

# **PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011**

---

## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 2 - Houses in Multiple Occupation**

##### ***Section 13 – Amendment of HMO licensing regime***

20. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.
21. **Section 13** also inserts new section 129A into the 2006 Act to give 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. 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, no fee may be charged in relation to that application. 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 or on a later date that the local authority considers reasonable, given the circumstances.
22. Section 131 of the 2006 Act provides that a local authority may only grant an HMO licence if it considers that the accommodation is suitable or can be made suitable for occupation as an HMO. Section 13(3) inserts new paragraphs (da) and (db) into section 131(2) requiring a local authority, when carrying out this assessment, to consider whether any rooms have been subdivided, and whether any have been adapted where this has resulted in the moving of water and drainage pipes.
23. This section also inserts new section 131A into Part 5 of the 2006 Act to give 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 could 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 authority must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation, the views of the applicant and any occupants, and any other matters specified by the Scottish Ministers by order. 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 and any other matters specified by the Scottish Ministers by order. Before making an order under section 131A, the Scottish

*These notes relate to the Private Rented Housing (Scotland) Act  
2011 (asp 14) which received Royal Assent on 20 April 2011*

Ministers must consult local authorities, representatives of landlords and occupiers, and any other persons or bodies whom they consider appropriate.