

# **Short Term Lets Consultation No. 3:**

**Paper 2 – Draft Licensing Order And Policy  
Note**

**June 2021**

**SHORT TERM LETS CONSULTATION NO. 3:  
PAPER 2 – DRAFT LICENSING ORDER AND POLICY NOTE**

*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.*

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2021 No.**

**LICENCES AND LICENSING**

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

<i>Made</i>	- - - -	<i>2021</i>
<i>Coming into force</i>	- -	<i>2021</i>

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-terms Lets) Order 2021 and comes into force on \*\* 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 paragraph 1 of schedule 1,

“excluded tenancy” means a tenancy described in paragraph 2 of schedule 1,

“guest” means a person who occupies accommodation under a short-term let,

“host” means a person who is the owner, tenant, or person who otherwise exercises control, of accommodation which is the subject of a short-term let,

“accommodation” includes the whole or any part of an accommodation unit,

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- (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).

“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, and

“the 1982 Act” means the Civic Government (Scotland) Act 1982(a).

(2) Where the accommodation is let to more than one person under a short-term let, references to the guest in this Order are to any one of those persons.

(3) For the purposes of Article 3, 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.

(4) 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.

(5) Schedule 1 has effect.

### **Definition of short-term let**

3.—(1) In this Order, the following definitions apply.

(2) “a short-term let” means the use of residential accommodation provided by a host in the course of business to 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 the host,
  - (ii) sharing the accommodation with the host for the principal purpose of facilitating the provision of work or services by the guest to the host or other members of the host’s household,
  - (iii) sharing the accommodation with the host 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, or
  - (iv) an owner or part-owner of the accommodation.
- (d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household,

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(a) 1982 c.45.

- (e) the accommodation is not excluded accommodation (see schedule 1), and
  - (f) the agreement does not constitute an excluded tenancy (see schedule 1),
  - (g) “short-term let agreement” means the agreement entered into for a short-term let, and
- (3) “short-term let licence” means a licence granted for the activity designated in article 4.

### **Designation of activity**

4.—(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 short-term let on or after 1 October 2022.

(3) Multiple properties are to be treated as one accommodation unit for the purposes of this Order where the properties—

- (a) can be booked separately for a short-term let;
- (b) are located on a single site,
- (c) have shared facilities (such as toilets, washing facilities or kitchens), and
- (d) do not form part of a house or a flat.

### **Application of Part 1 of the 1982 Act**

5. Part 1 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 4.

### **Mandatory licence conditions**

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

### **Transitional provision**

7.—(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 October 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) For applications received by a licensing authority prior to 1 April 2024 from 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,

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(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).

- (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
  - (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**

8. Schedule 4 has effect.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## Excluded accommodation and tenancies

**Excluded accommodation**

1. Excluded accommodation means accommodation which is, or is part of—
- (a) an aparthotel,
  - (b) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005<sup>(a)</sup> has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 Act,
  - (c) a hotel which has had planning permission granted for use for a purpose within class 7 in the schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997<sup>(b)</sup>
  - (d) a hostel,
  - (e) residential accommodation where professional care is provided to residents,
  - (f) a hospital or nursing home,
  - (g) a residential school, college or training centre,
  - (h) 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 accommodation used as military barracks),
  - (i) a refuge,
  - (j) student accommodation,
  - (k) accommodation which otherwise requires a licence for use for hire for overnight stays,
  - (l) accommodation which is provided by the guest,
  - (m) accommodation which is capable, without modification, of transporting guests to another location,
  - (n) a bothy, or
  - (o) 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.

**Excluded tenancies**

2. An excluded tenancy means a tenancy which falls within any of the following definitions—
- (a) a 1991 Act tenancy (within the meaning of section 1(4) of the 2003 Act),
  - (b) a limited duration tenancy (within the meaning of section 93 of the 2003 Act),
  - (c) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
  - (d) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
  - (e) a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the 2003 Act),
  - (f) a tenancy of a house on a croft (within the meaning of section 3 the 1993 Act),
  - (g) a tenancy of a house on a holding situated outwith the crofting counties (within the meaning of 1993 Act) to which any provisions of the Small Landholders (Scotland) Acts

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(a) 2005 asp 16.

(b) S.S.I. 1997/3061

1886 to 1931 (as defined in section 26 of the Small Landholders and Agriculture Holdings (Scotland) Act 1931(a)) applies,

- (h) a protected tenancy (within the meaning of the Rent (Scotland) Act 1984(b)),
- (i) an assured tenancy (within the meaning of the 1988 Act),
- (j) a short assured tenancy (within the meaning of the 1988 Act),
- (k) a Scottish secure tenancy (within the meaning of the 2001 Act),
- (l) a short Scottish secure tenancy (within the meaning of the 2001 Act),
- (m) a private residential tenancy (within the meaning of paragraph 5 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016(c)), or
- (n) a student residential tenancy.

## Interpretation

### 3. In this schedule—

“the 1988 Act” means the Housing (Scotland) Act 1988(d),

“the 1993 Act” means the Crofters (Scotland) Act 1993(e),

“the 2001 Act” means the Housing (Scotland) Act 2001(f),

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(g),

“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 residential unit within the building,

“bothy” means a building of no more than two storeys which—

- (a) does not have any form of—
  - (i) mains electricity,
  - (ii) piped fuel supply, and
  - (iii) piped water supply,
- (b) is 100 metres or more from the nearest public road, and
- (c) is 100 metres or more from the nearest inhabited house,

“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) meals,
  - (ii) cooking facilities,

“public road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.

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(a) 1931 c. 44.  
(b) 1984 c. 58  
(c) 2016 asp. 19  
(d) 1988 c. 43  
(e) 1993 c. 44  
(f) 2001 asp. 10  
(g) 2003 asp. 11

“refuge” means premises used wholly or mainly for providing accommodation to persons who have been subject to any incident or pattern of incidents, of—

- (a) controlling, coercive or threatening behaviour,
- (b) physical violence,
- (c) abuse of any other description (whether physical or mental in nature), or
- (d) threats of any such violence or abuse.

“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),
- (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and
- (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units,

“student residential tenancy” means a tenancy—

- (a) the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student, and
- (b) to which sub-paragraph (2) or (3) of paragraph 5 of schedule 1 (tenancies which cannot be private residential tenancies) of the 2016 Act applies,

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

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(a) 2006 asp 1.



## SCHEDULE 2

Article 5

### Application of Part 1 of the 1982 Act and modifications of schedule 1 of the 1982 Act

#### **Modification of section 3B – standard licence conditions**

1. After subsection (5) insert—

“(5A) Standard conditions determined in respect of a short-term let licence must not impose a limit on the number of nights for which premises may be used for secondary letting.”

#### **Modification of section 5 - warrants authorising entry**

2. After section 5, 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 any one of the holders of the licence.”

#### **Modification of paragraph 1 of schedule 1 – applications**

3. 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 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

- (i) 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,
- (db) 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
  - (i) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application,
- (dc) the number of bedrooms in the premises,
- (dd) details of any other short-term let licence granted to the applicant, and”.
- (d) Sub-paragraph (3) is omitted.

### **Temporary exemption from the requirement to have a licence**

#### **4. After paragraph 1 of schedule 1 insert—**

“**1A.**—(1) A licensing authority may, on application made to them, exempt the short-term let of premises 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) A 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.

(4) A licensing authority must publish, and keep under review, a statement of their policy with respect to the exercise of its functions under this paragraph, which is to be referred to as a ‘short-term lets licence temporary exemptions policy statement’.

(5) A licensing authority must publish a policy statement under sub-paragraph (4)—

- (a) on or before 1 October 2022, and
- (b) on or before 1 October every three years thereafter.

(6) In preparing and reviewing a policy statement under sub-paragraph (4), a licensing authority must consult with such persons as the licensing authority thinks appropriate.

(7) A policy statement published under sub-paragraph (4) must include information regarding—

- (a) the fees chargeable for a temporary exemption application, and
- (b) the time period within which the licensing authority will reach a final decision on a temporary exemption application.

(8) On publishing a policy statement under sub-paragraph (4), a licensing authority must—

- (a) make copies of the statement available for public inspection free of charge, and
- (b) publicise—
  - (i) the fact that the statement has been published, and
  - (ii) the arrangements for making copies of the statement available for public inspection.”.

## Modification of paragraph 2 of schedule 1 – publicity

5.—(1) Paragraph 2 of schedule 1 is modified as follows.

(2) After sub-paragraph (1), insert—

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

(3) For sub-paragraph (2), substitute—

“(2) Subject to sub-paragraph (2C), as soon as is reasonably practicable after receiving a relevant application, a licensing authority must publicise the application in accordance with either sub-paragraph (2A) or (2B).

(2A) The licensing authority may publicise the application by sending a notice containing the information listed in sub-paragraph (3) to—

- (a) the occupier of premises neighbouring the premises which are the subject of the application; and
- (b) any other persons as the licencing authority considers appropriate.

(2B) The licensing authority may publicise the application by displaying a notice containing the information listed in sub-paragraph (3), at or near the premises which are the subject of the application, for a period of 21 days.

(2C) A licensing authority may elect—

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

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

“(3) The information referred to in sub-paragraphs (2A) and (2B) is—

- (a) the fact 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).”

(5) Sub-paragraphs (4) to (9) are omitted.

(6) 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<sup>(a)</sup> 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) for consent under paragraph 9(2).”

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

## **Modification relating to preliminary refusal**

6. After paragraph 2 of schedule 1, insert—

### **“Preliminary refusal: breach of planning control**

**2A.**—(1) A licensing authority may, within 21 days of receipt an application for a licence, refuse to consider the application if it considers that use of the premises for a short-term let 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(1)(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 relevant planning 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) in the case of a notice to the applicant, 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.”.

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

7. 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) above must impose any limit on the number of nights 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 sub-paragraph (1A)(b) to which the licence is to be subject,

(cb) the application does not contain the information required under paragraph 1(2)(da) or (db) (the consent of the owners of the premises), or”, and

(c) after sub-paragraph (3), insert—

“(3A) A licensing authority may refuse an application for a short-term let 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 in the locality in which the premises is situated, whether of the same type of premises or otherwise.

(3B) It is for the licensing authority to determine the localities within its area for the purpose of sub-paragraph (3A) and in doing so the authority may determine that the whole of the authority’s area is a locality.

- (3C) A licensing authority must publish, and keep under review, a policy statement as to the extent to which the authority considers there to be overprovision of short-term lets, or short-term lets of a particular description, in any locality within its area, which is to be referred to as the ‘short-term lets overprovision policy statement’.
- (3D) The licensing authority must publish a policy statement under sub-paragraph (3C)—
- (a) on or before 1 October 2022, and
  - (b) on or before 1 October every three years thereafter.
- (3E) In preparing and reviewing a policy statement under sub-paragraph (3C), the licensing authority must consult with such persons as the licensing authority thinks appropriate.
- (3F) A policy statement published under sub-paragraph (3C) must include information regarding to—
- (a) the localities in which the overprovision policies contained within the overprovision policy statement apply, and
  - (b) the policy on overprovision which applies in each locality.
- (3G) On publishing a policy statement under sub-paragraph (3C), the licensing authority must—
- (a) make copies of the statement available for public inspection free of charge, and
  - (b) publicise—
    - (i) the fact that the statement has been published, and
    - (ii) the arrangements for making copies of the statement available for public inspection.”

**Modification of paragraph 8 of schedule 1 - duration of licences**

- 8.—(1) In paragraph 8 (duration of licences) of schedule 1—
- (a) in sub-paragraph (2)(a), omit “or”,
  - (b) after sub-paragraph (2)(b), insert—
    - “; or
    - (c) for such longer period as the licensing authority may decide at the time when they renew a short-term let licence.”.
- (2) After sub-paragraph (2), insert—
- “(2A) A licensing authority may decide to renew a short-term let 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**

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

### **“Power to require rectification of breach of licence**

**10A.**—(1) This paragraph applies where a licensing authority considers that any condition included in a short-term let 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 or prevention of any breach of a condition of a licence other than the breach of a condition of an enforcement notice.”.

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

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

“(5) Where a holder of a short-term let licence has surrendered the licence under sub-paragraph (1), a 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 in respect of the same premises.

(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**

11. 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 premises which are the subject of the application (including a postcode),
- (e) the council ward in which the premises are 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 premises are 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 short-term let licence (including applications and any other information relating to the licence) if a period longer than 12 months has passed beginning with the date on which the licence was revoked under paragraph 11,
  - (b) particulars relating to a licence which has been surrendered under paragraph 13, or
  - (c) particulars relating to a licence which has expired.
- (c) after sub-paragraph (4) insert—
 

“(5) From 1 October 2022, the licensing authority must on a quarterly basis—

  - (a) share the content of the register in respect of short-term let licences only with Scottish Ministers in a format which enables analysis of the data, and
  - (b) publish the content of the register in respect of short-term let licences only in an electronic format.

(6) The licensing authority must provide access to the register free of charge at an office of the licensing authority.

12. After paragraph 14 of schedule 1, insert —

**“Paragraph 14A (Sharing of information in respect of short-term let licences and applications)**

- (1) A licensing authority may share information as it considers appropriate with regards to—
  - (a) the suspension, variation or revocation of a short-term let licence, and
  - (b) the decision to refuse a short-term let licence application.
- (2) A licensing authority may request information from another licensing authority about their decision to—
  - (a) suspend, vary or revoke a short-term let licensing application, or
  - (b) refuse a short-term let licensing application.
- (3) If a licensing authority becomes aware of a person operating without a short-term let licence, it may share this information as it considers appropriate”.

**Modification of paragraph 15 of schedule 1 - fees**

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

- “15.—(1) A licensing authority may, subject to sub-paragraphs (2) and (3), charge such reasonable fees as they may determine 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).
- (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 determine different fees for different purposes,
  - (c) may take into account the following criteria—
    - (i) the size of the premises,
    - (ii) the number of bedrooms 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**

**14.**—(1) Paragraph 17 of schedule 1 (notification of the decisions and giving of reasons) is modified as follows.

(2) After sub-paragraph (1)(c), insert—

- “(ca) to serve an enforcement notice under paragraph 10A,
- (cb) to refuse an application made under paragraph 1A or to grant such an application subject to conditions,”.

#### **Interpretation**

**15.** 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 entering of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host’s only or principal home,

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

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



“neighbouring land”, in relation to premises, 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 a short-term let consisting of the entering of an agreement for the use 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,

“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.”.

## Mandatory licence conditions

Responsibility for the accommodation**Agents**

1. 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.

Safety**Fire safety**

2. 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.

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.

**Gas safety**

4. 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 allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

**Electrical safety**

5. Where there are electrical fittings or items in the premises, 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

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(a) S.I. 1988/1324.

(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).

### **Water safety: Private water supplies**

7. Where the premises are 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).

### **Water safety: Legionella**

8. The holder of the licence must assess the risk from exposure to Legionella within the premises, whether or not the premises are served by a private water supply.

### **Safety & repair standards**

9.—(1) The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.

(2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

### **Maximum Occupancy**

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

### Other conditions

### **Information to be displayed**

11. 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.

### **Planning Permission**

12. 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 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 and has not yet been determined, or
- (b) planning permission under the 1997 Act is in force.

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

(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).

## Listings

**13.** The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes—

- (a) the licence number,
- (b) the maximum number of guests permitted to reside in the premises, in accordance with the number specified in the licence, and
- (c) a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with The Energy Performance of Buildings (Scotland) Regulations 2008(a).

## Insurance

**14.** The holder of the licence must, for the duration of the licence, ensure that there is in place for the premises—

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

## Payment of fees

**15.** 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

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

## Interpretation

**17.** In this schedule—

“the holder of the licence” means any person to whom a short-term let 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,

“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,

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

- (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,
    - (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<sup>(a)</sup>, 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 2006.

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(a) S.I. 1998/2451.

## SCHEDULE 4

Article 8

### Consequential amendments

#### **Private Housing (Tenancies) (Scotland) Act 2016**

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

- (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 3 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 this paragraph.

- (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 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.”.

#### **Antisocial Behaviour etc. (Scotland) Act 2004**

3.—(1) Section 83 (application for registration) of the Antisocial Behaviour etc. (Scotland) Act 2004 is amended in accordance with this paragraph.

- (2) In subsection (6), after paragraph (m) insert—

“(n) the house is being used for a short-term let as defined in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.”.

#### **The Town and Country Planning (Short-term Let Control Areas) Regulations 2021**

4.—(1) The schedule of The Town and Country Planning (Short-term Let Control Areas) Regulations 2021(c) is amended in accordance with this paragraph.

- (2) In paragraph 1—

- (a) for sub-paragraphs (a) to (c) substitute—

“(a) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005(d) has effect,

- (b) a hotel which has had planning permission granted for use for a purpose within class 7 in the schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997(e),

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(a) 2016 asp 19.  
(b) 2006 asp 1.  
(c) S.S.I. 2021/154.  
(d) 2005 asp 16.  
(e) S.S.I. 1997/3061

- (c) a bothy,”
- (b) for sub-paragraph (e), substitute—
  - “(e) residential accommodation where professional care is provided to residents,”.
- (3) For paragraph 2 substitute—
  - “(2) 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 residential unit within the building,
    - “bothy” means a building of no more than two storeys which—
      - (a) does not have any form of—
        - (i) mains electricity,
        - (ii) piped fuel supply, and
        - (iii) piped water supply,
      - (b) is 100 metres or more from the nearest public road, and
      - (c) is 100 metres or more from the nearest inhabited house,
    - “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,
        - (ii) cooking facilities,
    - “public road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.
    - “refuge” means premises used wholly or mainly for providing accommodation to persons who have been subject to any incident or pattern of incidents, of—
      - (a) controlling, coercive or threatening behaviour,
      - (b) physical violence,
      - (c) abuse of any other description (whether physical or mental in nature), or
      - (d) threats of any such violence or abuse.
    - “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),
      - (b) each flat or unit contains its own washing, cooking and dining facilities separate to each of the other flats or units, and
      - (c) 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,
    - “student accommodation” means residential accommodation which has been built or converted solely for the purpose of being provided to students.”.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order designates the entering of an agreement between a guest and a host for the use of accommodation (or a part of the accommodation) for residential accommodation 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). Article 4 sets out the circumstances where a single licence can be obtained in respect of a number of properties. The licensing regime does not apply if the accommodation, or part of the accommodation, falls within one of the categories of excluded accommodation set out in schedule 1, and does not apply if the short-term let agreement constitutes one of the excluded tenancies in schedule 1.

The 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 that any standard conditions determined must not impose a limit upon the number of nights for which the premises may be used for secondary letting.

Paragraph 2 creates a procedure for an authorised officer of the licensing authority, an authorised civilian employee (as defined in section 8 of the Act) or a constable to obtain a warrant to gain entry to premises.

Paragraph 3 requires the inclusion of additional information in application forms.

Paragraph 4 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. It also sets out the requirements for the licensing authority to publish and review a short-term lets licence temporary exemptions policy statement.

Paragraph 5 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 this notice with a planning notice.

Paragraph 6 allows the licensing authority to refuse to consider the application if it considers the use of the premises for a short term let would breach planning control.

Paragraph 7 provides for additional grounds on which the licensing authority may refuse an application, including if it considers that there would be an overprovision of short-term lets. It also sets out the requirements for the licensing authority to publish and review an overprovision policy statement.

Paragraph 8 allows the licensing authority to renew a licence for longer than 3 years.

Paragraph 9 creates a process for the licensing authority to serve an enforcement notice where there has been a breach of the licence conditions, which includes setting out what constitutes the breach (or likely breach), what action can be taken to rectify or otherwise prevent the breach, and the date by which the action must be taken.

Paragraph 10 creates a simplified process for a licence holder to apply for a licence within 12 months of having surrendered an equivalent licence.

Paragraph 11 provides for the inclusion of additional information about short-term let licence applications on the public register of applications, and the duty upon the licensing authority to share the register with Scottish Ministers on a quarterly basis, provide public access to the register. It also allows licensing authorities to share information about the suspension, variation or revocation of a licence with other licensing authorities as it considers appropriate.

Paragraph 12 sets out the fees which the licensing authority is entitled to charge and the criteria it may take into account whilst doing so.

Paragraph 13 requires the licensing authority to give reasons for the issue of an enforcement notice under new paragraph 10A or to. Paragraph 13 also obliges the licensing authority to provide



reasons for the refusal of an application for a temporary exemption from the requirement to obtain a short-term lets licence or the grant of such an application subject to conditions. That has the effect of allowing an appeal against these decisions of a licensing authority under paragraph 18 of schedule 1 of the Act.

Article 6 and schedule 3 of the Order 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.

Article 7 of the Order requires the designated activity to be licensed from 1 October 2022 but transitional provision is made for persons carrying on the designated activity prior to 1 October 2022 where an application is made before 1 April 2023 for the grant of an appropriate licence (article 6). In such a case, the activity may be carried on (without a licence) until the licensing authority has determined the application and, where a decision to refuse an application is then appealed, until that appeal has been disposed of.

Article 8 and schedule 4 of the Order makes consequential amendments to:

- (a) the Private Housing (Tenancies) (Scotland) Act 2016, in order to establish that a private residential tenancy cannot be a short-term let as defined by this Order;
- (b) the Housing (Scotland) Act 2006, in order to clarify that the repairing standard applies to short-term lets which are offered in respect of houses, as defined by this Order;
- (c) the Antisocial Behaviour etc. (Scotland) Act 2004 in order to amend the landlord registration scheme under that Act and thereby ensure that the Tenancy Deposit Schemes (Scotland) Regulations 2011 (SSI 2011/176) do not apply to short-term lets as defined by this Order; and
- (d) the Town and Country Planning (Short-term Let Control Areas) Regulations 2021, in order to bring the definition of excluded accommodation in line with Schedule 1 of this Order (insofar as the types of accommodation are relevant).

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](http://www.gov.scot).

## POLICY NOTE

### THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2021

1. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (“the Licensing Order”) is made by Scottish Ministers 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 (“the 1982 Act”), and all other powers enabling them to do so. This instrument is subject to affirmative procedure at the Scottish Parliament.

#### **Purpose of the instrument.**

2. The 1982 Act gives the Scottish Ministers powers to create licensing schemes.
3. The Licensing Order sets out a licensing scheme for short-term lets to be established and operated by licensing authorities. The Licensing Order includes a definition of short-term let, sets out the activity to be licensed and the mandatory conditions which licensing authorities must apply across Scotland. It sets out transitional arrangements and modifications to the standard 1982 Act licensing procedures.

#### **Policy Objectives**

4. The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.
5. The Licensing Order establishes a licensing scheme to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with handling complaints effectively.
6. The Licensing Order is complemented by the Control Area Regulations<sup>1</sup> which makes provision for local authorities to designate control areas. The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.
7. Both these instruments will be complemented by possible changes to taxation to make sure short-term lets make an appropriate contribution to local communities and support local services. The review of the tax treatment of short-term lets is being progressed by the Scottish Government separately.

#### **The Licensing Order**

##### General overview

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<sup>1</sup> The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154).

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8. Article 3 of the Licensing Order defines what constitutes a short-term let; the types of property and tenancy which are excluded from the definition are outlined separately in schedule 1. Aspects of the definition which are relevant in the context of secondary letting of dwellinghouses are repeated in the Control Area Regulations; the Control Area Regulations are amended by schedule 4.
9. Article 4 sets out the activity to be licensed. Article 5 introduces schedule 2 which makes modifications to the 1982 Act which apply specifically to this licensing scheme.
10. Article 6 introduces schedule 3 which sets out the mandatory licensing conditions which apply across Scotland. The 1982 Act allows licensing authorities to set additional licensing conditions and national consistency in approach will be delivered through guidance.
11. Article 7 sets out how the licensing scheme will come into force and the transitional arrangements that will apply to existing operators.
12. Article 8 introduces schedule 4 which makes consequential amendments to: the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and the Housing (Scotland) Act 2006 (“the 2006 Act”); the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”); and the Control Area Regulations.

Interpretation

13. In the Licensing Order and this note, the term “host” means a person who is the owner, tenant, or person who otherwise exercises control, of a property which is the subject of a short-term let. They could be an applicant, a licensee or someone who has not yet applied for a licence. Article 2 and, for the purposes of schedule 1 to the 1982 Act, paragraph 15 of schedule 2, define a number of terms, including home sharing, home letting and secondary letting, which are used throughout this note.
14. Note that property (accommodation) includes the whole, or any part of a property (accommodation). This includes houses and flats but also any structure which can be used to provide residential accommodation. Secondary letting and home letting would normally extend to the whole property, whereas home sharing would normally involve one or more rooms in a property. Therefore, the property may comprise all or part of the premises which is the subject of the licence. Where several rooms are being let separately in a house, for example, there would be several properties (rooms) on the single premises (house).

Definition of a short-term let

15. Article 3 sets out the definition of short-term let for the purposes of the licensing scheme. (Note that the definition for the Control Area Regulations are amended by schedule 4 to be the same insofar as it applies to secondary letting.)
16. Paragraphs (2) and (3) have the effect of including all agreements made in the course of business for the whole or part use of residential accommodation within the definition, but then paragraph (3) sets out a broad range of exclusions. Before any exclusions are applied, the purpose of the stay is immaterial: both work and leisure

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stays are within scope. This includes agreements made by owners or tenants of the property and agreements made by agents acting on their behalf. However, the consent of the owner (or each owner) must be provided in the licensing application and an application must be refused if that is not provided (see schedule 2, paragraph 3).

17. Paragraph (3)(a) excludes property taken as the guest's only or principal home. This, taken with paragraph 2 of schedule 1, precludes other rented tenancies, including private rented tenancies under the 2016 Act. This makes short-term lets and other rented tenancies mutually exclusive. It further precludes Houses in Multiple Occupation ("HMOs"), as these only apply to "principal or main residences" which has the same meaning as "only or principal home". Note that there is no time limit on a short-term let. This is to avoid a loophole whereby lets longer than 28 days (for example in respect of a worker on a 3 month contract to work away from their principal home) might not be regulated under the Licensing Order or 2016 Act.
18. Paragraph (3)(b) excludes property provided free of charge or obligation. Commercial consideration is defined in Article 2(1) and includes payment of money and benefits in kind. It is explicit that arrangements where one household swaps their home with another household, one form of home letting, would be within the scope of commercial consideration. Note that goods arranged to be exchanged in lieu of money, such as a case of wine, would count as commercial consideration. However, a modest gift provided by a friend as a "thank you for having me" would not. The difference is in whether an agreement in the course of business has been made.
19. Provision of a service might include, for example, helping out with odd jobs or repairs or maintenance whilst staying in the property (but see paragraph 21 below). But it also extends to services provided unrelated to the stay.
20. Paragraph (3)(c)(i) excludes lets to immediate family (whether or not for commercial consideration). Immediate family is defined in Article 2, paragraphs (3) and (4), using a definition similar to that used for private rented tenancies (schedule 3, paragraph 5 of the 2016 Act). It covers parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. It also treats children with one parent in common as siblings and stepchildren as children.
21. Paragraph (3)(c)(ii) excludes home sharing (i.e. sharing the property) with the host(s) for the principal purpose of providing work or services to that person or other members of the household. This, for example, exempts live-in care arrangements. The reference to provision of work is deliberately broad so that it does not matter whether the person providing the work or services it is a direct employee or not of the host(s). Turning back to the example, the carer might be directly employed or employed by a care agency. Note that the property is ancillary to the work; where the work is ancillary to the property (such as mowing the lawn whilst staying for a week), this is within scope of commercial consideration. See also paragraph 24 below.
22. Paragraph (3)(c)(iii) excludes home sharing with the host(s) for the principal purpose of advancement of the guest's education. This exempts students living with a family for the express purpose of improving their English, for example. The reason for excluding these arrangements is that the student is more like a family member than a guest.

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23. Paragraph (3)(c)(iv) excludes time shares where a number of people own a share in, and the right to use, a particular property and where they are using that property. It does not exclude the use of a time share property let out by a part-owner to a guest nor does it exclude time shares where the right is to use any of a number of properties (i.e. not a specific property).
24. Paragraph (3)(d) makes equivalent provision to paragraph (3)(c)(ii) but for secondary letting. This has the effect of excluding tied property, i.e. where the guest is staying there for the purpose of their work and the property is owned or tenanted by the host. This would exempt, for example, a night lammer being provided with the use of a cottage on a farm for a few weeks during lambing. Note that property provided by a different host is not exempt: for example, a secondee to a bank being put up by the bank in serviced property. The secondee is working for the bank, not the host of the property. See also paragraph 42 below, concerning provision for employer-owned property at paragraph 1(p) of schedule 1.
25. Paragraph (3)(e) excludes certain properties from being a short-term let. Excluded property is defined in article 2, by reference to schedule 1.
26. Paragraph (3)(f) excludes certain types of tenancies from being a short-term let. Excluded tenancy is defined in article 2, by reference to schedule 1.

Excluded property (accommodation)

27. The properties which are excluded are listed at paragraph 1 of schedule 1. These would otherwise fall within the normal meaning of residential accommodation.
28. In broad terms, schedule 1 makes provision to exclude everything other than the use of houses, flats and unconventional accommodation. However, a property is not excluded simply because of how it is labelled. For example, a house used as a hotel, guest house or bed and breakfast is not excluded by being labelled as such, unless excluded specifically by one of the following paragraphs.
29. Sub-paragraph (a) excludes aparthotels. They are defined at paragraph 3. An aparthotel comprises five or more serviced apartments. Serviced apartment is also defined at paragraph 3 and is a flat or residential unit with some form of on-going service provision to the guests and management of them. Whilst a single serviced apartment might be “embedded” in flats or tenements (and is therefore within the scope of the licensing scheme), an aparthotel resembles much more a hotel in both planning terms and health and safety regulation and, for this reason, is excluded.
30. The definition of aparthotel does not require the whole building to be dedicated to apartments forming part of the aparthotel. The definition allows for the ground floor of the building to include shops, for example, or for parts of the building to be given over to flats, provided these have a separate entrance. The definition precludes apartments with different owners being considered collectively as an aparthotel. The “same person” applies singular or plural so the building can be owned by a couple, for example, or several joint owners or a corporate body.

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31. Sub-paragraph (b) excludes hotels and restaurants with rooms and inns, for example, where they are already licensed specifically to offer accommodation under the Licensing (Scotland) Act 2005.
32. Sub-paragraph (c) excludes hotels not already captured by paragraph 1(b) but which have planning permission to operate as a hotel. The Town and Country Planning (Use Classes) (Scotland) Order 1997<sup>2</sup> (“the UCO”) sets out the defined uses of buildings for planning purposes. Classes 7, 8 and 9 in the UCO are the classes primarily concerned with the provision of overnight accommodation. Hotels are class 7 premises under the UCO and paragraph 1(c) excludes hotels in class 7. Note that a house (class 9) which has simply been labelled a hotel by the owner is not excluded.
33. Sub-paragraphs (d) excludes hostels (also a class 7 premises under the UCO). Hostel is defined at paragraph 3.
34. Sub-paragraphs (e), (f) and (g) exclude residential institutions providing care or education (class 8 premises under the UCO).
35. Sub-paragraph (h) excludes all types of secure residential property (class 8A premises under the UCO).
36. Sub-paragraph (i) excludes refuges, which includes property used by people escaping domestic violence, for example.
37. Sub-paragraph (j) excludes student accommodation, which is defined in paragraph 3. The type of student accommodation which is excluded is purpose-built or specifically converted. Student halls of residence, for example, are excluded but houses and flats which are normally let to students are not excluded. So use of student halls of residence for other purposes in the summer holidays would not fall within the scope of the licensing scheme. However, use of a flat over the summer holidays, which was occupied by students from September to June, would be treated in the same way as the use of any other flat, and would therefore fall within the scope of the licensing scheme.
38. Sub-paragraph (k) excludes property which otherwise requires a licence for use for hire for overnight stays, for example licenced caravans under the Caravan Sites and Control of Development Act 1960<sup>3</sup>. However, paragraph 3 makes clear that HMO property is not exempt from requiring a short-term lets licence if it is also to be used for that purpose.
39. HMO licensing (under the 2006 Act) and short-term lets licensing are independent and separately required for each purpose, i.e. a short-term let licence is required, even if the host and property has an HMO licence already. This is because there is a difference between a property being occupied by longer-term residents and short-term guests.

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<sup>2</sup> SI 1997/3061

<sup>3</sup> The Housing (Scotland) Act 2014 inserted a new Part 1A into the 1960 Act creating a new licensing system for relevant permanent sites.

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40. Sub-paragraph (l) excludes property provided by the guest, for example where the guest brings their own tent (as opposed to glamping where the tent is normally fixed and provided by the host).
41. Sub-paragraph (m) excludes any form of property which is capable of transporting the guest; note that static is defined by paragraph 2(1). This would exclude, for example hire of canal boats and yachts. The licensing of mobile property presents very different challenges around who are the relevant licensing authorities and neighbours. However, a previously mobile unit that had been immobilised, such as an old tractor or a caravan in a tree would not be excluded as they would require modification to be capable of transporting guests.
42. Sub-paragraph 1(n) excludes bothies. Bothy is defined in paragraph 3. Broadly speaking, it is a small, remote building with no utilities. Bothies, as defined in the Licensing Order, are unlikely to present danger to the type of person who will be using them, nor are they likely to cause any of the other issues which can arise from short-term lets.
43. Sub-paragraph (o) excludes property provided by an employer. Article 3(3)(d) is also relevant, see paragraph 24 above. Whilst provision at article 3(3)(d) is primarily aimed at a natural person or household receiving work or services from someone staying in a second dwelling, this provision covers companies and other bodies providing accommodation to employees as part of a contract or to help them perform their duties. This is likely to occur where an employee is required around the clock, or is otherwise provided with residential quarters, for example caretakers or workers on an oil rig (insofar as the property is within Scottish territorial waters), where shifts extend into multiple days.

Excluded tenancies

44. The tenancies which are excluded are listed at paragraph 2 of schedule 1. The most common of these are the private rented tenancy under the 2016 Act (paragraph 2(m)), the Scottish secure tenancy under the 2001 Act (which covers most social housing) (paragraph 2(k)) and the student residential tenancy (paragraph 2(n), defined in paragraph 3. However, paragraph 2 also excludes other types of tenancy under the Housing (Scotland) Act 1988 and Housing (Scotland) Act 2001 and agricultural and crofting tenancies under the Agricultural Holdings (Scotland) Act 2003 and Crofters (Scotland) Act 1993, respectively.
45. Article 3 excludes property taken as the guest's only or principal home, see paragraph 17 above. The purpose of paragraph 2 of this schedule is to ensure that the these tenancies do not fall within the scope of the Licensing Order at a later date in the case that the tenant moves to a different place but retains the tenancy. In this case, the property would no longer be the tenant's only or principal home but the tenancy can persist.
46. For example, a crofting tenancy can be sublet to a subtenant. In these circumstances, the tenant of the croft would no longer have the tenancy as their only or principal home (as it would be the only or principal home of the subtenant). Both the tenancy and subtenancy are excluded.

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Activities requiring to be licenced

47. Article 4, paragraphs (1) and (2) have the effect that the licensing scheme is operational across Scotland from 1 October 2022 and licensing authorities will need to have a scheme open to receive applications from that date. Together with article 7, which makes transitional provision for existing hosts, the effect of article 4 is that any person wishing to commence short-term letting activity on or after 1 October 2022 must make an application for a licence and may not commence that activity until they have a licence.
48. Sub-paragraph (3) makes provision for a single licence to be issued in respect of unconventional accommodation (not a house or flat) where there is more than one separately bookable property on the site. This means, for example, that a person intending to operate 30 yurts within the same field would only require a single licence. However, a person operating 15 yurts in one field at one end of the village and 15 yurts in another field at the other end of the village would require two licences. The reason for making this provision is that the same considerations apply in respect of each property on the same site: they have the same neighbours; and the units are likely to be interchangeable with regards to bookings, so all need to meet the mandatory safety conditions for the site to be licensed.
49. Obviously, there will be circumstances where one or more of the properties is not usable because of accidental damage (e.g. by a guest or by fire) or because it has been taken out of service for refurbishment. In the circumstances, it may not be safe for those properties to be let to guests. Similar considerations apply in respect of, say, a six bedroom cottage where one bedroom has been taken out of commission. In both cases, the host may continue to let the (parts of) the property which meet the licence conditions but it would be an offence (failing to comply with licence conditions) to let a property which had become unsafe.
50. Licensing authorities may take account of the number of properties on a site (the site would be the premises) in determining the appropriate fee (see paragraph 15 of schedule 1 to the 1982 Act).

Modification of 1982 Act procedures

51. Article 5 introduces schedule 2 of the Licensing Order which makes modifications to the 1982 Act for the purposes of the short-term lets licensing scheme. Schedule 2 of the Licensing Order, read with relevant parts of the 1982 Act, governs how the scheme will operate. To avoid confusion between descriptions of paragraphs in schedule 2 of the Licensing Order and schedule 1 of the 1982 Act, the latter references are in **bold**.

*Standard licence conditions*

52. Paragraph 1 amends section 3B to prevent a licensing authority from setting any limit on the number of nights for which premises may be used for secondary letting as a standard licence condition. This is because such a condition is likely to have adverse consequences. In many cases, sufficient revenue can be made from secondary letting in a small part of the year and the premises would likely lie empty for the rest of the year. (In Edinburgh, such a premises could make sufficient revenue from Hogmanay



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and the Edinburgh Festival and a few hen party weekends in the event that, for example a 90 night annual limit was set.) This then leads to an inefficient use of housing stock.

*Warrants authorising entry*

53. Paragraph 2 inserts a new section 5A making provision for warrants authorising entry.
54. An unusual feature of short-term lets (compared to other licensed activities) is that most of the time there will be no licensee, employee or representative of the licensee present on the premises. This creates particular difficulties with unannounced inspections which can be a very effective way of ensuring licence terms and conditions are adhered to at all times. Furthermore, it is highly likely that guests will be out and about for much of the time of their stay. An unannounced inspection may be the only way of proving a violation of some licensing conditions (e.g. occupancy). Licensing authorities need to have the power to visit unannounced, and enter the premises forcibly if necessary, but only in very limited circumstances.
55. Section 5 of the 1982 Act provides powers to enter and inspect premises (which have not yet been applied to residential premises). Section 5A allows licensing officers to force entry to premises for inspection, where they have been refused or unable to gain entry. A warrant is required to gain entry if not given voluntarily, in the same manner as for HMOs.

*Applications*

56. Typically, an application for a licence will normally be for either:
  - (a) a licence which can cover both home sharing and home letting (i.e. where the host's home is being used); or
  - (b) a licence for secondary letting.
57. A licence can be for granted for a period of up to 3 years, after which it needs to be renewed. Licensing authorities have flexibility as to the duration of licences they grant and may grant licences for different time periods to different applicants provided they have clear and transparent criteria for doing so.
58. A licence application will need to include information about the host and the premises, including the mandatory and standard licence conditions.
59. Paragraph 3 modifies **paragraph 1 (applications)**. **Paragraph 1(2)(b)** is amended to extend the required information to include addresses for the 5 previous years, email address and telephone number. **Paragraph 1(2)(da)** requires details of any other owners and a declaration from them consenting to the application. **Paragraph 1(2)(d)(ii)** is designed to facilitate declarations from partnerships, where there may be many owners. **Paragraph 1(2)(db)** makes similar provision in the case that the applicant is a part-owner of the premises.
60. The persons named on the application form will be subject to the fit and proper person test. **Paragraph 5(3)(a)(i)** requires a licensing authority to refuse an application if, in their opinion, the applicant is not a fit and proper person to be the licence holder. The

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grounds for what constitutes a fit and proper person in this context will be set out in guidance (see **Paper 4** and **Paper 5**), as with, for example, checks on letting agents prior to registration. Relevant information might include (but is not limited to):

- a) relevant criminal convictions (and police intelligence);
  - b) being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past;
  - c) having had a short-term lets or HMO licence revoked by any local authority;
  - d) having had an application for a short-term lets licence turned down by any local authority; and
  - e) providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.
61. With regard to who is to be subject to the fit and proper person test, usually this will be applied to the applicant and anyone named on the application form as involved in the day-to-day management of the short-term let. One concern is where those named on the form does not appear to be a complete or accurate list. This might be for example, where a wife only is named on the application form because the husband has a criminal record.
62. The 1982 Act allows for applications to include “such other information as the authority may reasonably require” (**paragraph 1(2)(e)**) and allows the licensing authority to “make such reasonable enquiries as they think fit” (**paragraph 4(1)**). Guidance will set out for local authorities how they might use these powers to require relevant persons involved in a short-term let to be named on the application form and or to support further background investigation.
63. **Paragraph 1(2)(dc)** requires the application to include the number of bedrooms in the premises. This is an important factor for determining whether the number of guests the host wishes to accommodate is within the safe maximum occupancy for the premises. Further information may be required in some instances, e.g. where a premises has three bedrooms but the application is to accommodate 16 guests, where 3-6 guests might be more typical for that number of bedrooms.
64. **Paragraph 1(2)(dd)** requires details of other short-term let licences granted to the applicant, remembering that these may be licences granted by other licensing authorities. Where other licences have been granted, this might expedite the fit and proper person test.

*Temporary exemptions*

65. Paragraph 4 inserts **paragraph 1A** allowing licensing authorities to grant temporary exemptions to have a licence. The power is similar to that for late hours catering licences at section 42 of the 1982 Act.
66. **Paragraph 1A** gives licensing authorities the power to exempt, on application, the use of premises for short-term lets from the requirement to have such a licence: in respect of any particular occasion; or for a specified single continuous period not

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exceeding 6 weeks in any period of 12 months. An exemption can have conditions attached to it which are subject to the same monitoring and enforcement powers as for licences. (I.e. the local authority would have the right to inspect the premises and enforce licence terms.) Licensing authorities might be expected to issue a licence exemption number, subject to the same requirements as a licence.

67. This power might be used where the licensing authority needs a significant amount of additional capacity over a short period. Examples include sports championship competitions and arts festivals, where a large number of performers and spectators need to be accommodated for a short period of time. But it is important to avoid loopholes whereby hosts (or even licensing authorities) could circumvent the mandatory safety conditions which are to apply across Scotland. For this reason, the period of any exemption is limited to no more than 6 weeks in any period of 12 months.
68. **Paragraph 1A(4)** requires licensing authorities to publish a short-term lets temporary exemptions policy statement and, from time to time, review it. A licensing authority not wishing to use this power can prepare a statement to the effect that they do not grant temporary exemptions.
69. **Paragraph 1A(5)** requires the statement to be published in time for the licensing scheme being open to receive applications (from 1 October 2022) and every three years thereafter. **Paragraph 1A(6)** requires licensing authorities to consult with such persons as they consider appropriate in preparing and reviewing their temporary exemptions policy statement.
70. **Paragraph 1A(7)** sets out that a short-term lets temporary exemptions policy statement must include information regarding:
  - a) the fees chargeable for a temporary exemption application; and
  - b) the time period within which the licensing authority will finally determine the application.
71. **Paragraph 1A(8)** requires licensing authorities to make their statement available free of charge, which they would normally do by publishing it on their website.
72. Planning policies would still apply, although these will not commonly affect home sharing and home letting<sup>4</sup>. However, they are relevant for secondary letting, especially within control areas. For very large, one-off events (such as the Commonwealth Games, Olympics or COP26), the Scottish Ministers might make a special development order to grant planning permission for change of use for an area and to require discontinuance of use after a certain period.
73. Scottish Government guidance will set out more information as to how and when licensing authorities might use temporary exemptions.
74. Note that licensing authorities can also issue temporary licences under **paragraph 7**. These also have a maximum duration of 6 weeks or, if an application has also been

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<sup>4</sup> Whether planning policies apply to home letting and home sharing depends not least on the number of rooms being let compared with the number of rooms on the premises.

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made for a licence, until the application is determined. Note that the six week maximum duration is the same for both temporary exemptions and temporary licences.

*Publicity*

75. Paragraph 5 modifies **paragraph 2** with regard to publicity for relevant applications.
76. **Paragraph 2(10)** defines a relevant application. Applications for a licence are covered by **(10)(a)** and applications for material changes to the circumstances or premises for an existing licence are covered by **(10)(c)**. Renewal applications are covered by **(10)(b)** but note that these are only relevant where there has been a material change since the grant. This means that licensing authorities are not obliged to notify neighbours where a routine renewal application is made. The policy intention is to streamline the renewal process as much as possible (see also paragraph 101 concerning duration of licence on renewal).
77. Note that licensing authorities must publish the register of short-term lets operating in their area (see paragraph 112 below) which will include addresses of premises, the dates of application and the status of the licence. Any neighbour who is interested can, therefore, confirm the status of a short-term let.
78. Paragraph 5 provides that licensing authorities, rather than the applicant, are responsible for publicising the application. **Paragraph 2(2A)** gives licensing authorities the choice of doing this by sending notice to neighbours or displaying a notice. Neighbouring land is defined at **paragraph 19A** (inserted by paragraph 15) and aligns with the planning definition. Broadly speaking the licensing authority must notify neighbours within 20 metres of the boundary of the premises. In urban areas, this is more than sufficient to include all residents on a tenement stair and neighbouring tenement stairs. In rural areas, this will at least extend to nearest neighbours.
79. **Paragraph 2(3)** sets out what must be included in a notice. Some personal data from the application is excluded by **(b)** and **(c)** ensures that the notice includes information about how to make representation or object.
80. Local authorities are responsible for notifying neighbours about planning applications. In some cases, planning permission will be required for secondary letting, either by virtue of the property being in a control area or by virtue of the local authority's planning policy. **Paragraph 2(2C)** allows licensing authorities to combine licensing notification with a planning notice or to issue a planning notice only; the latter being useful where a planning application precedes a licence application. Planning notices are defined at **paragraph 2(10)** and are planning applications in respect of short-term lets.
81. The policy intention behind this change from the usual 1982 Act procedure to put the duty on the licensing authority to publicise the application, and the power to combine with planning notices, is:
  - (a) to reduce the burden on applicants, as licensing authorities are better placed to identify relevant premises;

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- (b) to avoid mischief between applicants and neighbours around claims over whether notice was given;
  - (c) to reduce confusion for neighbours where they might otherwise receive both a licensing notification and a planning notice in respect of an application for a licence for secondary letting; and
  - (d) to give licensing authorities the possibility of streamlining the handling of objections, should they wish to do so.
82. With regard to (d), licensing authorities might prepare a standard form for objections which guides neighbours to relevant grounds for licensing and, separately, planning purposes. The grounds for objection to an application should relate to the purposes of the licensing scheme or planning rules. For example, concerns relating to: safety, noise or nuisance or previous complaints are likely to relate to licensing; and the availability of residential housing, the impact on the character of the neighbourhood or the suitability of the building relate to planning.
83. **Paragraph 2(2A)(b)** gives licensing authorities the power to notify such other persons as they consider appropriate about a licensing application (and related planning notice). The Scottish Government will set out details about how this power might be used in guidance, for example possibly to include community councils and development trusts.

*Preliminary refusal: breach of planning control*

84. Paragraph 6 inserts **paragraph 2A (preliminary refusal: breach of planning control)** which gives the licensing authority the power to refuse to consider an application if it considers that the use of the premises would breach planning control. Note that this is a power, not a duty, on the licensing authority. This power is primarily designed to assist licensing authorities in processing licensing applications for secondary letting within control areas. Note that compliance with planning control is a mandatory licence condition in control areas, see paragraph 150 below.
85. When an application for a licence is made in respect of secondary letting in a control area, either:
- (a) planning permission is not required, for example this may be the case in respect of some unconventional dwellings (i.e. not a dwellinghouse);
  - (b) planning permission is required and has already been obtained;
  - (c) planning permission is required and a concurrent planning application has been made; or
  - (d) planning permission is required and no application has been made.
86. Cases (a) and (b) present no difficulty (other than the licensing authority confirming the case) and the licencing application may proceed.
87. In cases (c) and (d), the licensing authority has the power to refuse to consider the licensing application. **Paragraph 2A(2)** requires that, where the licensing authority

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exercises this power, they must give notice within 7 days to the applicant, the planning authority and the chief constable. **Paragraph 2A(3)(a)** requires the licensing authority to give their reasons for refusing to consider the application.

88. Once the applicant has obtained planning permission (or a certificate of lawfulness of use or development), **paragraph 2A(4)** allows them to resubmit their licensing application without any additional charge if this is done within 28 days of obtaining the planning permission (or certificate). **Paragraph 2A(3)(b)** requires the licensing authority to make this clear to the applicant when giving notice of refusing to consider the application.
89. **Paragraph 2A(5)** ensures that an existing host (see paragraph 157 below) can continue operating and that a further application can be made within one year; this would not be the case if the licensing authority refused to grant a licence.

*Determining an application or renewal application*

90. Paragraph 7 modifies **paragraph 5 (the grant and renewal of licences)**. **Paragraph 5(2B)** prevents a licensing authority from setting any limit on the number of nights for which premises may be used for secondary letting as an additional licence condition, i.e. specific to that licence (see also paragraph 52 above).
91. **Paragraph 5(3)(ca)** prevents the licensing authority from granting an application or renewal of a licence where the mandatory licence conditions, standard conditions or any further conditions cannot be secured by the applicant. **Paragraph 5(3)(cb)** prevents the licensing authority from granting an application or renewal of a licence where there is not sufficient information to show that the owners have consented to the use of the premises as a short-term let.

*Overprovision*

92. **Paragraphs 5(3A) to (3G)** give the licensing authority the power to refuse an application for secondary letting on the grounds of overprovision. The overprovision condition may apply to secondary letting generally or to specific types of premises only. For example, the licensing authority might consider that, given the number of short-term lets operating in an area, it is more important that a particular type of property is directed towards meeting the housing needs of permanent residents.
93. The prospective test included in **(3A)** allows for circumstances in where there are few homes in the locality. For example, in a rural community comprising 12 houses, in which two are already used as short-term lets, it may be that granting a licence to a third house would be regarded as an overprovision. In larger, urban communities it is likely that the test that there was already an overprovision would also be met. The type of short-term let here could refer to, for example, lets in a tenement. A licensing authority may take the view that there is an overprovision of lets in a tenements in a locality, but grant an application for a licence for a detached home, for example.
94. The wording in **(3B)** makes it clear that it is for the licensing authority to determine the localities. In some cases, these will be informed by, or aligned to, control areas but they might also be informed by other natural or artificial features, such as a group

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of homes within easy access to a significant amenity. A licensing authority may determine that their whole areas is one locality.

95. **Paragraph 5(3C)** requires licensing authorities to publish a short-term lets overprovision policy statement and, from time to time, review it. A licensing authority not wishing to use this power can prepare a statement to the effect that they do not refuse applications on the grounds of overprovision.
96. **Paragraph 5(3D)** requires the statement to be published in time for the licensing scheme being open to receive applications (from 1 October 2022) and every three years thereafter.
97. **Paragraph 5(3E)** requires licensing authorities to consult with such persons as they consider appropriate in preparing and reviewing their temporary exemptions policy statement.
98. A overprovision policy statement must include information about the localities in which overprovision policies apply and what those policies are (**paragraph 5(3F)**). A licensing authority can apply different policies in different localities, reflecting local pressures.
99. **Paragraph 5(3G)** requires licensing authorities to make their statement available free of charge, which they would normally do by publishing on their website.

*Refusal of an application*

100. Where a licence application is refused (or a licence is suspended or revoked), the host can continue to operate, prior to their appeal options under **paragraph 18** being exhausted; the host has 28 days to appeal. we expect the licensing authority to engage with the host to allow time for existing guests to depart before the offence of operating without a licence applied. This might be done through setting an appropriate effective date for the notice. Scottish Government guidance will advise hosts that they should refund guests for any days paid for that could not be provided following refusal, suspension or revocation. This would allow guests to fund alternative property. (We would expect the position in respect of refunds etc. for future bookings affected by refusal, suspension or revocation to be covered by booking terms and conditions in the same way as any other scenario in which the property becomes unexpectedly unavailable, such as through fire damage or flood.)

*Duration of licences*

101. Paragraph 8 modifies **paragraph 8 (duration of licences)** to allow licensing authorities to renew short-term lets licences for periods exceeding three years. Note that the grant of a licence may not, in the first instance, exceed three years. **Paragraph 8(2A)** gives licensing authorities wide-ranging discretion in how they apply this power but **paragraph 8(2B)** requires licensing authorities to set out the circumstances under which they will use this power. They are under no obligation to use the power. The policy purpose behind this power is to reduce the administrative burden around renewal for those short-term lets which comply with their licence conditions and do not cause issues to neighbours.

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*Enforcement*

102. Paragraph 9 inserts **paragraph 10A (power to require rectification of breach of licence)** and gives licensing authorities the power to serve enforcement notices. Where monitoring visits, or other information, suggest that any licence condition has been, or is likely to be, breached, licensing authorities can require a licensee to take action to put it right. This will usually be done by serving an enforcement notice under **paragraph 10A(2)**. Such notices must set out the matters constituting a breach or a likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.
103. The reference to future breaches might seem unusual but it would be based on evidence. This is to cover, for example, a host advertising a property as capable of taking ten guests in breach of a licence condition specifying no more than eight. This would be evidenced in a listing or advertisement.
104. **Paragraph 10A(4)** gives a condition in an enforcement notice the same status as a licence condition. This means that, if satisfactory action is not taken by the specified date to address the issues set out in the enforcement notice, the licensing authority can take action as if a licence condition has been breached, for example issuing a fine or suspending or revoking the licence.

*Surrender of licence*

105. The 1982 Act makes provision for the surrender of licences either voluntarily or following a decision by the local authority to suspend, vary or revoke a licence. Sometimes a host might surrender a licence, perhaps because a renewal or other fee would otherwise be due, but find that their circumstances change and they wish to resume short-term letting.
106. Paragraph 10 modifies **paragraph 13 (surrender of licence)** to allow a person who surrendered a licence voluntarily (i.e. not because of any requirement to do so by the licensing authority) to reapply for a licence for the same premises following a simplified process within 12 months of surrendering it. **Paragraph 13(6)** disapplies the requirements for the formal application process and the consultation with the police and the giving of notice. This provision facilitates both hosts and licensing authorities in responding to an unforeseen uptick in demand, for example. The giving of notice to neighbours is unnecessary because the situation is no different for them than as if the premises had continued to be licensed but not taken bookings for a period of time.

*Register*

107. Paragraph 11 modifies **paragraph 14 (register of applications)** to make provision for the register of short-term lets. Licensing authorities must maintain a register of applications for short-term lets licences. **Paragraph 14(2)(a)** requires the register to include a note of the kind and terms of each licence granted by the licensing authority and **paragraph 14(2)(b)** a note of any suspension, variation of the terms, or surrender, of a licence. Paragraph 10 supplements this with a range of other information which is generally self-explanatory. Note that the three types of short term let (**paragraph 14(2)(i)**) are defined in **paragraph 19A**. The purpose of **(k)** is



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to assist the two national parks in Scotland in identifying short-term let activity within their boundaries (which are not necessarily contiguous with local authority boundaries).

108. **Paragraph 14(2)(l)** requires the inclusion of the unique licence number allocated to the application. Each short-term let licence will have a unique licence number. The Scottish Government intend to work with licensing authorities to develop a nationally consistent licence numbering system for short-term lets across Scotland. The licence number will be designed to identify the licensing authority area within which the short term let is situated and to allow licensing authorities to issue licence numbers independently. Guidance will help licensing authorities to build in fraud prevention measures (i.e. not issuing sequential or predictable numbers). Licensing authorities may wish to issue a different licence number on receipt of an application, for a temporary licence, for a licence and on renewal.
109. **Paragraph 14(2)(m)** requires the inclusion of additional information, where the licensing authority has required it on short-term let licensing applications. The data on availability and occupancy could be useful to understand better the level of short-term let activity and build an evidence base to support further targeted policy interventions, where necessary.
110. **Paragraph 14(2A)** allows licensing authorities to cleanse the register of data in relation to licences that have been revoked for greater than 12 months or has been surrendered. Note that, where the licensing authority revokes the licence, no further application can be made by that host in respect of that property within one year of the date of revocation. This necessitates retaining at least the fact of revocation for at least 12 months. Depending on the reasons for the revocation, it may be appropriate to retain the information for longer, if it is likely to be relevant in determining any new application for a licence by the host.
111. **Paragraph 14(5)(a)** requires licensing authorities to share the register with the Scottish Government in a suitable format on a quarterly basis. The Scottish Government will amalgamate licensing authority data to produce a national report. This national report on short-term let activity in Scotland will close a significant gap in knowledge that currently exists. No personal data would feature in the Scottish Government report.
112. **Paragraph 14(5)(b)** requires licensing authorities to publish the content of their register on quarterly basis in an electronic format (expected to be their website). This published record will include the addresses where short-term lets are operating in a local authority area and will make it easy for local communities to track activity in their area. Licensing authorities might want to consider a unified process for publishing the content of their register and submitting it to the Scottish Ministers.

*Information sharing*

113. Paragraph 12 inserts a **new paragraph 14A (Sharing of information in respect of short-term let licences and applications)** which allows a licensing authority to share information with other licensing authorities and other persons in order to ensure compliance with the licensing scheme.

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114. **Paragraph 14A(1)** allows licensing authorities to share information about the reasons for suspending, varying or revoking a licence or its decision to refuse an application. **Paragraph 14A(2)** allows a licensing authority to request this information from another licensing authority.
115. This power to share information between authorities is important in the case that a host is licensed by more than one licensing authority and there are reasons why another licensing authority might also wish to take action, for example where one licensing authority takes the view that the host is no longer a fit and proper person.
116. Licensing authorities may also want to share information with letting agencies and platforms. Where a licence is revoked, for example, any letting agency or platform advertising or listing the property should be advised quickly. Licensing authorities could use this power to advise any person involved in advertising or listing the property of the fact that a licence has been varied, suspended or revoked; variation is relevant, for example, where the variation affects the maximum occupancy of the property. This would allow letting agencies and platforms to remove adverts or listings or require amendment if they are inaccurate.
117. **Paragraph 14A(3)** allows a licensing authority to share information about a person operating without a short-term let licence. For example if they become aware of an unlawful unlicensed premises being advertised or listed, they have the power to notify any person involved in advertising or listing the property.

*Fees*

118. Paragraph 13 replaces **paragraph 15 (fees)** with a **new paragraph 15** making provision for the charging of fees by the licensing authority.
119. **Paragraph 15(1)** allows licensing authorities to charge fees for applications and renewals and for duplicates and certified copies of licences. **Paragraph 15(1)(c)** allows fees to be charged where the licensing authority need to consider a material change of circumstances or in premises notified to them by the licensee under **paragraph 9**. An example may be where a host wishes to let out the property to a greater number of guests than specified on their licence.
120. **Paragraph 15(1)(e)** allows licensing authorities to charge for inspection of premises in certain circumstances. Hosts will not be charged a fee for routine inspections of premises for application or ongoing monitoring purposes, where they occur, but may be charged if an inspection results from a failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious. This has the double benefit of both providing an incentive to hosts to operate their short-term let compliantly, and with consideration for neighbours, and also helping to avoid the application fees for compliant hosts subsidising the compliance cost of dealing with bad hosts.
121. Note that a fee may be charged for an inspection following a complaint, where it is found that there are compliance issues, whether or not those are the issues that were the subject of the complaint. However, no fee should be charged if the complaint was frivolous or vexatious. This is to prevent malicious complaints incurring costs for hosts.

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122. **Paragraph 15(4)** requires that, where a fee is charged to a host for an inspection, the licensing authority must produce a report of its findings to the host within 28 days of the inspection. Best practice would be for this report to be generated and produced at the time of the inspection.
123. **Paragraph 15(2)(a)** requires licensing authorities to seek to ensure that the fees charged cover the costs associated with the licensing scheme. Licensing authorities can recover both their establishment and running costs for the licensing scheme through fees; though the total revenue must not exceed the total of these costs. Establishment costs including setting up the system and preparing staff to run the scheme. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs.
124. As the fees are not set out in the Licensing Order, licensing authorities are able to increase (or reduce) fees administratively, in line with any increase (or reduction) in their costs, including as a result of inflation, or any changes to revenue (e.g. from changes to levels of short-term let activity).
125. **Paragraph 15(2)(b)** sets out the criteria which a licensing authority may take into account in setting fees. This is a broad empowering framework. Some licensing authorities may choose to have a simple set of fees and others may choose a more elaborate structure; the choice will depend on local circumstances.
126. Under **(i), (ii) and (iii)**, they can vary fees by size of premises, number of rooms or number of guests who can reside at the premises. Many licensing authorities may set increasing fees for larger premises, as is often the case with HMO licencing. Under **(iv)**, they can set different fees for different types of short-term let and they may wish to set lower fees for home sharing and home letting than for secondary letting. Under **(v)**, they can distinguish between licences which permit letting in July and August only and those that permit year-round letting, for example. These powers allow licensing authorities considerable discretion in aligning fees with proxies for host revenue, should they wish to do so, and encouraging or discouraging certain types of short-term let activity.
127. **Paragraph 15(3)** gives licensing authorities the power to charge an annual or recurring fee (monitoring fee). Some licensing authorities might choose to do this instead of a renewal fee, especially in conjunction with the power to renew a licence for a period longer than three years (see paragraph 101).
128. **Paragraph 15(2)(b)(vi)** allows licensing authorities to reward compliance. For example, a monitoring or renewal fee may be reduced for a host with a strong compliance record. As well, or instead, a licensing authority might grant longer licences on renewal (which has the effect of reducing the per annum fee cost to the host) if no issues have arisen.
129. Local authorities will need to ensure their fees are robust and fair, especially in respect of any changes requested or proposed by the host after a licence has been granted. There will be circumstances in which the change will mean that the host should be paying a different fee, for example because they want to accommodate more guests or operate for more of the year than qualifies for any discount. Similarly

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considerations apply where a host wishes to resume operation after a period without a licence; local authorities must avoid any perverse incentive for hosts to switch on and off a licence to minimise fees.

130. Licensing authorities must ensure, prior to an application being granted, the applicant is only charged the costs relating to the processing of their application. The fee charged for the processing of the application itself need not be refunded. But it should not include enforcement costs. This was determined at the Supreme Court in case [\*R v. Westminster City Council \(2017\)\*](#)<sup>5</sup>. However, the licensing authority can charge fees to cover enforcement costs once the application is granted (normally through monitoring and/or renewal fees).
131. Scottish Government guidance to local authorities will set out how they might use the powers to set fees to best effect.

*Giving of reasons*

132. Paragraph 14 modifies **paragraph 17 (giving of reasons)** to include reference to an enforcement notice under **paragraph 10A**, see paragraph 102 above.

*Interpretation*

133. Paragraph 15 inserts **paragraph 19A** concerning the interpretation of new provision inserted by schedule 2.

Mandatory licensing conditions (set out in schedule 3)

134. Section 3A of the 1982 Act give the Scottish Ministers the power to prescribe conditions to which licences granted must be subject (either on grant or renewal or on deemed grant or renewal). These are referred to in the 1982 Act as mandatory conditions. Mandatory conditions also include other conditions which licences must be subject or which licensing authorities must impose, either in terms of the Act or other legislation.
135. The host (as licensee) is responsible for ensuring compliance with the licence conditions, including by the guests. Hosts must make sure that the guests are aware of relevant terms and conditions. Licensing authorities may determine the evidence they require of compliance with mandatory conditions, which could be documentary or photographic evidence, through an inspection or through certification provided by or through an accrediting organisation.
136. Article 6 has the effect of requiring all short-term let licences in Scotland to include the mandatory conditions set out at schedule 3. Schedule 3 makes provision which includes both conventional residential property (e.g. houses and flats) and unconventional static accommodation (e.g. yurts and pods).

*Agents*

137. Paragraph 1 of schedule 3 ensures that the persons responsible for the day-to-day management of the short-term lets are known to the licensing authority and have been

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<sup>5</sup> <https://www.supremecourt.uk/cases/docs/uksc-2013-0146a-judgment.pdf>

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suitably checked through the fit and proper person requirements. Note that the holder of the licence may refer to several people (those named on the application form), see paragraph 17.

*Fire safety*

138. Paragraphs 2 and 3 make provision for fire safety.
139. Paragraph 2 requires hosts to ensure their premises have satisfactory equipment installed for detecting, and giving warning of, fire or suspected fire and carbon monoxide. This is in line with the requirements of the repairing standard.
140. Paragraph 3 requires hosts to ensure that upholstered furnishings and mattresses comply with the Furniture and Furnishings (Fire Safety) Regulations 1988. Furthermore, they must keep records to demonstrate that this is the case. The provision does not require that the furnishings and mattresses retain fire safety labels, not least as these might be lost, damaged or defaced by guests. A host would be able to comply with this mandatory condition by keeping photographic evidence or removing and retaining the labels themselves.
141. Note that section 71 of the Fire (Scotland) Act 2005 gives the 2005 Act precedence over any licence conditions imposed in the Licensing Order; they are of no effect in so far as they relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of the 2005 Act.

*Gas safety*

142. Paragraph 4 makes provision for annual gas safety inspections and for any works identified to be carried out. Paragraph 9(2) applies the repairing standard to the premises where applicable (see below). Gas safety requirements are not specified in the repairing standard, but private sector landlords are required to comply with the Gas Safety (Installation and Use) Regulations 1998. Paragraph 11 has the effect of applying relevant provisions from the 1998 Regulations to short-term lets where applicable.

*Electrical safety*

143. Paragraphs 5 and 6 make provision for electrical safety in line with the repairing standard. Note that a competent person must produce both the Electrical Installation Condition Report and the Portable Appliance Testing Report but it need not be the same person. Paragraph 6 requires hosts to have regard to guidance under the Housing (Scotland) Act 2006 in terms of who is competent to undertake this work. Electrical Installation Condition Report is defined at paragraph 17 but Portable Appliance Testing Report takes its commonly understood meaning.

*Water safety: private water supplies*

144. Paragraph 7 requires that hosts with premises served by private water supplies must comply with the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. Note that it is the requirements on the owners of private dwellings in the 2017 Regulations that apply here; the 2017 Regulations cover a range of scenarios.

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*Water safety: Legionella*

145. Paragraph 8 requires the holder of the licence to assess the risk from exposure to Legionella within the premises. This risk assessment does not need to be carried out by a professional.

*Safety and the repairing standard*

146. Paragraph 9 makes provision for general safety and the repairing standard. Paragraph 9(1) makes general provision to require all types of property to be safe. Paragraph 9(2) requires the licence holder to ensure that premises within scope of the repairing standard (i.e. houses and flats) do comply with the repairing standard. The repairing standard is defined at section 13 of the 2006 Act. Paragraph 2 of Schedule 4 of this Order makes consequential amendments to section 12 of the 2006 Act, applying Chapter 4 of Part 1 of the 2006 Act (the repairing standard) to short-term lets.

*Maximum occupancy*

147. Every licence will specify a maximum permitted number of guests to reside in the property. This maximum number will be determined by the licensing authority and will be the lesser of:
- a) the maximum number that can be accommodated safely;
  - b) the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours; and
  - c) the number requested on the licensing application.

148. Paragraph 10 makes it a mandatory condition not to breach this maximum occupancy.

*Information to be displayed*

149. Paragraph 11 makes provision so that guests can easily find important information relating to safety and what to do in an emergency. It is not necessary for this information to be displayed on walls; the information could be provided in a folder in a drawer, for example, provided this is drawn to the attention of the guests.

*Planning permission*

150. Paragraph 12 requires that hosts whose premises are within a control area designated under the 1997 Act and Control Area Regulations must have planning permission, or have made an application for planning permission. This condition only applies to the use of dwellinghouses (i.e. houses and flats) for secondary letting (i.e. whole property lets). It does not apply to other types of property or to home sharing or home letting. It does not apply outside control areas. See paragraphs 84 and following explains the powers given to licensing authorities to refuse to consider licensing applications in breach of planning control.

*Listings*

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151. Paragraph 13 makes it a requirement for any listing or advert to include: the licence number; the maximum occupancy of the property; and the Energy Performance Certificate (EPC) rating (where this is required by buildings standards legislation). The licence number will allow guests to know that the property is licensed. The maximum occupancy is normally included on listings and adverts anyway as this is an important factor for guests in determining whether the accommodation is suitable for them. Currently, EPC Certificates are only be required for secondary letting of dwellinghouses (i.e. houses and flats). The rating will indicate how costly the property is to heat (where this is billed separately) or the environmental credentials of the property.
152. Letting agencies and platforms will be expected to request this information as part of the information required to advertise or list a property. The licence number will help assure the letting agency, platform and potential guests that the property is licensed. Display of the licence number will also help local authorities with enforcement.

*Insurance*

153. Paragraph 14 makes it a mandatory condition for the host to ensure that there is both valid buildings insurance and public liability insurance providing coverage not less than £5 million. This is important to protect the interests of the owner of the premises (and adjoining residents and owners) and the guest, should any accident, damage or injury occur. Note that the insurance may be arranged by someone other than the host (for example the property owner where the host is not the owner).

*Payment of fees*

154. Paragraph 15 makes payment of fees a mandatory condition. Whereas this is not a significant concern at the application stage (as the application will not be granted without payment of fee), this provision makes it easier for a licensing authority to suspend or revoke a licence where a renewal fee or monitoring fee is not paid in a timely fashion.

*False or misleading information*

155. Paragraph 16 prohibits the provision of false or misleading information to the licensing authority. This could be in the context of an application for a licence or at any later point. Again, the licensing authority could suspend or revoke a licence should they discover that false or misleading information has been negligently, knowingly or deliberately provided to them. This would cover the circumstances, for example, where the applicant submits evidence purporting to show that they live at the premises but they actually live elsewhere.

*Standard licence conditions*

156. Section 3B of the 1982 Act gives licensing authorities the power to determine conditions to which licences are to be subject (“standard conditions”). (In the 2020 consultation paper, these were called “discretionary conditions” because they are at the discretion of the licensing authority.) Different conditions may be determined for different licences, or different types of licence, or otherwise for different purposes, circumstances or cases. A licensing authority must publish their standard conditions,

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and failure to do so means the conditions have no effect. Standard conditions have no effect so far as they are inconsistent with any mandatory conditions. The Scottish Government will be setting out a framework for standard conditions in guidance to licensing authorities to ensure consistency across Scotland and to avoid arbitrary variation.

Transitional provision

157. In the following paragraphs, an “existing host” refers to a person operating a short-term let before 1 October 2022 and a “new host” refers to a person seeking to operate a short-term let on or after 1 October 2022.
158. Article 7 gives existing hosts one year from 1 October 2022 to submit a licensing application. Licensing authorities have 12 months to determine such applications. Until 1 April 2023, existing hosts can operate a short-term let without a licence. Until 1 April 2024, existing hosts can operate a short-term let without a licence, provided they made an application by 1 April 2023. On or after 1 April 2024 operating without a licence is unlawful in all cases. On or after 1 October 2022, it is an offence for any person to continue to operate after their licence application has been determined and refused. All hosts in Scotland must be licensed by 31 March 2024 at the very latest.
159. Article 7(1) makes transitional provisions for existing hosts to continue to operate whilst their application is considered. Section 7(1) of the 1982 Act makes it an offence to carry out short-term let activity without a licence but this article makes provision to disapply this offence for a transitional period in certain circumstances.
160. In order for the offence not to apply, the person must be operating before 1 October 2022, the date by which local authorities must open their licensing schemes to receive applications. Furthermore, they must make an application for a licence before 1 April 2023. They must not continue operating if their licence application is determined and refused. Once they have made a licence application, they will be given a temporary licence number. From 1 April 2023, every short-term let host in Scotland will either have had an application determined and, in the case the application was granted, been issued with a licence number or have an application pending and have been issued with a temporary licence number.
161. Article 7(2) makes it easier for licensing authorities to process a large number of applications from existing hosts. Although they will be encouraged to make the applications earlier, it is likely that many applications from existing hosts will be made close to the deadline of 1 April 2023. The policy requirement is that all existing hosts are licensed by 1 April 2024. Therefore, most applications will need to be processed in a 12 month period. Article 7(2) amends section 3 of the 1982 Act to provide for a single 12 month determination period, replacing the usual 3 months to consider and up to 6 months thereafter to determine. This will allow licensing authorities to spread the work over the 12 months, including taking applications to licensing committees.
162. For new hosts (those wishing to commence short-term letting on or after 1 October 2022), the nine months in the 1982 Act continues to apply. As new hosts will not be able to operate without a licence during the transitional phase, a longer determination would have greater immediate impact on them. That is why only the determination



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period for existing hosts has been amended. The downside for existing hosts is a potentially longer period of uncertainty with regard to the final determination of their application. Guidance to local authorities will draw attention to the need to take account of this prolonged uncertainty for existing hosts in how they prioritise their work.

Consequential amendments

163. Article 8 gives effect to schedule 4, which makes consequential amendments to the 2016 Act, the 2006 Act, the 2004 Act and the Control Area Regulations.
164. Paragraph 1 amends the 2016 Act so that the current exclusion of holiday lets from private residential tenancies is expanded to include short-term lets under the Licensing Order. Whilst most holiday lets will be short-term lets, this will not always be the case. For example, a let to family members may constitute a holiday let but is excluded from the definition of short-term let.
165. Paragraph 2 amends the 2006 Act so that the exemption of holiday lets from the repairing standard is narrowed to exclude short-term lets, having the effect that short-term lets are subject to the repairing standard.
166. Paragraph 3 amends section 83(6) of the 2004 Act so that all short-term lets are excluded from the terms of the tenancy deposit scheme, when read with the Tenancy Deposit Schemes (Scotland) Regulations 2011; a house being used for holiday purposes is already excluded but this does not exclude short-term lets for work purposes, for example.
167. Paragraph 4 amends the Control Area Regulations. Paragraphs 4(1) and (2) amend the list of excluded accommodation in the schedule and paragraph 4(3) amends the definitions in the schedule.

**Consultation**

168. In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The 2019 consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The [reports on the 2019 consultation and research](#) were published in October 2019.
169. In January 2020, Kevin Stewart MSP, Minister for Local Government, Housing and Planning, [announced plans to regulate the short-term let sector](#) in the Scottish Parliament. In September 2020, the Scottish Government launched a second public consultation (“the 2020 consultation”) on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a*

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*licensing scheme and planning control areas for short-term lets in Scotland* in December 2020. This report can be found on the Scottish Government website<sup>6</sup>.

170. The Licensing Order has been revised following engagement with a stakeholder working group over the period March to June 2021. More information about the changes can be found in **Paper 1**.

*Issues specific to the Licensing Order*

171. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the licensing scheme in chapter 7.

**Impact Assessments**

172. The Scottish Government has conducted pre-screening or full impact assessments, for: Children’s Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection (DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA). These can be found in the 2020 consultation report.

**Financial Effects**

173. The *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published on 14 December 2020 to accompany the laying of the Licensing Order and Control Area Regulations. The BRIA has been updated and published for consultation (**Paper 3**).

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<sup>6</sup> All Scottish Government consultation and research documents on short-term lets from 2019 and 2020 and impact assessments can be accessed from [www.gov.scot/publications/short-term-lets/](http://www.gov.scot/publications/short-term-lets/)