

SCHEDULE 2

PART 2

Modification of Schedule 1 of the 1982 Act

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4. Schedule 1 of the 1982 Act is to be read as if modified in accordance with paragraphs 5 to 17.

Applications

5. In paragraph 1 (Applications for the grant and renewal of licences)—
- (a) after sub-paragraph (2)(a), insert—
 - “(aa) the type of short-term let licence being applied for, being either—
 - (i) secondary letting,
 - (ii) home letting,
 - (iii) home sharing, or
 - (iv) home letting and home sharing,”
 - (b) 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”,
 - (c) after sub-paragraph (2)(d), insert—
 - “(da) where the applicant is not the owner of the premises, or the land on which the premises are located—
 - (i) the name and address of the owner (or, as the case may be, each owner), and
 - (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application,
 - (db) where the applicant shares ownership of the premises, or the land on which the premises are located—
 - (i) the name and address of each other owner, and
 - (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application,
 - (dc) the number of bedrooms in the premises,
 - (dd) details of any other short-term let licence granted to the applicant, and”.
 - (d) Omit sub-paragraph (3).

Temporary exemption from the requirement to have a licence

6. After paragraph 1 (applications for the grant and renewal of licences) insert—
- “1A.—(1) A licensing authority may, on application made to it, grant an exemption from the requirement to obtain a short-term let licence in relation to a specified property or properties and during a specified period (which must not exceed 6 weeks in any period of 12 months).
 - (2) A licensing authority may consult the chief constable and the Scottish Fire and Rescue Service in relation to an application made under sub-paragraph (1).

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

(4) 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.

(5) A licensing authority must publish, and keep under review, a statement of its policy in relation to the exercise of its functions under this paragraph.

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

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

(7) In preparing and reviewing a policy statement under sub-paragraph (5), a licensing authority must consult with such persons as the licensing authority considers appropriate.

(8) A policy statement published under sub-paragraph (5) must include information regarding—

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

(9) The policy statement published under sub-paragraph (5) must be made available on the licensing authority’s website.”.

Publicity

7. In paragraph 2—

(a) after sub-paragraph (1), insert—

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

(b) for sub-paragraph (3)(b) substitute—

“(b) the particulars required under paragraph 1(2) to be specified in the application, other than—

- (i) any address held by a person within the previous 5 years (other than their current address),
- (ii) the e-mail address or telephone number of any person, and
- (iii) the date and place of birth of any person,”

(c) for sub-paragraphs (7), (8) and (9) substitute—

“(7) The licensing authority—

(a) must, in accordance with sub-paragraph (8), cause public notice to be given of an application made to them for the grant or renewal of a short-term let licence if the application contains a declaration that the applicant has been unable to comply with the requirements of sub-paragraph (2), and

(b) may, in accordance with sub-paragraph (8), cause public notice to be given of every application made to them for the grant or renewal of a short-term let licence.

(8) For the purposes of sub-paragraph (7), public notice of an application for a short-term let licence must be given by publication of a notice—

- (a) in a newspaper or newspapers circulating in the area of the authority, or
- (b) on the licensing authority’s website or other website established and maintained for that purpose.

(9) For the purposes of sub-paragraph (7), a public notice of an application for a short-term let licence must contain the information stated at paragraph 2(3).”.

Preliminary refusal

8. After paragraph 2, insert—

“Preliminary refusal: breach of planning control

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

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

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

(3) The notice must—

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

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

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

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

(5) 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.”.

Grant and renewal of licences

9. In paragraph 5 (disposal of applications for the grant and renewal of licences)(2)—

(a) after sub-paragraph (2A), insert—

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

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

(1) 1997 c. 8. Section 123(1) was relevantly amended by section 6(2) of the Planning etc. (Scotland) Act 2006 (asp 17).

(2) Paragraph 5 was relevantly amended by S.S.I. 2006/475.

- “(ca) the applicant would not be able to secure compliance with—
- (i) the mandatory licence conditions, and
 - (ii) the standard conditions and any further conditions under sub-paragraph (1A)(b) to which the licence is to be subject,
- (cb) the application does not contain the information required under paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or”.

Duration of licences

10. In paragraph 8 (duration of licences)—

- (a) omit “or” following sub-paragraph (2)(a),
- (b) after sub-paragraph (2)(b), insert—
 - “, or
 - (c) for such longer period as the licensing authority may decide at the time when they renew a short-term let licence.”.
- (c) after sub-paragraph (2), insert—

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

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

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

Enforcement

11. After paragraph 10 (variation of licences), insert—

“Power to require rectification of breach of licence

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

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

(3) An enforcement notice must specify—

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

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

(5) A licensing authority may serve an enforcement notice on a licence holder requiring the rectification or prevention of any breach of a condition of a licence other than the breach of a condition of an enforcement notice.”.

Simplified process following surrender

12. In paragraph 13 (surrender of licence), after sub-paragraph (4)(3) insert—

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

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

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

Public register

13. In paragraph 14 (register of applications)—

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

“(c) where the application is made by or on behalf of a person other than a natural person—

- (i) the full name of the person, and
- (ii) the address of its registered or principal office,
- (d) the full address of the premises which are the subject of the application (including a postcode),
- (e) the council ward in which the premises are located,
- (f) the date of the application,
- (g) the status of the application (granted, refused, being determined, revoked, lapsed etc.),
- (h) the type of premises,
- (i) the type of short-term let,
- (j) the maximum number of guests permitted to reside on the premises,
- (k) whether the premises are within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park,
- (l) the unique licence number allocated to the application,
- (m) where the licensing authority has required its inclusion in the application—
 - (i) the number of bedrooms in the premises,
 - (ii) information on availability and occupancy,
 - (iii) contact details for the manager of the premises, if different from the applicant or where the application is for secondary letting, and
 - (iv) the Energy Performance Certificate rating.”.

(b) after sub-paragraph (2), insert—

“(2A) Nothing in this paragraph requires a licensing authority to include on the register—

- (a) particulars relating to a short-term let licence (including applications and any other information relating to the licence) if a period longer than 12 months

(3) Paragraphs 13 and 14 were relevantly amended by section 78(3) of the Air Weapons and Licensing (Scotland) Act 2015.

- has passed beginning with the date on which the licence was revoked under paragraph 11,
- (b) particulars relating to a licence which has been surrendered under paragraph 13, or
 - (c) particulars relating to a licence which has expired.”,
- (c) after sub-paragraph (4) insert—
- “(5) From 1 October 2022, the licensing authority must on a quarterly basis share the content of the register, in relation to short-term let licences only, with the Scottish Ministers in a format which enables analysis of the information.
- (6) From 1 October 2022, the licensing authority must publish the content of the register, in relation to short-term let licences only, on their website or other website established and maintained for that purpose and provide access free of charge.”.

Sharing of information

14. After paragraph 14, insert—

“Sharing of information in respect of short-term let licences and applications

- 14A.**—(1) Subject to sub-paragraphs (2) and (3), a licensing authority may, following a request from a local authority or otherwise, share information with—
- (a) a licensing authority, or
 - (b) a person who advertises or lists short-term lets.
- (2) The only information which may be shared under sub-paragraph (1) is any information in relation to—
- (a) the suspension, variation or revocation of a short-term let licence,
 - (b) the decision to refuse a short-term let licence application, or
 - (c) an individual operating a short-term let without a licence.
- (3) A licensing authority may only share information under sub-paragraph (1) for purposes in connection with—
- (a) the licensing of short-term lets, and
 - (b) the prevention of an offence under section 7(1).”.

Fees

15. For paragraph 15 (fees), substitute—

- “15.**—(1) A licensing authority may, subject to sub-paragraphs (2) and (3), charge such reasonable fees as they may determine in respect of—
- (a) applications made to them under this schedule,
 - (b) the issue of certified duplicate licences under paragraph 5(7),
 - (c) their consideration of a material change of circumstances or in premises under paragraph 9 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, or

- (ii) a complaint relating to the premises (unless the complaint is frivolous or vexatious).
- (2) In determining the amount of the different fees under sub-paragraph (1), the licensing authority—
- (a) must seek to ensure that the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions under Parts I and II of this Act and this schedule,
 - (b) may determine different fees for different purposes,
 - (c) may take into account the following criteria—
 - (i) the size of the premises,
 - (ii) the number of bedrooms at the premises,
 - (iii) the number of guests who can reside at the premises,
 - (iv) the type of short-term let,
 - (v) the duration of the period for which the premises are made available for use as a short-term let, and
 - (vi) the extent to which the licence holder has complied with the conditions of the licence.
- (3) A licensing authority may provide for annual or other recurring fees.
- (4) Where a local authority charges a fee in respect of an inspection, the licensing authority must—
- (a) produce a report of its finding to the licence holder within 28 days of the inspection, or
 - (b) where a report is not provided within 28 days of the inspection, refund the fee charged to the licence holder.”.

Giving of reasons

16. In paragraph 17 (notification of the decisions and giving of reasons)—
- (a) after sub-paragraph (1)(c), insert—
 - “(ca) to refuse an application made under paragraph 1A or to grant such an application subject to conditions,
 - (cb) to serve an enforcement notice under paragraph 10A,”.

Interpretation

17. After paragraph 19 (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(4),
- “home letting” means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host’s only or principal home,

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

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 No. 32

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

“premises” means the accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence,

“secondary letting” means a short-term let consisting of the entering into of an agreement for the use of accommodation which is not, or is not part of, the licence holder’s only or principal home,

“short-term let” has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,

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

“type of short-term let” means one of the following purposes—

- (a) secondary letting,
- (b) home letting,
- (c) home sharing, or
- (d) home letting and home sharing,

“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 assigned by the licensing authority.”