

Agenda item	6.1
Report no	HLC/051/18

## THE HIGHLAND COUNCIL

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 7 August 2018

**Report title:** Rent suspension orders in respect of unlicensed houses in multiple occupation

**Report by:** The Principal Solicitor – Regulatory Services

### 1. Purpose/Executive Summary

1.1 This report invites the Committee to grant delegated power to the Solicitor – Regulatory Services and the Principal Solicitor – Regulatory Services to make rent suspension orders in respect of properties which are not licensed as houses in multiple occupation (HMO) but which are being used as living accommodation occupied as HMO.

### 2. Recommendation

2.1 Members are invited

- (a) to grant delegated power to the Solicitor – Regulatory Services and the Principal Solicitor – Regulatory Services, in consultation with the Chairman or Vice Chairman of the Highland Licensing Committee, to make rent suspension orders under section 144 of the Housing (Scotland) Act 2006 (the Act) in respect of properties which are not licensed as HMO but which have been identified by the Environmental Health service as being occupied as HMO, and
- (b) to grant delegated power to the Solicitor – Regulatory Services and the Principal Solicitor – Regulatory Services, again in consultation with the Chairman or Vice Chairman of the Highland Licensing Committee, to revoke any rent suspension order so made if satisfied that:
  - (i) an HMO licence has subsequently been granted to the owner of the property concerned, or
  - (ii) the property is no longer occupied as an HMO.

Delegated power to revoke orders should be subject to the caveat that if an application for revocation of an order (on the ground that the property is no longer occupied as an HMO) is received, and officers are not satisfied that the property is no longer occupied as an HMO, the application for revocation will be referred to the Committee for a final decision.

### 3. Definition of HMO

3.1 Section 125 of the Act defines HMO as meaning any living accommodation occupied by 3 or more persons who are not all members of the same family or of one or other of two families and who:

- a) occupy the accommodation as their only or main residence, and
- b) share one or more of the basic amenities (toilet, personal washing facilities and facilities for the preparation of cooked food) with each other.

3.2 HMO which fall within this definition are nonetheless exempt from the requirement to be licensed if they are

- 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 a registered care home service, a registered independent health care service, a registered school care accommodation service, or a registered secure accommodation service,
- c) owned by the Crown and occupied only by members of the armed forces of the Crown (either alone or with their families),
- 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 under section 74 of the Antisocial Behaviour etc (Scotland) Act 2004 (i.e. an order transferring landlord's rights and obligations to the local authority), or
- g) owned by a co-operative housing association (within the meaning of section 300(1)(b) of the Housing (Scotland) Act 1987.

3.3 For the purposes of these provisions of the Act, persons are to be treated as being in the same family as, and as being related to, each other only if-

- a) they are a couple,
- b) one of them is a relative of the other, or
- c) one of them is a relative of one member of a couple and the other is a relative of the other member of that couple.

3.4 In this context

- a) a "couple" means two persons who-
  - i. are married or are civil partners, or
  - ii. live together as husband and wife or, where they are of the same sex, in an equivalent relationship,
- b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece,
- c) a relationship of the half blood is to be treated as a relationship of the whole blood,
- d) the stepchild of a person is to be treated as that person's child, and
- e) a person brought up or treated by another person as if the person were that other person's child is to be treated as that other person's child.

#### **4. Rent suspension orders**

- 4.1 Section 144 of the Act provides that the local authority may, if satisfied that an HMO which requires to be licensed as an HMO under the Act but is not so licensed, by order provide that no rent or other sums for occupation are to be payable under any tenancy or occupancy arrangement by virtue of which any person occupies the living accommodation concerned.
- 4.2 The owner of the property has no right to be heard by, or make representations to, the local authority before a decision to make a rent suspension order is made.
- 4.3 Once such an order is made, the owner of the property has no right to receive or demand rent or other sum of money from the occupiers of the living accommodation in respect of their occupation of the property. In all other respects the validity of the tenancy or occupancy arrangement is unaffected. In particular, the owner may not seek to evict any tenant of the property on grounds of non-payment of rent. Other legislation also protects tenants against harassment and/or illegal eviction by their landlord, these being criminal offences.
- 4.4 The order must be served on the owner, the occupiers of the living accommodation and any agent acting for the owner. It must be accompanied by a notice setting out the effect of the order, the date on which it is to take effect (which must be not earlier than the date on which the notice and order are served on the owner). The notice must also advise of the right to request reasons for the decision, the right to appeal against the decision to the sheriff and the period within which such an appeal must be made.

#### **5. Subsequent revocation of rent suspension orders**

- 5.1 A rent suspension order must be revoked by the local authority if an HMO licence is subsequently granted to the owner of the living accommodation concerned, or if the local authority is subsequently satisfied, on the application of any person with an interest or otherwise, that the living accommodation concerned is no longer an HMO.
- 5.2 There is a further right of appeal to the sheriff against a decision by the local authority to refuse an application for revocation of an order.

#### **6. Request for delegated power to make and revoke rent suspension orders**

- 6.1 The Council's Environmental Health service has responsibility for monitoring licensed HMO to ensure they comply with the appropriate regulations and standards. Environmental Health also have responsibility for identifying and taking enforcement action in respect of unlicensed HMO. The Scottish Fire and Rescue Service, the Council's Building Standards Service and Police Scotland also play an important role in these monitoring and enforcement activities.
- 6.2 Where Environmental Health identify a property as being operated as unlicensed HMO, there is often an urgent need to take action to stop the immediate use of the property as an HMO and/or to bring it within the licensing regime to ensure that appropriate standards are met.
- 6.3 In such cases, the use of rent suspension orders has proven to be an effective means of encouraging owners of unlicensed HMO to apply for a licence and bring their properties up to the Council's HMO standards.

- 6.4 The effectiveness of this method of enforcement can, however, be reduced if there is delay between the identification of the property as being occupied as an unlicensed HMO and the making and service of the rent suspension order. As the power to make rent suspension orders lies with the Committee, such delay is currently inevitable.
- 6.5 In order to streamline this process and avoid such delays, delegated powers are accordingly sought as set out in the recommendation at section 2. of this report.

## **7. Implications**

- 7.1 Not applicable.

Date: 25 July 2018

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