

SCHEDULE 1

Article 2

Excluded accommodation and tenancies

Excluded accommodation

1. Excluded accommodation means accommodation which is, or is part of—
 - (a) an aparthotel,
 - (b) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005(1) has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
 - (c) a hotel which has planning permission granted for use as a hotel,
 - (d) a hostel,
 - (e) residential accommodation where personal care is provided to residents,
 - (f) a hospital or nursing home,
 - (g) a residential school, college or training centre,
 - (h) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),
 - (i) a refuge,
 - (j) student accommodation,
 - (k) accommodation which otherwise requires a licence for use for hire for overnight stays,
 - (l) accommodation which is provided by the guest,
 - (m) accommodation which is capable, without modification, of transporting guests to another location,
 - (n) a bothy, or
 - (o) accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

Excluded tenancies

2. An excluded tenancy means a tenancy which falls within any of the following definitions—
 - (a) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984(2)),
 - (b) an assured tenancy (within the meaning of section 12 of the 1988 Act),
 - (c) a short assured tenancy (within the meaning of section 32 of the 1988 Act),
 - (d) a tenancy of a croft (within the meaning of section 3 the 1993 Act),
 - (e) a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the 1993 Act) to which any provisions of the Small Landholders (Scotland) Acts, 1886 to 1931(3) applies,
 - (f) a Scottish secure tenancy (within the meaning of section 11 of the 2001 Act),
 - (g) a short Scottish secure tenancy (within the meaning of section 34 of the 2001 Act),

(1) 2005 asp 16.

(2) 1984 c. 58.

(3) 1931 c. 44. See section 26 of the Small Landholders and Agricultural Holdings (Scotland) Act 1931. Section 26(2) was substituted by the Agricultural Holdings (Scotland) Act 1949 (c. 75), Schedule 7.

Status: This is the original version (as it was originally made).

- (h) a 1991 Act tenancy (within the meaning of section 1(4) of the 2003 Act),
- (i) a limited duration tenancy (within the meaning of section 93 of the 2003 Act),
- (j) a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
- (k) a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
- (l) a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the 2003 Act),
- (m) a private residential tenancy (within the meaning of section 1 of the 2016 Act), or
- (n) a student residential tenancy.

Interpretation

3.—(1) In this schedule—

“the 1988 Act” means the Housing (Scotland) Act 1988(4),

“the 1993 Act” means the Crofters (Scotland) Act 1993(5),

“the 2001 Act” means the Housing (Scotland) Act 2001(6),

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(7),

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016(8),

“aparthotel” means a residential building containing serviced apartments where—

- (a) the whole building is owned by the same person,
- (b) a minimum number of 5 serviced apartments are managed and operated as a single business,
- (c) the building has a shared entrance for the serviced apartments, and
- (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building,

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

- (a) does not have any form of—
 - (i) mains electricity,
 - (ii) piped fuel supply, and
 - (iii) piped mains water supply,
- (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984(9)), and
- (c) is 100 metres or more from the nearest habitable building,

“hostel” means a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons—

- (a) residential accommodation, and

(4) 1988 c. 43.

(5) 1993 c. 44. Section 3 was relevantly amended by section 21 of the Crofting Reform etc. Act 2007 (asp 7) and section 22 of the Crofting Reform (Scotland) Act 2010 (asp 14).

(6) 2001 asp 10. Section 11 was relevantly amended by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331) and section 12 of the Housing (Scotland) Act 2014 (asp 14), and section 34 was relevantly amended by sections 7 and 9 of the Housing (Scotland) Act 2014.

(7) 2003 asp 11. Section 5A of the 2003 Act was inserted by section 85(3) of the Land Reform (Scotland) Act 2016 (asp 18).

(8) 2016 asp 19.

(9) 1984 c. 54.

(b) either or both—

- (i) meals,
- (ii) cooking facilities,

“personal care” has the same meaning as in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010⁽¹⁰⁾,

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

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

“serviced apartment” means a flat or residential unit in respect of which—

- (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry),
- (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and
- (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units,

“student residential tenancy” means a tenancy—

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

“student accommodation” means residential accommodation which has been built or converted predominantly for the purpose of being provided to students.

(2) In paragraph 1(k), “licence” does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006⁽¹¹⁾.

⁽¹⁰⁾ 2010 asp 8.

⁽¹¹⁾ 2006 asp 1.