POLICY NOTE

THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) AMENDMENT ORDER 2024

SSI 2024/227

1. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024 ("the Amendment Order") is made by Scottish Ministers in exercise of the powers conferred by sections 3A(1), 44(1)(b), (2)(a), (b), (c) 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. The Amendment Order amends the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("The Order").

Purpose of the instrument.

2. The Amendment Order amends the Order to:

(a.) amend the definition of "commercial consideration" to make clear that provision of a service is no longer included in that definition.

(b.) exclude temporary placements for foster children where the accommodation is not their main residence

(c.) provide clarity that licensing authorities can approve part of an application for a single licence for multiple premises on the same site

(d.) exclude guest rooms within certain residential accommodation that are available for visiting residents

(e.) clarify how temporary exemptions operate and set out transitional arrangements for some of the changes in this amendment order

(f.) introduce provisional short-term let licences which can be applied for at the construction stage of new short-term let accommodation

(g.) introduce provisions for the transfer of licences in certain circumstances

(h.) update the list of information guests should have access to at the short-term let accommodation to include information about what to do if the carbon monoxide alarm sounds and warnings on mobile gas cabinet heaters

(i.) tidy up drafting for consequential amendments

Policy Objectives

Definitions

3. The definition of "commercial consideration" has been amended to make clear that provision of a service is not captured. This recognises that this could be confusing when read in conjunction with Article 3 (d) of the 2022 Licensing Order, which excludes accommodation if it is provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host's household.

Foster Care arrangements

4. The Amendment Order clarifies that a person's foster child is to be regarded as the person's child. This has been included to clarify that foster children are to be treated as part of a foster carer's immediate family even if the placement is short-term and the accommodation is not the foster child's main residence. The foster carers are remunerated for looking after these children and in this sense there could be confusion about whether this constitutes commercial consideration. This amendment provides legal certainty that this is not considered a commercial consideration for the purposes of short-term let licensing and the provision of foster care is excluded from the requirement to have a short-term let licence.

Single licence for multiple premises on the same site

5. Article 2(3) clarifies that licensing authorities when determining single licence applications for multiple accommodations on a single premises, do not need to refuse the whole application if one of the accommodations is deemed unsuitable. The licensing authority can still grant the licence for the accommodation on the premises that is suitable.

Excluded accommodation

6. Paragraph 1 of Schedule 1 to The Order has been amended to exclude guest rooms in certain residential accommodation that are available for guests visiting residents. This recognises that, when considering care homes for example, such arrangements are usually not carried out in the course of business for commercial consideration, but are usually for the purposes of personal visits to residents.

7. Guests do not pay a market rate to stay in the room but may pay a nominal fee for the use of the room that covers maintenance. There may also be no charge because the factoring fee paid by the tenant/ owner will cover maintenance of the guest room. The rooms are not let on the open market and are typically used by immediate family visiting residents in the accommodation complex.

8. Definitions of "sheltered housing" and "vulnerable adult" have been inserted into Paragraph 3(1) of schedule 1 of The Order by Article 2(5) to indicate the type of accommodation that is covered by these exclusions and the characteristics of residents living there. Sub-paragraph (c) of the sheltered housing definition refers to assistance and support that is provided for those residents. That does not have to be personal care provided by the sheltered housing. It may be professional help such as a District Nurse

but could also be informal assistance and support provided to some of the residents by visiting relatives and friends. As these are independent living premises not all residents will require assistance and support all of the time.

Temporary exemptions and transitional arrangements

9. The policy intention was previously that a temporary exemption should be for a single and continuous period of no more than six weeks in a 12 month period. This is clearly stated in the Policy Note published alongside The Order and the non-statutory Scottish Government guidance for hosts/operators and licensing authorities.

10. We are aware, however, that the wording in The Order (a specified period, which must not exceed six weeks in any period of 12 months) has been interpreted differently with some licensing authorities allowing multiple temporary exemption periods provided that the combined total does not exceed six weeks in a 12 month period. We have listened to stakeholder feedback and amended the wording to clarify the position and to allow up to three periods of temporary exemptions in each calendar year that must not exceed a combined total of six weeks. This will provide the flexibility for hosts to apply for temporary exemptions if they only wish to use their accommodation as a short-term let for short periods throughout the calendar year such as Christmas, Hogmanay and the summer holidays. If they wish to operate a short-term let for more periods and/ or over six weeks per year, hosts will need to apply for a full licence.

11. The Amendment Order provides transitional arrangements for those hosts that have already been granted temporary exemptions in the 12 months preceding the coming into force of the Amendment Order. Those periods of temporary exemption are discounted for the purpose of determining whether the maximum period of six weeks in one calendar year has been exceeded or the maximum number of three periods of exemption in one calendar year has been exceeded. This is designed to avoid any confusion on the part of hosts and licensing authorities when the new law comes into force.

Provisional licences

12. Article 2(7) inserts new paragraph 7A into schedule 2 of The Order to enable prospective short-term let hosts to apply for a provisional licence before the accommodation has been built. This will provide reassurance to an applicant that once a completion certificate has been issued for the property and, subject to the applicant being able to secure compliance with licensing conditions, they will be able to obtain confirmation of a full licence. The provisional licence does not permit the prospective host(s) to take bookings or receive guests until the licence is confirmed.

13. This provision is drafted to provide an alternative to the process for a full short-term let licence. For clarity, local authorities can still set a fee to process provisional and confirmation applications; this may be one fee at the beginning or two separate fees. Provisional licences are eligible to be transferred, upon application, in the same way that full licences can now be transferred under new paragraph 9A of schedule 2.

14. Prospective hosts will need to submit evidence, alongside their provisional licence application, such as confirmation of planning status. The licensing authority will use information already provided for the above purposes (such as floor plans) to assess the suitability of the accommodation and its maximum occupancy level. The prospective

host(s) will also need to display a notice, in accordance with paragraph 2(2) of schedule 1 of the 1982 Act, for 21 days after the provisional licence application is submitted to the licensing authority, at the site of the proposed short-term let accommodation. The Licensing Authority will have discretion to refuse the grant of a licence where there is good reason for doing so in accordance with paragraph 5(3) of schedule 1 to the 1982 Act. This will include where the person is not a fit and proper person to be a licence holder.

15. Licensing authorities will recognise that prospective hosts will not be able to comply with all of the mandatory conditions at Schedule 3 of The Order at the provisional licence application stage.

16. The licensing authority must confirm the licence when the host submits an application asking them to do so provided the licensing authority are satisfied that, following construction of the premises, the applicant would be able to comply with licensing conditions. The application for confirmation must be accompanied by confirmation of planning status and building standards information.

17. Licensing authorities may choose to set additional conditions at either the provisional or confirmation application stage in accordance with paragraph (5)(1A)(b) of schedule 1 to the 1982 Act.

Transfer of Licences

18. The Amendment Order inserts new paragraph 9A into Schedule 2 of The Order. This will enable licence holders to apply to the relevant licensing authority to transfer their licence to another individual. This will support hosts/operators if they wish to sell by allowing them to market their accommodation as a short-term let (with onward bookings) or if there are other reasons why a licence needs to be transferred such as the licence holder has died and an executor acts on their behalf. The licensing authority will consult the Chief Constable as part of the transfer application and prospective hosts/operators will not have to apply for a new full licence.

19. There will not be an opportunity for members of the public to lodge objections or representations to a transfer application as they otherwise would for an application for a new licence. This is to allow the sale of the property to proceed quickly with only the chief constable being given the opportunity to comment. The licensing authority will still be able to vary, suspend or revoke the licence either before or immediately after it has been transferred.

20. Licensing authorities may choose to set a fee for processing applications received to transfer a short-term let licence, in accordance with paragraph 15 of Schedule 2 of the Licensing Order.

21. The duration of the licence will not be altered by the transfer.

Addition to mandatory conditions

22. Paragraph 12 of Schedule 3 inserts two new pieces of information, as part of compliance with mandatory licence conditions. This responds to recommendations made by Sheriff Paul Brown in his Fatal Accident and Sudden Death Inquiry report of 18 September

2023 into the death of Oliver Hill that occurred on 28 October 2015 in a short-term let in Angus. This amendment means hosts/operators must make the following information accessible to guests within the short-term let accommodation: 1) instructions as to what guests should do in the event that the carbon monoxide alarms sounds and, where relevant, 2) if there is a mobile gas cabinet heater in the premises, safety instructions as to the operation and movement of the mobile heater.

Consequential Amendments

23. The purpose of this change is to avoid confusion about whether the repairing standard applies to short-term let accommodation. Paragraph (f) is removed from 12(1) of the Housing (Scotland) Act 2006 and subsection (3) remains, making it clear that short-term let accommodation is a type of tenancy that must meet repairing standard requirements.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

24. The Scottish Ministers have made the following statement regarding children's rights.

25. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

26. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

27. The Scottish Government has consulted extensively during the development of proposals for the regulation of short-term lets. Details can be found here: https://www.gov.scot/publications/short-term-lets/

28. The Licensing Order was approved by Parliament in January 2022 and came into force on 1 March 2022. The Scottish Government published a final version of its short-term let licensing guidance in March 2022 and updated this in June 2023.

29. Informal engagement with stakeholders was undertaken between October 2023 and March 2024 in connection to this Amendment Order, which also takes account of representations from stakeholders since licensing commenced in October 2022.

Impact Assessments and Financial Effects

30. The Scottish Government has published screening or full impact assessment documentation in connection to this Amendment Order for: Business Regulatory (BRIA); Children's Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection (DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA).

Scottish Government

Local Government and Housing Directorate

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