

APPENDIX 4 – LEGAL TEST

**Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets)
Order 2022 (as amended)
Section 44 and Schedule 1 of the Civic Government (Scotland) Act 1982
Applications for Short-Term Let Licences**

2. LEGAL TEST

A **Licensing authority SHALL** refuse an application to grant or renew a licence if, in their opinion:

- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –
 - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
 - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
 - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
 - ii. The nature and extent of the proposed activity
 - iii. The kind of persons likely to be in the premises, vehicle or vessel
 - iv. The possibility of undue public nuisance; or
 - v. Public order or public safety;
- d. the applicant would not be able to secure compliance with –
 - i. the mandatory licence conditions,
 - ii. the standard conditions and any further conditions,
- e. the application does not contain the information required under paragraph 1(2), (da)¹, or (db)² (the consent of the owners of the premises), or
- d. There is other good reason for refusing the application;

And otherwise **SHALL** grant the application.

¹ Where the applicant is not the owner of the premises, or the land on which the premises are located – (i) the name and address of the owner (or, as the case may be, each owner), and (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application.

² Where the applicant shares ownership of the premises, or the land on which the premises are located – (i) the name and address of each other owner, and (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application.

1. In terms of Article 4 (1) of the above Order, a licence known as a **short-term let licence**, **SHALL** be required for the use of premises as a short term-let, accommodation that is on a single premises requires only one short term licence.
2. Article 3, states that a “**short-term let**” means the use of residential accommodation provided by the host in the course of a business to a guest, where all of the following criteria are met:
 - a. the guest does not use the accommodation as their only or principal home,
 - b. the short-term is entered into for commercial consideration,
 - c. the guest is not –
 - (i) an immediate family member of the host,
 - (ii) sharing the accommodation with the host 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, or
 - (iii) an owner or part-owner of the accommodation,
 - d. the accommodation is not provide for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household,
 - e. the accommodation **is not excluded accommodation**.
In terms of Schedule 1, Paragraph 1 of the Order, excluded accommodation means accommodation which is, or is part of –
 - (i) an aparthotel³,
 - (ii) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
 - (iii) a hotel which has planning permission granted for use as a hotel,
 - (iv) a hostel⁴,
 - (v) residential accommodation where personal care⁵ is provided to residents,
 - (vi) a hospital or nursing home,
 - (vii) a residential school, college or training centre,
 - (viii) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, short-term holding centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),

³ ‘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 residential unit within the building – ‘serviced apartment’ means a flat or residential unit in respect of which - (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry), (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units.

⁴ ‘hostel’ means a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons – (a) residential accommodation, and (b) either or both – (i) meals, (ii) cooking facilities.

⁵ ‘personal care’ has the same meaning as in the paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010.

- (ix) a refuge⁶,
- (x) student accommodation⁷,
- (xi) accommodation which otherwise requires a licence for use for hire for overnight stays (does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (xii) accommodation which provided by the guest,
- (xiii) accommodation which is capable, without modification, of transporting guests to another location,
- (xiv) a bothy⁸, or
- (xv) accommodation owned by an employer and provided to an employee in terms of a contract of employment for the better performance of the employee's duties.

f. The short-term let **does not constitute an excluded tenancy.**

In terms of Schedule 1, Paragraph 2 of the Order, an excluded tenancy means a tenancy within any of the following definitions –

- (i) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984),
- (ii) an assured tenancy (within the meaning of section 12 of the ... Act 1988),
- (iii) a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988),
- (iv) a tenancy of a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993),
- (v) a tenancy of holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- (vi) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001),
- (vii) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001),
- (viii) a 1991 tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003),
- (ix) a limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003),
- (x) A short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003),
- (xi) a tenancy under a lease which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003),
- (xii) a private residential tenancy (within the meaning of section 1 of the Housing (Tenancies) (Scotland) Act 2016),
- (xiii) a student residential tenancy⁹.

⁶ 'refuge' means accommodation used wholly or mainly for persons who have been subject to any incident or pattern of incidents, of – (a) controlling, coercive or threatening behaviour, (b) physical violence, (c) abuse of any other description (whether physical or mental in nature), or (d) threats of any such violence or abuse.

⁷ 'student accommodation' means residential accommodation which has been built or converted predominately for the purpose of being provided to students.

⁸ 'bothy' means a building of no more than two storeys which (a) does not have any form of – (i) mains electricity, (ii) piped fuel supply, and (iii) piped mains water supply, (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and (c) is 100 metres or more from the nearest habitable building.

3. Section 3B (1) of the Civic Government (Scotland) Act 1982, states that, a **licensing authority, MAY** attach standard conditions to a short-term let licence, however, these **MUST NOT** impose a limit on the number of nights for which premises may be used for secondary letting¹⁰.
4. A **licensing authority, SHALL NOT**, in a case where a certificate falls to be submitted to them (in relation to the display of a site notice) reach a final decision on an application to which the certificate relates until it has been so submitted.

⁹ 'student residential tenancy' means a tenancy – (a) for the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student and (b) to which sub-paragraph (2) or (3) of schedule 1 (tenancies which cannot be private residential tenancies) of the Housing (Tenancies) (Scotland) Act 2016 applies).

¹⁰ 'secondary letting' means a short-term let consisting of the entering into an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home.