

Written Evidence

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024

June 2024



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Licensing Law sub-committee welcomes the opportunity to consider and comment on the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024. (**the 2024 Order**) The Sub-Committee has the following comments to put forward for consideration.

Commencement

Section 1(1) of the the 2024 Order indicates that it “comes into force on the day after the day on which it is made”.

While we appreciate that the Scottish Government view the changes as technical, local authorities will take some time to implement the provisions of the 2024 Order. While some of the work by licensing authorities will be logistical, other aspects of it will require a policy decision by Elected Members, principally in relation to agreeing fee levels.

Where a policy decision is required, the timescale challenges are that:

(i) local authorities will not be able to ask their Elected Members to develop a policy based on legislation until it is in force; and

(ii) matters which require to be referred to a Committee of Elected Members will have to be referred to them at an available meeting, in accordance with established governance. Some local authorities required their licensing committee to approve new policies and forms to implement proposals within The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2022 (**the 2022 Order**), however, others placed the requirements under the 2022 Order before their full Council, therefore will do so again. Full Council meetings have very busy agendas in the normal run of things and the dates are generally pre-arranged, meaning a lead in time for the Order coming into force is necessary.

We want to highlight that Council and Board meetings in local authorities in Scotland are not generally scheduled during the summer recess period of July annually. That means that any decision to bring the 2024 Order's provisions into



force in June would cause significant challenges and may result in local authorities being unable to effect the changes until after the summer recess.

We suggest that consideration be given to the following aspects before the 2024 Order comes into force:

1. The short-term lets' fee structure. Particularly, fees need to be set for provisional licence applications, applications for confirmation of provisional licences and applications for transfer. These fees need to be incorporated into the current fee structure for each local authority to ensure the new fees meet the criteria of the 2022 Order and that the local authorities remain self-funding and do not fix these fees too high or too low. Until the 2024 Order is approved these fees cannot be proposed and taken to the relevant finance teams within local authorities for approval, with final approval still required from a licensing committee and/or full council. There will also require to be amendment to local authority licensing policies and to the current Scottish Government guidance on short term lets and possibly to the policy statement. The timescale required to allow local authorities must be factored in to timescales of the 2024 Order and we would appreciate some information from the Scottish Government on when their guidance will be amended.
2. The preparation of further application forms such as for provisional licences, confirmation and transfer. We expect that this process will require some time to be implemented.
3. Administrative requirements. Licensing authorities would need to train their staff in the new provisions, update the information on their websites, and update their licensing software accordingly.
4. The implementation of the new rules in the temporary exceptions. Section 2(6) indicates that a licensing authority may grant a temporary exemption from the requirement to obtain a short-term let licence if conditions set in sub section 2(6)(1A) are met. Accordingly, licensing authorities may want to change their policies to reflect the new rules.

Provisional licences

Section 2(7) inserts provisions regarding provisional short-term let licences.

The proposed section 7A provides that “a short-term let licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being constructed for use as a short-term let.” Moreover, the accompanying guidance refers to “new builds.” We would suggest that the words “or converted” are added after “constructed” to clarify that applications for provisional licence will be permitted for older properties under conversion. We note, however, as the 2024



Order has now been laid before the relevant Parliamentary Committee, in this case the Housing Committee, it cannot be amended and either has to be approved in its current form or lifted and re-laid. The Law Society of Scotland understands from discussions with the Scottish Government prior to the 2024 Order being laid that there is further consultation on whether conversions should be included is necessary. There was reference made to conflicting legislation and detail of what legislation would be affected were conversions to be included in the provisional licence section was requested but has not been forthcoming. Could the Scottish Government confirm both what legislation they believe will be affected should conversions be included in the 2024 Order or any further short-term let Orders and why they deem consultation to be necessary for conversions when there was no consultation deemed necessary to introduce provisional licences for new build properties.

Regarding the duration of the short-term let licences, the 2024 Order indicates that a “provisional short-term let licence is treated as revoked if it is not confirmed within 3 years after the date on which it was issued”. The 2024 Order also indicates that the provisional short-term let licence will not have effect until confirmed by the licensing authority.

We note that Paragraph 8(2) of Schedule 1 of the Civic Government (Scotland) Act 1982 indicates that a licence will have effect “(a) for a period of three years from the date when it comes into force; or (b) for such shorter period as the licensing authority may decide at the time when they grant or renew the licence”.

We have some concerns that Paragraph 8 was not modified in the 2024 Order to clarify if it will apply to provisional short-term licences. In our view, the effect of this lack of clarification is that the provisions of the 2024 Order and the current Paragraph 8(2) of Schedule 1 of the 1982 Act apply simultaneously to provisional short-term applications.

Additionally, the 2024 Order does not indicate for how long a provisional licence will have effect after confirmed by the licensing authority. Will the provisional licence last for the remaining period of the initial three years or will it benefit from a full three-year period after confirmation. To clarify, by way of an example, if the provisional licence was granted and confirmed after 1 year, would the confirmed licence last for a further 2 years before it required to be renewed or would it last for 3 years from the date of confirmation before it required to be renewed.

We want to highlight that consideration should be given to the possibility of extending the period of provisional licences more than once, where required. Otherwise, there exists a risk of provisional licences being revoked where the holder is unable to obtain all the certifications required in the timescales indicated in the 2024 Order. Provision would have to be made as to how this extension is applied for and the practical processing and written submission and/or hearing of such an application.



Transfers

Section 2(8) inserts provisions related to the transfer of short-term let licences.

The proposed section 9A provides that an existing short-term let licence holder may apply for a transfer of the licence. The effect of this is that there is no provision for the situation where the licence holder is deceased, bankrupt or in administration or liquidation. We would suggest that further provisions should be inserted to cover these eventualities, mirroring section 34 transfers under the Licensing (Scotland) Act 2005 in relation to liquor licensing.

The 2024 Order indicates that the chief constable may make objections or representations to the licensing authority within 28 days of the date of receipt of notice in relation to transfer applications. The provision relating to applications for grant and renewal allowing late objections or representations (on sufficient reason being shown) has however been removed by the proposed modifications in relation to transfer applications. We are of the view that in some situations 28 days may not be enough time for Police Scotland to complete their investigations.

We note that the 2024 Order does not permit joint applications for transfer, as otherwise allowed under Paragraph 5(8) of Schedule 1 to the 1982 Act. We consider that there is a need for provisions for transfer to the applicant and, where applicable, the day-to-day manager of the property, who must be a licence holder under the Mandatory Conditions.