

EXECUTIVE NOTE

THE PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISION) ORDER 2012

SSI 2012/2

1. The above order is made in exercise of the powers conferred by section 41(3) and (4) of the Private Rented Housing (Scotland) Act 2011 (the 2011 Act). The instrument is subject to no procedure

Policy Objectives

2. This Order brings certain provisions of the Private Rented Housing (Scotland) Act 2011 into force. The purpose of the 2011 Act is to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector. This involves changes to the operation of the systems of registration of private landlords and licensing of houses in multiple occupation. The Act also includes provisions intended to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime.

Houses in Multiple Occupation (HMO) Provisions

3. The bulk of the provisions related to HMO licensing were commenced on 31 August 2011, to coincide with the implementation of the regime under Part 5 of the Housing (Scotland) Act 2006. This Order commences the remaining HMO provisions.

4. Section 13(2) inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable given the circumstances.

5. Section 13(4) and (5) also insert new section 131A into Part 5 of the 2006 Act to give a local authority the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of the licence could result in, overprovision of HMOs in a locality. It is for the local authority to determine the locality. In considering refusal, the authority must have regard to whether there is an existing HMO licence and any views submitted by the applicant and any occupants.

6. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality.

Premiums Provisions

7. Section 32 of the 2011 Act clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. This order commences section 32(2) for the purposes of allowing Ministers to consult and lay regulations. The Scottish Government intends to consult on proposed regulations with the aim of regulations coming into effect in Autumn 2012.

Overcrowding Statutory Notice Provisions

8. Section 17, 19 and 29 of the 2011 Act relate to Overcrowding Statutory Notices and are commenced for the purposes of allowing Ministers to consult, make orders and issue guidance. The intention is to undertake preparatory work so that the provisions can be brought fully into force early in 2013, strengthening local authority powers to deal with overcrowding in the private rented sector.

Consultation

9. There has been no formal consultation on the Commencement Order, though consultation on the proposals when the Bill was before Parliament attracted broad support. In respect of the HMO overprovision material, which was a Stage 3 amendment and not consulted on, there has been engagement with local authorities about commencement.

Impact Assessments

10. The finalised EQIA for the 2011 Act is available on the Scottish Government website at <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIADetails/Q/Type/10/Id/533> Most respondents to the consultation on the draft EQIA did not believe it would impact adversely on particular groups, with many respondents suggesting that it would help protect tenants and could improve the experience of relevant communities. The Scottish Government shares that view.

Financial Effects

11. There are no direct financial effects as a result of the Commencement Order. Further regulations may produce effects, which will be fully considered as these are developed.

12. The finalised Regulatory Impact Assessment for the 2011 Act is available on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2011/04/Impactassessment>

Scottish Government
Housing Regeneration Commonwealth Games Directorate

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