

Draft Order laid before the Scottish Parliament under section 44(3) of the Civic Government (Scotland) Act 1982, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

LICENCES AND LICENSING

**The Civic Government (Scotland) Act 1982
(Licensing of Booking Offices) Order 2009**

Made - - - - 2009
Coming into force - - 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by section 44(1) (b) and (2) of the Civic Government (Scotland) Act 1982⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 44(3) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 and comes into force on the day after the day on which it is made.

(2) In this Order—

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

“relevant premises” means the premises in relation to which a licence has been granted by virtue of article 2; and

“relevant vehicle” means a vehicle in relation to which a taxi licence or private hire car licence has been granted in terms of section 10 of the Act⁽²⁾ and that licence is in effect.

Licensing of booking offices

2.—(1) The activity specified in paragraph (2) is designated as an activity for which a licence under Part I of the Act shall be required, but no such licence shall be required—

(a) in respect of the carrying on of that activity before 16th November 2009; or

(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) Section 10 was amended by the Transport Act 1985 (c. 67), Schedule 7, paragraph 23(5).

(b) where the number of relevant vehicles in respect of which bookings are taken does not at any time exceed 3.

(2) The activity referred to in paragraph (1) is the use of premises for the carrying on of a business which consists to any extent of the taking of bookings, by any means of communication, from members of the public for the hire of a relevant vehicle.

Application of Part I of the Act

3. Part I of the Act shall have effect, subject to the modifications specified in the Schedule, for the purposes of the licensing of the activity designated by article 2.

Transitional provision

4.—(1) A person who on or after 16th November 2009 carries on the activity designated by article 2 without a licence under Part I of the Act shall not be guilty of an offence under section 7(1) of the Act⁽³⁾ if—

- (a) that person made an application to the licensing authority before that date for the grant of a licence under Part I of the Act in respect of the activity being carried on by the person; and
- (b) that application has not yet been finally determined.

(2) For the purposes of paragraph (1)(b), an application is finally determined—

- (a) when it is withdrawn by the applicant;
- (b) when it is refused by the licensing authority and the period of 28 days specified in paragraph 18(4) of Schedule 1 to the Act expires without an appeal against the refusal being made to the sheriff; or
- (c) in a case where an appeal is made against a refusal by the licensing authority, when that appeal is disposed of.

(3) For the purposes of paragraph (2)(c), an appeal is disposed of—

- (a) when it is abandoned by the appellant; or
- (b) when a decision on it is made by the sheriff or a higher court and any period for making a subsequent appeal to a higher court expires without such a subsequent appeal being made.

St Andrew's House,
Edinburgh
2009

Authorised to sign by the Scottish Ministers

(3) Section 7(1) was amended by the Entertainments (Increased Penalties) Act 1990 (c. 20), section 2(1); the reference in section 7(1) to a fine not exceeding £500 became a reference to a fine not exceeding level 4 on the standard scale by virtue of section 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), which section by consolidation became section 225 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

SCHEDULE

Article 3

APPLICATION OF PART I OF THE ACT

1. Part I of the Act shall have effect subject to the modifications in paragraphs 2 to 5 of this Schedule.
2. In section 6 (powers of entry to and search of unlicensed premises)–
 - (a) in subsections (1) and (2), after “constable” in each place insert “(or any authorised officer of the licensing authority)”;
 - (b) in subsection (3)–
 - (i) after “uniform” insert “(and where the person executing the warrant is an authorised officer of a licensing authority, that officer)”;
 - (ii) after “constable” where it second occurs insert “(or such authorised officer of the licensing authority)”;
 - (c) in subsection (4)(4)–
 - (i) after “constable” where it first occurs insert “(or authorised officer of the licensing authority)”;
 - (ii) after “constable” where it second occurs insert “(or such authorised officer)”.
3. In paragraph 5 (disposal of applications for the grant and renewal of licences) of Schedule 1(5)–
 - (a) in sub-paragraph (1)(a), for “unconditionally” substitute “subject to the mandatory conditions specified in sub-paragraph (1A) below”;
 - (b) in sub-paragraph (1)(b), for “conditions” substitute “those mandatory conditions and such conditions as are specified in sub-paragraph (2) below”; and
 - (c) after sub-paragraph (1), insert–

“(1A) The mandatory conditions referred to in sub-paragraph (1)(a) above are–

 - (a) that a record be kept of every booking for the hire of a relevant vehicle taken at the relevant premises;
 - (b) that a record be kept of–
 - (i) the registration number of the vehicle which was hired as the result of a booking taken at the relevant premises; and
 - (ii) the name of its driver at the time of that hire; and
 - (c) that the holder of the licence shall take all reasonable steps to ensure that any booking taken at the relevant premises from a member of the public for the hire of a relevant vehicle results in the hire of a vehicle which is–
 - (i) a relevant vehicle; and
 - (ii) being driven by a person who holds a licence granted under section 13 of the Act(6) and that licence is in effect.”.
4. After paragraph 19 (interpretation) of Schedule 1 insert–

(4) The reference in section 6(4) to a fine not exceeding £200 became a reference to a fine not exceeding level 3 on the standard scale by virtue of section 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), which section by consolidation became section 225 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

(5) Paragraph 5 of Schedule 1 was amended by S.S.I. 2005/383 and S.S.I. 2006/475.

(6) Section 13 was repealed in part by the Roads (Scotland) Act 1984 (c. 54), Schedule 11.

“20. In this Schedule, “relevant premises” and “relevant vehicle” have the same meaning as in the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the use of premises for the carrying on of a business, part of which consists of taking bookings from members of the public for the hire of taxis or private hire cars, as an activity for which a licence is required under the Civic Government (Scotland) Act 1982 (“the Act”) (article 2). The licensing regime does not apply if the number of vehicles for which bookings are taken is less than 4.

The licensing provisions in Part I of the Act (including Schedule 1) will apply to such licences with the modifications set out in the Schedule to the Order—

- (a) granting a power to search unlicensed premises to authorised officers of the licensing authority (paragraph 2);
- (b) attaching certain mandatory conditions to the grant or renewal of licences relating to records of bookings taken (paragraph 3); and
- (c) providing additional definitions in Schedule 1 to the Act (paragraph 5).

The Order requires the designated activity to be licensed from 16th November 2009 but transitional provision is made where an application is made before that date for the grant of an appropriate licence (article 4). In such a case, the activity may be carried on (without a licence) until the licensing authority has made a decision on the licence and, where a decision to refuse an application is then appealed, until that appeal has been disposed of.

A regulatory impact assessment has been prepared in respect of this Order. A copy of it can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh, EH6 6QQ. A copy has also been published on the Scottish Executive web site at www.scotland.gov.uk.