

*Draft Order laid before the Scottish Parliament under sections 3A(3) and 44(3) of the Civic Government (Scotland) Act 1982, for approval by resolution of the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

## **LICENCES AND LICENSING**

### **The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021**

<i>Made</i>	-	-	-	-	<i>2021</i>
<i>Coming into force</i>	-	-			<i>1st April 2021</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3A(1), 44(1)(b) and (2)(a) and (b) and 136(2) of the Civic Government (Scotland) Act 1982<sup>(1)</sup>, and all other powers enabling them to do so<sup>(2)</sup>.

In accordance with sections 3A(3), and 44(3) of that Act<sup>(3)</sup>, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

#### **Citation and commencement**

1. This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 and comes into force on 1 April 2021.

#### **Interpretation**

2.—(1) In this Order—

“commercial consideration” includes—

- (a) money,
- (b) a benefit in kind (such as provision of a service, or reciprocal use of accommodation),

“excluded accommodation” means accommodation described in schedule 1,

“guest” means a person occupying accommodation for the purposes of a short-term let,

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(1) 1982 c.45. The functions conferred upon the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 3A was inserted by section 172(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(2) The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(3) Section 44(3) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

“short-term let licence” means a licence for the activity designated by article 3,

“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,

“the 1982 Act” means the Civic Government (Scotland) Act 1982<sup>(4)</sup>, and

“the 1997 Order” means the Town and Country Planning (Use Classes) (Scotland) Order 1997<sup>(5)</sup>.

(2) In this Order, “short-term let” means the grant of an agreement in the course of business for the use of residential accommodation (or a part of the accommodation) by a guest, where all of the following criteria are met—

- (a) the guest does not occupy the accommodation as the guest’s only or principal home,
- (b) the agreement is entered into for commercial consideration,
- (c) the guest is not—
  - (i) an immediate family member of a person granting the agreement,
  - (ii) sharing the accommodation with a person granting the agreement for the principal purpose of facilitating the provision of work or services by the guest to that person or other members of the household, or
  - (iii) sharing the accommodation with a person granting the agreement for the principal purpose of advancing the guest’s education, as part of an arrangement made or approved by a school, college, or further or higher educational institution,
- (d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the person who is granting the agreement or to another member of that person’s household, and
- (e) the accommodation is not excluded accommodation (see schedule 1).

(3) A private residential tenancy within the meaning of Part 1 of the Private Housing (Tenancies) (Scotland) Act 2016<sup>(6)</sup> is not a short-term let.

(4) For the purposes of this article, a person (“A”) is an immediate family member of another person (“B”) if A is—

- (a) in a qualifying relationship with B,
- (b) a qualifying relative of B,
- (c) a qualifying relative of a person who is in a qualifying relationship with B, or
- (d) in a qualifying relationship with a qualifying relative of B.

(5) For the purposes of paragraph (4)—

- (a) two people are in a qualifying relationship with one another if they are—
  - (i) married to each other,
  - (ii) in a civil partnership with each other, or
  - (iii) living together as though they were married,
- (b) “a qualifying relative” means a parent, grandparent, child, grandchild or sibling,

<sup>(4)</sup> 1982 c.45.

<sup>(5)</sup> S.I. 1997/3061.

<sup>(6)</sup> 2016 asp 19.

- (c) two people are to be regarded as siblings if they have at least one parent in common,
  - (d) a person's stepchild is to be regarded as the person's child,
  - (e) a person ("C") is to be regarded as the child of another person ("D"), if C is being or has been treated by D as D's child.
- (6) Schedule 1 has effect.

### **Designation of activity**

**3.—**(1) The activity specified in paragraph (2) is designated as an activity for which a licence under Part 1 of the 1982 Act is required.

(2) The activity referred to in paragraph (1) is the use of accommodation for a short-term let on or after 1 April 2022.

(3) The use of separately bookable accommodation for a short-term let is a single activity, provided that—

- (a) all the accommodation is located on a single site,
- (b) the accommodation has shared facilities (such as toilets, washing facilities or kitchens), and
- (c) the accommodation is not, or does not form part of, a house or a flat.

### **Application of Part I of the 1982 Act**

**4.** Part I of the 1982 Act has effect, subject to the modifications specified in schedule 2, for the purposes of the licensing of the activity designated by article 3.

### **Mandatory licence conditions**

**5.** A short-term let licence granted by a licensing authority is subject to the conditions specified in schedule 3.

### **Transitional provision**

**6.—**(1) A person who carries on the activity designated by article 3 without a licence under Part I of the 1982 Act, does not commit an offence under section 7(1) of that Act if—

- (a) that person carried on the activity before 1 April 2022,
- (b) before 1 April 2023, that person makes an application to the licensing authority for the grant of a licence under Part I of that Act in respect of the activity being carried on by the person, and
- (c) that application has not yet been finally determined.

(2) Where a licensing authority determines an application by a person mentioned in paragraph (1), section 3 of the 1982 Act(7) is to be read as if—

- (a) for subsection (1), there were substituted—

“(1) For the purpose of the discharge of their functions under this Part of this Act, every licensing authority must, subject to the following provisions of this section, reach a final decision on the application within the period of 12 months beginning on the day on which the application was made.”,
- (b) in subsection (2), for “6 month” there were substituted “12 month”, and

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(7) Section 3 was amended by section 172(2) of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)) and section 77(2) of the Air Weapons and Licensing (Scotland) Act 2015 ([asp 10](#)).

- (c) in subsection (4)(a), for “6 month” there were substituted “12 month”.
- (3) For the purpose of paragraph (1)(c), an application is finally determined when—
  - (a) the application is granted,
  - (b) it is withdrawn by the applicant, or
  - (c) it is refused by the licensing authority and the period of 28 days specified in paragraph 18(4) of schedule 1 of the 1982 Act expires without an appeal against the refusal being made to the sheriff, or
  - (d) in a case where an appeal is made against a refusal by a licensing authority, that appeal is disposed of.
- (4) For the purposes of paragraph (3)(d), an appeal is disposed of when—
  - (a) it is abandoned by the appellant, or
  - (b) a decision in it is made by the sheriff or a higher court and any period for making a subsequent appeal to a higher court expires without such a subsequent appeal being made.

**Consequential amendments**

- 7. Schedule 4 has effect.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## SCHEDULE 1

## Article 2

### Excluded accommodation

#### Excluded accommodation

1. Excluded accommodation means accommodation which is, or is part of—
  - (a) a hotel,
  - (b) an aparthotel,
  - (c) a boarding house,
  - (d) a guest house,
  - (e) a premises which holds a premises licence under the Licensing (Scotland) Act 2005<sup>(8)</sup> where accommodation is an approved activity (as defined in the 2005 Act),
  - (f) a hostel,
  - (g) residential accommodation where care is provided to people in need of care,
  - (h) a hospital or nursing home,
  - (i) a residential school, college or training centre,
  - (j) 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 use as military barracks),
  - (k) a refuge,
  - (l) student accommodation,
  - (m) accommodation which otherwise requires a licence for use for hire for overnight stays,
  - (n) accommodation which is provided by the guest,
  - (o) accommodation which is not static,
  - (p) 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.

#### Interpretation

- 2.—(1) In this schedule—

“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 unit within the building,

“hostel” means a building in which is provided for persons generally or for any class or classes of persons—

  - (a) residential accommodation (otherwise than in houses), and
  - (b) either or both—
    - (i) board,

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<sup>(8)</sup> 2005 asp 16.