

## REPORT TO BUCHAN AREA COMMITTEE– 27 SEPTEMBER 2022

### Civic Government (Scotland) Act 1982 – Section 44 and Schedule 1 Civic Government (Scotland) Act 1982 Licensing of Short-Term Lets Order 2022 Short-Term Lets – Implementation of new statutory Licensing Scheme

#### 1 Executive Summary/Recommendations

- 1.1 This report provides Members with information on new statutory powers which have been given to Local Authorities, as licensing authorities, to regulate short-term lets in the form of a licensing Scheme.
- 1.2 The Scottish Government undertook extensive consultation to inform the Guidance and design principles for licensing schemes. However, Licensing Authorities require to implement their own licensing scheme under the legislation.
- 1.3 There is a requirement for the Council, as Licensing Authority to develop a Short-Term Let Policy that is consistent with the Scottish Government’s objectives.
- 1.4 Following consideration of a report at the Business Services’ Licensing Sub-Committee at their Meeting on 2<sup>nd</sup> September 2022, the Area Committees are being asked to consider and comment on the introduction of the new mandatory licensing scheme before the Licensing Sub-Committee takes a final decision on the implementation of the licensing Scheme at their meeting on 2<sup>nd</sup> December 2022.
- 1.5 **The Area Committee is recommended to:-**
- 1.5.1 **Note that implementation of a Short Term Lets Licensing Scheme is a mandatory requirement;**
- 1.5.2 **Consider the proposals for the implementation of the Short Term Lets Licensing Scheme in Aberdeenshire and the terms of the draft documents attached as Appendix 1 to this report and to provide comments to the Business Services Licensing Sub-Committee; and**
- 1.5.2 **In particular to consider and comment on where applications which have attracted objections or adverse representations should be considered at Committee level.**

#### 2 Decision-Making Route

- 2.1 The Business Services Committee has the remit for civic government licensing in terms of Part 2A of the Council’s Scheme of Governance. The Committee delegated its remit to the Business Services’ Licensing Sub-Committee which has power “to establish a policy framework for Aberdeenshire-wide Civic Government Licensing”.

2.2 The Licensing Sub-Committee considered the terms of an initial report on the proposed implementation of the policy and licensing Scheme for Short Term Lets in Aberdeenshire at their meeting on 2<sup>nd</sup> September 2022. The report set out the legal requirement for the Policy, the timeline for implementing the Licensing Scheme in Aberdeenshire, the Draft Policy, Conditions, Fees and proposed Forms. The Committee report was item 6 on the agenda and can be accessed [here](#). The Sub-Committee –

**Noted:**

- (a) The Commencement of the Civic Government (Scotland) Act 1982 (Licensing of Short Ter Lets) Order 2022 and the statutory Guidance approved by the Scottish Government for applicants and licensing authorities;
- (b) the required date of 1<sup>st</sup> October 2022 was not attainable for the reasons set out in the report and that the Scheme would be implemented as soon as possible;
- (c) the purposes and scope of the Licensing Scheme;
- (d) there would be no control areas established by the Planning Authority; and
- (e) The challenges faced by the Council in implementing the licensing Scheme.

**Agreed that:**

- (a) no temporary exemptions be granted for any type of licence;
- (b) no policy for temporary licences be adopted;
- (c) the duration of licences be three years;
- (d) the local conditions be used as a pool of conditions to be attached to licences as appropriate and as relevant to the type of property that is being licensed;
- (e) the statutory consultees for the purpose of the licensing scheme;
- (f) the procedures for civic government licence hearings and the approved guidance booklets for Applicants/Objectors and Licence Holders/Complainers will apply to this Scheme;
- (g) the draft fee structure;
- (h) the terms of the draft Policy, Guidance and Draft local conditions for the Licensing Scheme; and
- (i) The timeline for the introduction of the Policy

The Sub- Committee dropped the recommendation regarding which Committee should consider applications which attracted adverse representations or representations and asked that Committees be specifically consulted on which Committee(s) should consider applications which attracted objections/adverse representations prior to the Sub-Committee making a final decision;

The Sub-Committee further decided to formally consult with the Business Services, Communities and Infrastructure Services Committee on the proposed scheme rather than providing them with briefing notes.

2.3 The Licensing Scheme is being established in compliance with Part 4B - Policy Development and Review Framework of the Scheme of Governance which

requires that the Area Committees be consulted on proposals prior to a final decision being taken, hence the reason for this report.

### **3 Discussion**

#### Background

- 3.1 In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. The paper noted the range of approaches adopted in cities and counties around the world and asked for opinions on the types of short-term lets which should be regulated and the controls which should be applied. In parallel with the consultation, the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and included provision for the establishment of short-term let control areas.
- 3.2 In May 2019, the Scottish Government commissioned research to address gaps in the available evidence on the impact of short-term lets on housing and communities. The research combined both secondary data analysis of information published by Airbnb and surveys of residents and hosts, and in-depth interviews involving residents, hosts, community factors and local businesses.
- 3.3 Generally, the same themes, benefits and concerns were highlighted by people at consultation events; those responding to the consultation, and independent research.
- 3.4 On 8<sup>th</sup> January 2020, the Scottish Government announced plans to regulate the short-term let sector. Work to implement the regulations was paused in March 2020 but resumed in July 2021.
- 3.5 On 19<sup>th</sup> 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<sup>st</sup> March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982 (“the 1982 Act”) under Section 44 and Schedule 1 of that Act.
- 3.6 A copy of the order can be accessed [here](#).
- 3.7 The Scottish Government has also published Guidance in relation to the implementation of the Scheme which falls into 2 parts -
- o [Part 1](#): Guidance for hosts and Operators
  - o [Part 2](#): Guidance for licensing authorities and letting agency platforms

#### Principles of the Licensing Scheme

- 3.8 The Order introduces a new mandatory licensing scheme for short-term lets.

- 3.9 Prior to the introduction of the Order, there was no requirement to license short-term lets, therefore Licensing Authorities did not have the ability to regulate such premises.
- 3.10 The purpose of the Order is to ensure short-term lets are safe, address issues faced by neighbours and facilitates licensing authorities knowing and understanding what is happening in their area and enables them to handle complaints effectively. It also enables licensing authorities to ensure those providing short term let accommodation are suitable. The aim of the Order is to make sure that the economic and tourism benefits from short-term lets are balanced with the needs and concerns of local communities.

### Scope of the Scheme

- 3.11 The legislation requires the introduction of four licence types:-
- Home Sharing
  - Home Letting
  - Secondary Letting
  - Home letting and Home Sharing
- 3.12 Home sharing and home letting relates to the use of the host or operator's only or principal home whereas, secondary letting makes use of a separate premises. Properties that fall into the scheme include self-catering properties, B and B's, guest houses, glamping pods, some types of caravans, glamping pods and yurts.
- 3.13 Policies require to be developed to cover the following areas:
1. Temporary Exemptions
  2. Temporary Licences
  3. Licence Duration and Renewal
  4. Additional Conditions
  5. Compliance and Enforcement
- 3.14 The default duration of a licence under the 1982 Act is three years unless otherwise determined by the Licensing Authority, It is recommended that Short-Term Let Licences be issued for three years.
- 3.15 Additional conditions can be determined by the licensing Authority. Local conditions have been drafted which reflect collaboration between the relevant Council Services in respect of issues which have prompted the need for additional conditions.
- 3.16 Compliance and Enforcement is an operational matter. It is considered that it will be split into the following remits -
- Compliance – Authorised Officers will be responsible for inspections of all STL properties. Property condition standards will reflect HMO standards.

- Complaints – The Licensing Standards Officers will deal with mediation between complainers and licence holders, assisted by authorised officers where required.
- Enforcement – The Licensing Standards Officers, in conjunction with Authorised Officers will deal with enforcement action in relation to a breach of licence conditions. If the breach is in respect of non-compliance of the Repairing or Tolerable Standard Authorised Officers will issue a Notice.

### Planning Legislation

- 3.17 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 provides 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 have to apply for planning consent as it is considered a change of use.
- 3.18 Following consultation with the planning service, it is not proposed to establish any control zones within Aberdeenshire.
- 3.19 As the licences are civic government licences, the remit in terms of the Scheme of Governance sits within the Governance Team, Legal and People, Business Services. However, given that expertise for HMO licences is delegated by the Governance Team to the Environmental Health Service, it is proposed that the administration of Short-Term Lets Licences also be delegated to Environmental Health with support from the Governance Team in respect of any application that requires to be determined by Committee.
- 3.20 There is a statutory requirement under the 1982 Act that The Chief Constable and Fire Authority be consulted on all civic government licence applications. In addition, there are Council services which require to be consulted. The Licensing Sub-Committee approved the following persons/bodies to be statutory consultees:
- Police Scotland
  - The Scottish Fire and Rescue Service
  - Aberdeenshire Council’s Planning Service
  - Aberdeenshire Council’s Building Standards
  - Aberdeenshire Council’s Council Tax
  - Aberdeenshire Council’s Private Sector Housing
  - Aberdeenshire Council’s Environmental Health
  - Cairngorms National Park Authority where the premises is located within the area of the National Park
- 3.21 HMO Licences are currently determined by the Licensing Sub-Committee despite being area based. The Licensing Sub-Committee reserved consideration of HMO Licences. This is due to the specialised nature of the licence type, to

ensure consistency of decision-making and recognising the greater experience of the Sub-Committee Members in dealing with controversial licence applications compared to that of the Area Committees. Otherwise, the Scheme of Governance currently provides that area specific applications are determined by the relevant Area Committee. STL Licences are very similar in nature to HMO Licences.

- 3.22 There is also potential for a very high number of applications that may require Committee Determination. This will have an impact on any Committee that requires to determine applications which will be taken into account as part of the consultation process.
- 3.23 Area Committees are being asked for their views on where consideration of applications which have attracted objections or adverse representations should sit as part of this consultation.
- 3.24 Changes to Part 2 A – List of Committee Powers and Part 2B – List of Officer Powers are required to enable the Scheme to be properly administered. This has already been referred to in the report to the Procedures Committee on 31 August 2022 in relation to the annual review of the Scheme of Governance. The following changes will require consideration:
- Committee Powers – The general remit for review of the Scheme will be added to the Civic Government licence requirements of the Business Services Committee under Part C:1.1 of the Committee Powers, further delegated to the Licensing Sub Committee.
  - Committee Powers - Remit for consideration of applications which have received objections or adverse representations currently sits with the Area Committees under Part B7.1.
  - Officer Powers - The specific delegations to the Head of Legal and People and Head of Planning and Economy will be amended under Section D6 and Section F4 of the Officer Powers respectively.
- 3.25 Licence fees require to be set. Revenue cannot exceed the costs of establishing and running the regime, including support provided by other Services. This includes the costs of setting up the Scheme.
- 3.26 The draft fees have been established as follows:

Guest capacity (people)	Home sharing and home letting		Secondary letting	
	Grant	Renewal	Grant	Renewal
1-2	£612.00	£550.00	£612.00	£550.00
3-4	£816.00	£735.00	£816.00	£735.00
5-9	£1,015.00	£914.00	£1,015.00	£914.00
10+	£1,298.00	£1,168.00	£1,298.00	£1,168.00

Other types of application	Fee
Variation of licence / change in circumstances	[tbc]
Duplicate licence	[tbc]

Enforcement costs	Fee
Inspection of a premises where concern is flagged at the application process by a consultee	[tbc]
Visit to premises where the visit is necessary due to a failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious	[tbc]
Inspection of a premises following a complaint where it is found that there are compliance issues (whether or not the subject of a complaint)	[tbc]

Work is still being carried out to ensure that the fees set cover the costs of administering the licensing scheme.

### Preparation

- 3.27 Officers from Governance and Environmental Health formed a Short-Term Lets Working Group at the beginning of the summer recess to ensure a collective approach has been taken across the Council. The Group has also consulted with the Planning Service on Control Areas.
- 3.28 A dedicated mailbox has been set up to answer queries from members of the public in relation to the Scheme and to deal with any complaints. A [web page](#) has already been set up and has gone live.
- 3.29 Officers have compiled a list of premises that are likely to require a licence once the scheme is implemented in order to be able to keep them informed of proposals and ensure they are included in the consultation process. This list is being added to, as officers become aware of premises and deal with enquiries from members of the public.
- 3.30 Arrangements are being made with the Communications Team to publicise the proposed policy and the consultation thereon across all platforms
- 3.31 The Working Group has drafted a Short-Term Lets Policy, Guidance for Applicants and Operators and local conditions. Application Forms and procedures have been drafted to enable the processing of these licences. These forms and procedures are based on those already established under the 1982 Act, and are based on HMO licence application forms as the parameters are very similar.
- 3.32 The Draft Documents were approved by Licensing Sub-Committee on 2<sup>nd</sup> September 2022 for the purposes of consultation. The Policy, Guidance and Proposed Conditions are attached as **Appendix 1** to this report.

3.33 All hosts and operators can continue to operate if they have submitted an application for a licence on or before 1<sup>st</sup> April 2023.

3.34 All short-term lets are to be licensed by 1<sup>st</sup> July 2024.

### Challenges

3.35 The introduction of the Scheme poses a number of issues for the Council, as follows:

- Timescale

The Scottish Government delayed introduction of the legislation, but did not extend the timescales for licensing authorities to implement the scheme. The local government elections and Council summer vacation periods were not taken into account when setting the implementation date of 1<sup>st</sup> October 2022. This has caused significant issues for staff who have not had the resources to meet the deadline and also fails to take into account the requirements of the Council's Scheme of Governance for the implementation of new Policies. Given the high publicity and potential controversy the Scheme is likely to attract, it is important the Council, as Licensing Authority, takes the time to implement this new Scheme properly and set the Scheme requirements at the appropriate level.

- Volume of Applications

The application of the scheme to the large number of short-term lets likely to be available in Aberdeenshire will be a significant undertaking for the Council to effectively deliver. From data collected, it is suggested that there are at least 2,500 properties that officers are aware of that will require a licence in Aberdeenshire. This will result in a substantial increase in workload and will place an additional pressure on administrative staff in processing applications.

- Timing and Duration of Consultation

Consultation with the Area Committees will be at the first cycle of Committee Meetings following approval of the Draft Scheme by the Sub-Committee. Public Consultation utilising the Engage platform will take place at the same time concluding on 7 October 2022 but will be for a slightly shorter period than Officers would have wished in order to be able to bring back a final report to the December meeting of the Sub-Committee.

A link to the public consultation is included here: [Licensing of Short Term Lets Consultation | Engage Aberdeenshire](#)

- Staff Resources

There is no capacity at the current time either within the Governance Team or the Environmental Health Team to administer the Scheme. It will also put pressure on the role of the HMO Officer. Significant recruitment will be required to allow the scheme to be properly administered. There are already significant challenges within Environmental Health and other services across the Council recruiting qualified staff.

- Committee Time

There is potential for the volume of business undertaken by relevant Committee(s) to significantly increase due to the number of applications requiring Committee determination. Any application which attracts an adverse representation or objection (from a member of the public or any of the statutory consultees) will require to go before a Committee for a formal hearing. Consideration therefore needs to be given to the capacity of the Committee Meetings to allow for the volume of applications in addition to the existing levels of business for the Committee.

## 4 Council Priorities, Implications and Risk

### 4.1

<b>Pillar</b>	<b>Priority</b>
Our People	Education Health & Wellbeing
Our Environment	Infrastructure Resilient Communities
Our Economy	Economy & Enterprise

4.2 This report helps deliver the above strategic priorities by having the right people, in the right place at the right time; utilises digital infrastructure by encouraging on line applications and is designed to assist local tourism and local economy by balancing the needs of businesses fairly against the needs of the communities and ensures that the properties licensed meet a required standard.

4.3 The table below shows whether risks and implications apply if the recommendation(s) is (are) agreed.

<b>Subject</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Financial	<b>X</b>		
Staffing	<b>X</b>		
Equalities and Fairer Duty Scotland	<b>X</b>		
Children and Young People's Rights and Wellbeing	<b>X</b>		
Climate Change and Sustainability			<b>X</b>
Health and Wellbeing	<b>X</b>		
Town Centre First	<b>X</b>		

4.4 The financial and staffing implications are as set out at section 3.26 and section 3.35 of this report, respectively.

4.5 The screening Section, as part of Stage One of the Integrated Impact Assessment process has been undertaken. On the basis of the information we

hold to date, the screening process has identified the following potential positive impacts –

- Town Centres
- Health and Wellbeing
- Groups with protected characteristics
- Children and young peoples’s wellbeing
- Strategic priorities of the Council

Further work requires to be carried out, as part of the consultation process to provide evidence to support the potential positive impacts identified above and also to establish whether any negative impacts are applicable. The IIA will be continually assessed and updated during the consultation process as we ingather evidence. A full IIA will form part of the report that goes back to the Sub Committee in December 2022

4.6 The following Risks have been identified as relevant to this matter on a [Corporate Level](#):

- *ACORP001 Budget Pressures in terms of recouping the cost of implementing the scheme through fees and ensuring sufficient staff resources are in place to administer the Scheme*
- *ACORP002 Changes in government Policy legislation and regulation: implementation of the Scheme is a statutory requirement*
- *ACORP003 – Workforce: We need to ensure we have sufficient staff resources with the appropriate skills to administer the Scheme*
- *ACORP004 - Business and organisational transformation: the Scheme will be tailored to the statutory requirements and will comply with the requirements of Part 4 B of the Scheme of Governance*

Implementation of the Scheme meets the following Strategic outcomes:

- [Business Services](#) –
  - BSSR002 – Communities are confident, resilient and inclusive. Individuals feel secure and in control of their circumstances
  - BSSR003 – We live within our means and us public money to maximise outcomes for our communities
  - BSSR005 – One Aberdeenshire, people working effectively with each other across public services and across communities
  - BSSR006 – Staff working close to the communities they serve, making decisions based on local need
- [Education and Children’s Services](#) –
  - ECSR0004 – to develop and deliver a revised LLA Business Plan focussed on the three pillars of Live Life Outdoor, Live Life Well and Live Life@Home
- [Infrastructure Services](#) –

- ISR001– Aberdeenshire is a location of choice that has a diverse economic base of innovative companies with a skilled workforce and return to full employment.
- ISR003 – supporting Aberdeenshire businesses through pandemic, EU Exit and energy transition
- ISR004 – Consumers are assured that businesses are conformed to regulations.
- ISR013 - Business are supported to ensure compliance with legislation, economic diversification and energy transition
- ISR015 – Everyone having access to appropriate accommodation and housing support where required
- ISR016 – Everyone having access to appropriate accommodation and housing support where required

## **5 Scheme of Governance**

- 5.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report, their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 5.2 The Committee is able to consider this item in terms of Section B1.2 of Part 2 A: Committee Powers of the Scheme of Governance as it enables the Committee to consider, comment on and make recommendations to Servies and any other appropriate Committee on any matter or policy which impacts its area.

**Ritchie Johnson**  
**Director Business Services**

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Date 12<sup>th</sup> September 2022

### **List of Appendices –**

**Appendix 1 – Approved Draft Policy, Guidance, Conditions**



From mountain to sea

# **Short term lets licensing policy statement**

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# 1. Background

On 19 January 2022, The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) <sup>1</sup>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”).

Section 44 of the Act permits Scottish Ministers to designate an activity as an activity for which a licence shall be required. The effect of the Order is that from 1<sup>st</sup> October 2022 the use of accommodation for a short-term let is an activity for which a licence is required under the 1982 Act.

Prior to the introduction of the legislation, there was no requirement to license short-term lets and, therefore, local authorities did not have the ability to regulate these types of premises.

The aims of the licensing scheme are: -

- To ensure all short-term lets are safe.
- To facilitate licensing authorities in knowing and understanding what is happening in their areas; and
- To assist with handling complaints and address issues faced by neighbours effectively.

The Council’s Short-Term Let Policy focuses on ensuring that an efficient, effective and proportionate licensing scheme is in place, which is customised to the needs and circumstances of Aberdeenshire and supports applicants who wish to obtain a short-term let licence. The Policy outlines how the Council will administer applications, collect fees and monitor short term lets. 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.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1982/45/contents>

## 2. Timescales for applying

After 1 October 2022, new hosts and operators will need to have a licence. This means that, if you were not using your premises to provide short term lets before 1 October 2022, you can advertise but not take bookings or receive guests until you have obtained a licence.

Existing hosts or operators (those using accommodation to provide short-term lets before 1 October 2022) have until 1 April 2023 to apply for a licence. During this period, they can operate without a licence (by continuing to take bookings and receive guests) unless their licence application has been determined or refused.

After 1 April 2023, existing hosts 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 been granted a short-term let licence.

By 1<sup>st</sup> July 2024, all short-term lets will require to be licensed in order to continue operating.

It is a criminal offence to operate without a licence. Section 7 of the 1982 Act sets out four offences, as set out below. These currently attract fines on the standard scale. Depending on the 1982 Act activity, different punishments will apply. The default is a fine not exceeding level 4 on the standard scale.

- Operating without a licence
- Failing to comply with a licence condition
- Failing to notify a change
- Making a false statement.

### 3. What is “Short Term Let”?

#### 3.1 Definition of Short Term Let

A short term let is defined as the use of residential accommodation provided by a host in the course of a 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:

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

### 3.2 Excluded Accommodation

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

- **an aparthotel** an aparthotel is accommodation comprising of five or more serviced apartments in a residential building where: -
  1. The whole building is owned by the same person
  2. A minimum number of 5 serviced apartments are managed and operated as a single business
  3. The building has a shared entrance for the serviced apartments, and
  4. The serviced apartments do not share an entrance with any other flat of residential unit within the building
  
- **Licensed Premises**, under the Licensing (Scotland) Act 2005 (Alcohol Licensing) where the provision of accommodation is an activity listed in the operating plan, or which otherwise requires a licence for use for hire for overnight stays. For example –
  - If you operate a restaurant with rooms or an inn which is already licensed specifically to offer accommodation, then you are not providing short-term lets.
  - If you provide licensed caravans, you are not providing short-term lets
  - **However, if you have an HMO (Houses in Multiple Occupation) Licence for your property, you will still need a short-term let's licence if it is also used for short-term lets. This is the case whether or not you live at the premises covered by your HMO licence.**
  
- **a hotel which has planning permission granted for use as a hotel**
  - The majority of hotels are excluded through being licensed to provide accommodation under the Licensing (Scotland) Act 2005
  
- **a hostel**
  - A hostel provides residential accommodation and food, or shared facilities to prepare it, other than in a house.
  
- **residential accommodation where personal care is provided to residents** such as a residential care home
  
- **a hospital or nursing home**
  
- **Educational accommodation such as –**
  - residential schools, colleges, training centres or purpose-built student accommodation. Student halls of residence, for example are excluded but houses and flats which are normally let to students (perhaps during a summer period when student tenants have moved back home from the

summer and are being used as short-term lets) are not excluded.

- **secure residential accommodation** including a prison, young offenders' institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks
- **a refuge**
  - A refuge includes accommodation for women escaping domestic violence for example
- **accommodation which otherwise requires a licence for use for hire for overnight stays**
- **accommodation, which is provided by the guest**, for example –
  - Where they bring their own tent (as opposed to glamping where the tent is normally fixed and provided by the host)
- **Mobile Accommodation**, mobile accommodation which is capable of transporting your guests at the time of their stay, for example –
  - Where you hire out canal boats, yachts or motor homes.  
However, a previously mobile unit that had been immobilised would not be excluded
- **a bothy** this is a building of no more than two storeys which –
  - (a) does not have any form of –
    - (i) Mains electricity
    - (ii) Piped fuel supply, and
    - (iii) Piped mains water supply
  - (b) Is 100 metres or more from the nearest public road (within the meaning of Section 151 of the Roads (Scotland) Act 1984 and
  - (c) Is 100 metres or more from the nearest habitable building.
- **Shift Accommodation**
  - accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties. This includes accommodation provided by companies and other bodies to employees as part of a contract or to help them perform their duties. For example, caretakers or workers on an oil rig (in so far as the accommodation is within Scottish Territorial Waters) where shifts extend into multiple days.

### 3.3 Excluded tenancy

An excluded tenancy means a tenancy which falls within any of the following definitions:

- protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984)
- an assured tenancy (within the meaning of section 12 of the Housing (Scotland) 1988 Act)
- a short, assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988)
- a tenancy of a croft (within the meaning of section 3 the Crofters (Scotland Act 1993)
- a tenancy of a holding situated out with the crofting counties (within the meaning of section 61 of the Crofters (Scotland Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931(8)) applies
- a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001)
- a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001)
- a 1991 Act tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003)
- a limited duration tenancy (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003)
- a modern limited duration tenancy (within the meaning of section 5A of Agricultural Holdings (Scotland) Act 2003)
- a short, limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003)
- a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003)
- a private residential tenancy (within the meaning of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016)
- a student residential tenancy.

Excluded Property extends to property which is part of any of the accommodation or tenancies listed above. So for example self-catering property in the grounds of a licensed hotel would be excluded if that property is part of the licensed area.

**Please take your own independent legal advice on whether or not your accommodation would require a short-term let licence. The Licensing Authority cannot provide legal advice to you as to whether or not a premises is excluded from requiring a licence.**

## 4. Types of Short Term Let Licences

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

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

The different types of licence are defined as follows:

- **Secondary letting** – this means a short-term let involving the letting of property where you do not normally live, such as a second home
- **Home letting** - this means using all or part of your home for short-term lets whilst you are absent, for example when you are on holiday.
- **Home sharing** – this means using part of your own home for short- term lets whilst you are there
- **Home Letting and Home Sharing** - this means you use your home, or part of your home for short-term lets both whilst you are there and when you are absent.

The application form will ask you to confirm what type of short-term let licence you are applying for when submitting your application. You must select one of the above types of licence.

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.

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

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.

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

Your property will not be a short-term let if it falls into the following criteria –

- (a) If the guest (a person occupying property for the purposes of a short-term let) uses

the accommodation as their only or principal home.

(b) The guest is –

1. An immediate family member of the host (The Order provides that a person (“A”) is an immediate family member of another person (“B”) if A is –
  - i. In a qualifying relationship with B.
  - ii. A qualifying relative of B.
  - iii. A qualifying relative of a person who is in a qualifying relationship with B or
  - iv. In a qualifying relationship with a qualifying relative of B.

Two people are in a qualifying relationship with one another if they are: -

- Married to each other
- In a civil partnership with each other
- Living together as though they were married

A “qualifying relative” means a parent, grandparent, child, grandchild or sibling (Two people are to be regarded as siblings if they share at least one parent in common)

A person's stepchild is to be regarded as that person's child

A person (“C”) is to be regarded as the child of another person (“D”) if C is being or has been treated by D as D's child.

2. 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
3. An owner or part-owner of the accommodation.

(c) The accommodation is 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.

(d) The accommodation is excluded accommodation (see 3.2 above)

(e) The Short-term let constitutes an excluded tenancy (see 3.3. above)

## 5. Planning Permission

Under the 1982 Act, a preliminary ground for refusing to consider a short-term let licence is that the use of the premises for a short-term let would constitute a breach of planning control under the Town and Country Planning (Scotland) Act 1987 by virtue of Section 123(1)(a) or (b) of that Act.

Currently, EITHER [planning permission is not required by Aberdeenshire Council, as planning authority, for use of a residential property as a short-term let.] OR [planning permission is required by Aberdeenshire Council, as planning authority, if the use of a residential property as a short-term let is deemed to be a material change of use (e.g., it has become the principal use of the property, or the use may impact on the amenity of neighbouring properties).

Should you be unsure as to whether planning permission is required for a short term let, please contact the planning Service. Details for the Council's planning service can be found at - <https://www.aberdeenshire.gov.uk/planning/planning-applications/contact/>

**Please note that all short-term let licence applications received where the premises in within the Cairngorms National Park will be sent for determination to their Planning Department as they have full planning authority for that area.**

### Designated Control Areas

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 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.

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.

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.

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

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.

Hosts and operators must comply with both planning and licensing law.

The Council, as licensing authority, may refuse to consider a licensing application if the host or operator within a designated short term let control area needs planning permission but does not have it. The Council, as licensing authority, has 21 days from receipt of a valid application to decide to refuse to consider the application on these grounds. If an application is refused to be considered on these grounds, the host or operator must be notified within 7 days together with an explanation.

Aberdeenshire currently has no designated control areas. If any Designated Control Areas are introduced in Aberdeenshire in the future, then applicants and licence holders should note that, where planning permission may not be required at present for a short-term let licence, this position would change. These licence holders should note that it is a mandatory condition of a short-term let licence, that, if the premises falls within a Control Area, the licence holder must ensure that an application for planning permission under the Town and Country Planning (Scotland) Act 1997 has been made or is in force. This means that if a Control Area is introduced during the period of your short-term let licence, where planning permission was not initially required at the time of applying and being granted a licence, you would have to apply for planning permission or a certificate of lawfulness as applicable, or, if you continued to operate your short-term let once planning permission or a certificate has been refused, you would be in breach of a licence condition and enforcement action may be necessary.

Aberdeenshire Council, as licensing authority, recognises the current position within Aberdeenshire regarding Control Areas could change and will ensure this Policy is reviewed to take into account any Control Areas that may be introduced within Aberdeenshire in future.

Please note that the introduction of Control Areas falls under the Council as Planning Authority to implement and not the Council as Licensing Authority.

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

Before 1 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.

The applicant has 3 months to submit a planning application where one is required. If the applicant does not do so within 3 months, the licence application can be refused, and the applicant must cease providing short term lets.

Details for the Council's planning department can be found at - <https://www.aberdeenshire.gov.uk/planning/planning-applications/contact/>.

## **6. Temporary Exemptions**

The Council will not be granting temporary exemptions under any circumstances. This position will be reviewed in 3 years' time.

## **7. Temporary Licences**

The Council will not be granting temporary licences under any circumstances. This position will be reviewed in 3 years' time.

## 8. Application Process

### 8.1 Making an application

All applicants must complete either an online or paper short term let licence application form together with the appropriate documentation and fee. The application should either be submitted online, or paper applications should be emailed to [STL@aberdeenshire.gov.uk](mailto:STL@aberdeenshire.gov.uk) or, alternatively, posted to Environmental Health, Gordon House, Blackhall Road, Inverurie AB51 3WA

An application for a Short Term Let Licence can be made by a person other than the owner of the premises. Where this is the case, the applicant must ensure they provide the relevant consent from the owner(s).

Part of the application form will require the applicant to provide a declaration to the Licensing Authority that they can comply with the mandatory conditions attached to a short-term let licence, including all the documentation detailed within these conditions. Applicants should be mindful that the Council and Council Officers can request any documentation referred to in the mandatory conditions at any time during the consideration of an application or the period of a licence. Applicants should note that a breach of a condition is a criminal offence under the 1982 Act.

Applicants should either pay the application fee as part of the online application process or if submitting a paper application form by making a payment to any of Aberdeenshire Council's Service Points or by contacting 01467 539039 to make payment by card over the telephone

Where Objections or adverse representations are made in respect of an application, all parties will be invited to attend the Business Services' Licensing Sub-Committee. The Sub-Committee will determine whether the application is to be granted. It should be noted that if an application is refused, then the applicant cannot apply for a short-term let licence within one year of the date of refusal unless there has been a material change in circumstances. An applicant who has been refused must contact the Council's Licensing Service by email at [licapps@aberdeenshire.gov.uk](mailto:licapps@aberdeenshire.gov.uk) if they wish to reapply within one year of the date of refusal. It is the Council that determines whether the change is material, not the applicant.

### 8.2 Documentation Required with an Application

Applicants should be aware that an application will not be accepted and processed without the following documentation (where applicable):

- Planning Permission or a Certificate of Lawfulness
- Floor/Layout Plan -All applicants for the grant of a STL (Short Term Let) licence will be required to submit a floor plan of the premises, scale 1: 50 showing at least the following:
  - Rooms – living area/bedrooms/bedrooms available for guests.

- Room sizes, including bedrooms.
- Fire escapes.
- Location of heat/smoke alarms.
- **Location of fire doors**; and
- Location of stairs/elevators/lifts.

For renewal applications, where there has been no change to the layout of the premises a floor plan would not be required with the application.

For variation applications, where the variation relates to a change to the layout of the premises, a floor plan would be required with the application.

- **A location plan for rural properties**
- Evidence of Operation as a STL before 1 October 2022- Where an applicant has been operating a STL before 1 October 2022, the applicant will be required to certify this when submitting a STL licence application. Checks to establish this may be made by the Licensing Authority.
- Consent from owner(s) where owner is not the applicant. Where the premises is owned by more than one person (Shared ownership), all owners will have to declare that they consent to the application if one owner is submitting the application.

### **8.3 Notice of Application**

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.

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.

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

A copy of the application will be sent to the following consultees:

- Police Scotland
- The Scottish Fire and Rescue Service
- Aberdeenshire Council's Planning Service
- Aberdeenshire Council's Building Standards
- Aberdeenshire Council's Council Tax
- Aberdeenshire Council's Private Sector Housing
- Cairngorms National Park Authority

All personal data will be processed in line with the following privacy notices:  
<http://publications.aberdeenshire.gov.uk/dataset/environmental-health-privacy-notice>

#### 8.4 Objections and representations

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

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

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

Anonymous objections or representations will not be considered.

It is important that an objection or representation is specific. It is not enough to say, “I object” or “I complain”.

The Council is entitled (but not obliged) to accept a late objection or representation if satisfied that there is sufficient reason as to why it was not made in the time required. If a person lodged a late letter, the letter should explain what the sufficient reason is. There is no guarantee that the Licensing Sub-Committee will accept a late submission.

The objection or representation should be relevant to the statutory grounds that can be taken into consideration when refusing an application. (The Council refers to these as “the Legal Test”) These are set out in the Act:

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

It should detail clearly the reasons for the objection/representation and why the applicant and/or the premises are not suitable. If the objection is based on alleged incidents, then

for each alleged incident, the objector should answer questions such as

- What happened?
- What was the day, date and time?
- Was there any official complaint (e.g., to Police, Council)?
- If so, what action was taken?

The Council will provide the applicant with copies of any objections or representations received, appropriately redacted. All data be processed in line with the following privacy notice: **TO BE INSERTED**

### **8.5 Determination of application**

Under the 1982 Act, the Council will have 12 months to determine the short term let licence application from the date it is received with all the required documentation.

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.

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 an HMO licence and providing false or misleading information in your application form.

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 Head of Legal and People or Head of Planning and Economy.

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 **XXX** Committee.

The person submitting the objection or representation will be invited to attend the meeting of the Committee and speak to their objection/representation. You will be given at least 14 days' notice of the hearing date.

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.

The Sub-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 section 3.

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

A copy of the Council's hearing procedure can be found at **Appendix 1**.

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 Head of Legal and People, Business Services within 10 days of that request.

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

### **8.6 Right of appeal**

The applicant and the person(s) making an objection/representation have a right of appeal to the Sheriff Court. 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.

However, they only have this right if they have taken every opportunity to state their case to the Sub-Committee as has been made available.

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.

Parties should seek their own independent legal advice in relation to an appeal.

### **8.7 Licence duration and renewal**

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.

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.

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

In the event of the death of a short-term let licence holder, the licence will be deemed to have been granted to the executor and will remain in force for a period of 3 months from the date of expiry of the licence holder's death, unless previously suspended or revoked. Where the Council is satisfied that it is necessary for the purpose of winding up the estate, on request, in writing, by the Executor, the Council may extend the period further.

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.

### **Variations**

The Council may vary the terms of a licence on any grounds it thinks fit and can do this at any time. This can be done following an application made to the Council by the licence holder or on their own initiative. This could include adding further conditions to the licence. The Council may consult with the statutory consultees on the proposed variation and any other parties it considers appropriate. A fee will be charged to the applicant should they wish to vary their licence. The Council may also require the display of a Notice of Application.

A variation cannot be used to substitute a new holder of the licence for the existing one, effectively transfer a licence. A new licence application requires to be made to transfer the licence to a new licence holder.

### **Material Change in Circumstances**

The Licence Holder must notify the Council in writing as soon as possible where there is a material change in circumstances affecting the licence holder of the short-term let.

### **Suspension or Revocation of a Licence**

#### **Immediate Suspension [Paragraph 12. Schedule 1 1982 Act]**

The Council can suspend a short-term let licence immediately if it is of the opinion that the carrying on of the activity to which the licence relates is causing or is likely to cause a serious threat to public order or public safety. This action would generally be taken on receipt of a complaint.

After an immediate suspension has taken place, the Licence Holder will be given an opportunity to attend a hearing before the Licensing Sub-Committee in relation to the matter which prompted the suspension, The Sub-Committee, after hearing from the licence holder and the complainer, will determine whether to suspend the licence for a further period, revoke the licence, or take no further action. This hearing takes place within 6 weeks of the immediate suspension.

The grounds for further suspending or revoking a licence are set out in Paragraph 11 of Schedule 1 to the 1982 Act, or as the Council refers to it, the Legal test. These are:

- (a) the holder of a licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management is not or is no longer a fit and proper person to hold the licence.
- (b) The activity to which the licence relates is being managed by or carried on for the benefit of a person, other than the licence holder, who would have refused the grant or renewal of the licence under paragraph 5(3)
- (c) The carrying on of the activity to which the licence relates has caused or is likely to cause undue public nuisance or a threat to public order or public safety.
- (d) A condition of the licence has been contravened.

### **Non-Immediate Suspension or Revocation**

The Council can, whether upon a complaint made to it or not, consider whether to suspend or revoke the licence in terms of Paragraph 11 of Schedule 1 to the Act, the terms of which are outlined above.

## 9. Conditions

### 9.1 Mandatory Conditions

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 Additional Conditions

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.

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**.

**It should be noted that the Council cannot impose an additional condition to a licence which limits the number of nights a premises may be used for secondary letting.**

### 9.3 Maximum Occupancy

One of the mandatory conditions that is attached to all STL licenses is that the licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

All application forms will ask the applicant to confirm the number of guests they would like to accommodate in the premises. The Licensing Authority do however have to provide a maximum number of guests who can stay on the premises at any one time on the STL licence when it is issued. This is known as the “maximum capacity”.

The Licensing Authority, taking into account the information provided on the application form and layout plan, will calculate the maximum capacity in the following way:

The maximum number of persons in relation to a premises is whichever is the less of:

(a) The number specified in Table 1 below in relation to the number of rooms in the house available as sleeping accommodation for guests, and

(b) The aggregate for all such rooms in the premises of the numbers specified in column 2 of Table 2 in relation to each room of the floor area specified in column 1.

It should be noted that no account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.

It should be noted that a room is available as sleeping accommodation if it is of a type normally used in the premises as a living room or as a bedroom.

No account shall be taken of a child under the age of one and a child aged one or over but under 10 shall be reckoned as one-half of a unit.

Unconventional accommodation will be considered on a case-by-case basis.

*Table 1*

<b>Number of Rooms</b>	<b>Number of Persons</b>
<b>1</b>	<b>2</b>
<b>2</b>	<b>3</b>
<b>3</b>	<b>4</b>
<b>4</b>	<b>7 and 1/2</b>
<b>5+</b>	<b>2 for each room</b>

*Table 2*

<b>Floor Area of Room</b>	<b>Number of Persons</b>
<b>110 sq. ft. or more</b>	<b>2</b>
<b>90 sq. ft. or more but less than 110 sq. ft.</b>	<b>1 and 1/2</b>
<b>70 sq. ft. or more but less than 90 sq. ft.</b>	<b>1</b>
<b>50 sq. ft. or more but less than 70 sq. ft.</b>	<b>1/2</b>

## 10. Compliance and enforcement

### General

This Policy sets out the Council's approach to monitoring, compliance and enforcement of those persons undertaking being a Host/Operator of a short-term let. It makes clear the steps that the Council will take to monitor compliance –

- Of those required to apply for a licence
- When determining an application for a licence; and
- Of licensed short-term let hosts and operators.

It also sets out the 1982 Act actions the Council may take if further action to enforce the requirements are necessary.

Effective monitoring of compliance and enforcement is an important aspect of this policy and will help to achieve improved standards of practice and ensure that all hosts and operators comply with their responsibilities. This will enable hosts and operators to compete on a fair basis, improve standards within the industry and instil greater consumer confidence when using a short-term let.

### Principles and Objectives

#### *Principles*

Our approach to monitoring compliance and enforcement is founded upon the Scottish Government's five principles of Better Regulation. The principles state that any regulation should be:

- **Transparent** – be open and keep regulations (and how they are implemented) simple and user friendly
- **Accountable** - be able to justify decisions and be subject to public scrutiny
- **Consistent** – rules and standards must be joined up and implemented fairly
- **Targeted** – regulation should be focused on the problem and minimise the side effects.

#### *Objectives*

This policy sets out a framework for monitoring the compliance of those hosts and operators providing short-term lets. Our objectives are to:

- Encourage and support compliance amongst those providing short-term lets
- Provide clear information to those undertaking short-term letting about how the Council will assess their fit and proper status, monitor compliance and support the enforcement of regulation; and

- Reduce duplication and minimise unnecessary burden upon short-term let licence holders by targeting compliance activity on those assessed as being at greater risk of non-compliance.

### **Monitoring Compliance**

In order to monitor compliance, Council officers can undertake an inspection of the premises

Scottish Government Guidance enables a person authorised by the Council to inspect premises which appear to be being used for the purpose of short-term let accommodation. This gives the authorised person the ability to visit your premises and inspect both the premises and any records associated with the conditions attached to the licence. In keeping with the principals of proper and targeted compliance, the Council may visit when considered necessary and will consider a range of factors when carrying out an inspection. This may include, for example –

- As part of considering your application
- Part of a routine inspection
- As a result of a complaint from a guest or neighbour
- Follow up on a previous visit to confirm that an issue has been resolved
- Other accreditation obtained by the host or operators
- Feedback from Police Scotland or the Scottish Fire & Rescue Service
- Peculiarities of the operation (unconventional accommodation)
- Pattern of complaints associated with the host, operator or premises
- Reputational evidence from guest reviews and internet profile

Monitoring of the compliance of hosts and operators cannot be the responsibility of any one person or the Council. To be effective, it requires collaboration between service users, letting agencies, and platforms not only to monitor compliance but in addition identifying and eliminating unlicensed short-term lets.

You will not be charged a fee for a routine visit. However, you may be charged if a follow-up visit is necessary because you have breached one of your licence conditions.

### **Enforcement and Sanctions**

Our primary aim is to ensure compliance through means of encouragement and support, however, there are several ways to enforce the requirements in the Licensing Order. These are:

- Additional licence conditions on application
- Enforcement Notices - An enforcement notice must set out the matters constituting a breach or likely breach, the action required to rectify or prevent

the breach and the date by which the action must be taken.

- Variation, Suspension or Revocation of the Licence
- Pursuance of prosecution of offences under the 1982 Act (see table of fines below).

Where compliance cannot be achieved through alternative means and there is evidence indicating that a criminal offence has been committed, cases may be referred to Police Scotland, to consider criminal proceedings.

Level on the Scale	Maximum Fine
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000

Applicants and Licence Holders should note that the Scottish Government intends to increase the maximum fine to £50,000 through provision in a suitable Bill early in the current Session of Parliament.

The Scottish Government also intends to make provision for imprisonment as a last resort for hosts who continue to operate without a licence.

The Licensing Authority will review the terms of this Policy upon additional provisions being approved by the Scottish Government.

### 10.1 Unlicensed short term lets

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

The Scottish Government has set out the following timescales for hosts and operators. Please note the rules are different depending on whether you are a new host/operator or an existing host/operator:

#### New hosts/operators

- From 1 October 2022 hosts **cannot** accept bookings until a short term let licence has been obtained
- From 1 October 2022, hosts **cannot** operate while a short term let

application is being determined

### Existing hosts/operators

- Existing hosts/operators must apply for a short term let licence by 1 April 2023, at the latest.
- If the accommodation provider has been trading on or before 30 September 2022, they may continue to accept bookings after 1 October 2022 but only if they have made a licence application by 1 April 2023.
- Hosts can continue to operate for the time it takes for the licence application to be finally determined.
- A provisional licence number will be provided to the applicant on receipt of a licence application
- By 1 July 2024 accommodation providers should not be trading unless they have been granted a full licence

A public register will be maintained of licensed short term lets by the Council. This will allow members of the public to check the licensing status of a premises being used as a short term let. The public register will be available on the Council's website at [INSERT LINK](#)

## **10.2 Licensed short term lets**

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

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.

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.

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.

## 11. Complaints about licensed short term lets

Aberdeenshire Council aims to ensure that hosts and operators provide the necessary standards for members of the public with regard to the licensing of short-term lets. All complaints and concerns received will be taken seriously as they provide an opportunity to improve and maintain the high standards, we aim to achieve by means of the licensing regime. The Council will –

- Ensure that all complaints are investigated fairly and in a timely way with those involved.
- Ensure that complaints are, wherever possible, resolved and that relationships are repaired; and
- Gather information which improves standards in relation to the licence.

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.

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

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.

These issues would include a host/operator exceeding the number of people staying at the premises, serious disturbance or antisocial behaviour or concerns about the maintenance and safety of the premises. These complaints can be directed to [STL@aberdeenshire.gov.uk](mailto:STL@aberdeenshire.gov.uk)

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.

Complaints will aim to be acknowledged within 5 working days. A full response advising you of the outcome may take some time if the complaint requires further investigation. The complaint may also need to be directed to other departments within the Council such as Planning 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.

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

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

## **Assessing Complaints**

Some complaints will require enforcement action taken by the Council (as outlined earlier in this Policy), others will not require enforcement action.

The Council aims to resolve most complaints by means of engagement and discussion with the host/operator and, if necessary, adding additional conditions to a licence if deemed appropriate. Enforcement action will only be taken as a last resort.

## **12. Third party accreditation**

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

The Council will also consider the provision of supporting documentation being provided through suitable third-party platforms. Applicants will be expected to provide a link to the database with the supporting documentation in lieu of uploading the documents as part of the application process.

## 13. Equalities

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

Prior to the Committee implementing this policy an Integrated Impact Assessment was undertaken. This can be viewed using the following link [\[to be inserted once the decision is made\]](#).

## 14. Fees

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

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

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
- The duration of the period for which the premises are made available for use as a short-term let (noting that licensing authorities cannot set limits on nights on licences for secondary letting); and
- The extent to which the licence holder has complied with the conditions of the licence.

The Scottish Government recommends that Licensing authorities, as a minimum, establish a fee structure that take into account the type of licence and the guest capacity.

### Application and renewal – full licence

Guest capacity (people)	Home sharing and home letting		Secondary letting	
	Grant	Renewal	Grant	Renewal
1-2	£612.00	£550.00	£612.00	£550.00
3-4	£816.00	£735.00	£816.00	£735.00
5-9	£1,015.00	£914.00	£1,015.00	£914.00
10+	£1,298.00	£1,168.00	£1,298.00	£1,168.00

Other types of application	Fee
Variation of licence / change in circumstances	[tbc]
Duplicate licence	[tbc]

Enforcement costs	Fee
Inspection of a premises where concern is flagged at the application process by a consultee	[tbc]
Visit to premises where the visit is necessary due to a failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious	[tbc]

Inspection of a premises following a complaint where it is found that there are compliance issues (whether or not the subject of a complaint)	[tbc]
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<b>**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**</b>	
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Applicants should either pay the application fee as part of the online application process or if submitting a paper application form by making a payment to any of Aberdeenshire Council's Service Points or by contacting 01467 539039 to make payment by card over the telephone.

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## Appendix 1 – Hearing procedure

### Guidance for Members of the Public – Participating in Remote Licensing Hearings (Licensing Sub-Committee/Area Committees)

*In September 2021, Full Council agreed to trial a choice based blended model for virtual committee meetings. This allows meeting participants to attend in person from a meeting venue via a meeting room device called a surface hub or fully virtually using an appropriate device connected to the meeting. All meetings will take place via Microsoft Teams.*

*As a result of the ongoing Covid-19 situation, all public participants attending meetings must do so by dialling in to the meeting by telephone.*

*All meetings shall be streamed live, and the recording will be published thereafter on the Council's website for public viewing. **If you are not willing to consent to the recording of your participation in the meeting, you will not be able to participate in the meeting.***

*This guidance is aimed at assisting members of the public/outside bodies who require to participate in Licensing Hearings at meetings of the Area Committees or the Licensing Sub-Committee during this period.*

#### **Remotely attending the Committee Meeting**

The Coronavirus (Scotland) Act 2020 provides that a Licensing authority must give any person who would have been given the opportunity to be heard at the hearing the opportunity to be heard instead by whichever of the following means the person prefers –

**(a) telephone, or**

**(b) written representations, including by means of an electronic communication [e-mail]**

No later than 14 days in advance of the meeting, the Governance Team will contact you and ask which of the above methods you wish to use. (You can use both).

If you opt to participate by way of **written representation**, you must ensure that these are lodged with the Governance Team, no later than 7 days in advance of the date of the hearing, in order that copies can be included with the agenda for the meeting.

Any representation lodged will also be copied to all other relevant parties in advance of the meeting.

Please contact the Governance Team as soon as possible if you are not able to meet the 7-day deadline.

If you opt to participate by way of **telephone**, you will be asked to provide a telephone number which you should use to join the meeting as this will be used as a form of identification. Please be aware the contact telephone number provided will potentially be visible in the meeting recording.

To join the meeting, you will be given a telephone number and conference ID to dial in. This information should not be shared with anyone else. When your call comes in, you will be held in the meeting lobby until the Committee Officer brings you in to the meeting at the appropriate time. To ensure you join the meeting at the correct time, you should view the meeting via the link to the live stream (which you find at item 0 on the published agenda for the meeting on the website) and phone in to the number provided before the Committee reaches your item on the agenda. If you do not have the resources to view the licence stream, please contact the Governance Team.

Once you have made the call to join the meeting, you will be asked to input the conference ID followed by the # key. Once you have done that you will be advised that access to the meeting is restricted, and you have to wait until the Committee Officer admits you to the meeting. You should not type anything further into the phone and should not respond to any of the prompts for information. Simply remain on the line until you are admitted to the meeting.

Please note, if you do not phone into the meeting and make yourself available in time to participate as requested, the Committee may consider the item in your absence.

Any officer presentation materials to be used in relation to the item you are invited to participate in can be found published with the agenda papers for the meeting concerned on the Council's website.

### **During the Meeting**

Your microphone should be muted until you are invited to speak. If you forget, the meeting organiser will mute your microphone for you. To unmute your microphone when requested to speak use \*6 on your phone.

The Convenor will confirm the order of participants. Please wait to be invited to speak, in order that the discussion may be managed fairly.

You will be invited to Speak to your application/objection/representation. This will not be time limited, but you should address yourself to the issues raised by the matter at hand and be as concise as possible. The Committee Members will also have an opportunity to question any of the parties present during the proceedings.

You will be entitled to remain in the meeting for the duration of the item under consideration involving yourself. After the Committee has taken its decision, you should remove yourself from the meeting by hanging up the call. Alternatively, the Committee Officer may remove you from the meeting. You will be able to watch the rest of the Committee meeting via the link to the live stream.

The Governance Team will contact you and confirm the Committee's decision at an appropriate time after the meeting.

If you cannot maintain your connection or, if you experience technical difficulties, please note that the meeting may proceed in your absence.

## 1. Procedure for remote Licensing Hearings (APPLICATIONS)

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) If there are no spent convictions, go to (h) below.

### SPENT CONVICTIONS

- (d) Where the applicant has spent convictions, the Chair should: -
  - (i) Invite the representative of the Chief Constable to satisfy the Committee that justice cannot be done unless the spent convictions are taken into account. (In the undernoted case, it is indicated that it would be improper to invite the applicant to make comment on the spent convictions)
  - (ii) The Chair should invite members of the Committee to ask questions.

NOTE: In the case of O'Docherty v Renfrewshire Council 1998 SLT 327, it is suggested that "at the least some sort of inquiry as to the age and general nature of the convictions would be essential to any proper decision.

- (e) The Committee then has to determine whether or not it is satisfied that there is no other way of doing justice than to look at the spent convictions in considering the application. The Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Committee not reach any decision during the retiral.

### NOTE TO PARTIES

If the Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (f) Thereafter, the Chair should:
  - (i) Call for a motion regarding the spent convictions
  - (ii) Call for a seconder to the motion
  - (iii) Call for any amendment to the motion
  - (iv) Call for a seconder to any amendment proposed.
  - (v) If there is no amendment, the Chair should confirm with the Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
  - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (g) If the Committee has determined to consider the spent convictions, they will then be circulated to Members separately by email for the Committee's perusal.

### **NOTE FOR PARTIES**

**Where the hearing is in public, the recording of the meeting will be paused until the Chair is satisfied that all members have read and understood the document circulated, at which point the recording will be restarted**

THEREAFTER:

- (h) Invite the applicant to speak to his application (outline to the Committee why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (i) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (j) Give the applicant an opportunity to address any issues raised by the Objector(s).

### **NOTE TO PARTIES**

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof.**
  - **Cross Examination by the parties is not generally permitted**
  - **Hearsay evidence is admissible.**
- (k) Members MAY then question all parties present.
  - (l) Chair should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.

### **NOTE TO PARTIES**

**Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Committee Member.**

- (m) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

### **NOTE TO PARTIES**

**If the Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted**

- (n) Thereafter, the Chair should confirm with Members that they have sufficient evidence upon which to make a decision.

- If the Committee determines that there is not sufficient evidence upon which to make a decision, the application will be **deferred** to a future meeting of the Committee for further evidence to be obtained.
  - If the Committee determines that there is sufficient evidence upon which to make a decision, the Chair will then:
    - (i) Call for a motion
    - (ii) Call for a seconder to the motion
    - (iii) Call for any amendment to the motion
    - (iv) Call for a seconder to any amendment proposed.
    - (v) If there is no amendment, the Chair should confirm with the Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
    - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (o) The Legal Officer will confirm the decision taken by the Committee

#### **NOTE TO PARTIES**

**The parties will then be asked to leave the meeting, failing which the Committee Officer will remove the parties from the meeting.**

## 2. Procedure for remote Licensing Hearings – (variation, suspension or revocation hearings, consideration of complaints)

- (a) Identify whether the Complainer and his/her advisors are present.
- (b) Identify whether Licence Holder and his/her advisors are present.
- (c) Identify whether any person with an objection or representation(s) and his/her advisors are present. [in turn]
- (d) Invite the Complainer to speak to his complaint (outline to the Committee why the complaint has been made)
- (e) Ask the Objector(s) to speak to their Objection(s) or Representation(s) [in turn]
- (f) Ask the Licence Holder to respond to the Complaint and any objections or representations made
- (g) Give the Complainer an opportunity to address any issues raised by the Licence Holder.

### NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof.**
  - **Cross Examination by the parties is not generally permitted**
  - **Hearsay evidence is admissible.**
- (h) Members MAY then question all parties present.
  - (i) Chair should invite concluding remarks (Licence Holder then Complainer), but no new evidence, before considering the application.

### NOTE TO PARTIES

**Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Committee Member.**

- (j) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

### NOTE TO PARTIES

**If the Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties and all attendees from the meeting. [The recording of the meeting will be paused, where relevant]. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the meeting will continue [and the recording of the meeting will be restarted, where relevant]**

- (k) Thereafter, the Chair should confirm with Members that they have sufficient evidence upon which to make a decision.
- If the Committee determines that there is not sufficient evidence upon which to make a decision, the matter will be **deferred** to a future meeting of the Committee for further evidence to be obtained.
  - If the Committee determines that there is sufficient evidence upon which to make a decision, the Convenor will then:
    - (i) Call for a motion
    - (ii) Call for a seconder to the motion
    - (iii) Call for any amendment to the motion
    - (iv) Call for a seconder to any amendment proposed.
    - (v) If there is no amendment, the Convenor should confirm with the Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
    - (vi) If there is an amendment, then there **MUST** be a vote. The Convenor has the casting vote.
- (l) The Legal Officer will confirm the decision taken by the Committee

#### **NOTE TO PARTIES**

**The parties will then be asked to leave the meeting, failing which the Committee Officer will remove the parties from the meeting.**

## Appendix 2 – Mandatory licence conditions

### Agents

1. Only those named as the holder of the licence, or the designated manager 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 have 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 providing cover to a minimum of £5m 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 area Use) Regulations 1998,

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## Appendix 3 – Additional licence conditions

### Introduction

Aberdeenshire Council consider 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.

### Conditions Applying to All Licences

#### 1. Material Changes

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

#### 2. Reporting of Certain Incidents

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

#### 3. Anti-Social Behaviour

- i. 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.
- ii. The licence holder must take reasonable steps to:
  - i. ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests.
  - ii. deal effectively with any disturbance or nuisance arising within or from the premises, as soon as reasonably practicable after the licence holder is made aware of it; and

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

#### 4. Privacy and Security

- i. The licence holder must manage the premises in such a way as to respect and protect the privacy and security of neighbours.
- ii. The licence holder must ensure:
  - i. guests know and understand any particular rules applying to shared areas and entrances.
  - ii. guests understand that shared doors should be properly and securely closed after use; and
  - iii. the provision of access codes or keys to guests cannot be used by guests to gain access to shared areas after they have finally departed.

#### 5. Noise WILL ONLY BE ATTACHED IN THE CIRCUMSTANCES SET OUT – WILL NOT BE ATTACHED AS A MATTER OF COURSE

- i. The licence holder must ensure that the bedrooms, living room and hallway in the premises have a suitable floor covering in order to minimise impact and airborne noise affecting any properties below. (i.e., carpet or vinyl floor covering with quality underlay)  
***(Condition may be applied following investigation of concerns regarding noise and would be applied to properties located at 1<sup>st</sup> floor and/or above where a residential property is located below.)***
- ii. The licence holder must ensure that noise monitoring equipment [of type x] is maintained in full working order [in location y] and that the maximum reading does not exceed [a] decibels between 7 am and 11 pm, nor [b] decibels between 11 pm and 7 am.  
***(Condition may be applied following investigations of concerns regarding noise.)***
- iii. The licence holder must take reasonable steps to ensure that guests do not first arrive or finally depart from the property between the hours of 11 pm to 7 am. The licence holder must advise guests of this as part of their booking terms and conditions. (Note: “reasonable steps” allows for exceptions, such as significantly delayed transport.)  
***(Condition would only be applied to those properties located at 1<sup>st</sup> floor and/or above where a residential property is located below, in***

***close proximity to a neighbouring property or whether there is a shared entrance/communal areas.)***

- iv. The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 2200hrs  
***(Condition may be applied following investigation of concerns regarding noise associated with hot tubs and where a hot tub is positioned in close proximity or overlooked by neighbouring property.)***
- v. The licence holder must take reasonable step to ensure that guests do not play amplified music within the garden or external areas after [23:00 hours] where it would impact neighbouring residents.  
***(Condition may be applied following investigation of concerns regarding noise associated with playing music in outdoor areas.)***

## **6. Littering & Waste Disposal**

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

## **7. Preventing damage to property**

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

## **8. Prohibition of LPG room-heaters and storage of inflammable liquids etc.**

- i. The licence holder shall not permit the use or storage on the premises of LPG room-heaters or, unless in an external store designed and approved for such storage, the storage of any liquified petroleum gas (LPG) or any highly inflammable liquid, gas, or substance. This condition shall not apply to small amounts of liquids or gas sold in small non-refillable retail packs (e.g., lighter fuel or cosmetic appliance cartridges) kept by guests for their own use. Nor shall it apply to the external storage of LPG in cylinders or tanks which are provided by the licence holder for the provision of gas for cooking or for water or space heating or other domestic use, provided the storage complies fully with LPGA Codes of Practice and Building Regulation Technical Standards and that any installation connected to such cylinders or tanks complies with The Gas Safety (Installation and Use) Regulations 1998 or any amendment thereto

**GUEST SPECIFIC CONDITIONS – ONLY TO BE ATTACHED WHERE CONSIDERED APPROPRIATE TO THE CIRCUMSTANCES OF AN INDIVIDUAL APPLICATION DEPENDENT ON THE NATURE OF THE PREMISES**

**9. Maintenance of property**

Where there is a solid fuel appliance within the premises (i.e., wood burning stove), the holder of the licence shall ensure: -

- i. the chimney/flue associated with the appliance is inspected and cleaned annually by a suitably competent person.
- ii. a record of the annual inspection and cleaning of the flue is able to be produced, on request by the Council

**10 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.

iii.

#### **11 Requirement to produce on demand any policy, certificate etc.**

- ii. The licence holder shall require producing on demand to any authorised person any policy, certificate, document, record, certificate of inspection or safety, licence or plan required by or issued in terms pursuant to any condition of this licence.

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

1. Where a swimming pool or swimming pond is installed or available 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.

#### **13. 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.

#### **14. 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 and have any appropriate boat hire licences under the 1982 Act.
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.
5. This condition does not apply to premises where the vessels provided are done so under the terms of a current boat hire licence issued by the licensing

authority and operated in compliance with the conditions of such a licence.

### **15. 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.

### **16. 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.

## Licensing of Short-Term Let Premises Guidance Notes & Fees

- The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 requires Short-Term Let premises (STLs) to be licensed by the local authority. Failure to be licensed is an offence under the Civic Government (Scotland) Act 1982
- It is the **owner** of the building who is required to apply for a licence.
- There are four types of licenses for short-term let accommodation. Any licence granted must be for either:
  1. Secondary letting;
  2. Home letting;
  3. Home sharing; or
  4. Home letting and home sharing

The different types of licenses are defined as follows:

**Secondary letting** – this means the letting of property where you do not normally live

**Home letting** - this means using all or part of your home for short-term lets whilst you are absent.

**Home sharing** – this means using part of your own home for short-term lets whilst you are there

**Home letting / home sharing** – this means you may decide to do both home letting whilst you are not living there **and** home sharing when you are living there.

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 same site.

- Applications require to be made online or in writing to the Head of Planning and Economy (Environmental Health), Gordon House, Blackhall Road, Inverurie AB51 3WA or emailed to [STL@aberdeenshire.gov.uk](mailto:STL@aberdeenshire.gov.uk). An application will only be considered valid once the correct fee has been submitted. See over for details of fees and payment options.
- The following items require to be submitted with the application form:
  - Electrical Certificates                      Portable appliance testing (PAT) Certificate & Electrical Installation Report (EICR) Certificate
  - Gas Certificate                                      (if applicable) to be provided by a Gas Safe Registered installer
  - Public Liability Insurance                      (cover to a minimum of £5m)
  - Location Plan    Where applicable for rural premises
  - Correct Fee    **current fees attached**
- The Environmental Health Service will inspect the premises to ensure that they comply or can be made to comply with the standards issued by the Scottish Government, copies of which can be viewed online - [Part 1 – Guidance for Hosts and Operators](#) or on the Council's website <https://aberdeenshire.gov.uk/licensing/licences-and-permits/short-term-let-licensing/> Paper copies are available on request.
- The Environmental Health Service will consult with Scottish Fire & Rescue Service who may undertake a fire safety inspection. In addition, a Fire Risk Assessment must be completed and retained for inspection by Scottish Fire & Rescue Service. **For information relating to fire safety in STLs contact (insert tel no TBC 01779 822650)**. Further information and guidance is available at <https://www2.gov.scot/Topics/Justice/policies/police-fire-rescue/fire/FireLaw>
- The Environmental Health Service will contact Police Scotland to obtain details of (a) any convictions that the owner, manager or any other person named on the application form may have and (b) any information regarding the premises.

- The Notice titled 'Notice for Display at Premises' must be displayed for at least 21 days (from the date the valid application is submitted to the Environmental Health Service) in a prominent position at the premises where it can be clearly read by members of the public. The Notice must be removed **after** 21 days and the 'Certificate of Compliance' completed and returned to Environmental Health at the above postal or email addresses.
- In accordance with the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022, details of the application and subsequent decisions will be detailed in a public register.
- Should objections or representations be received regarding an application, or if it is minded to refuse the application, a report will be submitted to the Licensing Sub-Committee for a decision. The applicant will require to attend or be represented at the Sub-Committee.
- An STL licence is normally valid for 3 years. If the Licensing Sub-Committee are asked to consider an application, they can reduce the length of the licence. A further / renewal application requires to be submitted **before** the expiry date of the existing licence. If an application is submitted after the expiry date the application will be treated as a new application and subject to the appropriate fee.
- Should ownership of the STL change, a new application will require to be submitted. Other changes in circumstances, such as a change in the person with day to day responsibility, requires to be approved by Aberdeenshire Council; an application and fee **may** be required depending upon the circumstances.

**LICENCE APPLICATION FEES**  
**(from 1<sup>st</sup> October 2022 to 31<sup>st</sup> March 2023)**

An application can only be processed once payment has been made. Contact Environmental Health on 01467 539039 to make payment by card over the telephone. Payment can also be made at one of our service points by debit or credit card. Please check opening times before making a trip: [Reach a Council Office - Aberdeenshire Council](#)

Guest capacity (people)	Home sharing and home letting		Secondary letting	
	Grant	Renewal	Grant	Renewal
1-2	£612.00	£550.00	£612.00	£550.00
3-4	£816.00	£735.00	£816.00	£735.00
5-9	£1,015.00	£914.00	£1,015.00	£914.00
10+	£1,298.00	£1,168.00	£1,298.00	£1,168.00

## CONTACT DETAILS

### Environmental Health

Advice on Short-Term Let licensing can be obtained by calling (TBC 01467 539039) or email: [STL@aberdeenshire.gov.uk](mailto:STL@aberdeenshire.gov.uk)

### Planning & Building Standards

The Building Standards Service of Aberdeenshire Council are responsible for ensuring that buildings meet the statutory requirements. New buildings or conversions/change of use to STL **may** require Building Warrant and/or Planning Permission. If you are the owner of an existing STL and are proposing any alterations to your premises, your local Building Standards Surveyor will offer advice as to whether or not you require a Building Warrant. You are also advised to check with the Planning Service to clarify if Planning Permission is required for any alteration, extension or change of use. Secondary Let premises may require Planning Permission. Contact the Planning Service on - [www.aberdeenshire.gov.uk/planning/planning-applications/check-if-you-need-planning-permission/](http://www.aberdeenshire.gov.uk/planning/planning-applications/check-if-you-need-planning-permission/)