

Item: 5

Licensing Committee: 21 March 2024.

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 – Review of Fees for Short-term Let Licences.

Joint Report by Corporate Director for Strategy, Performance and Business Solutions and Corporate Director for Neighbourhood Services and Infrastructure.

1. Purpose of Report

To review the fees in respect of the short-term let licensing scheme in Orkney, effective from 1 October 2022.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 1 September 2022, when considering proposed fees, effective from 1 October 2022, for the short-term let licensing scheme in Orkney, the Licensing Committee resolved:

- That licences for short-term lets should have a duration of three years at first application and on renewal.
- That, where an application for a short-term let licence had been unsuccessful and a licence refused, the non-refundable element of the application fee should be capped at £240.
- That the fees for the short-term let licensing scheme, to be introduced on 1 October 2022, attached as Appendix 3 to the Minute, be approved.
- That the fees for the short-term let licensing scheme be reviewed annually, commencing in March 2024.

2.2.

That a comparison of the proposed fees being charged by the Council with those being charged by other local authorities in Scotland has been undertaken, attached as Appendix 2 to this report.

2.3.

That a review of the cashflows for the fees for licences for short-term lets, as detailed in section 6 of this report, indicates that the current fee structure is in line with previous projections.

It is recommended:

2.4.

That fees for licences for short-term lets remain unchanged from those approved on 1 September 2022.

2.5.

That, where an application for a short-term let licence has been unsuccessful and a licence refused, the non-refundable element of the application fee should remain capped at £240.

3. Legislative Background

3.1.

Mandatory licensing of short-term lets in Scotland was introduced from 1 October 2002 through the implementation of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (the Order).

3.2.

The provisions relating to fees are set out in Paragraph 15 of Schedule 1 to the Civic Government (Scotland) Act 1982 (the Act), as amended by the Order.

3.3.

Sub-paragraph 15(1) of Schedule 1 to the Act states that a licensing authority may, subject to sub-paragraphs (2) and (3) charge such reasonable fees as they may determine in respect of:

- Applications made to them under this schedule.
- The issue of certified duplicate licences.
- Their consideration of a material change of circumstances or in premises and their disposal of the matter.
- The issue of certified true copies.
- An inspection of premises following:
 - A failure to comply with a licence condition, or
 - A complaint relating to the premises (unless the complaint is frivolous or vexatious).

3.4.

Paragraph 15(2) of Schedule 1 of the Act states that, in determining the amount of the different fees under sub-paragraph 15(1), the licensing authority:

- Must seek to ensure that the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions under Parts I and II of the Act and the schedule.

- May determine different fees for different purposes.
- May take into account the following criteria:
 - The size of the premises.
 - The number of bedrooms 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.
 - The extent to which the licence holder has complied with the conditions of the licence.

3.5.

Paragraph 15(3) of Schedule 1 of the Act states that a licensing authority may provide for annual or other recurring fees.

4. Scottish Government Guidance

4.1.

In June 2023 the Scottish Government issued an updated version of its Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms (the Guidance).

4.2.

With regard to setting fees, the Guidance notes that licensing authorities are experienced in running other forms of licensing schemes and keeping costs down. In line with this, the Scottish Government expects licensing authorities to have regard to minimising costs through:

- Economies of scale.
- Integrating service delivery with other housing and licensing functions.
- Using online and digital verification where possible, for example through photo and video evidence instead of a visit.
- Taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

4.3.

The Guidance also states that fees must be calculated according to cost recovery only, and licensing authorities must not charge:

- Hosts or operators for visits to premises where this is a routine part of processing an application or part of the licensing authority's ongoing assurance processes; or
- Neighbours or others for handling objections.

4.4.

It is settled law that the fee charged for processing an application should not include enforcement costs. A licensing authority may charge fees to cover enforcement costs once the application is granted.

4.5.

As noted in section 3.4 above, in setting fees, the licensing authority "may take into account" the size of the premises, number of rooms, number of guests, type and duration of short-term let and the extent to which the licence holder has complied with the conditions of the licence. The Guidance states that the Scottish Government expects licensing authorities to consider each of these criteria, even if they subsequently deem some may not be suitable for the local circumstances.

4.6.

The Scottish Government does not expect licensing authorities to set a uniform flat fee, as this might disproportionately benefit hosts and operators of larger premises and adversely affect home sharing, bed and breakfasts and smaller self-catering operators.

4.7.

The Scottish Government recommends as a minimum that licensing authorities establish a licence fee structure that takes account of the following:

- Type of licence, with lower fees for home sharing and home letting licences than for a secondary letting licence.
- Guest capacity – the intended maximum number of guests, as requested by the host or operator on their application form.

4.7.1.

Within this recommended fee structure, licensing authorities may decide to group guest numbers into bands.

5. Comparison with Other Scottish Local Authorities

5.1.

The fees which are currently being charged by the Council are attached as Appendix 1 to this report.

5.2.

A comparison of the fees being charged by the Council with those being charged by other local authorities in Scotland has been conducted, with the outcome detailed in Appendix 2 to this report. Due to the factors set out in paragraphs 5.3 to 5.6 below, no direct comparison could be made.

5.3.

The information in Appendix 2 was collated from information published on each local authority website. Across all the local authorities in Scotland, there is huge variation in the levels of fees set and the parameters used to set such fees. Fees are set differently according to the number of occupants, number of bedrooms, the type of short term let and the duration thereof.

5.4.

Accordingly, it is very difficult to do a meaningful comparison of the Council's fees with those set by other local authorities. To illustrate this, in comparison to the local authorities which have set a figure for secondary lettings of 1 to 4 occupants, the Council's fees are comparable with Argyll and Bute and North Lanarkshire, cheaper than Clackmannanshire and Inverclyde and more expensive than Glasgow and East Ayrshire. However, the Council's fee for 5 to 9 occupants is significantly lower than Argyll and Bute's fee for 5 to 8 occupants so the fees are not comparable overall.

5.5.

Fees are one half of the equation, with costs being the other. While it is interesting to compare what fees are being charged by other local authorities, there can only really be a true comparison when the estimated costs and assumptions are also known. For example, some local authorities may have a 10% inspection rate, whereas others may have a much higher inspection rate. There are also huge disparities in the geographical areas covered, and the number of properties likely to require licensing in each local authority area. The estimated costs and assumptions of other local authorities are not known, and this information is not publicly available.

5.6.

The Council cannot hope to match the economies of scale which are likely to be achieved by some of the local authorities proposing the lowest fees, such as Glasgow City Council. There will also be huge variations in the cost of carrying out site visits across local authorities. These points serve to illustrate just how complex it is to make meaningful comparisons between different local authorities' fee proposals.

6. Proposed Review of Charges

6.1.

The starting point for setting the original fees involved calculating the amount of officer time and other costs likely to be involved in processing each application and multiplying this by the number of applications anticipated. Allowance needed to be

made for applications for larger or more complex premises to take longer to process than average. Other costs that require to be covered include the costs of setting up the scheme, dealing with enquiries and complaints, and premises inspection.

6.2.

The original estimated number of potential short-term let licence applicants across Orkney was 600. This estimate was based on numbers provided by the Assessor and Electoral Registration Officer, the Council's Revenues Section, and an assessment of the number of Orkney properties featured on lettings website Air BnB. However, sensitivity analysis was also undertaken using a figure of 450 applications.

6.3.

In line with the legislative provisions set out in section 3.4 and the Scottish Government guidance referenced in section 4.7 above, the current fee structure contains different levels of fees depending on different levels of guest capacity and different types of licence being incorporated into the proposed short-term let licensing fee structure.

6.4.

During consultation on the original fee structure, there was criticism that the Council's fees were too high. A number of comments were received to the effect that Orkney's proposed fees were the highest of all local authorities in Scotland. Whilst this contention appears to have gained traction among the general public, it is not borne out by the information provided by other local authorities as set out in section 5 above.

6.5.

Review of the cashflows against projections, at time of writing, show that the level of licence applicants was 511. This sits comfortably between the 450 and 600 sensitivity range noted above. The timing of the applications, and the subsequent extension of the application period, has added some variation, not only in respect of fee income but also in respect of processing progress.

6.6.

Review of the actual outturn figures for 2023/24 show slightly higher apportioned costs, slightly higher salary costs, and at that time no Environmental Health cost. As far as the variants and timings have impacted the original financial projections, they are considered within acceptable parameters to ensure the administration of STL application processing can be self-financing over the proposed three-year licensing period.

6.7.

Given the level of uncertainty, and the evidence of increased costs, it is felt prudent to retain the current price structure. A clearer picture will develop as the initial three-year period progresses. Licensing fees are excepted from the Council's overall charging budget strategy.

7. Refund Policy

7.1.

In general, fees are not refundable. This is the case whether or not a licensing application is granted, because the licensing authority will incur significant costs in processing the application. The Scottish Government expects licensing authorities to publish their policy on refunds so that hosts and operators are clear on the position before they make an application. A statement to this effect was included in the draft schedule of fees which went out for consultation.

7.2.

The Scottish Government guidance states that licensing authorities must ensure, prior to an application being granted, that the applicant is only charged the costs relating to the processing of their application. If the application is refused, the fee charged for the processing of the application itself need not be refunded.

7.3.

In light of concern expressed during the consultation that applicants may find themselves in the position of having paid out several hundred pounds for a licence application only to have it refused, it is proposed that the non-refundable element of a licence fee is capped at the same as the lowest level of fee for applications which require to go through the full application process, namely £240.

8. Corporate Governance

This report is presented in order to comply with the Council's statutory duties as a Licensing Authority and is not for the exclusive purpose of supporting or relating to improved outcomes for communities as outlined in the Council Plan or the Local Outcomes Improvement Plan.

9. Financial Implications

9.1.

The short-term lets licensing scheme is a relatively new scheme and there is only one year's information on which to base financial forecasts. As such, there is inevitably a degree of conjecture involved in every aspect, from the number of applications likely to be received, to the amount of time which will require to be spent by officers on processing each application.

9.2.

For 2024/25, Licensing has a provisional budget of £15,400. It is anticipated that fees receivable by the authority in respect of STLs will be sufficient to meet the expenses of the authority in exercising their functions, and as such be self-financing over the proposed three-year licensing period.

10. Legal Aspects

The legal aspects are contained within the body of this report.

11. Contact Officers

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12. Appendices

Appendix 1: Current Short-term Let Licensing Fees.

Appendix 2: Proposed Short-term Let Licensing Application Fees: Comparison with other Scottish Local Authorities.

Appendix 1.

Short-term Lets – Licences and Other Matters.

Licensing Fees.	£.	Non-linked isles £.
	2023/24.	2023/24
Secondary Letting.		
Short-term let for 3 years (capacity up to 4 occupants)	310.00.	232.50
Short-term let for 3 years (capacity 5 - 9 occupants)	380.00.	285.00
Short-term let for 3 years (capacity for 10 or more occupants)	510.00.	382.50
Home Sharing and Home Letting.		
Short-term let for 3 years (capacity up to 4 occupants)	240.00.	180.00
Short-term let for 3 years (capacity 5 - 9 occupants)	300.00.	225.00
Short-term let for 3 years (capacity for 10 or more occupants)	400.00.	300.00
Material change in premises – Secondary Letting:		
Capacity up to 4 occupants	310.00.	232.50
Capacity 5 – 9 occupants	380.00.	285.00
Capacity for 10 or more occupants	510.00.	382.50
Material change in premises – Home Sharing and Home Letting:		
Capacity up to 4 occupants	240.00.	180.00
Capacity 5 - 9 occupants	300.00.	225.00
Capacity for 10 or more occupants	400.00.	300.00
General.		
Temporary licence for short-term let (which cannot exceed 6 weeks).	240.00.	180.00
Material change of circumstances.	75.00.	N/A
Material change of circumstances – name change only.	30.00	N/A
Formal legally certified duplicate or true copy licences or a true copy of an entry in the register of licences.	120.00.	N/A
Simple replacement or copy licences or information about an entry in the register of licences.	30.00.	N/A

Information: The first £240 of licence fees for each individual application is non-refundable.

Version No:	Date:	Details:
1.	22/06/2022.	Draft schedule of STL licensing fees for consultation.
2.	01/09/2022.	Schedule of STL licensing fees to be agreed.

