

Local Government, Housing and Planning Committee - The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) (Amendment) Order 2024 - request for views

Introduction

With thanks to the Committee for providing VisitScotland with the opportunity to contribute to the scrutiny of the amendments for the licencing order.

The introduction of the legislation continues to be contentious within the sector and there remain concerns about its effective operation. There is no agreed baseline data against which full analysis can be made and it will not be until after 31 December 2024 that definitive data on the licences granted, applications rejected will be available. There is evidence that operators are withdrawing from the industry with the non-renewal of membership of sector bodies being a clear example.

There is a risk that reductions in the accommodation offer available across Scotland will have a detrimental impact on the visitor economy. In the absence of complete data, it remains too early to judge whether this will be a significant impact or not.

The Order addresses some issues identified to date in the operation of the legislation, and we are supportive of it. However, we believe there is evidence that licencing authorities have misinterpreted the guidance and or used the old 2021 Order not the current 2022 Order as the basis for their policies and practices in some cases.

VisitScotland Chairs the Short Term Let Industry Advisory Group (IAG). The IAG submitted comments on seventeen recommendations it thought should be considered in respect of issues raised to date in the operation of the legislation. Scottish Government confirmed one of these would not be taken forward “due to established planning law” and three have been addressed in the Order. Scottish Government have since provided an update on the outstanding points which we have now shared with the IAG. We expect that some of the outstanding points will be addressed through a review of guidance.

We will continue to work with the sector and Scottish Government to seek solutions to issues as they arise.

Detailed comments on the proposed amendments follow.

Comments on specific amendments:

Definition – amend the definition of “commercial consideration” to make clear that provision of a service is no longer included in that definition.

For the purposes of the regulations a short-term let can be entered into for ‘commercial considerations’ and therefore anything within the definition of ‘commercial consideration’ can constitute a short-term let. We therefore agree with the removal of ‘provision of service’ from the definition of commercial consideration as this will make it clear that provision of a service does not fall within scope.

Foster care arrangements – exclude temporary placements for foster children where the accommodation is not their main residence.

We welcome the amendment which removes caring for foster children from the definition of ‘commercial consideration’ thereby removing it from scope of the licencing scheme.

Single licence for multiple premises on the same site – provide clarity that licencing authorities can approve part of an application for a single licence for multiple premises on the same site.

We are supportive of the principle that a single application can be made for multiple properties on a single site. It is therefore logical that where a licencing authority has concerns about some but not all of the properties within the application, they should be able to licence those that are acceptable but reject those that are not. We are therefore supportive of the amendment; however, the amended position must be reflected clearly and concisely in guidance to licencing authorities.

We would raise an issue in relation to this whereby we understand that some licencing authorities may be using the original 2021 Order¹ not the updated and current 2022 Order² as the basis for their policies and fees. It would appear in some instances licencing authorities are refusing to accept single licence applications for multiple properties on the same site. Instead, they are requiring multiple applications and applicants are incurring a charge for each property on the single site. As a result, we understand that some businesses are being charged considerable cumulative fees to process their applications. We believe the guidance and public information requires to be reconsidered to address this practice. There must be clarity that the 2021 Order is superseded by the 2022 Order.

Excluded accommodation – exclude guest rooms within certain residential accommodation that are available for visiting residents.

We are supportive of the amendment to exclude guest rooms within certain types of residential accommodation. According to our understanding of the amendment, these accommodation types relate to care homes / residential accommodation etc., where the primary use of these guest rooms would be for family visiting residents.

Temporary exemptions and transitional arrangements – clarify how temporary exemptions operate and set out transitional arrangements for some of the changes in this amendment order.

We welcome this amendment which improves the position for temporary exemptions to be applied more flexibly over a twelve-month period. It provides additional flexibility for

¹ [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2021 \(legislation.gov.uk\)](#)

² [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(legislation.gov.uk\)](#)

accommodation providers over short periods of time, which will be welcome for those hosts looking to provide accommodation for events or festivals etc.

Currently licencing authorities are permitted to apply temporary exemptions for a continuous period of six weeks within a twelve-month period. Where temporary exemptions are permitted, adherence to the mandatory conditions will still be required.

We note the Events Industry Advisory Group (EIAG)³ is conducting analysis on the impact of temporary exemptions on accommodation for major events. The EIAG have reported concerns about the number of local authorities who do not intend to apply temporary exemptions; and the extent of mandatory conditions being applied where temporary exemptions are being applied.

We understand that some in the sector have concerns about removing mandatory conditions from temporary exemptions where they will be required for a full licence. From a licencing authority perspective, we understand that they will be unlikely to expose themselves to risk in granting temporary exemptions that do not meet mandatory conditions. We therefore accept that a balance has been struck in respect of the decision to retain the mandatory conditions when applying temporary exemptions.

We consider there may be scope to strengthen this amendment. In view of the EIAG concerns about the number of local authorities choosing not to apply temporary exemptions, we consider licencing authorities could be required to include provisions for temporary exemptions for major events.

Provisional licences – introduce provisional short-term let licences which can be applied for at the construction stage of new short-term let accommodation.

The introduction of this amendment to allow prospective short-term let operators to apply for a provisional licence before the accommodation has been built is welcome. This will ensure that new entrants looking to join the sector through new-build construction are not prevented from doing so due to the uncertainty of a licence being granted or refused post construction.

We understand concern within the sector around the inability of operators to be able to trade, advertise or take bookings when they have been granted a provisional licence. This raises challenges for businesses looking to plan ahead, to secure bookings, to employ staff and in securing investment etc. With the addition of this amendment businesses may feel reassured about getting a full licence in due course and therefore able to make decisions about employment and investment. However, we note that the provisional licence still does not permit prospective operators to take bookings which may undermine that confidence.

We also note that the sector was keen to include conversions within scope of a provisional licence; these would also be providing new short term let accommodation. We are not clear as to the rationale for not including it here.

³ [Event Industry Advisory Group - Updates & Guidance | VisitScotland.org](https://www.visitScotland.org)

Transfer of Licences – introduce provisions for the transfer of licences in certain circumstances.

We welcome the introduction of the ability to transfer licences. There had been significant concern around the potential for business transactions to be hindered by an inability to transfer an existing licence to a new operator, therefore this is a welcome inclusion.

We note that the amendment allows the licencing authority to set a fee for processing applications for a transfer of a short-term let licence. We expect that any fee for this process will be substantially less than is required to process a new application, given that all the documentation for the property should be in place. We would anticipate that only the fit and proper person test would be required. This should be reflected clearly within the guidance.

We note that the duration of the licence will not be altered by the transfer, this should also be clearly reflected in guidance so that prospective purchasers are aware.

Additional to mandatory conditions – update the list of information guests should have access to at the short-term let accommodation to include information about what to do if the carbon monoxide alarm sounds and warnings on mobile gas cabinet heaters.

In the spirit of improving health and safety, this is a reasonable amendment. Scottish Government should provide guidance or signpost to relevant guidance on what should be included in the information that is required to be provided.

Consequential amendments – tidy up drafting for consequential amendments.

We accept consequential amendments as necessary for the purposes of amending the Order.

Conclusion

We welcome the progress being made through the amendments laid. As we have noted, there continues to be concerns within the sector about the scheme's operation, and we do not think the amendments in this Order will ameliorate all those concerns. Further work will be required, particularly around guidance to address the issues being identified as problematic.

We will continue to monitor the impact of short-term let licencing on the visitor economy and we will work with both government and sector interests to ensure that the scheme is more effective in delivering the Government's planned outcomes with less impact on short term let businesses. Once data sets are complete and fully available (probably in March 2025) it will be possible to have clearer evidence of any impacts and assess any necessary steps in addressing these.