

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

2021 No.

LICENCES AND LICENSING

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021

Made - - - - *2021*
Coming into force - - *1st April 2021*

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

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

Citation and commencement

1. This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 and comes into force on 1 April 2021.

Interpretation

2.—(1) In this Order—

“commercial consideration” includes—

- (a) money,
- (b) a benefit in kind (such as provision of a service, or reciprocal use of accommodation),

“excluded accommodation” means accommodation described in schedule 1,

“guest” means a person occupying accommodation for the purposes of a short-term let,

“short-term let licence” means a licence for the activity designated by article 3,

“unique licence number” means a unique number which—

- (a) is assigned to each application or licence, and

(a) 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).

(b) 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.

(c) Section 44(3) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

- (b) contains a number or letters which—
 - (i) identifies the licensing authority, and
 - (ii) is used in every licence number used by the licensing authority,“the 1982 Act” means the Civic Government (Scotland) Act 1982(a), and
“the 1997 Order” means the Town and Country Planning (Use Classes) (Scotland) Order 1997(b).

(2) In this Order, “short-term let” means the grant of an agreement in the course of business for the use of residential accommodation (or a part of the accommodation) by a guest, where all of the following criteria are met—

- (a) the guest does not occupy the accommodation as the guest’s only or principal home,
- (b) the agreement is entered into for commercial consideration,
- (c) the guest is not—
 - (i) an immediate family member of a person granting the agreement,
 - (ii) sharing the accommodation with a person granting the agreement for the principal purpose of facilitating the provision of work or services by the guest to that person or other members of the household, or
 - (iii) sharing the accommodation with a person granting the agreement for the principal purpose of advancing the guest’s education, as part of an arrangement made or approved by a school, college, or further or higher educational institution,
- (d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the person who is granting the agreement or to another member of that person’s household, and
- (e) the accommodation is not excluded accommodation (see schedule 1).

(3) A private residential tenancy within the meaning of Part 1 of the Private Housing (Tenancies) (Scotland) Act 2016(c) is not a short-term let.

(4) For the purposes of this article, a person (“A”) is an immediate family member of another person (“B”) if A is—

- (a) in a qualifying relationship with B,
- (b) a qualifying relative of B,
- (c) a qualifying relative of a person who is in a qualifying relationship with B, or
- (d) in a qualifying relationship with a qualifying relative of B.

(5) For the purposes of paragraph (4)—

- (a) two people are in a qualifying relationship with one another if they are—
 - (i) married to each other,
 - (ii) in a civil partnership with each other, or
 - (iii) living together as though they were married,
- (b) “a qualifying relative” means a parent, grandparent, child, grandchild or sibling,
- (c) two people are to be regarded as siblings if they have at least one parent in common,
- (d) a person’s stepchild is to be regarded as the person’s child,
- (e) a person (“C”) is to be regarded as the child of another person (“D”), if C is being or has been treated by D as D’s child.

(6) Schedule 1 has effect.

(a) 1982 c.45.
(b) S.I. 1997/3061.
(c) 2016 asp 19.

Designation of activity

3.—(1) The activity specified in paragraph (2) is designated as an activity for which a licence under Part 1 of the 1982 Act is required.

(2) The activity referred to in paragraph (1) is the use of accommodation for a short-term let on or after 1 April 2022.

(3) The use of separately bookable accommodation for a short-term let is a single activity, provided that—

- (a) all the accommodation is located on a single site,
- (b) the accommodation has shared facilities (such as toilets, washing facilities or kitchens), and
- (c) the accommodation is not, or does not form part of, a house or a flat.

Application of Part I of the 1982 Act

4. Part I of the 1982 Act has effect, subject to the modifications specified in schedule 2, for the purposes of the licensing of the activity designated by article 3.

Mandatory licence conditions

5. A short-term let licence granted by a licensing authority is subject to the conditions specified in schedule 3.

Transitional provision

6.—(1) A person who carries on the activity designated by article 3 without a licence under Part I of the 1982 Act, does not commit an offence under section 7(1) of that Act if—

- (a) that person carried on the activity before 1 April 2022,
- (b) before 1 April 2023, that person makes an application to the licensing authority for the grant of a licence under Part I of that Act in respect of the activity being carried on by the person, and
- (c) that application has not yet been finally determined.

(2) Where a licensing authority determines an application by a person mentioned in paragraph (1), section 3 of the 1982 Act(a) is to be read as if—

- (a) for subsection (1), there were substituted—

“(1) For the purpose of the discharge of their functions under this Part of this Act, every licensing authority must, subject to the following provisions of this section, reach a final decision on the application within the period of 12 months beginning on the day on which the application was made.”,

- (b) in subsection (2), for “6 month” there were substituted “12 month”, and
- (c) in subsection (4)(a), for “6 month” there were substituted “12 month”.

(3) For the purpose of paragraph (1)(c), an application is finally determined when—

- (a) the application is granted,
- (b) it is withdrawn by the applicant, or
- (c) it is refused by the licensing authority and the period of 28 days specified in paragraph 18(4) of schedule 1 of the 1982 Act expires without an appeal against the refusal being made to the sheriff, or

(a) Section 3 was amended by section 172(2) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and section 77(2) of the Air Weapons and Licensing (Scotland) Act 2015 (asp 10).

- (d) in a case where an appeal is made against a refusal by a licensing authority, that appeal is disposed of.
- (4) For the purposes of paragraph (3)(d), an appeal is disposed of when—
 - (a) it is abandoned by the appellant, or
 - (b) a decision in 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.

Consequential amendments

7. Schedule 4 has effect.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

Excluded accommodation

Excluded accommodation

1. Excluded accommodation means accommodation which is, or is part of—
- (a) a hotel,
 - (b) an aparthotel,
 - (c) a boarding house,
 - (d) a guest house,
 - (e) a premises which holds a premises licence under the Licensing (Scotland) Act 2005^(a) where accommodation is an approved activity (as defined in the 2005 Act),
 - (f) a hostel,
 - (g) residential accommodation where care is provided to people in need of care,
 - (h) a hospital or nursing home,
 - (i) a residential school, college or training centre,
 - (j) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks),
 - (k) a refuge,
 - (l) student accommodation,
 - (m) accommodation which otherwise requires a licence for use for hire for overnight stays,
 - (n) accommodation which is provided by the guest,
 - (o) accommodation which is not static,
 - (p) accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

Interpretation

- 2.—(1) In this schedule—

“aparthotel” means a residential building containing serviced apartments where—

- (a) the whole building is owned by the same person,
- (b) a minimum number of 5 serviced apartments are managed and operated as a single business,
- (c) the building has a shared entrance for the serviced apartments, and
- (d) the serviced apartments do not share an entrance with any other flat or unit within the building,

“hostel” means a building in which is provided for persons generally or for any class or classes of persons—

- (a) residential accommodation (otherwise than in houses), and
- (b) either or both—
 - (i) board,

(a) 2005 asp 16.

(ii) common facilities for the preparation of adequate food for the needs of those persons,

“serviced apartment” means a flat or residential unit in respect of which—

- (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry), and
- (b) there is a management regime in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units,

“static” means not capable, without modification, of transporting guests to another location,

“student accommodation” means residential accommodation which has been built or converted solely for the purpose of being provided to students.

(2) In paragraph 1(m), “licence” does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006(a).

(a) 2006 asp 1.

SCHEDULE 2

Article 4

Application of Part 1 of the 1982 Act

Modification of section 5 - warrants authorising entry

1. After section 5 (rights of entry and inspection), insert—

“Warrants authorising entry

5A.—(1) A sheriff or a justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 5(1) to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—

- (a) that there are reasonable grounds for the exercise of the right in relation to the premises concerned, and
- (b) that—
 - (i) the exercise of the right in relation to the premises has been refused,
 - (ii) such a refusal is reasonably expected,
 - (iii) the land is, or premises are, unoccupied,
 - (iv) the occupier is temporarily absent,
 - (v) the case is one of urgency, or
 - (vi) that an application for admission would defeat the object of the proposed entry.

(3) A sheriff or justice may not be satisfied that a condition specified in any of heads (ii) to (iv) of subsection (2)(b) is met unless the sheriff or justice is also satisfied that notice of intention to apply for a warrant has been given to the occupier of the premises concerned.

(4) The reference to the occupier in subsection (3) is to be read as including the applicant or licence holder, as the case may be, any known agent of the applicant or licence holder, and a person for the time being in charge of any premises.”.

Modification of paragraph 1 of schedule 1 – applications

2. In paragraph 1 of schedule 1—

- (a) in sub-paragraph (2)(b), after “address” at both places it occurs insert “, any other address held within the previous 5 years, e-mail address, telephone number”,
- (b) in sub-paragraph (2)(d), omit “and”,
- (c) after sub-paragraph (2)(d), insert—
 - “(da) where the applicant is not the sole owner, or the owner, of the premises, the name and address of each owner and—
 - (i) a declaration from each other owner, or each owner, that he or she consents to the application, or
 - (ii) a declaration from a person who is authorised to act on behalf of all the owners,
 - (db) the number of bedrooms in the premises,
 - (dc) details of any other short-term let licence granted to the applicant, and”.

Temporary exemption from the requirement to have a licence

3. After paragraph 1 of schedule 1 insert—

“**1A.**—(1) A licensing authority may, on application made to them, exempt the use of premises requiring a licence from the requirement to have such a licence—

- (a) in respect of any particular occasion, or
- (b) during a specified period not exceeding 6 weeks in any period of 12 months.

(2) The licensing authority may attach conditions to an exemption granted under sub-paragraph (1), and the provisions of Part I of this Act relating to the attaching of conditions to licences apply to the attaching of conditions to exemptions under this subsection.

(3) A licensing authority may elect not to grant exemptions under sub-paragraph (1) for—

- (a) any premises, or
- (b) for a class or classes of premises.”.

Modification of paragraph 2 of schedule 1 – publicity

4. In paragraph 2 of schedule 1—

(a) after sub-paragraph (1), insert—

“(1A) A licensing authority shall, as soon as is reasonably practicable after an application for the grant or renewal of a short-term let licence is made to them, issue a unique licence number to the applicant which may be used as a temporary licence number.”,

(b) for sub-paragraph (2), substitute—

“(2) A licensing authority must, as soon as is reasonably practicable after a relevant application is made to them, give notice in accordance with this paragraph that an application has been made.

(2A) Notice under sub-paragraph (2) is to be given—

- (a) either by sending a notice—
 - (i) addressed to “the Owner, Lessee or Occupier” to premises situated on neighbouring land, and
 - (ii) to such other persons as the licensing authority thinks fit, or
- (b) by displaying a notice in accordance with sub-paragraph (2B).

(2B) Where this sub-paragraph applies, the licensing authority must, for a period of 21 days, display a notice complying with sub-paragraph (3) at or near the premises so that it can conveniently be read by the public.

(2C) A licensing authority may elect to—

- (a) combine a notice in accordance with sub-paragraph (2A) with a planning notice,
- (b) not give notice in accordance with sub-paragraph (2A) where it has given or published a planning notice.”,

(c) for sub-paragraph (3), substitute—

“(3) A notice required by sub-paragraph (2A) must state—

- (a) that an application has been made for a licence,
- (b) the particulars required under paragraph 1(2) to be specified in the application (other than the date and place of birth, previous addresses, email address and phone number of any person),
- (c) that objections and representations in relation to the application may be made to the licensing authority in accordance with paragraph 3,
- (d) the effect of paragraph 3(1) to (3).”.

- (d) where it occurs in each of sub-paragraphs (4) and (5) for “sub-paragraph (2)” substitute “sub-paragraph (2A)”,
- (e) at both places where it occurs in sub-paragraph (6), for “sub-paragraph (2)” substitute “sub-paragraph (2A)”,
- (f) in sub-paragraph (7)(b), for “sub-paragraph (2)” substitute “sub-paragraph (2A)”, and
- (g) after sub-paragraph (9), insert—

“(10) In this paragraph—

“planning notice” means a notice published in accordance with regulation 18, or published in accordance with regulation 20, of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(a) in connection with an application for planning permission for the use of the premises for short-term lets,

“relevant application” means an application—

- (a) for the grant of a licence,
- (b) for renewal of a licence where there has been a material change since the grant, or
- (c) an application for consent under paragraph 9(2).”.

Modification relating to preliminary refusal

- 5. After paragraph 2 of schedule 1, insert—

“Preliminary refusal: breach of planning control

2A.—(1) The licensing authority may, within 21 days of an application for a licence, refuse to consider the application if it considers that use of the premises for short-term lets would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) by virtue of section 123(a) or (b) of that Act.

(2) The licensing authority must, within 7 days of deciding to refuse to consider an application for a short-term let licence, serve notice of its decision on—

- (a) the applicant,
- (b) the enforcing authority, and
- (c) the chief constable.

(3) The notice must—

- (a) give the licensing authority’s reason for refusing to consider the application, and
- (b) inform the applicant of the effect of subsection (4).

(4) No fee may be charged in respect of a further application for a licence in relation to the premises concerned made within 28 days of the applicant subsequently obtaining—

- (a) planning permission under Part 3 of the 1997 Act, or
- (b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,

in respect of the use of the premises for short-term lets.

(5) For the purposes of this paragraph, a refusal to consider an application under sub-paragraph (1) is not to be treated as a refusal to grant a licence under paragraph 5.”.

(a) S.S.1. 2013/155.

Modification of paragraph 5 of schedule 1 - the grant and renewal of licences

6. In paragraph 5 (disposal of applications for the grant and renewal of licences) of schedule 1—
- (a) after sub-paragraph (2A), insert—

“(2B) The conditions referred to in sub-paragraph (1A)(b) must not relate to any limit of the number of nights per year for which premises may be used for secondary letting.”,
 - (b) after sub-paragraph (3)(c), insert—

“(ca) the applicant would not be able to secure compliance with—

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

(cb) the application does not contain the information required under paragraph 1(2)(da) (the consent of each owner), or”, and
 - (c) after sub-paragraph (3), insert—

“(3A) A licensing authority may refuse an application for a licence for secondary letting if it considers that there is (or, as a result of granting the licence, would be) overprovision of short-term lets, or a specific type of short-term let of the same type as that to which the application relates, in the locality in which the premises is situated.

(3B) It is for the licensing authority to determine the localities within its area for the purpose of sub-paragraph (3A).

(3C) In considering whether there is or would be overprovision for the purposes of sub-paragraph (3A) in any locality, the licensing authority must have regard to—

 - (a) the number and capacity of licensed short-term lets in the locality, and
 - (b) the need for housing accommodation in the locality and the extent to which short-term let accommodation is required to meet that need, and
 - (c) such other matters as they consider relevant.”.

Modification of paragraph 8 of schedule 1 - duration of licences

- 7.—(1) In paragraph 8 (duration of licences) of schedule 1—
- (a) in sub-paragraph (2)(a), omit “or”,
 - (b) in sub-paragraph (2)(b), for “.” substitute “, or”,
 - (c) after sub-paragraph (2)(b), insert—

“(c) for such longer period as the licensing authority may decide at the time when they renew a short-term let licence.”.
- (2) After paragraph 8(2), insert—
- “(2A) A licensing authority may decide to renew a licence for such longer period under sub-paragraph (2)(c)—
- (a) in respect of different licences, or different types of licence,
 - (b) otherwise for different purposes, circumstances or cases.
- (2B) A licensing authority must publish, in such manner as they think appropriate, the circumstances (if any) in which they will renew a licence for such longer period under sub-paragraph (2)(c).”.

Enforcement

8. After paragraph 10 (variation of licences) of schedule 1, insert—

“Power to require rectification of breach of licence

10A.—(1) This article applies where a licensing authority considers that any condition included in a licence has been, or is likely to be, breached (regardless of whether the licensing authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach).

(2) Where this article applies, a licensing authority may serve notice (an “enforcement notice”) on a holder of a licence.

(3) An enforcement notice must specify—

- (a) the matters constituting the breach or likely breach,
- (b) the action to be taken by the licence holder which the licensing authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach,
- (c) the date by which the action must be taken.

(4) A condition of an enforcement notice is deemed to be a condition of a licence.

(5) A licensing authority may serve an enforcement notice on a licence holder requiring the rectification of any issues identified as being in breach of the conditions attached to the licence.”.

Modification of paragraph 13 of schedule 1 - simplified process following surrender

9. In paragraph 13 (surrender of licence) of schedule 1, after sub-paragraph (4) insert—

“(5) Where a holder of a licence has surrendered a licence under sub-paragraph (1), the licensing authority may grant an equivalent licence to the person who surrendered the licence if it receives an application within 12 months of the date of the surrender.

(6) A licensing authority may exercise the power in sub-paragraph (5) notwithstanding that it has not complied with the following paragraphs—

- (a) paragraph 1 (applications for the grant and renewal of licences), or
- (b) paragraph 2 (consultation).”.

Modification of paragraph 14 of schedule 1 - public register

10. In paragraph 14 (register of applications) of schedule 1—

(a) after sub-paragraph (2)(b), insert—

- “(c) the applicant’s name,
- (d) the full address of the short-term let (including a postcode),
- (e) the council ward in which the short-term let is located,
- (f) the date of the application,
- (g) the status of the application (granted, refused, being determined, revoked, lapsed etc.),
- (h) the type of premises,
- (i) the short-term let type (secondary letting, home sharing or home letting),
- (j) the maximum occupancy limit or limits,
- (k) whether the short-term let is within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park,
- (l) the unique licence number allocated to the application,
- (m) where the licensing authority has required its inclusion in the application—
 - (i) the number of bedrooms in the premises,
 - (ii) data on availability and occupancy,

- (iii) contact details for the manager of the premises, if different from the applicant, and
 - (iv) the Energy Performance Certificate rating.”.
- (b) after sub-paragraph (2), insert—
 - “(2A) Nothing in this paragraph requires a licensing authority to include on the register—
 - (a) particulars relating to a licence (including applications and any other information relating to the licence) if a period longer than 12 months has passed beginning with the last date on which the licence was revoked under paragraph 11,
 - (b) particulars relating to a licence which has been surrendered.”,
- (c) after sub-paragraph (4) insert—
 - “(5) From 1 April 2022, the licensing authority must on a quarterly basis—
 - (a) share the register with Scottish Ministers in a format which enables analysis of the data, and
 - (b) publish the content of the register.
 - (6) A licensing authority may comply with the duty in sub-paragraph (5)(b) by making the content of the register available in an electronic format.
 - (7) A licensing authority may share information as it considers appropriate about the suspension, variation or revocation of a licence with other licensing authorities.”.

Modification of paragraph 15 of schedule 1 - fees

11. For paragraph 15 (fees) of schedule 1, substitute—

- “**15.**—(1) A licensing authority may subject to sub-paragraph (2) below in respect of—
- (a) applications made to them under this schedule,
 - (b) the issue of certified duplicate licences under paragraph 5(7),
 - (c) their consideration of a material change of circumstances or in premises under paragraph 9 above and their disposal of the matter,
 - (d) the issue under paragraph 14 of certified true copies,
 - (e) an inspection of premises following—
 - (i) a failure to comply with a licence condition,
 - (ii) a complaint relating to the premises (unless the complaint is frivolous or vexatious),

charge such reasonable fees as they may, in accordance with sub-paragraph (2), determine and the authority may under this sub-paragraph determine different fees for different classes of business, and items of business may be classed for that purpose by reference to any factor or factors whatsoever.

(2) In determining the amount of the different fees under sub-paragraph (1), the licensing authority—

- (a) must seek to ensure that from time to time the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions under Parts I and II of this Act and this schedule,
- (b) may take into account the following criteria—
 - (i) the size of the premises,
 - (ii) the number of rooms at the premises,
 - (iii) the number of guests who can reside at the premises,
 - (iv) the type of short-term let,
 - (v) the duration of the period for which the premises are made available for use as a short-term let, and

(vi) the extent to which the licence holder has complied with the conditions of the licence.

(3) A licensing authority may provide for annual or other recurring fees.

(4) Where a local authority charges a fee in respect of an inspection, the licensing authority must produce a report of its finding to the licence holder within 28 days of the inspection.”.

Modification of paragraph 17 of schedule 1 - giving of reasons

12. After paragraph 17(1)(c) (notification of the decisions and giving of reasons) of schedule 1, insert—

“(ca) to serve an enforcement notice under paragraph 10A,”.

Interpretation

13. After paragraph 19 of schedule 1 (interpretation), insert—

“**19A.** In this schedule—

“energy performance certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008^(a)

“home sharing” means a short-term let consisting of the grant of an agreement for the use, while the grantor is present, of accommodation which is, or is part of, the grantor’s only or principal home,

“home letting” means a short-term let consisting of the grant of an agreement for the use, while the grantor is absent, of accommodation which is, or is part of, the grantor’s only or principal home,

“neighbouring land” means an area or plot of land (other than land forming part of a road) which, or part of which, is conterminous with or within 20 metres of the boundary of the premises,

“secondary letting” means the letting of accommodation which is not, or is not part of, the licence holder’s only or principal home,

“short-term let” means the activity designated by article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021^(b),

“short-term let licence” means a licence for a short term let,

“unique licence number” means a unique number which—

(a) is assigned to each application or licence, and

(b) contains a number or letters which

(i) identifies the licensing authority, and

(ii) is used in every licence number used by the licensing authority.”.

(a) S.S.I. 2008/309. Regulation 6 is amended by S.S.I. 2012/208 and S.S.I. 2013/12.

(b) S.S.I. 2021/XXX.

SCHEDULE 3

Article 5

Mandatory licence conditions

Information to be displayed

1. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests—

- (a) a certified copy of the licence and the licence conditions,
- (b) fire, gas and electrical safety information,
- (c) details of how to summon the assistance of emergency services,
- (d) a copy of the gas safety report,
- (e) a copy of the Electrical Installation Condition Report, and
- (f) a copy of the Portable Appliance Testing Report.

Gas safety

2. Where the premises has a gas supply—

- (a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
- (b) if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not grant a short-term let until the works necessary to bring the appliance to the required safety standard have been carried out.

Fire safety

3. The holder of the licence must—

- (a) ensure that all upholstered furnishings and mattresses within the premises comply with the Furniture and Furnishings (Fire Safety) Regulations 1988(a),
- (b) keep records showing that all upholstered furnishings and mattresses within the premises comply with the Regulations.

Legionella

4. The holder of the licence must assess the risk from exposure to Legionella within the premises, whether or not the short-term let has a private water supply.

Private water supplies

5. Where a premises is served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017(b).

Planning Permission

6. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(c) (“the 1997 Act”), the holder of the licence

(a) S.I. 1988/1324.

(b) S.S.I. 2017/282.

(c) 1997 c.8. Section 26B was inserted by section 17 of the Planning (Scotland) Act 2019 (asp 13).

must where the use of the premises for a short-term let requires planning permission under the 1997 Act ensure that either—

- (a) an application has been made for planning permission under the 1997 Act, or
- (b) planning permission under the 1997 Act is in force.

Safety & repair standards

7.—(1) The holder of the licence must take all reasonable steps to ensure the accommodation is safe for residential use.

(2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2016, the holder of the licence must ensure that the premises meet the repairing standard.

(3) Where the premises are not subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2016, the holder of the licence must ensure that the accommodation meets the requirements in sub-paragraphs (4) to (6).

(4) The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—

- (a) fire or suspected fire, and
- (b) carbon monoxide present in a concentration that is hazardous to health.

(5) Where there are electrical fittings or items in the accommodation, the holder of the licence must—

- (a) ensure that any electrical fittings and items are in—
 - (i) a reasonable state of repair, and
 - (ii) proper and safe working order,
- (b) arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,
- (c) ensure that following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,
- (d) arrange for a competent person to—
 - (i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and
 - (ii) date label and sign all moveable appliances which have been inspected.

(6) In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006(a).

Maximum Occupancy

8. The licence holder must ensure that the number of guests residing in the accommodation does not exceed the number specified in the licence.

Listings

9. The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the premises includes—

- (a) the licence number, and
- (b) a valid Energy Performance Certificate rating.

(a) 2006 asp 1. Section 19B was inserted by section 23(2) of the Housing (Scotland) Act 2014 (asp 14).

Insurance

10. The holder of the licence must, for the duration of the licence, hold for the premises—

- (a) valid buildings insurance, and
- (b) valid public liability insurance providing cover of not less than £5 million.

Agents

11. The holder of the licence must not authorise any other person to carry on the day to day management of the short-term let of the premises.

Payment of fees

12. The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.

False or misleading information

13. The holder of the licence must not provide any false or misleading information to the licensing authority.

Interpretation

14. In this schedule—

“the holder of the licence” means any person to whom a licence has been granted or jointly granted,

“Electrical Installation Condition Report” means a report containing the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the premises inspected,
- (c) the name, address and relevant qualifications of the person who carried out the inspection,
- (d) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (e) any defect identified,
- (f) any action taken to remedy a defect,

“Energy Performance Certificate” has the same meaning as in the Energy Performance of Buildings (Scotland) Regulations 2008^(a),

“gas safety report” means a report containing the following information—

- (a) the date on which the appliance or flue was checked,
- (b) the address of the premises at which the appliance or flue is installed,
- (c) a description of and the location of each appliance or flue checked,
- (d) any safety defect identified,
- (e) any remedial action taken,
- (f) confirmation that the check undertaken complies with the requirements of an examination of —
 - (i) the effectiveness of any flue,
 - (ii) the supply of combustion air,
 - (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both,

(a) S.S.I. 2008/309.

- (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
 - (v) its operation so as to ensure its safe functioning,
 - (g) the name and signature of the individual carrying out the check, and
 - (h) the registration number with which that individual, or that individual's employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998^(a), and
- “repairing standard” means the steps which the holder of the licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2016.

^(a) S.I. 1998/2451.

SCHEDULE 4

Article 7

Consequential amendments

Private Housing (Tenancies) (Scotland) Act 2016

1. In schedule 1 (tenants which cannot be private residential tenancies) of the Private Housing (Tenancies) (Scotland) Act 2016(a) in paragraph 6 (holiday lets)—

- (a) the existing words become sub-paragraph (1), and
- (b) after that sub-paragraph insert—

“(2) A tenancy cannot be a private residential tenancy if it is a short-term let within the meaning of article 2 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.”.

Housing (Scotland) Act 2006

2.—(1) Section 12 (tenancies to which repairing standard duty applies) of the Housing (Scotland) Act 2006(b) is amended in accordance with paragraphs (2) and (3).

- (2) In subsection (1)(f), after “holiday” insert “unless the tenancy is a short-term let”.
- (3) After subsection (2), insert—

“(3) For the purposes of this Chapter, a short-term let is a type of tenancy (and the terms landlord, let and tenant are to be construed accordingly).

(4) In this section, a short-term let has the same meaning as in article 2 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.”.

(a) 2016 asp 19.

(b) 2006 asp 1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the grant of an agreement for the use of residential accommodation (or a part of the accommodation) by a guest where certain conditions are met as an activity for which a licence is required under the Civic Government (Scotland) Act 1982 (“the Act”) (article 3). The licensing regime does not apply if the accommodation falls within one of the categories of excluded accommodation set out in schedule 1.

The licensing provisions in Part 1 of the Act (including schedule 1) will apply to such licences with the modifications set out in schedule 2 of the Order—

Paragraph 1 provides for a procedure for officers of the licensing authority to obtain a warrant to gain entry to premises.

Paragraph 2 requires the inclusion of additional information in application forms.

Paragraph 3 enables the licensing authority to exempt premises from the requirement to have a licence for a particular occasion or for up to 6 weeks each year.

Paragraph 4 provides a process for the licensing authority to give notice of an application to neighbouring properties or alternatively to publish notice of the application. A licensing authority may combine the notice process with a planning notice.

Paragraph 5 allows the licensing authority to refuse the application if it considers the use of the premises for a short term let would breach planning control.

Paragraph 6 provides for additional grounds on which the licensing authority may refuse an application.

Paragraph 7 allows the licensing authority to renew a licence for longer than 3 years.

Paragraph 8 creates a process for the licensing authority to serve an enforcement notice where there has been a breach of the licence conditions.

Paragraph 9 creates a simplified process for a licence holder to apply for a licence within 12 months of having surrendered an equivalent licence.

Paragraph 10 provides for the inclusion of additional information on a public register.

Paragraph 11 sets out the fees which the licensing authority is entitled to charge.

Paragraph 12 requires the licensing authority to give reasons for the issue of an enforcement notice. That has the effect of allowing appeal against the issue of an enforcement notice under paragraph 18 of schedule 1 of the Act.

Article 6 and schedule 3 set out certain mandatory licence conditions which must be included in a licence. In addition, the licensing authority has discretion under paragraph 5(1A)(b) of schedule 1 of the Act to include other licence conditions.

The Order requires the designated activity to be licensed from 1 April 2022 but transitional provision is made for persons carrying on the designated activity prior to 1 April 2022 where an application is made before 1 April 2023 for the grant of an appropriate licence (article 7). 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 Housing and Social Justice Directorate, Victoria Quay, Edinburgh, EH6 6QQ. A copy has also been published on the Scottish Government website at www.gov.scot.

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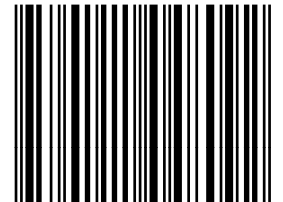
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