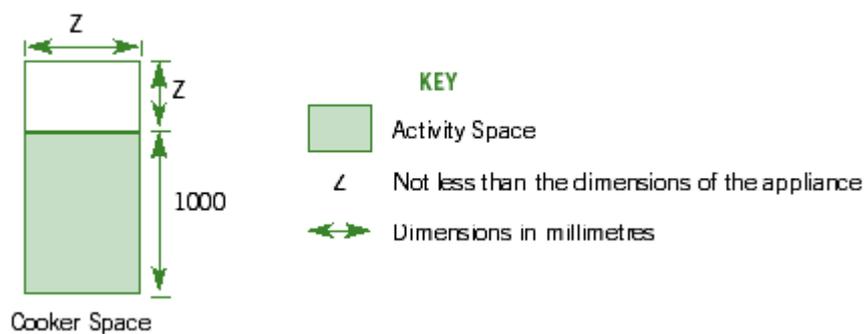


Notes:

1. An activity space is measured at floor level.
2. The shaded area of an activity space may overlap only the shaded area of another activity space.

P2 KITCHENS

Activity Space for Cookers



ANNEX B

SCOTTISH HOUSES IN MULTIPLE OCCUPATION LOCAL AUTHORITY SUBGROUP ON PREPARATION OF GUIDANCE

Scottish local authorities organise and run regular meetings for officials involved in HMO licensing, this group is called the Scottish Houses in Multiple Occupation Network Group (SHMONG). This group set up and chaired a subgroup to review physical standards in HMOs. SHMONG agreed that this group would also work with the Scottish Government on preparing updated HMO guidance for the new regime under Part 5 of the Housing (Scotland) Act 2006.

The following local authorities were represented on the subgroup, Aberdeen City Council, City of Edinburgh Council, Dundee City Council, Falkirk Council, Fife Council, Glasgow City Council, Midlothian Council and North Lanarkshire.

The following officers attended meetings;

Aberdeen City Council
Ally Thain

City of Edinburgh Council
Colin Dick
Jim Donnelly
Joan Farwell
Jennifer Jones
Alistair Somerville
Caitlin Tilbury

Dundee City Council
Gabrielle Hayes
Colin McCrae

Falkirk Council
Isabel Renton

Fife Council
Beverley Green
Stewart Winton
John McArthur

Glasgow City Council,
David Anderson
Fraser Innes
Mairi McCallum
Mairi Millar
Helen Welsh

Midlothian Council
Lilianne Lauder

North Lanarkshire
Irene Morrison

Scottish Government
Peter Reid
Stephen White