

**REPORT TO:** Licensing Sub-Committee

**MEETING DATE:** 9 June 2022

**BY:** Head of Corporate Support

**SUBJECT:** Civic Government (Scotland) Act 1982 and  
Planning (Scotland) Act 2019  
Regulation of Short-Term Lets

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## **1 PURPOSE**

- 1.1 To determine an appropriate licensing regime, to regulate short-term lets in East Lothian.
- 1.2 Public consultation (by the Scottish Government) has informed design principles for licensing schemes, however each local authority is required to implement their own licensing scheme.
- 1.3 Licensing authorities are required to develop a set of short-term lets policies which are consistent with the Scottish Government's objectives.

## **2 RECOMMENDATIONS**

- 2.1 The Licensing Sub-committee is asked to consider the Scottish Government's Supplementary Guidance for Licensing Authorities (Appendix 1) and approve an appropriate licensing regime in terms of the principles set out in this report, namely:
  - 2.1.1 Temporary Exemptions will not be granted for any type of licence.
  - 2.1.2 No Temporary Licences policy will be adopted.
  - 2.1.3 The duration of a licence will be three years (grant and renewal) unless otherwise determined by the Licensing Authority.
  - 2.1.4 The Additional Conditions set out in Appendix 3 will be applied to all licences.

- 2.1.5 There will be a presumption that self-certification applications will be acceptable and inspections will only be required where there are reasonable grounds to do so.
- 2.2 The Sub-Committee recommends that, initially, fees for short term let licences are set on the same basis and at the same level as Houses in Multiple Occupation fees, until a full review of costs can be carried out, noting that the final decision on fees will be determined by Cabinet.

### **3 BACKGROUND**

- 3.1 In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. The paper noted the range of approaches adopted in cities and countries around the world and asked for opinions on the types of short-term lets which should be regulated and the controls which should be applied. In parallel with the consultation, the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas.
- 3.2 In May 2019, the Scottish Government commissioned research to address gaps in the available evidence on the impact of short-term lets on housing and communities. The research combined both secondary data analysis of information published by Airbnb and surveys of residents and hosts, and in-depth interviews involving residents, hosts, community actors and local businesses.
- 3.3 Broadly speaking, the same themes, benefits and concerns were highlighted by people at consultation events, those responding to the consultation and the independent research.
- 3.4 On 8 January 2020, the Scottish Government announced plans to regulate the short-term let sector. Work to implement the regulations was paused in March 2020 but resumed in July 2020. The Civic Government (Scotland) Act 1982 (“the Act”) (Licensing of Short-term Lets) Order 2022 (“the Order”) was approved by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022. Licensing authorities have until October 2022 to implement their own licensing regime.

### **PRINCIPLES OF LICENSING REGIME**

- 3.5 The legislation requires us to introduce four licence types:
- Home Sharing
  - Home Letting
  - Secondary Letting
  - Home Letting and Home Sharing

- 3.6 Home sharing and home letting concern the use of the host or operator's only or principal home whereas secondary letting makes use of a separate premises.
- 3.7 Policies will have to be developed on a number of topics (See Appendix 1, Sections 2, 5 and 6 General Policies):
- Temporary Exemptions
  - Temporary Licences
  - Licence duration and renewal
  - Additional Conditions
  - Compliance and Enforcement
- 3.8 Paragraph 1A(5) of Schedule 2, Part 2 of the Licensing of Short-Term Lets Order 2022 (Appendix 2) allows Licensing Authorities to determine not to grant Temporary Exemptions. Should it be decided not to grant Temporary Exemptions, the Licensing Authority are required to prepare a statement to that effect and paragraph 1A(7) requires consultation with appropriate persons, on this decision.
- 3.9 The licensing authority will, in the first instance, have to determine whether Temporary Exemptions and Temporary Licences will be included in the licensing regime (See Appendix 1, Section 2, Temporary Exemptions Policy Statement (2.9 to 2.19) and Temporary Licences Policy (2.20 to 2.25)).
- Temporary Exemptions – the legislation allows local authorities to not allow any exemptions to the requirement to be licensed
  - Temporary Licences – Property and management standards will be same for temporary or full licences therefore there would be no difference in the application fee.
- 3.10 It is felt that, if a property is being let, no matter the proposed duration or the purpose of the letting, such an arrangement should be subject to the same standards and duties on the prospective licensee as would be the case in a standard application, and so there appears to be no clear reason to issue temporary exemptions from the need to obtain a licence under this scheme. Likewise, while there may be a temptation on the part of someone looking to enter the letting market to test the waters with a temporary licence to see how things go, the administration process and therefore the licence fee would be the same whether the licence was temporary or full, and the holder of a temporary licence could then be required to apply and pay a fee a second time to move from a temporary to a full licence. It is not felt that there is any financial or administrative reason to allow for a temporary licence. A full licence will cost the same, and can easily be surrendered if plans do not bear fruit after a test period. It is therefore being recommended that these temporary options do not form part of the system being put in place.
- 3.11 Separately to the licensing regime, the Council, as Planning Authority, will have to decide whether to introduce Control Areas (See Appendix 1, Section 4, Planning Considerations) as this will determine whether a

licence can be rejected. Within a Control Area designated by the planning authority, such a change of use will always require planning permission.

- 3.12 The Licensing Authority will next need to determine the duration of licenses (See Appendix 1, Section 2, Licence Duration and Renewal Policy (2.5 to 2.8)). The default duration of a licence under the Civic Government (Scotland) Act 1982 is three years unless otherwise determined by the Licensing Authority.
- 3.13 Additional conditions can be determined by the local authority. These reflect a collaboration between relevant departments in respect of issues which have prompted the need for the additional condition(s) (See Appendix 1, Section 5, setting Additional Licence Conditions).
- 3.14 It is proposed that these will be standard conditions on all East Lothian Licences, in addition to the mandatory conditions as set out in Schedule 3 of the Order (Appendix 2). Suggested additional conditions are set out in Appendix 3.
- 3.15 Officers will need to consider and agree which department will deal with compliance and enforcement – who will ensure compliance with licence conditions and serve enforcement notices (See Appendix 1, Section 6, Complaints and Enforcement)
- Compliance – Currently a Public Health & Environmental Protection Officer carries out inspections of all House in Multiple Occupation (HMO) properties. Property condition standards will be the same as HMO standards.
  - Complaints – The Licensing Standards Officer deals with mediation between complainers and licence holders.
  - Enforcement – The Licensing Standards Officer deals with enforcement action in relation to a breach of licence conditions. If the breach is in respect of non-compliance of the Repairing or Tolerable Standard, a Public Health & Environmental Protection Officer would issue a Notice.
- 3.16 Licence fees are required to be set. Revenue cannot exceed the costs of establishing and running the regime including support provided by departments other than Licensing (See Appendix 1, Section 3, Setting Licence Fees). However, at this time, the full costs of implementing and administering the new regime are not yet known. It is therefore recommended that the fee structure for Houses of Multiple Occupation be used in the first instance but that a full review of costs and fees be undertaken within 12 months of the introduction of the scheme with fees adjusted as required to reflect the cost neutral principle under which the licensing scheme must operate. A final decision on fees will require to be taken by Cabinet but the views of the Licensing Sub-Committee will be noted as part of the reporting process.
- 3.17 Current HMO fees are set as:

3 – 5 residents	£504
6 – 10 residents	£811
11 – 20 residents	£1,240
21 – 30 residents	£1,489

#### **4 POLICY IMPLICATIONS**

- 4.1 Licensing of Short-Term Lets will soon become a statutory obligation for East Lothian Council. This report is based upon Legislation and Scottish Government guidance for licensing Short-Term Lets.

#### **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – The council is entitled to charge an application fee for these applications although the scheme is required to operate on a cost-neutral basis, taking account of additional resources required to implement and administer the regime and other costs incurred across the council.
- 6.2 Personnel – At any time there are more than 300 East Lothian properties advertised for short-term let on the platform Airbnb. Three hundred licence applications would see an increase of around 20% in licence applications received by the Council. This increase in workload could not be absorbed by existing staff in the licensing team and additional personnel will be required. There is some uncertainty around the number of applications that will be received and the additional staffing resource will reflect the additional workload.
- 6.3 Property inspections will be required. Currently a Public Health & Environmental Protection Officer carries out inspections of all House in Multiple Occupation (HMO) properties. Three hundred + inspections cannot be absorbed by existing resources.
- 6.4 The Licensing Standards Officer will be unable to absorb the additional work generated by enquiries, complaints and enforcement action for this licensing regime. It is therefore proposed that an additional Licensing Standards Officer is appointed to deal with short-term lets and other Civic Government licensing matters.
- 6.5 Other – Not currently calculated.

## **7 BACKGROUND PAPERS**

7.1 Scottish Government Guidance published in March 2022 – Part 1 Guidance for Hosts and Operators (Appendix 4), Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms (Appendix 1).

**Appendix 1** Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms

**Appendix 2** Licensing of Short-term Lets Order 2022

**Appendix 3** Additional Conditions

**Appendix 4** Guidance for Hosts and Operators

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# **Short Term Lets in Scotland Licensing Scheme**

## **Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms**

**March 2022**

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## 1. Introduction

- 1.1. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022<sup>1</sup> was approved by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022.
- 1.2. The Scottish Government has developed this guidance in consultation with the [Short-Term Lets Stakeholder Working Group](#) comprising a wide range of industry, local authority and community stakeholders. This non-statutory guidance is split into two parts: Part 1<sup>2</sup> is for hosts and operators and Part 2 for Scottish licensing authorities, letting agencies and platforms facilitating short-term lets in Scotland. It should not be interpreted as offering definitive legal advice and, if in doubt, you should seek your own legal advice.
- 1.3. Separate guidance has been produced in respect of planning considerations for hosts and operators and **Planning Circular 1/2021** to assist planning authorities in establishing short-term let control areas. Hosts and operators must comply with both planning and licensing law.

### (a) Purpose of guidance

- 1.4. This Guidance Part 2 is designed to help licensing authorities implement a licensing scheme in their area which is:
  - in line with the Scottish Government's overall policy aims for the licensing of short-term lets (see Guidance Part 1);
  - efficient, effective and proportionate; and
  - customised to the licensing authority's local policies and the needs and circumstances of the licensing authority's local area.
- 1.5. It is desirable for licensing authorities to work collaboratively with other licensing authorities to facilitate consistency in operational approach, where it is possible to do so; the aim being to tailor schemes to local needs, but to minimise unwarranted variation in the overall processes.

### (b) Language used in Guidance Part 2

- 1.6. The glossary for Guidance Part 1 has effect for this Guidance Part 2.

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<sup>1</sup> [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(legislation.gov.uk\)](#)

<sup>2</sup> <https://www.gov.scot/isbn/9781804351307>

1.7. We additionally use the following terms from the 1982 Act and Licensing Order, where the circumstances require it:

**“applicant”** means the person making the application for the licence, normally the host or operator; and

**“licence holder”** means any one of the persons named on the licence application including, but not limited to, the host or operator.

### **(c) Updates**

1.8. Ownership of this guidance rests with the Scottish Government and the latest version will always be available at: [Short-term lets: regulation information - gov.scot \(www.gov.scot\)](http://www.gov.scot). We will notify licensing authorities of any updates.

### **(d) Information for applicants (and the application form)**

1.9. The Scottish Government expects licensing authorities to take active steps to publicise their licensing schemes to raise awareness amongst current and potential short-term let hosts and operators.

1.10. One of these steps is for licensing authorities to have a dedicated section on their website for their short-term let licensing scheme where hosts and operators can find all the information that they need to apply and comply. This should include:

- links to Scottish Government guidance;
- fees for applications and renewals (and any other fees);
- additional information and guidance about relevant policies, additional conditions or measures specific to the licensing authority area;
- the application form; and
- how to make an appeal

1.11. Licensing authorities should also consider writing to existing hosts and operators as part of an awareness raising campaign. This could include:

- properties registered on the non-domestic rates roll as self-catering, B&Bs or guest houses;
- properties registered as second homes and paying council tax, as they may be used occasionally as short-term lets; and

- properties that have been granted planning permission to operate as a short-term let.
- 1.12. The Scottish Government would like hosts and operators to be able to conduct as many transactions as possible with licensing authorities in an online or electronic format. It is therefore desirable for licensing authorities to work towards a digital first approach (in line with Scottish Government's Digital Strategy). Online information should be provided in line with [Scottish Government's digital accessibility requirements](#) and be compatible with assistive technology.
- 1.13. Licensing authorities are expected to still have paper copies of relevant information, and the application form, available upon request for people who cannot access them online, and provide support to access online services at their offices.

### ***Application checklist***

- 1.14. Licensing Guidance Part 1 (Annex B) has an application checklist for hosts and operators. Licensing authorities may wish to augment this application checklist to cater for any additional conditions or other specific requirements and make this available on their website.

### **(e) Information for residents and neighbours**

- 1.15. In addition to the information on their website set out at 1.10, it would also be helpful for licensing authorities to include information on:
- how to make a complaint (licensing and planning authorities might wish to consider how to join up and triage complaints, see **chapter 6**);
  - how to report suspected unlicensed short-term lets and breaches of licence conditions; and
  - how to raise an objection after becoming aware of an application (licensing and planning authorities might consider how to join up and triage licensing and planning processes and objections, see **chapter 6**).

## 2. Licence types and policies

### (a) Four types of licence

- 2.1. Licensing authorities can grant one of four types of licence for short-term let accommodation. The licence granted must be for either:
- a) secondary letting;
  - b) home letting;
  - c) home sharing; or
  - d) home letting and home sharing.
- 2.2. Home sharing and home letting concern the use of the host or operator's only or principal home whereas secondary letting makes use of a separate premises.

### (b) General policies

- 2.3. Each licensing authority should have regard to their planning authority's objectives and policies, including:
- the local development plan;
  - other relevant planning policies; and
  - any intended or designated control areas.
- 2.4. Licensing authorities must develop a policy on **temporary exemptions** see paragraph 2.9 and are also expected to develop policies on:
- **licence duration and renewal** - see paragraph 2.5;
  - **temporary licences** – see paragraph 2.20;
  - **additional conditions** – see **chapter 5**; and
  - **compliance and enforcement** – see **chapter 6**;

### (c) Licence duration and renewal policy

- 2.5. Licensing authorities may decide to grant a licence for a period of up to 3 years initially, after which it needs to be renewed. Licensing authorities may grant licences for different time periods to different applicants and/or for

different types of short-term let licence. Licensing authorities are expected to provide clear and transparent criteria for doing so.

- 2.6. Licensing authorities must specify the duration and expiry date of each licence on the licence itself. The duration applies from the date on which the licence comes into force. Where an application is made to renew a licence, the licence will continue to have effect until such a time as a decision is made on the renewal.
- 2.7. The Licensing Order allows licensing authorities to renew licences for such periods as they see fit (there is no time limit)<sup>3</sup>. However, licensing authorities must set out the circumstances in which they would use the power to set a licence period in excess of three years. Licensing authorities are encouraged to renew licences for a period of three years, unless they have good reasons to do otherwise.
- 2.8. The Scottish Government expects licensing authorities to consider how they will ensure compliance with licence conditions for the duration of licences. This might include whether and how often they would want to see certain documentation or make visits during the licence period. This need not be a blanket approach, as the need to visit a premises during the licence period would depend on various factors.

#### **(d) Temporary exemptions policy**

- 2.9. Licensing authorities may grant temporary exemptions to the requirement to have a licence<sup>4</sup>. They can do this for a specified single continuous period not exceeding 6 weeks in any period of 12 months. The 6 week limit is a maximum, and not a default. In order to obtain a temporary exemption from the requirement to have a licence, hosts and operators must apply for a temporary exemption, where this is offered by a licensing authority.
- 2.10. Licensing authorities must publish a temporary exemptions policy statement on their website and keep it under review. As a minimum it must publish a policy on or before 1 October 2022 and on or before 1 October every three years thereafter.
- 2.11. Licensing authorities must consult with such persons as they consider appropriate in preparing and reviewing their temporary exemptions policy statement. Their temporary exemptions policy statement must include information regarding:
  - the fees chargeable for a temporary exemption application; and

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<sup>3</sup> Paragraph 8 (duration of licences) of schedule 1 to the 1982 Act as modified by the Licensing Order.

<sup>4</sup> Paragraph 1A of schedule 1 to the 1982 Act.

- the time period within which the licensing authority will finally aim to determine the application.
- 2.12. Licensing authorities may also decide to adopt a policy of granting temporary exemptions for specific types of licences (for example home sharing and home letting only), if they wish. 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 or temporary licence before deciding whether or not they wish to do this permanently, requiring a full licence application.
- 2.13. Licensing authorities may also attach conditions to an exemption. The Scottish Government therefore expects licensing authorities' policy statements to include:
- a) the likely conditions attached to an exemption;
  - b) the grounds for granting or refusing an application for an exemption, including any classes of premises (or types of licence) for which an exemption would not be granted; and
  - c) information about how a decision can be appealed.
- 2.14. Licensing authorities can check and enforce any conditions that are attached to a temporary exemption. Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator.
- 2.15. Licensing authorities have the power to consult the Chief Constable and the Scottish Fire and Rescue Service in respect of applications for temporary exemptions.
- 2.16. Licensing authorities can grant or refuse an application for a temporary exemption. If they grant a temporary exemption, they should provide the host or operator with a temporary exemption number (like a licence number), see **chapter 4**.
- 2.17. Where a licensing authority does not want to use their powers to grant any exemptions, they can comply with this duty by publishing a statement on their website to the effect that applications for exemptions will not be granted under any circumstances.

### ***Interaction with planning policy***

- 2.18. Planning policies still apply, although these will not commonly affect smaller scale home sharing and home letting<sup>5</sup>. However, they are relevant for secondary letting, especially within control areas.
- 2.19. For very large, one-off events (such as the Commonwealth Games, Olympics or COP26), the Scottish Ministers can make a special development order to grant planning permission for change of use for an area and to require discontinuance of use after a certain period. In such circumstances, temporary exemptions could be granted in respect of secondary letting without any concern about breach of planning control.

### **(e) Temporary licences policy**

- 2.20. Licensing authorities may also decide to grant temporary licences<sup>6</sup>. The Scottish Government expects licensing authorities to develop and publish a policy setting out:
- the licensing authority's criteria for issuing temporary licences;
  - the fees payable; and
  - any additional conditions which apply (in addition to the mandatory conditions which apply to all licences, including temporary licences).
- 2.21. It is desirable for licensing authorities to clearly state if there is an application form specifically to apply for temporary licences (and or exemptions). Please note that in applying for a temporary licence, hosts and operators must still comply with all the mandatory conditions.
- 2.22. Licensing authorities must consult the Chief Constable and Scottish Fire and Rescue Service in respect of an application for a temporary licence.
- 2.23. A temporary licence may be granted for a duration of up to six weeks, or longer if the host or operator has also made an application for a full licence. If they have applied for a licence, their temporary licence will last until their licence application is finally determined (this includes an appeal if one has been lodged within 28 days of the decision).

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<sup>5</sup> Whether planning policies apply to home letting and home sharing depends not least on the number of rooms being let compared with the number of rooms on the premises.

<sup>6</sup> Under paragraph 7(1) of schedule 1 to the 1982 Act.



- 2.24. The issuing of a temporary licence to a host or operator who is also making a licence application does not extend the time for the licensing authority to dispose of the licence application.
- 2.25. Licensing authorities should issue a temporary licence number to accompany a temporary licence, see **chapter 4**.

### **3. Setting licence fees**

#### **(a) Balancing costs and revenues**

- 3.1. Licensing authorities are responsible for establishing and running the short-term let licensing scheme in their area and can recover the costs of establishing and running the scheme through fees<sup>7</sup>.
- 3.2. Licensing authorities must determine their own fees and fee structures to recover establishment and running costs specific to their area. Licensing authorities must review their fees from time to time to ensure that revenue from fees remains in line with the running costs of the licensing scheme<sup>8</sup>.
- 3.3. Licensing authorities are experienced in running other forms of licensing schemes and keeping costs down. In line with this, the Scottish Government expects licensing authorities to have regard to minimising costs through:
  - economies of scale;
  - integrating service delivery with other housing and licensing functions;
  - using online and digital verification where possible, for example through photo and video evidence instead of a visit; and
  - taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

#### **(b) Chargeable activities**

- 3.4. Licensing authorities may charge fees for the following:
  - licence applications;
  - licence renewal applications;
  - temporary exemption applications;
  - issuing of duplicate licences;
  - their consideration of a material change of circumstances or in premises and their disposal of the matter;

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<sup>7</sup> Paragraph 15(2)(a) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>8</sup> Paragraph 15(2)(a) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

- issuing a certified true copy of any entry on the public register; and
  - visits to premises where the visit is necessary because of a failure of the host or operator (see paragraph 3.13 below).
- 3.5. Licensing authorities may wish to set a fee structure that is based on some premises requiring inspection (risk based approach) but apportion the costs across all applications to charge one fee level.
- 3.6. Alternatively, they may decide to split these costs into component parts, publishing a cost for a licence application fee and a separate cost where an inspection is required (for example, if a concern is flagged by Police Scotland or the Scottish Fire and Rescue Service). This could also be combined with a policy, for example, which set out that the need for routine inspections might be minimised if the documents submitted as part of an application (such as floor plans, photos, videos, certificates etc.) were sufficient to:
- verify compliance with mandatory licence conditions; and/or
  - determine the maximum occupancy number.
- 3.7. This approach may help to ensure applicants provide sufficient evidence when submitting the application. Where licensing authorities choose to adopt such an approach, we would expect them to provide clear guidance to applicants on the information/format of information they'd require in order to grant an application without a physical inspection of the premises. An example fee structure based on this approach is set out below:

	Guest capacity	Licence application /renewal fee	Licence application / renewal inspection fee (where required)	Licence application / renewal fee (where inspection required)
Home sharing and home letting licence	1 or 2	£x	£y	£x+y
Secondary letting licence	1 or 2	£a	£b	£a+b

- 3.8. Licensing authorities may decide to allow hosts or operators to pay an ongoing subscription in place of the application and/or renewal fee, should they wish to do so<sup>9</sup>.
- 3.9. Licensing authorities must not charge neighbours or others for handling complaints or objections.
- 3.10. Licensing authorities may charge for applications to vary the terms of a licence. When deciding the level of fee it will charge, it is desirable for licensing authorities to consider how the level of any fee charged may act as a disincentive for hosts and operators to keep them informed.
- 3.11. Revenue from fines in respect of licensing offences (see **chapter 6**) do not go to the licensing authority.

### ***Publicising the fees***

- 3.12. Licensing authorities are expected to publish their fees in respect of their licensing scheme and should give reasonable notice of any changes.

### ***Fees for visits to premises***

- 3.13. Licensing authorities may charge a fee to a host or operator for a visit to their premises, where the visit results from their failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious.
- 3.14. A fee may be charged for an inspection following a complaint, where it is found that there are compliance issues, whether or not those are the issues that were the subject of the complaint.
- 3.15. Where a fee is charged for such a visit, the licensing authority must produce a report of its findings to the host or operator within 28 days of the inspection<sup>10</sup>. Where a report is not provided within 28 days of the inspection, the licensing authority must refund the fee charged to the licence holder.

### ***Refunds and refused applications***

- 3.16. In general, fees are not refundable. The Scottish Government expects licensing authorities to publish their policy on refunds so that hosts and operators are clear on the position before they make an application.
- 3.17. Whether or not a licensing application is granted, the licensing authority will incur significant costs in processing the application. Licensing authorities must

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<sup>9</sup> Powers at paragraph 15(3) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>10</sup> Required by Paragraph 15(4) of Schedule 1 to the 1982 Act, inserted by the Licensing Order.

ensure, prior to an application being granted, the applicant is only charged the costs relating to the processing of their application. If the application is refused, the fee charged for the processing of the application itself need not be refunded.

- 3.18. Please be aware that the fee charged for processing the application should not include enforcement costs. This was determined at the Supreme Court in the case of *R v. Westminster City Council (2017)*<sup>5</sup>. The licensing authority may charge fees to cover enforcement costs once the application is granted (normally through monitoring and/or renewal fees).
- 3.19. Where a licensing authority refuses to consider an application because the host or operator needs to obtain planning permission (see **chapter 6**), the licensing authority does not need to refund the fee paid. However, the licensing authority must not charge a further fee in respect of a resubmitted licensing application made within 28 days of planning permission being granted.

### **(c) Parameters for setting fees**

- 3.20. Licensing authorities may take account of the following criteria in determining the amount of fees to charge:
- the size of the premises;
  - the number of rooms at the premises;
  - the number of guests who can reside at the premises;
  - the type of short-term let;
  - the duration of the period for which the premises are made available for use as a short-term let (but note that licensing authorities cannot set limits on nights on licences for secondary letting); and
  - the extent to which the licence holder has complied with the conditions of the licence (which might affect a renewal fee).
- 3.21. The Scottish Government expects licensing authorities to consider each of these criteria, even if they subsequently deem some may not be suitable for their local circumstances.
- 3.22. The Scottish Government does not expect licensing authorities to set a uniform flat fee, as this might disproportionately benefit hosts and operators of larger premises and adversely affect home sharing, bed and breakfasts and smaller self-catering operators.

3.23. The Scottish Government recommends as a minimum that licensing authorities establish a licence fee structure that takes account of the following:

- **type of licence** with lower fees for home sharing and home letting licences than for a secondary letting licence; and
- **guest capacity** - the intended maximum number of guests, as requested by the host or operator on their application form.

3.24. Note that a licensing authority may specify a maximum occupancy for safety reasons that is lower than the number of guests an applicant has requested. In this instance licensing authorities may choose to, but do not have to, refund the difference between the fee paid and the fee that would have been paid had the application specified the maximum occupancy figure.

3.25. Within this recommended fee structure, licensing authorities may decide to group guest numbers into bands. An example banded fee structure is set out below:

<b>Guest capacity (people)</b>	<b>Home sharing and home letting licence</b>	<b>Secondary letting licence</b>
1 or 2	£ [ ]	£ [ ]
3 or 4	£ [ ]	£ [ ]
5 or 6	£ [ ]	£ [ ]
7 or 8	£ [ ]	£ [ ]
9 to 12	£ [ ]	£ [ ]
12 to 20	£ [ ]	£ [ ]
20+	£ [ ]	£ [ ]

## 4. Handling licence applications

4.1. Licensing authorities will be familiar with the processes under the 1982 Act for determining licence applications. This chapter focuses on obligations and considerations that are specific to the short-term let licensing scheme.

### (a) Additional information from applicants

4.2. Licensing authorities may request, and the Scottish Government recommends they do request, additional information on licence application forms<sup>11</sup>. The following information, if requested, would need to be included in the public register<sup>12</sup>:

- the number of bedrooms in the premises,
- data on availability and occupancy,
- contact details for the manager of the premises, if different from the applicant, and
- the Energy Performance Certificate rating.

4.3. Requesting data on availability and occupancy could be useful to licensing authorities in better understanding the level of short-term let activity and help to determine the maximum occupancy number.

### (b) Planning considerations

4.4. A licensing authority may refuse to consider a licensing application if the host or operator of a dwellinghouse within a short-term let control area needs planning permission but does not have it<sup>13</sup>. This power is designed to assist licensing authorities in handling applications for secondary letting but licensing authorities can use it in other circumstances too, such as letting rooms in your own home. Further details can be found in planning guidance for hosts and operators<sup>14</sup>. The licensing authority has 21 days from receipt of a valid application to decide to refuse to consider the application on these grounds.

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<sup>11</sup> The 1982 Act allows for applications to include “such other information as the authority may reasonably require” (paragraph 1(2)(e)) and allows the licensing authority to “make such reasonable enquiries as they think fit” (paragraph 4(1)).

<sup>12</sup> See paragraph 14(4)(m) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>13</sup> Paragraph 2A of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>14</sup> <https://www.gov.scot/isbn/9781804351925>

- 4.5. If a licensing authority refuses to consider an application for this reason, they must tell the host or operator within seven days and explain why they are refusing to consider the application.
- 4.6. A host or operator who has subsequently obtained planning permission (or a certificate of lawfulness of use or development), can resubmit their licensing application and the licensing authority must not charge any additional fee, provided the host or operator submits their application within 28 days of obtaining planning permission (or certificate).
- 4.7. Existing hosts or operators who have made a licence application by 1 April 2023 can continue to operate in the time it takes for their licence application to be finally determined, which means it is granted, refused or the licensing authority refuses to consider the application because it considers that use of the premises for a short-term let would constitute a breach of planning control.
- 4.8. Before 1 April 2023, licensing authorities cannot determine a licence application on the basis it breaches planning control unless they have given existing hosts a chance to submit an application for planning permission or for a certificate of lawful existing or proposed use or development (“CLUD”). Licensing authorities can determine a licensing application before this date where planning permission or a CLUD has already been refused.
- 4.9. The applicant has three months to submit an application for planning permission or for a CLUD. If they do not do so within three months, the application is finally determined for these purposes and the applicant must cease providing short-term lets. The deadline for all short-term lets to be licensed has therefore been extended from 1 April 2024 to 1 July 2024.

### ***Links with control areas***

- 4.10. The high-level policy purpose behind control areas is as follows:

*to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.*

- 4.11. It is a mandatory condition that a host or operator has planning permission or has made an application for planning permission where all of the following conditions apply:
  - their premises is in a control area;
  - they are using it for secondary letting; **and**



- it is a dwellinghouse.
- 4.12. In these circumstances, the host or operator must have made an application for planning permission or already have planning permission before they apply for a licence. In most cases, planning applications are determined within two months<sup>15</sup>.
- 4.13. Licensing authorities should be aware that planning authorities could designate control areas affecting licensed premises after they have been licensed. Licensing authorities should ensure that licensed hosts or operators who may be affected by the designation of a control area are alerted as part of the planning authority's consultation process.
- 4.14. Licensing authorities should give licensed hosts and operators a reasonable opportunity to comply with this mandatory condition by submitting a planning application. The host or operator should do this as soon as possible after the control area is designated.
- 4.15. Where a control area is designated, licensing authorities should publish details of this on their website. This will assist hosts in determining whether or not to apply for a licence, in the knowledge that planning permission or a certificate of lawful use or development will be required.

#### ***Where planning permission is refused***

- 4.16. Licensing authorities should be advised by planning authorities where they refuse planning permission for short-term lets (see **Planning Circular 1/2021**). The licensing authority should then ensure that any application or licence contingent on the planning permission is refused, varied or revoked as appropriate.
- 4.17. Note that it will not always be necessary for an application to be refused or licence to be revoked. For example, a host or operator may have a licence to let out one bedroom in their own home but have submitted an application to vary the licence, and an accompanying planning application, in order to let out three bedrooms. In this case, the applications might be declined but the existing licensed activity can continue.

#### **(c) Licence numbers**

- 4.18. Licensing authorities must issue a unique licence number to existing hosts and operators who apply for a licence before 1 April 2023, as soon as reasonably practicable after an application for the licence has been made<sup>16</sup>.

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<sup>15</sup> Scottish Government: [Getting Planning Permission](#).

<sup>16</sup> Paragraph 2(1A) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

This is known as a provisional licence number (not to be confused with a licence number for a temporary licence) and is to allow existing hosts to continue operating until their application has been determined (licensing authorities have until 31 March 2024 to do this).

- 4.19. Provisional licence numbers will not be issued to new hosts from 1 October 2022, or anyone applying after 1 April 2023, as they cannot operate whilst their application is being determined.
- 4.20. The Scottish Government expects licensing authorities to issue licence numbers in a consistent format across Scotland. This consistency is to aid with data handling (see **chapter 7**) and to assist letting agencies and platforms in being able to host the licence number provided by the host or operator in their listings. The format is set out and explained in this chapter and specified in **Annex A**.
- 4.21. This expectation for consistency in format also applies to:
  - temporary licences; and
  - temporary exemptions.
- 4.22. This means that all hosts and operators in Scotland providing short-term lets will have such a number. For ease, we will call this the licence number throughout the rest of this chapter.
- 4.23. The format of the licence number, alongside information contained in the public register, will allow anybody to identify:
  - a) the licensing authority who issued the licence (and therefore the area to which the licence relates);
  - b) the type of short-term let to which the licence relates (public register); and
  - c) the type of licence (or exemption).
- 4.24. The licence number will also include a 5 digit number issued by the licensing authority. The overall licence number will be unique across Scotland when combined with the header data set out in 4.23.

## **(d) Notifying residents and neighbours**

- 4.25. Applicants have responsibility for giving notice<sup>17</sup> of an application for a new, or renewal of a, short-term lets licence.
- 4.26. Applicants are required to display a site notice at or near the premises so that it can be conveniently read by the public for a period of 21 days beginning with the date on which the application was submitted to the licensing authority.
- 4.27. A notice must state—
- a) that an application has been made for a licence,
  - b) the main facts of the application<sup>18</sup>,
  - c) that objections and representations in relation to the application may be made to the licensing authority, and
  - d) how to make objections or representations.
- 4.28. Applicants are required by para 2(4) of schedule 1 to the 1982 Act to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired.
- 4.29. A template site notice and certificate of compliance have been included in Licensing Guidance Part 1, however, licensing authorities may wish to develop their own forms for applicants to use.

## **Objections**

- 4.30. An objection must specify the grounds, but the grounds are not limited by, or defined in, the 1982 Act<sup>19</sup>.
- 4.31. Licensing authorities may entertain late objections if they are satisfied there is a sufficient reason as to why it was not made on time. Where a licensing authority entertains a late objection, they must satisfy themselves as to the sufficiency of the reason for lateness and explain why they have decided to entertain the objection.

## **(e) Maximum occupancy condition**

- 4.32. It is a mandatory condition that hosts and operators ensure that they do not exceed the maximum number of guests for their premises. This includes

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<sup>17</sup> Paragraph 2 of schedule 1 to the 1982 Act, has been significantly modified by the Licensing Order.

<sup>18</sup> The details are specified in paragraph 2(3) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>19</sup> Paragraph 3(1)(b) of Schedule 1 to the 1982 Act.

making the maximum occupancy clear on adverts and listings and in booking terms and conditions.

- 4.33. Hosts and operators will state in their application how many guests they would like to accommodate. It would be helpful if licensing authorities could set out how it will determine maximum occupancy, to enable hosts and operators to understand how this will be calculated.
- 4.34. The Scottish Government expects licensing authorities to consider criteria (a) and (b) below when determining maximum occupancy. They may also wish to take other factors into account as relevant, such as (c), using the lowest of these numbers to determine maximum occupancy:
- a) the number requested on the application form
  - b) the maximum number that can be accommodated safely (broken down to the number of adults and the number of children)
  - c) the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours
- 4.35. In order for licensing authorities and Scottish Fire and Rescue Service to undertake an assessment of the maximum number of guests that can be accommodated safely, it is desirable for licensing authorities to ask applicants to submit (as part of their application) floor plan(s) for their premises indicating room sizes, fire escape routes and accommodation intended for guests with mobility impairment. Licensing authorities may also wish to ask for plans to show the location of any steps, stairs, elevators or lifts in the premises, as well as the extent and boundary of the building – if relevant.

### **Children**

- 4.36. Licensing authorities may choose to specify on a licence that guests may bring a certain number of small children under a specified age limit and these would not count towards the occupancy of the premises. Children above the age limit and any additional children of any age would count towards the occupancy. Licensing authorities may wish to set the age limit as under 10 years, which is in line with the reference to children in the context of housing within the Housing Act (Scotland) 1987.

## 5. Setting additional licence conditions

### (a) Whether to set additional conditions

- 5.1. In addition to the mandatory licence conditions, which apply to all short-term lets across Scotland, licensing authorities may impose additional conditions<sup>20</sup>.
- 5.2. Additional conditions can help licensing authorities to respond to local challenges and concerns specific to certain models of short-term letting (for example, secondary letting in tenement flats).
- 5.3. An additional condition must not be used to tackle a breach of an existing condition (whether it is a mandatory or additional condition); enforcement notices should be used for this purpose – see **chapter 6**.
- 5.4. A central policy objective of short-term let licensing is to ensure that the accommodation provided is safe. Where the licensing authority considers that there are significant risks to safety and security, it may be more appropriate to:
  - refuse an application;
  - delay granting an application;
  - issue an enforcement notice;
  - vary or suspend a licence; or
  - revoke a licence.
- 5.5. Some of these measures are temporary and allow remedial action to be taken and the licensing authority to be content that the risk has been reduced or removed appropriately.

### *The issues that might be addressed*

- 5.6. Some of the issues raised by residents and communities in relation to short-term lets, through the public consultation, research and elsewhere, include:
  - overcrowding of the property;
  - noise and nuisance, including drunkenness, smoking and drug-taking;

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<sup>20</sup> Section 3B of the 1982 Act gives licensing authorities the power to determine conditions to which licences are to be subject (“standard conditions”) which we are calling “additional conditions” in this guidance because they are additional to the mandatory conditions.

- litter or other mess in communal areas;
- failure to maintain the property in a good state of repair;
- failure to maintain, or contribute to the cost of, communal area repairs and increased wear and tear;
- damage to property (e.g. from key boxes affixed to walls); and
- unlawful activity (e.g. using the property as a brothel).

5.7. Additional conditions allow licensing authorities to tackle many of these issues whilst still allowing the premises to be used for short-term lets.

### **(b) Scope of additional conditions**

5.8. Licensing authorities have broad powers around which premises have additional conditions attached to them. Different additional conditions may be determined:

- in respect of different licences, or different types of licence; or
- otherwise for different purposes, circumstances or cases.

5.9. Licensing authorities cannot use additional conditions to contradict, modify or dilute mandatory conditions.

### **(c) How to publicise additional conditions**

5.10. Licensing authorities must publish their additional conditions, and failure to do so means the conditions have no effect.

5.11. The Scottish Government expects licensing authorities to:

- include additional conditions on the licence documentation provided to the host or operator;
- publish their additional conditions on their website, together with the criteria and circumstances they will use to determine when these apply.

### **(d) How to draft an additional condition**

#### ***Preliminary***

5.12. Licensing authorities are experienced in applying the Civic Government (Scotland) Act 1982 and, in determining whether additional conditions are appropriate, will wish to be satisfied that:

- the matter is not already covered by the requirements of the 1982 Act, Licensing Order or mandatory conditions;
- the matter is not already sufficiently covered by other legislation (i.e. already unlawful and enforceable);
- the matter is sufficiently serious to merit an additional condition, rather than a verbal warning, letter or memo;
- the matter is not a breach of an existing condition in which case an enforcement notice should be used – see **chapter 6**; and
- the proposed additional condition does not contradict the requirements of the 1982 Act, Licensing Order or mandatory conditions.

5.13. It is advisable for licensing authorities to consider if an additional condition might have unintended consequences that are potentially as severe or worse than the issue to be addressed. For example, measures to limit noise indoors might lead to guests making noise outdoors instead.

### ***Making it SMART***

5.14. It is good practice for licensing authorities to ensure the format and wording of additional conditions are:

- (i) **Specific** (unambiguous – anyone can understand what is meant by the condition);
- (ii) **Measurable** (enforceable – the licence holder will know when they have complied or are complying with the condition);
- (iii) **Action-oriented** (place a duty and clear action on the licence holder to do or prevent something);
- (iv) **Realistic** (is it reasonable to expect the condition is achievable); and
- (v) **Time-bound** (where there is an action to be completed, rather than an on-going action).

### ***Structure***

5.15. The Scottish Government expects any additional condition to be set out in four parts:

- (i) **Issue** – what is the issue or problem with the premises or short-term let activity?

- (ii) **Reasoning** – why is the additional condition required? There should be **general** and **specific** reasoning relating to the condition. This will help the licence holder understand that the specific action they are being asked to take is fair because it is to ensure a general outcome that applies in other similar circumstances. It will also help the licensing authority defend the condition should it be appealed and allow the Procurator Fiscal to explain the background should the matter ever proceed to the criminal courts.
- (iii) **Action** - what must the licence holder do?
- (iv) **Deadline** – when any specific actions must be completed by?

### **Example**

#### Issue

*Upon inspection of the guest accommodation, the paths around the property were found to have uneven slabs at various locations, namely to the front and the side of the property.*

#### Reasoning

*General: All parts of a short-term let, both internally and externally, shall be maintained in a reasonable state of repair to the satisfaction of X Council and be free from any defect liable to prejudice the health and safety of the occupants.*

*Specific: Uneven slabs along the footpath, are a trip hazard and may cause a guest to trip and fall over.*

#### Action

*The licence holder must ensure that:*

- 1. Repair work is carried out to lift and relay or renew the slabs at the uneven areas on the pathways around property, ensuring that the path is level and free of trip hazards.*
- 2. Access to the uneven areas of the pathways around the property is prohibited until the repair work (set out at 1 above) has been carried out.*

#### Timeframe

*The works outlined above at (1) must be completed as soon as reasonably practicable but no later than [date].*



### **(e) Prohibited condition: limits on nights**

5.16. Licensing authorities must not impose an additional condition limiting the number of nights a property may be used for secondary letting. The policy intention behind this is to ensure premises are not left empty for large periods each year<sup>21</sup>.

5.17. This condition does not apply to home sharing and home letting.

### **(f) Template additional conditions**

5.18. The Scottish Government has included suggested templates for the following issues:

- antisocial behaviour;
- privacy and security;
- noise;
- littering and waste disposal;
- damage to property.

5.19. Licensing authorities are encouraged to adopt this format when determining additional conditions to ensure consistency across Scotland.

#### ***Antisocial behaviour***

5.20. While there are already a range of powers available to licensing authorities to deal with antisocial behaviour through provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, there are levels of noise and disturbance that may fall short of being described as a statutory nuisance but are considered unacceptable in planning terms (and licensing terms).

5.21. Licensing authorities may wish to include a condition requiring the licence holder to manage their premises in a way to prevent anti-social behaviour as far as reasonably practicable, and to effectively deal with any instances of anti-social behaviour.

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<sup>21</sup> Paragraph 5(2B) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

#### **Template additional condition**

*1. The licence holder must take reasonable steps to manage the premises in such a way as to seek to prevent and deal effectively with any antisocial behaviour by guests to anyone else in the short-term let and in the locality of the short-term let.*

*2. The licence holder must take reasonable steps to:*

- ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests;*
- deal effectively with any disturbance or nuisance arising within or from the premises, as soon as reasonably practicable after the licence holder is made aware of it; and*
- ensure any vehicles belonging to guests are parked lawfully, for example explaining where any designated parking spaces are to be found and highlighting any local rules.*

#### **Privacy and security**

5.22. Licensing authorities may wish to impose conditions to ensure that the privacy and security of neighbours is safeguarded. While terms will vary depending on the exact circumstances, the following template could be used where there is a shared entrance through which both guests and residents pass.

#### **Template additional condition**

*1. The licence holder must manage the premises in such a way as to respect and protect the privacy and security of neighbours.*

*2. The licence holder must ensure:*

- guests know and understand any particular rules applying to shared areas and entrances;*
- guests understand that shared doors should be properly and securely closed after use; and*
- the provision of access codes or keys to guests cannot be used by guests to gain access to shared areas after they have finally departed.*

#### **Noise**

5.23. Licensing authorities may wish to impose conditions to minimise noise impact on neighbouring properties to short-term lets, particularly those in flatted, terraced or semidetached dwellings. Only conditions which are strictly necessary in the specific circumstances should be attached to a licence.

5.24. Noise conditions could include:

a) Physical moderations to the property in order to minimise noise impact on neighbours, such as:

- replacing wood floors with carpeted or vinyl flooring; or
- installing door closers to prevent doors being slammed.

b) Installation of noise monitoring kit within the premises to log noise, and notify the owner of any noise above a certain specified dB limit. Limits to be specified based on time of day, with lower noise limits overnight. Licensing authorities should be aware that noise monitoring kit within the premises is not useful in respect of noise occurring in external areas; and noise monitoring in external areas presents a range of challenges, including respect for the privacy of others and identifying the source of the noise.

5.25. Licensing authorities may want to set specific standards for floor coverings in certain circumstances.

5.26. Where physical alterations are required, licensing authorities may wish to physically inspect the property, or accept photographic or video evidence that the alterations have been completed to their satisfaction.

5.27. Where licensing authorities wish to require installation of noise monitoring kit, they may want to specify (subject to the capability of the kit and/or service provider):

- the appropriate specification and location for installation of the kit;
- day and night limits;
- any monitoring logging requirements (for example the time interval for logging noise); and
- the protocols for notification of a breach to the host, and to the licensing authority if necessary.

5.28. In considering the appropriate location for noise monitoring equipment, licensing authorities may wish to consider whether it would be both appropriate, and feasible, to request the installation of noise monitoring kit in shared areas such as tenement stairwells. On one hand, if noise monitoring kit was installed in a tenement stairwell it may be difficult to determine who was responsible for the noise (guests or neighbours). However, if it was combined with noise monitoring kit within any short-term let operating in the

stairwell it may be possible to determine and attribute noise disturbances by comparing the logs of both sets of noise monitoring kits.

#### **Template additional conditions**

*The licence holder must ensure that the bedrooms, living room and hallway in the premises are carpeted.*

*The licence holder must ensure that noise monitoring equipment [of type x] is maintained in full working order [in location y] and that the maximum reading does not exceed [a] decibels between 7 am and 11 pm, nor [b] decibels between 11 pm and 7 am.*

- 5.29. Licensing authorities may wish to attach conditions relating to particularly noisy activities. For example, introducing a prohibition on guests checking in and checking out from a short-term let within a defined time period, to minimise noise impact in common areas, particularly from luggage. Where licensing authorities choose to apply this condition, the prohibition should normally be between 11 pm and 7 am to ensure consistency across Scotland.

#### **Template additional condition**

*The licence holder must take reasonable steps to ensure that guests do not first arrive or finally depart from the property between the hours of 11 pm to 7 am. The licence holder must advise guests of this as part of their booking terms and conditions.*

*(Note: “reasonable steps” allows for exceptions, such as significantly delayed transport.)*

### ***Littering and waste disposal***

- 5.30. There are fixed penalties of £80 for littering and £200 for fly tipping. Alleged offenders are required by law to provide their name and address to enforcement officers <sup>22</sup>.
- 5.31. Penalties can be issued by Police Scotland, by licensing authorities, and by public bodies including Loch Lomond and the Trossachs National Park.
- 5.32. Littering could occur within common areas in properties with shared facilities, such as tenements, as well as public areas within the vicinity of a short-term

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<sup>22</sup> [Managing waste: https://www.gov.scot/policies/managing-waste/litter-and-flytipping/](https://www.gov.scot/policies/managing-waste/litter-and-flytipping/)

let. In both instances, it would be difficult to attribute any instances of littering to a particular property, or guest within a property.

- 5.33. Visitors using residential waste provision can put a strain on shared facilities. For example, short-term lets within a tenement creating a larger amount of waste due to increased turnover of guests and cleaning than a typical residential flat, putting strain on communal bins. Note, however, that waste from businesses operating secondary lets should not be treated as household waste but rather as commercial or trade waste; it cannot be placed in communal bins.

**Template additional condition**

1. *The licence holder must provide adequate information on, and facilities for, the storage, recycling and disposal of waste.*
2. *The licence holder must advise guests of:*
  - *their responsibilities;*
  - *the use of the bins / sacks provided for the premises; and*
  - *the location of the nearest recycling centre or recycling point.*
3. *The licence holder must:*
  - *clearly label bins as belonging to the premises;*
  - *ensure that guests manage their waste in compliance with (2), including when they depart; and*
  - *maintain the bin storage area and the exterior of the premises in a clean and tidy condition.*

**Damage to property**

- 5.34. With regard to preventing damage to public and private property:

**Template additional condition**

*The licence holder must not affix a key box, or other device to facilitate guest entry to the property, to any public or jointly owned private infrastructure without prior written permission of the relevant authority or owner(s). The licence holder must be able to produce the permission to the licensing authority on request.*

## 6. Complaints and enforcement

### (a) Handling complaints

- 6.1. Complaints about hosts and operators can be considered under powers in the 1982 Act<sup>23</sup>. Anybody may make a complaint to a licensing authority about the way that hosts and operators are operating their short-term lets, although complaints are most likely to be received from neighbours and guests. Complaints from neighbours may be about an actual, or suspected, short-term let. Whether the complaint is from a guest or a neighbour, it may be justified or unjustified.
- 6.2. As a general principle, licensing authorities should seek to try to resolve a complaint through engagement with the host or operator in the first instance. If this is not successful, then the procedures under the 1982 Act should be used.

#### *From guests*

- 6.3. In the first instance guests should raise any concerns with their host or operator, letting agency or platform. If they remain unsatisfied or the issue is sufficiently grave they may contact the relevant licensing authority. Licensing authorities are expected to establish a clear process for handling contact from guests.

#### *From neighbours*

- 6.4. Neighbours might complain about the following, for example:
- the number of people staying at the premises;
  - noise, disturbance or instances of antisocial behaviour;
  - issues around maintenance, guests in common areas and accumulation of refuse (especially in flats or tenements); or
  - suspected unlicensed short-term lets.

Complaints about suspected unlicensed operators should be directed to Police Scotland.

#### *Clear information*

- 6.5. In order to assist guests, neighbours and others in making a complaint, the Scottish Government expects licensing authorities to publish details on how

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<sup>23</sup> Specifically, paragraphs 11 and 12 of Schedule 1.

complaints can be made on their webpage, including: grounds that would not be considered valid for a complaint, relevant contact details, and estimated timescales for acknowledging and responding to complaints.

### ***Triage and redirection***

- 6.6. Licensing authorities may wish to provide a single portal to cover both licensing and planning matters for short-term lets, which would direct the complaint to the relevant local authority department, rather than expecting neighbours to understand whether their concern is a licensing or planning or other matter.
- 6.7. Licensing authorities may need to direct some complaints to planning authorities, letting agencies, platforms, VisitScotland, Police Scotland or other bodies for further investigation.

### ***Case management***

- 6.8. Keeping records of complaints and their outcomes will be important evidence for licensing authorities to maintain, in order to have an accurate picture of the compliance or otherwise of hosts or operators.
- 6.9. Licensing authorities may wish to note that VisitScotland operates a fully traceable complaints procedure for businesses in their quality assurance scheme. Complaints, depending on their nature, are recorded and either dealt with immediately (a business is asked to respond to any points of concern raised) and/or made visible to their Quality & Tourism Advisor team for addressing at the time of their next grading visit. In all cases, a reassessment of accommodation standards is made at subsequent live visits (usually on a biennial basis) and the appropriate award is allocated.

### ***Speed of turnaround***

- 6.10. The Scottish Government expects complaints to be acknowledged within five working days and complainants to be appropriately kept up to date with the progress of their complaint; sometimes this may simply be advising them of the outcome.

### ***Assessing complaints***

- 6.11. Some complaints will require enforcement action from the licensing authority. Options for enforcement action are set out in paragraphs 6.27 and following below.
- 6.12. Some complaints may not require enforcement action from the licensing authority, for example:

- where the licensing authority determines that the complaint is frivolous or vexatious;
- the complaint relates to a matter which has already been investigated and the complaint was found to be unjustified;
- action has already been taken or is in progress; or
- the complaint relates to a matter which is outside the scope of the licensing scheme, for example around the quality of the stay.

### **(b) Taking a risk-based approach to ensuring compliance**

6.13. The expectation is that licensing authorities will take a risk-based approach to ensuring compliance, this includes allowing self-certification where appropriate and only using inspections where there are grounds to do so.

6.14. Some of the factors they may wish to consider when deciding whether to carry out an inspection of a particular premises might be:

- other accreditation obtained by the host or operator;
- feedback from Police Scotland and the Scottish Fire and Rescue Service, who may have their own views, suggestions or requirements around risk assessment and prioritisation;
- peculiarities of the operation (e.g. unconventional accommodation);
- pattern of complaints associated with the host, operator or premises;
- intelligence from other inspections (which may indicate a higher incidence of issue or non-compliance with hosts or operators or premises of that type or in that area); and
- reputational evidence (where available) from guest reviews and internet profile.

6.15. Licensing authorities will determine the appropriate balance of:

- self-declaration from hosts and operators;
- checking relevant documentation;
- allowing for third-party accreditation; and



- visits to premises by licensing authority and other local authority officials.

6.16. There is no specific liability on licensing authorities in terms of a “failure to inspect”; the licensing authority’s duties to consider an application and grant a licence, and thereafter to ensure adherence with a licence’s conditions, remain in line with the 1982 Act provisions and the current licensing framework.

### **(c) Third party accreditation**

6.17. It is entirely for licensing authorities to determine what they will accept from hosts and operators to demonstrate compliance with the mandatory conditions, and any additional conditions which the licensing authority has attached. Licensing authorities may wish to consider accepting third party evidence, accreditation or certification from bodies such as Quality in Tourism or Visit Scotland in lieu of visiting premises in some circumstances. This may provide efficiencies for licensing authorities, whilst still ensuring that minimum mandatory standards are met. This might be particularly beneficial in the case of remote, rural premises.

### **(d) Identifying unlicensed short-term lets**

6.18. Licensing authorities, letting agencies and platforms all have a role to play in identifying and eliminating unlicensed short-term lets.

6.19. While licensing authorities are obliged to maintain a public register of licensed short-term lets and update this on a quarterly basis, it is desirable for the register to be updated as often as possible to provide an accurate record that can be checked to find out whether a licence for a short term let premises: has been granted or refused, is being determined, has been revoked or has lapsed.

#### ***Proactive action by the licensing authority***

6.20. Licensing authorities should consider how they will monitor whether there are hosts or operators in their area that are trading without a valid short-term lets licence.

#### ***Proactive action by letting agencies and platforms***

6.21. Hosts and operators are allowed to advertise their properties without a licence. However, from 1 October 2022 new hosts and operators cannot accept bookings until they have obtained a licence. After this date letting agencies and platforms should not allow a booking to be made by a new host/operator until a licence number can be provided.

- 6.22. Existing hosts that have been trading on or before 30 September 2022 may continue to accept bookings after 1 October 2022 but only if they have applied for a licence by 1 April 2023 and once it has been determined, the licence is granted. Licensing authorities are expected to issue a provisional licence number on receipt of a licensing application to facilitate this. By 1 July 2024, existing hosts should not be trading unless they have been granted a full licence.
- 6.23. Where it appears that a host or operator is attempting to operate without a licence when one is required, or where the letting agency or platform has other concerns about breaches of licence conditions (e.g. bookings being taken for numbers of guests that exceed the maximum occupancy), they are expected to report these to the relevant licensing authority.
- 6.24. Hosts and operators:
- must ensure that any advert or listing placed on or after they are granted a licence includes their licence number;
  - are advised to make clear in their terms and conditions that the booking is conditional on the guests' compliance with the licensing scheme.
- 6.25. Letting agencies and platforms should take steps to help hosts and operators comply with this.
- 6.26. The Scottish Government has specified a consistent licence number format for the whole of Scotland (see **ANNEX A**). Letting agencies and platforms are expected to undertake checks to identify any inconsistencies between the licence type and the listing. For example, where a host/ operator is using a home sharing and home letting licence number but advertising the property as being a whole property let, as evidenced by, for example, it not being their billing or contact address.

### **(e) Options for enforcement action**

- 6.27. The options for enforcement action for licensing authorities provided through the Licensing Order and 1982 Act are:
- additional licence conditions on application (or through variation) – see **chapter 5**;
  - enforcement notices – see paragraphs 6.28 and following below;
  - variation, suspension or revocation of the licence – see paragraphs 6.32 and following below; or

- pursuance of prosecution in respect of offences under the 1982 Act – see paragraphs 6.37 and following below.

## **(f) Enforcement notices**

- 6.28. Licensing authorities have the power<sup>24</sup> to serve enforcement notices. Where complaints, visits to premises, or other information, suggest that any licence condition has been breached, licensing authorities can require a licence holder to take action to put it right. This will usually be done by serving an enforcement notice (“non-compliance” or “improvement” notice). Such notices must set out the matters constituting a breach or a likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.
- 6.29. Enforcement notices can also be served if a licence condition is felt likely to be breached, for example, a host or operator is advertising property with a maximum capacity of ten guests in breach of a licence condition specifying no more than eight. This would be evidenced in a listing or advertisement.
- 6.30. The format of an enforcement note may be similar to an additional condition (see **chapter 6**). An enforcement notice must specify—
- the matters constituting the breach or likely breach<sup>25</sup>,
  - the action to be taken by the licence holder, which the licensing authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach, and
  - the date by which the action must be taken.
- 6.31. If satisfactory action is not taken by the required date(s) to address the issues set out in a notice, licensing authorities have powers to vary, suspend or revoke a licence.

## **(g) Variation, suspension and revocation**

- 6.32. A licensing authority may vary, suspend or revoke a licence in certain circumstances, see Guidance Part 1. Licensing authorities may do this without serving an enforcement notice if the seriousness of the breach justifies urgent action.
- 6.33. The procedures to follow for variation, suspension and revocation are set out in schedule 1 to the 1982 Act.

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<sup>24</sup> Paragraph 10A of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>25</sup> See the Policy Note (**Paper 2**) for more information.

6.34. Hosts and operators can appeal against being served with a notice of variation, suspension or revocation. Hosts and operators can take bookings and provide accommodation whilst they appeal a revocation or suspension and they have 28 days in which to lodge an appeal.

### ***Variation***

6.35. A licensing authority may vary the terms of a licence on any grounds they think fit<sup>26</sup>. They can do this at any time. They can do this following an application made to them by the licence holder or of their own initiative.

### ***Suspension or revocation***

6.36. Licensing authorities may order the suspension or revocation of a licence<sup>27</sup> if in their opinion—

- the licence holder is no longer a fit and proper person to hold the licence;
- the licence holder is managing the property on behalf of someone who would have been refused the grant or renewal of the licence;
- the short-term let is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
- a condition of the licence has been contravened.

Where the licensing authority revokes a licence, no further application can be made by that host or operator in respect of that premises within one year of the date of revocation.

## **(h) Offences under the 1982 Act**

6.37. Section 7 of the 1982 Act<sup>28</sup> sets out four offences, as set out below. These currently attract fines on the standard scale<sup>29</sup>:

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<sup>26</sup> Paragraph 10 of schedule 1 to the 1982 Act.

<sup>27</sup> Paragraph 11 of schedule 1 to the 1982 Act.

<sup>28</sup> Section 7 of the 1982 Act.

<sup>29</sup> As set out at section 225 of the Criminal Procedure (Scotland) Act 1995.

Level on the scale	Maximum fine
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

### ***Operating without a licence***

- 6.38. It is an offence, without reasonable excuse, to carry on an activity for which a licence is required without having such a licence. Depending on the activity, different punishments apply. The default is a fine not exceeding level 4 on the standard scale.
- 6.39. The Scottish Government intends to increase the maximum fine to £50,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.
- 6.40. Only imprisonment may be a sufficient deterrent in rare and extreme cases. The Scottish Government intends to make provision for imprisonment as a last resort for hosts who continue to operate without a licence. Imprisonment could be useful where the potential revenue for the host or operator from continuing to operate without a licence exceeded the maximum fine and the host or operator was continuing to operate in flagrant disregard of the law.

### ***Failing to comply with a licence condition***

- 6.41. It is an offence to fail to comply with a licence condition, though it is a defence to have used all due diligence to prevent the offence. The default is a fine not exceeding level 3 on the standard scale.
- 6.42. The Scottish Government intends to increase the maximum fine to £10,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.
- 6.43. The maximum occupancy condition limits the number of guests in the premises. Breaching this condition might lead to significantly more revenue. The fine for failing to comply with the licence condition must outweigh the profit made from such a breach.
- 6.44. Note that some mandatory conditions are also enforceable through other legislation. Hosts and operators must include an EPC rating in their listing

where they are required to have a valid EPC certificate for the premises under building standards legislation. A host or operator who fails to hold a valid EPC certificate, where required to have one under building standards legislation, can be fined as follows as a minimum<sup>30</sup>:

- £500 for failing to hold a valid EPC certificate; and
- £500 for failing to display a rating on any property listing.

***Failing to notify a change etc.***

6.45. It is an offence for a licence holder, without reasonable excuse, to:

- a) fail to notify the licensing authority of a material change of circumstances (level 3 on the standard scale),
- b) make or cause or permit to be made any material change in the premises (level 3 on the standard scale),
- c) fail to deliver the licence to the licensing authority (level 1 on the standard scale).

***Making a false statement***

6.46. It is an offence to make a false statement in an application (level 4 on the standard scale).

6.47. The Scottish Government intends to increase the maximum fine to £10,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.

6.48. Licensing authorities should be aware that some hosts or operators may make a false declaration about where they live, in order to apply for a home sharing or home letting licence, rather than a secondary letting licence. The host or operator may be attempting to obtain a licence with a lower fee and to avoid planning controls.

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<sup>30</sup> [Energy Performance Certificates: introduction - gov.scot \(www.gov.scot\)](https://www.gov.scot)

## 7. Licensing data

### (a) Introduction

- 7.1. Licensing authorities are required to maintain a public register of short-term let licences, and share the content of the register with Scottish Government on an ongoing regular basis in a format that enables analysis of the information. By 1 July 2024, Scotland will have accurate up-to-date data on the number of short-term lets operating (based on licence applications), and their exact location (as well as other relevant data).
- 7.2. As data controllers, licensing authorities are responsible for ensuring compliance with UK General Data Protection Regulations, this includes storage, handling and disposal of all data related to licence applications they receive. The Data Protection Impact Assessment (DPIA)<sup>31</sup> sets out further detail for licensing authorities, as data controllers, on:
- data controllers and safeguards;
  - data security;
  - anonymity and pseudonymity;
  - data handling procedures;
  - storage and disposal of data; and
  - identification methods.
- 7.3. Licensing authorities must not keep personal data for longer than needed. Licensing authorities are responsible for storing data and disposing of it when it is no longer needed. Personal information must only be held for as long as it is necessary for the effective administration of the licensing scheme.
- 7.4. Licensing authorities may share personal data, for specific purposes, as follows:
- Within and between local authorities, Scottish Fire and Rescue Service and Police Scotland as part of the notification process in order to carry out background checks.
  - With other licensing authorities, to share the reasons for suspending, varying or revoking a licence with each other<sup>32</sup>. This might be relevant for example if a host/operator is deemed no longer fit and proper to hold a licence in one area and is also licensed by more than one licensing authority.

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<sup>31</sup> Impact assessments contained within: [Short-term lets – licensing scheme and planning control areas: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/short-term-lets/licensing-scheme-and-planning-control/areas-consultation-analysis)

<sup>32</sup> Paragraph 14A of Schedule 1 to the 1982 Act, as inserted by the Licensing Order.

- Publication in the public register of licences, see paragraphs 7.7 and following below.
- Quarterly submissions to Scottish Government, so that data on licences from each local authority can be amalgamated at a national level, and to review against policy objectives. No personal data will be published in Scottish Government reports on short-term letting activity.
- With letting agencies and platforms, or any person involved in advertising or listing of a property of the fact that:
  - unlawful unlicensed premises are being advertised or listed; or
  - a licence has been suspended or revoked (or varied where the variation affects the maximum occupancy of the property). This will allow letting agencies and platforms to remove adverts or listings or require amendment if they are inaccurate.

7.5. Further details on data processing can be found in the DPIA in the [2020 consultation report](#). Information about the processing of personal data is set out section C of the DPIA.

## **(b) Managing the data**

- 7.6. The lawful basis and objectives for collecting, processing and sharing the data (set out in the DPIA) require licensing authorities to:
- a) collect sufficient data for monitoring and enforcement purposes, including setting out requirements for the sharing of relevant information between licensing authorities for hosts and operators with premises in more than one area (**operational data**).
  - b) share data, including the number, type and location of short-term lets, with Scottish Government in a consistent format on an ongoing regular basis (**analytical data**). The Scottish Government will combine data into a national database for subsequent analysis but will not include personal data in its report. Operational and analytical data is expected to be shared using the same format and data field specifications as in the public register, with any additional fields appended.
  - c) publish and maintain a register of short-term let licences and their status (granted, refused, being determined, revoked, lapsed etc.), which can be accessed and searched by members of the public (**public register**). Licensing authorities must publish the register on a quarterly basis.



### **(c) The public register**

- 7.7. The specification for the register is set out at **Annex B** with the data fields. Licensing authorities must:
- a) make the register available to the public electronically, in a searchable format - this could be done through publishing an Excel spreadsheet with suitable user instructions and protections; and
  - b) publish or update their register on **at least** a quarterly basis. By 1 October 2023, the Scottish Government expects licensing authorities to provide more frequent or live updates where it is possible to do so.
- 7.8. The requirement to identify whether the short-term let is within either of the two national parks in Scotland is to assist them in identifying short-term let activity within their boundaries (which are not necessarily contiguous with licensing authority boundaries).
- 7.9. The structure and specification of licence numbers are explained in **chapter 4** and **Annex A**.
- 7.10. Licensing authorities can remove data from the register of data in respect of:
- licences that have been revoked for more than 12 months; or
  - licences that have been surrendered.
- 7.11. Note that, reasons for revoking a licence may be appropriate to retain for longer than 12 months if it is likely to be relevant in determining any new application for a licence by the host.

### **(d) Data sharing with Scottish Government**

- 7.12. The data to be shared regularly will include the contents of the public register, in a format that enables analysis of the information. In addition to the data fields that must be included in the public register, SG also wishes to collect the following data and expects LAs to ensure these fields are included in their data collections and provided to SG as part of quarterly returns. This will ensure consistent data across Scotland and facilitate robust analysis:
- Date application determined;
  - Licence expiry date;
  - UPRN;
  - Application outcome (selecting one of the following reasons):
    - Applicant(s) not fit and proper;
    - Premises not suitable;

- Planning permission required and not held;
  - Other (free text).
- 7.13. This information will allow for monitoring of application processing times, average length of time a licence is granted for, and common reasons for applications being refused in order to monitor and evaluate the policy.
- 7.14. In order to minimise the volume of data transferred from licensing authorities to Scottish Government we do not expect it will be necessary to transfer data for every entry on the public register in each quarterly data extract. Data extracts may include the following:
- New applications / additions to the public register;
  - Entries that have been removed from the public register;
  - Licence records where one of the data fields has changed (e.g. status has changed from 'being determined' to 'approved').
- 7.15. The Scottish Government intends to work with licensing authorities over the coming months to finalise the data specification for the data to be shared with Scottish Government on a regular basis. This is likely to involve use of ProcXed to design and manage data collection from licensing authorities.
- 7.16. Licensing authorities may choose to, but need not, include some or all of the additional fields set out in para 7.12 within their public registers.

## Annex A

### Licence number specification

The licence number will comprise 8 characters, three of which are alphabet (capital letters) and 5 of which are digits (D):

**A<sub>1</sub>A<sub>2</sub>-DDDDD-A<sub>3</sub>**

The leading two characters (A<sub>1</sub>A<sub>2</sub>) will identify the licensing authority:

Aberdeen City	<b>AC</b>
Aberdeenshire	<b>AS</b>
Angus	<b>AN</b>
Argyll and Bute	<b>AR</b>
Clackmannanshire	<b>CL</b>
Dumfries and Galloway	<b>DG</b>
Dundee	<b>DD</b>
East Ayrshire	<b>EA</b>
East Dunbartonshire	<b>ED</b>
East Lothian	<b>EL</b>
East Renfrewshire	<b>ER</b>
Edinburgh	<b>EH</b>
Falkirk	<b>FK</b>
Fife	<b>FI</b>
Glasgow	<b>GL</b>
Highland	<b>HI</b>
Inverclyde	<b>IN</b>
Midlothian	<b>ML</b>
Moray	<b>MO</b>

Na h-Eileanan Siar	<b>ES</b>
North Ayrshire	<b>NA</b>
North Lanarkshire	<b>NL</b>
Orkney	<b>OR</b>
Perth and Kinross	<b>PK</b>
Renfrewshire	<b>RN</b>
Scottish Borders	<b>SB</b>
Shetland	<b>SH</b>
South Ayrshire	<b>SA</b>
South Lanarkshire	<b>SL</b>
Stirling	<b>ST</b>
West Dunbartonshire	<b>WD</b>
West Lothian	<b>WL</b>

The 5 digits will be issued by each licensing authority.

The final character (A<sub>3</sub>) will denote the type of “licence”:

- E** Temporary exemption
- T** Temporary licence
- P** Provisional licence number issued on receipt of a licence application
- F** First (full) licence
- R** Renewed licence

**Example**

<b>A</b>	<b>C</b>	<b>-</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>-</b>	<b>E</b>
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This number relates to a temporary exemption (E) in Aberdeen City (AC). The type of short-term let (e.g. home sharing) will be displayed on the public register.

## Annex B

### Public register specification

**Note:** to be completed and agreed. Constrained types and formats (e.g. postcode) to be specified.

CONTENT	TYPE / FORMAT	DESCRIPTION	M/O <sup>33</sup>
<b>Applicant Name</b>	Full Name	The applicant's full name*	M
Title	Title		O
Forenames	String (repeatable)	<i>*Mandatory only where an application is made by or on behalf of a person other than a natural person</i>	M
Surname	String	<i>*Mandatory only where an application is made by or on behalf of a person other than a natural person</i>	M
<b>Premises address</b>	Address	Address	M
Address Line 1	String	First line of address	M
Address Line 2	String	Second line of address	O
Address Town	String	The town component of the address	M
Address County	String	The county component of the address	M
UK Postcode	Postcode	The postal code	M
UPRN	Number	Unique Property Reference Number	O
<b>Council Ward</b>	Ward	The council ward in which the premises is located	M
Ward	Ward (constrained type)		M
<b>Application details</b>	Date	Key dates	M
Date of application	Date (dd-mm-yyyy)	The date the application was received	M
Date application determined	Date (dd-mm-yyyy)	The date the application was determined	O
Licence expiry date	Date (dd-mm-yyyy)	The date the licence expires	O
<b>Status</b>	Status	Status of the application	M
Application status	Status (constrained type)	Whether the application has been granted, refused, being determined, revoked, lapsed, suspended.	M

<sup>33</sup> Mandatory / Optional

<b>CONTENT</b>	<b>TYPE / FORMAT</b>	<b>DESCRIPTION</b>	<b>M/O<sup>33</sup></b>
<b>Application outcome reason</b>	<b>Reason</b>	<b>Reason (for refusals only)</b>	<b>M</b>
Refusal outcome reason	Reason (constrained type)	Reason given for the outcome: applicant(s) not fit and proper; premises not suitable; planning permission required and not held; other (free text).	M
<b>Type of premises</b>	<b>Premises</b>	<b>The type of premises to which the application relates</b>	<b>M</b>
Type of premises	Premises (constrained type)	e.g. detached home, semi-detached home, terraced home, flatted dwelling, unconventional dwelling, bed and breakfast, guest house etc.	M
<b>Short-term let type</b>		<b>The type(s) of short-term let</b>	<b>M</b>
Short-term let type	STL Type (constrained type)	One of home sharing, home letting, home sharing and home letting; or secondary letting	M
<b>Maximum occupancy</b>	<b>Number</b>	<b>The maximum occupancy as specified on the licence</b>	<b>M</b>
Maximum occupancy	Number (integer)	Maximum number of guests allowed to reside in the premises	M
<b>National Park</b>	<b>National Park</b>		<b>M</b>
National Park	National Park (constrained type)	Indicates whether the short-term let is within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park or neither.	M
<b>Licence number</b>			<b>M</b>
Licence number	Licence number	As specified in <b>Annex A</b> .	M
<b>Number of bedrooms</b>	<b>Number</b>	<b>Number of bedrooms in the premises</b>	<b>O</b>
Number of bedrooms	Number (integer)		O
<b>Occupancy data</b>			<b>O</b>
Year	Year (yyyy)	Year to which data relates	M
Nights available	Number (repeatable)	Nights available, repeatable for each property	O
Nights occupied	Number (repeatable)	Nights occupied, repeatable for each property	O
<b>Manager</b>	<b>Name</b>	<b>Name</b>	<b>O</b>
Title	Title		O
Forenames	String (repeatable)		M

<b>CONTENT</b>	<b>TYPE / FORMAT</b>	<b>DESCRIPTION</b>	<b>M/O<sup>33</sup></b>
Surname	String		M
Company name	String	Company name if management is provided by a company	O
Address Line 1	String	First line of address	M
Address Line 2	String	Second line of address	O
Address Town	String	The town component of the address	M
Address County	String	The county component of the address	M
UK Postcode	Postcode	The postal code	M
<b>EPC rating</b>	<b>EPC</b>		<b>O</b>
EPC rating	EPC (constrained type)	Rating A to G	O





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W W W . g o v . s c o t

*This draft Order supersedes the draft of the same title which was laid before the Scottish Parliament and published on 22 November 2021 (ISBN 978-0-11-105221-1). It is being issued free of charge to all known recipients of that draft Order.*

*Draft Order laid before the Scottish Parliament under sections 3A(3) and 44(3) of the Civic Government (Scotland) Act 1982, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

**LICENCES AND LICENSING**

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

*Made* - - - - *2021*

*Coming into force* - - *1st March 2022*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3A, 44(1)(b), 44(2)(a), (b) and (d), and 136(2) of the Civic Government (Scotland) Act 1982(a), and all other powers enabling them to do so.

In accordance with sections 3A(3) and 44(3) of that Act(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 and comes into force on 1 March 2022.

**Interpretation**

2.—(1) In this Order—

“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),

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(a) 1982 c. 45. The functions conferred upon the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Section 3A was inserted by section 172(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13). The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) Section 44(3) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

“excluded accommodation” means accommodation described in paragraph 1 of schedule 1,  
“excluded tenancy” means a tenancy described in paragraph 2 of schedule 1,  
“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) Where the accommodation is let to more than one person under a short-term let, references in this Order to the guest are to any one of those persons.

(3) For the purposes of Article 3, 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.

(4) For the purposes of paragraph (3)—

- (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.

(5) Schedule 1 has effect.

### **Definition of short-term let and short-term let licence**

**3.** In this Order—

“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), and

- (f) the short-term let does not constitute an excluded tenancy (see schedule 1),  
“short-term let licence” means a licence granted for the activity designated in article 4.

### **Designation of activity**

**4.**—(1) The activity specified in paragraph (2) is designated as an activity for which a licence under Part 1 of the 1982 Act is required.

- (2) The activity referred to in paragraph (1) is a short-term let on or after 1 October 2022.  
(3) Accommodation that is on a single premises requires only one short-term let licence.

### **Application of Part 1 of the 1982 Act**

**5.** For the purposes of the licensing of the activity designated by article 4, the following have effect subject to the modifications in schedule 2—

- (a) Part 1 of the 1982 Act, and  
(b) Schedule 1 of the 1982 Act.

### **Mandatory licence conditions**

**6.** A short-term let licence granted by a licensing authority is subject to the conditions specified in schedule 3.

### **Transitional provision**

**7.**—(1) A relevant person does not commit an offence under section 7(1) of the 1982 Act<sup>(a)</sup> if—

- (a) before 1 April 2023, that person makes an application to the licensing authority for the grant of a licence under Part I of that Act in respect of the activity being carried on by the person, and  
(b) that application has not yet been finally determined.

(2) For applications received by a licensing authority prior to 1 April 2023 from a relevant person, section 3 of the 1982 Act<sup>(b)</sup> is to be read as if—

- (a) for subsection (1), there were substituted—

“(1) For the purpose of the discharge of their functions under this Part of this Act, every licensing authority must, subject to the following provisions of this section, reach a final decision on the application within the period of 12 months beginning on the day on which the application was made.”,

- (b) for subsection (2), there were substituted—

“(2) On summary application by the licensing authority within the 12 month period referred to in subsection (1), the sheriff may, if it appears to them that there is good reason to do so, extend that period as they think fit.”, and

- (c) for subsection (4)(a), there were substituted—

“(a) the 12 month period referred to in subsection (1), or”.

(3) Paragraphs (4) to (7) apply to applications received by a licensing authority prior to 1 April 2023 from a relevant person where the licensing authority considers that use of the premises for a short-term let would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997<sup>(c)</sup> by virtue of section 123(1)(a) or (b) of that Act.

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(a) Section 7(1) was relevantly amended by section 59 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) and section 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21).

(b) Section 3 was relevantly amended by section 172(2) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and section 77(2) of the Air Weapons and Licensing (Scotland) Act 2015 (asp 10).

(c) 1997 c. 8. Section 123(1) was relevantly amended by section 6(2) of the Planning etc. (Scotland) Act 2006 (asp 17).

(4) The licensing authority may, as soon as reasonably practicable after receipt of the application, notify the relevant person that—

- (a) the licensing authority will suspend their consideration of the application for a period of three months beginning on the date of the notice,
- (b) the relevant person must, within that three month period, submit an application for planning permission or apply for a certificate of lawfulness of use or development which would, if granted, remedy the considered breach, and
- (c) the relevant person must notify the licensing authority that an application has been made in accordance with sub-paragraph (b).

(5) Where the licensing authority notifies the relevant person under paragraph (4), the licensing authority may only refuse to consider the application under paragraph 2A of schedule 1 of the 1982 Act where—

- (a) the relevant person has not submitted an application for planning permission or a certificate of lawfulness of use or development, which would remedy the considered breach of planning control, within the period of three months referred to in paragraph (4)(a), or
- (b) the planning authority refuses the application for planning permission or a certificate of lawfulness of use or development and the relevant person does not appeal against that refusal or cannot appeal against that refusal.

(6) Where the licensing authority does not notify the relevant person under paragraph (4), paragraph 2A of schedule 1 of the 1982 Act does not apply.

(7) Where the licensing authority notifies the relevant person under paragraph (4), section 3(1) of the 1982 Act applies to the application as if the 12 month period begins on the earlier of—

- (a) the date on which the relevant person notifies the licensing authority in accordance with paragraph (4)(c), or
- (b) 1 July 2023.

(8) For the purpose of paragraph (1)(b), an application is finally determined when—

- (a) the application is granted,
- (b) the application is withdrawn by the relevant person,
- (c) the licensing authority refuses to consider the application on the basis of paragraph 2A of schedule 1 of the 1982 Act,
- (d) the application is refused by the licensing authority and the period of 28 days specified in paragraph 18(4) of schedule 1 of the 1982 Act expires without an appeal against the refusal being made to the sheriff, or
- (e) where an appeal is made against a refusal by a licensing authority to grant the application, that appeal is disposed of.

(9) For the purposes of paragraph (8)(e), an appeal is disposed of when—

- (a) it is abandoned by the appellant,
- (b) a decision is made by the sheriff or a higher court and any period for making a subsequent appeal to a higher court expires without such a subsequent appeal being made, or
- (c) no subsequent appeal is possible.

(10) For the purposes of this article—

“a relevant person” is a person who—

- (a) carries on the activity designated by article 4 without a short-term let licence under Part I of the 1982 Act, and
- (b) carried on the activity before 1 October 2022,

“a certificate of lawfulness of use or development” means a certificate under section 150 or 151 of the Town and Country Planning (Scotland) Act 1997.

**Consequential amendments**

**8.** Schedule 4 has effect.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## Excluded accommodation and tenancies

**Excluded accommodation**

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<sup>(a)</sup> has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 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.

**Excluded tenancies**

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<sup>(b)</sup>),
  - (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<sup>(c)</sup> 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),

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(a) 2005 asp 16.

(b) 1984 c. 58.

(c) 1931 c. 44. See section 26 of the Small Landholders and Agricultural Holdings (Scotland) Act 1931. Section 26(2) was substituted by the Agricultural Holdings (Scotland) Act 1949 (c. 75), Schedule 7.

- (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.

## Interpretation

### 3.—(1) In this schedule—

“the 1988 Act” means the Housing (Scotland) Act 1988(a),

“the 1993 Act” means the Crofters (Scotland) Act 1993(b),

“the 2001 Act” means the Housing (Scotland) Act 2001(c),

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003(d),

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016(e),

“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(f)), 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,

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(a) 1988 c. 43.  
 (b) 1993 c. 44. Section 3 was relevantly amended by section 21 of the Crofting Reform etc. Act 2007 (asp 7) and section 22 of the Crofting Reform (Scotland) Act 2010 (asp 14).  
 (c) 2001 asp 10. Section 11 was relevantly amended by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331) and section 12 of the Housing (Scotland) Act 2014 (asp 14), and section 34 was relevantly amended by sections 7 and 9 of the Housing (Scotland) Act 2014.  
 (d) 2003 asp 11. Section 5A of the 2003 Act was inserted by section 85(3) of the Land Reform (Scotland) Act 2016 (asp 18).  
 (e) 2016 asp 19.  
 (f) 1984 c. 54.



“personal care” has the same meaning as in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010(a),

“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.

(2) In paragraph 1(k), “licence” does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006(b).

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(a) 2010 asp 8.  
(b) 2006 asp 1.

## PART 1

## Modification of Part 1 of the 1982 Act

**Modification of Part 1 of the 1982 Act**

1. Part 1 of the 1982 Act is to be read as if modified in accordance with paragraphs 2 and 3.

**Standard licence conditions**

2. After subsection (5) of section 3B (Mandatory licence conditions), insert—

“(5A) Standard conditions determined in respect of a short-term let licence must not impose a limit on the number of nights for which premises may be used for secondary letting.”.

**Warrants authorising entry and inspection**

3. After section 5 (Rights of entry and inspection), insert—

**“Warrants authorising entry and inspection**

**5A.**—(1) A sheriff or a justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 5(1) to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied by evidence on oath that there are reasonable grounds for the exercise of the right in relation to the premises concerned, and that one of the conditions at subsection (3) is met.

(3) The conditions are that—

- (a) the exercise of the right in relation to the premises has been refused,
- (b) the case is one of urgency,
- (c) a request for entry to the premises, made to a holder of the licence, would defeat the object of the proposed entry,
- (d) the sheriff or justice of the peace is satisfied that the notice of intention to apply for a warrant has been given to a holder of the licence for the premises concerned, and that,
  - (i) refusal of the exercise of the right in relation to the premises is reasonably expected,
  - (ii) the land is, or premises are, unoccupied, or
  - (iii) the occupier is temporarily absent.

(4) This section applies only to the exercise of a right conferred by section 5(1) where that right is exercised in relation to a short-term let.”.

## PART 2

### Modification of Schedule 1 of the 1982 Act

#### Modification of schedule 1 of the 1982 Act

4. Schedule 1 of the 1982 Act is to be read as if modified in accordance with paragraphs 5 to 17.

#### Applications

5. In paragraph 1 (Applications for the grant and renewal of licences)—

(a) after sub-paragraph (2)(a), insert—

“(aa) the type of short-term let licence being applied for, being either—

- (i) secondary letting,
- (ii) home letting,
- (iii) home sharing, or
- (iv) home letting and home sharing,”

(b) in sub-paragraph (2)(b), after “address” at both places it occurs insert “, any other address held within the previous 5 years, e-mail address, telephone number”,

(c) after sub-paragraph (2)(d), insert—

“(da) 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,

(db) 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,

(dc) the number of bedrooms in the premises,

(dd) details of any other short-term let licence granted to the applicant, and”.

(d) Omit sub-paragraph (3).

#### Temporary exemption from the requirement to have a licence

6. After paragraph 1 (applications for the grant and renewal of licences) insert—

“**1A.**—(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.”.

## **Publicity**

7. In paragraph 2—

(a) after sub-paragraph (1), insert—

“(1A) As soon as is reasonably practicable after receiving an application for the grant of a short-term let licence, a licensing authority must issue a unique licence number to the applicant which may be used as a temporary licence number.”,

(b) for sub-paragraph (3)(b) substitute—

“(b) the particulars required under paragraph 1(2) to be specified in the application, other than—

- (i) any address held by a person within the previous 5 years (other than their current address),
- (ii) the e-mail address or telephone number of any person, and
- (iii) the date and place of birth of any person.”,

(c) for sub-paragraphs (7), (8) and (9) substitute—

“(7) The licensing authority—

- (a) must, in accordance with sub-paragraph (8), cause public notice to be given of an application made to them for the grant or renewal of a short-term let licence if the application contains a declaration that the applicant has been unable to comply with the requirements of sub-paragraph (2), and
- (b) may, in accordance with sub-paragraph (8), cause public notice to be given of every application made to them for the grant or renewal of a short-term let licence.

(8) For the purposes of sub-paragraph (7), public notice of an application for a short-term let licence must be given by publication of a notice—

- (a) in a newspaper or newspapers circulating in the area of the authority, or
- (b) on the licensing authority's website or other website established and maintained for that purpose.

(9) For the purposes of sub-paragraph (7), a public notice of an application for a short-term let licence must contain the information stated at paragraph 2(3).”.

## Preliminary refusal

8. After paragraph 2, insert—

### “Preliminary refusal: breach of planning control

2A.—(1) A licensing authority may, within 21 days of receipt of an application for a licence, refuse to consider the application where it considers that use of the premises for a short-term let would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”)(a) by virtue of section 123(1)(a) or (b) of that Act.

(2) The licensing authority must, within 7 days of deciding to refuse to consider an application for a short-term let licence, serve notice of its decision on—

- (a) the applicant,
- (b) the relevant planning authority, and
- (c) the chief constable.

(3) The notice must—

- (a) give the licensing authority’s reason for refusing to consider the application, and
- (b) in the case of a notice to the applicant, inform the applicant of the effect of sub-paragraph (4).

(4) No fee may be charged in respect of a further application for a licence in relation to the premises concerned made within 28 days of the applicant subsequently obtaining—

- (a) planning permission under Part 3 of the 1997 Act, or
- (b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,

in respect of the use of the premises for short-term lets.

(5) A refusal to consider an application under sub-paragraph (1) is not to be treated as a refusal to grant a licence under paragraph 5.”.

## Grant and renewal of licences

9. In paragraph 5 (disposal of applications for the grant and renewal of licences)(b)—

(a) after sub-paragraph (2A), insert—

“(2B) The conditions referred to in sub-paragraph (1A)(b) must not impose any limit on the number of nights for which premises may be used for secondary letting.”,

(b) after sub-paragraph (3)(c), insert—

“(ca) the applicant would not be able to secure compliance with—

- (i) the mandatory licence conditions, and
- (ii) the standard conditions and any further conditions under sub-paragraph (1A)(b) to which the licence is to be subject,

(cb) the application does not contain the information required under paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or”.

---

(a) 1997 c. 8. Section 123(1) was relevantly amended by section 6(2) of the Planning etc. (Scotland) Act 2006 (asp 17).

(b) Paragraph 5 was relevantly amended by S.S.I. 2006/475.

## **Duration of licences**

**10.** In paragraph 8 (duration of licences)—

(a) omit “or” following sub-paragraph (2)(a),

(b) after sub-paragraph (2)(b), insert—

“, or

(c) for such longer period as the licensing authority may decide at the time when they renew a short-term let licence.”.

(c) after sub-paragraph (2), insert—

“(2A) A licensing authority may decide to renew a short-term let licence for such longer period under sub-paragraph (2)(c)—

(a) in respect of different licences, or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(2B) A licensing authority must publish, in such manner as they think appropriate, the circumstances (if any) in which they will renew a licence for such longer period under sub-paragraph (2)(c).”.

## **Enforcement**

**11.** After paragraph 10 (variation of licences), insert—

### **“Power to require rectification of breach of licence**

**10A.**—(1) This paragraph applies where a licensing authority considers that any condition included in a short-term let licence has been, or is likely to be, breached (regardless of whether the licensing authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach).

(2) Where this paragraph applies, a licensing authority may serve notice (an “enforcement notice”) on a holder of a licence.

(3) An enforcement notice must specify—

(a) the matters constituting the breach or likely breach,

(b) the action to be taken by the licence holder which the licensing authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach,

(c) the date by which the action must be taken.

(4) A condition of an enforcement notice is deemed to be a condition of a licence.

(5) A licensing authority may serve an enforcement notice on a licence holder requiring the rectification or prevention of any breach of a condition of a licence other than the breach of a condition of an enforcement notice.”.

## **Simplified process following surrender**

**12.** In paragraph 13 (surrender of licence), after sub-paragraph (4)(a) insert—

“(5) Where a holder of a short-term let licence has surrendered the licence under sub-paragraph (1), a licensing authority may grant an equivalent licence to the person who surrendered the licence if it receives an application within 12 months of the date of the surrender in respect of the same premises.

---

(a) Paragraphs 13 and 14 were relevantly amended by section 78(3) of the Air Weapons and Licensing (Scotland) Act 2015.

(6) A licensing authority may exercise the power in sub-paragraph (5) notwithstanding that it has not complied with the following paragraphs—

- (a) paragraph 1 (applications for the grant and renewal of licences), or
- (b) paragraph 2 (consultation).”.

### **Public register**

**13.** In paragraph 14 (register of applications)—

(a) after sub-paragraph (2)(b), insert—

“(c) where the application is made by or on behalf of a person other than a natural person—

- (i) the full name of the person, and
  - (ii) the address of its registered or principal office,
- (d) the full address of the premises which are the subject of the application (including a postcode),
- (e) the council ward in which the premises are located,
- (f) the date of the application,
- (g) the status of the application (granted, refused, being determined, revoked, lapsed etc.),
- (h) the type of premises,
- (i) the type of short-term let,
- (j) the maximum number of guests permitted to reside on the premises,
- (k) whether the premises are within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park,
- (l) the unique licence number allocated to the application,
- (m) where the licensing authority has required its inclusion in the application—
- (i) the number of bedrooms in the premises,
  - (ii) information on availability and occupancy,
  - (iii) contact details for the manager of the premises, if different from the applicant or where the application is for secondary letting, and
  - (iv) the Energy Performance Certificate rating.”.

(b) after sub-paragraph (2), insert—

“(2A) Nothing in this paragraph requires a licensing authority to include on the register—

- (a) particulars relating to a short-term let licence (including applications and any other information relating to the licence) if a period longer than 12 months has passed beginning with the date on which the licence was revoked under paragraph 11,
- (b) particulars relating to a licence which has been surrendered under paragraph 13, or
- (c) particulars relating to a licence which has expired.”.

(c) after sub-paragraph (4) insert—

“(5) From 1 October 2022, the licensing authority must on a quarterly basis share the content of the register, in relation to short-term let licences only, with the Scottish Ministers in a format which enables analysis of the information.

(6) From 1 October 2022, the licensing authority must publish the content of the register, in relation to short-term let licences only, on their website or other website established and maintained for that purpose and provide access free of charge.”.

## Sharing of information

14. After paragraph 14, insert—

### “Sharing of information in respect of short-term let licences and applications

**14A.**—(1) Subject to sub-paragraphs (2) and (3), a licensing authority may, following a request from a local authority or otherwise, share information with—

- (a) a licensing authority, or
- (b) a person who advertises or lists short-term lets.

(2) The only information which may be shared under sub-paragraph (1) is any information in relation to—

- (a) the suspension, variation or revocation of a short-term let licence,
- (b) the decision to refuse a short-term let licence application, or
- (c) an individual operating a short-term let without a licence.

(3) A licensing authority may only share information under sub-paragraph (1) for purposes in connection with—

- (a) the licensing of short-term lets, and
- (b) the prevention of an offence under section 7(1).”.

## Fees

15. For paragraph 15 (fees), substitute—

“**15.**—(1) A licensing authority may, subject to sub-paragraphs (2) and (3), charge such reasonable fees as they may determine in respect of—

- (a) applications made to them under this schedule,
- (b) the issue of certified duplicate licences under paragraph 5(7),
- (c) their consideration of a material change of circumstances or in premises under paragraph 9 and their disposal of the matter,
- (d) the issue under paragraph 14 of certified true copies,
- (e) an inspection of premises following—
  - (i) a failure to comply with a licence condition, or
  - (ii) a complaint relating to the premises (unless the complaint is frivolous or vexatious).

(2) In determining the amount of the different fees under sub-paragraph (1), the licensing authority—

- (a) must seek to ensure that the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions under Parts I and II of this Act and this schedule,
- (b) may determine different fees for different purposes,
- (c) may take into account the following criteria—
  - (i) the size of the premises,
  - (ii) the number of bedrooms at the premises,
  - (iii) the number of guests who can reside at the premises,
  - (iv) the type of short-term let,
  - (v) the duration of the period for which the premises are made available for use as a short-term let, and



(vi) the extent to which the licence holder has complied with the conditions of the licence.

(3) A licensing authority may provide for annual or other recurring fees.

(4) Where a local authority charges a fee in respect of an inspection, the licensing authority must—

- (a) produce a report of its finding to the licence holder within 28 days of the inspection, or
- (b) where a report is not provided within 28 days of the inspection, refund the fee charged to the licence holder.”.

### **Giving of reasons**

**16.** In paragraph 17 (notification of the decisions and giving of reasons)—

(a) after sub-paragraph (1)(c), insert—

“(ca) to refuse an application made under paragraph 1A or to grant such an application subject to conditions,

(cb) to serve an enforcement notice under paragraph 10A,”.

### **Interpretation**

**17.** After paragraph 19 (interpretation), insert—

“**19A.** In this schedule—

“Energy Performance Certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008(a),

“home letting” means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host’s only or principal home,

“home sharing” means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host’s only or principal home,

“premises” means the accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence,

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

“short-term let” has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,

“short-term let licence” means a licence for a short-term let,

“type of short-term let” means one of the following purposes—

- (a) secondary letting,
- (b) home letting,
- (c) home sharing, or
- (d) home letting and home sharing,

“unique licence number” means a unique number which—

- (a) is assigned to each application or licence, and

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(a) S.S.I. 2008/309. Regulation 6 is amended by S.S.I. 2012/208 and S.S.I. 2013/12.

- (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.”.

Mandatory licence conditions

**Agents**

1. Only those named as a holder of the licence can carry out the day to day management of the short-term let of the premises.

**Type of licence**

2. The holder of the licence may only offer the type of short-term let for which the licence has been granted.

**Fire safety**

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—

- (a) fire or suspected fire, and
- (b) the presence of carbon monoxide in a concentration that is hazardous to health.

4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988(a).

**Gas safety**

5. Where the premises has a gas supply—

- (a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
- (b) if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

**Electrical safety**

6. Where there are electrical fittings or items within the parts of the premises which are for guest use, or to which the guests are permitted to have access, the holder of the licence must—

- (a) ensure that any electrical fittings and items are in—
  - (i) a reasonable state of repair, and
  - (ii) proper and safe working order,
- (b) arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,
- (c) ensure that, following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,
- (d) arrange for a competent person to—
  - (i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and

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(a) S.I. 1988/1324.

(ii) date label and sign all moveable appliances which have been inspected.

7. In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006(a).

#### **Water safety: private water supplies**

8. Where the premises are served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017(b).

#### **Water safety: legionella**

9. The holder of the licence must assess the risk from exposure to legionella within the premises, whether or not the premises are served by a private water supply.

#### **Safety & repair standards**

10.—(1) The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.

(2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

#### **Maximum Occupancy**

11. The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

#### **Information to be displayed**

12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests—

- (a) a certified copy of the licence and the licence conditions,
- (b) fire, gas and electrical safety information,
- (c) details of how to summon the assistance of emergency services,
- (d) a copy of the gas safety report,
- (e) a copy of the Electrical Installation Condition Report, and
- (f) a copy of the Portable Appliance Testing Report.

#### **Planning Permission**

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(c) (“the 1997 Act”), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—

- (a) an application has been made for planning permission under the 1997 Act and has not yet been determined, or
- (b) planning permission under the 1997 Act is in force.

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(a) 2006 asp 1. Section 19B was inserted by section 23(2) of the Housing (Scotland) Act 2014 (asp 14).

(b) S.S.I. 2017/282.

(c) 1997 c. 8. Section 26B was inserted by section 17 of the Planning (Scotland) Act 2019 (asp 13).

## Listings

**14.**—(1) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes—

- (a) the licence number, and
- (b) a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with the Energy Performance of Buildings (Scotland) Regulations 2008<sup>(a)</sup>.

(2) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises is consistent with the terms of the short-term let licence.

## Insurance

**15.** The holder of the licence must ensure that there is in place for the premises—

- (a) valid buildings insurance for the duration of the licence, and
- (b) valid public liability insurance for the duration of each short-term let agreement.

## Payment of fees

**16.** The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.

## False or misleading information

**17.** The holder of the licence must not provide any false or misleading information to the licensing authority.

## Interpretation

**18.** In this schedule—

“Electrical Installation Condition Report” means a report containing the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the premises inspected,
- (c) the name, address and relevant qualifications of the person who carried out the inspection,
- (d) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (e) any defect identified,
- (f) any action taken to remedy a defect,

“Energy Performance Certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008<sup>(b)</sup>,

“gas safety report” means a report containing the following information—

- (a) the date on which the appliance or flue was checked,
- (b) the address of the premises at which the appliance or flue is installed,
- (c) a description of and the location of each appliance or flue checked,
- (d) any safety defect identified,
- (e) any remedial action taken,

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(a) S.S.I. 2008/309.

(b) S.S.I. 2008/309. Regulation 6 is amended by S.S.I. 2012/208 and S.S.I. 2013/12.

- (f) confirmation that the check undertaken complies with the requirements of an examination of—
  - (i) the effectiveness of any flue,
  - (ii) the supply of combustion air,
  - (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both,
  - (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
  - (v) its operation so as to ensure its safe functioning,
- (g) the name and signature of the individual carrying out the check, and
- (h) the registration number with which that individual, or that individual’s employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998<sup>(a)</sup>,

“holder of the licence” means any person to whom a short-term let licence has been granted or jointly granted,

“home letting” means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host’s only or principal home,

“home sharing” means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host’s only or principal home,

“premises” means the accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence,

“repairing standard” means the steps which the holder of the licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006<sup>(b)</sup>,

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

“short-term let” has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,

“short-term let licence” means a licence for a short-term let, and

“type of short-term let” means one of the following purposes—

- (a) secondary letting,
- (b) home letting,
- (c) home sharing, or
- (d) home letting and home sharing.

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(a) S.I. 1998/2451.

(b) 2006 asp 1.

## Consequential amendments

**Antisocial Behaviour etc. (Scotland) Act 2004**

**1.**—(1) Section 83 (application for registration) of the Antisocial Behaviour etc. (Scotland) Act 2004(a) is amended in accordance with this paragraph.

(2) In subsection (6)—

- (a) omit “or “ from the end of paragraph (l),
- (b) at the end of paragraph (m), replace “.” with “; or”, and
- (c) after paragraph (m) insert—

“(n) the house is being used for a short-term let as defined in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022.”.

**Housing (Scotland) Act 2006**

**2.**—(1) Section 12 (tenancies to which repairing standard duty applies) of the Housing (Scotland) Act 2006(b) is amended in accordance with this paragraph.

(2) In subsection (1)(f), after “holiday” insert “unless the tenancy is a short-term let”.

(3) After subsection (2), insert—

“(3) For the purposes of this Chapter, a short-term let is a type of tenancy (and the terms landlord, let and tenant are to be construed accordingly).

“(4) In this section, a short-term let has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022.”.

**Private Housing (Tenancies) (Scotland) Act 2016**

**3.**—(1) Schedule 1 (tenancies which cannot be private residential tenancies) of the Private Housing (Tenancies) (Scotland) Act 2016(c) is amended in accordance with this paragraph.

(2) In paragraph 6 (holiday let), the existing words become sub-paragraph (1).

(3) After that sub-paragraph insert—

“(2) A tenancy cannot be a private residential tenancy if it is a short-term let within the meaning of article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022.”.

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(a) 2004 asp 8. Section 83 was relevantly amended by S.I. 2009/33.

(b) 2006 asp 1.

(c) 2016 asp 19.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order designates a “short-term let” as the use of residential accommodation provided by a host in the course of business to a guest where certain criteria are met as an activity for which a licence is required under the Civic Government (Scotland) Act 1982 (“the Act”), modifies the procedures in the Act in relation to short-term let licences, provides mandatory conditions which will be required in respect of all short-term let licences, and makes consequential amendments to a number of enactments.

Article 3 provides a definition of short-term let and excludes certain types of accommodation and certain types of tenancy (as described in schedule 1 of the Order) from that definition. Article 4 specifies that a short-term let after 1 October 2022 is an activity which requires a licence under the Act. Article 5 provides that Part 1 of the Act (including schedule 1 of the Act as introduced by section 4 of the Act) has effect, for the purposes of the licensing of a short-term let, subject to the modifications specified in schedule 2 of the Order. Article 6 provides that a short-term let licence is subject to the mandatory conditions specified in schedule 3 of the Order.

Article 7 makes transitional provision whereby the offence of operating without a licence (section 7(1) of the Act) is not committed in circumstances where a person used a property for a short-term let before 1 October 2022 and submitted an application for a short-term let licence before 1 April 2023 which has not yet been finally determined. It also provides for a procedure to be followed during the transitional period in respect of licence applications where the licensing authority considers that use of the premises for a short-term let would constitute a breach of planning control.

The provisions in Part 1 of the Act (including schedule 1) will apply to short-term let licences with the modifications set out in schedule 2 of the Order which are as follows:

Paragraph 1 provides that any standard conditions determined must not impose a limit upon the number of nights for which the premises may be used for secondary letting.

Paragraph 2 creates a procedure for an authorised officer of the licensing authority, an authorised civilian employee (as defined in section 8 of the Act) or a constable to obtain a warrant to gain entry to the premises, and includes a set of conditions of which one must be met in order for a warrant to be granted.

Paragraph 3 requires the inclusion of additional information in application forms.

Paragraph 4 enables the licensing authority to exempt premises from the requirement to have a licence for a specified period which cannot exceed 6 weeks per year. It also sets out the requirements for the licensing authority to publish and review a statement of their policy in relation to the granting of temporary exemptions and sets out what information it must include.

Paragraph 5 provides a process for the licensing authority to provide a temporary licence number to the applicant and to publicise the application.

Paragraph 6 allows the licensing authority to refuse to consider the application if it considers the use of the premises for a short-term let would breach planning control, and further sets out how this can be remedied by the applicant.

Paragraph 7 provides for additional grounds on which the licensing authority may refuse an application.

Paragraph 8 allows the licensing authority to renew a licence for longer than 3 years.

Paragraph 9 creates a process for the licensing authority to serve an enforcement notice where there has been a breach of the licence conditions, which includes setting out what constitutes the breach (or likely breach), what action can be taken to rectify or otherwise prevent the breach, and the date by which the action must be taken.



Paragraph 10 creates a simplified process for a licence holder to apply for a licence within 12 months of having surrendered an equivalent licence.

Paragraph 11 provides for the inclusion of additional information about short-term let licence applications on the public register of applications. Paragraph 11 also obliges the licensing authority to share the content of the register in relation to short-term lets with the Scottish Ministers on a quarterly basis, as well as to publish the content of the register on a website.

Paragraph 12 provides for licensing authorities to share specified information with either another licensing authority or a person who advertises short-term lets for the purposes of licensing of short-term lets and to prevent the commission of offences under section 7(1) of the 1982 Act.

Paragraph 13 sets out the process by which fees may be set by the licensing authority and the criteria it may take into account whilst doing so.

Paragraph 14 requires the licensing authority to give reasons for the issue of an enforcement notice. Paragraph 14 also obliges the licensing authority to provide reasons for the refusal of an application for a temporary exemption from the requirement to obtain a short-term lets licence or the grant of such an application subject to conditions. That has the effect of allowing an appeal against these decisions of a licensing authority under paragraph 18 of schedule 1 of the Act.

Schedule 3 of the Order sets out certain mandatory licence conditions which must be included in a short-term let licence. In addition, the licensing authority has discretion under paragraph 5(1A)(b) of schedule 1 of the Act to include other licence conditions.

Schedule 4 of the Order makes consequential amendments to:

- (a) the Antisocial Behaviour etc. (Scotland) Act 2004 in order to amend the landlord registration scheme under that Act and thereby ensure that the Tenancy Deposit Schemes (Scotland) Regulations 2011 (S.S.I. 2011/176) do not apply to short-term lets as defined by this Order;
- (b) the Housing (Scotland) Act 2006, in order to clarify that the repairing standard applies to short-term lets which are offered in respect of houses, as defined by this Order;
- (c) the Private Housing (Tenancies) (Scotland) Act 2016, in order to establish that a short-term let cannot be a private residential tenancy.

A regulatory impact assessment has been prepared in respect of this Order. A copy of it can be obtained from the Scottish Government Housing and Social Justice Directorate, Victoria Quay, Edinburgh, EH6 6QQ. A copy has also been published on the Scottish Government website at [www.gov.scot](http://www.gov.scot).

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**Short-term Lets**  
**Additional licence conditions**

1. If there is a material change of circumstance affecting the Licensee or the operation of the Short-term Let, the Licensee must inform the licensing authority as soon as possible. No alteration must be made to the property without the prior written consent of the authority.
2. The licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing, gas and electrical installations, are maintained throughout the period of the licence to the standard required. The licence holder should hold all necessary certificates.
3. To ensure an adequate electricity supply is maintained to the installed Fire Detection system, where credit card meters are in use, the Licensee will be responsible for ensuring that the meters remain in credit when the premises are unoccupied for any period exceeding 48 consecutive hours.
4. The Licensee shall allow access to the premises at any reasonable time to the following officials for licensing purposes:
  - Any officer of East Lothian Council
  - Any officer of the Scottish Fire & Rescue Service
  - Any officer of Police Scotland
5. The Licensee will be responsible for the day to day running of the premises, and for ensuring that guests comply with the terms of their Lease and in particular to deal effectively with any anti-social behaviour by guests to anyone else in the locality of the Short-term Let.
6. Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.
7. The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.
8. The licence holder should ensure that let rooms are fitted with a lever latch and secured with a suitable lock and thumb turn mechanism or other appropriate locking mechanism.
9. The building should be maintained in a reasonable state of repair, having regard to its age, type and location. Garden and environmental areas should also be adequately maintained.
10. Where a Short-term Let is in a shared building the licence holder must co-operate and participate in the general repair and maintenance of the building and the cleaning of common parts. Where the guests fail to participate in the cleaning of common areas or environmental areas, the licence holder will be expected to carry out the work.
11. Adequate and suitable facilities must be provided for the storage and disposal of refuse.

Where bins are provided to terraced and tenemental property they must be clearly identified by flat or property address. The licensee must ensure that the guests utilise the bins provided and ensure that refuse or bins are placed out on collection day and that bins are returned to the bin storage area following collection (where applicable).

# **Short Term Lets in Scotland Licensing Scheme**

## **Part 1 Guidance for Hosts and Operators**

**March 2022**

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## 1. Introduction

- 1.1. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022<sup>1</sup> was passed by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022.
- 1.2. This guidance is intended for hosts and operators of short-term lets in Scotland to explain their responsibilities to comply with this legislation. Hosts and operators may be individuals or organisations such as partnerships, charities, trusts or companies who provide short-term lets.
- 1.3. There is also supplementary guidance for licensing authorities<sup>2</sup> (about establishing and operating licensing schemes for short-term lets), which you can refer to for more detailed information.
- 1.4. Separate planning guidance<sup>3</sup> has been produced for hosts and operators. You should check if your accommodation lies within a control area, as obtaining planning permission may be a requirement of applying for a short-term let licence.
- 1.5. This guidance is non-statutory and should not be interpreted as offering definitive legal advice. If in doubt, you should seek your own legal advice.

### (a) Purpose of guidance

- 1.6. This guidance will help you understand:
  - whether your accommodation falls within scope of the legislation (see Annex A)
  - what you need to do to apply for a licence
  - what you need to do to comply with the requirements of the licensing scheme and relevant regulations
  - your responsibility to comply with the conditions set out in your licence
  - how to renew your licence
- 1.7. Annex A can help you to establish whether your accommodation and premises are classed as short-term lets under the definition set out in the

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<sup>1</sup> [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> <https://www.gov.scot/isbn/9781804351291>

<sup>3</sup> [Short term lets: planning guidance for hosts and operators - gov.scot \(www.gov.scot\)](https://www.gov.scot)

legislation. This guidance is intended for hosts and operators who have established their accommodation and premises is within scope.

- 1.8. Words with a particular meaning are highlighted in bold and explained where they first appear and the explanation is repeated in the glossary at the end of this guidance.

## **(b) Purpose of the licensing scheme**

- 1.9. **Short-term lets** can offer people a flexible and cheaper travel option, and have contributed positively to Scotland's tourism industry and local economies across the country. The Scottish Government has put in place this licensing scheme to ensure basic safety standards are in place across all short-term lets operating in Scotland, while also providing discretionary powers to licensing authorities to address the needs and concerns of local communities. Improved visitor experience and confidence will benefit tourism and the economy.
- 1.10. The aims of the licensing scheme are:
- to ensure all short-term lets are safe;
  - to facilitate licensing authorities in knowing and understanding what is happening in their area; and
  - to assist with handling complaints and address issues faced by neighbours effectively.

## **(c) What the licensing scheme is and where it applies**

- 1.11. The licensing scheme applies to the whole of Scotland and will be implemented by licensing authorities. Your licensing authority is the local authority<sup>4</sup> in whose area your **accommodation** is located.
- 1.12. There are some conditions that every short-term let in Scotland will need to follow – these are called **mandatory conditions** and are primarily about ensuring that **guests** and **neighbours** are safe. They are set out in the Licensing Order and licensing authorities have no choice about implementing these. Many **hosts and operators** will already be complying with these mandatory conditions because some of them are required by existing law and others are best practice.
- 1.13. Licensing authorities can also set **additional conditions** to address any specific local circumstances or concerns. These additional conditions might apply to everyone in that licensing authority area or might be specific to your

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<sup>4</sup> Section 2 of the 1982 Act.



property. Examples of additional conditions are set out in licensing guidance part 2.

#### **(d) How licensing works**

- 1.14. You will need a separate licence for each of your **premises**, whether or not they are in the same licensing authority area. However, a single licence may be issued in respect of unconventional accommodation (not a **dwellinghouse**) where there is more than one separately bookable property on the site.
- 1.15. You do not need a separate licence for short-term lets on the same premises. For example, if you are letting out two rooms in your home, that would be covered by one licence.
- 1.16. Your licence will specify the type of short-term let for which the premises can be used. Licensing authorities will issue a licence for a premises for either:
  - **home sharing;**
  - **home letting;**
  - **home sharing and home letting; or**
  - **secondary letting**

#### **(e) Temporary exemptions**

- 1.17. Your licensing authority can grant temporary exemptions to the requirement to have a licence<sup>5</sup>. They can do this for a specified single continuous period not exceeding 6 weeks in any period of 12 months.
- 1.18. They might do this to accommodate a large influx of visitors over a short period to support sports championship competitions and arts festivals, for example. To get a temporary exemption, you need to apply for one.
- 1.19. There are some important differences between applying for, and operating with, a temporary exemption and having a licence. Your licensing authority might:
  - ask for the application to be made on a different (shorter) form;
  - charge a different (lower) fee;
  - ask for less information than on a licence application; and
  - not apply some of the mandatory conditions.

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<sup>5</sup> Paragraph 1A of schedule 1 to the 1982 Act, inserted the Licensing Order.

- 1.20. Your licensing authority can check and enforce any conditions that are attached to your exemption. Your licensing authority would have the right to visit your premises.
- 1.21. Your licensing authority may choose not to issue any temporary exemptions under any circumstances or may have specific criteria that they apply. If you think a temporary exemption might be the right approach for your circumstances, you should check your licensing authority's short-term lets temporary exemptions policy statement, which you should be able to find on their website. You should also check whether there is a deadline for applications to be made in order to secure a temporary exemption.
- 1.22. Your licensing authority can grant or refuse an application for a temporary exemption. If they grant your application, you will be given a temporary exemption number (like a licence number).
- 1.23. You should be aware that a temporary exemption from the requirement to have a licence does not affect the way planning rules apply to you. If any temporary changes to planning rules have been made (for example to handle a major international event), your planning authority will publicise these.

#### **(f) Temporary licences**

- 1.24. Licensing authorities can issue temporary licences<sup>6</sup> but they need not do so. If you are granted a temporary licence, it can last for up to six weeks or longer if you have also made an application for a licence. If you have applied for a licence, your temporary licence will last until your licence application is finally determined.
- 1.25. Your licensing authority website will explain whether and how your licensing authority issues temporary licences, including how long it takes to issue them.
- 1.26. If you are granted a temporary licence, you will be given a temporary licence number. You must comply with all the mandatory conditions.
- 1.27. You must not use your premises for a type of short-term let that is outside the scope of your licence. If you want to make a change to the type of letting being carried out, you must apply to the licensing authority that issued the licence.

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<sup>6</sup> Under paragraph 7(6) of schedule 1 to the 1982 Act.

## (g) What happens next

1.28. Licensing authorities must have their licensing scheme ready to receive applications by 1 October 2022.

1.29. After 1 October 2022:

- **new hosts and operators** will need to have a licence. This means that, if you were not using your premises to provide short-term lets before 1 October 2022, you can advertise but not take bookings or receive guests until you have obtained a licence.
- **existing hosts/ operators** (those using accommodation to provide short-term lets before 1 October 2022) have until 1 April 2023 to apply for a licence. During this period you can operate without a licence (by continuing to take bookings and receiving guests) unless your licence has been determined, and your application rejected. You will need to be able to prove that you used the property for short-term lets, for example through evidence of bookings and payments, as part of your initial application. After 1 April 2023, existing hosts can only continue to operate if they have:
  - a) Submitted an application for a licence on or before 1 April 2023 that has not yet been determined; OR
  - b) Been granted a short-term let licence.

1.30. On or after 1 October 2022, it is a criminal offence for any person to continue to operate after their licence application has been determined and refused.

1.31. All short-term lets in Scotland will need to be licensed by 1 July 2024. On or after 1 July 2024 operating without a licence is unlawful in all cases.

1.32. This is summarised in the following table:

Period	Rules for hosts and operators
From 1 October 2022	<ul style="list-style-type: none"><li>• New hosts must not operate without a licence</li><li>• Existing hosts can operate without a licence (but must continue to comply with existing laws and regulations)</li><li>• Existing hosts should use this time to make a licence application.</li><li>• Existing hosts must cease operating within 28 days if their licence application is refused (guests should be asked to leave immediately if they are at serious</li></ul>

	risk of harm). Guests with affected bookings should be offered a full refund.
From 1 April 2023	<ul style="list-style-type: none"> <li>• New hosts must not operate without a licence</li> <li>• Existing hosts can operate without a licence but only if they have submitted an application and it has not been determined. They should make it clear in their terms and conditions that bookings are conditional on compliance with the licensing scheme.</li> <li>• Existing hosts must cease operating within 28 days if their licence application is refused (guests should be asked to leave immediately if they are at serious risk of harm). Guests with affected bookings should be offered a full refund.</li> </ul>
From 1 July 2024	<ul style="list-style-type: none"> <li>• All hosts must have a licence</li> <li>• Any host must cease operating within 28 days if their licence application is refused</li> </ul>

1.33. Operating without a licence is a criminal offence so it is important to get a licence in good time if you need one.

## **(h) Development of the licensing scheme and guidance**

1.34. This guidance has been produced by the Scottish Government with input from a [stakeholder working group](#). You can find out more about how the licensing scheme was developed on the Scottish Government website: [Short-term lets: regulation information - gov.scot \(www.gov.scot\)](#)

## **(i) Updates**

1.35. This version of the guidance relates to the Licensing Order approved by the Scottish Parliament on 19 January 2022 but will be kept under review and updated as required.

1.36. The latest version will always be available at: [Short-term lets: regulation information - gov.scot \(www.gov.scot\)](#)

## 2. Getting ready to apply for a licence

2.1. Before you apply for a licence, you should be aware that in assessing your application, your licensing authority will consider:

- your suitability and that of the other people named on your application form;
- your compliance / ability to comply with the mandatory conditions (applicable to all short-term lets across Scotland);
- your compliance / ability to comply with any additional conditions that the licensing authority might attach to your licence (either specific to your accommodation, or specific to short-term lets in your local authority); and
- the suitability of your premises in the context of the licensing authority's policies.

2.2. In addition, you should check your local authority's planning policies to find out if you need to obtain planning permission before applying for a licence. Further information is set out in the Planning Guidance for Short-term Lets<sup>7</sup>.

### (a) Planning permission<sup>8</sup>

2.3. You are advised to check whether you need planning permission to use your property to provide short-term lets, see the **planning guidance**. Your licensing authority can refuse to consider your application if it looks like you need planning permission and you do not have it.

2.4. This mandatory licence condition<sup>9</sup> is only relevant if:

- your premises is in a control area – if in any doubt, check with your planning authority;
- you are using it for secondary letting; **and**
- it is a dwellinghouse.

2.5. If this applies to you, then you must have made an application for planning permission or already have planning permission before you apply for a licence. You must also make sure that you continue to have planning permission whilst you have a licence.

2.6. It is possible that your planning authority could designate a control area affecting your premises after you have been granted a licence. To comply with

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<sup>7</sup> [Short term lets: planning guidance for hosts and operators - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2018/06/Short-term-lets-planning-guidance-for-hosts-and-operators.pdf)

<sup>8</sup> Paragraph 12 of schedule 3 of the Licensing Order.

<sup>9</sup> Of course, you must comply with planning law more generally but this is a mandatory condition of the short-term let licence application requirements which you must comply with for licensing purposes.

this licence condition, you should submit a planning application as soon as possible after the control area is designated. Your licensing authority will make reasonable allowance for you to do this.

- 2.7. In general, licence fees are not refundable. The Scottish Government expects licensing authorities to publish their policy on refunds so you can see your licensing authority's position before you make an application. Therefore, if you have been granted a licence, and are subsequently refused planning permission following the designation of a control area we do not expect you will be refunded.

### **(b) Who can make an application**

- 2.8. Before you make an application for a licence, you must identify all the people who need to be named on the application form.
- 2.9. You, as the host or operator, can apply for a licence to use your (or someone else's) premises to provide short-term lets. You can also ask another person to make the application on your behalf. For example, you might ask:
- your solicitor; or
  - your letting agency or property management company.
- 2.10. You, as the host or operator, are the person responsible for granting agreements with guests to use the property, even if this is delegated to another person or company on a day-to-day basis.
- 2.11. If you do not own the premises, then you must have the permission of the owner(s) to make an application for a licence. For example, you may be a tenant and want to use your property for home sharing or home letting. You should first make sure that your tenancy agreement would allow you to do this in general terms and then seek the specific permission of your landlord.

### **(c) Information required about those named on the application**

- 2.12. You should be ready to provide the following information on your application form.
- a) If you are applying as an individual:
- your full name;
  - your date and place of birth;
  - your address;
  - your address history for last five years; and
  - e-mail and telephone number.

- b) If you are applying as a corporate entity (e.g. company or charity):
- your full name;
  - the address of its registered or principal office;
  - the names and private addresses and dates and places of birth of its directors, partners or other persons responsible for its management, including trustees in the case of charities.
- 2.13. Where you intend to appoint somebody else to manage your property, similar details must be provided for your agent or day-to-day manager, irrespective of whether you are applying as an individual or a corporate entity.
- 2.14. You must have the consent of the owner (or each owner) and your application will be refused if that is not provided. Where premises are owned by multiple owners, you must provide:
- a) a declaration from each other owner, or each owner, that they consent to the application, or
  - b) a declaration from a person who is authorised to act on behalf of all the owners.

#### **(d) Mandatory conditions**

- 2.15. The licensing scheme requires all short-term lets to comply with mandatory conditions which apply in Scotland<sup>10</sup>. You therefore need to check you comply before making your application and, if relevant, undertake work to ensure you meet the conditions.
- 2.16. You may be able to do some or most of the checks and work yourself by following this and other guidance (depending on your own background, qualifications and experience). Where you do need assistance, it is worth noting a number of local authorities operate trusted trader schemes, which can help you to find honest and reliable tradespeople.
- 2.17. The mandatory conditions relate to:
- day to day management of the short-term let only being carried out by the holder of the licence (see 3.10 to 3.14)
  - only operating under the type of licence you have been granted (see 3.1)
  - fire safety
  - gas safety
  - electrical safety
  - water safety
  - safety and repair standards

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<sup>10</sup> Set out in schedule 3 of the Licensing Order.

- maximum occupancy
- displaying information (see 5.1)
- planning permission (see 2.3 to 2.6)
- listings (see 5.2)
- insurance
- payment of fees
- providing true and accurate information (i.e. not providing false and misleading information)

### ***Fire safety: general***

- 2.18. The Licensing Order sets out some conditions around fire safety which your licensing authority will want to check for licensing purposes. Please note that you must also comply with other requirements in the Fire (Scotland) Act 2005, which the Scottish Fire and Rescue Service are responsible for enforcing.
- 2.19. The 2005 Act requires the person who has control of the premises to provide fire safety measures, including risk reduction measures, means of fire warning, fire-fighting, escape, staff training and instruction, as well as emergency procedures. It sets out fire safety responsibilities and seeks to ensure people are safe from harm caused by fire.
- 2.20. You must take appropriate action to:
- assess the risk from fire in your premises;
  - identify the fire safety measures necessary as a result of the assessment of risk;
  - implement these fire safety measures, using risk reduction principles;
  - put in place fire safety arrangements for the ongoing control and review of the fire safety measures;
  - comply with any further specific requirements of the fire safety regulations;
  - keep the fire safety risk assessment and outcome under review; and
  - maintain good records.
- 2.21. You can find out more in [Practical Fire Safety Guidance For Premises with Sleeping Accommodation](#). Broadly speaking, Annex 2 of this guidance is aimed at premises used for secondary letting with no more than 10 guests and home sharing with no more than 8 guests. If you are in doubt about your legal obligations, you may wish to seek further advice.



- 2.22. You can find out more information about how to conduct a fire risk assessment from the Scottish Fire and Rescue Service, including information about registered and accredited fire risk assessors.

**Fire safety: the premises<sup>11</sup>**

*You must ensure your premises has satisfactory equipment installed for detecting, and for giving warning of—*  
*(a) fire or suspected fire, and*  
*(b) carbon monoxide present in a concentration that is hazardous to health.*

- 2.23. This is stated explicitly in the Licensing Order and applies to all premises. (It is the same as the repairing standard.) Therefore, every host and operator should be complying with this requirement.
- 2.24. You must make sure you have taken adequate steps to ensure fire prevention, including fitting and maintaining working smoke and carbon monoxide alarms. Further details can be found in [Tolerable Standard Guidance: Satisfactory Fire Detection and Satisfactory Carbon Monoxide Detection](#).

**Fire safety: furniture and fittings**

*You must—*  
*a) ensure that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988,*  
*b) keep records showing that all upholstered furnishings and mattresses within the premises comply with the Regulations.*

- 2.25. You could comply with this condition by:
- keeping photographic evidence;
  - removing and retaining the labels themselves; or
  - keeping receipts which confirm compliance (for example by providing a reference number or accurate description of the product).
- 2.26. You do not have to ensure that furnishings and mattresses retain their fire safety labels. This might be difficult to rely on because guests might deface or remove them.

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<sup>11</sup> Paragraph 3 of schedule 3 of the Licensing Order.

- 2.27. If you are home sharing (letting out a room in your home), the requirement does not apply to areas of your accommodation to which your guest does not have access, for example your bedroom.

### **Gas safety<sup>12</sup>**

*Where your premises has a gas supply—*

- a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,*
- b) if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not let their accommodation until the works necessary to bring the appliance to the required safety standard have been carried out.*

- 2.28. When you apply, you must be able to provide confirmation (if requested) that a currently valid, annual gas safety check has been carried out on all gas appliances by a Gas Safe registered engineer.
- 2.29. If your licence lasts for more than one year, it is your responsibility to ensure that a gas safety inspection is completed each year.
- 2.30. If you do not use any form of gas (you have no gas connection or private storage tank), then you do not need to take any action.

### **Electrical safety<sup>13</sup>**

*If you have electrical fittings or items in the premises, you must—*

- a) ensure that any electrical fittings and items are in—
  - (i) a reasonable state of repair, and*
  - (ii) proper and safe working order,**
- b) arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,*
- c) ensure that following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,*
- d) arrange for a competent person to—
  - (i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and*
  - (ii) date label and sign all moveable appliances which have been inspected.**

- 2.31. A competent person must produce both the Electrical Installation Condition Report and the Portable Appliance Testing Report but it need not be the same

<sup>12</sup> Paragraph 5 of schedule 3 of the Licensing Order.

<sup>13</sup> Paragraph 6 of schedule 3 of the Licensing Order.

person. The definition of an Electrical Installation Condition Report is set out in the Licensing Order<sup>14</sup>.

- 2.32. The Scottish Government has produced [statutory guidance on electrical installations and appliances in private rented property](#). Annex A of that guidance sets out who is competent to conduct an Electrical Installation Condition Report and you should have regard to this advice. Electrical Safety First have also produced a [landlords' guide to electrical safety](#). You will find these helpful as the standards that apply to private residential tenancies also apply to short-term lets.
- 2.33. At the time of this guidance publication, the minimum standard for electrical safety inspections to be carried out is at least every five years, as set out in the IET wiring regulations BS 7671.

#### **Water: private supplies<sup>15</sup>**

- 2.34. If your premises is supplied with water from Scottish Water, then you do not need to take any further action in respect of this condition.
- 2.35. If your premises has a private water supply, then you must comply with requirements on the owners of private dwellings in the 2017 Regulations. You can find more information and guidance from the Drinking Water Quality Regulator for Scotland: [Guidance on the Water Intended for Human Consumption \(Private Supplies\) \(Scotland\) Regulations 2017 | DWQR](#).

#### **Water: Legionella<sup>16</sup>**

*You must assess the risk from exposure to Legionella within your premises, whether or not it has a private water supply.*

- 2.36. The Legionella risk assessment does not need to be carried out by a professional; you can do it yourself. The risks from hot and cold water systems in most residential settings are generally considered to be low because water is used regularly and does not stagnate.
- 2.37. You are advised to keep a brief record of what assessment you did, as your licensing authority may want to see it. Your licensing authority may also provide a template legionella risk assessment form which you can use to complete your assessment.

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<sup>14</sup> Paragraph 18 of schedule 3 of the Licensing Order.

<sup>15</sup> Paragraph 8 of schedule 3 of the Licensing Order.

<sup>16</sup> Paragraph 9 of schedule 3 of the Licensing Order.

2.38. You can find out more on the [Health and Safety Executive webpage on legionella and landlords' responsibilities](#)

## **Safety**

2.39. Generally, you must take all reasonable steps to ensure the premises is safe for residential use<sup>17</sup>. The Licensing Order and this guidance cannot anticipate every circumstance. Safety may be checked by a suitably qualified council official, such as an Environmental Health Officer. They will tailor any inspections they carry out to the particular circumstances of your premises.

### ***The repairing standard for houses and flats***<sup>18</sup>

***Where your premises is a dwellinghouse, you must ensure that the premises meet the repairing standard.***

2.40. The [repairing standard](#) requires:

- your premises to be wind and water tight and in all other respects reasonably fit for people to live in;
- the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order;
- installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order;
- any fixtures, fittings and appliances that you provide for guests must be in a reasonable state of repair and in proper working order;
- any furnishings that you provide for guests must be capable of being used safely for the purpose for which they are designed;
- the premises must have a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire;
- the premises must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- the premises must meet the statutory [tolerable standard](#).

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<sup>17</sup> Paragraph 10 of schedule 3 of the Licensing Order.

<sup>18</sup> Paragraph 10(2) of schedule 3 of the Licensing Order, which applies the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

- 2.41. The Tolerable Standard is the minimum standard for all housing, and a home which falls below this standard is considered to be unfit for human habitation.
- 2.42. The Repairing Standard is higher (and all housing which meets the Repairing Standard must meet the Tolerable Standard). Private residential tenancies and HMOs are also required to meet the requirements of the Repairing Standard.
- 2.43. If you are using a dwellinghouse for secondary letting, you must have a valid EPC certificate issued within the last 10 years. Note that you can be fined for failing to hold a valid EPC certificate for your premises under building standards legislation<sup>19</sup>. Guidance on EPC requirements for holiday lets can be found here: [Energy Performance Certificates for Holiday Lets: guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot/energy-performance-certificates-for-holiday-lets-guidance) If you have bought your property recently, you may wish to refer to the Home Report for the property. EPC's are typically included within Home Reports.

### **Maximum occupancy<sup>20</sup>**

*You must ensure that the number of guests residing in the premises does not exceed the number specified in the licence.*

- 2.44. You should state in your application how many guests you would like to accommodate. Check with your licensing authority as it may publish criteria on maximum occupancy to help you work this out for your premises.
- 2.45. The licensing authority will want to consider the number of beds, bedrooms, size of the premises and means of escape. It may wish to visit your premises or ask to see floor plans.
- 2.46. Your licensing authority may specify on your licence that your guests may bring a certain number of small children and these would not count towards the occupancy of the premises. Children above the age limit specified on your licence and any additional children of any age would count towards the occupancy.
- 2.47. Your licensing authority will consider the facts and circumstances of your application and determine the maximum number of guests you can accommodate (and your licence will state this).
- 2.48. However, the licensing authority may also consider:

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<sup>19</sup> The Energy Performance of Buildings (Scotland) Regulations 2008. See [Energy Performance Certificates: introduction - gov.scot \(www.gov.scot\)](http://www.gov.scot/energy-performance-certificates-introduction).

<sup>20</sup> Paragraph 11 of schedule 3 of the Licensing Order.

- a) the maximum number that can be accommodated safely; and
- b) the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours.

2.49. If they grant your application, they will normally set the lowest number out of: the number you asked for; the maximum safe number; and the maximum tolerable number.

### ***Insurance for buildings and public liability<sup>21</sup>***

*You must, for the duration of the licence, ensure there is in place for the premises—*  
*(a) valid buildings insurance, and*  
*(b) valid public liability insurance for the duration of each short-term let agreement .*

2.50. This condition is important to protect your interests, those of the owner of your premises, neighbours and guests, should any accident, damage or injury occur. You must make sure that insurance cover remains in place for the duration of each short-term let agreement.

2.51. The buildings insurance must cover the short-term let activity but this could be through your own insurance policy or through a shared policy covering the premises (e.g. for an apartment block) or insurance taken out by the owner.

### ***Payment of fees<sup>22</sup>***

*You must pay any fees due to the licensing authority in respect of the licence on demand.*

2.52. Your application will not be considered unless you pay the relevant fee. Your licence will also not be renewed if you do not pay the appropriate renewal fee. Some licensing authorities might allow fees to be paid in instalments and your licence might be suspended or revoked if you do not keep up with your payments.

### ***False or misleading information<sup>23</sup>***

*You must not provide any false or misleading information to your licensing authority.*

<sup>21</sup> Paragraph 15 of schedule 3 of the Licensing Order.

<sup>22</sup> Paragraph 16 of schedule 3 of the Licensing Order.

<sup>23</sup> Paragraph 16 of schedule 3 of the Licensing Order.

2.53. You must provide all relevant information and be honest in your application and subsequent communications with the licensing authority, for example when:

- your licensing authority asks you about your short-term let activity;
- your licensing authority visits your premises;
- you make a request of the licensing authority to change the terms of your licence; or
- you apply to renew your licence.

2.54. You should provide relevant information about the (anticipated) use of private outdoor facilities, communal areas and communal outdoor facilities, as these can be places of particular concern to residents and neighbours.

2.55. It is an offence to provide false or misleading information to your licensing authority. They could suspend or revoke your licence. You might also have to pay a fine, currently up to £2,500.

### **(e) Additional conditions**

2.56. Before you apply, check the licensing authority's website to find out whether additional licence conditions may be applied to your licence<sup>24</sup>. These conditions may be specific to you, apply to you and others in similar circumstances or apply to everyone in the licensing authority's area. They might do this is because of particular local circumstances or because there is something special or unusual about your premises.

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<sup>24</sup> These are called standard conditions in section 3B of the 1982 Act.

### **3. Making an application for a licence**

#### **(a) Overview**

- 3.1. For each premises, you need to decide whether you are applying for:
- a) a licence for home sharing;
  - b) a licence for home letting
  - c) a licence for home sharing and home letting; or
  - d) a licence for secondary letting.
- 3.2. This is because your licensing authority will only grant one type of licence per premises and may treat these applications differently, for example in terms of fees payable or if your premises is in a control area.

#### **(b) Application checklist**

- 3.3. The checklist at Annex B may support you in preparing your application, however, please view the licensing authority's website to check any additional points (e.g. around fees and additional conditions) specific to that authority that may apply.
- 3.4. Your licensing authority website will have a copy of the application form and instructions about how to complete and submit it.
- 3.5. Your application will be considered incomplete and returned to you if you do not include all the information requested.

#### **(c) Who should be named on the application**

##### ***Hosts and operators***

- 3.6. You, as the host or operator, should be named on the application form.

##### ***Owners***

- 3.7. The owner(s) of the premises should be named on the application form.
- 3.8. Where accommodation or premises is jointly owned, all owners must be named on the application form.
- 3.9. Where accommodation or premises is owned by a business, for example as part of a portfolio, all company directors, partners, or other persons responsible for its management must be named on the application form.



### ***Day-to-day management***

- 3.10. Any people that you are asking to carry out the day-to-day management of your accommodation should be named on your application. For example, this might be a spouse, a friend or someone you employ.
- 3.11. If you have a letting agency to manage your accommodation, then your application form should name the directors, partners or others responsible for the letting agency. However, the employees of the agency do not need to be named.
- 3.12. You should not name everyone with any involvement in your arrangements. For example, cleaners and others who enter the premises are not to be named on your application for that reason alone.
- 3.13. After the licence is granted, you may decide to make different arrangements for the day-to-day management of your premises (such as passing responsibility for the day-to-day management to a letting agency) but you must first notify and obtain the approval of your licensing authority.
- 3.14. If you want to appoint a new agent or day-to-day manager of your premises, you should contact your licensing authority to find out how to make that change.

### **(d) Owners' consent**

- 3.15. Where accommodation is owned by multiple owners either of the following will be required:
  - a) a declaration from each other owner, or each owner, that they consent to the application, or
  - b) a declaration from a person who is authorised to act on behalf of all the owners.

### **(e) Fit and proper person test**

- 3.16. Everybody named on the application form will be subject to the fit and proper person test.
- 3.17. Licensing authorities are responsible for determining whether you are a fit and proper person to offer property for short-term lets in their area. Your licensing authority is likely to take account of the following:
  - a) relevant criminal convictions and other relevant information from the police;

- b) being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past;
  - c) having had a licence for short-term lets or House in Multiple Occupation (HMO) revoked by any licensing authority;
  - d) having had an application for a short-term lets licence refused by any licensing authority; and
  - e) providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.
- 3.18. Licensing authorities can also consider any other information they consider to be relevant. They will liaise with the police for information as appropriate. They have powers to request additional information, or make reasonable enquiries, for example to verify the details of all property owners.
- 3.19. The purpose of collecting this information is to assess the fitness of applicants and any agents (or day-to-day managers) to be involved in providing property for short-term lets.
- 3.20. The purpose of these checks is to: protect neighbours, guests and other people from harm and crime; and to assist the police in law enforcement.
- 3.21. Your application will be refused by your licensing authority if, in their opinion, you (or your agent) are not a fit and proper person to have a licence<sup>25</sup>.

### **(f) Duration of your licence**

- 3.22. The maximum duration for your first licence is 3 years. When you apply to renew your licence, your licensing authority could grant it for a longer period. Your licensing authority may grant licences of different durations to different hosts and operators. The reason for this should be set out in the licensing authority's policy.
- 3.23. Different licensing authorities may have different policies and you should check your licensing authorities website for more information.

### **(g) Fees**

- 3.24. You will need to pay a fee with your application. The exact fee that you need to pay may depend on a number of factors e.g. how many guests you want to accommodate or the number of bedrooms in your property. Your licensing

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<sup>25</sup> Paragraph 5(3)(a)(ii) of Schedule 1 to the 1982 Act.

authority's website will have information on the fees they charge and the methods of payment they accept.

- 3.25. If you have premises in more than one licensing authority area, the fees you pay may be different, even for a similarly sized property.
- 3.26. If your application is refused, your fee will not be refunded. However, you may receive a partial refund.
- 3.27. If your licensing authority chooses to refuse to consider your application because you need to get planning permission first, they will tell you about this within seven days of making that decision. You will be able to resubmit your licensing application without paying any further fee provided you do this within 28 days of planning permission being granted.

## **4. How your licensing application will be determined**

### **(a) Relevant considerations**

- 4.1. Before considering your application in detail, your licensing authority will consider it in the context of their licensing and planning policies, including:
  - their local development plan;
  - their policy on planning control.
- 4.2. Your licensing authority may refuse to consider your application if they consider it would be a breach of planning control. If your licensing authority refuses to consider your application for this reason, they must tell you within seven days and explain why they are refusing to consider the application.
- 4.3. If your application proceeds to consideration, your licensing authority will look at the following information in assessing your application:
  - whether the people named on your application are fit and proper persons to be involved in providing short-term lets;
  - evidence that you are compliant (or can secure compliance) with the mandatory conditions;
  - whether any additional conditions would be attached to your licence; and
  - any competent objections received, see below.

### **(b) Confirming the facts of your application**

- 4.4. As part of considering your application, your licensing authority will want to check that you and your premises are compliant with the mandatory conditions. They might do this through one or a combination of:
  - a visit to your premises;
  - asking to see relevant documentation; or
  - asking you to declare that you have met the conditions.
- 4.5. Your licensing authority will check some information with Police Scotland and the Scottish Fire and Rescue Service.
- 4.6. The Scottish Government expects licensing authorities will take a risk-based approach to assessing applications for a licence. Premises may be visited as

part of the application process but this may not always be the case. You will not be charged any extra if your premises is visited.

### **(c) Notifying neighbours**

- 4.7. You must notify your neighbours about your application for a new licence, and again when you apply to renew a licence. In order to comply with this requirement you will need to display a site notice at or near your premises, so it can be conveniently read by the public.
- 4.8. The site notice must state the following:
- an application has been made for a licence;
  - various details including the type of licence applied for, name and address of the applicant and any agents, address of the premises; and
  - details on how to make objections and representations.
- 4.9. The site notice should be displayed for 21 days from the date your licence application was submitted to your licensing authority.
- 4.10. Once your site notice has been displayed for 21 days you will be required to send a certificate to your licensing authority confirming you have complied. You may wish to consider submitting evidence to demonstrate compliance, such as a time stamped photograph of the site notice in-situ.
- 4.11. We have prepared a template site notice and certificate of compliance forms in Annex C. Your licensing authority may also have template site notice and certificate of compliance forms which you can use.

### **(d) Handling objections**

- 4.12. Objections may be made by neighbours or any other person who wants to raise an objection.
- 4.13. The primary purpose of the licensing scheme is to ensure short-term lets are safe and take account of local needs and circumstances. Competent grounds for objection to a licensing application may include:
- concerns that the application is inaccurate or misleading;
  - concerns about the safety of guests, neighbours or others;
  - concerns about noise or nuisance; and

- concerns that the application runs contrary to other legal or contractual requirements.
- 4.14. Invalid grounds for objection could include not liking you or not liking short-term lets in general.
- 4.15. Where the objection does not relate to grounds for refusal, these can be disregarded by a licensing authority. They are likely to be disregarded if they relate to another process, for example, an objection to a licensing application on planning grounds.
- 4.16. Your licensing authority will consider any objection which:
- is made in writing;
  - specifies the grounds of the objection, or nature of the representation;
  - specifies the name and address of the person making it; and
  - is signed by the objector, or on their behalf.
- 4.17. Objections should be made within 28 days of public notice of the application being given. Your licensing authority will send you a copy of any relevant objections. You will have the chance to respond to any objections, either in writing or in person.
- 4.18. Your licensing authority will decide whether or not to hold a hearing in respect of an application. It does not have to do so and you cannot challenge its decision to hold a hearing or not, although you can appeal their decision on your application. If the authority does not hold a hearing, they will give you at least seven days to give your views in writing on all the objections received. It is for the licensing authority to determine whether any objection received has a material impact upon the licensing application.

### **(e) The licensing committee**

- 4.19. Where the licensing authority decides to hold a hearing this will be at a meeting of the licensing committee. The licensing committee comprises a number of local councillors who consider licensing applications for a range of purposes such as alcohol and taxis, as well as short-term lets. The licensing committee is likely to consider many licensing applications in one sitting.
- 4.20. If your application goes to the licensing committee, you, and any person who has made an objection, will be given the opportunity to be heard at the meeting of the licensing committee. Your licensing authority will give you, and

any objectors, at least 14 days' notice of the hearing date. The meeting will be held in public, so other members of the public can observe the proceedings.

- 4.21. Objectors will be invited to speak to their objections, and you will be invited to state why your application should be granted.
- 4.22. Members of the committee may follow up with questions, ahead of deciding whether or not to grant your application. The decision and voting may take place in public or the committee may retire to consider and decide the applications.

### **(f) Determining your application**

4.23. Your licensing authority must grant your application unless there are grounds to refuse it. Possible grounds for refusing your application may include<sup>26</sup>:

- anybody named on your application is disqualified from having a short-term lets licence<sup>27</sup>;
- anybody named on your application is not a fit and proper person;
- some other person is benefiting from the activity who would be refused a licence if they made the application themselves;
- the premises are not suitable or convenient having regard to—
  - a) the location, character or condition of the premises;
  - b) the nature and extent of the proposed activity;
  - c) the kind of persons likely to be in the premises;
  - d) the possibility of undue public nuisance; or
  - e) public order or public safety; or
- there is other good reason for refusing the application (this cannot be applied in a blanket fashion without considering the merits of a particular application).
- you cannot demonstrate, or secure, compliance of the mandatory licence conditions

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<sup>26</sup> Set out in paragraph 5(3) of schedule 1 to the 1982 Act.

<sup>27</sup> Under section 7(6) of the 1982 Act.

- you cannot secure compliance with any other conditions the licensing authority seek to apply in respect of your application.

## **(g) Timescales for determination**

- 4.24. Existing hosts who make an application before 1 April 2023 can continue operating whilst their application is being determined<sup>28</sup>. Licensing authorities have 12 months to determine these applications, beginning with the date on which the application was made. This extension, to the time limit for determining an initial application, is designed to help them manage the volume of applications they will receive.
- 4.25. In all other cases, licensing authorities have 9 months from the date on which the application was made to consider and determine each application.
- 4.26. If your licensing authority fails to determine your application within the timescales set out above, your licence will be deemed to have been granted, unless the licensing authority has been granted an extension by the court. If your licence were deemed to be granted, it would be valid for one year. The mandatory licence conditions that apply to all short-term lets would also apply to the deemed grant of a licence.

## **(h) Your rights of appeal**

- 4.27. You can appeal against your licensing authority's decision<sup>29</sup> by [summary application](#) to the sheriff. A Summary Application is made by initial writ and a style can be accessed here ([Form 1](#)). You may wish to familiarise yourself with the relevant [Summary Application Rules](#). You may also wish to seek advice and can contact your local [Citizens Advice Bureau](#) or you can get contact details for solicitors from the [Law Society of Scotland](#). Sheriff clerk staff cannot give you legal advice in respect of your appeal.
- 4.28. You have to appeal within 28 days from the date of the licensing authority's decision, unless you have a good reason for being late. The sheriff can decide whether to consider a late application for an appeal.
- 4.29. The sheriff may uphold your appeal only if he considers that the licensing authority, in arriving at their decision –
- erred in law;
  - based their decision on any incorrect material fact;

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<sup>28</sup> Article 6 of the Licensing Order.

<sup>29</sup> The appeals process is set out in paragraph 18 of schedule 1 to the 1982 Act.



- acted contrary to natural justice; or
- exercised their discretion in an unreasonable manner.

4.30. If the sheriff upholds your appeal, the sheriff may either ask the licensing authority to reconsider their decision or change the decision of the licensing authority.

### ***How much does an appeal cost?***

4.31. You will have to pay any solicitor that you instruct to help you as well as [court fees](#) for lodging the initial writ. Additionally, the sheriff may make an order for one or other party to pay the other party's costs. For example, the licensing authority may have to pay your costs in making the appeal if the sheriff finds that they acted unreasonably in making their decision. You may be entitled to an exemption from paying court fees depending on your circumstances.

### **(i) Time limit on reapplying**

4.32. If your application for a licence is refused, you cannot reapply for a licence within one year of that decision, unless there has been a material change in your circumstances since then. You may be asked by your licensing authority to provide a covering letter setting out any material changes that have occurred alongside any new application made within one year of the decision to refuse your licence.

### **(j) How your data will be managed**

4.33. Licensing authorities are responsible for ensuring compliance with UK General Data Protection Regulations, as data controllers and for the storage, handling and disposal of all data related to licence applications they receive.

4.34. Certain personal data will be shared, for specific purposes, as follows:

- Within and between local authorities, Scottish Fire and Rescue Service and Police Scotland as part of the notification process in order to carry out background checks.
- Published in public registers of licences (by each licensing authority).
- Quarterly submissions to Scottish Government, so that data on licences from each local authority can be amalgamated at a national level, and to review against policy objectives. No personal data will be published in Scottish Government reports on short-term letting activity.

- 4.35. Further details on data processing can be found in the Data Protection Impact Assessment (DPIA) in the [2020 consultation report](#). Information about the processing of personal data is set out section C of the DPIA.
- 4.36. The following **personal** information will be published in the register:
- Names and registered offices (where an application is made on behalf of a company / corporate body only).
  - Names of any day-to-day managers
  - The address of your premises (including postcode and Unique Reference Number (URN) ).
- 4.37. Other information about your short-term let will also be published in the register, including the type of short-term let you operate, and maximum number of guests permitted to reside on the premises.
- 4.38. The following **personal** information from your application or from Police Scotland background checks will be retained:
- Your contact details
  - The contact details of other people named on your application form
  - Date and place of birth (for all applicants, and any agent(s))
  - Unspent convictions involving: fraud and dishonesty; violence; drugs; firearms; and sexual offences.

***How long will my data be stored for?***

- 4.39. Your licensing authority must not keep your personal data for longer than needed and is responsible for storing your data, then disposing of it when it is no longer needed. Your personal information will only be held for as long as it is necessary for the effective administration of the licensing scheme.

## 5. Responsibilities upon obtaining a licence

### (a) Information to be displayed<sup>30</sup>

*You must make the following information available within the premises in a place where it is accessible to all guests—*

- a) a certified copy of the licence and the licence conditions,*
- b) fire, gas and electrical safety information,*
- c) details of how to summon the assistance of emergency services,*
- d) a copy of the gas safety report,*
- e) a copy of the Electrical Installation Condition Report, and*
- f) a copy of the Portable Appliance Testing Report.*

- 5.1. How you do this is up to you. You might display the information on a notice board or in a folder containing details about the premises. The important point is that guests can access it easily. You may also wish to consider providing digital copies alongside booking confirmation.

### (b) Listings to include licence number, maximum occupancy and EPC rating<sup>31</sup>

*You must ensure that any listing or advert (whether electronic or otherwise) for your premises includes—*

- a) the licence number,*
- b) the maximum number of guests permitted to reside in the premises, and*
- c) a valid Energy Performance Certificate rating, if you are required to have one for the premises.*

- 5.2. Where you have a licence, you must display your licence number on any listing or advert. Displaying your licence number will help guests to know that the accommodation meets the standards of the licensing scheme.
- 5.3. Where you have electronic listings or adverts, for example on your own website or on a platform, you should update your listing or advert as soon as reasonably practicable after receiving your licence.
- 5.4. Licensing authorities and letting agencies (platforms) will conduct checks to ensure that licence numbers on listings and adverts are genuine and that these requirements are complied with.

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<sup>30</sup> Paragraph 11 of schedule 3 of the Licensing Order.

<sup>31</sup> Paragraph 13 of schedule 3 of the Licensing Order.

- 5.5. You should be clear on any advert or listing, and in your booking terms and conditions, on the maximum number of guests that you can accommodate under the terms of your licence.
- 5.6. You must display your EPC rating where you are required to have a valid EPC certificate. This will give your guests an idea about the energy performance of your property and also an indication of how costly the property is to heat, if they have to pay for it.
- 5.7. Listings only need to display the EPC rating, not the full certificate. However, licensing authorities may wish to request a copy of the certificate as part of the licence application verification process. Note that you can be fined for failing to display an EPC rating for your premises on listings under existing building standards legislation.
- 5.8. If your application has been refused or your licence has been revoked, as soon as you are notified, you should take down any adverts or listings for your property. Using your property for short-term lets would be an offence (operating without a licence) and your adverts or listings could be perceived or used as evidence of your intention to break the law.

## **6. Staying compliant**

### **(a) Complying with licence conditions**

- 6.1. You are responsible for ensuring that your short-term let activity complies with the mandatory conditions and any additional conditions which your licensing authority attaches to your licence.
- 6.2. It is important to remember that you will need to take further action in the course of your licence, for example making sure that annual and other regular checks are undertaken. You are also responsible for taking all reasonable steps to ensure that your guests comply with your licence conditions.
- 6.3. Failure to maintain the mandatory conditions would be a breach of your licence conditions and you could be fined or lose your licence(s) if you do so. It is important that you keep evidence of how you have complied with the conditions, for example records of safety checks and service visits.

#### ***Maintaining standards***

- 6.4. You should make sure that you are alert to changes in standards through legislation or guidance that will from time to time occur. Signing up to communications from professional or trade bodies can help to alert you.

#### ***Taking property out of service***

- 6.5. Sometimes, it will be necessary to take some of your accommodation out of service because it has become unsafe (or otherwise does not comply with your licence conditions). This may be because:
  - a guest has caused damage;
  - a fire has occurred; or
  - you are carrying out work which makes (that part of) the property unsafe whilst the work is carried out.
- 6.6. Depending on the nature of the issue, it may mean that one of your guest bedrooms or your whole premises cannot be used. Where you have several lets on one premises (e.g. yurts in a field), you may have taken one out of service but the remainder may be usable.
- 6.7. You can continue to let (parts of) the accommodation which comply with your licence conditions but it would be an offence (failing to comply with licence conditions) to let accommodation which had become (temporarily) unsafe.

## ***Preventing antisocial behaviour***

6.8. You may find that some of your guests get involved with antisocial behaviour in or around your premises, affecting neighbours and local community. Antisocial behaviour legislation defines it for these purposes as:

*“A person engages in antisocial behaviour if the person:*

- a) acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance; or*
- b) pursues a course of conduct that causes or is likely to cause alarm, distress, nuisance or annoyance, to a person residing in, visiting or otherwise engaging in lawful activity at, or in the locality of, a relevant house.”*

6.9. You might want to consider the following measures:

- setting clear standards so your guests are aware of what might be antisocial in Scotland and in your particular premises (for example this can vary between cultures and some premises may be distinctive);
- investigating any complaints from neighbours;
- taking action to advise and warn guests (for example, on reducing noise nuisance);
- enforcing the terms of your booking, for example non-refund of a deposit for failing to comply with it;
- terminating a short-term let early; and, in the worst case,
- involving the police (e.g. to tackle drunken aggressive behaviour).

6.10. You might want to keep a record of the measures you took as this might help you demonstrate that you remain a fit and proper person to provide short-term lets.

## **(b) Requesting changes to your licence**

6.11. You might want to change the way you provide short-term lets. For example, you might want to:

- change your letting agency or property management company;
- make physical alterations to the premises;

- increase the number of guests at your premises; or
  - increase the number of rooms you want to use for guests.
  - or your personal details might change.
- 6.12. You must notify your licensing authority of any significant changes relevant to your licence. Some changes will require the licensing authority's approval before they can happen. It is an offence to fail to notify or seek approval of significant changes. If you are unsure whether your (proposed) changes require notification or approval, please contact your licensing authority for advice and confirmation of whether a fee will be payable.

### ***Selling your premises***

- 6.13. Your licence is specific to you (whether as a person or a company) and your accommodation. This means you cannot simply hand your licence over to someone else, even if that person has purchased the accommodation from you and wants to carry on providing short-term lets.
- 6.14. Where you are selling your premises to someone who will use that premises for a different purpose, you should advise your licensing authority that you want to surrender your licence (see below).
- 6.15. In some circumstances, the purchaser may wish to continue providing short-term lets. This could arise where:
- you are selling your own home and had a licence to use it for home letting or home sharing; or
  - you are selling premises which are not your own home and had a licence to use that premises for secondary letting.
- 6.16. In all cases, the purchaser will need to make a fresh licence application. It is important that the purchaser understands that the licensing authority will consider their application on its merits in accordance with their policies at that time. There should be no presumption that the purchaser's application for a licence would be granted.
- 6.17. Where a licensing authority wanted to support the purchaser in continuing to provide short-term lets without significant delay, the licensing authority could grant the purchaser a temporary licence pending consideration of their licence application.

### **(c) Visits to your premises**

- 6.18. Your licensing authority can choose to visit your premises and inspect both the premises and any records associated with the conditions attached to the licence. They are not obliged to visit your premises.
- 6.19. They may visit: as part of considering your application; as part of a routine pattern of inspection; because a complaint has been made by a guest or neighbour; or to follow-up on a previous visit to confirm that an issue has been resolved.
- 6.20. Your licensing authority must give a reasonable period of notice to you (or your agent) ahead of a routine visit.
- 6.21. You will not be charged a fee for a routine visit. However, you may be charged if a (follow-up) visit is necessary because you have breached one of your licence conditions.
- 6.22. Your licensing authority can make unannounced inspections as a way of ensuring licence terms and conditions are adhered to at all times. An unannounced inspection may be the only way of proving (or disproving) a violation of some licensing conditions (e.g. occupancy). Licensing authorities can enter your premises forcibly if necessary, but would only do so in very unusual circumstances.
- 6.23. Where a visit raises concerns, your licensing authority can require you to take action to put it right. This will usually be done by serving an enforcement notice (“non-compliance” or “improvement” notice). Such notices are likely to specify a date or date(s) by which you should put things right. If you do not take satisfactory action in time, your licensing authority could vary, suspend or revoke your licence.

### **(d) Suspensions and revocations**

- 6.24. Your licensing authority has the power to suspend or revoke your licence. These are serious steps which are only likely to be taken when you have been given the chance to put things right and failed to do so and/or your guests are at serious risk of harm.
- 6.25. In considering whether to suspend your licence, your licensing authority may make such reasonable enquiries as they think fit. Before making a decision on whether or not to suspend your licence, your licensing authority will consult with Police Scotland and the Scottish Fire and Rescue Service.
- 6.26. Your licence may be suspended whilst the licensing authority considers whether or not to revoke your licence. If your licence is revoked, you will not



be able to make a further application in respect of that premises within one year of the date of revocation.

### **(e) Renewing your licence**

- 6.27. If you want to continue to provide short-term lets after the end of your licence period, you will need to make an application for renewal of your licence before your licence expires. Your licensing authority will set out details of how you should go about this and provide a renewal application form.
- 6.28. You can apply to renew your licence at any time before it expires. If your licence expires before your renewal application is determined, you can continue to use your property to provide short-term lets until your renewal application is determined<sup>32</sup>.
- 6.29. If your licence lapses before you apply, then any subsequent application would be treated as a new application rather than a renewal.
- 6.30. An application for renewal comprises licensing authorities satisfying themselves that:
- a) the matters set out in the application form or previous renewal are still correct and notification of any changes (e.g. around contact details etc.); and
  - b) the applicant remains a fit and proper person;
- 6.31. the premises remains in compliance with the licence conditions. Licensing authorities will also consider any request to make any changes to the terms of the licence.
- 6.32. In common with the application stage, you will be required to display a site notice when you apply for a renewal.
- 6.33. If you request changes to the terms of your licence, then your licensing authority will consider these changes in a similar way as they would for an initial application.
- 6.34. Your licensing authority is likely to charge a fee for a renewal application (unless they operate a subscription model with regular fee payments). The fee may be different to the fee you were charged when you applied previously.
- 6.35. Your licensing authority can change the additional licence conditions attached to your licence at renewal, adding or removing any conditions.

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<sup>32</sup> Paragraph 8(5) and (6) of schedule 1 to the 1982 Act.

- 6.36. Your licensing authority can grant licence periods of longer than three years on a renewal application. They may do this where a property has been used for short-term lets with no issues or complaints during the initial licence period.
- 6.37. Licensing authorities will normally approve licence renewal applications where there has been no change in circumstance since the previous application. Remember that a change of circumstances may arise from your activity or premises or from a change in your licensing authority's policies. If your licensing authority does not renew your licence, then you will have a right of appeal.

### **(f) Surrendering your licence**

- 6.38. You can surrender your licence to the licensing authority at any time when you no longer want to use your property to provide short-term lets.

## 7. Glossary of terms

7.1. In this guidance, the following terms are used. Please note that this is not a complete list of terms used and defined in the Licensing Order<sup>33</sup>:

<b>“the 1982 Act”</b>	means the <a href="#">Civic Government (Scotland) Act 1982</a> ;
<b>“the Control Area Regulations”</b>	mean the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 ( <a href="#">SSI 2021/154</a> );
<b>“accommodation”</b>	means any building or structure, or any part of the building or structure, and includes rooms in a home, a whole home or something more unusual like a yurt or a treehouse;
<b>“control area”</b>	means a short-term let control area designated following the process set out in the Control Area Regulations;
<b>“dwellinghouse”</b>	means, for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) such as a house, flat, cottage etc.;
<b>“existing host”</b>	means a host or operator who has used their premises to provide short-term lets before 1 October 2022 and who will apply for a licence to continue the same use;
<b>“guest”</b>	means a person occupying property for the purposes of a short-term let;
<b>“home letting”</b>	means using all or part of your own home for short-term lets whilst you are absent;
<b>“home sharing”</b>	means using all or part of your own home for short-term lets whilst you are there;
<b>“host” or “operator” or “you”</b>	means a person or company providing property for short-term letting, including commercial landlords (note that the host

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<sup>33</sup> The Licensing Order defines many types of property that are excluded from the licensing scheme, for example.

	may not be the owner or person who lives at the property);
<b>“letting agency”</b>	means an organisation which facilitates the agreement between the host or operator and the guest for use of the property as a short-term let and which may additionally provide other services (marketing, bookings, queries, cleaning etc.);
<b>“licensing authority”</b>	means an authority responsible for running the licensing scheme, usually a council;
<b>“mandatory conditions”</b>	means conditions which licensing authorities must apply across Scotland;
<b>“neighbour”</b>	means, for our purposes, someone whose permanent residence is in close enough proximity to a short-term let to have a legitimate interest in its business, e.g. potentially affected by safety, noise, litter, nuisance;
<b>“[your] own home”</b>	means [your] only or principal place of residence, the place where you normally live;
<b>“platform”</b>	means an online letting agency;
<b>“premises”</b>	means the property and land on one site, normally premises have their own postal address;
<b>“secondary letting”</b>	means a short-term let involving the letting of property where you do not normally live, for example a second home;
<b>“short-term let of a property”</b>	means the entering of an agreement between a guest and a host in the course of business for the use of the property as residential accommodation by a guest in circumstances set out in Annex A <sup>34</sup> ;

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<sup>34</sup> Properly defined at article 3 of the Licensing Order.

## Annex A

### 8. What is a short-term let

#### Introduction

- 8.1. If you are providing anyone with residential accommodation anywhere in Scotland, then you might be providing short-term lets.
- 8.2. In this guidance, accommodation means any building or structure that you are letting out for residential use or any part of the building or structure. It may be rooms in your home, a whole house or something more unusual like a yurt or a treehouse.
- 8.3. You need a licence for each premises in which you let out accommodation. Premises means accommodation and land on one site; normally premises have their own postal address. So, for example, two neighbouring cottages are likely to be separate premises (each will require a licence), whereas 15 yurts in one field are likely to be counted as one premises (requiring one licence in total).
- 8.4. For a self-catering cottage, the accommodation and the premises are one and the same. If you are letting out two rooms in your own home, both are classed as accommodation (assuming they can be let out separately) and the whole home is the premises. This distinction is important as some licence conditions will apply to the premises and others just to the accommodation.
- 8.5. In this guidance, your own home means your only or principal home (the place where you normally live).

#### Exclusions

- 8.6. The legislation does set out some exclusions, these are:
  - a) **Licensed accommodation**, under the Licensing (Scotland) Act 2005 where the provision of accommodation is an activity listed in the operating plan, or which otherwise requires a licence for use for hire for overnight stays. If you operate a restaurant with rooms or an inn, for example, which is already licensed specifically to offer accommodation then you are not providing short-term lets. Many hotels are licensed under the 2005 Act and would be excluded. If you provide licensed caravans<sup>35</sup>, you are not providing short-term lets. However, if you have an HMO licence for your property, you would still need a short-term lets licence if it is also to be

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<sup>35</sup> Under the Caravan Sites and Control of Development Act 1960. The Housing (Scotland) Act 2014 inserted a new Part 1A into the 1960 Act creating a new licensing system for relevant permanent sites.

used for short-term lets<sup>36</sup>. This is the case whether or not you live at the premises covered by your HMO licence.

- b) **Accommodation provided by your guests**, for example where they bring their own tent (as opposed to glamping where the tent is normally fixed and provided by the host).
- c) **Mobile accommodation**, which is capable of transporting your guests at the time of their stay. This would exclude, for example where you hire out canal boats or yachts. However, a previously mobile unit that had been immobilised, such as an old tractor or a caravan in a tree would not be excluded.
- d) **Hotels**, with planning consent to operate as a hotel<sup>37</sup>. Note that the majority of hotels are excluded through being licensed to provide accommodation under the Licensing (Scotland) Act 2005 (see (a) above).

8.7. The following types of more specialist types of accommodation are also excluded<sup>38</sup>:

- a) **Aparthotels**, comprising five or more serviced apartments in a residential building. (Note that serviced apartments are defined in the Licensing Order<sup>39</sup>.)
- b) **Health and care accommodation**, such as residential care homes, hospitals and nursing homes.
- c) **Educational accommodation**, such as residential schools, colleges, training centres and purpose-built student accommodation. Student halls of residence, for example, are excluded but houses and flats which are normally let to students are not excluded.
- d) **Secure residential accommodation**, including prisons, young offenders institutions, detention centres, secure training centres, custody centres, short-term holding centres, secure hospitals, secure local authority accommodation or military barracks.
- e) **Hostels and refuges**. A hostel provides residential accommodation and food, or shared facilities to prepare it, other than in a house. Refuges

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<sup>36</sup> For example, where the property was used as an HMO for students during the academic year and for short-term lets for the summer.

<sup>37</sup> I.e. class 7 use as set out in the Town and Country Planning (Use Classes) (Scotland) Order 1997.

<sup>38</sup> Set out in Schedule 1 of the Licensing Order.

<sup>39</sup> Paragraph 3 of Schedule 1 of the Licensing Order.

include accommodation for women escaping domestic violence, for example.

- f) **Shift accommodation.** 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. This excludes accommodation provided by companies and other bodies to employees as part of a contract or to help them perform their duties. For example, caretakers or workers on an oil rig (insofar as the accommodation is within Scottish territorial waters), where shifts extend into multiple days.

8.8. Excluded property extends to property which is part of any of the above. So, for example, self-catering property in the grounds of a licensed hotel would also be excluded.

8.9. If you think any of these exclusions might apply to you, then please refer to schedule 1 of the Licensing Order and the Policy Note<sup>40</sup> for more information.

## Types of short-term let

8.10. The legislation<sup>41</sup> defines four types of short-term let as follows:

- **“home sharing”** means using all or part of your own home for short-term lets whilst you are there;
- **“home letting”** means using all or part of your own home for short-term lets whilst you are absent, for example whilst you are on holiday;
- **“secondary letting”** means the letting of property where you do not normally live, for example a second home; and
- **“home letting and home sharing”** means you operate short-term lets from your own home while you are living there and also for periods when you are absent.

## Questions to consider

8.11. The definition of a short-term let is set out in the Licensing Order and explained in the accompanying Policy Note. The following questions will guide you through the definition. You might also find it helpful to refer to the application checklist at **Annex B**.

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<sup>40</sup> [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(legislation.gov.uk\)](#)

<sup>41</sup> In paragraph 19A of schedule 1 to the 1982 Act (inserted by paragraph 14 of the Licensing Order).

### ***Have you made an arrangement in the course of business?***

- 8.12. An arrangement in the course of business will normally involve setting out some terms and conditions in a contract which your guest has accepted. An arrangement in the course of business includes taking a booking on-line or over the phone, for example. It does not matter whether your guests are staying for work or leisure purposes; the business transaction here is between you and your guest or guests.
- 8.13. However, having a friend over to stay with you would not normally be an arrangement in the course of business.
- 8.14. This agreement is included in the activity requiring a licence, as well as having the guests reside in the property. That is to say, you do not need a licence to advertise a property for short-term lets but you will, in due course, need a licence to accept bookings (making the agreement).

### ***Is it the guests' only or principal home?***

- 8.15. If you are letting out property to your guests as their only or principal home, then it is not a short-term let. For example, if you are letting out your property as a private residential tenancy then that is not a short-term let. It does not later become a short-term let, even if it is no longer their only or principal home. For example, where a tenant moves to a different place but retains the tenancy. The accommodation would no longer be the tenant's only or principal home but the tenancy can persist.
- 8.16. There are other tenancies, such as agricultural, crofting and social housing which are also likely to be the tenants' only or principal home and therefore excluded<sup>42</sup>.
- 8.17. Providing accommodation to a lodger (including refugees) in your own home (where it is the lodger's only or principal home) is also excluded.

### ***How long are your guests staying?***

- 8.18. This is not a relevant consideration in assessing whether or not you are providing short-term lets. A short-term let can be for one night or for several months. Remember that it is not a short term let where it is the guest's only or principal home.

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<sup>42</sup> See paragraph 2 of schedule 1 of the Licensing Order.



### ***Are you charging your guests?***

8.19. If you are providing your property for free, then you are not providing short-term lets. However, the following arrangements would not count as free use of the property and could potentially be a short-term let:

- where the guests do work for you or provide a service in lieu of payment and the work or service was not the principal reason for their stay (e.g. offering to mow the lawn in lieu of payment);
- where the guests provide you with goods of value in lieu of payment;
- where you suggest a donation as part of the agreement; and
- where they reciprocate (e.g. house swap).

8.20. However, a “thank you” gift provided at the initiative and discretion of the guests (as often happens when a friend comes to stay) does not count as a charge.

### ***Are your guests related to you?***

8.21. If you are letting property to immediate family<sup>43</sup>, then this is not a short-term let. Immediate family is specifically defined in the Licensing Order. It is not a short-term let if one of the guests in the let:

- a) is your partner;
- b) is your or your partner’s: parent or grandparent; child or grandchild; or brother or sister; or
- c) is the partner of one of your: parents or grandparents; children or grandchildren; or brothers or sisters.

8.22. In this definition:

- partner means spouse, civil partner or someone you live with as if you were married to them;
- children with one parent in common are to be regarded as siblings; and
- stepchildren are to be regarded as children.

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<sup>43</sup> Article 2(4) and 2(5) of the Licensing Order.

***Are your guests staying to work for you?***

- 8.23. There are some exclusions if your guests are staying principally to provide services to you or work for you or members of your household.
- 8.24. It is not a short-term let where your guests live with you for the principal purpose of providing work or services to you. For example, if you have somebody to live with you to provide you with health or personal care, this would not be a short-term let. However, this does not extend to any guests doing any work. If your guests mow the lawn to help out whilst staying, this is not the principal purpose of their stay and does not preclude it being a short-term let.
- 8.25. The same applies in respect of guests living in other premises. For example, if you provide a cottage for the use of a seasonal agricultural worker (e.g. night labourer) for the purpose of doing work for you, then this would not be a short-term let. However, this exclusion does not apply if you are providing accommodation for the guests to work for someone else.

***Are your guests staying for educational reasons?***

- 8.26. There are some exclusions if your guests are staying principally to advance their education.
- 8.27. It is not a short-term let where your guests live with you for the principal purpose of advancing their education **and** the arrangement has been made or approved by a school, college, further or higher educational institution (such as a university). This excludes students living with a family for the express purpose of improving their English, for example. The reason for excluding these arrangements is that the student is more like a family member than a guest.

***What kind of property are you offering?***

- 8.28. Broadly speaking, if you are letting property that is part or all of a home or something more unusual, it is likely to be a short-term let. However, if you are offering institutional accommodation or are otherwise regulated then it is probably not. It does not really matter what you call your property, as terms such as bed-and-breakfast and hotel are not well-defined. This guidance cannot cover every permutation – if your circumstances are unusual, you may wish to contact your licensing authority or consider getting your own legal advice.

## Annex B

### Application checklist

This list helps you check you have the relevant information to submit an application for a licence. Getting your application right first time will help you to get a decision more quickly.

Your licensing authority will set out the detail and format of any documentation that must accompany your application.

<b>Preliminary</b>	
I am providing or intend to provide short-term lets – see definition of short-term lets in Annex A.	
I know the date by which I need to apply for a licence – see paragraph 1.29.	
I know whether I can continue operating whilst my application is processed – see paragraph 1.29.	
I know which type of licence I want to apply for – see paragraph 8.10 <ul style="list-style-type: none"><li>• home letting</li><li>• home sharing</li><li>• home sharing and home letting; or</li><li>• secondary letting.</li></ul>	
I have identified my licensing authority based on the address of my premises. You can find out which local authority your property is located in by entering the postcode at the following webpage: <a href="http://www.gov.uk">Find your local council - GOV.UK (www.gov.uk)</a>	
I have checked whether my licensing authority considers applications for temporary exemptions and, if so, whether I should apply for one – see details on temporary exemptions from paragraph 1.17.	
I have checked whether my licensing authority considers applications for temporary licences and, if so, whether I should apply for one – see details on temporary licences from paragraph 1.24.	

<b>Applicants (see chapter 2)</b>	
I have identified the owners and those involved with the day-to-day management of my premises.	
I have the permission of the owners of the premises (or their representative) in writing to use it for this purpose.	
To the best of my knowledge, I and the other people I will name on my application are fit and proper persons.	
I have contact details for the people and organisations I will name on my application form.	

<b>Mandatory conditions (see chapter 2)</b>	
<b>Responsibility for the property</b>	<b>Agents</b> – I have identified those involved with the day-to-day management of my premises and know that I cannot change them without the licensing authority’s approval.
<b>General safety and standards</b>	<b>General safety</b> – I have taken all reasonable steps to ensure the property is safe for residential use.
	<b>Occupancy</b> - I know how many guests I want to accommodate and I consider that I can do this safely. I have checked what the licensing authority will need to see regarding floor plans.
	<b>Repairing standard</b> – I have worked out whether my premises is a dwellinghouse and whether the repairing standard applies to me. <i>[If relevant]</i> My premises meets the repairing standard.
	<i>[If relevant]</i> <b>EPC</b> – my premises has a valid EPC certificate issued within the last 10 years.
<b>Fire safety</b>	<b>Fire safety: premises</b> – I have installed satisfactory equipment to detect and warn against fire or suspected fire, and carbon monoxide.
	<b>Fire safety: furniture and furnishings</b> - my furniture and furnishings / furniture and furnishing guests have access to comply with fire safety regulations and I have records that demonstrate compliance.
<b>Gas safety</b>	<b>Gas safety</b> – I have an up to date Gas Safety Certificate (dated within the last 12 months).

<b>Mandatory conditions (continued)</b>		
<b>Electrical safety</b>	<b>Electrical safety</b> – I have made sure my electrical fittings and items are in good working order;	
	arranged for an <b>electrical safety inspection</b> to be carried out by a competent person;	
	obtained an <b>Electrical Installation Condition Report</b> on any fixed installations; and	
	obtained a <b>Portable Appliance Testing Report</b> on moveable appliances to which my guests have access and labelled inspected items.	
<b>Water safety</b>	<b>Water supply</b> – I have established that my premises are supplied with water by Scottish Water <b>or</b> I have established that my premises has a private water supply and I comply with the relevant regulations.	
	I have completed a <b>legionella risk assessment</b> .	
<b>Other</b>	<b>Information for guests</b> – I have prepared information for guests and know where I will put it for them on the premises.	
	<b>Planning permission</b> – I have established whether I need to submit evidence that I have planning permission (or a certificate of lawful use of development) or have made an application.	
	<b>Listings: licence number</b> – I have made plans to display my licence number on adverts and listings.	
	<i>[If relevant]</i> <b>Listings: EPC rating</b> – I have made plans to display my EPC rating on adverts and listings.	
	<b>Buildings insurance</b> – I have checked that there is valid buildings insurance in place for the premises.	
	<b>Public liability insurance</b> - I have checked that there is valid public liability insurance in place whilst my premises is let as a short-term let.	

<b>Additional conditions</b>	
I have checked whether my licensing authority has any <b>additional licence conditions</b> and I can comply with the ones that are likely to apply to me – see paragraph 2.56.	
<b>Other matters to consider</b>	
<b>Food safety</b> - I understand the food hygiene and safety rules that apply to me.	
I comply with legal requirements that relate to <b>fire safety</b> set out in the Fire (Scotland) Act 2005 – see from paragraphs 2.18.	
I have checked the <b>title deeds</b> of my premises.	
I will declare my income from my short-term let activity for <b>tax</b> purposes.	
I have checked with my <b>lender</b> that I am allowed to use my premises for this purpose.	
I am complying with <b>other legal requirements</b> that affect me, my business or my premises.	
I have considered <b>engaging with my neighbours</b>	
<b>Fees</b>	
I know the <b>fee</b> that I will be charged and I am ready to pay it with my application- see paragraph 3.24.	

## Annex C

### PUBLIC NOTICE OF APPLICATION FOR SHORT-TERM LETS LICENCE

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

New application

Renewal

Applicant name			
Applicant's address			Postcode

Has applied to ***[insert licensing authority name]*** for a Short-term lets licence.

Short-term let premises address <i>(if different from applicant's address)</i>	
Type of licence applied for	Home sharing / home letting / home sharing & home letting / secondary letting <b><i>[DELETE as appropriate]</i></b>
Day-to-day manager / agent details <i>(if different from applicant)</i>	Name:  Address:

### **Representations**

Representations about the application may be made by any member of the public.

Representations **must**:

- be in writing;
- specify the grounds of the objection or, as the case may be, the nature of the representation;
- set out the name and address of the person making it;
- must be signed by the person, or on their behalf; and
- be made within 28 days of public notice of the application being given.

Copies of any representations will be given to the applicant. If a representation is made to the Licencing Authority after this date but before a final decision is taken on the application, then the Licensing Authority may consider the late representation if it is satisfied that it was reasonable for the representation to have been made after the deadline.

Representations should be sent to: ***[Insert licensing authority contact details]***

Date application lodged / public notice given	/	/
Last date for representations	/	/

- This notice must be displayed on or near the short-term let property in a position where it can be easily read by the public.
- This notice must be displayed for a period of 21 days from the date the application was lodged with the Licensing Authority.
- After the notice has been displayed for 21 days, a certificate of compliance must be completed and the whole notice returned to the Licensing Authority at the address above, Alternatively confirmation of display can be submitted in writing and signed, together with full applicant and property details.



## CERTIFICATE OF COMPLIANCE

### SHORT-TERM LETS LICENCE – CONFIRMATION OF DISPLAY OF PUBLIC NOTICE

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

#### CONFIRMATION OF DISPLAY OF NOTICE

**This section must be completed by the applicant and the whole notice returned to the Licensing Authority at the above address at the end of the 21-day display period. Alternatively please provide confirmation of display in writing with signature, along with full applicant and property details.**

I (Full name of applicant)			
Certify that the notice of application has been displayed as prescribed above for a period of not less than 21 days from _____ ending on _____			
Applicant's signature		Date	



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