

# **Short-term Lets – Temporary Exemptions – Statement of Policy**

**Orkney Islands Council**

**Civic Government (Scotland) Act 1982**

**Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022**

**1 October 2022 to 30 September 2025**

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## Preamble

0.1.	<p>Definitions: In this Statement the following words shall have the meaning set out:</p> <ul style="list-style-type: none"> <li>• “the Act” means the Civic Government (Scotland) Act 1982.</li> <li>• “the Council” means Orkney Islands Council constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation.</li> <li>• “Guidance” means the Scottish Government’s Guidance for (1) Hosts and Operators published at <a href="#">Guidance for Hosts and Operators</a> and for (2) Licensing Authorities, Letting Agencies and Platforms is published at <a href="#">Guidance for licensing authorities</a>.</li> <li>• “the Order” means the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022.</li> <li>• “providers” means providers of short-term lets.</li> </ul>
0.2.	<p>In terms of Section 2 of the Act, licensing authorities for the purposes of the Act are local authorities, constituted in terms of the Local Government etc. (Scotland) Act 1994 and subsequent legislation.</p>
0.3.	<p>Section 1A of Schedule 1 of the Act requires licensing authorities to publish a statement of policy which will be applied regarding temporary exemptions from the requirement to obtain a short-term let licence.</p>
0.4.	<p>In developing this policy, the Council has consulted in accordance with the Act and given due consideration to the views of all those who responded to that consultation process. Details of consultees are provided in section 4.1 below and Appendix 1 to this statement.</p>
0.5.	<p>In preparing this policy, the Council has had due regard to the Guidance.</p>
0.6.	<p>You can contact the Council’s Licensing Team:</p> <ul style="list-style-type: none"> <li>• by email to: <a href="mailto:shortletslicensing@orkney.gov.uk">shortletslicensing@orkney.gov.uk</a>;</li> <li>• by fax to: 01856 871604;</li> <li>• by telephone to: 01856 873535 extensions 2232 or 2229;</li> <li>• in writing to: Head of Legal and Governance, Orkney Islands Council, Council Offices, Kirkwall, Orkney KW15 1NY.</li> </ul>
0.7.	<p>Comments on this policy must be submitted in writing by email or letter. Paper and electronic copies of this statement are also available on request from the above email or postal addresses.</p>
0.8.	<p>Comments will be made public.</p>
0.9.	<p>If assistance is required, please discuss this with any member of staff, who will be glad to help.</p>
0.10.	<p>All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact us at the above telephone number or email or postal addresses.</p>

0.11.	During the consultation period, this document will be published at <a href="https://www.orkney.gov.uk/News">https://www.orkney.gov.uk/News</a> and will be available for inspection at the Council Offices, Kirkwall, Orkney between 10:00 and 13:00 and 14:00 and 16:00 on Mondays to Fridays. Notification of the consultation will also be published in a local newspaper.
0.12.	The final document, following adoption, will be published at <a href="http://www.orkney.gov.uk">www.orkney.gov.uk</a> .
0.13.	The consultation period will commence from 27 June 2022 and will run to 7 August 2022. The policy will be applied for the period of 3 years as required by Section 1A of Schedule 1 of the Act. It will be kept under review and be subject to ongoing consultation with stakeholders and revised, if appropriate, by the issue of supplementary statements, during its currency.

## 1. Introduction

1.1.	The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 amended the Civic Government (Scotland) Act 1982 to require short-term lets to be licensed.
1.2.	Section 1A of Schedule 1 of the Act requires licensing authorities to publish a statement of policy which will be applied regarding temporary exemptions from the requirement to obtain a short-term let licence.
1.3.	The Act and the Order are published at <a href="https://www.legislation.gov.uk/">https://www.legislation.gov.uk/</a>
1.4.	Scottish Government Guidance is published at the weblinks provided at paragraph 0.1 above.
1.5.	A Glossary of terms is attached at Appendix 2 to this statement.

## 2. What the Act Says About Temporary Exemptions

2.1.	The provisions of paragraph 1A of Schedule 1 of the Act are set out in the following paragraphs:
(1).	A licensing authority may, on application made to it, grant an exemption from the requirement to obtain a short-term let licence in relation to a specified property or properties and during a specified period (which must not exceed 6 weeks in any period of 12 months).
(2).	A licensing authority may consult the chief constable and the Scottish Fire and Rescue Service in relation to an application made under sub-paragraph (1).
(3).	A licensing authority may attach conditions to an exemption granted under sub-paragraph (1), and the provisions of Part I of this Act relating to the attaching of conditions to licences apply to the attaching of conditions to exemptions under this subsection.
(4).	A licensing authority may elect not to grant exemptions under sub-paragraph (1) for: (a) any premises, or (b) for a class or classes of premises.
(5).	A licensing authority must publish, and keep under review, a statement of its policy in relation to the exercise of its functions under this paragraph.
(6).	A licensing authority must publish a policy statement under sub-paragraph (5): (a) on or before 1 October 2022, and (b) on or before 1 October every three years thereafter.
(7).	In preparing and reviewing a policy statement under sub-paragraph (5), a licensing authority must consult with such persons as the licensing authority considers appropriate.

(8).	A policy statement published under sub-paragraph (5) must include information regarding: (a) the fees chargeable for a temporary exemption application, and (b) the time period within which the licensing authority will reach a final decision on a temporary exemption application.
(9).	The policy statement published under sub-paragraph (5) must be made available on the licensing authority's website.

### 3. This Authority will not Grant Temporary Exemptions

3.1.	The Council has considered whether to grant temporary exemptions from the requirement to obtain licences for the operation of short-term lets.
3.2.	Licensing authorities may elect not to grant exemptions for: (a) any premises, or (b) for a class or classes of premises.
3.3.	Scottish Government Guidance suggests that licensing authorities:
3.3.1.	may grant temporary exemptions to accommodate a large influx of visitors over a short period to support sports championship competitions and arts festivals, for example,
3.3.2.	may decide to adopt a policy of granting temporary exemptions for specific types of licences (for example home sharing and home letting only). This could be used to facilitate those that are interested in trying out home sharing or home letting to do so by making an application for a temporary exemption before deciding whether or not they wish to do so permanently, requiring a full licence application.
3.4.	The Council notes that the Scottish Government's principal policy intention is to ensure that all premises used for short-term lets meet essential safety standards and that mandatory licence conditions are prescribed by Article 6 of, and Schedule 3 to, the Order to address that policy intention.
3.5.	When considering whether to grant temporary exemptions, the Council notes that, normally, an exemption from a policy provides an applicant with relief from certain burdens that only affect those who have not been afforded an exemption. However, in the case of the requirement to obtain a short-term let licence, the Council notes that an exemption could provide little advantage to a licence holder and indeed would be likely to be unreasonably burdensome for the reasons set out below.

3.6.	A policy intention of the Order is to ensure that premises are safe and of a certain standard. Given that most of the mandatory licence conditions relate to fundamental safety matters, and the Licensing Authority's own duty of care, the Council note that it seems inconceivable that temporary exemptions granted should not be made subject to the same essential safety standards as those required for licences. A corollary of this however is that hosts who are awarded temporary exemptions would require to incur the same costs as licence holders in respect of achieving compliance with the mandatory licence conditions. These would include, for example, arranging for electrical items to be certified and ensuring that furniture met the prescribed safety standards. These costs would have a disproportionate impact on hosts obtaining temporary exemptions since a temporary exemption could only be obtained for a maximum of six weeks, whereas a short-term let licence can run for a period of up to three years.
3.7.	In order to apply for a temporary exemption, an applicant would also still be obliged to pay a non-refundable application fee. In terms of the Act, a licensing authority is required to recover the costs of processing applications through fees charged for applications. Notwithstanding that a temporary exemption could only be granted for a period of up to six weeks, the work for the Licensing Authority in processing applications would be the same as that required for processing applications for temporary or permanent licences. While a restricted application fee could be charged for temporary exemptions in order to afford recognition to their limited duration, it would still be a significant fee and would be in line with the proposed fee for a temporary licence application.
3.8.	The Council notes that a dictionary definition of "exemption" is "the action of freeing or state of being free from an obligation or liability imposed on others." As will be apparent from the analysis set out above, it is unlikely that the Licensing Authority would be in a position to allow an exemption satisfying this definition. Applicants would still have to go through a full application process and face being subject to the mandatory licence conditions just to obtain an exemption for up to six weeks. The application fee would still be significant, and the applicant would still have to absorb the costs of achieving compliance with the mandatory conditions.
3.9.	On the basis of the above, the Council has decided to adopt a policy of not using its powers to grant temporary exemptions for premises.

#### **4. Development of this Policy and Ongoing Review**

4.1.	We consulted on the draft Statement of Policy before finalising and publishing it. A list of the persons we consulted is attached at Appendix 1 to this statement.
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4.2.	This Statement of Policy has been prepared in accordance with the provisions of the Act and the Guidance. It will be applied during the 3-year period from 1 October 2022. It will be kept under review and revised, if appropriate, during that 3-year period.
4.3.	This Statement of Policy is subject to any amendments made to legislation, statutory regulations, licence conditions and guidance outwith our control.
4.4.	We will carry out our role under the Act in a transparent manner and in the public interest.
4.5.	This document should be read in conjunction with the Act and Guidance. This document relates to one aspect of licensing of short-term lets, being temporary exemptions, and not to the whole licensing scheme.
4.6.	The contents of this document are not a full or authoritative statement of the law or guidance and do not constitute professional or legal advice.
4.7.	This statement is published on the licensing authority's website at <a href="http://www.orkney.gov.uk">www.orkney.gov.uk</a> and is available at the offices of the licensing authority during normal working hours.
4.8.	Nothing in this statement will override the right of any person to make an application. Each application will be considered on its own merits and according to the statutory requirements of the Act.



# Appendix 1

## Schedule of Consultees to this Statement of Policy

During the consultation period from 27 June 2022 to 7 August 2022, this document was published on our website at <https://www.orkney.gov.uk/News>. Notice of the consultation was also published in a local newspaper. All consultees listed below were also notified.

Thereafter, all responses were considered and any appropriate adjustments were made to the text.

If anyone has any queries, please contact the Licensing Team via the contact details provided at section 0.6 of this document.

- Community Councils.
- Officials of the Council in respect of planning, building standards and environmental health.
- Police Scotland.
- Providers of short-term lets who contacted the Licensing Service for advice or information about the licensing scheme.
- Providers of short-term lets via Destination Orkney at <https://www.orkney.com/life/industry/tourism>.
- The general public via the public notices on [www.orkney.gov.uk](http://www.orkney.gov.uk), social media and in the local newspaper.
- Scottish Fire and Rescue Service.

## Appendix 2

### Glossary of Terms used throughout the Order and the Act

1.	<b>Interpretation – What do words and terms mean? Article 2 of the Order</b>
1.	The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (the Order) came into force on 1 March 2022.
2.	Article 2 of the Order provides:
2.1.	“1982 Act” means the Civic Government (Scotland) Act 1982,
	“accommodation” includes the whole or any part of a premises,
	“commercial consideration” includes:
(a)	money,
(b)	a benefit in kind (such as provision of a service, or reciprocal use of accommodation),
	“excluded accommodation” means accommodation described in paragraph 1 of Schedule 1 below,
	“excluded tenancy” means a tenancy described in paragraph 2 of Schedule 1 below,
	“guest” means a person who occupies accommodation under a short-term let,
	“host” means a person who is the owner, tenant, or person who otherwise exercises control over occupation and use, of the accommodation which is the subject of a short-term let,
	“unique licence number” means a unique number which:
(a)	is assigned to each application or licence, and
(b)	contains a number or letters which:
(i)	identifies the licensing authority, and
(ii)	is used in every licence number assigned by the licensing authority.
2.2.	Where the accommodation is let to more than one person under a short-term let, references in the Order to the guest are to any one of those persons.
2.3.	For the purposes of the Order, a person (“A”) is an immediate family member of another person (“B”) if A is:
(a)	in a qualifying relationship with B,
(b)	a qualifying relative of B,
(c)	a qualifying relative of a person who is in a qualifying relationship with B, or

(d)	in a qualifying relationship with a qualifying relative of B.
2.4.	For the purposes of paragraph 2.3 above:
(a)	two people are in a qualifying relationship with one another if they are:
(i)	married to each other,
(ii)	in a civil partnership with each other, or
(iii)	living together as though they were married,
(b)	a “qualifying relative” means a parent, grandparent, child, grandchild or sibling,
(c)	two people are to be regarded as siblings if they have at least one parent in common,
(d)	a person’s stepchild is to be regarded as the person’s child,
(e)	a person (“C”) is to be regarded as the child of another person (“D”), if C is being or has been treated by D as D’s child.
2.5.	Schedule 1 below has effect.
3.1.	“Short-term let” means the use of residential accommodation provided by a host in the course of 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 let 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 provided 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 (see Schedule 1 below), and
(f)	the short-term let does not constitute an excluded tenancy (see Schedule 1 below),
3.2.	“Short-term let licence” means a licence granted for the activity of the provision of a short-term let on or after 1 October 2022.
4.1.	The Order designates the activity specified in paragraph 4.2 as an activity for which a licence under Part 1 of the 1982 Act is required.

4.2.	The activity referred to in paragraph 4.1 is a short-term let on or after 1 October 2022.
4.3.	Accommodation that is on a single premises requires only one short-term let licence.
5.	For the purposes of the licensing of the activity designated in paragraph 4.1 above, the following have effect subject to the modifications in Schedule 2 or the Order:
(a)	Part 1 of the 1982 Act, and
(b)	Schedule 1 of the 1982 Act.

<b>2.</b>	<b>Schedule 1 of the Order – Excluded accommodation and tenancies</b>
1.	Excluded accommodation means accommodation which is, or is part of:
(a)	an aparthotel,
(b)	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,
(c)	a hotel which has planning permission granted for use as a hotel,
(d)	a hostel,
(e)	residential accommodation where personal care is provided to residents,
(f)	a hospital or nursing home,
(g)	a residential school, college or training centre,
(h)	secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),
(i)	a refuge,
(j)	student accommodation,
(k)	accommodation which otherwise requires a licence for use for hire for overnight stays,
(l)	accommodation which is provided by the guest,
(m)	accommodation which is capable, without modification, of transporting guests to another location,
(n)	a bothy, or
(o)	accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

2.	An excluded tenancy means a tenancy which falls within any of the following definitions:
(a)	a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984,
(b)	an assured tenancy (within the meaning of section 12 of the 1988 Act),
(c)	a short assured tenancy (within the meaning of section 32 of the 1988 Act),
(d)	a tenancy of a croft (within the meaning of section 3 the 1993 Act),
(e)	a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the 1993 Act) to which any provisions of the Small Landholders (Scotland) Acts, 1886 to 1931 applies,
(f)	a Scottish secure tenancy (within the meaning of section 11 of the 2001 Act),
(g)	a short Scottish secure tenancy (within the meaning of section 34 of the 2001 Act),
(h)	a 1991 Act tenancy (within the meaning of section 1(4) of the 2003 Act),
(i)	a limited duration tenancy (within the meaning of section 93 of the 2003 Act),
(j)	a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
(k)	a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
(l)	a tenancy under a lease under 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 2003 Act),
(m)	a private residential tenancy (within the meaning of section 1 of the 2016 Act), or
(n)	a student residential tenancy.
3(1).	In Schedule 1 of the Order:
	“the 1988 Act” means the Housing (Scotland) Act 1988,
	“the 1993 Act” means the Crofters (Scotland) Act 1993,
	“the 2001 Act” means the Housing (Scotland) Act 2001,
	“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003,
	“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016,
	“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,
	“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,
	“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.
	“personal care” has the same meaning as in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010,
	“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.
	“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,
	“student residential tenancy” means a tenancy:

(a)	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 paragraph 5 of Schedule 1 (tenancies which cannot be private residential tenancies) of the 2016 Act applies,
	“student accommodation” means residential accommodation which has been built or converted predominantly for the purpose of being provided to students.
3(2).	In paragraph 1(k), “licence” does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006.

Version No:	Date:	Details:
1.	03/02/2022.	Draft Policy for consultation.
2.	05/04/2022.	Amended Draft Policy for consultation.
3.	29/04/2022.	Amended Draft Policy for consultation.
4.	10/05/2022.	Amended Draft Policy for consultation.
5.	23/06/2022.	Amended Draft Policy for consultation.
6.	01/09/2022.	Final Policy adopted.