POLICY NOTE

THE FIRE (SCOTLAND) ACT 2005 (RELEVANT PREMISES) REGULATIONS 2012

SSI 2012/XXX

The above instrument was made in exercise of the powers conferred by sections 58, 78(8) and 88(2) of the Fire (Scotland) Act 2005. The instrument is subject to affirmative procedure.

Policy Objectives

The main policy objective is to ensure the safety in the event of fire, of children in the care of childminders. This is achieved by amending section 78 of the Fire (Scotland) Act 2005 to clarify that premises used for the provision of a registered childminding service are subject to fire safety obligations imposed by the 2005 Act. Childminding services are subject to registration as part of the Public Services Reform (Scotland) Act 2010. The 2005 Act applies to most premises other than dwellings, mainly those premises used or operated by employers, the self-employed and the voluntary sector.

To ensure that legislative burdens are proportionate to the scale and risk of the operation, similar to other types of small scale business, certain provisions of the Fire Safety (Scotland) Regulations 2006 are disapplied in respect of small scale childminders. The effect is that these childminders are not obliged to record certain information, engage safety assistance or provide information to outside employers.

Another objective is to make a minor technical amendment to clarify the application of the fire safety regime to some Houses in Multiple Occupation (HMOs). Part 5 of the Housing (Scotland) Act 2006 (commenced in August 2011) updated the definition of an HMO to refer separately to "houses" and "living accommodation which forms part of premises". As the fire safety legislation refers to "houses" which require an HMO licence it could, following the updating, be misinterpreted as referring only to that part of the definition in the 2006 Act rather than to all HMOs. That was not intended and would not be desirable. This instrument aligns the description of House in Multiple Occupation in the 2005 Act with that in the Housing (Scotland) Act 2006.

Background

The fire safety regime in Part 3 of the 2005 Act, introduced in 2006, was considered to apply fire safety obligations in respect of premises used for childminding. The need for clarification has arisen as a result of interpretation differences that subsequently arose in the opinion of the various bodies involved and their legal advisers. Concerns were raised by stakeholders, in particular the Fire and Rescue Services and the Care Inspectorate. They requested that Scottish Government provide clarity on the application of fire safety legislation to premises used for childminding.

Consultation

The proposal to clarify the position in respect of premises used for childminding was included in a 12 week public consultation which was carried out from 29 November 2011 to 22nd February 2012. The stakeholders who responded included representatives from the Fire

and Rescue Services, employee representatives, Local Authorities and the Care and Business sectors. The majority of consultees agreed that it should be clarified that premises used for childminding are 'relevant premises'(to which fire safety duties apply), this included the association that represents childminders.

Prior to publication of the consultation report we met key stakeholders to outline and explain our intentions, and respond to any concerns. We also liaised with the Scottish Childminders Association whose main concern is that if childminders premises are not defined as domestic premises for the purpose of fire safety legislation, this should have no implications to anything else concerning childminders such as business rates. The exclusion introduced is not designed to define childminders premises as non-domestic in a general sense, rather it is only to ensure clarity for the purpose of fire safety in the premises.

The consultation report which includes a summary and analysis of responses and the Government's proposed response to the consultation was placed on the Scottish Government website in June 2012.

Impact Assessments

Given the technical nature of these Regulations, a Business and Regulatory impact assessment was not carried out nor a Strategic Environmental assessment. The changes introduced by the instrument are intended only to clarify existing provisions. An Equality Impact Assessment was carried out. There are no equality issues arising from this amending regulations.

Financial Effects

As regards childminding, the impact on the Fire and Rescue Services, Local Authorities and care service providers is expected to be minimal or nil. This is because the majority of childminders already comply with fire safety requirements.

As regards HMOs, there should also be no financial effects. The Regulations simply ensure that the fire safety regime continues to apply to all premises that require an HMO licence

Scottish Government
Safer Communities Directorate

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