

To: Regulatory Functions Board

On: 8th June 2022

Report by: Director of Finance and Resources

Heading: Licensing of Short-Term Lets: Proposals for Implementation

1. Summary

1.1 The purpose of this report is to provide the Board with an update on new legislation which requires local authorities to regulate short-term lets in the form of a licensing scheme. The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 (“the Licensing Order”), brings short-term lets within the scope of licensed activities covered by the statutory provisions of the Civic Government (Scotland) Act 1982 (“the 1982 Act”). This report details the mandatory and discretionary controls provided under the terms of the Licensing Order.

1.2 The report also sets out the preparatory work which will be required to implement the licensing scheme and the main issues the Council will have to consider in relation to the Licensing Order. Details are provided of recommended consultation arrangements in relation to the short-term lets licensing framework which requires to be introduced.

2. Recommendations

2.1 It is recommended that the Board:-

2.1.1 Agree that a consultation exercise be undertaken as detailed at section 4 of, and Appendices 2 and 3 to, the report ;

2.1.2 Otherwise note the terms of the report.

3. **Background**

3.1 The Licensing Order, which follows upon previous consultations at a national level, requires all local authorities in Scotland to put in place a scheme to accept licence applications from 1 October 2022. The Licensing Order is made under the provisions of the 1982 Act, under the terms of which the Board already regulates a number of activities, although subject to a number of modifications.

3.2 In terms of the Licensing Order, “short-term lets” includes, subject to various exclusions, the use of residential accommodation provided by a host in the course of business to a guest. The Licensing Order does not define a short-term let by reference to a maximum period, but a licence will not be required where the guest uses accommodation as their only or principal home. Any licence issued will be restricted to the stated type of short-term let specified in the licence:

- Home Sharing- for example the letting of a room in a house where the host lives;
- Home Letting- which includes the letting of a home in the host’s absence;
- Home Sharing and Home Letting- which is a combination of the above; and
- Secondary Letting- which relates to premises other than the host’s only or principal home.

The above categories of short-term lets all require, subject to the exclusions and exceptions set out in the Licensing Order, to be licensed.

3.3 The Licensing Order sets out minimum requirements for the licensing of short-term lets, including mandatory licence conditions which contain minimum safety standards for properties, as well as allowing local licensing authorities to impose further conditions, similar to other licence types regulated under the 1982 Act. Additional licence conditions might, for example, address issues such as noise and anti-social behaviour. The Scottish Government have published detailed, non-statutory guidance in relation to the licensing of short-term lets. Part 2 of this Guidance, which is designed to assist licensing authorities, is available at

<https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-2-supplementary-guidance-licensing-authorities-letting-agencies-platforms-2/>

- 3.4 The Licensing Order sets out a timetable for the implementation of the licensing scheme. The Order contains transitional provisions which allow existing operators to continue hosting guests pending their application being considered and determined. The timeline for local authorities to open a licensing scheme for short term lets to applications is as follows:
- 3.4.1 1 October 2022 – Licensing system opens to applications;
- 3.4.2 By 1 April 2023 – Existing hosts or operators (as at 1st October 2022) must have made an application to the Council and can continue to operate whilst their application is processed and determined. New hosts or operators will be required to have a licence granted before being able to operate;
- 3.4.3 1 July 2024 – All short term lets will require to be licensed.

4. Further Information and Next Steps

- 4.1 The Council will require to carry out a statutory consultation to obtain views on whether not to allow a system of Temporary Exemptions and introduce a policy on this matter. The purpose of a Temporary Exemption is to allow a host to let their accommodation for a period of up to 6 weeks within a year without having a short-term let licence, subject to any conditions agreed by the Board. A further report will be brought to the Board following the consultation. The Board will require to consider whether to allow Temporary Exemptions and, if so, in what circumstances and upon which conditions.
- 4.2 It is proposed that the parties detailed at Appendix 2 to the report will be consulted, seeking responses to the matters set out at Appendix 3. It is anticipated that an online public consultation survey will be undertaken in similar terms. The consultation questions set out at Appendix 3 are designed to obtain views on various matters as highlighted in the Licensing Order and the above Guidance. Given the timescale for implementation, it is anticipated that the consultation exercise will run for a period of four weeks.
- 4.3 The Board will require to decide at a future meeting what additional conditions should be attached to short-term let licences in addition to the mandatory conditions set out at Appendix 1. Consideration will also have to be given to other matters, such as whether to allow applications for Temporary Licences. Currently, as it is within the Council's discretion to consider these applications under the terms of the 1982 Act, the Council allows them in appropriate cases for other licensed activities: in particular, in relation to urgent events or where the requirement for a licence is of a temporary nature for a period of up to 6 weeks as permitted by the 1982 Act.
- 4.4 The Board will also require, following the above consultation, to agree a fees structure for short-term lets licences based on cost recovery.

Further, the Licensing Order modifies the usual provisions of the 1982 Act to allow more flexibility regarding the duration of licences at the renewal stage (for a period of more than three years). The Board may in this regard wish to consider whether to allow either grants or renewals of short-term lets licences for a three year period, similar to the landlord registration and Houses in Multiple Occupation (HMO) licensing regimes, as opposed to the current policy on licences granted under the 1982 Act where licences are normally granted for a period of one year and renewed for two years.

- 4.5 The above Guidance suggests a risk-based approach to inspection of short-term lets. There is no requirement to carry out physical inspections of all properties. Accordingly, it would be open to the Council, for example, to inspect accommodation used for secondary lettings but rely on a self-declaration of compliance for other properties, similar to landlord registration. The Board may wish to note in this regard that the Scottish Government does not expect licensing authorities to set a uniform flat fee for short-term lets, as this might disproportionately benefit hosts and operators of larger premises and adversely affect home sharing, bed and breakfasts and smaller self-catering operators.
- 4.6 The Licensing Order allows for inspection of accommodation during the currency of a licence and for an additional fee to be charged to cover the cost of an inspection in certain circumstances. Alternatively, it is open to the Council to charge an annual fee in place of an inspection fee.
- 4.7 Officers will require to develop application forms, guidance notes and other processes in relation to short-term lets licensing prior to 1st October 2022. In addition, officers will endeavour to raise awareness of the short-term lets licensing regime in advance of that date, following upon the details of the licensing scheme being agreed by the Board.

Implications of the Report

1. **Financial** – The delivery of a short-term lets licensing regime could result in a significant increase in workload for the Council's licensing service, although the number of short-term lets which might fall within the scope of the new regime is yet to be determined. As with other licensing regimes, fees for licensing applications should be set on a cost recovery basis.
2. **HR & Organisational Development** – None.
3. **Community Planning** –
 - Our Renfrewshire is safe – the improved regulation of short-term lets to ensure safer accommodation for visitors and facilitate more resilient communities.

4. **Legal** – The Licensing Order introduces a mandatory system of licensing for short-term lets which requires to be introduced by all licensing authorities in Scotland. Otherwise, as detailed in the report.
5. **Property/Assets** – None
6. **Information Technology** – None at this stage. The Guidance referred to in the report encourages the adoption of a digitised form and processes which will require further consideration before the introduction of the licensing scheme.
7. **Equality & Human Rights** -

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report, as the report provides information about a new mandatory licensing regime and seeks approval from the Board of the proposed consultation arrangements. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** - None
9. **Procurement** – None
10. **Risk** - None
11. **Privacy Impact** - None
12. **Cosla Policy Position** – None
13. **Climate Emergency** – None.

List of Background Papers- None.

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Mandatory Conditions of Licence set out in the Licensing Order

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.

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,

“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,

“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.

List of Proposed Consultees

1. Police Scotland
2. Scottish Fire and Rescue
3. Chief Executive and all Renfrewshire Council Directors
4. Head of Communities and Public Protection
5. Andrew McKean, Tourism Officer, Chief Executive's Service
6. Visit Scotland
7. Fiona Campbell, The Association of Scotland's Self Caterers (ASSC)
8. Scottish Guest House and Bed and Breakfast Alliance
9. Federation of Small Businesses
10. Renfrewshire Chamber of Commerce

Consultation Questions

We would like to hear your views on Short-Term Lets and their licensing.

The Scottish Government have introduced new legislation which will require all local authorities in Scotland to introduce a system of licensing for short-term lets by 1st October 2022, with all short-term let accommodation requiring to be licensed in 2023. The Council requires to consult in relation to whether temporary exemptions should be allowed from the need for a licence (for up to 6 weeks in any period of 12 months) and is also seeking views on other matters. Your views on the matters below would therefore be appreciated.

Introductory

1. Please describe why you are interested in short-term lets?- e.g., are you:

- a short-term let operator
- a short-term let customer
- a resident affected by short-term lets
- a trade group with an interest in short-term lets

Please provide any further information you consider relevant.

Licence Conditions

2. The short-term lets licensing system which the Council will introduce must contain mandatory conditions which, largely, relate to the safety of short-term let accommodation. These conditions will apply across Scotland.

The Council has the power to agree additional licence conditions. Licence conditions set out a number of rules which the licence holder must comply with during the period for which the licence is in effect. For example, a condition might be used to set out the maximum occupancy of a property used as a short term let.

Do you think the Council should adopt additional conditions?

3. If so, what issues should the additional conditions cover?

- overcrowding of the property;
- noise and nuisance;
- 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
- unlawful activity

Please explain your reasons and what you think the conditions should achieve

Please note that the Council is not able under the new legislation to impose a condition which restricts the number of nights which a non-resident host can let out their property

4. In relation to occupancy levels in short-term lets, it will be a condition that hosts/ operators of these premises do not exceed the maximum number of guests.

The Council may choose to specify on a licence that guests may bring children under a specified age limit, and that these children would not count towards the occupancy of the premises. Scottish Government guidance states that 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, which provides a legal definition of 'overcrowding'.

Should children under the age of 10 count towards the occupancy of a licensed short-term let?

Temporary licences

5. The Council can issue temporary short-term let licences. A temporary licence may be granted for a continuous period of up to six weeks, or longer if a host or operator has also made an application for a full licence.

Should temporary licences be allowed?

Temporary Exemptions

6. The Council can also issue temporary exemptions from the requirement to have a licence. The Council require to adopt a policy as to whether these will be allowed.

A temporary exemption could be issued for a property for certain occasions where there is a large number of visitors to Renfrewshire over a short period- e.g., to support events or festivals. A Temporary Exemption would last for a single continuous period of up to six weeks in any period of 12 months.

Should Temporary Exemptions be introduced?

7. If so, in what circumstances do you think these should be allowed?
8. Should any premises, or types of premises, not be allowed to operate under a Temporary Exemption? (for information, short-term lets can involve properties shared by a person who lives there, or let out by them, or a property in which the host does not live)
9. Should similar conditions be attached to Temporary Exemptions, if allowed, as apply to short-term let licences? (Please explain your response).

General

10. Please add any further comments you would like to make regarding the licensing of short-term lets.