

Agenda Item	6.
Report No	HLC/072/23

THE HIGHLAND COUNCIL

Committee: Highland Licensing Committee

Date: 24 October 2023

Report Title: Short Term Let Licensing Policy

Report By: Iain Meredith, Acting Principal Solicitor

1. Purpose/Executive Summary

- 1.1 This report seeks to allow the Committee update the short term let (STL) licensing policy in accordance with changes to legislation and Scottish Government Guidance.

2. Recommendations

- 2.1 Members are asked to:
- i. Approve the changes made to the STL licensing policy as contained within appendix 1.

3. Implications

- 3.1 The Highland Licensing Committee approved the Highland Council's short term let licensing policy at its meeting of 6 September 2023. This was in accordance with the Civic Government (Scotland) Act 1982 as amended by The Civic Government Scotland Act 1982 (Licensing of Short Term Lets) Order 2022.
- 3.2 When the licensing scheme was introduced, the legislation stated that all existing host must submit an application by 1 April 2023 in order to continue operating lawfully. Subsequently this date was put back to 1 October 2023. The policy as amended within **appendix 1** is updated to reflect the changed dates within sections 2 and 13.
- 3.3 The Scottish Government has also issued guidance regarding the changes to planning requirements for STLs. While these are largely an issue for the council's planning service, they do have to be reflected within the STL licensing policy.

- 3.4 Accordingly, section 17 of the policy has been amended to reflect updated guidance, and also to provide greater clarity to prospective applicants.
- 3.5 Primarily, these changes are:
- Clarification of how a planning control area would interact with the licensing regime
 - Clarifying that planning permission may be required for all types of premises, not just dwellinghouses
 - Stating that the planning status of a property can be a material condition that the licensing authority can take into account
 - Stating that properties with a certificate of lawful use may be assessed differently to properties that have been granted planning permission
- 3.6 For comparison, the current policy can be viewed at https://www.highland.gov.uk/downloads/file/25349/short-term_lets_-_policy_statement

Date: 11 October 2023

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Background Papers: Civic Government (Scotland) Act 1982

Appendices: Appendix 1 – Updated Short Term Let Licensing Policy



Short term let licensing policy statement

Contents

Foreword

1. Background
2. Timescales for applying
3. Definitions
4. Application and notification
5. Objections and representations
6. Determination of application
7. Right of appeal
8. Licence duration and renewal
9. Licence conditions
10. Temporary exemptions
11. Temporary licences
12. Maximum occupancy
13. Compliance and enforcement
14. Variation of a licence
15. Suspension and revocation of a licence
16. Third party accreditation
17. Planning permission
18. Equality
19. Fees

Appendix 1 – Contact details

Appendix 2 – Hearing procedure

Appendix 3 – Mandatory conditions

Appendix 4 – Additional conditions

Foreword

This policy statement is the first one published by the Highland Licensing Committee.

The purpose of the policy is to provide guidance for applicants, licence holders and members of the public on the licensing system for short term lets.

Consultation on the draft policy statement took place during the period from 21 June 2022 to 5 August 2022.

A report providing details of the comments received from consultees was considered at the meeting of the Highland Licensing Committee on 6 September 2022. A copy of the report is available online at:

https://www.highland.gov.uk/meetings/meeting/4664/highland_licensing_committee

This policy statement will be reviewed and revised when necessary.

1. Background

- 1.1. On 19 January 2022, The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) was approved by the Scottish Parliament. The Order came into force on 1 March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982 (“the Act”).
- 1.2. The Order introduces a new mandatory licensing system for short term lets which local authorities are required to establish by 1 October 2022.
- 1.3. Prior to the introduction of the legislation, there was no requirement to licence short term lets and, therefore, local authorities did not have the ability to regulate these types of premises.
- 1.4. The licensing scheme was brought in by the Scottish Government with the aim to ensure short term lets are safe, address issues faced by neighbours, to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively. It also enables local authorities to ensure the people providing short term lets are suitable. The legislation aims to make sure that the economic and tourism benefits from short term lets are balanced with the needs and concerns of local communities.

2. Timescales for applying

- 2.1. From 1 October 2023, existing host and operators (those using accommodation to provide short term lets before 1 October 2022) can only continue to operate if they either have a licence, or have made an application for a licence that has yet to be determined.
- 2.2. New hosts or operators cannot lawfully operate (i.e. take bookings or receive guests) until their application has been determined and they have been granted a licence.
- 2.3. In a short term let control area, where a licence has been granted, then the holder of the licence must also ensure that either they have made an application for planning permission and which has not yet been determined under the Town and Country Planning (Scotland) Act 1997 or that planning permission under that Act is in force. Not to meet these requirements will be a breach of a Mandatory Condition 13 of the licence. More information on planning matters and the relationship, if any, with licensing, is provided in Part 17 of this policy statement.

3. Definitions

3.1. A short term let is defined in the Act as the use of residential accommodation provided by a host in the course of business to a guest, where all 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
 - a. An immediate family member of the host
 - b. 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
 - c. 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
- (f) The short term let does not constitute an excluded tenancy

Commercial consideration - this includes money and a benefit in kind (such as a provision of a service or reciprocal use of accommodation).

Guest – this means a person who occupies accommodation under a short-term let

Host – this means a person who is the owner, tenant or person otherwise in control over occupation and use of the accommodation

Immediate family member — a guest is deemed to be an immediate family member of the host if they are:

1. Your partner (spouse, civil partner or someone you live with as if you were married to them)
2. Is you or your partner's: parent or grandparent, child or grandchild or brother or sister
3. Is the partner of one of your: parents or grandparents, children or grandchildren, or brothers or sisters

Excluded accommodation – this means accommodation which is, or is part of:

- an aparthotel
- premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 Act
- a hotel which has planning permission granted for use as a hotel
- a hostel
- residential accommodation where personal care is provided to residents
- a hospital or nursing home
- a residential school, college or training centre
- 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)
- a refuge
- student accommodation,
- accommodation which otherwise requires a licence for use for hire for overnight stays
- accommodation which is provided by the guest,
- accommodation which is capable, without modification, of transporting guests to another location
- a bothy
- 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.

3.2. Please note that if you have an HMO licence for your property, you would still need a short-term let licence if it is also to be used for short-term lets. This is the case whether or not you live at the premises covered by your HMO licence.

3.3. Self-catering property in the grounds of a licensed hotel would be excluded.

Excluded tenancy – an excluded tenancy means a tenancy which falls within any of the following definitions:

- protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984)
- an assured tenancy (within the meaning of section 12 of the Housing (Scotland) 1988 Act)
- a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988)
- a tenancy of a croft (within the meaning of section 3 the Crofters (Scotland Act 1993)
- a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931(8)) applies
- a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001)
- a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001)
- a 1991 Act tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003)
- a limited duration tenancy (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003)
- a modern limited duration tenancy (within the meaning of section 5A of Agricultural Holdings (Scotland) Act 2003)
- a short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003)
- 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 Agricultural Holdings (Scotland) Act 2003)
- a private residential tenancy (within the meaning of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016)
- a student residential tenancy.

3.4. There are four types of licences for short term let accommodation. Any licence granted must be for either:

1. Secondary letting;
2. Home letting;
3. Home sharing; or
4. Home letting and home sharing

3.5. The different types of licences are defined as follows:

- **Secondary letting** – this means a short-term let involving the letting of property where you do not normally live
- **Home letting** - this means using all or part of your home for short-term lets whilst you are absent.
- **Home sharing** – this means using all or part of your own home for short-term lets whilst you are there

3.6. A separate licence is required for each of your premises. However, a single licence may be issued in respect of unconventional accommodation where there is more than one separately bookable property on the site.

3.7. Dwellinghouse means for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) such as a house, flat, cottage etc

3.8. You do not need a separate licence for short-term lets within the same dwellinghouse. For example, if you are letting out two rooms in your home, that would be covered by one licence.

3.9. Unconventional accommodation – this means residential accommodation that is not defined as a dwelling house and would include residential accommodation such as glamping pods and yurts.

4. Application and notification

- 4.1. All applicants must complete an online short term let licence application form.
- 4.2. Applicants must pay the application fee as part of the online application process.
- 4.3. Under the terms of the Act, all applicants who apply for a short-term let licence must display a notice for a period of 21 days beginning with the date on which the application was submitted to the licensing authority at or near the premises so that it can be conveniently read by the public.
- 4.4. The notice shall state that an application has been made for a licence, the main facts of the application, that objections and representations in relation to the application may be made to the licensing authority and how to make objections or representations. A template will be provided to the applicant once an application is submitted.
- 4.5. Applicants are required to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired. A template will be provided to the applicant once an application is submitted.
- 4.6. A copy of the application must be sent to Police Scotland and the Scottish Fire and Rescue Service by the local authority. A copy will also be sent to:
 - The Highland Council's Planning Department
 - The Highland Council's Building Standards Department
 - The Highland Council's Environmental Health Service
- 4.7. All personal data will be processed in line with the following privacy notices:

https://www.highland.gov.uk/directory_record/1036156/civic_government_licence

https://www.highland.gov.uk/directory_record/1036197/licensing_payments

5. Objections and representations

5.1. It is open to any member of the public to submit an objection or representation in relation to a short term let licence application.

5.2. To enable The Highland Council, as licensing authority (“the Council”) to entertain an objection or representation, it must be:

- in writing (email is sufficient)
- specify the grounds of the objection or the nature of the representation
- specify the name and address of the person making it
- be signed off by them or on their behalf
- be received by the Council within 28 days from when the notice of application is displayed

5.3. Anonymous objections or representations will not be considered.

5.4. Late objections or representations may be considered if the Council is satisfied that there is sufficient reason as to why it was not made in the time required.

5.5. The objection should be relevant to the statutory grounds that can be taken into consideration when refusing an application. These are set out in the Act:

- The applicant or anyone else detailed in the application form is not a fit and proper person to be the holder of a licence;
- The activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;
- The premises is not suitable for the conduct of the activity, having regard to:
 - The location, character or condition of the premises
 - The nature and extent of the proposed activity;
 - The kind of persons likely to be in the premises;
 - The possibility of undue public nuisance, public order; or public safety
- Where there is other good reason

5.6. It should detail clearly the reasons for the objection/representation and why the applicant and/or the premises are not suitable.

5.7. A copy of the objection or representation will be provided to the applicant and will include your name and address. All personal data will be processed in line with the following privacy notice:

https://www.highland.gov.uk/directory_record/1046990/licensing_objections_representations_and_complaints

6. Determination of application

- 6.1. Everybody named on the application form will be subject to the fit and proper test. Every application form will require consultation with Police Scotland who will carry out background checks.
- 6.2. Licensing authorities are responsible for determining whether you are a fit and proper person to be the holder of a licence for short-term lets. Consideration will be given to a wide range of information including relevant criminal convictions, other relevant information provided by Police Scotland, any previous disqualifications from being a private landlord, previous revocations of a HMO licence and providing false or misleading information in your application form.
- 6.3. If there are no objections or adverse representations to a short term let licence application, the application will be determined under delegated powers by the Principal Solicitor – Regulatory Services/Solicitor – Regulatory Services
- 6.4. If an objection or adverse representation is submitted in relation to the short term let licence application, the application will be subject to a hearing at a meeting of the Highland Licensing Committee.
- 6.5. The person submitting the objection or representation will be invited to attend the meeting of the Highland Licensing Committee and speak to their objection/representation. You will be given at least 14 days' notice of the hearing date.
- 6.6. The applicant or their representative will also be invited to attend the meeting and given the opportunity to state why the application should be granted.
- 6.7. The Committee will be able to ask questions of both parties and, thereafter, decide whether to grant or refuse the application. The grounds for refusing an application are set out at paragraph 4.5.
- 6.8. Applications will be heard in public unless required to be taken privately on the grounds of disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973
- 6.9. A copy of the Council's hearing procedure can be found at **Appendix 2**.
- 6.10. Both the applicant and the person(s) making an objection/representation can request a statement of reasons for the decision within 21 days of the date of the decision. The statement of reasons will be produced by the Principal

Solicitor – Regulatory Services/Solicitor – Regulatory Services within 10 days of that request.

- 6.11.** If your application for a licence is refused, you cannot reapply for a licence within 1 year of that decision, unless there has been a material change in your circumstances since then.

7. Right of appeal

- 7.1.** The applicant and the person(s) making an objection/representation have a right of appeal to the Sheriff Court.
- 7.2.** However, they only have this right if they have taken every opportunity to state their case to the Committee as has been made available.
- 7.3.** The Sheriff can uphold an appeal only if the sheriff considers that the licensing authority erred in law, based their determination on any incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
- 7.4.** Any appeal must be lodged by way of a summary application with the relevant Sheriff Clerk's office within 28 days of the date of the decision appealed against.
- 7.5.** Parties should seek their own independent legal advice in relation to an appeal.

8. Licence duration and renewal

- 8.1.** The duration of the licence applies from the date on which the licence comes into force. This will be specified on the licence together with the expiry date of the licence.
- 8.2.** When an application is made to renew a licence timeously, the existing licence will continue in effect until such time as a decision is made on the renewal application.
- 8.3.** A licence shall have effect-
- for a period of 3 years from the date when it comes into force; or
 - for such shorter period as the licensing authority may decide at that time when they grant; or
 - for such longer period as the licensing authority may decide at the time when they renew a short-term let licence

8.4. The Scottish Government's guidance for licensing authorities on short term lets has made it clear that licensing authorities are encouraged to renew licences for a period of 3 years, unless they have good reasons to do otherwise.

8.5. Whilst, each application will be decided on its own merits, it is not anticipated that licences will be renewed for a period of longer than 3 years.

9. Licence conditions

9.1. The Act sets out a number of mandatory licence conditions which apply to all short-term let across Scotland. A list of these conditions can be found at **Appendix 3**.

9.2. In addition to the mandatory licence conditions which apply to all short-term lets, licensing authorities may impose additional conditions. These enable the licensing authority to respond to local challenges and concerns relative to specific types of short-term letting.

9.3. There are a number of additional conditions which will apply to all short term let properties. There also some specific additional conditions which may only apply to certain types of short term let properties or to properties following investigation of concerns. A list of the additional licence conditions which may apply to your short-term let licence can be found at **Appendix 4**.

10. Temporary exemptions

10.1. The Council will not be granting temporary exemptions under any circumstances. This position will be kept under review.

11. Temporary licences

11.1. A licensing authority can also decide to grant temporary licences. These can be applied for online or by way of a paper application. Details for the application process are set out in Section 3.

11.2. Temporary licences may be granted for a duration of up to 6 weeks.

11.3. A temporary licence cannot be renewed. However, if a host or operator applies for a full licence during the period of a temporary licence, the temporary licence duration will extend until their full licence application is determined.

- 11.4. Hosts and operators that apply for a temporary licence will still have to comply with all the mandatory conditions and any additional conditions deemed applicable.
- 11.5. It is anticipated that temporary licences will be used by hosts or operators that only require a short term let for a specific event that runs for 6 weeks or less or where a host or operator wishes to trial providing a short term let.
- 11.6. The additional conditions will also apply to any temporary licences granted.

12. Maximum occupancy

- 12.1. For licensing purposes, children under the age of 2 do not count towards the maximum occupancy on any licence granted.

13. Compliance and enforcement

13.1. Unlicensed short term lets

- 13.1.1. It is a criminal offence to carry on an activity for which a licence is required without having a licence and without reasonable excuse.
- 13.1.2. The Scottish Government has set out the following timescales for hosts and operators. Please note the rules are different depending on whether you are a new host/operator or an existing host/operator:

New hosts/operators

- From 1 October 2022 you **cannot** accept bookings until you have obtained a short term let licence
- From 1 October 2022, you **cannot** operate while your short term let application is being determined

Existing hosts/operators

- Existing hosts/operators must have applied for a short term let licence by 1 October 2023, at the latest.

- If you have been trading on or before 30 September 2022, you may continue to accept bookings after 1 October 2022 but only if you have made a licence application by 1 October 2023.
- You can continue to operate for the time it takes for your licence application to be finally determined.
- A provisional licence number will be provided to you on receipt of a licence application
- By 1 July 2024 you should not be trading unless you have been granted a full licence

13.1.3. A public register will be maintained of licensed short term lets by the Council. This will allow members of the public to check the licensing status of a premises being used as a short term let.

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

13.2. Licensed short term lets

13.2.1. Hosts and operators must ensure that any advert or listing placed on or after they are granted a licence includes their licence number.

13.2.2. Hosts and operators must ensure that they comply with all the mandatory and any additional conditions on their licence. It is a criminal offence to fail to comply with a licence condition if a licence holder has not used all due diligence to prevent the offence.

13.2.3. It is also a criminal offence for a licence holder, without reasonable cause, to fail to notify the licensing authority of a material change of circumstances.

13.2.4. The Council may undertake premises site visits as part of the application process and throughout the duration of the licence to ensure compliance with licence conditions.

13.3. Complaints about licensed short term lets

13.3.1. In the first instance, guests should raise any concerns about their short term let with their host/operator or letting agent/platform. If the issue is sufficiently severe, then the Council may become involved.

13.3.2. A complaint must be relevant to the matters that the Council can take into consideration. Frivolous or vexatious complaints will not be considered.

13.3.3. The Council can consider matters relating to the suitability of the licence holder, threats to public safety or public order or whether a condition of the licence has been contravened.

13.3.4. These issues would include a host/operator exceeding the number of people staying at the premises, serious disturbance or antisocial behaviour or concerns about the maintenance and safety of the premises. These complaints can be directed to stl@highland.gov.uk

13.3.5. Please note that the Council cannot consider complaints in relation to the quality of a guest's stay or specific contractual matters between the guest and the host/operator as this is outside the scope of the licensing scheme.

13.3.6. Complaints will aim to be acknowledged within 5 working days. A full response advising you of the outcome may take some time if the complaint requires further investigation. The complaint may also need to be directed to other departments within the Council such as Planning, Environmental Health or other services such as Police Scotland or Scottish Fire and Rescue Service for input. Complainants will be kept up to date with progress if there is a delay in a full response being provided.

13.3.7. Premises site visits may be undertaken by the Council as part of an investigation into a complaint.

13.4. Enforcement

13.4.1. It is possible that some complaints may require enforcement action from the Council.

13.4.2. The Act provides for several options for enforcement action if justified. This includes additional licence conditions being attached, enforcement notices or variation, suspension or revocation of the licence or in more serious circumstance pursuing a prosecution.

13.4.3. An enforcement notice must set out the matters constituting a breach or likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.

13.4.4. If the matter is not addressed satisfactorily by the licence holder, the Council may then consider a variation, suspension or revocation of the licence.

13.4.5. 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 or for an inspection necessary due to a complaint relating to the premises, which is not deemed frivolous or vexatious (please see section 19. Fees for more details).

14. Variation of a licence

14.1. A licensing authority may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms on any grounds they think fit.

14.2. A variation application cannot, however, be used to substitute a new holder of the licence for the existing one i.e. effectively to transfer a licence.

15. Suspension or revocation of a licence

15.1. A licensing authority may, whether upon a complaint made to them or not, suspend or revoke a licence.

15.2. A licensing authority may order the suspension or revocation of a licence if in their opinion-

- the holder of the licence 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

15.3. The period of suspension can be the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix. The effect of the suspension shall be that the licence shall cease to have effect during the period of suspension.

16. Third party accreditation

- 16.1.** The Council will consider third party evidence, accreditation or certification from certain approved bodies to demonstrate compliance with the mandatory and any additional conditions of a licence.
- 16.2.** The Council will also consider the provision of supporting documentation being provided through suitable third-party platforms. Applicants will be expected to provide a link to the database with the supporting documentation in lieu of uploading the documents as part of the application process.

17. Planning permission

17.1 There is a separate legislative process from licensing which allows the Council, as planning authority, to establish short term let control area. It is important to understand the purposes of such a short term control area and what the consequences, in planning terms, might be for properties with a short term let business in such an area and the relationship to the licensing system. It is also important to understand that short term let properties which exist outside of such an area may also require planning permission.

17.2 It must also be understood that the securing of planning permission is a separate matter from securing a licence to operate as a short term let. It should also be noted that the definition of a short- term let for the purpose of securing a licence is different from the definition for the purposes of planning law and in particular securing, if needed, planning permission¹.

17.3 The purposes behind the establishment of a short term let control areas are to help planning authorities manage high concentrations of short term lets, where it affects the availability of residential housing or the character of a neighbourhood, and to restrict or prevent short term lets in places or types of buildings where that might not be appropriate.

17.4 Being in such an area is also important as it may mean, as a matter of law under section 26B of the Town and Country Planning (Scotland) Act 1997 and Regulations made by Scottish Ministers under that section², that the use of a property as a short term let is deemed to represent a change of use such that it requires planning permission.

¹ For the licensing definition see Article 3 of The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("the 2022 Order)." Hosts and operators should familiarise themselves with this definition.

² These are The Town and Country Planning (Short -term Let Control Areas) Regulations 2021.

17.5 It is also possible that a property may be in a short term let in a control area but that it does not fall within the special definition of a short term let which leads to a deemed change in use³. In such a case the planning authority may still need to consider whether the property requires planning permission. This will be done on a case-by-case basis with the authority having to assess the materiality of any change in use. Not all changes in use will be material.

17.6 It is also important to understand that planning permission may also be required for the use of a property outside of such a short term let control area. Outside of a control area, it is for the planning authority to consider whether any change of use of a dwelling house is material and, therefore, requires planning permission. This is determined on a case-by-case basis as opposed to being a deemed change in use in terms of Section 26B of the 2005 Act.

17.7 By way of a general overview, within a short term let control area designated by the planning authority, such a change of use will always require planning permission where the property provides a form of short term letting which triggers a deemed change in use. Where a *deemed* change in use does not arise in a short term let control area, planning permission may be required if the use of the property still generates a material change in use. That will also be the case in relation to properties outside of a short term let control area. In both those cases, whether there has been a change in use which was material and so needs planning permission will need to be assessed on a case by case basis by the planning authority.

17.8 In all cases, where a property has been operating as a short term let for a period which exceeds ten years and does not benefit from having a grant of planning permission, planning permission may not be required. The change in use may be immune from enforcement action and the planning authority may be prepared to issue, on application, a Certificate of Lawful Use or Development. That could replace the need that would otherwise arise for planning permission. This is a matter for the planning authority.

17.9 It should be noted that the Council as licensing authority may refuse to consider an application for a short term let licence where it considers that use of the premises as a short term let would give rise to a breach of planning control.⁴ This is known as a preliminary refusal and the Council has a

³ For that special definition see Regulation 2 of the 2021 Regulations. There are exceptions to that special definition in that not all tenancies constitute a short term let for the purpose of that special definition. For exclusions from that special definition see section 26B(3) of the 1997 Act and Regulation 2 of the 2021 Regulations. Hosts and operators should familiarise themselves with these provisions.

⁴ By virtue of section 123(1)(a) of the Town and Country Planning (Scotland) Act 1997 and Paragraph 8 of Schedule 2 of the 2022 Order. Hosts and operators are asked to familiarise themselves with these provisions. A refusal to consider an application is not a refusal decision which attracts a right of appeal to the Sheriff.

discretion to refuse to consider an application for a licence in those circumstances.

17.10 The exercise of this power does not depend on whether or not the property is in a short term let control area. As this is a discretionary power, the Council will ordinarily be open to considering representations as to why, in a particular case, it should not make a preliminary refusal, but go on to consider the application for a licence. Applications will be decided on a case by case basis.

17.11 The Council, as licensing authority, has 21 days from receipt of a valid application to decide to refuse to consider the application on these grounds. If an application is refused to be considered on these grounds, the host or operator must be notified within 7 days together with an explanation.

17.12 A host or operator who then subsequently obtains planning permission or a certificate of lawful use or development can resubmit their licensing application (with no additional fees) provided the host or operator submits the licence application within 28 days of obtaining planning permission or a certificate.

17.13 It is also a mandatory condition of the licence that planning permission is required where the holder of a short term let licence for premises in a short term let control area. The holder must either have planning permission for the premises or have made an application for planning permission that has not yet been determined⁵. The licensing authority has no power to waive, change or modify this condition. Operating a short term let in breach of this condition is capable of being both a criminal offence and could also lead to enforcement action by the Council as licensing authority, including the possibility of suspension or revocation of the licence. Such action would also be distinct from any action the Council might take as planning authority.

17.14 Although for the purpose of section 26B of the 1997 Act and the 2021 Regulations, the focus is on there being a “dwellinghouse”, it is important to understand that one can operate a short term let from a property or premises which do not constitute a dwelling house. Such may still require planning permission. Whether it does will be a matter for the hosts and operators to consider, as needed, in conjunction with the planning authority. Again, independently of the planning authority, the licensing authority can exercise the power to issue a preliminary refusal.

⁵ See Schedule 3, Mandatory Condition 13 made under Article 6 of the 2022 Order.

17.15 Information in relation to areas within The Highland Council proposed to be designated by the authority as a short term let control area can be found at https://www.highland.gov.uk/info/161/planning_and_building_standards/991/short-term_let_control_area.

17.16 As will be evident from the foregoing, hosts and operators must comply with both planning and licensing law. Planning permission may be required whether or not the premises is in a short term let control area. It is the responsibility of applicants and licence holders to ascertain whether or not they require planning permission when they come to make an application or, given Mandatory Condition 13, where a licence is already held.

17.17 Please note that planning authorities could designate control areas after a premises has already obtained a short term let licence. Licence holders would be given a reasonable opportunity to comply with the Mandatory Condition 13 by submitting a planning application as soon as possible after the control area is designated. If planning permission is refused, this may result in the licence being refused, varied, or revoked as appropriate.

17.18 In determining an application for a licence, whether a premises has planning permission will be a material consideration for the licensing authority in deciding whether to grant or, in appropriate cases, to decide to attach or not attach a reasonable condition to the licence.

17.19 It should be understood that the existence of planning permission will not, of itself, automatically lead to the grant of a licence. The Council as a licensing authority is entitled to consider all relevant circumstances relating to the applicant, property and proposed activity as a short term let⁶.

17.20 That being said in general terms where planning permission exists it is likely to provide the Council for a basis for accepting the location or suitability of the premises for the purpose of a short term let or, as regards how the premises might impact any considerations of amenity, as having addressed issues of amenity. Even so, each case must still be assessed on a case by case basis.

17.21 It might also be noted that an application for a short term let licence for a premises which already has a certificate of lawful use or development will be assessed differently to premises that have been granted planning permission on the basis that the former have not gone through any assessment of suitability as part of a planning application process. The Council, as licensing authority may give closer consideration to questions of

⁶ See in particular the general grounds of potential refusal in Paragraph 5(3) of Schedule 1 of the Civic Government (Scotland) Act 1982.

location, suitability and amenity in those circumstances as compared with applicants who have a grant of planning permission (which would have included consideration of those issues already).

17.22 Given the foregoing host and operators are, therefore, also encouraged to engage with the Council's planning department prior to submitting a licence application to confirm whether they require planning permission or a certificate of lawful use or development.

17.23 Details for the Council's planning department can be found at – https://www.highland.gov.uk/info/161/planning_and_building_standards.

18. Equality

18.1. The Equality Act 2010 Act introduced a new public sector equality duty which requires public authorities, including the Committee, to try and eliminate discrimination, promote equality and good relations across a range of protected characteristics.

18.2. Prior to the Committee implementing this policy an equality impact assessment was undertaken. This can be viewed using the following link: https://www.highland.gov.uk/meetings/meeting/4664/highland_licensing_committee

19. Fees

19.1. Licensing authorities are required to charge fees in respect of processing and determining, the consideration of applications, the issue of duplicate licences and other matters. They must ensure that the fees are sufficient to cover their administrative expenses and are reviewed periodically.

19.2. Licensing fees are non-refundable. Whether or not a licensing application is granted, the Council incurs significant costs in processing the application.

19.3. The Council has considered the following criteria in the process of determining the fees:

- 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

Application and renewal – full licence

Guest capacity (people) (excluding children under the age of 2)	Home sharing and home letting	Secondary letting
1-2 occupants	£320	£400
3-6 occupants	£390	£470
7-9 occupants	£460	£540
10+ occupants	£530	£610

Other types of application	Fee
Temporary licence application	50% of the full fee
Variation of licence / change in circumstances	£120
Duplicate licence	£20

Enforcement costs

A licensing authority may charge such reasonable fees as they may determine in respect of 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).

The decision to make such a charge will be taken in a proportionate manner in line with the [Enforcement Policy for Environmental Health](#). Where such a charge is to be made, the Council will seek full cost recovery for such inspections based on the appropriate productive hourly rate for the grade of officer undertaking the inspection.

Note - 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.

Appendix 1 – Contact details

Email – stl@highland.gov.uk

Area offices:

Caithness, Sutherland and Easter Ross
Council Offices, Caithness House, Market Place, Wick, KW1 4AB

Inverness, Nairn Badenoch and Strathspey
The Highland Council, Town House, Inverness, IV1 1JJ

Ross, Skye and Lochaber
The Highland Council, Charles Kennedy Building, Achintore Road, Fort William, PH33 6RQ
The Highland Council, Tigh Na Sgire, Park Lane, Portree, IV51 9GP

Appendix 2 – Hearing procedure

DURING THE HEARING

1. The Chair will introduce the Members and Officials present. If the representations/objection(s) were submitted timeously and there are no spent convictions to be considered, then proceed directly to number 4.
2. If the representation/objection (from the Police or any other party) has been received late the Committee must hear details as to why the representation/objection was late and be satisfied that there is sufficient reason why it was not made in the time required. If they agree that then the representation/objection can be heard otherwise it should be disregarded. The process to be followed should be that the objector is invited to provide reasons as to why the submission was late. Members may ask any follow up questions of the objector. The applicant must then be asked if they have any objections to the late submission being accepted. The Committee must take all comments into account when deciding whether to accept the late submission.
3. If spent convictions are to be referred to then the guidance notes for spent convictions should be followed for each conviction. The Committee should resolve to go into private whilst considering spent convictions.
4. The hearing procedure below should now be followed:

A	The Licensing Officer will present the report to the Committee
B	The applicant or the party who has initiated the hearing will present their case first
C	The presenting party shall be entitled to provide information in support of their application, representation or objection (as applicable).

D	Any other interested party will have the opportunity to ask the presenting party relevant questions.
E	The Committee Members will have the opportunity to ask the presenting party relevant questions.
F	Any other interested parties will then present their case in turn and be entitled to provide information in support of their application, representation or objection (as applicable)
G	Any other interested party will have the opportunity to ask the presenting party relevant questions.
H	The Committee Members will have the opportunity to ask the presenting party relevant questions
I	The Chair will invite the applicant, or the party who has initiated the hearing, to briefly summarise their points if they wish.
J	The Chair will invite the other interested parties to briefly summarise their points if they wish.
K	The Chair will ask the applicant, or the party who has initiated the hearing, and all parties making representations, that they are satisfied that they have said all they wish to.
L	At the sole discretion of the Members, the Committee may decide to retire to consider the representations/objections in private.
M	The Committee will invite the parties to return to the meeting and the Chair will invite Members to take a decision. NOTE: If during private deliberations, the Committee receive advice on a legal submission from the Clerk which is contrary to the view of the party making the submission or the Committee believe additional information would be relevant, then these points should be raised with the parties, in public, prior to any decision being made.

DECISION

A determination of the case will be made at the conclusion of the hearing and all parties will be notified of the decision in writing within 7 days of the hearing and shall be advised of his/her right to seek written reasons and appeal to the Sheriff Court.

If the decision of the Committee is to suspend, refuse or refuse to suspend a licence, a relevant person has a right to request within 28 days of the meeting, the Committee's reasons for arriving at their decision. Unless the circumstances of the case justify immediate suspension, the suspension shall not take effect for 28 days from the date of the decision.

Appeals against the decision of the Committee must be lodged with the Sheriff Clerk within 28 days of the date of the decision.

Appendix 3 – 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

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

(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(2).

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

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 (“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.

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

(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,

“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,

(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,

Appendix 4 – Additional licence conditions

1. Material Changes

- i. The licence holder shall notify the Council immediately of any material change of circumstances affecting the licensed premises or the licence holder (or any agent appointed by them to manage part or all of the licensed activity), including details of any criminal convictions incurred by such persons since the granting or renewal of the licence

2. Reporting of Certain Incidents

- i. The licence holder shall notify the Council, as soon as is reasonably practicable, of the details of any incident affecting, or within, the licensed premises which (a) has resulted in structural damage to, or structural collapse within, the premises, or (b) which has involved a gas leak, fire, or explosion necessitating the call-out of the Emergency Services.

3. Noise and Anti-Social Behaviour

- i. The licence holder shall take reasonable steps to manage the premises in such a way as to seek to prevent and deal effectively with any noise nuisance or antisocial behaviour by guests to anyone else in the short-term let and in the locality of the short-term let.
- ii. The licence holder shall take reasonable steps to:
 - i. ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests;
 - ii. 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

- iii. ensure any vehicles belonging to guests are parked lawfully, for example explaining where any designated parking spaces (if applicable) are to be found and highlighting any local rules.
- iii. The licence holder shall notify the Council, as soon as is reasonably practicable, of the details of any incident of anti-social behaviour affecting or emanating from the premises which has required police involvement.

4. Privacy and Security

- i. The licence holder shall take reasonable steps to manage the premises in such a way as to respect and protect the privacy and security of neighbours.
- ii. The licence holder shall take reasonable steps to ensure:
 - i. guests know and understand any particular rules applying to any shared areas and entrances;
 - ii. guests understand that shared doors should be properly and securely closed after use; and
 - iii. 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.

5. Littering & Waste Disposal

- i. The licence holder shall take reasonable steps to ensure that adequate facilities, to the satisfaction of the Council, are provided for the storage, recycling and disposal of all waste and shall ensure that all common areas of the premises and all common external areas within the curtilage of the premises are kept in a clean, tidy, and well-maintained condition to the satisfaction of the Council.
- ii. The licence holder shall be responsible for advising residents of the refuse collection day and for making arrangements for the presentation of wheeled bins for collection at the appropriate time and day (if applicable).
- iii. The licence holder shall take reasonable steps to:
 - i. clearly label bins as belonging to the premises
 - ii. ensure guests are made aware of how to correctly use the bins provided for the premises (if applicable)
 - iii. ensure bins/sacks are available (if applicable)
 - iv. ensure that guests manage their waste properly, including when they depart (if applicable)
 - v. ensure guests are made aware as to what items should not be disposed of by flushing down the toilet

6. Preventing damage to property

- i. The licence holder shall 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 consent of the relevant authority or owner(s). The licence holder must be able to produce evidence of permission to the licensing authority on request

7. Maintenance of property

- i. Where there is a hot tub provided at the premises for use by guests, the holder of the licence shall take reasonable steps to ensure: -
 - i. that it is suitably located and maintained so as to ensure it can be safely operated and used by guests;
 - ii. that suitable and sufficient cleaning and disinfection procedures are in place;
 - iii. that guests are provided with clear instructions on its safe use and any restrictions on its use;
 - iv. that it is kept securely covered when not in use.

8. Requirement to produce on demand any policy, certificate etc.

- i. The licence holder shall require to produce, as soon as is reasonably practicable, to any authorised person any policy, certificate, document, record, certificate of inspection or safety, licence or plan required by or issued in terms pursuant to any condition of this licence.

Additional conditions that may be applied following on from investigations of concern regarding noise:

Note – These conditions are published in accordance with Scottish Government guidance that any proposed additional conditions should be publicised. These are not applied to all licences. These will only be recommended to Committee following specific case investigations by the Council’s Environmental Health team and if the use of the condition is deemed appropriate and proportionate for the specific case by enforcement officers following the Enforcement Policy for Environmental Health.

Noise:

- i. The licence holder must take reasonable steps to ensure that the bedrooms, living room and hallway in the premises have a suitable floor covering in order to minimise impact and airborne noise affecting any properties below. (i.e. carpet or vinyl floor covering with quality underlay) ***(Condition may be applied following investigation of concerns regarding noise and would be applied to properties located at 1st floor and/or above where a residential property is located below.)***
- ii. The licence holder must take reasonable steps to 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. ***(Condition may be applied following investigations of concerns regarding noise.)***
- iii. 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.)

(Condition would only be applied following investigations of concerns regarding noise where a property is located at 1st floor and/or above where a residential property is located below, in close proximity to a neighbouring property or whether there is a shared entrance/communal areas.)

- iv. The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 2200hrs

(Condition may be applied following investigation of concerns regarding noise associated with hot tubs and where a hot tub is positioned in close proximity or overlooked by neighbouring property.)

- v. The licence holder must take reasonable step to ensure that guests do not play amplified music within the garden or external areas after [23:00 hours] where it would impact neighbouring residents.

(Condition may be applied following investigation of concerns regarding noise associated with playing music in outdoor areas.)