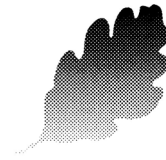


Midlothian



HOUSING (SCOTLAND) ACT 2006

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

NOTES FOR GUIDANCE

- 1 A licence shall be required for a House in Multiple Occupation, i.e. shared accommodation including flats, bedsits, lodgings, bed and breakfast accommodation and other communal accommodation such as student residences and hostels. Houses within a building which, although otherwise separate, share use of a sanitary convenience or personal washing facilities, cooking facilities, are taken to form part of a single house. To be classified as a licensable HMO, the accommodation must be the only or principal residence of three or more people who are not members either of the same family or of one or other of two families.

- 2 A person is a member of the same family as another person if:-
 - (a) those persons are married to each other or live together as a couple; or
 - (b) one of them is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other, and, for the purposes of subparagraph (b) above:-
 - (i) a relationship by marriage shall be treated as a relationship by blood;
 - (ii) a relationship of the half-blood shall be treated as a relationship of the whole blood;
 - (iii) the stepchild of a person shall be treated as his or her child;
 - (iv) the foster child of a person shall be treated as that person's child;
 - (v) a person brought up or treated by another person as if the person were the child of the other person is to be treated as that person's child

Where a house is occupied by (a) any person with a heritable right of ownership in the house; or (b) any such person together with any person who is a member of the same family as that person, those persons shall be disregarded in calculating the number of persons whose principal residence it is.

- 3 A Licence for a House in Multiple Occupation shall not be required in respect of any house -
- (a) occupied only by the owners of the HMO either alone or together with—
 - (i) any persons in the same family as any of those owners, and
 - (ii) any number of other persons who are unrelated to any of those owners but who are members of the same family or of one or other of two families,
 - (b) 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, registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8),
 - (c) owned by the Crown and occupied only by members of the armed forces of the Crown (either alone or together with any persons in the same family as any of those members),
 - (d) a prison, a young offenders institution or a remand centre,
 - (e) occupied only by (i) persons who are members of, and fully maintained by, a religious order the main occupation of which is prayer, contemplation, education or the relief of suffering, or (ii) a group consisting of such persons and no more than two other persons,
 - (f) subject to a management control order made under section 74 (order transferring landlord's rights and obligations to local authority) of the Antisocial Behaviour etc. (Scotland) Act 2004 or
 - (g) owned by a co-operative housing association (within the meaning of section 300(1)(b) of the 1987 Act) the management of which is undertaken by general meeting.

- 4 Completed application forms must be accompanied by a plan of the premises and cheques/postal orders made payable to Midlothian Council or cash. If application forms are delivered by hand, applicants or their agents should deliver them to Reception, Midlothian House, 40-46 Buccleuch Street, Dalkeith. The plans -
- (a) should contain the name and address of the applicant and of the person who prepared them;
 - (b) should be signed by the applicant or agent as relative to the application; must be drawn clearly and to a scale of not less than 1/50 and contain a location plan to a scale of not less than 1/1250; and
 - (c) must show the whole of the premises that is the subject of the application and the room layout on each floor; all doors giving access to and within the application premises and their direction of opening; the location of alarm systems, smoke detectors, emergency lighting and other fire precaution equipment that exists or is proposed; the means of ventilation (mechanical or natural) to, apartments, toilets, bathrooms and/or showerrooms and kitchens; nature of heating and details of the combustion appliance (solid fuel/gas/oil); and Sanitary facilities (existing or proposed); and the location of the electrical sockets, carbon monoxide and smoke detectors, extract fans/ventilation.

5 All questions must be answered. Failure to do so may result in the application being delayed or possible conviction

6 **Subject to the provisions of the Rehabilitation of Offenders Act 1974, ALL CONVICTIONS MUST BE DECLARED including those not resulting in imprisonment or fines e.g. Admonitions, Community Service Orders, Compensation Orders, Deferred Sentences, Probation Orders, etc.**

If you are unable to provide this information you will be able to obtain it from Police Scotland You can submit a subject access request to Police Scotland by emailing:

dataprotectionsubjectaccess@scotland.pnn.police.uk

or by writing to Data Protection Central Processing Unit, Information Management Unit, Police Scotland, Queen Street, Aberdeen, AB10 1ZA.

Your request must be accompanied by scans/ photos/ photocopies of two official documents which between them should confirm your date of birth and your current address.

Once the Chief Constable is satisfied as to your identity, Police Scotland have one month to reply to your request.

Further information and application forms can be found on the Police Scotland website on the following link:

<http://www.scotland.police.uk/access-to-information/data-protection/subjectaccess-requests>

Failure to make a full declaration may lead to refusal of the application, prosecution and, if any omission is discovered after the Licence has been granted, suspension.

- 7 The Excerpts from the Statutory Guidance as regards the Standards which will be applied are described in **Appendix 1** hereto.
- 8 The Tenancy Management Standards are described in **Appendix 2** hereto.
- 9 The current standard conditions of licensing are as shown in **Appendix 3** hereto. These should be taken as indicative of the type of conditions that will be applied.
- 10 The fee is:-
- | | Application Fee
£ | Renewal Fee
£ |
|--------------------------|-------------------------|-------------------------|
| Up to 5 persons | 359.00 (3 years) | 225.00 (3 years) |
| Between 6 and 10 persons | 459.00 (3 years) | 284.00 (3 years) |
| Over 10 persons | 581.00 (3 years) | 362.00 (3 years) |
- 11 The applicant shall, for a period of 21 days beginning with the date on which the application was submitted, display a Notice confirming that the application has been made and after the expiry of the 21 day period, duly certify that this Notice has been posted.
- 12 The Council will consult the Chief Constable, Chief Fire Officer and Director, Education, Communities and Economy in relation to Planning, Environmental Health and Building Control; and Joint Director of Health and Social Care Chief Officer in relation to Housing and Social Work.
- 13 It should be understood that any Licence does not carry with it the necessary consent or approval to any proposed development which may be required under Planning or Building Control legislation or under any other Statutes or Enactments. In relation to Planning, it is unlikely that, if the property is a flat, planning permission for change of use will be required.

14 Any changes in material circumstances must be intimated by means of the appropriate application form and the relative fee of **£73**.

15 Additional reasonable conditions of licensing may be applied.

NOTE: Adjusted to take account of CG(S) A 1982 (LHMO) A Order 2002 (S1 2002/161) CG(S) A 1982 (LHMO) A Order 2003 (S1 2003/463)

Business Gateway Midlothian

If you are starting a business, or if you already run your own business and could use some extra support and advice please email BG@midlothian.gov.uk to register, an Adviser will then be allocated to provide a range of support services for businesses including support from a network of partners.

If you would like to know how Midlothian Council collects, uses and shares your personal information, please visit our website www.midlothian.gov.uk to access our online Privacy notice

APPENDIX 1

STANDARDS

1 OVERVIEW

- 1.1 The Private Rented Housing (Scotland) Act 2011 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 Housing (Scotland) Act 2006.

PRELIMINARY REFUSAL: BREACH OF PLANNING CONTROL

- 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.
- 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.
- 3 The Licensing section of the local authority will liaise with planning colleagues before dealing with a licence application.
- 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.

- 5 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.

SUITABILITY OF THE APPLICANT AND AGENT

- 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.
- 2 The applicant must be the owner of the property.
- 3 The local authority will 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
- 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.
- 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.
- 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.

SUITABILITY OF THE LIVING ACCOMMODATION

Introduction

- 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.
- 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.
- 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.

Factors which will be considered

- 1 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.
- 2 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.

THE LOCATION OF THE ACCOMMODATION

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

THE CONDITION OF THE ACCOMMODATION

- 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.
- 2 Space heating for each bedroom and living room should have a fixed controllable space heating appliance.
- 3 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 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
- 5 There must be a certificate stating that the central heating system is working properly.
- 6 There must be installed a Carbon Monoxide (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.
- 7 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>
- 8 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.
- 9 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.
- 10 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

- 1 Any chimneys/flues that are in use must be cleaned annually.
- 2 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.

- 3 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

- 1 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.
- 2 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.
- 3 Kitchens, bathrooms and toilets should have either natural ventilation as for bedrooms and living rooms, or adequate mechanical ventilation.
- 4 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
- 5 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.
- 6 Any ceiling strip light unit within the HMO must be fitted with a proper diffuser/cover.
- 7 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

- 1 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
- 2 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.

- 3 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.

ANY AMENITIES THE ACCOMMODATION CONTAINS

- 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.
- 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.
- 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.

Kitchen facilities

- 1 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.
- 2 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.
- 3 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 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.
- 5 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

- 1 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
- 2 There would be expected to be:
- one WC for a maximum of 5 persons
 - one bath or shower for a maximum of 5 persons.

- 3 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 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.
- 5 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.
- 6 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.
- 7 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.
- 8 Every wash hand basin, bath and shower would be expected to be provided with an adequate piped supply of hot and cold water.
- 9 The building would be expected to be provided with a safe and hygienic drainage system which complies with the relevant British or European Standards.

THE TYPE AND NUMBER OF PERSONS LIKELY TO OCCUPY THE ACCOMMODATION

- 1 The local authority must consider whether the accommodation is suitable for the particular number and type of persons likely to occupy it. The local authority will impose a licensing condition to specify the maximum number of occupants for the premises.
- 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.

- 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

- 1 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
- 2 Minimum room dimensions expected are included in Annex A.
- 3 Suggested furniture and activity spaces are also given in Annex A.
- 4 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
- 5 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

- 1 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.

- 2 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.
- 3 When assessing the standards and facilities required, licensing officers will 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.

SUBDIVISION OF ANY ROOMS WITHIN THE ACCOMMODATION

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.

ADAPTATION OF ANY ROOMS WITHIN THE ACCOMMODATION, RESULTING IN AN ALTERATION TO THE SITUATION OF THE WATER AND DRAINAGE PIPES WITHIN IT

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.

THE SAFETY AND SECURITY OF PERSONS LIKELY TO OCCUPY THE ACCOMMODATION

- 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.

- 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.
- 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.

Gas and electrical safety

General

- 1 Any works to the gas or electrical installations must have been carried out in accordance with the relevant regulations and guidance.
- 2 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.
- 3 Appropriate certificates must be available to show that the electrical system (PIR) 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 Authorities should be satisfied that the PIR certificate is up to date (these must be renewed at least every five years, or earlier as directed by the approved electrical contractor).
- 5 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).
- 6 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.

- 7 A licence condition will be included 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

- 1 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.
- 2 The applicant will provide 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

- 1 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.
- 2 These sockets should be easily accessible. Other outlets may be inaccessible, for example those for white goods.
- 3 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

- 1 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 the "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.

- 2 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.
- 3 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

- 1 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.
- 2 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

- 1 The accommodation must have secure locks on all access doors and ground floor or accessible windows.
- 2 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.
- 3 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.

THE POSSIBILITY OF UNDUE PUBLIC NUISANCE

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.

Noise reduction

- 1 Noise is a significant source of complaints about HMOs from neighbours, and some physical aspects of the property can add to the problems. Appropriate measures must be 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.
- 2 Further guidance on available measures to address noise nuisance is available via the following link:
<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Buildingstandards/publications/pubtech/techhsi>

OVERPROVISION

- 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.
- 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.
- 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.

APPENDIX 2

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 Executive Director - Place, Midlothian Council, or of any officer authorised to act for him in this respect.
 - 1
- 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 Police Scotland; and
 - (c) any officer of Scottish 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 Scottish 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

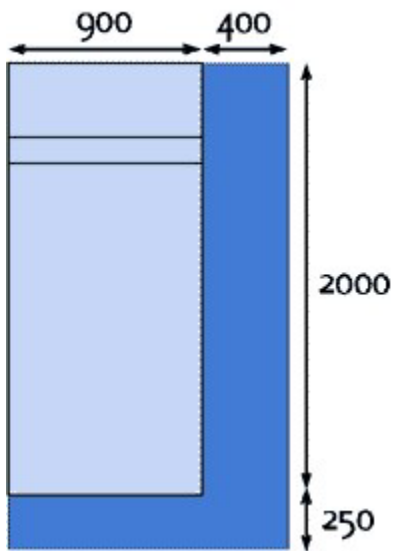
(In normal circumstances children would not be accommodated in bedrooms with cookers. If, exceptionally, they are, appropriate measures must be taken to ensure their safety.)

4 Communal Living Room

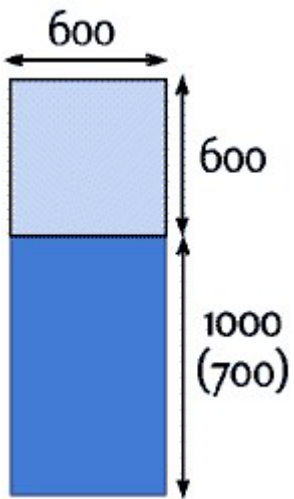
3-6 persons	11 sq. metres
7-10 persons	16.5 sq. metres
11-15 persons	19.5 sq. metres

Annex B - Activity Spaces

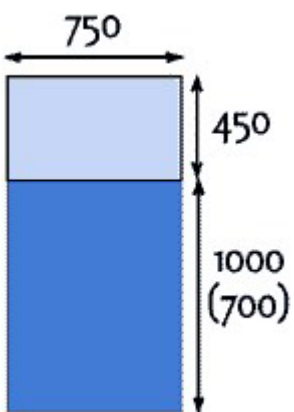
Bed space



Wardrobe space



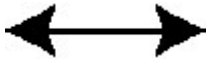
Chest of drawers space



key



Activity Space



Dimensions in millimetres

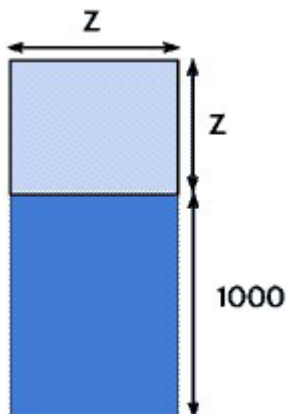
() Reduced dimension when measured to a bed

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



key



Activity Space

Z

Not less than the dimensions of the appliance



Dimensions in millimetres

Note: An activity space is measured at floor level.