

Local Government, Housing and Planning Committee
Tuesday 25 June 2024
21st Meeting, 2024 (Session 6)

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

Introduction

1. The purpose of this paper is to provide information to help inform the Committee's consideration of the following affirmative instrument—

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

2. The Minister for Housing and Scottish Government officials will provide evidence to the Committee on the draft Order at this meeting.

3. The Minister will then move the following motion:

S6M-13502: That the Local Government, Housing and Planning Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024 [draft] be approved.

4. The draft Order was laid on 16 May and originally had a reporting deadline of 24 June. However, the draft Order was then withdrawn and re-laid in order to—

“...address an issue with the Order which has been highlighted by the legal advisers to the Delegated Powers and Law Reform Committee ... in relation to an amendment made by the above order to the Housing (Scotland) Act 2006 which could result in unintended consequences if not resolved.”

5. The draft Order was re-laid on 30 May with a revised reporting deadline of 12 September. Given the potential impact of the Order on the short-term letting sector over the busy summer period the Committee agreed to consider the re-laid Order before summer recess. The Committee's report will be published on the morning of Wednesday 26 June.

Background

6. On 22 November 2021, the Scottish Government laid the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#) ("the Licensing Order") in the Scottish Parliament.
7. The [Policy Note](#) explains that the Order establishes a licensing scheme to "ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with handling complaints effectively."
8. The Committee took evidence on the Order in December 2021 and agreed by division to recommend to Parliament that it should be approved. The Committee published [its report on the Order](#) on 12 January 2022.
9. The Committee subsequently considered a further Order delaying the requirement for existing short-term lets owners to obtain a license. The Committee agreed unanimously to recommend approval of that Order. The Committee published [its report on the Order](#) on 23 February 2023.
10. The Minister for Housing [wrote to the Committee on 30 January 2024](#) to inform it that "work to identify and deliver improvements to operational processes is ongoing, and I will report on these in coming months." The letter also confirmed that "at the end of February 2024 we will bring forward an affirmative Scottish Statutory Instrument (SSI) that will amend The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022."
11. The letter stated that—

"The SSI will include provision to introduce powers enabling the transfer of short-term let licences and the option for prospective hosts constructing or converting buildings for short-term let use to apply for a provisional licence that can be confirmed once the premises are complete" and;

We are also using the SSI to clarify the period and operation of temporary exemptions, to deliver the intention that these are for a single continuous period of up to six weeks in any 12-month period starting on the date of the temporary exemption (which is set out in the Policy Note that accompanied the original legislation). In addition, guest rooms in specific types of accommodation will be excluded, as will temporary emergency short-term foster arrangements where such arrangements are not the main residence of the foster child."
12. However, the Minister made clear that "it is not my intention to amend the types of short-term let requiring a licence (home-sharing, home letting (includes home exchanges) and secondary letting)."

13. The Committee then received a [second letter from the Minister on 29 February](#) “to advise that we are still engaging with stakeholders about its content and refining the provision. The affirmative statutory instrument will therefore be laid slightly later than indicated.”
14. The Committee then received a [third letter from the Minister on 22 April](#) stating that—
- The amending regulations would now be laid on 16 May 2024
 - The next release of short-term let licensing statistics will be on 23 May.
 - An update on the short-term let licensing scheme will be published before the end of June.

The Order

15. The accompanying [Policy Note](#) states that the purpose of the Order is to—
- amend the definition of “commercial consideration” to make clear that provision of a service is no longer included in that definition.
 - exclude temporary placements for foster children where the accommodation is not their main residence.
 - provide clarity that licensing authorities can approve part of an application for a single licence for multiple premises on the same site.
 - exclude guest rooms within certain residential accommodation that are available for visiting residents.
 - clarify how temporary exemptions operate and set out transitional arrangements for some of the changes in this amendment order.
 - introduce provisional short-term let licences which can be applied for at the construction stage of new short-term let accommodation.
 - introduce provisions for the transfer of licences in certain circumstances.
 - 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.
 - tidy up drafting for consequential amendments.
16. The Minister for Housing [wrote to the Committee on 28 May](#) in response to a number of questions asked by the Committee in correspondence including what consideration has been given to amending the licensing scheme to remove home sharing from its scope and to extending the period that temporary licences can apply for beyond the current six weeks.

17. The Minister’s letter confirms that “as the purpose of licensing is to ensure that all short-term let accommodation complies with consistent safety standards across Scotland and hosts are deemed suitable to provide them”, The Scottish Government does not intend to “alter licensing types (home-sharing, home letting and secondary letting), the core principles of licensing (mandatory and additional conditions, public scrutiny and the opportunity to object) or the delegation of powers to licensing authorities to administer local licensing schemes.”
18. The letter also confirmed that the Scottish Government would update the Committee on the implementation of short-term let licensing by the end of June. The Committee [wrote to the Minister on 6 June](#) asking if the update could be provided before this meeting and [in his response](#), the Minister informed the Committee that publication of the update would now be delayed until after the UK general election after seeking advice “in accordance with pre-election guidance.”

Consultation

19. The Policy Memorandum states that the Scottish Government “has [consulted extensively during the development of proposals for the regulation of short-term lets](#).”
20. In respect of this specific Order, the Policy Memorandum states that “informal engagement with stakeholders was undertaken between October 2023 and March 2024 in connection to this Amendment Order, which also takes account of representations from stakeholders since licensing commenced in October 2022.”
21. The Committee previously agreed to invite written comments on the instrument from stakeholders before taking evidence from the Minister. Thirteen responses were received and are available on the Committee’s website via the links below.
- [Argyll and Bute Council](#)
 - [Association of Scotland’s Self-Caterers \(ASSC\)](#)
 - [City of Edinburgh Council](#)
 - [East Lothian Council](#)
 - [Glasgow City Council](#)
 - [The Law Society of Scotland](#)
 - [Orkney Council](#)
 - [Police Scotland](#)
 - [Renfrewshire Council](#)
 - [Scottish Bed and Breakfast Association \(SBBA\)](#)
 - [Scottish Tourism Alliance](#)
 - [Short-term Accommodation Association \(STAA\)](#)
 - [Visit Scotland](#)

22. Respondents were broadly supportive of the Order's proposed changes, although several contended that they were insufficient and that further changes were needed.

23. The following concerns were raised in respect of the Order itself—

- Argyll and Bute Council suggested that the proposals do not address the difficulties around the definition of "single premises."
- The ASSC suggested that there had been insufficient consultation when developing the Order.
- The ASSC also felt that that the wording around single licences for multiple accommodation is "ambiguous and does not go far enough to address the issues being seen in Perth & Kinross, Stirling, and Argyll & Bute Councils, whose policies regarding this we believe to be unlawful and based on the superseded 2021 Order."
- City of Edinburgh Council had received legal advice that interpreting the original provisions of the 2022 Licensing order to give effect to the stated policy intention of a single exemption of no more than 6 weeks in any 12 months period was not lawful. The Council welcomes the amendment in addressing that drafting issue but suggested that it is not immediately obvious what the rationale of restricting the number of periods within a 12-month period brings.
- City of Edinburgh Council does not support the introduction of provisional licences or transfer of licences and believes this to be "wholly unnecessary".
- The Law Society of Scotland suggested that the Order's commencement date would provide insufficient time for councils to implement its provisions.
- The Law Society of Scotland also highlighted concerns around the fact that the Order provides for provisional licence applications to be made when a property is being constructed but not converted and for how long a provisional licence would apply.
- The Law Society also highlighted concerns relating to the transfer of short-term let licences.
- Renfrewshire Council expressed concerns around the commencement date of the SSI as time for implementation would be needed.
- Renfrewshire Council also expressed concerns around provisional licenses, suggesting that "these provisions require further attention to allow them to work in practice. We consider that additional modifications would be required to Schedule 1 to the 1982 Act to achieve this, particularly regarding the duration of licence provisions within Paragraph 8 of Schedule 1 to that Act."
- The SBBA felt that the proposed changes to information to be displayed at short-term let premises are unnecessary as this is covered by existing legislation.
- VisitScotland understands that some licencing authorities may be using the original 2021 Order instead of the updated and current 2022 Order as the basis

for their policies and fees and suggests that “guidance and public information requires to be reconsidered to address this practice.”

- VisitScotland also welcomes clarification around temporary exemptions and transitional arrangements but considers there may be scope to strengthen this amendment.
- VisitScotland also notes concerns 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.

24. The following concerns were also raised in respect of the short-term lets licensing scheme more broadly—

- The ASSC submission provides a list of concerns raised by the Industry Advisory Group in February which it considers the Order fails to address .
- In addition to commenting on the content of the Order itself, the SBBA provided a list of concerns raised by its members.
- The STA welcomes the Order as “a positive first step in addressing some of the issues that have emerged since the introduction of the STLs scheme” but states that “it remains the case that a far more significant review of how the Short-Term Lets (STLs) Licensing Scheme is operating in practice is needed if we are to safeguard these businesses and to protect and enhance the visitor accommodation offer that people can access when they stay in Scotland” and the wider visitor economy.
- The STAA continues to advocate for a comprehensive and holistic review of the short-term let licensing scheme, particularly in respect of temporary licences, a recommended prohibition of local authorities from adding additional licensing conditions, a cap on the maximum licence cost and clarification around planning requirements.
- VisitScotland notes that there “continue 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.”

Delegated Powers and Law Reform Committee Consideration

25. Notwithstanding the issue previously raised by its legal advisers, the Delegated Powers and Law Reform Committee considered the amended draft Order on 11 June and confirmed that it had [no points to raise](#).

Conclusion

26. The Committee is invited to consider the above information in its consideration of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) (Amendment) Order 2024.

Clerks to the Committee
June 2024