
SHORT TERM LETS LICENSING

Briefing Note by Chief Legal Officer

SCOTTISH BORDERS COUNCIL

25 August 2022

1 BACKGROUND

- 1.1 The purpose of this note is to update Members on the requirements of the new mandatory licensing system for short term lets which local authorities are required to establish by **1 October 2022**.
- 1.2 On 19 January 2022, the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 was approved by the Scottish Government. The order came into effect on 1 March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982. 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.
- 1.3 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

- 2.1 The new regime has a two tier approach to implementation, in that existing operators have more time to apply for a licence than any new operator. After 1 October 2022, any new hosts and operators will need to have a licence before they can operate. Any hosts and operators not previously providing short-term lets before 1 October 2022 will be able **advertise** but cannot take any bookings or receive guests until they have obtained a licence.
- 2.2 **Existing hosts and operators** using accommodation to provide short-term lets prior to 1 October 2022 have until **1 April 2023 to apply for a licence**. During this period existing hosts and operators can continue to

operate and take bookings and receive guests (unless their application has been received, determined and refused).

- 2.3 After 1 April 2023, existing hosts and operators can only continue to operate if they **have submitted an application** for a licence on or before 1 April 2023 that has not yet been determined or have been granted a short-term let licence. All short term lets must be licensed by 1 April 2024.
- 2.4 **In other words, existing operators do not need to have obtained a licence by the 1 April 2023, but they must have applied for such a licence on or before that date.**

3 WHAT IS A SHORT-TERM LET?

- 3.1 A short-term let is not defined by the length of that letting period, rather it is defined 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-
 - (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 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 another member of the host's household,
 - (e) the accommodation is not excluded accommodation,
 - (f) the short-term let does not constitute and excluded tenancy.
- 3.2 A number of property types are specifically excluded from the Licensing Scheme, for example, hostels, aparthotels and student accommodation.

4 LICENSING PROCESS

- 4.1 Applications will be made in writing (online) to the Council. Any applications will be published and the public will have the right to object.
- 4.2 The Authority will determine the application having regard to whether the Applicant is a fit and proper person to hold the licence and the premises is suitable for the conduct of the activity, having regard to-
- (i) the location, character or condition of the premises,
 - (ii) the nature and extent of the proposed activity,
 - (iii) the kind of persons likely to be in the premises,
 - (iv) the possibility of undue public nuisance, public order; or public safety,
 - (v) other good reason

4.3 Any Licence which is granted will contain a number of Conditions. The Legislation requires a number of mandatory conditions to be attached, and these are shown in Appendix A. As can be seen these include matters related to gas, electricity and fire safety. In addition to those mandatory conditions an authority can attach such other conditions that they think are appropriate.

5 TYPES OF LICENSES

5.1 The different types of licences which can be applied for are defined as follows:

- (1) Secondary Letting- this means a short term let involving the letting of a property where the host or operator does not normally live.
- (2) Home Letting- this means a short term let where the host or operator lets out part or all of their home whilst they are absent.
- (3) Home Sharing- this means a short-term let where the host or operator lets out part or all of their home for short-term lets whilst they are there. This includes guest houses or bed and breakfast accommodation within the host or operator's principal residence.

5.2 A separate licence is required for each of a host or operator's premises. However, a single licence may be issued in respect of unconventional accommodation such as glamping pods where there is more than one separately bookable property on the same site.

5.3 **A licence shall have effect for a period of three years** from the date it comes into effect or for such shorter period as the licensing authority may decide at the time of the grant. In addition, upon renewal of the licence the licensing authority may grant the licence for a period of longer than three years if it deems it appropriate to do so. Scottish Government guidance to Local authorities however encourages local authorities to grant licences for a period of three years unless they have good reason to do otherwise.

6 FEES

6.1 Licensing authorities are required to charge fees in respect of processing and determining applications. They must ensure that the fees are sufficient to cover their administrative costs. The Council will require to agree the appropriate fees to be charged, but Licensing Officers are currently considering what an appropriate level may be. Regard is being paid both to the fees charged for other licences and also to the fees which other local authorities charge. A possible recommendation may be:

- (a) Maximum Occupancy of 5 people or more-
 - Secondary letting - £400
 - Home letting or home sharing or both- £275
- (b) Maximum Occupancy of 4 people or Less-
 - Secondary Letting - £250
 - Home letting or home sharing or both- £200

7 DRAFT POLICY

- 7.1 A draft short-term lets licensing policy is currently being finalised for Members to consider, with a view thereafter of carrying out a short public consultation of three weeks on the terms of the draft policy. Upon the conclusion of the public consultation the responses will be collated and the findings reported to the Council's Civic Government Licensing Committee prior to the Licensing Policy being finalised.

8 SHORT-TERM LET CONTROL AREAS

- 8.1 There is a separate legislative process from licensing which allows the Council, as Planning Authority, to establish short term let control areas. The purpose of control areas is to help planning authorities manage high concentration of secondary letting where it affects the availability of residential housing or the character of the neighbourhood and to restrict or prevent short-term lets in places where it is not appropriate.
- 8.2 The Council does not currently propose to designate any short term let control areas but this will be reviewed regularly. 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. It will be a mandatory condition of the licence that a host or operator complied with the planning regime. Hosts and Operators will be encouraged to liaise 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.

9 NON-DOMESTIC RATES

- 9.1 The Assessor has advised that the law in respect of Short-Term Lets for Valuation for Rating differs to this licensing regime. If a property, due to its actual use (not planning use), is determined by the Assessor to be non-domestic, having regard to the Valuation Acts and Case Law, it will fall to be entered in the valuation roll and liable for non-domestic rates.
- 9.2 In March 2022, the Assessor issued a communication to the operators of all Self-Catering properties within the Valuation Roll (c850) advising that the law in respect of the valuation for non-domestic rating of Self-Catering properties was changing in Scotland.
- 9.3 On 1 April 2022, the Council Tax (Dwellings & Part Residential Subjects) (Scotland) Amendment Regulations 2021 came into force. This legislation was introduced by Scottish Government following a recommendation within the Barclay Report on Non-Domestic Rates (August 2017) to counter a known Council Tax avoidance tactic for second homes.
- 9.4 For each financial year, from 2022/23 onwards, in order to be classed as a non-domestic property and liable for non-domestic rates instead of Council Tax, a self-catering operator will be required by the Assessor to declare that the property **was not a sole or main residence**, provide **evidence of 70 days of actual letting** as well as **140 days of intention to let**. The

letting must be on a commercial basis, with a view to the making of profit, therefore, any lettings to family/friends at a nil/reduced rate will not count towards this requirement. This legislation is independent of any HMRC rules in respect of Furnished Holiday Lets. If an operator does not meet this criteria the Assessor will retrospectively transfer the property to the Council Tax List.

Appendix A – 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.