SCOTTISH STATUTORY INSTRUMENTS

2000 No. 177

LICENCES AND LICENSING

HOUSING

The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000

Made - - - - 6th June 2000

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred upon them by section 44(1)(b) and (2) of the Civic Government (Scotland) Act 1982(**1**) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has been laid before and approved by a resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order, unless the context otherwise requires–

"the 1982 Act" means the Civic Government (Scotland) Act 1982;

"the 1991 Order" means the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 1991(**2**);

"house" includes (subject to paragraphs (2) and (4) below) any part of a building, being a part which is occupied as a separate dwelling and, in particular, includes a flat;

"house in multiple occupation" means a house occupied during any period mentioned in article 5 of this Order by more qualifying persons than the number specified in that article in relation to that period, being persons who are not all members either of the same family or of one or other of 2 families;

(**1**) 1982 c. 45. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(**2**) S.I.1991/1253.

"owner" means a person having a heritable interest in the house which is capable of being recorded in the General Register of Sasines or registered in the Land Register (established by section 1 of the Land Registration (Scotland) Act 1979(**3**)) and "owned" and "ownership" shall be interpreted accordingly;

"qualifying person" means (subject to paragraph (3) below) a person whose only or principal residence is the house in multiple occupation;

"self-governing school" has the same meaning as in section 1(3) of the Self-Governing Schools etc. (Scotland) Act 1989(**4**);

"women's refuge" means a house managed by a voluntary organisation and used wholly or principally for the temporary accommodation of persons who have left their homes as a result of–

(a) physical violence or mental abuse; or

(b) threats of such violence or abuse,

from persons to whom they are or were married or with whom they are or were co-habiting.

(2) Any house–

(a) which is or requires to be registered–

(i) as a nursing home under the Nursing Homes Registration (Scotland) Act 1938(**5**);

(ii) as a residential establishment under section 62 of the Social Work (Scotland) Act 1968(**6**); or

(iii) as a private hospital under the Mental Health (Scotland) Act 1984(**7**);

(b) which is occupied principally for the purpose of the provision for school students of residential accommodation by an education authority, the board of management of a self-governing school or the managers of a grant-aided or independent school (or by any other person in pursuance of such arrangements made by an education authority or any such board of management or managers);

(c) which is occupied by a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering;

(d) which is occupied only–

(i) by qualifying persons, each of whom has a heritable right of ownership in the house; or

(ii) by a person who is a member of the same family as such a qualifying person; or

(e) in respect of which a control order under section 178 of the Housing (Scotland) Act 1987(**8**) is in force,

shall not be regarded as a house for the purposes of this Order.

(3) For the purposes of the definition of "qualifying person" in paragraph (1) above–

(a) a person undertaking a full time course of further or higher education who resides during term time in a house shall, during the period of that person's residence, be regarded as residing there as his only or principal residence; and

(**3**) 1979 c. 33.
(**4**) 1989 c. 39.
(**5**) 1938 c. 73.
(**6**) 1968 c. 49.
(**7**) 1984 c. 36.
(**8**) 1987 c. 26.

(b) a patient in a hospital from which National Health Service goods and services are provided under the National Health Service (Scotland) Act 1978(**9**) shall be disregarded for the purpose of calculating the number of persons who occupy a house as their only or principal residence.

(4) For purposes of this Order, houses comprised within a building which, although otherwise separate, share use of–

(a) a sanitary convenience; or

(b) personal washing facilities; or

(c) cooking facilities,

shall be taken to form part of a single house.

(5) For purposes of this Order, 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 sub-paragraph (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.

Licensing of houses in multiple occupation

3.—(1) For the purposes of section 44(1)(b) of the 1982 Act, giving permission for a house to be occupied is hereby designated as an activity for which a licence under this Order shall be required.

(2) For the purposes of paragraph (1) above, a person giving permission permits a house to be occupied if, and only if–

(a) that person is the owner of that house; and

(b) that person knowingly gives permission for that house to be occupied; and

(c) that house is a house in multiple occupation.

(3) Where a house is owned by more than one person, it shall be a defence for an owner charged with an offence under section 7(1) of the 1982 Act to show that another person who has a heritable right of ownership in that house holds a licence required by virtue of paragraph (1) above.

(4) Paragraph (1) above is subject to articles 6, 7 and 8 below.

Application of Part I of the 1982 Act

4. Part I of the 1982 Act shall have effect, subject to the modifications specified in the Schedule to this Order, for the purposes of the licensing of the activity designated by article 3 above.

Size of house in multiple occupation

5. The number of qualifying persons, for the purpose of the definition of a house in multiple occupation in article 2(1) above, is specified as follows:–

(a) in the period beginning with 1st October 2000 and ending with 30th September 2001, 5;

(b) in the period beginning with 1st October 2001 and ending with 30th September 2002, 4;

(**9**) 1978 c. 29.

(c) in the period beginning with 1st October 2002 and ending with 30th September 2003, 3; and

(d) in the period beginning with 1st October 2003, 2.

Transitional provisions

6.—(1) Unless article 7 below applies, no relevant person shall, in the relevant period, be guilty of an offence under section 7(1) of the 1982 Act in consequence of the giving by that person of any permission for which a licence would be required by virtue of article 3 of this Order where–

(a) an application has been made prior to 1st October 2000 by that person to the licensing authority for a licence to give that permission; and

(b) that application is not withdrawn.

(2) In paragraph (1) above–

"the relevant period" means–

(a) where the application referred to in paragraph (1) above is granted, the period from 1st October 2000 to the date of that grant; or

(b) where that application is refused, the period from 1st October 2000 to the date three months after the date of that refusal; and

"relevant person" means an owner of a house who has, immediately before 1st October 2000, given permission for that house to be occupied by more than 5 persons (being persons who are not all members either of the same family or of one or other of 2 families) as their only or principal residence.

7.—(1) Article 3 of this Order shall not apply in relation to any permission given in respect of a house where that permission is, at 1st October 2000, authorised by virtue of a licence granted under the 1991 Order until–

(a) the date on which that licence granted under the 1991 Order expires;

(b) the date on which that licence is surrendered; or

(c) the date on which any revocation or suspension of the licence by the licensing authority has effect, and the terms and conditions of the licence granted under the 1991 Order shall continue to apply until its expiry or surrender or until the date on which any such revocation or suspension of that licence has effect.

(2) Where the date on which that licence granted under the 1991 Order is due to expire falls prior to 30th September 2001, that licence shall be deemed to have been granted, and shall continue in force subject to the terms and conditions under which it was granted (other than as to expiry date), until (and including) 30th September 2001.

(3) This article only applies to a permission in relation to a house which, in the period specified in article 5(a) above, is a house in multiple occupation.

8.—(1) Article 3 of this Order shall not apply in relation to any permission given in respect of a house where that permission is, at the relevant date, authorised by virtue of a licence granted under the 1991 Order until–

(a) the date on which that licence granted under the 1991 Order expires;

(b) the date on which that licence is surrendered; or

(c) the date on which any revocation or suspension of the licence by the licensing authority has effect,