

Local Government, Housing and Planning Committee

16th Meeting, 2021 (Session 6)

Tuesday 21st December 2021

SSI cover note for: The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022; and the Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022

Background

1. On 22 November and 30 November the Scottish Government laid the following affirmative instruments:

- The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022; and
- The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022

2. Both instruments are concerned with giving effect to the Scottish Government's proposals in terms of the licensing of short-term lets.

3. The policy note to the Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022 ("the Licensing Order") explains that the 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."

4. The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 amend the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154) ("the Control Area

Regulations”) to update the definition of short-term let and excluded accommodation so that they are consistent with the definition in the Licensing Order.

Delegated Powers and Law Reform Committee consideration

5. At its meeting on 7 December 2021, the Committee considered the instruments and determined that it did not need to draw the attention of the Parliament to either of the instruments on any grounds within its remit. However, the Committee welcomed that this re-laid draft Order addresses issues reported by the Session 5 Committee at its meeting on 12 January 2021 in respect of the draft Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.

Local Government, Housing and Planning Committee consideration of the Instruments

6. At its meeting on 31 August 2021, the Committee agreed that it wished to undertake some work on the proposals for the regulations prior to their laying. Specifically, the Committee agreed to issue a survey on the proposed regulations. That survey closed on 29 October 2021 having received 2578 responses.

7. A summary of those responses as prepared by SPICe can be accessed via the link below.

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-local-government-housing-and-planning/correspondence/2021/licensing-of-short-term-lets-analysis-of-survey-responses>

8. The Committee has until 17 January 2022 to consider the instruments.

9. It agreed to hold evidence sessions on the instruments on 7, 14 and 21 December.

10. This is the Committee’s final evidence session on the instruments.

11. At the meeting, the Committee will take evidence from the Cabinet Secretary for Social Justice, Housing and Local Government on both instruments under consideration.

12. It will then debate the instruments. A separate motion has been lodged for each instrument and these will be debated separately.

13. The Committee must decide whether or not to agree to the motions, and then report to Parliament.

14. The Committee has received written submissions from City of Edinburgh Council, FSB and the Professional Association of Self-Caterers UK which are available at **Annexe A**.

The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022

Title of Instrument:	The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022
Type of Instrument:	Affirmative
Laid Date:	30 November 2021
Circulated to Members:	25 November 2021
Meeting Date:	21 December 2021
Minister to attend meeting:	Yes
Motion to approve:	S6M-02265
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	17 January 2022

Purpose

15. The 1982 Act gives the Scottish Ministers powers to create licensing schemes. 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.

16. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Procedure for Affirmative instruments

17. The draft **Order** was laid on 30 November 2021 and referred to the Local Government, Housing and Planning Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison has, by motion [S6M-02265](#) (set out in the agenda), proposed that the Committee recommends the approval of the Order.

Recommendation

18. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 17 January 2022.

Scottish Government Explanatory Note

As per purpose above and including:

19. This Order designates a “short-term let” as the use of residential accommodation provided by a host in the course of business to a guest where certain criteria are met as an activity for which a licence is required under the Civic Government (Scotland) Act 1982 (“the Act”), modifies the procedures in the Act in relation to short-term let licences, provides mandatory conditions which will be required in respect of all short-term let licences, and makes consequential amendments to a number of enactments.

20. Article 3 provides a definition of short-term let and excludes certain types of accommodation and certain types of tenancy (as described in schedule 1 of the Order) from that definition. Article 4 specifies that a short-term let after 1 October 2022 is an activity which requires a licence under the Act. Article 5 provides that Part 1 of the Act (including schedule 1 of the Act as introduced by section 4 of the Act) has effect, for the purposes of the licensing of a short-term let, subject to the modifications specified in schedule 2 of the Order. Article 6 provides that a short-term let licence is subject to the mandatory conditions specified in schedule 3 of the Order.

21. Article 7 makes transitional provision whereby the offence of operating without a licence (section 7(1) of the Act) is not committed in circumstances where a person used a property for a short-term let before 1 October 2022 and submitted an application for a short-term let licence before 1 April 2023 which has not yet been finally determined. It also provides for a procedure to be followed during the transitional period in respect of licence applications where the licensing authority considers that use of the premises for a short-term let would constitute a breach of planning control.

22. The provisions in Part 1 of the Act (including schedule 1) will apply to short-term let licences with the modifications set out in schedule 2 of the Order which are as follows:

23. 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.

24. 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 the premises, and includes a set of conditions of which one must be met in order for a warrant to be granted.

25. 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 specified period which cannot exceed 6 weeks per year. It also sets out the requirements for the licensing authority to publish and review a statement of their policy in relation to the granting of temporary exemptions and sets out what information it must include.

26. Paragraph 5 provides a process for the licensing authority to provide a temporary licence number to the applicant and to publicise the application.

27. 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, and further sets out how this can be remedied by the applicant.

28. Paragraph 7 provides for additional grounds on which the licensing authority may refuse an application.

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

30. 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.

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

32. Paragraph 11 provides for the inclusion of additional information about short-term let licence applications on the public register of applications. Paragraph 11 also obliges the licensing authority to share the content of the register in relation to short-term lets with the Scottish Ministers on a quarterly basis, as well as to publish the content of the register on a website.

33. Paragraph 12 provides for licensing authorities to share specified information with either another licensing authority or a person who advertises short-term lets for the purposes of licensing of short-term lets and to prevent the commission of offences under section 7(1) of the 1982 Act.

34. Paragraph 13 sets out the process by which fees may be set by the licensing authority and the criteria it may take into account whilst doing so.

35. Paragraph 14 requires the licensing authority to give reasons for the issue of an enforcement notice. Paragraph 14 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.

36. Schedule 3 of the Order sets out certain mandatory licence conditions which must be included in a short-term let licence. In addition, the licensing authority has discretion under paragraph 5(1A)(b) of schedule 1 of the Act to include other licence conditions.

37. Schedule 4 of the Order makes consequential amendments to:

(a) 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 (S.S.I. 2011/176) do not apply to short-term lets as defined by this Order;
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;

38. the Private Housing (Tenancies) (Scotland) Act 2016, in order to establish that a short-term let cannot be a private residential tenancy.

39. 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.

Scottish Government Policy Note

POLICY NOTE

THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022

SSI 2022/XXX

40. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Licensing Order”) is made by Scottish Ministers in exercise of the powers conferred by sections 3A, 44(1)(b), (2)(a), (b) and (d), 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.

41. The 1982 Act gives the Scottish Ministers powers to create licensing schemes.

42. 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

43. 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.

44. 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.

45. The Licensing Order is complemented by the Control Area Regulations¹ 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.

46. 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

47. Article 3 of the Licensing Order defines what constitutes a short-term let; the types of accommodation 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

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

Regulations; the Control Area Regulations are amended by a separate instrument, the Control Area Amendment Regulations².

48. 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.

49. 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.

50. Article 7 sets out how the licensing scheme will come into force and the transitional arrangements that will apply to existing operators.

51. Article 8 introduces schedule 4 which makes consequential amendments to: the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”); the Housing (Scotland) Act 2006 (“the 2006 Act”); and the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

Interpretation

52. In the Licensing Order and this note, the term “host” means a person who is the owner, tenant, or person who otherwise exercises control over occupation and use, of accommodation 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 17 of schedule 2, define a number of terms, including home sharing, home letting and secondary letting, which are used throughout this note.

53. In this note, “existing host” is used to refer to a person operating a short-term let before 1 October 2022 and continuing to do so, and “new host” to refer to a person seeking to operate a short-term let on or after 1 October 2022.

54. Note that accommodation includes the whole, or any part of a premises. 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 premises, whereas home sharing would normally involve one or more rooms in a premises. Therefore, the accommodation 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

55. Article 3 sets of 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 the Control Area Amendment Regulations to be the same insofar as it applies to secondary letting.)

² The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022.

56. The preamble in the definition of short-term let has the effect of including all lets (agreements) made in the course of business for the whole or part use of residential accommodation within the definition, but the following paragraphs set out a broad range of exclusions. Before any exclusions are applied, the purpose of the stay is immaterial: both work and leisure stays are within scope. This includes agreements made by owners or tenants of the accommodation 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 5).

57. Paragraph (a) excludes accommodation 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.

58. Paragraph (b) excludes accommodation 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.

59. A benefit in kind through provision of a service might include, for example, helping out with odd jobs or repairs or maintenance whilst staying in the accommodation (but see paragraph 63 below). But it also extends to services provided unrelated to the stay.

60. Paragraph (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.

61. Paragraph (c)(ii) 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.

62. Paragraph (c)(iii) excludes time shares where a number of people own a share in, and the right to use, specific accommodation and where they are using that accommodation. It does not exclude the use of time share accommodation 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 specific accommodation).

63. Paragraph (d) excludes all types of short-term let where this is for the principal purpose of providing work or services to that person or other members of the household. This includes where the guest is living with the host in their home or in separate accommodation.

64. This provision 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 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 accommodation is ancillary to the work; where the work is ancillary to the accommodation (such as mowing the lawn whilst staying for a week), this is within scope of commercial consideration.

65. This provision also has the effect of excluding tied accommodation, i.e. where the guest is staying there for the purpose of their work and the accommodation 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 accommodation provided by a different host is not exempt: for example, a secondee to a bank being put up by the bank in serviced accommodation. The secondee is working for the bank, not the host of the accommodation. See also paragraph 83 below, concerning provision for employer-owned accommodation at paragraph 1(o) of schedule 1.

66. Paragraph (e) excludes certain properties from being a short-term let. Excluded accommodation is defined in article 2, by reference to schedule 1.

67. Paragraph (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 accommodation

68. The accommodation which is excluded are listed at paragraph 1 of schedule 1. These would otherwise fall within the normal meaning of residential accommodation.

69. In broad terms, schedule 1 makes provision to exclude everything other than the use of houses, flats and unconventional accommodation. However, accommodation is not excluded simply because of how it is labelled. For example, a house used as a hotel is not excluded by being labelled as such, unless excluded specifically by one of the following paragraphs.

70. 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 bears more of a resemblance to a hotel in both planning terms and health and safety regulation and, for this reason, is excluded.

71. 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.

72. 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.

73. Sub-paragraph (c) excludes hotels not already captured by sub-paragraph (b) but which have planning permission to operate as a hotel. The Town and Country Planning (Use Classes) (Scotland) Order 19973 (“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) would exclude hotels in class 7, and hotels granted planning permission under equivalent preceding legislation. Note that a house (class 9) which has simply been labelled a hotel by the owner is not excluded.

74. Sub-paragraph (d) excludes hostels (also a class 7 premises under the UCO). Hostel is defined at paragraph 3.

75. Sub-paragraphs (e), (f) and (g) exclude residential institutions providing care or education (class 8 premises under the UCO). Sub-paragraph (e) excludes residential accommodation where personal care is provided to residents. Personal care is defined with reference to the Public Services Reform (Scotland) Act 2010.

76. Sub-paragraph (h) excludes all types of secure residential accommodation (class 8A premises under the UCO).

77. Sub-paragraph (i) excludes refuges, which includes accommodation used by people escaping domestic violence, for example.

78. 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 predominantly for this purpose. 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.

79. Sub-paragraph (k) excludes accommodation 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. However, paragraph 3 makes clear that

³ SI 1997/3061.

⁴ The Housing (Scotland) Act 2014 inserted a new Part 1A into the 1960 Act creating a new licensing system for relevant permanent sites.

HMO accommodation is not exempt from requiring a short-term lets licence if it is also to be used for that purpose.

80. 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 accommodation has an HMO licence already. This is because there is a difference between accommodation being occupied by longer-term residents and short-term guests.

81. Sub-paragraph (l) excludes accommodation 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).

82. Sub-paragraph (m) excludes any form of accommodation which is capable of transporting the guest without modification. This would exclude, for example hire of canal boats and yachts. The licensing of mobile accommodation 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.

83. Sub-paragraph (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. Note that bothies themselves are habitable buildings, so the effect of limb (c) in the definition is to limit the exclusion to isolated bothies, rather than clusters that are more likely to be used for holiday lets.

84. Sub-paragraph (o) excludes accommodation provided by an employer. Article 3(3)(d) is also relevant, see paragraph 63 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 accommodation is within Scottish territorial waters), where shifts extend into multiple days.

Excluded tenancies

85. 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(f)) and the student residential tenancy (paragraph 2(n), defined in paragraph 3. However, paragraph 2 also excludes other types of tenancy under the Rent (Scotland) Act 1984, 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.

86. Article 3 excludes accommodation taken as the guest's only or principal home, see paragraph 57 above. The purpose of paragraph 2 of this schedule is to ensure that 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 accommodation would no longer be the tenant's only or principal home but the tenancy can persist.

87. 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.

88. A croft includes the house and land. The sublet of a whole croft (i.e. a sublet which would require the consent in writing of the Crofting Commission under section 27(2) of the Crofters (Scotland) Act 1993) is excluded. However, a sublet of the house only or any other building is within scope. For example, a crofting family living in a cottage on the croft who add two glamping pods to their croft to offer holiday accommodation would require a short-term let licence. A single short-term let licence would be required for the glamping pods, as they are located on a single premises.

Activities requiring to be licenced

89. Article 4(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. Activity comprises the taking of bookings (making an agreement to let the accommodation) and the let itself (i.e. the period during which the guests are permitted to stay in the accommodation).

90. Sub-paragraph (3) makes provision for a single licence to be issued in respect of separately bookable accommodation on a single premises. A house or a flat would normally constitute a single premises; several houses or several flats would be multiple premises requiring a licence each. This provision puts beyond doubt that the separate letting of more than one room in the same house (such as with a bed-and-breakfast) only requires a single licence. It also simplifies the licensing process for premises with many separately bookable accommodation units.

91. For example, a person intending to operate 30 yurts within the same field (premises) 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 (two premises) would require two licences. The provision applies to accommodation with shared facilities (such as yurts) or standalone accommodation, such as park lodges, provided they are all on the same premises.

92. The same licensing considerations apply in respect of each accommodation unit on the same site: they have the same neighbours; and the units will frequently be interchangeable with regards to bookings, so all need to meet the mandatory safety conditions for the site to be licensed.

93. 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 accommodation which meet the licence conditions but it would be an offence (failing to comply with licence conditions) to let accommodation which had become unsafe.

94. Licensing authorities may take account of the number of properties on the premises in determining the appropriate fee (see paragraph 15 of schedule 1 to the 1982 Act).

Modification of 1982 Act procedures

95. 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

96. Paragraph 2 amends section 3B of the 1982 Act 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 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

97. Paragraph 3 inserts a new section 5A making provision for warrants authorising entry.

98. 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.

99. 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

100. An application for a short-term let licence will be for a type of short-term let and the premises can only be used to provide the type of short-term let specified on the licence. A licence can be 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.

101. A licence application will need to include information about the host and the premises, including the mandatory and standard licence conditions.

102. Paragraph 5 modifies paragraph 1 (applications). Paragraph 1(2)(aa) is added to require the application to specify the type of short-term let licence being applied for. Note that there are four types of licence, one of which combines home letting and home sharing. Guidance to licensing authorities will recommend granting licences for secondary letting ((aa)(i)) or home letting and home sharing ((aa)(iv)) only, thus distinguishing between use of primary and secondary residences. But the legislation allows for greater flexibility, in case it is necessary to differentiate between home letting and home sharing.

103. 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.

104. 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 grounds for what constitutes a fit and proper person in this context will be set out in guidance, 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.

105. 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.

106. 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.

107. 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.

108. 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

109. Paragraph 6 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.

110. 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 for a specified single continuous period not 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 (paragraph 1A(3)). (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.

111. 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.

112. Paragraph 1A(2) gives licensing authorities the power to consult the chief constable and Scottish Fire and Rescue Service in respect of applications for

temporary exemptions. (Note that this is different from temporary licences at paragraph 7, where the licensing authorities are under a duty to consult these bodies.) Licensing authorities have been given a power, rather than a duty, to allow for flexibility in the range of circumstances and durations for which temporary exemptions may be granted.

113. Paragraph 1A(4) allows licensing authorities to determine not to grant any temporary exemptions at all or for a class or classes of premises. For example, a licensing authority could determine not to grant temporary exemptions in respect of tenement flats.

114. Paragraph 1A(5) 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.

115. Paragraph 1A(6) 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(7) requires licensing authorities to consult with such persons as they consider appropriate in preparing and reviewing their temporary exemptions policy statement.

116. Paragraph 1A(8) 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.

117. Paragraph 1A(9) requires licensing authorities to make their statement available free of charge, which they would normally do by publishing it on their website.

118. Planning policies would still apply, although these will not commonly affect home sharing and home letting⁵. 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.

119. Scottish Government guidance will set out more information as to how and when licensing authorities might use temporary exemptions.

120. 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 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.

⁵ 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.

Publicity

121. Paragraph 7 modifies paragraph 2 with regard to publicity for relevant applications. Otherwise, the usual 1982 Act procedures apply.

122. Paragraph 2(1A) requires the licensing authority to issue a unique licence number to the applicant, as soon as reasonably practicable after receiving the application. This may be used as a temporary licence number and will assist in the transitional period where existing hosts are continuing to operate, having submitted an application but have not yet had their application determined. Platforms and others hosting adverts and listings may roll out requirements to provide a licence number before the end of the transitional period.

123. The applicant must put up a site notice. Paragraph 2(3)(b) sets out what must be included in a notice and some personal data from the application is excluded by (i) to (iii). Paragraph 2(3)(c) ensures that the notice includes information about how to make representation or object.

124. In guidance, licensing authorities will be asked to prepare a standard form for objections which guides neighbours to relevant grounds for licensing purposes. For example, concerns relating to: safety, noise or nuisance or previous complaints are likely to relate to licensing; whereas the availability of residential housing, the impact on the character of the neighbourhood or the suitability of the building are likely to relate to planning.

125. Paragraph 7(1)(c) substitutes paragraphs (7), (8) and (9) in the 1982 Act with new paragraphs (7), (8) and (9). The effect of this is to repeat the relevant 1982 Act duties but additionally to give licensing authorities the power to publicise every application for a grant or renewal of a licence. Licensing authorities can exercise this power by publication of the notice in a newspaper or a notice on their website. The intention behind this provision is that licensing authorities can provide live application data which would help neighbours and others to search for applications, as can be done for planning applications in some planning authority areas.

Preliminary refusal: breach of planning control

126. Paragraph 8 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 195 below.

127. Note that the application of paragraph 2A is modified by transitional provision made at article 7 (see paragraphs 206 and following below) in respect of applications made by existing hosts prior to 1 April 2023. The power at paragraph 2A applies without modification in respect of applications made by new hosts from 1 October 2022 and all applications made on or after 1 April 2023.

128. 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.

129. Cases (a) and (b) present no difficulty (other than the licensing authority confirming the case) and the licencing application may proceed.

130. 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 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.

131. Once the applicant has obtained planning permission or a certificate of lawfulness of use or development (“CLUD”), 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 CLUD). Paragraph 2A(3)(b) requires the licensing authority to make this clear to the applicant when giving notice of refusing to consider the application.

132. Paragraph 2A(5) ensures 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. It also prevents the decision from being entered on the public register.

Determining an application or renewal application

133. Paragraph 9 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 96 above).

134. 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.

Refusal of an application

135. 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. The Scottish Government expects the licensing authority to engage with the host to allow time for existing guests to depart before taking action to pursue the offence of operating without a licence.

136. 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 find alternative accommodation. (The Scottish Government 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 accommodation becomes unexpectedly unavailable, such as through fire damage or flood.)

Duration of licences

137. Paragraph 10 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.

Enforcement

138. Paragraph 11 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.

139. The reference to future breaches might seem unusual but it would be based on evidence. This is to cover, for example, a host preparing accommodation to take ten guests in breach of a maximum occupancy condition (schedule 3, paragraph 11) specifying no more than eight. This could be evidenced in a listing or advertisement (which would be a breach of the listing condition at schedule 3, paragraph 14).

140. 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

141. 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.

142. Paragraph 12 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

143. Paragraph 13 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 11 supplements this with a range of other information which is generally self-explanatory. Note that the four types of short-term let for the purpose of licensing⁶ (paragraph 14(2)(i)) are defined in paragraph 19A. The purpose of (k) is 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).

144. 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 intends 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.

145. 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.

146. The register will not include the names of applicants where they are natural persons. However, paragraph 14(2)(m)(iii) requires contact details for the manager of the premises to be provided in some circumstances. Firstly, the licensing authority needs to have asked for this information as part of the application process. Secondly, the manager of the premises is only to be included where the manager is different from the applicant or the application is for secondary letting.

⁶ There are three ways premises can be used for any given short-term let: home letting, home sharing and secondary letting. But licences may be granted for any of four purposes: home letting; home sharing; home letting and home sharing; or secondary letting.

147. In many cases of home sharing or home letting, the manager of the premises will be the applicant (and most likely be a natural person) and their contact details will not appear in the register. In the case of home sharing, any neighbour with a concern should be able to raise it directly (as the host lives at the premises). In the case of home letting, as it is the applicant's normal place of residence, they have a strong interest in ensuring that guests take care of it and in maintaining good relations with their immediate neighbours.

148. However, in the case of secondary letting, contact details for the manager of the premises are always required. In some cases, the manager of the premises will be the applicant and a natural person and, even so, their contact details will be included in the register. This is important so that any neighbour with a concern has the opportunity of raising the concern with the manager of the premises before escalating the concern to a complaint to the licensing authority.

149. 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 premises 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.

150. Paragraph 14(5) 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.

151. Paragraph 14(6) requires licensing authorities to publish the content of their register on their website or other website established and maintained for that purpose. Licensing authorities would be expected to update this information at least quarterly (potentially as part of the same process as required by paragraph 14(5)). Over time, the Scottish Government expects licensing authorities to move to more frequent or live updates. Note that the framing of this requirement allows flexibility for licensing authorities in how the register is made available on the internet, including for all registers to be made available through a single website as a single national register.

152. 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.

Information sharing

153. Paragraph 14 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 persons involved in advertising or listing short-term lets in order to ensure compliance with the licensing scheme.

154. Paragraph 14A(1) allows for both push and pull of information: a licensing authority can share this information on request from another licensing authority or because it considers that another licensing authority or person who advertises or lists short-term lets needs the information for one of the specified purposes. The purposes are for the licensing of short-term lets or the prevention of the offence of operating without a licence.

155. Paragraph 14A(2)(a) allows licensing authorities to share any information in relation to the suspension, variation or revocation of a licence and (b) allows licensing authorities to share any information in relation to its decision to refuse an application.

156. 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.

157. 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 accommodation should be advised quickly. Licensing authorities could use this power to advise any person involved in advertising or listing the accommodation 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 accommodation. This would allow letting agencies and platforms to remove adverts or listings or require amendment if they are inaccurate.

158. Paragraph 14A(2)(c) 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 accommodation.

Fees

159. Paragraph 15 replaces paragraph 15 (fees) with a new paragraph 15 making provision for the charging of fees by the licensing authority.

160. 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 accommodation to a greater number of guests than specified on their licence.

161. 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.

162. 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.

163. Paragraph 15(4)(a) 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. Paragraph 15(4)(a) requires the licensing authority to refund the fee if they fail to produce a report within 28 days.

164. 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.

165. 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).

166. 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.

167. 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.

168. 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 137).

169. 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.

170. 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 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.

171. 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)⁷. However, the licensing authority can charge fees to cover enforcement costs once the application is granted (normally through monitoring and/or renewal fees).

172. Scottish Government guidance to local authorities will set out how they might use the powers to set fees to best effect.

Giving of reasons

173. Paragraph 16 modifies paragraph 17 (giving of reasons) to include: refusing an application for a temporary exemption under paragraph 1A or granting it subject to conditions, see paragraph 110 above; and the serving of an enforcement notice under paragraph 10A, see paragraph 138 above. This means that the licensing authority must give reasons for these decisions. It also has the effect of making both of these decisions appealable.

Interpretation

174. Paragraph 17 inserts **paragraph 19A** concerning the interpretation of new provisions inserted by schedule 2.

Mandatory licensing conditions (set out in schedule 3)

175. 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 to which licences must be subject or which licensing authorities must impose, either in terms of the Act or other legislation.

176. 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

⁷ <https://www.supremecourt.uk/cases/docs/uksc-2013-0146a-judgment.pdf>

photographic evidence, through an inspection or through certification provided by or through an accrediting organisation.

177. Note that there is no specific liability on licensing authorities in terms of a “failure to inspect”; the licensing authority’s duties to consider an application and grant a licence, and thereafter to ensure adherence with a licence’s conditions, remain in line with the 1982 Act provisions and the current licensing framework.

178. 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 accommodation (e.g. houses and flats) and unconventional static accommodation (e.g. yurts and pods).

Agents

179. 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 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.

Type of licence

180. Paragraph 2 puts beyond doubt that the licence holder may only offer the type of short-term let for which the licence has been granted. This will be one of: secondary letting; home letting; home sharing; or home letting and home sharing. This is important because different considerations and risks apply to different types of short-term let. For example, noise and nuisance is more likely in the case of secondary letting than home sharing.

Fire safety

181. Paragraphs 3 and 4 make provision for fire safety.

182. Paragraph 3 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.

183. Paragraph 4 requires hosts to keep records showing that upholstered furnishings and mattresses comply with the Furniture and Furnishings (Fire Safety) Regulations 1988. The requirement only applies to parts of the premises which are for guest use, or to which the guests are otherwise permitted have access. In secondary letting, this would preclude locked rooms into which the guests are not meant to enter. In home sharing, this would preclude private rooms used by the host and not the guests, for example the host’s bedroom.

184. 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.

185. 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

186. Paragraph 5 makes provision for annual gas safety inspections and for any works identified to be carried out. Paragraph 10(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

187. Paragraphs 6 and 7 make provision for electrical safety in line with the repairing standard. The condition only applies to parts of the premises for guest use or to which guests are permitted to have access. In secondary letting, this would preclude locked rooms into which the guests are not meant to enter. In home sharing, this would preclude private rooms used by the host and not the guests, for example the host's bedroom. Whether and to what degree a kitchen in a home share would be captured, would depend on the way the kitchen was used. In some bed and breakfasts, guest do not enter the kitchen and paragraphs 6 and 7 would not apply to it. In others, they eat in the kitchen only in which case paragraph 6(d) would not apply, and in others, they are allowed to use kitchen equipment, in which case paragraph 6(d) would apply.

188. 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 7 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 18 but Portable Appliance Testing Report takes its commonly understood meaning.

Water safety: private water supplies

189. Paragraph 8 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.

Water safety: Legionella

190. Paragraph 9 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

191. Paragraph 10 makes provision for general safety and the repairing standard. Paragraph 10(1) makes general provision to require all types of premises to be safe. Paragraph 10(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

192. Every licence will specify a maximum permitted number of guests to reside in the premises. 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.

193. Paragraph 11 makes it a mandatory condition not to breach this maximum occupancy.

Information to be displayed

194. Paragraph 12 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

195. Paragraph 13 requires that hosts whose premises are within a control area designated under the 1997 Act and Control Area Regulations must have: planning permission or CLUD; made an application for planning permission; or made an application for a CLUD. 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 accommodation or to home sharing or home letting. It does not apply outside control areas. See paragraphs 84 and following which explain the powers given to licensing authorities to refuse to consider licensing applications in breach of planning control.

Listings

196. Paragraph 14(1) makes it a requirement for any listing or advert to include: the licence number and the Energy Performance Certificate (EPC) rating (where this is required by buildings standards legislation).

197. The licence number will allow guests to know that the accommodation is licensed.

198. Currently, EPC Certificates are only required for secondary letting of dwellinghouses (i.e. houses and flats). The rating will indicate how costly the accommodation is to heat (where this is billed separately) or the environmental credentials of the accommodation.

199. Letting agencies and platforms will be expected to request this information as part of the information required to advertise or list accommodation. The licence number will help assure the letting agency, platform and potential guests that the accommodation is licensed. Display of the licence number will also help local authorities with enforcement.

200. Paragraph 14(2) requires that listings and adverts are consistent with the terms of the licence. This means, for example, that the premises should only be advertised or listed for the type of short-term let for which a licence has been granted (schedule 3, paragraph 2); i.e. it would be a breach of licence conditions to offer a house for secondary letting for which a home sharing licence had been granted. It also means that the total capacity of the accommodation advertised must be consistent with the maximum occupancy (schedule 3, paragraph 11) of the premises. For example, advertising a house for secondary letting for 10 guests, when the maximum occupancy is eight would breach this condition. Similarly, in a B&B with a maximum occupancy of eight, advertising each of four rooms with an occupancy of two is consistent with the maximum occupancy, whereas advertising each of the four rooms with an occupancy of three would not be.

Insurance

201. Paragraph 15 makes it a mandatory condition for the host to ensure that there is valid buildings insurance in place for the premises for the duration of the licence. It is also mandatory to have valid public liability insurance for the premises for the duration of each short-term let agreement (i.e. whilst guests are staying at the premises).

202. Insurance 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 owner of the premises, where the host is not the owner, or the platform). The fact that public liability insurance need only be in place for the time that guests are staying at the premises makes it easier for hosts to use public liability insurance provided by platforms as part of their booking service. The Scottish Government intends to recommend in guidance that public liability insurance should be at least £2 million for whole property lets and that home sharers should seek advice.

Payment of fees

203. Paragraph 16 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

204. Paragraph 17 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

205. 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, 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

206. Article 7(10) defines a “relevant person” as a person operating a short-term let before 1 October 2022 and continuing to do so without a licence; i.e. an existing host operating without a licence.

207. Article 4(1) and (2) has the effect that, from 1 October 2022, it is an offence for any person to continue to operate after their licence application has been determined and refused. Article 4 also means that new hosts cannot operate without a licence from 1 October 2022.

208. Article 7 gives relevant persons the six months from 1 October 2022 to 1 April 2023 to submit a licensing application. Licensing authorities have 12 months to determine such applications (but note some applications can be suspended for up to 3 months, see paragraph 214 below). Until 1 April 2023, a relevant person can provide short-term lets without a licence. On or after 1 April 2023, a relevant person can continue to provide short-term lets, provided they made an application by 1 April 2023 and that application has not been finally determined (as set out at paragraph (8)).

209. Article 7(1) makes transitional provisions for relevant persons 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 limited period in certain circumstances.

210. 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.

211. Article 7(2) makes it easier for licensing authorities to process a large number of applications from relevant persons. Although they will be encouraged to make the applications earlier, it is likely that many applications from relevant persons will be made close to the deadline of 1 April 2023. 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. (Note that this timeline has been temporarily extended by the Coronavirus (Scotland) Act 2020.) This allows licensing authorities to spread the work over the 12 months, including taking applications to licensing committees.

212. For new hosts (those wishing to commence short-term letting on or after 1 October 2022), the usual timelines in the 1982 Act (9 months, temporarily modified by the Coronavirus (Scotland) Act 2020 to 12 months) continue 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 period for relevant persons has been amended in the Licensing Order. The downside for relevant persons 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 relevant persons in how they prioritise their work.

Preliminary refusal: breach of planning control

213. Paragraphs (3) to (7) make transitional provision in respect of applications by relevant persons where the licensing authority considers that the use of the premises for short-term let would constitute a breach of planning control.

214. In this case, the licensing authority may suspend consideration of the application. Note that the application is not finally determined and, therefore, the relevant person can continue to provide short-term lets. Paragraph (4) requires the licensing authority to give the relevant person notice as soon as reasonably practicable. The suspension lasts for a period of three months beginning on the date of the notice. Paragraph (4)(b) requires the relevant person to make a planning application or apply for a certificate of lawfulness of use or development (“CLUD”) which would remedy the breach. Paragraph (4)(c) requires the relevant person to tell the licensing authority when they have done this; in practice, they might provide a planning application reference number to the licensing authority.

215. Paragraph (5) limits the power of the licensing authority to refuse to consider a licence application from a relevant person under paragraph 2A of schedule 1 of the 1982 Act. A refusal to consider a licence application made by a relevant person would, as a consequence of provision made by paragraph (8)(c), mean that the application is finally determined and it would be an offence for the relevant person to continue to provide short-term lets. The licensing authority may only refuse to consider a licence application where the relevant person has not submitted a planning or CLUD application within 3 months of being asked to do so or the planning or CLUD application has been refused and no appeal against that decision is ongoing or possible.

216. Paragraph (6) prevents the licensing authority from refusing to consider a licence application if the relevant person was not notified under paragraph (4); i.e. the relevant person has to be given the opportunity to remedy the breach.

217. Paragraph (7) gives the licensing authority 12 months from the date the relevant person notifies the licensing authority that a planning or CLUD application has been made to determine the application or from 1 July 2023, whichever is the earlier. This means that any such applications must be determined by 1 July 2024 at the latest.

218. Paragraph (8) sets out the circumstances in which a licence application by a relevant person is finally determined. When an application is finally determined, the disapplication of the offence under section 7(1) of the 1982 Act ceases and, unless a licence has been granted, the relevant person must cease providing short-term lets. One of the circumstances in which an application is finally determined is when an appeal is disposed of; paragraph (9) sets out the different circumstances in which an appeal is disposed of.

Deadline for all hosts to be licensed

219. All hosts must be licenced by 1 July 2024.

220. In the cases where a licensing authority suspends consideration of an application, because they consider that use of the premises for short-term let would constitute a breach of planning control, it is possible that the host could continue to operate without a licence for a limited period beyond 1 April 2024. Consider the following example:

221. an application from a relevant person is received on 31 March 2023;

222. the licensing authority considers that use of the premises for a short-term let would constitute a breach of planning control;

223. the relevant person is notified on 17 April 2023 that their application is suspended by the licensing authority; and

224. the relevant person takes the full 3 months to notify the licensing authority of a planning application and does this on 16 July 2023.

225. In such a case, the application may not be finally determined until 30 June 2024. Note that the licensing authority has less than 12 months to determine the application but that the reduced time corresponds to the time between receiving the application and notifying the relevant person that their application is suspended.

Consequential amendments

226. Article 8 gives effect to schedule 4, which makes consequential amendments to the 2004 Act, the 2006 Act, the 2016 Act.

227. Paragraph 1 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.

228. 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.

229. Paragraph 3 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.

Consultation

230. 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.

231. 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 licensing scheme and planning control areas for short-term lets in Scotland in December 2020.

232. 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.

233. The Scottish Government laid the 2020 Licensing Order and Control Area Regulations in December 2020. The Control Area Regulations were approved by the Scottish Parliament, and came into force on 1 April 2021. The 2020 Licensing Order was withdrawn in February 2021 in response to concerns raised by stakeholders and members.

234. A stakeholder working group was established in February 2021 to develop guidance on the licensing scheme and planning control areas, and to consider whether any changes to the 2020 Licensing Order were needed. The stakeholder working group met in February, March and May 2021, prior to the publication of a revised Licensing Order and draft Business and Regulatory Impact Assessment (BRIA) for

⁸ The minutes of the stakeholder working group meetings, more information about the working group and a list of members can be found here: [Short-Term Lets Stakeholder Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/Short-Term Lets Stakeholder Working Group).

consultation from 25 June 2021 to 13 August 2021. This third public consultation (“the 2021 consultation”) was accompanied by draft guidance on the licensing scheme and control areas for hosts and operators, platforms and local authorities.

235. The Scottish Government published its report on the 2021 consultation in November 2021. This report can be found on the Scottish Government website⁹.

Issues specific to the Licensing Order

236. The 2021 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of the consultation draft Licensing Order and BRIA.

Impact Assessments

237. 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. They will be updated and published in early 2022, in parallel with revised and updated guidance documents.

Financial Effects

238. An updated *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published in November 2021 to accompany the laying of the Licensing Order and Control Area Amendment Regulations.

Scottish Government

Housing and Social Justice Directorate

November 2021

Scottish Government - Other documents

- [Business and Regulatory Impact assessment](#)
- **Letter from Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison on the relaying of the instrument (below)**

30 November 2021

Dear Presiding Officer

THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022

⁹ All Scottish Government consultation and research documents on short-term lets from 2019, 2020 and 2021 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 was laid in draft before the Scottish Parliament on 22 November 2021. The Order is made by Scottish Ministers in exercise of the powers conferred by sections 3A(1), 44(1)(b) and (2)(a) (b), and 136(2) of the Civic Government (Scotland) Act 1982, and all other powers enabling them to do so. This instrument is subject to affirmative procedure at the Scottish Parliament.

In terms of Rule 10.8 of the Standing Orders of the Scottish Parliament, the Scottish Government wishes to withdraw the above named instrument and re-lay an amended version in order to address minor issues with the instrument which have been highlighted by the legal advisers to the Delegated Powers and Law Reform Committee (DPLRC). The majority of the issues raised are typographical errors, and one relates to drafting which cannot be addressed under the correction procedure. None of the issues raised by the DPLRC disclose any significant legal concerns. We intend to correct the issues identified and re-lay the Licensing Order today (30 November).

I am copying this letter to the convener of the Local Government, Housing and Planning Committee and Business Managers.

SHONA ROBISON

Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022

Title of Instrument:	Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022
Type of Instrument:	Affirmative
Laid Date:	22 November 2021
Circulated to Members:	25 November 2021
Meeting Date:	21 December 2021
Minister to attend meeting:	Yes
Motion to approve:	S6M-02264
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	17 January 2022

Purpose

239. Section 26B was inserted into the 1997 Act by the Planning (Scotland) Act 2019. The effect of section 26B is to allow planning authorities to designate all or part of their area as a short-term let control area ("a control area"). Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply. The Control Area Amendment Regulations amend the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154) ("the Control Area Regulations") to update the definition of short-term let and excluded accommodation so that they are consistent with the definition in the Licensing Order.

Procedure for Affirmative instruments

240. The draft Regulations were laid on 22 November 2021 and referred to the Local Government, Housing and Planning Committee. The Regulations are subject to affirmative procedure (Rule 10.6). It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Social Justice, Housing and Local Government,

Shona Robison has, by motion [S6M-02264](#) (set out in the agenda), proposed that the Committee recommends the approval of the regulations.

Recommendation

241. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 17 January 2021.

Scottish Government Explanatory Note

242. These Regulations amend the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (“the 2021 Regulations”) which made further provision for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). Section 26B enables a planning authority to designate all or part of its area as a short-term let control area. Where an area is designated as a short-term let control area a change of use of a dwellinghouse to use for the purpose of providing short-term lets is deemed to be a material change of use and so constitutes development under section 26 of the 1997 Act. Regulation 2 of the 2021 Regulations makes provision about what constitutes providing a shortterm let for the purposes of section 26B of the 1997 Act. This does not include the letting of excluded accommodation. Regulation 2 removes from the list of excluded accommodation in the schedule of the 2021 Regulations dwellinghouses which are, or which are part of, a hotel, a boarding house, a guest house, a hostel or an aparthotel. Regulation 2 also amends regulation 2 the 2021 Regulations to provide that short term letting for the purposes of section 26B does not include provision of accommodation under an “excluded tenancy”. What is an “excluded tenancy” is defined in the changes made to regulation 1(2) of the 2021 Regulations. Regulation 2 also makes it clear that for the provision of accommodation to be a short term let for the purposes of section 26B it must be done in the course of business.

Scottish Government Policy Note

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (SHORT-TERM LET CONTROL AREAS) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/XXX

243. The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 (“the Control Area Amendment Regulations”) are made in exercise of the powers conferred by sections 26B(5) and 275 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of the instrument.

244. Section 26B was inserted into the 1997 Act by the Planning (Scotland) Act 2019. The effect of section 26B is to allow planning authorities to designate all or part of their area as a short-term let control area (“a control area”).

245. Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.

246. The Control Area Amendment Regulations amend the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154) (“the Control Area Regulations”) to update the definition of short-term let and excluded accommodation so that they are consistent with the definition in the Licensing Order¹⁰.

Policy Objectives

247. 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.

248. 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.

249. The Licensing Order complements the Control Area Regulations which make 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.

250. The licensing scheme and control areas 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 Control Area Amendment Regulations

251. Planning permission is required for any material change of use of a building or land. Outside of a control area, it continues to be the case that it is for the planning authority to consider whether any change of use of a dwellinghouse is material and therefore requires planning permission on a case-by-case basis. In terms of section 26B of the 1997 Act, once a control area is designated by a planning authority,

¹⁰ The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (SSI 2022/xxx).

a change of use of a dwellinghouse to provide short-term lets will always require planning permission.

252. The Control Area Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas and allow planning authorities to consider applications for consent for change of use in relation to planning matters.

253. Regulation 2 of the Control Area Regulations sets criteria to establish what does or does not constitute a short-term let for the purposes of section 26B of the 1997 Act in addition to the criteria set out in section 26B(3) of the 1997 Act. It sets out exclusions around the provision of accommodation to family members, persons living in the property to provide work or services to the provider of the accommodation or a family member, and types of accommodation set out in the Schedule to the Control Area Regulations.

254. Regulation 2 of the Control Area Amendment Regulations aligns the definition of short-term let in regulation 2 and the schedule of the Control Area Regulations with the definition at article 3 and schedule 1 of the Licensing Order, insofar as it is relevant to the regulation of change of use dwellinghouses in terms of section 26B of the 1997 Act.

Excluded tenancies

255. Section 26B(3)(a) of the 1997 provides that providing accommodation by means of a private rented tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) does not constitute a short-term let. Regulation 2(2)(b) has the effect the provision of accommodation by means of an “excluded tenancy” does not constitute a short-term let either. A definition of “excluded tenancy” is inserted into regulation 1(2) of the Control Area Regulations. Only prospective tenancies are relevant, so tenancies which can no longer be entered into, which are included in the Licensing Order, are not included here¹¹.

256. Student residential tenancies are excluded, but without reference to paragraph 5(3) of schedule 1 of the 2016 Act (c.f. the Licensing Order) as this refers to accommodation for which planning permission has been granted for use for housing students.

In the course of business

257. Regulation 2(3) adds the qualifier “in the course of business” to the definition of short-term let. As commercial consideration includes payment of money and benefits in kind, it would include goods arranged to be exchanged in lieu of money. The “in the course of business” test precludes arrangements which are not commercial in nature from being within scope of a short-term let.

Excluded accommodation

258. Regulation 2(4)(a) removes hotels, guest houses, boarding houses, hostels and aparthotels from the list of excluded accommodation for consistency with the Licensing Order.

¹¹ Tenancies 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 Agricultural Holdings (Scotland) Act 2003) are also not excluded.

Hotels, guest houses, boarding houses and hostels

259. Section 26B of the 1997 Act applies only to the change of use of a “dwellinghouse”. It is envisaged that some hotels, guest house, boarding houses or hostels may also comprise a dwellinghouse within part of the premises. The changes to the definition of excluded accommodation will mean that a change of use of such a dwellinghouse within a control area to use for the purpose of providing short-term lets will not be excluded from the scope of section 26B of the 1997 Act.

260. The addition (see paragraph 264 below) of premises licensed under the Licensing (Scotland) Act 2005 (“the 2005 Act”) to the list of accommodation excluded from the scope of the Control Area Regulations will exclude most dwellinghouses on the premises of hotels. For the small minority of hotels which are both unlicensed and have dwellinghouses on the premises: the use of these dwellinghouses to provide accommodation to workers is excluded by regulation 2(1)(d) of the Control Area Regulations; the use of these dwellinghouses to provide short-term lets would be within scope but, in most cases, we would expect that these dwellinghouses would already have planning permission for use for this purpose. In the case that a dwellinghouse is not excluded for any of the preceding reasons, it is the policy intention that it is within scope of the Control Area Regulations.

261. Similar arguments apply as to hotels with regard to the treatment of dwellinghouses (other than the only or principal home of the landlord or occupier) on the premises of guest houses, boarding houses and hostels.

Aparthotels

262. Serviced apartments comprising an aparthotel (as defined in the Control Area Regulations) would normally be expected have planning permission for that change of use; they should not be excluded from the scope the Control Area Regulations.

Residential accommodation

263. The definition of residential accommodation at paragraph 1(e) of the schedule to the Control Area Regulations is amended by regulation 2(4)(a)(ii) to align with the definition used in the Licensing Order.

Premises licensed under the 2005 Act

264. Premises licensed under the 2005 Act are added to the list of excluded accommodation by regulation 2(4)(a)(iii) to align with the Licensing Order. This has the effect of, for example, excluding dwellinghouses on the premises of hotels where they are already licensed specifically to offer accommodation under the 2005 Act.

Interpretation

265. Regulation 2(4)(b) adds to and amends the interpretation of various terms in the schedule, to align with corresponding terms in the Licensing Order.

266. For more background information on the definition of short-term let, see the Policy Note for the Licensing Order.

Consultation

267. 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.

268. 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 licensing scheme and planning control areas for short-term lets in Scotland* in December 2020.

269. 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 Control Area Regulations in chapter 6.

270. The Scottish Government laid the 2020 Licensing Order and Control Area Regulations in December 2020. The Control Area Regulations were approved by the Scottish Parliament, and came into force on 1 April 2021. The 2020 Licensing Order was withdrawn in February 2021 in response to concerns raised by stakeholders and members.

271. A stakeholder working group was established in February 2021 to develop guidance on the licensing scheme and planning control areas, and to consider whether any changes to the 2020 Licensing Order were needed. The stakeholder working group met in February, March and May 2021¹², prior to the publication of a revised Licensing Order and draft Business and Regulatory Impact Assessment (BRIA) for consultation from 25 June 2021 to 13 August 2021. This third public consultation (“the 2021 consultation”) was accompanied by draft guidance on the licensing scheme and control areas for hosts and operators, platforms and local authorities. *Planning Circular 01/2021: short-term let control areas* was also published on 25 June 2021¹³, allowing planning authorities to progress with plans to designate control areas.

272. The Scottish Government published its report on the 2021 consultation in November 2021. This report can be found on the Scottish Government website¹⁴.

Issues specific to the Control Area Amendment Regulations

1. The 2021 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of the Licensing Order, including the

¹² The minutes of the stakeholder working group meetings, more information about the working group and a list of members can be found here: Short-Term Lets Stakeholder Working Group - gov.scot (www.gov.scot).

¹³ [Planning circular 01/2021: short-term let control areas - gov.scot \(www.gov.scot\)](#)

¹⁴ All Scottish Government consultation and research documents on short-term lets from 2019, 2020 and 2021 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

definition of short-term let (which is relevant to the Control Area Amendment Regulations) and the BRIA.

Impact Assessments

273. 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. They will be updated and published in early 2022, in parallel with revised and updated guidance documents.

Financial Effects

274. An updated *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published in November 2021 to accompany the laying of the Licensing Order and Control Area Amendment Regulations. The BRIA is attached as a separate document and can be found on the Scottish Government website.

275. The cost of a planning application (currently £401)¹⁵ is not affected by the Control Area Amendment Regulations.

Scottish Government
 Directorate for Local Government and Communities
 November 2021

Scottish Government - Other documents

- [Draft Equality Impact Assessment](#)
- [Draft Final Impact Assessment part 1](#)
- [Draft Final Impact Assessment part 2](#)
- [Draft Final Impact Assessment part 3](#)
- [Draft Final Impact Assessment part 4](#)
- [Draft Final Impact Assessment part 5](#)
- [Draft Final Impact Assessment part 6](#)

¹⁵ Set in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120).

Annexe A

Written Submissions

Follow up information from Andrew Mitchell of the City of Edinburgh Council

Andrew Mitchell of the City of Edinburgh Council has sent the City of Edinburgh Council [response](#) to the Scottish Government consultation.

Written submission from FSB on Short Term Lets

In summary, I would highlight the following points:

1. We believe that regulating the self-catering and B&B sectors in the proposed way is disproportionate – especially considering an available alternative regulatory model has been developed by the Association of Scotland's Self-Caterers (ASSC) and endorsed by VisitScotland and many others. Indeed, the regulations are a flawed and blunt attempt to address specific issues that have arisen in the holiday accommodation market with the significant growth in Airbnb (and similar) rental properties in a small number of local communities.
2. We fear that the creation of licensing schemes and control areas will have a detrimental impact on local economies across Scotland – and that the impact will be most acute on the smallest businesses. We expect that fees associated with the licensing and planning schemes will be high, and this will have a big impact on local businesses with typically small profit margins.
3. We believe that now is not the time to be introducing new regulations on key local businesses in the self-catering and B&B sectors. Indeed, it is highly likely that FSB members in these sectors will be badly affected by the Omicron variant and the introduction of new Covid-19 mitigations by the Scottish Government.

Written submission from the Professional Association of Self-Caterers UK

The Professional Association of Self-Caterers UK represents professional self-caterers across the UK. These are small businesses where the self-catering business is a primary income stream for the owners. We have significant concerns about the proposals for licensing in Scotland.

The self-catering sector is worth £2.6billion to the British economy and supports 69,635 jobs across the United Kingdom. In 2019 there were 17,794 traditional self-catering properties across Scotland, which not only generated £672million in economic activity but encouraged visitors to spend £867million, thereby benefiting other related businesses in tourism and hospitality.

The depth of feeling that these proposals will be unworkable, unnecessarily costly for those to be regulated (and regulators) and will drive many small businesses to close was clearly reflected in the thousands of consultation responses to Scottish Government. That deep and widespread concern has not been captured accurately within the consultation report, nor the BRIA.

We are concerned as to whether these proposals are genuinely fit for purpose, in the wider public interest and will they actually address the required policy objectives? What are, indeed, the policy objectives?

We note Tony Cain's 'evidence' at the Local Government, Housing & Planning Committee on 14th December in response to the Convener:

Convener: "What would we need to do to manage down the levels of STL's"

*Tony Cain (Association of Local Authority Chief Housing Officers): "I think we need to go through a process of removing licences and permissions to operate. People will say we can't do that. These are their businesses - and I was thinking about this earlier; we regularly prohibit activities that were previously unregulated. And this is one of those areas. **Ten years ago there was no such thing as a STL.** It has taken ten years to get to a place where we understand how to manage and the risks of unmanaged STLs. We simply now need to select those that can no longer operate".*

On the basis that professional, traditional, fully regulated self-caterers have co-existed peacefully in communities for decades, can we assume that they will be exempt from this legislation? We cannot be described as STLs in the context above. Otherwise it would appear that this will result in the Scottish Government 'managing down' a sector that is worth £867m to the Scottish economy.

Many of the material issues raised during consultation from industry have not been addressed by the Scottish Government. Our colleagues at the Association of Scotland's Self-Caterers, with full industry support, including from ourselves, have put forward alternative options including a registration system or registration exemption - but these have been disregarded, seemingly without proper analysis (or at least that has not been transparently shared).

Industry views have been discredited and viable alternatives have been ignored.

We would encourage the Committee and the Scottish Government to reconsider these proposals as a matter of urgency and to protect the livelihoods of legitimate small businesses in Scotland.