

By email only:

localgov.committee@parliament.scot

Dear Sirs,

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

Response to Request for Views

We refer to the Request for Views in relation to the above instrument and now provide this response, by officers on behalf of Renfrewshire Council.

Our comments are as follows:

Commencement

We have some practical observations about the commencement of the draft SSI (hereinafter “the 2024 Order”). The draft SSI states that it “comes into force on the day after the day on which it is made.”

Our concerns in relation to commencement relate mainly to the provisions around provisional licences and transfers, and to a lesser extent to the provisions regarding temporary exemptions.

While we appreciate that the Scottish Government view the changes as technical, these provisions will take some time, after the making of the 2024 Order, to be implemented by local authorities. While some of the work by licensing authorities will be logistical, other aspects of it will require a policy decision by Elected Members (in Renfrewshire, by the Council’s Regulatory Functions Board), principally in relation to agreeing fee levels.

Where a policy decision is required, the challenges which arise in terms of timescales are that: (i) we cannot ask our Elected Members to develop a policy based on legislation until it is in force; and, thereafter, (ii) matters which require to be referred to a Board or Committee of Elected Members will have to be referred to them at an available meeting, in accordance with established governance. Irrespective of whether the 2024 Order may be made before, or after, the Scottish Parliamentary recess, it will

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take some time after the making of the 2024 Order to arrange for any policy decision to be made. However, we would highlight that Council and Board meetings are also not scheduled during a summer recess period, meaning that any decision to bring the 2024 Order's provisions into force in June would give rise to particular difficulties.

To this end, changes to the short-term lets fees structure would require to be made at a meeting of our Council's Regulatory Functions Board. There would require to be fees set for both provisional licence applications, applications for confirmation of provisional licences and applications for transfer.

In addition to agreeing fee levels for these applications, other arrangements will have to be made after the 2024 Order is made, and prior to the provisions coming into force, to allow the changes to be implemented smoothly. These include:

- Development of further application forms: e.g., for provisional licences, confirmation and transfer. Guidance to date has encouraged licensing authorities to provide digital forms and points of contact so far as possible. The development, testing and introduction of new forms will require some time to implement;
- Introduction of staff training on the new legislative requirements/ procedures;
- Updating of web content; and
- Necessary updating of licensing software/ back-office functionality

Fostering, Hospitals/ Nursing Homes and Sheltered Housing

We have no comment to make regarding these new exemptions. These arrangements/ premises have not to date presented any issues for us in practice. We understand why the Scottish Parliament may wish to remove these from the ambit of the licensing regime given the aims sought to be achieved by a system of licensing for short-term lets.

Definition of “Commercial Consideration”

We have no comment to make regarding the amendment of this definition, which seeks to provide some clarity relative to existing exemptions.

Proposed new Article 4(4) for insertion into the 2022 Order

We have no issue with this amendment, as it provides additional clarity for licensing authorities. Having said that, we think the existing legislation, the Civic Government (Scotland) Act 1982 (“the 1982 Act”), already allowed for this: where an application is not granted in full, it is considered to be partly refused. This was in our understanding already considered possible, subject to a ground of refusal being available and reasons being provided for the decision where requested.

Temporary Exemptions

We anticipate no issue implementing the proposed changes to allow up to three periods totalling six weeks by way of temporary exemption within one calendar year, should this change to the legislation be made. Our only observation in this regard is again regarding the commencement of the Order, similar to the observations regarding timescales above. Licensing authorities may wish to change their policies to reflect these changes, if they have agreed stricter policies on the basis of previous non-statutory guidance as to what temporary exemptions they would allow.

If so, this may mean that any changes to the existing provisions may be unable to be

fully implemented by licensing authorities from the day after the Order comes into force, as per the commencement provision. It is accepted, however, that the transitional provision in article 4(3) of the 2024 Order may be of some assistance in clarifying that earlier periods prior to the Order coming into force should not be counted.

Provisional Licences

Our main concern relates to the new article 7A and 7B which is proposed to be inserted into the 2022 Order by article 2(7) of the 2024 Order.

Having worked with the licensing provisions of the 1982 Act as a licensing authority for many years, officers are of the view 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.

While we appreciate that broadly similar provisions apply for (liquor) premises licences under the terms of sections 45 and 46 of the Licensing (Scotland) Act 2005, it is our view that insufficient regard has been given to the fact that Act provides for premises licences which are perpetual. This is not the case under the 1982 Act. Under Paragraph 8 of Schedule 1 to it, as modified in relation to short-term lets, a new licence will be granted for a set period (maximum three years) from the date the licence comes “into force” (our emphasis), or such other period from the “grant” of the licence.

It is worth highlighting the terminology (“is of no effect until”) (our emphasis) used in the proposed new article 7A, which is at variance with the above terminology (“into force”) in existing Paragraph 8 of Schedule 1 to the 1982 Act.

Our particular concern is that neither the terms of the new proposed articles 7A and 7B, nor any other provisions in the 2024 Order, disapply the existing provisions in said Paragraph 8. They contain no other provisions as to how long a confirmed licence will have effect for either.

The existing provisions in Schedule 1, Paragraph 8 of the Act provide for the duration of the licence applied for. There is no qualification to these provisions to clarify what should happen when the application being made is not for a full licence, but a provisional licence. As a result, in the absence of modification of Paragraph 8, it is our view that there will be two conflicting provisions regarding the duration of a provisional licence, whether or not it is confirmed within the original provisional period (or an extension of it). Due to how the proposed articles 7A and 7B are drafted, the procedural provisions of Schedule 1 to the 1982 Act, subject to the previous modifications for short-term lets, all apply to a provisional short-term let application as they do to a full application for such licence (as acknowledged in the Policy Note published with the draft 2024 Order).

We suggest this conflict is problematic. We believe that it is important that the provisions detailed above be considered further.

To summarise this point simply, the current drafting could result in a licence “in force” for up to three years, while “in effect” for, say, three and a half years. A provisional licence cannot be renewed (nor should it require to be). Further, there is nothing within the proposed articles 7A or 7B regarding how long a provisional licence should be “in force”, or “in effect”, once confirmed.

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We would add two further points.

Firstly, unlike applicants for provisional and full (liquor) licences under the Licensing (Scotland) Act 2005, applicants for short-term lets licences are not usually legally represented throughout the process. Agents experienced in liquor licensing are used to seeking extensions of provisional periods to avoid their clients' provisional licences being lost. We think there is a risk that many unrepresented applicants will not appreciate the strictness of the time limits for confirmation under these provisions: should they fail to apply timeously to extend their provisional period, or obtain confirmation timeously, they may not expect their licence to be revoked leaving them with no option other than to recommence a full application process. However, that would be the effect of such failure.

Secondly, we have noted that there appears to be no equivalent provision in the proposed article 7A to the provision contained in section 45(9) of the Licensing (Scotland) Act 2005. Section 45(9) of that Act makes clear that the provisional period can be extended more than once. In the absence of a similar provision, it appears that no further extension can be given to a provisional period already extended in respect of a short-term let. This could result in provisional premises licences being treated as revoked if, say, matters relating to compliance with the Mandatory Conditions require follow-up after investigation by the licensing authority, which cannot be resolved within a provisional period which has already been extended.

Transfers

Regarding these provisions, we note the previous observation by the SOLAR Licensing Group that this change is being made for short-term lets only. While we appreciate that this change is being made for short-term lets through delegated legislation and can therefore be made more quickly for that licensing activity, we think it may be difficult for operators of other licensed activities to understand why this facility cannot be made available to them, with the flexibility a transfer provision would allow.

Regarding the proposed article 9A(6), we note that, for transfers, the facility for Police Scotland to object late to a transfer application appears to have been purposely removed. From our experience, and unlike the position with liquor licensing applications, the vast majority of police responses under the 1982 Act are based on concerns around the fitness of applicants and we have experience of a number of objections being admitted where Elected Members on our licensing committee are satisfied that "sufficient reason" for the late objection or representation has been shown.

While this change in approach may be intentional, there may be situations where Police Scotland require to carry out investigation into the fitness and properness of an applicant: for whatever reason, they may not be able to do so within 28 days. The removal of this facility would appear to prevent them making a submission after this period. The rationale for the difference in approach is not entirely clear to us, from either perusal of the provision or of the Policy Note, as the amount of work to be completed by Police Scotland in making objection or representation to an application for a licence or for a transfer is in practice likely to be the same, given the grounds on which they are most likely to object.

We have also noted the terms of the proposed article 9A(8) allowing conditions to be imposed on transfer of a short-term let licence. We are not wholly persuaded this is necessary. All that would change if an application for transfer were granted is who holds the licence. In the case of the Mandatory Conditions, the safety requirements set out in the 2022 Order will be able to be enforced through the Mandatory Conditions, including checks on, say, any new electrical appliances. This would be the same

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position as if an existing licence holder provided new electrical items for use by their guests.

Further, we are not sure why it is proposed that Paragraph 5(8) of Schedule 1 to the 1982 Act should not apply to these applications. This relates to licences being issued in the joint name of the applicant and day to day manager. As this provision applies to applications for licences, and as the person managing the short-term let requires under the Mandatory Conditions to be a licence holder, it is not clear why this provision should be disapplied for transfer applications to prevent the issue of the new licence in the joint names of the applicant and the day to day manager.

Additional Mandatory Conditions

We support this provision, to give effect to the recommendation by Sheriff Brown in the Fatal Accident and Sudden Death Inquiry report from September 2023. This should allow clarity and consistency by licensing authorities in providing regulation regarding these matters highlighted by the Sheriff.

Amendment of Housing (Scotland) Act 2006

We have no comment to make regarding this amendment.

We hope that the above comments are of assistance to the Committee.

Yours faithfully

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Encs.

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