
EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the giving of permission for the occupation of a house which is a house in multiple occupation (“HMO”) where that permission to occupy is knowingly given by the owner, as an activity for which a licence under the Civic Government (Scotland) Act 1982 shall be required in terms of section 44(1)(b) of that Act (article 3).

The licensing provisions at Part I of that Act (including Schedule 1) will apply to such licences (article 4 and the Schedule), but the Order contains provision in particular—

- (a) allowing local authorities 12 months (rather than 6) to determine licence applications;
- (b) granting a power of search of unlicensed premises to officers of local authorities;
- (c) increasing the maximum fine for contravention of section 7(1) of the 1982 Act (acting without a licence) to level 5 (£5000) on the standard scale; and
- (d) preventing licensing authorities from using these licensing powers to control the level of rent charged to tenants of premises required to be licensed.

The Order introduces, by a stepped process (article 5), the licensing regime starting at 1st October 2000 where it will apply to houses occupied by 6 or more persons, being members of more than 2 families (“qualifying persons”). The number of qualifying persons will reduce to 3 or more persons by 1st October 2003. Provision is made for members of the same family to include persons of the same sex living together as a couple.

Transitional provisions (articles 6, 7 and 8) are made in respect of the transfer to the new system to assist (a) in avoiding the need for large numbers of applications to be determined in advance of 1st October 2000 and (b) the transition from the existing regime of voluntary licensing, for circumstances where such a regime is in place at present.

Article 6 provides for the circumstance where there is (in effect) an HMO at present but no voluntary regime licence is required under the 1991 Order. In that case, an existing HMO owner, if that person applies before 1st October 2000 for a licence under this Order, does not commit a criminal offence by operating an HMO until the licence application is granted or the date 3 months after refusal of the application.

Article 7 provides for the circumstance where there is an HMO (with more than 5 occupiers) at present operating under a 1991 Order licence. That licence will continue until expiry, at which date a licence under this Order is required, but if the expiry date is before 30th September 2001, the voluntary licence is extended to that date. This extension covers a potential gap between expiry of the licence existing at 1st October 2000 and the date by which the local authority will have been required to have considered an application under this Order.

Article 8 provides for the same as article 7 (for an HMO caught by this Order for the first time from 1st October 2001, 2002 and 2003 respectively), except that no extension of a voluntary licence is provided for.

The voluntary licensing regime will cease to have effect at 1st October 2001 when the mandatory number of occupying persons becomes the same as the triggering number in the voluntary regime, although licences already granted will run until their expiry, revocation, suspension or surrender (article 9).