

# Item: 5

**Licensing Committee: 22 June 2022.**

**Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 – Licence Conditions.**

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

## **1. Purpose of Report**

To advise of mandatory standard conditions for licences for short-term lets.

## **2. Recommendations**

The Committee is invited to note:

### **2.1.**

That mandatory licensing of short-term lets will be introduced from 1 October 2022.

### **2.2.**

That mandatory licence conditions, attached as Appendix 1 to this report, will apply to licences for short-term lets.

### **2.3.**

That licensing authorities may determine additional standard conditions for licences for short-term lets.

**It is recommended:**

### **2.4.**

That the Council should not determine additional standard conditions for licences for short-term lets at present.

## **3. Legislative and Corporate Governance Background**

### **3.1.**

Mandatory licensing of short-term lets in Scotland will be introduced from 1 October 2022 through the implementation of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) which amended the Civic Government (Scotland) Act 1982 (“the Act”). The Act and the Order are published at [Act and Order](#). The Scottish Government’s Guidance for (1) Hosts and Operators is

published at [Guidance for Hosts and Operators](#) and for (2) Licensing Authorities, Letting Agencies and Platforms is published at [Guidance for licensing authorities](#).

### **3.2.**

“Short-term let” means the use of residential accommodation provided by a host in the course of business to a guest, where all of a number of criteria are met. It includes home sharing, home letting, both home sharing and home letting and secondary letting of a separate premises.

### **3.3.**

From 1 October 2022, new hosts and operators will require to have a licence. This means that, if they were not using their premises to provide short-term lets before 1 October 2022, they will not be permitted to take bookings or receive guests until they obtain a licence. If hosts and operators have already been using their property to provide short-term lets before 1 October 2022, they will have until 1 April 2023 to apply for a licence and will be able to operate in the meantime by continuing to advertise and promote their premises, take bookings and receive guests while their application is processed. All hosts and operators must be licensed by 1 July 2024.

### **3.4.**

The Council’s Scheme of Administration states that the Licensing Committee has authority to determine standard conditions to which licences, permits, approvals and registrations will be subject, in accordance with the relevant legislation.

## **4. Mandatory Licence Conditions**

Article 6 of the Order provides that a short-term let licence (including a temporary licence) granted by a licensing authority is subject to the conditions specified in Schedule 3 to the Order. These are detailed in Appendix 1 to this report and comprise the “mandatory licence conditions”. Most of the mandatory licence conditions relate to fundamental safety matters. The Council has no discretion to disapply any mandatory condition of a licence.

## **5. Additional Standard Licence Conditions**

### **5.1.**

Section 3B of the Act gives licensing authorities the power to determine further conditions to which licences are to be subject (“standard conditions”) which the Scottish Government refers to in its Guidance as “additional conditions” because these are additional to the mandatory conditions.

### **5.2.**

The Guidance suggests that additional conditions can help licensing authorities to respond to local challenges and concerns specific to certain models of short-term letting (for example, secondary letting in tenement flats) and other issues, such as overcrowding of the property, noise and nuisance, litter or other mess in communal areas, failure to maintain the property in a good state of repair, failure to maintain, or

contribute to the cost of, communal area repairs and increased wear and tear, damage to property (e.g. from key boxes affixed to walls) and unlawful activity.

### **5.3.**

The Act contains specific provisions regarding additional standard conditions, and these are set out in sections 5.3.1 to 5.3.13 below.

#### **5.3.1.**

Section 3B(1) of the Act provides that “A licensing authority may determine conditions to which licences granted by them under this Act are to be subject”.

#### **5.3.2.**

Section 3B(2) of the Act provides that “Conditions determined under subsection (1) are referred to in this Part and Part 2 as “standard conditions”.

#### **5.3.3.**

Section 3B(3) of the Act provides that “Different conditions may be determined under subsection (1):

- (a) in respect of different licences, or different types of licence,
- (b) otherwise for different purposes, circumstances or cases”.

#### **5.3.4.**

Section 3B(4) of the Act provides that “A licensing authority must publish, in such manner as they think appropriate, any standard conditions determined by them”.

#### **5.3.5.**

Section 3B(5) of the Act provides that “Standard conditions have no effect:

- (a) unless they are published, and
- (b) so far as they are inconsistent with any mandatory conditions”.

#### **5.3.6.**

Section 3B(5A) of the Act provides that “Standard conditions determined in respect of a short-term let licence must not impose a limit on the number of nights for which premises may be used for secondary letting”.

#### **5.3.7.**

Section 3B(6) of the Act provides that “Subsection (1) is subject to paragraph 5(1A)(a) of Schedule 1 to this Act”.

#### **5.3.8.**

Paragraph 5(1A) of Schedule 1 to the Act provides that “In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both):

- (a) disapply or vary any standard conditions so far as applicable to the licence,
- (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject”.

### **5.3.9.**

Paragraph 5(2) of Schedule 1 to the Act provides “Subject to sub-paragraph (2A), the conditions referred to in sub-paragraph (1A)(b) above shall be such reasonable conditions as the licensing authority think fit and, without prejudice to that generality, may include:

(a) conditions restricting the validity of a licence to an area or areas specified in the licence; and

(b) in relation to the grant of a licence, where that licence is intended to replace an existing licence, a condition requiring the holder of the existing licence to surrender it in accordance with paragraph 13 below”.

### **5.3.10.**

Paragraph 5(2A) of Schedule 1 to the Act provides “The conditions referred to in sub-paragraph (1A)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5)”.

### **5.3.11.**

Paragraph 5(2B) of Schedule 1 to the Act provides “The conditions referred to in sub-paragraph (1A)(b) must not impose any limit on the number of nights for which premises may be used for secondary letting”.

### **5.3.12.**

Paragraph 5(2ZA) of Schedule 1 to the Act provides “A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject”.

### **5.3.13.**

Paragraph 5(3) of Schedule 1 to the Act provides “A licensing authority shall refuse an application to grant or renew a licence if, in their opinion ...

(ca) the applicant would not be able to secure compliance with:

(i) the mandatory licence conditions, and

(ii) the standard conditions and any further conditions under sub-paragraph (1A)(b) to which the licence is to be subject”.

## **5.4.**

Because this licensing scheme is new and will only come into operation from 1 October 2022, the Council currently has limited information on possible numbers of premises which will require to become licensed, although it is anticipated that the licensing authority will receive several hundred such applications. In the absence of current information about which premises will require to be licensed and potential problems associated with licensing of any particular premises, it is recommended that the Council should not determine any additional standard conditions at this time, but that this should be kept under review with recommendations for any additional

standard conditions being developed as necessary after the licensing scheme becomes operational.

## **6. Financial Implications**

The Council will receive application fees as a result of the introduction of mandatory licensing of short-term lets. It is anticipated that the licensing authority will receive several hundred such applications.

## **7. Legal Aspects**

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

## **8. Contact Officers**

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## **9. Appendix**

Appendix 1: Mandatory licence conditions.

## Appendix 1.

### Short-term Lets – Mandatory Licence Conditions

<b>Agents</b>		
1.	Only those named as a holder of the licence can carry out the day to day management of the short-term let of the premises.	
<b>Type of licence</b>		
2.	The holder of the licence may only offer the type of short-term let for which the licence has been granted.	
<b>Fire safety</b>		
3.	The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of:	
	(a)	fire or suspected fire, and
	(b)	the presence of carbon monoxide in a concentration that is hazardous to health.
4.	The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988.	
<b>Gas safety</b>		
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.
<b>Electrical safety</b>		
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.
<b>Water safety: private water supplies</b>		
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.
<b>Water safety: legionella</b>		
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.
<b>Safety and repair standards</b>		
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.
<b>Maximum Occupancy</b>		
11.		The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.
<b>Information to be displayed</b>		
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.
<b>Planning Permission</b>		
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.
<b>Listings</b>		
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.
<b>Insurance</b>		
15.	The holder of the licence must ensure that there is in place for the premises:	
	(a)	valid buildings insurance for the duration of the licence, and
	(b)	valid public liability insurance for the duration of each short-term let agreement.
<b>Payment of fees</b>		
16.	The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.	
<b>False or misleading information</b>		
17.	The holder of the licence must not provide any false or misleading information to the licensing authority.	
<b>Interpretation</b>		
18.	In these Conditions:	
•	“Electrical Installation Condition Report” means a report containing the following information:	
	(a)	the date on which the inspection was carried out,
	(b)	the address of the premises inspected,
	(c)	the name, address and relevant qualifications of the person who carried out the inspection,
	(d)	a description, and the location, of each installation, fixture, fitting and appliance inspected,
	(e)	any defect identified,



	(f)	any action taken to remedy a defect,
•		“Energy Performance Certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008,
•		“gas safety report” means a report containing the following information:
	(a)	the date on which the appliance or flue was checked,
	(b)	the address of the premises at which the appliance or flue is installed,
	(c)	a description of and the location of each appliance or flue checked,
	(d)	any safety defect identified,
	(e)	any remedial action taken,
	(f)	confirmation that the check undertaken complies with the requirements of an examination of: (i) the effectiveness of any flue, (ii) the supply of combustion air, (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both, (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance, (v) its operation so as to ensure its safe functioning,
	(g)	the name and signature of the individual carrying out the check, and
	(h)	the registration number with which that individual, or that individual’s employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998.
•		“holder of the licence” means any person to whom a short-term let licence has been granted or jointly granted,
•		“home letting” means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host’s only or principal home,
•		“home sharing” means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host’s only or principal home,
•		“premises” means the accommodation which is the subject of an application for a short-term let licence or the subject of a short-term let licence,
•		“repairing standard” means the steps which the holder of the licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006,

•	“secondary letting” means a short-term let consisting of the entering into of an agreement for the use of accommodation which is not, or is not part of, the licence holder’s only or principal home,	
•	“short-term let” has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,	
•	“short-term let licence” means a licence for a short-term let, and	
•	“type of short-term let” means one of the following purposes:	
	(a)	secondary letting,
	(b)	home letting,
	(c)	home sharing, or
	(d)	home letting and home sharing.

1 October 2022.