

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

LICENCES AND LICENSING

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024

Made - - - - 2024
Coming into force - - 2024

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3A(1), 44(1)(b), 44(2)(a), (b), (c) and (d), and 136(2) of the Civic Government (Scotland) Act 1982(1) and all other powers enabling them to do so.

In accordance with sections 3A(3) and 44(3) of that Act, a draft of this instrument 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 Short-term Lets) Amendment Order 2024 and comes into force on the day after the day on which it is made.

(2) In this Order—

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

“the Order” means the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022(2).

Amendment of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

2.—(1) The Order is amended as follows.

(2) Article 2 (interpretation) is amended as follows—

(1) 1982 c. 45. The functions conferred upon the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Section 3A was inserted by section 172(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13). The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) S.S.I. 2022/32.

- (a) in paragraph (1)—
 - (i) in the definition of “commercial consideration”, for “provision of a service, or” substitute “the”, and
 - (ii) after the definition of “excluded tenancy” insert—
 - ““foster child” has the same meaning as in section 1 of the Foster Children (Scotland) Act 1984(3) as read with section 2 of that Act,”
 - (b) in paragraph (4)(d), after “stepchild” insert “or foster child”.
- (3) After Article 4(3) (designation of activity), insert—
- “(4) Where a short-term let licence application is submitted in respect of multiple accommodation on a single premises, the licensing authority may grant the licence in respect of some or all of that accommodation.”.
- (4) Paragraph 1 of schedule 1 (excluded accommodation and tenancies) is amended as follows—
- (a) for sub-paragraph (e), substitute—
 - “(e) residential accommodation where personal care is provided to residents, including guest rooms provided at that accommodation for the purposes of visiting residents,”
 - (b) for sub-paragraph (f), substitute—
 - “(f) a hospital or nursing home, including guest rooms provided at the hospital or nursing home for the purposes of visiting residents of the hospital or nursing home,”
 - (c) after sub-paragraph (n), “or” is revoked,
 - (d) after sub-paragraph (o), insert—
 - “or,
 - (p) guest rooms in sheltered housing which are provided for the purposes of visiting residents of that housing.”.
- (5) Paragraph 3(1) of schedule 1 (interpretation) is amended as follows—
- (a) after the definition of “serviced apartment” insert—
 - ““sheltered housing” means accommodation—
 - (a) which is purpose built or designed to accommodate vulnerable adults,
 - (b) which enables those vulnerable adults to live independently, and
 - (c) where assistance or support is provided for those vulnerable adults,”
 - (b) after the definition of “student accommodation” insert—
 - ““vulnerable adult” has the same meaning as in section 25 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(4).”.
- (6) In paragraph 6 of schedule 2 (temporary exemption from the requirement to have a licence), in the inserted paragraph 1A of schedule 1 of the 1982 Act, for sub-paragraph (1) insert—

(3) 1984 c. 56. Section 1 was amended by paragraph 41 of schedule 12 of the Children Act 1989 (c. 41) (“the 1989 Act”). Section 2 was amended by paragraph 42 of schedule 12 of the 1989 Act; paragraph 35 of schedule 4, and by schedule 5, of the Children (Scotland) Act 1995 (c. 36); paragraph 12 of schedule 3 of the Regulation of Care (Scotland) Act 2001 (asp 8); paragraph 16 of schedule 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modifications of Enactments) Order 2005 (S.S.I. 2005/465); paragraph 3 of schedule 2, and by schedule 3, of the Adoption and Children (Scotland) Act 2007 (asp 4); paragraph 36 of schedule 2 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13); and paragraph 5 of schedule 1 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211).

(4) 2016 asp 22.

“(1) Subject to sub-paragraph (1A), a licensing authority may, on application made to it, grant a temporary exemption from the requirement to obtain a short-term let licence in relation to a specified property or properties.

(1A) A temporary exemption from the requirement to obtain a short-term let licence may only be granted in relation to a specified property or properties if, in one calendar year—

- (a) there are no more than three separate periods of temporary exemption for that property or those properties, and
- (b) the total period of temporary exemption for that property or those properties (whether one, two or three periods of exemption are granted) is 6 weeks or less.”.

(7) After paragraph 9 of schedule 2 (grant and renewal of licences), insert—

“Provisional licences

9A. After paragraph 7, insert—

“Provisional Short-term Let Licences

7A.—(1) A short-term let licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed for use as a short-term let.

(2) A short-term let licence application in respect of any such premises is referred to in this paragraph and paragraph 7B as a “provisional short-term let licence application”.

(3) A short-term let licence issued in respect of any such premises and which has not been confirmed in accordance with paragraph 7B is referred to in this paragraph and paragraph 7B as a “provisional short-term let licence”.

(4) A provisional short-term let licence is of no effect unless and until it is confirmed by the licensing authority which issued it in accordance with paragraph 7B.

(5) A provisional short-term let licence application must be accompanied by a provisional planning certificate in respect of the premises.

(6) A provisional short-term let licence is treated as revoked if it is not confirmed within 3 years after the date on which it was issued.

(7) On the application of the holder of a provisional short-term let licence, the licensing authority which issued the licence may, where sub-paragraph (8) applies, extend the period mentioned in sub-paragraph (6) by such period as that authority considers appropriate.

(8) This sub-paragraph applies where the licensing authority is satisfied that—

- (a) completion of the construction of the premises to which the licence relates has been delayed, and
- (b) the delay has been caused by factors outwith the provisional short-term let licence holder’s control.

(9) A provisional planning certificate is a certificate signed on behalf of the appropriate authority and stating—

- (a) that planning permission, planning permission in principle or outline planning permission under the Town and Country Planning (Scotland) Act 1997 has been obtained in respect of the construction of the premises, or
- (b) that no such planning permission is required.

(10) In this paragraph, “construct” has the same meaning as it has for the purposes of section 56 of the Building (Scotland) Act 2003(5).

Confirmation of provisional short-term let licence

7B.—(1) The holder of a provisional short-term let licence may apply to the licensing authority which issued the provisional licence for confirmation of the licence.

(2) An application under sub-paragraph (1) must be accompanied by—

- (a) the provisional short-term let licence,
- (b) if the provisional planning certificate which accompanied the provisional premises licence application in respect of the premises consisted of outline planning permission or planning permission in principle, a planning certificate,
- (c) a building standards certificate, and
- (d) such other information as the licensing authority may reasonably require.

(3) Where a licensing authority receives an application under sub-paragraph (1), the authority must, where sub-paragraph (4) applies, confirm the licence.

(4) This sub-paragraph applies where the licensing authority is satisfied that, following the construction of the premises, the applicant would be able to secure compliance with—

- (a) the mandatory licence conditions, and
- (b) the standard conditions and any further conditions under paragraph 5(1A) (b) to which the licence is to be subject.

(5) A “planning certificate” is a certificate signed on behalf of the appropriate authority and stating—

- (a) that planning permission under the Town and Country Planning (Scotland) Act 1997 in respect of any development of the subject premises in connection with their proposed use as a short-term let has been obtained, or
- (b) that no such planning permission is required.

(6) A “building standards certificate” is a certificate signed on behalf of the appropriate authority and stating—

- (a) that a completion certificate has been accepted under section 18 of the 2003 Act in respect of any construction of the subject premises in connection with their proposed use as a short-term let,
- (b) that permission for the temporary occupation or use of the premises has been granted under section 21(3) of the 2003 Act, or
- (c) that no such completion certificate or permission is required.

(7) In this paragraph—

“the 2003 Act” means the Building (Scotland) Act 2003,

“appropriate authority” means—

- (a) in relation to a planning certificate or provisional planning certificate, the planning authority (within the meaning of the Town and Country

Planning (Scotland) Act 1997) for the area in which the subject premises are situated,

- (b) in relation to a building standards certificate, the local authority for that area.””

(8) After paragraph 10 of schedule 2, insert—

“Transfer of short-term let licence

10A. After paragraph 9, insert—

“Transfer on application of licence holder

9A.—(1) A short-term let licence holder may apply to the appropriate licensing authority for the transfer of the licence to such person as is specified in the application.

(2) In this paragraph—

- (a) an application under sub-paragraph (1) is referred to as a “transfer application”, and
- (b) the person to whom the licence is to be transferred under a transfer application is referred to as the “transferee”.

(3) A transfer application must be accompanied by—

- (a) the short-term let licence to which the application relates or, if that is not possible, a statement of the reasons for failure to produce the licence,
- (b) where the applicant is not the owner of the premises or the land on which the premises are located—
 - (i) the name and address of the owner (or, as the case may be, each owner), and
 - (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application,

(c) where the applicant shares ownership of the premises or the land on which the premises are located—

- (i) the name and address of each other owner, and
- (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application,

(d) where the short-term let licence is held in joint names—

- (i) the name and address of each licence holder, and
- (ii) a declaration from each licence holder, or a person authorised to act on their behalf, that they consent to the application,

(e) such other information as the licensing authority may reasonably require.

(4) Where a licensing authority receives a transfer application, the licensing authority must give notice of it, together with a copy of the application, to the chief constable.

(5) The chief constable may, within 28 days of the date of receipt of a notice under sub-paragraph (4), make objections or representations to the licensing authority in relation to the transfer application.

(6) Paragraph 3 applies to any objection or representation made by the chief constable under sub-paragraph (5) as it applies to an objection or representation relating to an application for the grant or renewal of a licence but as if—

- (a) in paragraph 3(1), head (e) was repealed, and
- (b) in paragraph 3(2), “Notwithstanding sub-paragraph (1)(e) above,” were repealed.

(7) Where the chief constable does not make any objection or representation under sub-paragraph (5), the licensing authority must grant the transfer application.

(8) Where the chief constable makes an objection or representation under sub-paragraph (5), paragraphs 4 and 5 apply to the transfer application—

- (a) as those paragraphs apply to an application for the grant or renewal of a licence, and
- (b) subject to the modifications in sub-paragraph (9).

(9) Paragraph 5 applies to a transfer application as if—

- (a) in paragraph 5(1), for heads (a) and (c) there were substituted “grant or refuse to grant the transfer application”.
- (b) in paragraph 5(1A) for “In granting or renewing a licence under sub-paragraph (1)(a)” there were substituted “In granting or refusing to grant a transfer application under sub-paragraph (1)”.
- (c) in paragraph 5(1A)(a), after “licence” insert “which is the subject of the transfer application”.
- (d) for paragraph 5(2), (2A) and (2ZA) there were substituted “(2) The conditions referred to in sub-paragraph (1A)(b) are such reasonable conditions as the licensing authority think fit.”.
- (e) in paragraph 5(3)(a) and (b), references to the “applicant” were references to the transferee,
- (f) paragraph 5(3)(c), (4) and (5)(c) and (d) were repealed,
- (g) in paragraph 5(7) for “granted” there were substituted “transferred”, and
- (h) paragraph 5(8) were repealed.”

(9) In paragraph 12 of schedule 3 (information to be displayed), after sub-paragraph (f) insert—

- “(g) instructions as to what guests should do in the event that the carbon monoxide alarm sounds,
- (h) if there is a mobile gas cabinet heater in the premises, safety instructions as to the operation and movement of that mobile heater.”.

Amendment of Housing (Scotland) Act 2006

3. In section 12(1) of the Housing (Scotland) Act 2006(6), paragraph (f) is repealed.

Transitional provision

4.—(1) Article 2(3) applies only to an application for a short-term let licence made on or after the day on which this Order comes into force.

(6) 2006 asp 1. Section 12(1)(f) was amended by paragraph 2 of schedule 4 of the Order.

(2) Article 2(6) applies only to an application for a temporary exemption made under paragraph 1A of schedule 1 of the 1982 Act (as inserted by paragraph 6 of schedule 2 of the Order) on or after the day on which this Order comes into force.

(3) In relation to an application for a temporary exemption made on or after the day on which this Order comes into force, no account is to be taken of any period or periods of temporary exemption prior to the day on which this Order comes into force, for the purposes of determining—

- (a) the number of periods of temporary exemption granted in one calendar year for that property or those properties under paragraph 6(1A)(a) of schedule 1 of the 1982 Act (as inserted by article 2(6)), and
- (b) whether the total period of temporary exemption for that property or those properties in one calendar year is 6 weeks or less under paragraph 6(1A)(b) of schedule 1 of the 1982 Act (as inserted by article 2(6)).

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the 2022 Order”) introduced a licensing regime for the short-term let of residential accommodation. This Order amends the 2022 Order which in turn modifies the Civic Government (Scotland) Act 1982. This ensures that the short-term let licensing regime is contained wholly within the 2022 Order.

Article 2(2)(a) amends the definition of commercial consideration to remove the provision of a service as a form of commercial consideration.

Article 2(2)(b) amends the definition of “excluded tenancy” at sub-paragraph (1) to provide that a person’s foster child is treated as the person’s child. A foster child is therefore classed as an immediate family member of the host for the purposes of the definition of “short-term let” in article 3 of the 2022 Order and not a guest in a short-term let.

Article 2(3) amends article 4 of the 2022 Order to give a licensing authority a discretion, where a short-term let licence application is made in respect of multiple accommodation situated on a single premises, to grant the licence in respect of some or all of that accommodation.

Article 2(4) amends paragraph 1 of schedule 1 of the 2022 Order to ensure that guest rooms provided in residential accommodation where personal care is provided, guest rooms in hospitals, guest rooms in nursing homes and guest rooms in sheltered housing are all classed as excluded accommodation for the purposes of the short-term let licensing regime.

Article 2(5) provides definitions of sheltered housing and vulnerable adult for the purposes of the amendments made in article 2(4).

Article 2(6) amends paragraph 6 of schedule 2 of the 2022 Order (which in turn modifies schedule 1 of the 1982 Act) to clarify that a temporary exemption from the need to obtain a short-term let licence may be granted for no more than three separate periods which amount in total to no more than 6 weeks in one calendar year.

Article 2(7) inserts new provision after paragraph 9 of schedule 2 of the 2022 Order (and in turn inserts paragraphs 7A and 7B into schedule 1 of the 1982 Act). New paragraph 7A introduces a procedure whereby an application can be made to a licensing authority for a provisional short-term let licence in relation to premises which have yet to be, or are in the course of being, constructed. The provisional short-term let licence application is processed in the same manner as a short-term let licence application but where a provisional licence is granted, it is of no effect until it has been confirmed by the licensing authority. A provisional short-term let licence is revoked if it is not confirmed within 3 years of being granted, unless that period is extended by the licensing authority.

Article 2(8) inserts new provision after paragraph 10 of schedule 2 of the 2022 Order (and in turn inserts paragraph 9A into schedule 1 of the 1982 Act). New paragraph 9A introduces a procedure whereby a short-term let licence holder can apply to the licensing authority to transfer the licence into the name of a third party (the transferee).

Article 2(9) amends paragraph 12 of schedule 3 of the 2022 Order. Schedule 3 of the 2022 Order specifies mandatory conditions for short-term let licences and paragraph 12 of schedule 13 specifies information which must be displayed in the premises. Article 2(9) provides that information about action to be taken when the carbon monoxide alarm sounds and information about the operation and movement of mobile gas cabinet heaters must be displayed in the premises.

Article 3 amends section 12(1) of the Housing (Scotland) Act 2006 to make it clearer that the repairing standard in Part 1 of that Act applies to short-term lets. The repairing standard applies to any tenancy of a house let for human habitation and a short-term let is defined as a tenancy under section 12(3) (as inserted by the 2022 Order).

Article 4 makes transitional provision in relation to article 2(3) and (6). Article 4(1) provides that the licensing authority's power to grant one licence for multiple accommodation on a single premises applies only to an application made on or after the day on which this Order comes into force. Article 4(2) provides that the new rule on temporary exemption applies only to an application for a temporary exemption made on or after the day on which this Order comes into force. Article 4(3) provides that periods of temporary exemption prior to the day on which this Order comes into force are not to be taken into account for the purposes of determining whether the temporary exemption applied for would breach the rules that there must be no more than three separate periods of exemption within one calendar year and there must be no more than 6 weeks of temporary exemption within one calendar year.