

**2010 No. 159 (C. 8)**

**HOUSING**

**The Housing (Scotland) Act 2006 (Commencement No. 8,  
Transitional Provisions and Savings) Order 2010**

*Made* - - - -

*20th April 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 191(2) and 195(3) of the Housing (Scotland) Act 2006(a).

**Citation**

1. This Order may be cited as the Housing (Scotland) Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2010.

**Interpretation**

2. In this Order—

“the 1982 Act” means the Civic Government (Scotland) Act 1982(b);

“the 2000 Order” means the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000(c);

“2000 Order licence” means a licence granted under or by virtue of the 2000 Order;

“the 2006 Act” means the Housing (Scotland) Act 2006;

“HMO licence” has the same meaning as given by section 124(2) of the 2006 Act;

“licensing authority” means a licensing authority in terms of section 2 of the 1982 Act(d); and

“the transition date” means 31st August 2011.

**Commencement of provisions**

3. The day appointed for the coming into force of the provisions of the 2006 Act specified in Column 1 of the Table below is 31<sup>st</sup> August 2011, but where a particular purpose is specified in relation to any provision in Column 2, that provision comes into force on that day only for that purpose.

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(a) 2006 asp 1.

(b) 1982 c.45.

(c) S.S.I. 2000/177, amended by S.S.I. 2002/161 and 2003/463.

(d) Section 2 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 129(2).

## Table

| <i>Column 1</i>                      | <i>Column 2</i>  |
|--------------------------------------|--|
| Sections 124 to 166                  |  |
| Section 192                          | Only for the purpose of giving effect to the consequential changes in schedule 6 and the repeals in schedule 7 listed in this Order                        |
| Schedule 4                           |  |
| Schedule 5                           |  |
| Schedule 6, paragraphs 18, 23 and 24 |  |
| Schedule 7                           | Only for the purpose of the repeals of Part 8 of, and Schedule 11 to, the Housing (Scotland) Act 1987 and section 78(5)(f) of the Fire (Scotland) Act 2005 |

## Transitional provisions

4. Any 2000 Order licence which is in force on the transition date, other than a licence to which any of paragraphs (c) to (e) and (g) of article 6(1) applies, will from that date be deemed instead to be an HMO licence granted under or by virtue of the 2006 Act with the same expiry date and subject to the same, if any, conditions that are attached to it.

5.—(1) Each licensing authority is to give notice in accordance with this article to every person who appears to the licensing authority likely, on the transition date, to be the holder of a 2000 Order licence or an applicant for such a licence.

(2) Notice under paragraph (1) is to advise the recipient—

- (a) of the transition date;
- (b) of the consequences in general terms of the implementation of the provisions under the 2006 Act; and
- (c) where guidance is accessible.

(3) The requirement to give notice may be satisfied by electronic means.

(4) Where it is practicable to do so, notice is to be given no later than one month before the transition date, and in other cases the licensing authority shall give notice as soon as is reasonably possible.

(5) A failure by a licensing authority to give notice does not affect the application of this Order to a 2000 Order licence or an application for such a licence.

## Savings provisions

6.—(1) Notwithstanding the commencement of paragraphs 23 (amendment of the Fire (Scotland) Act 2005) and 24 (revocation of existing Orders) of schedule 6 to the 2006 Act, section 78(5)(a) of the Fire (Scotland) Act 2005<sup>(a)</sup> and the provisions of the 2000 Order shall continue to have effect in relation to that application or licence as if the commencement of paragraphs 23 and 24 of schedule 6 to the 2006 Act had not taken place where on the transition date—

- (a) an application for a 2000 Order licence is pending;

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(a) 2005 asp 5.

- (b) an application for a 2000 Order licence has been refused;
- (c) a decision has been taken to suspend a 2000 Order licence in terms of paragraphs 11 or 12 of schedule 1 to the 1982 Act and the period of that suspension has not ended;
- (d) a licensing authority has served notice on the holder of a 2000 Order licence that it proposes to hold a hearing at which suspension under paragraph 11 of schedule 1 to the 1982 Act will be considered, or is considering whether to order suspension under paragraph 12 of that schedule, but—
  - (i) has not yet decided whether or not to order such suspension; or
  - (ii) has decided not to order such suspension and that decision has not yet become final;
- (e) a decision has been taken to grant an application for a 2000 Order licence, but the decision has not yet become final;
- (f) a decision to grant an application for a 2000 Order licence has become final, but the licence has not yet come into force on account of a licence condition or conditions; or
- (g) a licensing authority has served notice on the holder of a 2000 Order licence that it proposes to consider variation of the terms of that licence in terms of paragraph 10 of schedule 1 to the 1982 Act and either—
  - (i) it has not yet decided whether or not to vary the terms of the licence;
  - (ii) it has decided to vary the terms of the licence, but that variation has not yet come into force; or
  - (iii) it has decided not to vary the terms of the licence, but that decision has not yet become final.

(2) From the transition date, any licence—

- (a) granted in respect of an application to which paragraph (1)(a) or (b) applies;
- (b) coming into force in consequence of the ending of a period of suspension to which paragraph (1)(c) or (d) applies (unless the suspension was ordered under paragraph 12 of schedule 1 to the 1982 Act and a further suspension has been ordered, in which case the suspensions shall be regarded as one period);
- (c) to which paragraph (1)(c) or (d) applies but in respect of which a decision is taken (whether on appeal or otherwise) not to order or give effect to a period of suspension;
- (d) to which paragraph (1)(e) applies and the decision to grant the licence becomes final;
- (e) to which paragraph (1)(f) applies, which comes into force;
- (f) to which paragraph (1)(g) applies and in respect of which a decision is taken, or has been taken, not to vary the licence (whether on appeal or otherwise), and such a decision becomes final; or
- (g) to which paragraph (1)(g) applies and in respect of which a variation comes into force;

shall be deemed instead of being a 2000 Order licence to be an HMO licence granted under or by virtue of the 2006 Act with the same expiry date and subject to the same, if any, conditions that are attached to it—

- (i) where subparagraph (a) applies, from the date any decision to grant the licence becomes final;
- (ii) where subparagraph (b) or (e) applies, from the date the licence comes into force;
- (iii) where subparagraph (c), (d) or (f) applies, from the date of the decision becoming final; and
- (iv) where subparagraph (g) applies, from the date the variation comes into force.

(3) For the purposes of paragraphs (1) and (2), a decision becomes final—

- (i) when the time within which an appeal may be made has elapsed; or
- (ii) where an appeal is lodged, when the appeal is abandoned or determined.

(4) Section 124(1) of the 2006 Act (requirement for HMOs to be licensed) shall not apply to any house in multiple occupation in respect of which a licence is in force under the 2000 Order by virtue of this article.

*ALEX NEIL*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
20th April 2010

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force the provisions of Part 5 of the Housing (Scotland) Act 2006 (“the 2006 Act”) relating to the licensing of houses in multiple occupation (HMO).

Part 5 of the 2006 Act covers sections 124 to 166 of the 2006 Act, which replace the provisions of the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (2000/177), (“the 2000 Order”). However some of the provisions require to stay in force for a period to take account of pending applications for HMO licences as well as those granted under the 2000 Order in respect of which proceedings may be ongoing.

Article 3 provides the detail of provisions which are to be commenced.

Articles 4 and 5 introduce transitional provisions. In most cases licences granted under the 2000 Order will become licences under the 2006 Act provisions, with identical currency and conditions. Article 5 provides for notification by licensing authorities of the changes made by this Order to licence holders and prospective licence holders.

However Article 6 preserves the previous licence in some cases by making savings provisions, which will apply to cases where a licence has been suspended or suspension/variation of a licence is being considered. It also preserves the existing system for pending applications or for applications that have been refused (to allow appeal rights to continue). Once the ongoing matters are finally resolved, any licence will become a licence under the 2006 Act provisions.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

| <i>Provision</i>   | <i>Date of<br/>Commencement</i> | <i>S.S.I. No.</i>        |
|--|---------------------------------|--------------------------|
| Sections 176 and 177   | 29th January 2006               | 2006/14                  |
| Sections 178 and 180   | 17th May 2006                   | 2006/252                 |
| Sections 70, 175, 185, 193 and 194   | 5th July 2006                   | 2006/395                 |
| Sections 52, 53, 54, 55, 56, 57, 63(1), 64(6), 65(3) and (4), 181(1)(c) and (5), 182, 184, 186, 187, 188 and 189   | 4th December 2006               | 2006/395 and<br>2006/569 |
| Partially, sections 22(5), 64(7), 65(5), 66(1) and (4), 99, 104, 105, 111(3), Schedule 2, paragraph 8 and Schedule 3, paragraph 2  | 4th December 2006               | 2006/395 and<br>2006/569 |
| Sections 167 to 171 and 179  | 28th May 2007                   | 2007/270                 |
| Sections 12 to 29, 36 to 39, 58, 59(2) to (5), 60, 61, 63(2) to (9), 64(1) to (5) and (7), 65(1), (2) and (5), 66, 67, 172 to 174, 181(2), (4) and (6), 183, schedule 2 and schedule 6, paragraphs 4, 5, 7, 8, 16, 17 and 19 | 3rd September 2007              | 2007/270                 |
| Partially, section 192 and schedule 7  | 3rd September 2007              | 2007/270                 |

| <i>Provision</i>  | <i>Date of Commencement</i> | <i>S.S.I. No.</i>                    |
|---|-----------------------------|--------------------------------------|
| Sections 73, 77 and 79,   | 29th September 2008         | 2008/308                             |
| Sections 98 to 119  | 1st December 2008           | 2008/308                             |
| Sections 1 to 11, 30 to 35, 40 to 51, 59 (1) and (6), 62, 65(6), 68, 69, 71 to 97, 181(1)(a),(b),(d) and (e) and (3) and schedule 1 | 1st April 2009              | 2009/122                             |
| Section 192 (partially)   | 1st April 2009              | 2009/122                             |
| Schedule 6, paragraphs 1 to 3, 6, 9, 10, 12, 14 and 20 to 22  | 1st April 2009              | 2009/122                             |
| Schedule 7 (partially)  | 1st April 2009              | 2009/122                             |
| Schedule 6, paragraph 11  | 1st April 2010              | 2009/122                             |
| Schedule 7 (partially)  | 1st April 2010              | 2009/122, as amended by SSI 2010/114 |

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