

## **LICENSING OF SHORT TERM LETS**

**Report by Chief Legal Officer**

**SCOTTISH BORDERS COUNCIL**

**29 September 2022**

### **1. PURPOSE AND SUMMARY**

- 1.1 The purpose of this report is to provide Members with any opportunity to consider the terms of the draft short term lets licensing policy which the Council requires to implement following the commencement of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 1982.**
- 1.2 At its meeting on 25 August 2022, Council was provided with a briefing on the requirements of the new mandatory licensing system for short term lets which all local authorities are required to establish.**
- 1.3 At its meeting on 26 August 2022, the Council's Civic Government Licensing Committee agreed to recommend to Council that a 3 week statutory consultation be carried out on the draft policy as detailed at Appendix 1.**

### **2. RECOMMENDATION**

#### **2.1 It is recommended that Council**

- (a) approves the draft short term lets licensing policy as detailed at Appendix 1**
- (b) instructs the Chief Legal Officer to conduct the statutory consultation required on the content of the draft short term lets licensing policy and to report to Council on the outcome of that consultation.**

### **3. BACKGROUND**

- 3.1 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")
- 3.2 The Order introduces a new mandatory licensing system for short term lets which local authorities are required to establish by 1 October 2022.
- 3.3 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.
- 3.4 The licensing scheme was brought in by the Scottish Government with the aim to ensure that 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 tourism and benefits from short term lets are balanced with the needs of the local communities.
- 3.5 The short term let licensing scheme will cover a wide range of residential accommodation including, but not exclusively, self-catered properties, B and B's, guest houses, glamping pods and yurts.

### **4. SCOPE OF THE LICENSING SCHEME**

- 4.1 The licensing scheme includes new mandatory safety requirements that will cover every type of short term let. These are set out in the mandatory conditions of a licence. It will also include a "fit and proper" test to assess whether an applicant is suitable to be the holder of a licence. Every licence application will require consultation with Police Scotland and the Scottish Fire and Rescue Service. In addition, consultation will be carried out with the Council's Environmental Health Service and Planning and Building Standards departments.
- 4.2 The Council also has discretion to apply further appropriate conditions to address any local concerns.
- 4.3 The Order sets out a timetable for the implementation of the licensing scheme. This has been set out in paragraph 2 of the draft policy as detailed at Appendix 1.

### **5. PLANNING LEGISLATION**

- 5.1 In addition to the introduction of the licensing scheme for short term lets, new planning regulations were brought into force in April 2021. The Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021 provide a mechanism for the Council, as planning authority, to establish short term let "control areas" which aim to help manage high numbers of short term lets. Under these regulations, the Council, as planning authority, can establish areas where any property operating as a short term let for more

than 28 days a year has to apply for planning consent as it is considered a change of use. As set out in paragraph 16.6 of the draft policy as detailed at Appendix 1, the Council does not propose to designate any short term control areas meantime but this will be reviewed on a regular basis.

## **6. TIMESCALE FOR THE IMPLEMENTATION OF THE LICENSING SCHEME**

- 6.1 The Scottish Government delayed the introduction of the legislation by a year but did not extend the timescales for local authorities to have to start accepting applications. The guidance for local authorities was not published until 25 March 2022 and the Council must be in a position to accept applications by 1 October 2022.
- 6.2 The implementation of any discretionary powers or conditions will require the Council to carry out a public consultation.
- 6.3 Subject to Council approval the consultation exercise will start immediately and will run for a period of three weeks.
- 6.4 The consultation will ask for views on the draft policy as detailed at Appendix 1.

## **7. LICENSING FEE STRUCTURE**

- 7.1 Licensing authorities are required to charge fees in respect of processing and determining applications. The Civic Government (Scotland) Act 1982 states that licensing fees must be sufficient to cover the authority's administrative expenses. This doesn't just include staff time and ongoing associated expenses but all work involved in getting the licensing scheme up and running.
- 7.2 The Licensing fees being proposed are as set out in paragraph 17 of the draft policy as detailed at appendix 1. The proposed fees are comparable with those being proposed by a neighbouring local authority. The legislation also enables enforcement costs to be recovered separately. These are for premises which require inspection after ongoing complaints or where there is a failure to comply with conditions relating to the premises.

## **8. NEXT STEPS**

- 8.1 Officers will monitor and collate the responses received during the public consultation.
- 8.2 A further report will be brought to Council following the statutory consultation in relation to agreeing a licensing policy and fee structure.

## **9. IMPLICATIONS**

### **9.1 Financial**

There are no costs attached to any of the recommendations contained in this report. There are no costs associated with the publication of the draft Short Term Lets Licensing Policy as this will be published online. The proposed Licensing fee structure will be reflected in the Council's fees and charges

schedule and any financial implications arising therefrom will be reflected through the monitoring process for the remainder of the financial year 2022/2023 and the financial planning process for 2023/2024. It is estimated that the new short term lets requirement will result in approximately 1000 applications being received and the income generated through the proposed fee structure will be applied to assist with the costs of providing this service.

## **9.2 Risk and Mitigation**

The carrying out of the consultation and the consideration of the responses received will allow Council to determine the final content of the Short Term Lets Licensing Policy.

## **9.3 IIA**

It is anticipated that there will be no adverse impact due to race, disability, gender, age, sexual orientation or religious belief arising from the proposals in this report.

## **9.4 Sustainable Development Goals**

There are no sustainable development goals arising from the proposals contained in this report.

## **9.5 Climate Change**

There are no climate change impacts from the proposals contained in this report.

## **9.6 Rural Proofing**

There are no rural proofing issues arising from the proposals contained in this report.

## **9.7 Data Protection Impact Statement**

There are no personal data implications arising from the proposals contained in this report.

## **9.8 Changes to Scheme of Administration or Scheme of Delegation**

No change to either the Scheme of Administration or the Scheme of Delegation as a result of the recommendations in this report.

## **10. CONSULTATION**

The Chief Financial Officer, the Chief Legal Officer ( Monitoring Officer), the Chief Officer Audit and Risk, the Chief Human Resources Officer and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

**Approved by**

**Nuala McKinlay**

## Chief Legal Officer

### Author(s)

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**Background Papers:** None

**Previous Minute Reference:** 25 August 2022

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Ron Kirk can also give information on other language translations as well as providing additional copies.

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**Appendix 1**

**SCOTTISH BORDERS LICENSING BOARD**

**SHORT TERM LETS LICENSING**

**DRAFT POLICY STATEMENT**

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**Foreword**

This policy statement is the first one published by Scottish Borders Council.

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 [ ] 2022 to [ ] 2022.

A report providing details of the comments received from consultees was considered at the meeting of the Planning, Protective Services and Licensing Committee on [ ] 2022. A copy of the report is available online at [ ].

This policy statement will be reviewed and revised when necessary.



# 1. Background

- 1.1. On 19th 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 1st 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<sup>st</sup> 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. After 1<sup>st</sup> October 2022, new hosts and operators will need to have a licence. This means that, if you were not using your premises to provide short-term lets before 1<sup>st</sup> October 2022, you can advertise but not take bookings or receive guests until you have obtained a licence.
- 2.2. Existing hosts or operators (those using accommodation to provide short-term lets before 1<sup>st</sup> October 2022) have until 1<sup>st</sup> April 2023 to apply for a licence. During this period you can operate without a licence (by continuing to take bookings and receive guests) unless your licence application has been determined and refused.
- 2.3. After 1<sup>st</sup> April 2023, existing hosts can only continue to operate if they have submitted an application for a licence on or before 1st April 2023 that has not yet been determined or been granted a short-term let licence.

# 3. Definitions

- 3.1. A short-term let is defined in the 2022 Order 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

- (iii) an owner or part owner of the accommodation,
- (d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host's household,
- (e) the accommodation is not excluded accommodation,
- (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-

- (a) your partner (spouse, civil partner or someone you live with as if you were married to them),
- (b) you or your partner's parent, grandparent, child, grandchild or sibling,
- (c) the partner of one of your parents, grandparents, children, grandchildren or sibling.

**Excluded accommodation** – this means accommodation which is, or is part of-

- (a) an aparthotel,
- (b) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 Act,
- (c) a hotel which has planning permission granted for use as a hotel,
- (d) a hostel,
- (e) residential accommodation where personal care is provided to residents,
- (f) a hospital or nursing home,
- (g) a residential school, college or training centre,
- (h) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),
- (i) a refuge,
- (j) student accommodation,

- (k) accommodation which otherwise requires a licence for use for hire for overnight stays,
- (l) accommodation which is provided by the guest,
- (m) accommodation which is capable, without modification, of transporting guests to another location,
- (n) a bothy, or
- (o) accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

**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.

It is recommended that people take their own independent legal advice on whether or not their accommodation would require a short-term let licence. The Licensing Authority cannot provide legal advice on whether or not a premises is excluded from requiring a short-term let licence.

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

- (a) protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984,
- (b) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) 1988 Act),
- (c) a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988),
- (d) a tenancy of a croft (within the meaning of section 3 the Crofters (Scotland Act 1993),
- (e) 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,
- (f) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001),
- (g) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001),
- (h) a 1991 Act tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003),
- (i) a limited duration tenancy (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003),
- (j) a modern limited duration tenancy (within the meaning of section 5A of Agricultural Holdings (Scotland) Act 2003),
- (k) a short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003),

- (l) a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003),
- (m) a private residential tenancy (within the meaning of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016),
- (n) a student residential tenancy.

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

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

**3.5.** The different types of licences are defined as follows-

- (a) **Secondary letting** – this means a short-term let involving the letting of property where you do not normally live,
- (b) **Home letting** - this means using all or part of your home for short-term lets whilst you are absent,
- (c) **Home sharing** – this means using all or part of your own home for short-term lets whilst you are there. This includes guest houses or bed-and-breakfast accommodation within the host's principal residence.

**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. The application should either be submitted online or paper applications should ideally be emailed to [liquorandlicensing@scotborders.gov.uk](mailto:liquorandlicensing@scotborders.gov.uk) or, alternatively, posted to, The Licensing Unit, Scottish Borders Council details of which are available at **Appendix 1**.

**4.2.** Applicants must either pay the application fee as part of the online application process or if submitting a paper application form by making a payment to Scottish Borders Council by contacting [insert once finalised ].

- 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 shall be sent to Police Scotland and the Scottish Fire and Rescue Service by the local authority. A copy will also be sent to:
  - Scottish Borders Council's Planning Department
  - Scottish Borders Council's Building Standards service
  - Scottish Borders Council's Environmental Health service
- 4.7. All personal data will be processed in line with the following privacy notices:

## **5. Objections and representations**

- 5.1. The 1982 Act permits any member of the public to submit an objection or representation in relation to an application for a short-term let licence.
- 5.2. To enable Scottish Borders Council, as licensing authority ("the Council") to entertain an objection or representation, it must be:
  - (a) in writing (email is sufficient),
  - (b) specify the grounds of the objection or the nature of the representation,
  - (c) specify the name and address of the person making it,
  - (d) be signed off by them or on their behalf,
  - (e) 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. "Anonymous" includes objections or representations where the person making the objection or representation cannot be contacted using the contact information provided.
- 5.4. Late objections or representations may be considered, entirely at the Council's discretion, 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 1982 Act-
  - (a) the applicant or anyone else detailed in the application form is not a fit and proper person to be the holder of a licence,

- (b) 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,
- (c) the premises is not 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) 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:**

## **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 Clerk to the Council's Civic Government Licensing Committee and other duly authorised Licensing Officers within the Council's Licensing Unit.

**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 Council's Civic Government Licensing Committee.

**6.5.** The person submitting the objection or representation will be invited to attend the meeting of the Civic Government 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 5.5.

- 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** 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 Clerk to the Civic Government Licensing Committee within 10 days of that request.
- 6.10.** If your application for a licence is refused, you cannot reapply for a licence within one year of that decision, unless there has been a material change in your circumstances since then.

## **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 longer than three 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 2**.
- 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 3**.

## 10. Temporary exemptions

- 10.1. The Council is not intending to grant 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. Temporary licences may be granted for a duration of up to 6 weeks. 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.
- 11.2. The Council is aware that under the 1982 Act, temporary short-term licences could be applied for. However, there is a limited consultation process with temporary licences in comparison to a full licence. A temporary licence application would have no requirement to display a site notice, and no opportunity for objections or representations to be received other than from the statutory consultees. In addition, under the legislation, the only bodies the Licensing Authority would consult with are Police Scotland and Scottish Fire and Rescue Service.
- 11.3. Given a full consultation would not be undertaken, the Council is not proposing to consider any temporary licence applications for short-term let licence applications and instead require a full short-term let licence to be applied for as detailed at section 4. This would mean that all short-term let licence applications would be subject to the full consultation process as detailed in Section 4.4.

## 12. Compliance and enforcement

### 12.1. Unlicensed short-term lets

- 12.1.1. It is a criminal offence to carry on an activity for which a licence is required without having a licence and without reasonable excuse.



- 12.1.2.** 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<sup>st</sup> October 2022 you **cannot** accept bookings until you have obtained a short-term let licence.
- From 1<sup>st</sup> October 2022, you **cannot** operate while your short-term let application is being determined.

Existing hosts/operators

- Existing hosts/operators must apply for a short-term let licence by 1<sup>st</sup> April 2023, at the latest.
- If you have been trading on or before 30<sup>th</sup> September 2022, you may continue to accept bookings after 1<sup>st</sup> October 2022 but only if you have made a licence application by 1<sup>st</sup> of April 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 once the application is duly made and the licence application has been validated.
- It will be an offence to offer short-term let accommodation after 1<sup>st</sup> April 2024 unless you hold a licence.

- 12.1.3.** The Council will maintain a public register of short-term let licence applications and licences granted. This will allow members of the public to check the licensing status of a premises being used as a short-term let.

- 12.1.4.** Complaints about suspected unlicensed hosts/operators should be directed to the Council's Licensing Unit details of which are available at Appendix 1. .

**12.2. Licensed short-term lets**

- 12.2.1.** Hosts and operators must ensure that any advert or listing placed on or after they are granted a licence, or a provisional licence number, includes their licence number.

- 12.2.2.** 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.

- 12.2.3.** 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.

- 12.2.4. 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.

### **12.3. Complaints about licensed short-term lets**

- 12.3.1. 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.
- 12.3.2. A complaint must be relevant to the matters that the Council can take into consideration. Frivolous or vexatious complaints will not be considered.
- 12.3.3. 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.
- 12.3.4. 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 the Council's Licensing unit details of which are available at Appendix 1.
- 12.3.5. 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.
- 12.3.6. 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 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.
- 12.3.7. Premises site visits may be undertaken by the Council as part of an investigation into a complaint.

### **12.4. Enforcement**

- 12.4.1. It is possible that some complaints may require enforcement action from the Council.
- 12.4.2. 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.
- 12.4.3. The Council recognises the importance of having compliance issues monitored in order to ensure licensed Short-term lets are complying with licence standards and not causing an unnecessary nuisance to the community, nearby residents or neighbours. As such it will carry out a risk-based approach to enforcement, using a range of escalating informal measures, prior to an Enforcement Notice being

issued and subsequently a complaint being made to the Committee in relation to the STL licence.

- 12.4.4.** An enforcement notice will 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.
- 12.4.5.** If the matter is not addressed satisfactorily by the licence holder, the Council may then consider a variation, suspension or revocation of the licence.
- 12.4.6.** You will not be charged a fee for a routine visit. However, you will be charged if a follow up visit is necessary because you have breached one of your licence conditions

### **13. Variation of a licence**

- 13.1.** 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.
- 13.2.** 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.

### **14. Suspension or revocation of a licence**

- 14.1.** A licensing authority may, whether upon a complaint made to them or not, suspend or revoke a licence.
- 14.2.** 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
- 14.3.** 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.

### **15. Third party accreditation**

- 15.1.** The Council will consider third party evidence, accreditation or certification from certain approved bodies provided they demonstrate compliance with the mandatory and any additional conditions of a licence.

### **16. Planning permission**

- 16.1.** There is a separate legislative process from licensing which allows the Council, as planning authority, to establish short-term let control area.
- 16.2.** The purpose of control areas is to help planning authorities manage high concentrations of secondary letting (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 it is not appropriate.
- 16.3.** 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.
- 16.4.** Within a control area designated by a planning authority, such a change of use will always require planning permission. The host or operator must make an application for planning permission or already have planning permission before they apply for a licence.
- 16.5.** It is a mandatory condition of the licence that a host or operator has planning permission or has made an application for planning permission where their premises is in a designated control area, they are using it for secondary letting and it is a dwelling house.
- 16.6.** The Council does not propose to designate any Short-term Control areas meantime but this will be reviewed on a regular basis.
- 16.7.** Hosts and operators must comply with both planning and licensing law.
- 16.8.** A host or operator who then subsequently obtains planning permission or a certificate of lawfulness of use or development can resubmit their licensing application provided the host or operator submits the licence application within 28 days of obtaining planning permission or a certificate.
- 16.9.** Before 1st April 2023, the Council, as licensing authority, cannot determine a licence application on the basis that it breaches planning control unless they have given existing hosts a chance to submit an application for planning permission or for a certificate of lawful use or development. However, the Council, as licensing authority, can determine a licensing application before this date where planning permission or a certificate of lawful use or development has already been refused.
- 16.10.** The applicant has 3 months to submit a planning application. If the applicant does not do so within 3 months, the licence application can be determined for these purposes and the applicant must cease providing short-term lets.
- 16.11.** 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 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.
- 16.12.** Hosts and operators are, therefore, 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 of development.

## 17. Fees

- 17.1.** 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.
- 17.2.** Licensing fees are non-refundable. Whether or not a licensing application is granted, the Council incurs significant costs in processing the application.
- 17.3.** 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)	Home sharing and home letting	Secondary letting
1 to 3	£275	£300
4 to 6	£305	£335
7+ Occupants	£350	£385

Other types of application	Fee
Variation of Licence/ Change in circumstances	£75
Duplicate Licence	£35

### 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 licensing 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 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 productive hourly rate for the grade of officer undertaking the inspection.

**\*\*Where a fee is charged for such a visit, a report must be provided to the host or operator within 28 days of the inspection. Otherwise, the fee must be refunded to the licence holder\*\*\***

## **Appendix 1 – Contact details**

Licensing Unit, Scottish Borders Council, Council Headquarters, Newtown St.Boswells, TD6 0SA

Telephone – 01835 826662

Email –[liquorandlicensing@scotborders.gov.uk](mailto:liquorandlicensing@scotborders.gov.uk)

## **Appendix 2 – 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<sup>(2)</sup>.

### **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,
  - (iii) the supply of combustion air,
  - (iv) subject to head (iv), its operating pressure or heat input or, where necessary, both,
  - (v) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
  - (vi) 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 3 – Additional licence conditions**

## Short-term Lets: Proposed Additional Conditions

### **Introduction**

Scottish Borders Council considers that additional conditions should be applied to short-term let licences in its area. These derive from (a) the Part 2 Guidance for licensing authorities and (b) issues relating to guest safety which the Council has identified in its area and for which it considers additional licence conditions are necessary and appropriate.

The “Part 2” additional conditions, are based closely upon the examples provided by the Scottish Government. These conditions would be generally-applicable to all licences, although some, for instance those relating to impact noise are not necessary for detached premises with no party structures.

The guest safety conditions are intended for specific premises where certain facilities and amenities are provided for the use of guests (this would require a declaration on the application form). Alternatively, the conditions could be generally-applied with a conditional clause; the draft guest safety conditions are in the latter form.

### **Additional conditions based on Part 2 Guidance**

#### **Antisocial behaviour**

1. The licence holder must take reasonable steps to manage the premises in such a way as to seek to prevent and deal effectively with any antisocial behaviour by guests to anyone else in the short-term let and in the locality of the short-term let.
2. The licence holder must take reasonable steps to:
  - Ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests;
  - Deal effectively with any disturbance or nuisance arising within or from the premises, as soon as reasonably practicable after the licence holder is made aware of it; and
  - Ensure that any vehicles belonging to guests are parked lawfully, for example explaining where any designated parking spaces are to be found and highlighting any local rules.

#### **Privacy and security**

1. The licence holder must manage the premises in such a way as to respect and protect the privacy and security of neighbours.
2. The licence holder must ensure:
  - Guests know and understand any particular rules applying to shared areas and entrances;

- Guests understand that shared doors should be properly and securely closed after use; and
- The provision of access codes or keys to guests cannot be used by guests to gain access to shared areas after they have finally departed.

### **Noise control in flatted premises**

1. Where the premises are a flat above another dwellinghouse, the licence holder must:
  - Fit and maintain carpets (with appropriate underlay) to the floors of bedrooms, living room and any hallway.
  - Take reasonable steps to ensure that guests do not first arrive or finally depart from the property between the hours of 2300 and 0700. The licence holder must advise guests of this condition as part of their booking terms and conditions.
2. Note that “reasonable steps” allows for unavoidable circumstances, such as significantly-delayed transport.
3. 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.

### **Littering and waste disposal**

1. The licence holder must provide adequate information on, and the facilities for, the storage, recycling and disposal of waste.
2. The licence holder shall be responsible for advising residents of the refuse collection day and for making arrangements for the presentation of bins for collection at the appropriate time and day.
3. The licence holder must advise guests of:
  - Their responsibilities;
  - The use of the bins etc. provided for the premises; and
  - The location of the nearest recycling area or recycling point.
4. The licence holder must:
  - Clearly label bins as belonging to the premises;
  - Ensure that guests manage their waste in compliance with (2), including when they depart; and
  - Maintain the bins storage area and the exterior of the premises in a clean and tidy condition.

### **Damage to property**

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

## **Additional Conditions for Guest Safety**

### **Legionella risk assessment – spa pools/hot tubs**

1. Where a spa pool, including any electric hot tub or wood-fired hot tub, is provided for the use of guests, the licence holder must install, maintain and operate it so it can be safely operated and used by guests.
2. The licence holder shall ensure:
  - That any such spa pool is installed and maintained in accordance with the guidance in HSE publication HSG282 *Control of legionella and other infectious agents in spa-pool systems*.
  - That there is a risk assessment and written scheme of control for *Legionella* in respect of any such spa pool.
  - That the risk assessment and written scheme of control are lodged with any application for a licence and are to the satisfaction of the licensing authority.
  - That, prior to any spa pool being brought into use for the first time during the period of the licence, at least 28 days' notice shall be given to the licensing authority and the risk assessment and written scheme of control shall be submitted at the time of such notice.
3. The licence holder shall provide guests with information on the safe use of the spa pool in accordance with the written scheme of control.
4. The licence holder shall not provide or install any inflatable hot tub for the use of guests without the prior written approval of the licensing authority. Note that the licensing authority will not give approval in respect of inflatable hot tubs not intended for commercial use and which cannot conform to the requirements of HSG282.

### **Guest safety – swimming pools and ponds**

1. Where a swimming pool or swimming pond is installed and provided for the use of guests, the licence holder must take reasonable measures to ensure water quality and bather safety.
2. The licence holder shall ensure:
  - In the case of swimming pools, that a pool safety operating plan is prepared and lodged with any application for a licence and is to the satisfaction of the licensing authority. The licence holder shall have regard to the guidance in HSE publication HSG179 *Health and safety in swimming pools*.
  - In the case of swimming pools and swimming ponds, that a bather safety plan is prepared and lodged with any application for a licence and is to the satisfaction of the licensing authority. The bather safety plan shall include measures to minimise the risk of bathers getting into difficulty, to facilitate the rescue of bathers in difficulty and to call for the assistance of emergency services where necessary.
  - That, prior to any swimming pool or pond being brought into use for the first time during the period of the licence, at least 28 days' notice shall be given to the licensing authority and the pool safety operating plan and bather safety plan shall be submitted at the time of such notice.

3. In this condition, “swimming pond” means an outdoor body of untreated water in natural ground which has been excavated or modified to provide a facility for swimming. It does not include natural watercourses, fresh-water lochs or coastal waters.
4. This condition does not apply to swimming pools which are staffed and operated with continuous poolside supervision by trained lifeguards.

#### **Risk of Carbon monoxide – barbecue huts**

1. Where a barbecue hut is installed and provided for the use of guests, the licence holder must take reasonable steps to ensure that the risk from Carbon monoxide is minimised.
2. The licence holder shall:
  - Install, maintain and operate the barbecue hut only in accordance with the manufacturer’s instructions.
  - Install and maintain in proper working condition a Carbon monoxide monitor and alarm within the barbecue hut.
  - Provide guests with instructions on the safe use of the barbecue hut, the symptoms of Carbon monoxide poisoning and the actions to be taken in an emergency.
  - Not permit the use of the barbecue hut by persons under the age of 18 except in the presence of a person over the age of 18.
  - Not permit the use of a barbecue hut as sleeping accommodation.

#### **Guest safety – provision and use of watercraft**

1. Where any watercraft are provided for the use of guests, the licence holder must take reasonable measures to ensure the suitability and safety of the watercraft and the safety of persons using them.
2. The licence holder shall ensure:
  - That any watercraft provided are suitable for the waters upon which they are intended to be used.
  - That any watercraft are operated and maintained in accordance with the manufacturer’s instructions.
  - That personal flotation devices are provided which are suitable for the use intended and the user, and have regard to the categorisation of any inland waters or standards issued by the Maritime and Coastguard Agency.
  - That personal flotation devices are inspected and maintained in accordance with the manufacturer’s instructions.
  - That guests are provided with proportionate safety information about the use of watercraft, including the intended areas of use, local hazards, adverse weather conditions, actions to take in an emergency, and the means of contacting the emergency services.
3. In this condition, “watercraft” means any boat, canoe, kayak, stand-up paddleboard, raft, or similar vessel capable of carrying passengers or being ridden upon, and

equipped with sails, or an engine, or capable of being directed or steered using oars or paddles.

4. In complying with this condition, the licence holder shall have regard to advice and guidance issued by authoritative bodies including, where appropriate, MCA, RoSPA and the Scottish Canoe Association.

#### **Guest safety – provision of bicycles**

1. Where bicycles are provided for the use of guests, the licence holder must take all reasonable steps to ensure the safety of persons using them.
2. The licence holder shall ensure:
  - That any bicycles provided are suitable for the use intended and for the user.
  - That, where cycle helmets are provided, they are suitable for the use intended and the user.
  - That there is a programme of inspection and maintenance in place to ensure that bicycles and cycle helmets are only made available to guests when they are in a safe condition.
3. In complying with this condition, the licence holder shall have regard to the Cycle Hire Guidelines of the Association of Cycle Traders.

#### **Guest safety – outdoor play equipment**

1. Where any outdoor play equipment is provided for the use of guests, the licence holder must take all reasonable steps to ensure the safety of persons using the play equipment.
2. The licence holder shall ensure:
  - That only equipment which is suitable for the use intended shall be installed and provided for the use of guests.
  - That play equipment is installed and maintained in accordance with the manufacturer's instructions.
  - That play equipment is subject to an inspection and checking regime in accordance with the manufacturer's instructions.
  - That rules are in place and communicated to guests to ensure the safe use of play equipment and to prevent its abuse.
3. In complying with this condition, the licence holder shall have regard to the RoSPA *Code of good practice for play areas* and the RoSPA guidance on the safe use of garden trampolines.
4. The provision for the use of guests of inflatable play equipment which is intended for bouncing or climbing on is prohibited. This prohibition does not apply to inflatable play equipment which, at all times when it is use, is directly supervised by the licence-holder or their agent, or an employee of the licence-holder or their agent.