

SCHEDULE 2

Article 4

Application of Part 1 of the 1982 Act

Modification of section 5 - warrants authorising entry

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

“Warrants authorising entry

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

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

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

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

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

Modification of paragraph 1 of schedule 1 – applications

2. In paragraph 1 of schedule 1—

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

Temporary exemption from the requirement to have a licence

3. After paragraph 1 of schedule 1 insert—

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

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

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

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

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

Modification of paragraph 2 of schedule 1 – publicity

4. In paragraph 2 of schedule 1—

(a) after sub-paragraph (1), insert—

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

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

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

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

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

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

(2C) A licensing authority may elect to—

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

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

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

- (a) that an application has been made for a licence,

- (b) the particulars required under paragraph 1(2) to be specified in the application (other than the date and place of birth, previous addresses, email address and phone number of any person),
- (c) that objections and representations in relation to the application may be made to the licensing authority in accordance with paragraph 3,
- (d) the effect of paragraph 3(1) to (3).”,
- (d) where it occurs in each of sub-paragraphs (4) and (5) for “sub-paragraph (2)” substitute “sub-paragraph (2A)”,
- (e) at both places where it occurs in sub-paragraph (6), for “sub-paragraph (2)” substitute “sub-paragraph (2A)”,
- (f) in sub-paragraph (7)(b), for “sub-paragraph (2)” substitute “sub-paragraph (2A)”, and
- (g) after sub-paragraph (9), insert—
 - “(10) In this paragraph—
 - “planning notice” means a notice published in accordance with regulation 18, or published in accordance with regulation 20, of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(1) in connection with an application for planning permission for the use of the premises for short-term lets,
 - “relevant application” means an application—
 - (a) for the grant of a licence,
 - (b) for renewal of a licence where there has been a material change since the grant, or
 - (c) an application for consent under paragraph 9(2).”.

Modification relating to preliminary refusal

5. After paragraph 2 of schedule 1, insert—

“Preliminary refusal: breach of planning control

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

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

- (a) the applicant,
 - (b) the enforcing authority, and
 - (c) the chief constable.
- (3) The notice must—
- (a) give the licensing authority’s reason for refusing to consider the application, and
 - (b) inform the applicant of the effect of subsection (4).

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

(1) [S.S.I. 2013/155](#).

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

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

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

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

6. In paragraph 5 (disposal of applications for the grant and renewal of licences) of schedule 1—

(a) after sub-paragraph (2A), insert—

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

(b) after sub-paragraph (3)(c), insert—

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

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

(cb) the application does not contain the information required under paragraph 1(2)

(da) (the consent of each owner), or”, and

(c) after sub-paragraph (3), insert—

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

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

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

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

Modification of paragraph 8 of schedule 1 - duration of licences

7.—(1) In paragraph 8 (duration of licences) of schedule 1—

(a) in sub-paragraph (2)(a), omit “or”,

(b) in sub-paragraph (2)(b), for “.” substitute “, or”,

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

“(c) for such longer period as the licensing authority may decide at the time when they renew a short-term let licence.”.

(2) After paragraph 8(2), insert—

“(2A) A licensing authority may decide to renew a licence for such longer period under sub-paragraph (2)(c)—

- (a) in respect of different licences, or different types of licence,
- (b) otherwise for different purposes, circumstances or cases.

(2B) A licensing authority must publish, in such manner as they think appropriate, the circumstances (if any) in which they will renew a licence for such longer period under sub-paragraph (2)(c).”.

Enforcement

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

“Power to require rectification of breach of licence

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

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

(3) An enforcement notice must specify—

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

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

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

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

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

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

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

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

Modification of paragraph 14 of schedule 1 - public register

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

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

- “(c) the applicant’s name,
- (d) the full address of the short-term let (including a postcode),
- (e) the council ward in which the short-term let is located,

- (f) the date of the application,
- (g) the status of the application (granted, refused, being determined, revoked, lapsed etc.),
- (h) the type of premises,
- (i) the short-term let type (secondary letting, home sharing or home letting),
- (j) the maximum occupancy limit or limits,
- (k) whether the short-term let is within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park,
- (l) the unique licence number allocated to the application,
- (m) where the licensing authority has required its inclusion in the application—
 - (i) the number of bedrooms in the premises,
 - (ii) data on availability and occupancy,
 - (iii) contact details for the manager of the premises, if different from the applicant, and
 - (iv) the Energy Performance Certificate rating.”.
- (b) after sub-paragraph (2), insert—
 - “(2A) Nothing in this paragraph requires a licensing authority to include on the register—
 - (a) particulars relating to a licence (including applications and any other information relating to the licence) if a period longer than 12 months has passed beginning with the last date on which the licence was revoked under paragraph 11,
 - (b) particulars relating to a licence which has been surrendered.”,
- (c) after sub-paragraph (4) insert—
 - “(5) From 1 April 2022, the licensing authority must on a quarterly basis—
 - (a) share the register with Scottish Ministers in a format which enables analysis of the data, and
 - (b) publish the content of the register.
 - (6) A licensing authority may comply with the duty in sub-paragraph (5)(b) by making the content of the register available in an electronic format.
 - (7) A licensing authority may share information as it considers appropriate about the suspension, variation or revocation of a licence with other licensing authorities.”.

Modification of paragraph 15 of schedule 1 - fees

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

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

- (i) a failure to comply with a licence condition,
- (ii) a complaint relating to the premises (unless the complaint is frivolous or vexatious),

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

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

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

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

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

Modification of paragraph 17 of schedule 1 - giving of reasons

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

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

Interpretation

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

“**19A.** In this schedule—

“energy performance certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008(2)

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

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

(2) [S.S.I. 2008/309](#). Regulation 6 is amended by [S.S.I. 2012/208](#) and [S.S.I. 2013/12](#).

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

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

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

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

“unique licence number” means a unique number which—

- (a) is assigned to each application or licence, and
- (b) contains a number or letters which
 - (i) identifies the licensing authority, and
 - (ii) is used in every licence number used by the licensing authority.”.

⁽³⁾ S.S.I. 2021/XXX.