

**Housing (Scotland) Act 2006
Procedure for Disposal of Applications for Licences**

Report by Director, Corporate Resources

1 Purpose of Report

This report outlines the procedure to be adopted for a Hearing; and this report should be considered along with each application.

2 Procedure for Considering Applications at Hearings

The Procedure for considering applications is as follows:-

- 1 The objectors are given the opportunity to explain the basis of their objection (copies of the representations have been previously circulated to the applicant).
- 2 The applicant and the Members are given the opportunity to question the objectors.
- 3 The applicant is given the opportunity to speak in support of the application; and respond to the comments which have been made.
- 4 The objectors and the Members are given the opportunity to question the applicant.
- 5 The objectors and then the applicant are given the opportunity to sum up.
- 6 The Committee take a decision on the matter in the presence of the applicant and the objectors. The Committee may first adjourn but only for the expressly stated purpose of seeking procedural or legal advice (normally from the Clerk or Legal Adviser) and not for the purpose of taking the decision in private. The reasons for making the decision should be explained when conveying the decision.

3 Disposal of Applications for Licences

In disposing of an application for the grant of a licence the Committee may:-

- (a) grant the licence unconditionally;

- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence.

The Committee must refuse to grant an HMO licence if (a) the applicant, any agent specified in the application, and where the applicant or agent is not an individual, any director, partner or other person concerned in the management of the applicant or agent is disqualified by an order made under section 157(2) of the Act, or (b) the authority considers that any of those persons is not a fit and proper person to be authorised to permit persons to occupy any living accommodation as an HMO. Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004 applies to a local authority in deciding whether a person is a fit and proper person for the purposes of Agents as it applies to the authority when it is deciding whether a person is a fit and proper person for the purposes of section 84(3) or (4) of that Act.

The Committee may grant an HMO licence only if it considers that the living accommodation concerned—

- (a) is suitable for occupation as an HMO, or
- (b) can be made so suitable by including conditions in the HMO licence.

In determining whether any living accommodation is, or can be made to be, suitable for occupation as an HMO the local authority must consider (a) its location, (b) its condition, (c) any amenities it contains, (d) the type and number of persons likely to occupy it, (e) the safety and security of persons likely to occupy it, and (f) the possibility of undue public nuisance.

The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

In considering whether to refuse to grant an HMO licence, the local authority must have regard to—

- (a) whether there is an existing HMO licence in effect in respect of the living accommodation, and
- (b) the views (if known) of—
 - (i) the applicant, and
 - (ii) if applicable, any occupant of the living accommodation.

It is for the local authority to determine the localities within its area. In considering whether there is or would be overprovision in any locality, the local authority must have regard to—

- (a) the number and capacity of licensed HMOs in the locality, and
- (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.

An HMO licence may include such conditions as the Committee thinks fit. The Standard conditions are attached (**Appendix I**). Where an HMO licence includes, or is varied to include, a condition which requires work to be carried out in any living accommodation, the condition must also specify the date by which that work must be completed. No date may be specified which would (a) cause a condition of an HMO licence to have effect, or (b) require the work required by such a condition to be completed, before the date by which the local authority reasonably considers that the licence holder can secure compliance with the condition or, as the case may be, complete the work.

4 Appeals

Any decision may be appealed by summary application to the Sheriff.

An appeal may be made only by a person on whom notice of the decision requires to be served.

An appeal is not competent unless the person making it has followed every procedure made available for stating a case to the local authority in relation to the decision being appealed that it would be reasonable to have expected the person to follow.

An appeal must be made within 28 days of the person receiving notice of the decision.

But the Sheriff may on cause shown hear an appeal made after the deadline.

5 Recommendations

The Committee is recommended to note the terms of the report.

6 Report Background and Appendices

6.1 Background

Housing (Scotland) Act 2006.

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Background Papers:	File CG 10.7 (RGA)	

APPENDIX I

Houses in Multiple Occupation Standard Licence Conditions
(These conditions should be read in conjunction with the Statutory Guidance.)

GENERAL

- 1 Where appropriate, the Licensee shall comply with the Food Safety Act 1990, and any regulations thereunder; the Health and Safety at Work etc Act 1974 and any regulations thereunder; and the Furniture and Furnishings (Fire) Safety Regulations 1988.
- 2 Where alterations to the premises are required or proposed a building warrant and certificate of completion shall be obtained under the Building (Scotland) Acts 1959 & 1970 and the Licensee shall comply with the building regulations and technical standards made thereunder.
- 3 The use of the licensed premises shall comply with the terms of any planning permission issued by Midlothian Council's Planning Committee.
- 4 No alteration shall be permitted to the premises without the written permission of the Director, Corporate Resources, Midlothian Council, or of any officer authorised to act for him in this respect.
- 5 The Licensee shall allow free access to the premises for the following officials for licensing purposes:-
 - (a) any officer of Midlothian Council;
 - (b) any officer of Lothian and Borders Police; and
 - (c) any officer of Lothian and Borders Fire & Rescue Service.
- 6 The Licensee shall take all available means to ensure that no disturbance arises from within the premises.
- 7 The Licensee shall maintain comprehensive building insurance and Property Owner's Liability Insurance in accordance with the approved Standards. These shall be displayed in the premises where they can be conveniently read by residents.
- 8 The licence holder must make the Licence, including any conditions, available to occupiers, within the premises where it can be conveniently read by residents.
- 9 The premises shall be maintained in a good state of repair, cleanliness and decoration.
- 10 The licence holder must ensure that the physical standards for HMO living accommodation, assessed as suitable by Midlothian Council when approving the licence application, are met at all times.

- 11 The Licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing, gas and electrical installations, are maintained to a satisfactory standard throughout the period of the licence. The HMO owner shall hold all necessary certificates.
- 12 The licence holder must ensure that the number of persons residing in the premises shall not exceed the maximum number stated on the front cover of the licence.
- 13 Adequate facilities shall be provided for the storage and disposal of refuse.
- 14 A telephone to which the residents have access shall be installed in the premises for the purpose of calling the Emergency Services. This will be maintained in good working order by the Licensee.

FIRE PRECAUTIONS

- 15 Fire safety measures shall be implemented as per recommendations of the Fire and Rescue Service.

Applicants have a duty to provide a written fire safety risk assessment, in accordance with Part 3 of the Fire (Scotland) Act 2005 as amended and the Fire Safety (Scotland) Regulations 2006. Further guidance on the Act, Regulations, fire safety risk assessment and benchmarks is available on the Scottish Government Website, www.firelawscotland.org.

SAFETY / EMERGENCIES

- 16 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.
- 17 The licence holder should ensure, where considered appropriate, that let rooms are fitted with a lever latch and secured with a suitable lock and thumb turn mechanism or other appropriate locking mechanism.
- 18 All chimneys / flues that are in use must be cleaned annually.
- 19 Glazing in the licensed premises positioned where accidental collision with it is likely must be constructed and installed, or protected, to minimise the danger of collision and injury to people. Compliance with BS6262 Part 4:1994 will satisfy this condition.

ELECTRICITY

- 20 The Licensee shall be responsible for ensuring that all electrical installations are in accordance with the current IEE Regulations and that electrical appliances provided by the Licensee are maintained in a safe and satisfactory condition.
- 21 At least once every five years (or earlier as directed by the approved electrical contractor) certification must be provided to confirm that the installed electrical system has been examined by a competent person and is functioning properly and is safe. Portable Appliance Testing of all plug in appliances shall be carried out on an annual basis to confirm they are functioning properly and are safe.

Continuity of certification is required and where a PIR certificate or PAT certificate expires part of the way through a licence period then a new PIR or PAT certificate shall be obtained.

- 22 There shall be a minimum of:-
- (a) in each kitchen, six electrical socket outlets;
 - (b) in each bedroom and living room, six electrical socket outlets; and
 - (c) elsewhere in the building, four additional socket outlets.
- 23 There shall be an electric lighting system providing at least one lighting point to every circulation space, bedroom, living room, kitchen, bathroom, watercloset compartment and other space having a floor area of two square metres or more. Any lighting point serving a stair within a HMO shall have controlling switches at each storey.

KITCHEN FACILITIES

- 24 Suitable and sufficient refrigerated and non-refrigerated facilities shall be provided for food storage. Food storage should be lockable where requested by the occupant.
- 25 A wholesome supply of cold running water, suitable for drinking purposes shall be provided for the use of residents. This shall be in a readily accessible position within the premises and accessible at all times.
- 26 Should full board not be provided, the premises shall have facilities for preparing, cooking and storing food. Each letting unit must contain a cooker with rings, grill and oven or ONE cooker (with rings, grill and oven) must be provided for up to FIVE people, TWO for between SIX and TEN people in a common kitchen. Cookers within common kitchens must be sited so as to provide the minimum activity space as detailed in Annex A of the statutory guidance.

- 27 Where there is a common kitchen, ONE sink with hot and cold water supply and integral drainer, must be provided for up to FIVE people. Two such sinks and drainers must be provided for between SIX and TEN people.
- 28 Suitable and sufficient worktop area with impervious surfaces shall be provided for preparing food.

SANITARY PROVISIONS

- 29 There shall be:
- (a) one watercloset for every five persons, either located on the same level as the floor containing bedrooms or on the first floor immediately above or below the storey containing the bedrooms; and
 - (b) one bath or shower for every five persons.
- 30 For the purposes of determining the scale of provision of sanitary facilities the number of persons shall include the occupying owner or manager and residing family where appropriate unless separate exclusive sanitary facilities are provided for them.
- 31 Every toilet shall have a wash hand basin within the toilet compartment itself, or within an adjacent space providing the sole means of access to the toilet. The watercloset and wash hand basin shall also be separated by a door from any room or space used wholly or partly for the preparation or consumption of food.
- 32 Hot and cold water supplies shall be suitable and sufficient for the purposes.
- 33 The licensed premises shall be provided with a safe and hygienic drainage and plumbing system in compliance with the relevant British or European Standards.
- 34 Every bedroom shall be located so that it is not necessary to pass through another bedroom in order to reach a bathroom, watercloset compartment, or circulation space.

HEATING, LIGHTING AND VENTILATION

- 35 The premises shall be provided with suitable and adequate heating, lighting and ventilation in accordance with standards detailed in the statutory guidance. Annual inspections shall be carried out by a Gas Safe Registered Engineer for gas appliances and an approved certificate shall be provided for solid fuel or gas appliances. Continuity of gas safety certification is required and where a gas safety certificate expires part of the way through a licence period, then a new certificate shall be obtained.

- 36 Each bedroom and living room shall have a fixed controllable space heating appliance (making available not less than, in the case of the former, 2 kilowatts and, in the case of the latter, 3 kilowatts). Where there is a central heating system, it must be capable of maintaining a temperature of 18°C (in the bedrooms and livingrooms) when the outside temperature is minus 1°C. Where there is a failure in the heating system, the system shall be fully operational within 12 hours or replacement heating appliances to the standards specified above shall be provided within the same period.
- 37 All bedrooms and living-rooms shall have adequate natural lighting, i.e. the area of clear glazing equal to at least 1/15th of the floor area of the room.
- 38 All bedrooms and living-rooms shall be ventilated directly to the external air by window or rooflight, the openable area of which must be equal to at least 1/30th of the floor area of the room.
- 39 All kitchens, bathrooms and waterclosets shall open to the external air, or alternatively, adequate mechanical ventilation must be provided.
- 40 The licence holder must ensure that Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.

CARBON MONOXIDE DETECTION

- 41 A carbon monoxide alarm which meets the requirements of BS EN 50291:2001 must be installed in the same room as any gas appliance.

SPACE STANDARDS

- 42 All bedrooms and any livingrooms shall comply with the minimum space standards detailed in Annex A of the statutory guidance. Activity spaces for bedrooms and kitchens also contained in Annex A must be met.

TENANTS RIGHTS

- 43 The Licensee shall ensure that adequate and up-to-date records are maintained for all residents. These records shall be made available on request to officials of Midlothian Council and Lothian and Borders Police and shall include the following details:
- (a) each resident's full name;
 - (b) dates of entry and departure of each resident; and
 - (c) records of rental payments and arrears.
- 44 The Licensee shall comply with all relevant legislation affecting private sector residential tenancies.

- 45 Written occupancy agreements shall be provided to each tenant and must meet with the approval of Midlothian Council. Once approved, the occupancy agreement shall not be altered unless the Licensee obtains further approval from Midlothian Council. Tenants' appliances shall be in good repair, used for the intended purpose and suitable for the intended purpose.
- 46 The Licensee shall be responsible for the day to day running of the premises, and for ensuring that residents comply with the terms of their Lease.
- 47 Only rent books, occupancy records, and tenancy agreements approved by the licensing authority shall be used.
- 48 Where the rent is payable weekly, payments shall be recorded in a rent book, which will be retained by the resident. Otherwise, a written receipt of each rental payment shall be issued to residents.
- 49 The Licensee shall issue receipts for any rental deposits received.
- 50 The Licensee shall refund the rental deposit, or part thereof, within 14 days of any agreed occupancy termination date or as soon as is practicable thereafter.
- 51 The Licensee shall ensure that residents' mail is available to residents on a daily basis.
- 52 The licence holder must ensure that actions to secure repossession must be only by lawful means.
- 53 The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.

Annex A - Space Standards

1 Bedrooms where common living room available

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

2 Bedrooms where no communal living area available

1 adult	10 sq. metres
2 adults	15 sq. metres
3 adults	19.5 sq. metres
Over 3 adults	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.

3 Bedroom with cooker

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

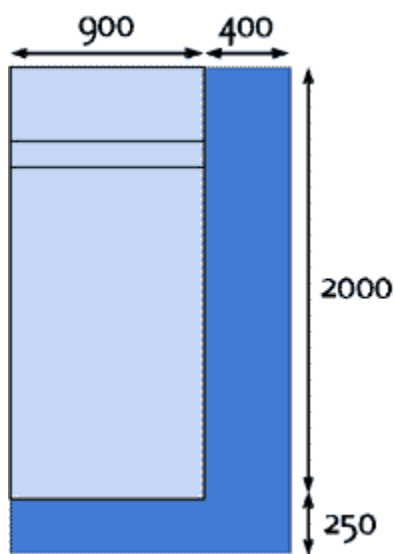
(In normal circumstances children would not be accommodated in bedrooms with cookers. If, exceptionally, they are, appropriate measures must be taken to ensure their safety.)

4 Communal Living Room

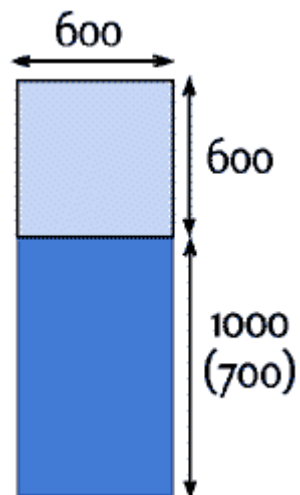
3-6 persons	11 sq. metres
7-10 persons	16.5 sq. metres
11-15 persons	19.5 sq. metres

Annex B - Activity Spaces

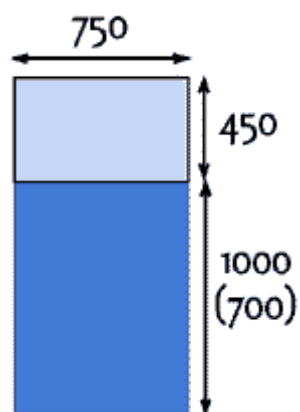
Bed space



Wardrobe space



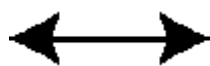
Chest of drawers space



key



Activity Space



Dimensions in millimetres

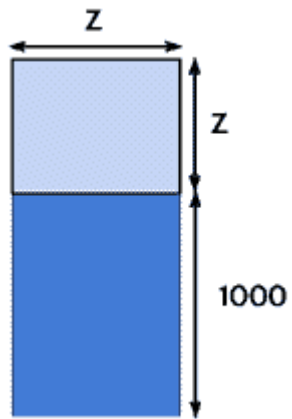
() Reduced dimension when measured to a bed

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.

Annex C - Activity Space for Cookers

Cooker Space



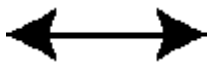
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Activity Space

z

Not less than the dimensions of the appliance



Dimensions in millimetres

Note: An activity space is measured at floor level.