

## LICENSING OF HOUSES IN MULTIPLE OCCUPATION

### APPLICATION GUIDANCE NOTES

Before lodging your application for a licence for a House in Multiple Occupation (HMO) please ensure that you have read the following guidance notes.

1. You should note that a licence for a House in Multiple Occupation is required if three [3] or more unrelated adults live and share either cooking, toilet or personal washing facilities. The definition includes hostels, bedsits, student residence and shared flats. The premises should be the sole or main residence of those people.

Living accommodation occupied during term time by a person undertaking a full time course of further or higher education is, at all times during that person's residence, to be treated as being that person's only or main residence.

An HMO licence is not required where the premises are provided as part of:

- (i) a care home service
- (ii) an independent health care service
- (iii) a school care accommodation service, or
- (iv) a secure accommodation service

**which is registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8).**

2. **The applicant must be the owner of the property.** Where the applicant is an individual natural person, the whole question 1 must be completed, and question 2 should be ignored.
3. Where the applicant is a company, partnership or other non-natural person, the whole of question 2 must be completed and question 1 should be ignored.
4. The Council may require you to provide proof of ownership of the premises stated on the application form.
5. The fees for applications for licences (valid for a maximum of 3 years) are as follows:

Occupancy Level	Fee
11 or more occupants	£1066
10 or less occupants	£801
Change of Circumstances	£120
Footprint Fee	£62

**NB: These fees are payable when the application is lodged and are non-refundable.**

6. A separate application requires to be submitted in respect of each residence occupied as an HMO.
7. The enclosed Public Notice requires to be completed and displayed at or near the premises where it can be easily read by the passing public in the street, for a continuous period of 21 days, starting on the day the application is lodged with the Council.

**NB: Under Schedule 4, paragraph 3 of the Housing (Scotland) Act 2006, 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.**

8. The enclosed Certificate of Compliance requires to be completed and returned to the relevant Corporate Development Service only after the 21 day notice period is over.
9. An application for licence in respect of an HMO should be accompanied by 5 copies of plans of the premises. Ideally these plans should include a floor plan of each floor to a scale of 1: 50 with elevations to a scale of 1:100 and include a section through the building (including stairs) where the building is more than one storey. The plans should include all appropriate structural detail required to assess the suitability of the building. A site plan (including boundaries) to a scale of 1:500 should also be provided.

Whilst every effort should be made to submit plans to the above requirement should such plans not be available then hand drawn line plans will be acceptable providing that they are reasonably to scale or adequately dimensioned.

10. You are also required to submit the style of tenancy agreement you intend entering into with tenants of your HMO for approval by the Council as meeting the Council's Standards for HMO.

The introduction on 1 December 2017 of the new private residential tenancy ("PRT") under the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") means that, with the exception of certain types of tenancy listed in Schedule 1 to the 2016 Act which cannot be PRTs, it will no longer be possible to create an assured or short assured tenancy from 1 December 2017 onwards. Schedule 1 to the 2016 Act, listing the tenancies which cannot be PRTs and which can therefore be still be created under a short assured tenancy agreement or other appropriate form of agreement can be accessed at <http://www.legislation.gov.uk/asp/2016/19/schedule/1/enacted>

Existing tenancies which were created before 1 December 2017 under short assured or other forms of tenancy agreement will continue to operate as they do currently until they come to an end.

From 01 December 2017, all new tenancies which class as PRTs under the 2016 Act will last until a tenant wishes to leave the property or a landlord uses one of the statutory 18 grounds for eviction.

To find out more information about PRTs please use the following links:

**Tenant information**

<https://beta.gov.scot/publications/private-residential-tenancies-tenants-guide/>

## Landlord information

<https://beta.gov.scot/publications/private-residential-tenancies-landlords-guide/>

**It is the law that a landlord must give their tenant(s) a written tenancy agreement.**

To help landlords do this, the Scottish Government has produced a 'Model Private Residential Tenancy Agreement' which includes both mandatory clauses which must be included when using the Model PRT Agreement as well as discretionary clauses which a landlord may choose to include and/or add to. The Model PRT Agreement can be accessed at

<http://www.gov.scot/Publications/2017/10/3669>

**As now set out in the Council's Standards for HMO (revised November 2017), the Council will require all applicants for HMO licences to include these mandatory clauses in any PRT agreements they enter into in respect of their HMO properties on or after 1 December 2017. To that end, it is recommended that landlords use the Scottish Government Model PRT Agreement.**

When a landlord uses the Model PRT Agreement they must also provide their tenant(s) with a copy of the '**Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement**' which explain all of the different parts of the tenancy agreement. A link to the Easy Read Notes is provided below.

<http://www.gov.scot/Publications/2017/10/3671>

A digital version of the Scottish Government Model PRT Agreement, which can be completed online, will also be provided on the Scottish Government website by mid-November 2017.

Applicants for HMO licences and existing HMO licence holders may use a different style of tenancy agreement for their PRT agreements as long as it sets out all of the mandatory clauses as required by in terms of the Council's Standards for HMO and provided any discretionary and additional clauses included in the agreement do not conflict with any of the mandatory clauses or other provisions of legislation.

If a landlord decides to use a form of agreement for PRTs other than the Model PRT Agreement, they must provide their tenant(s) with a copy of the '**Private Residential Tenancy Statutory Terms Supporting Notes**' which include information about the nine statutory tenancy terms which must be provided in the tenancy agreement by law. A link to this document is below:

<http://www.gov.scot/Publications/2017/10/8776>

11. Whilst processing the application, the Corporate Development Service will consult with the following:- Building Standards, Environmental Health, Housing Services, the Police and the Fire Service.
12. Your premises will be inspected by some of the Services referred to in Para. 10 above. However, the Services involved will try to arrange to co-ordinate their visits to minimise inconvenience.
13. Depending on the occupancy of your premises planning consent may be required for the operation of the same as an HMO. You are asked to contact your local planning office prior to submission of an application for licence for an HMO to ascertain whether this is the case.

Please note that a change of use to multiple occupancy involving (in the case of a house) more than five residents or (in the case of a flat) more than two residents who are not members of the same family will require planning permission.

From 31<sup>st</sup> January 2012 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. Notice of this refusal must be served on you within 28 days of the Council receiving your HMO licence application.

Further information on this is available in section 4.1a of the Scottish Government's Guidance for Local Authorities a link for which is below:

<http://www.scotland.gov.uk/Resource/0038/00387514.pdf>

It should be noted that in such cases where the Council refuse to consider an application for HMO licence due to a breach of planning control the application fee paid is non-refundable. However if a further HMO licence application is made within 28 days of planning consent being granted then no further fee would be required.

Where it is found that an existing HMO does not have the relevant planning consent the Legal Manager has delegated powers, under section 135 (2) (aa) of the Act, to postpone the expiry date of any existing HMO licence for the same premises for a period of up to four months to give the applicant sufficient opportunity to remedy the breach of planning control. The Legal Manager has delegated power to further extend this period until the outcome of any appeal against, or review of, a decision to refuse planning permission is known.

Where required the property should also have a relevant Building Warrant and Completion Certificate.

14. From 31<sup>st</sup> January 2012 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 HMO's in the locality. Further information on this is available in section 4.11 of the Scottish Government's Guidance for Local Authorities a link for which is below:

<http://www.scotland.gov.uk/Resource/0038/00387514.pdf>

This was considered by the Highland Licensing Committee at its meeting held on 6<sup>th</sup> November 2012 where it was agreed that there is currently no evidential basis for adoption of a policy under which to refuse HMO licence applications on grounds of overprovision under section 131A of the Act. This position will be reviewed on a five-yearly basis.

15. For all applications copies of a) relevant insurance cover b) an Electrical Certificate and c) a copy of the lease with tenants (if any) and a copy of any written tenancy agreement should accompany the application.
16. Once all the consultations have been carried out, you will be told of the nature of these enquiries. The results of them may be taken into account in coming to a decision on your application. If any objections against your application are received, they will be reported to the Highland Licensing Committee and you will be given an opportunity to be heard by the Committee before a decision is made on your application.

17. The Council must consider your application within three months of it being lodged and reach a decision on it within twelve months. However, if no objections are received, your application will normally be dealt with and a licence issued as soon as reasonably practicable after the conclusion of the consultation process. You may not operate as a House in Multiple Occupation until you have been issued with a licence.
18. The Council may impose such conditions on the grant of a licence as they consider reasonable and if a licence is granted, you will be advised of the conditions, which must be observed at all times. You are entitled to seek variation of any of these conditions or such other conditions imposed by the Council once a licence has been granted.
19. The Council may refuse an application:-
- (i) if they consider that the applicant is not a fit and proper person to hold a licence
  - (ii) where the premises are not considered suitable for the proposed activity
  - (iii) for any other good reason.
20. Where an application is refused, the applicant may appeal to the Sheriff and you may care to seek the advice of a Solicitor.
21. If you are unclear about any of the above, please do not hesitate to ask a member of the Corporate Development Service staff for assistance or clarification. Contact names, addresses and telephone No's as follows:
22. **Determination Period:** The Council have 12 months in which to determine an application for HMO licence. If an application cannot be determined by officers using delegated powers and the 12 month deadline is approaching then the application may require to be submitted to the Council's Highland Licensing Committee for their consideration. The Committee have the power to grant or refuse applications for a licence.

Offices	Contact Names & Addresses		
Inverness, Nairn, Badenoch & Strathspey	Senior Licensing Officer Council Headquarters Glenurquhart Road Inverness IV3 5NX Tel: 01463 785098		
Ross, Skye & Lochaber	Licensing Officer Council Offices High Street Dingwall IV15 9QN Tel: 01349 868493	Council Offices Tigh na Sgìre Tigh na Sgìre Park Lane Portree IV51 9GP Tel:01478 613824	Council Offices Charles Kennedy Building Fort William PH33 6RQ Tel: 01397 707233
Caithness, Sutherland & Easter Ross	Council Offices Wick KW1 4AB Tel: 01955 609508		