

Agenda item	10.i
Report no	HC/15/22

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 20 June 2022

Report title: Short Term Let Licensing

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive summary

- 1.1** This report provides Members with information on the new powers which have been given to local authorities to regulate short term lets in the form of a licensing scheme. This report details what powers are available to the Council in relation to mandatory and discretionary controls under the legislation. It also sets out the timeline for the implementation of those powers following a period of public consultation and final Committee decision.
- 1.2** This report also sets out the preparatory work that has been carried out by officers and the issues the Council will have to consider as a result of the legislation coming into force. It also provides further information on how officers intend to consult on a draft short term let policy statement and conditions prior to bringing proposals back to the Highland Licensing Committee for consideration.

2. Recommendation

2.1 This Report invites the Committee to:

- (i) Note the commencement of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 on 1 March 2022
- (ii) Note that, as a result of the provisions of the legislation, local authorities must open a licensing scheme for short term lets by 1 October 2022
- (iii) Note the challenges the Council faces in relation to the implementation of this licensing scheme
- (iv) Agree to carry out a statutory consultation on the draft policy and additional conditions for short term lets

3. Background

- 3.1 On 19 January 2022, The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) was approved by the Scottish Parliament. The Order came into force on 1 March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982 (“the Act”).
- 3.2 The Order introduces a new mandatory licensing system for short term lets which local authorities are required to establish by 1 October 2022.
- 3.3 Prior to the introduction of the legislation, there was no requirement to licence short term lets and, therefore, local authorities did not have the ability to regulate these types of premises.
- 3.4 The licensing scheme was brought in by the Scottish Government with the aim to ensure short term lets are safe, address issues faced by neighbours, to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively. It also enables local authorities to ensure the people providing short term lets are suitable. The legislation aims to make sure that the economic and tourism benefits from short term lets are balanced with the needs and concerns of local communities.
- 3.5 The short term let licensing scheme will cover a wide range of residential accommodation including, but not exclusively, self-catered properties, B&B's, guest houses, glamping pods and yurts.

4. Scope of the licensing scheme

- 4.1 The licensing scheme includes new mandatory safety requirements that will cover every type of short term let. These are set out in the legislation as mandatory conditions of a licence. It will also include a ‘fit and proper’ test to assess whether an application is suitable to be the holder of a licence. Every licence application will require consultation with Police Scotland and the Scottish Fire and Rescue Service. In addition, consultation will be carried out with the Council’s Environmental Health Service and Planning and Building Standards departments. The Environmental Health Service will undertake any on-site compliance checks required for applications, taking a proportionate and risk-based approach.
- 4.2 The Council also has the discretion to apply further appropriate conditions to address any local concerns.
- 4.3 The Order sets out a timetable for the implementation of the licensing scheme. This has been set out at **Appendix 1** of this report.

5. Planning legislation

- 5.1 In addition to the introduction of the licensing scheme for short term lets, new planning regulations were brought into force in April 2021. The Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021 provide a mechanism for the Council, as planning authority, to establish short term let “control areas” which aim to help manage high numbers of short term lets. Under these regulations, the Council, as planning authority, can establish areas where any property operating as a short term let for more than 28 days a year have to apply for planning consent as it is considered a change of use.

- 5.2** Following Member request, the Council, as planning authority, is currently working to establish a short-term let control area to cover Ward 20 (Badenoch & Strathspey) only, with the public consultation phase completed. The Council, as planning authority, is working to a timeframe, where a request to formally establish the Control Area will be submitted to Scottish Ministers in quarter 3 of 2022, with the intended introduction in quarter 4 of 2022.

6. Challenges

- 6.1** The introduction of a mandatory licensing scheme and the adoption of discretionary powers, as well as new planning regulations, will present a significant number of issues for the Council as set out below:

Timescale for the implementation of the licensing regime

The Scottish Government delayed the introduction of the legislation by a year but did not extend the timescales for local authorities to have to start accepting applications. The guidance for local authorities was only published on 25 March 2022 and the Council must be in a position to accept applications by 1 October 2022, at the latest. This has become more challenging given the timetabling with local government elections, member training and summer recess of Committees.

Volume of applications

Introducing a licensing regime on the scale of the short term let section in The Highland Council area will be a significant undertaking for the Council to effectively deliver. From data collected, figures suggest that there are approximately 10,000 properties that will require to be licensed within The Highland Council area. This will result in a substantial increase in workload and will place an additional pressure on ICT for processing applications.

Timing and duration of public consultation

Due to the time constraints, the public consultation will require to take place from June to August, the busiest time for the trade. Given the tight timescales, it also only allows for a maximum 6 week consultation period.

Staff resourcing

There is no capacity within the current licensing setup to administer this licensing scheme or within the Environmental Health service for their role. Significant recruitment is required to allow the scheme to be administered and statutory deadlines met.

Committee time

There is also the potential for business of the Highland Licensing Committee to become severely pressured by the volume of applications requiring Committee determination. Any application which attracts an adverse representation or objection (from a member of the public, Police Scotland, Fire Service or Council department) will require to go to the Highland Licensing Committee for a formal hearing. Consideration needs to be given to the capacity of Committee meetings and whether changes will need to be made to processes, including amending delegated powers and/or other business to allow for this volume.

7. Preparation

- 7.1 Licensing officers have been working alongside IT to create a comprehensive online application process to ensure that the application process is as efficient as possible. Paper applications will also be available. A dedicated mailbox has been set up to answer queries from members of the public in relation to the licensing scheme. Quotes are being sought in relation to implementing a professional licensing software database management system.
- 7.2 A working group between Licensing, Environmental Health and Planning has been ongoing to ensure a collective approach is taken across the Council.
- 7.3 Initial engagement with Highland Tourism Partnership has commenced keeping them up to date with the Council's progress with the implementation of the scheme and answering any queries in relation to the licensing scheme.
- 7.4 Authority to recruit for additional staff to administer the scheme is due to commence shortly.
- 7.5 The policy statement, which includes the proposed additional conditions, has been drafted and is set out in **Appendix 2** of this report.

8. Proposed Consultation process

- 8.1 The implementation of any discretionary powers or conditions will require the Council to carry out a statutory consultation on whether or not to adopt further powers and their scope.
- 8.2 Subject to Committee approval, the consultation exercise will start in June 2022 and run to the beginning of August 2022, allowing for a period of 6 weeks.
- 8.3 The consultation will ask for views on the draft policy and proposed additional conditions. Whilst the full draft policy and additional conditions documentation will be published for public consultation, a survey has been put together to focus on the main aspects where the Council has discretionary powers. A copy of the survey can be found at **Appendix 3** of this report.

9. Licensing fee structure

- 9.1 Licensing authorities are required to charge fees in respect of processing and determining applications. The Civic Government (Scotland) Act 1982 states that licensing fees must be sufficient to cover the authority's administrative expenses. This doesn't just include staff time and ongoing associated expenses, but all the work involved in getting the licensing scheme up and running.
- 9.2 Licensing officers have worked alongside the Council's finance department and other services to establish the costs involved in the preparation of the scheme to date and the ongoing costs of administering the scheme. This includes consideration of the level of staff and estimated time required in processing an application through to the cost of Committee time and any potential appeals.
- 9.3 Based on the information available to date, the indicative fee is anticipated to be in the region of £300 to £600. A fee structure is likely to be in place taking into consideration the capacity of premises and type of short term let licence being applied for. Ongoing work is

being carried out with the finance department to ensure all costs have been captured and the confirmed fee and fee structure will be presented to the Committee at a further meeting. The legislation also enables enforcement costs to be recovered separately. These are for premises which require inspection after ongoing complaints or whether there is a failure to comply with conditions relating to the premises. Officers from Licensing and Environmental Health services are considering options for recovery of enforcement costs and this will be presented to the Committee at a further meeting.

10. Next steps

- 10.1** Given the tight timescales, officers will continually monitor the responses received to the consultation.
- 10.2** A further report will be brought to the 6 September meeting of the Highland Licensing Committee in relation to agreeing a statement of licensing policy, conditions framework and finalising the licensing fee and fee structure.

Date: 7 June 2022

Author: Claire McArthur

Background Papers:

The Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022

The Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021

Civic Government (Scotland) Act 1982

Appendices:

Appendix 1 – Short Term Let implementation timeline

Appendix 2 – Draft Policy Statement

Appendix 3 – Public consultation survey

Short Term Lets Timeline

Short Term Lets Timeline (cont.)

All new hosts and operators of short term let premise must have a licence to be able to operate

POST 1 OCTOBER 2022



Existing hosts or operators (those using accommodation to provide short term lets before 1 October 2022) will need to apply for a licence.

Existing hosts and operators can continue to operate if they have submitted an application for a licence on or before this date.

BY 1 APRIL 2023



All short term lets are to be licensed

BY 1 JULY 2024



Short term let licensing policy statement

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Foreword

This policy statement is the first one published by the Highland Licensing Committee.

The purpose of the policy is to provide guidance for applicants, licence holders and members of the public on the licensing system for short term lets.

Consultation on the draft policy statement took place during the period from [] 2022 to [] 2022.

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

This policy statement will be reviewed and revised when necessary.

1. Background

- 1.1. On 19 January 2022, The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) was approved by the Scottish Parliament. The Order came into force on 1 March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982 (“the Act”).
- 1.2. The Order introduces a new mandatory licensing system for short term lets which local authorities are required to establish by 1 October 2022.
- 1.3. Prior to the introduction of the legislation, there was no requirement to licence short term lets and, therefore, local authorities did not have the ability to regulate these types of premises.
- 1.4. The licensing scheme was brought in by the Scottish Government with the aim to ensure short term lets are safe, address issues faced by neighbours, to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively. It also enables local authorities to ensure the people providing short term lets are suitable. The legislation aims to make sure that the economic and tourism benefits from short term lets are balanced with the needs and concerns of local communities.

2. Timescales for applying

- 2.1. After 1 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.
- 2.2. 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 you can operate without a licence (by continuing to take bookings and receive guests) unless your licence application has been determined and refused.
- 2.3. After 1 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.

3. Definitions

3.1. A short term let is defined in the Act as the use of residential accommodation provided by a host in the course of business to a guest, where all the following criteria are met-

- (a) The guest does not use the accommodation as their only or principal home
- (b) The short term let is entered into for commercial consideration
- (c) The guest is not
 - a. An immediate family member of the host
 - b. 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
 - c. 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. Is you or your partner's: parent or grandparent, child or grandchild or brother or sister
3. Is the partner of one of your: parents or grandparents, children or grandchildren, or brothers or sisters

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

- an aparthotel
- premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 Act
- a hotel which has planning permission granted for use as a hotel
- a hostel
- residential accommodation where personal care is provided to residents
- a hospital or nursing home
- a residential school, college or training centre
- 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
- student accommodation,
- accommodation which otherwise requires a licence for use for hire for overnight stays
- accommodation which is provided by the guest,
- accommodation which is capable, without modification, of transporting guests to another location
- a bothy
- accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

3.2. Please note that if you have an HMO licence for your property, you would still need a short-term let licence if it is also to be used for short-term lets. This is the case whether or not you live at the premises covered by your HMO licence.

3.3. Self-catering property in the grounds of a licensed hotel would be excluded.

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 outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931(g)) 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.

3.4. There are four types of licences 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

3.5. The different types of licences are defined as follows:

- **Secondary letting** – this means a short-term let involving 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 all or part of your own home for short-term lets whilst you are there

3.6. A separate licence is required for each of your premises. However, a single licence may be issued in respect of unconventional accommodation where there is more than one separately bookable property on the site.

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

3.8. You do not need a separate licence for short-term lets within the same dwellinghouse. For example, if you are letting out two rooms in your home, that would be covered by one licence.

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

4. Application and notification

- 4.1.** All applicants must complete either an online or paper short term let licence application form. The application should either be submitted online or paper applications should ideally be emailed to stl@highland.gov.uk or, alternatively, posted to your local area licensing office, details of which are available at **Appendix 1**.
- 4.2.** 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 The Highland Council Service Centre by contacting 01349 88 6609.
- 4.3.** Under the terms of the Act, all applicants who apply for a short-term let licence must display a notice for a period of 21 days beginning with the date on which the application was submitted to the licensing authority at or near the premises so that it can be conveniently read by the public.
- 4.4.** The notice shall state that an application has been made for a licence, the main facts of the application, that objections and representations in relation to the application may be made to the licensing authority and how to make objections or representations. A template will be provided to the applicant once an application is submitted.
- 4.5.** Applicants are required to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired. A template will be provided to the applicant once an application is submitted.
- 4.6.** A copy of the application must be sent to Police Scotland and the Scottish Fire and Rescue Service by the local authority. A copy will also be sent to:
- The Highland Council's Planning Department
 - The Highland Council's Building Standards Department
 - The Highland Council's Environmental Health Service
- 4.7.** All personal data will be processed in line with the following privacy notices:

https://www.highland.gov.uk/directory_record/1036156/civic_government_licence

https://www.highland.gov.uk/directory_record/1036197/licensing_payments

5. Objections and representations

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

5.2. To enable The Highland 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 when the notice of application is displayed

5.3. Anonymous objections or representations will not be considered.

5.4. Late objections or representations may be considered if the Council is satisfied that there is sufficient reason as to why it was not made in the time required.

5.5. The objection should be relevant to the statutory grounds that can be taken into consideration when refusing an application. These are set out in the 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 other good reason

5.6. It should detail clearly the reasons for the objection/representation and why the applicant and/or the premises are not suitable.

5.7. A copy of the objection or representation will be provided to the applicant and will include your name and address. All personal data will be processed in line with the following privacy notice:

https://www.highland.gov.uk/directory_record/1046990/licensing_objections_representations_and_complaints

6. Determination of application

- 6.1. Everybody named on the application form will be subject to the fit and proper test. Every application form will require consultation with Police Scotland who will carry out background checks.
- 6.2. Licensing authorities are responsible for determining whether you are a fit and proper person to be the holder of a licence for short-term lets. Consideration will be given to a wide range of information including relevant criminal convictions, other relevant information provided by Police Scotland, any previous disqualifications from being a private landlord, previous revocations of a HMO licence and providing false or misleading information in your application form.
- 6.3. If there are no objections or adverse representations to a short term let licence application, the application will be determined under delegated powers by the Principal Solicitor – Regulatory Services/Solicitor – Regulatory Services
- 6.4. If an objection or adverse representation is submitted in relation to the short term let licence application, the application will be subject to a hearing at a meeting of the Highland Licensing Committee.
- 6.5. The person submitting the objection or representation will be invited to attend the meeting of the Highland Licensing Committee and speak to their objection/representation. You will be given at least 14 days' notice of the hearing date.
- 6.6. The applicant or their representative will also be invited to attend the meeting and given the opportunity to state why the application should be granted.
- 6.7. The Committee will be able to ask questions of both parties and, thereafter, decide whether to grant or refuse the application. The grounds for refusing an application are set out at paragraph 4.5.
- 6.8. Applications will be heard in public unless required to be taken privately on the grounds of disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973
- 6.9. A copy of the Council's hearing procedure can be found at **Appendix 2**.
- 6.10. Both the applicant and the person(s) making an objection/representation can request a statement of reasons for the decision within 21 days of the date of the decision. The statement of reasons will be produced by the Principal Solicitor – Regulatory Services/Solicitor – Regulatory Services within 10 days of that request.

- 6.11.** 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.

7. Right of appeal

- 7.1.** The applicant and the person(s) making an objection/representation have a right of appeal to the Sheriff Court.
- 7.2.** However, they only have this right if they have taken every opportunity to state their case to the Committee as has been made available.
- 7.3.** The Sheriff can uphold an appeal only if the sheriff considers that the licensing authority erred in law, based their determination on any incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
- 7.4.** Any appeal must be lodged by way of a summary application with the relevant Sheriff Clerk's office within 28 days of the date of the decision appealed against.
- 7.5.** Parties should seek their own independent legal advice in relation to an appeal.

8. Licence duration and renewal

- 8.1.** The duration of the licence applies from the date on which the licence comes into force. This will be specified on the licence together with the expiry date of the licence.
- 8.2.** When an application is made to renew a licence timeously, the existing licence will continue in effect until such time as a decision is made on the renewal application.
- 8.3.** A licence shall have effect-
- for a period of 3 years from the date when it comes into force; or
 - for such shorter period as the licensing authority may decide at that time when they grant; or
 - for such longer period as the licensing authority may decide at the time when they renew a short-term let licence

8.4. The Scottish Government's guidance for licensing authorities on short term lets has made it clear that licensing authorities are encouraged to renew licences for a period of 3 years, unless they have good reasons to do otherwise.

8.5. Whilst, each application will be decided on its own merits, it is not anticipated that licences will be renewed for a period of longer than 3 years.

9. Licence conditions

9.1. The Act sets out a number of mandatory licence conditions which apply to all short-term let across Scotland. A list of these conditions can be found at **Appendix 3**.

9.2. In addition to the mandatory licence conditions which apply to all short-term lets, licensing authorities may impose additional conditions. These enable the licensing authority to respond to local challenges and concerns relative to specific types of short-term letting.

9.3. There are a number of additional conditions which will apply to all short term let properties. There also some specific additional conditions which may only apply to certain types of short term let properties or to properties following investigation of concerns. A list of the additional licence conditions which may apply to your short-term let licence can be found at **Appendix 4**.

10. Temporary exemptions

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

11. Temporary licences

11.1. A licensing authority can also decide to grant temporary licences. These can be applied for online or by way of a paper application. Details for the application process are set out in Section 3.

11.2. Temporary licences may be granted for a duration of up to 6 weeks.

11.3. A temporary licence cannot be renewed. However, if a host or operator applies for a full licence during the period of a temporary licence, the temporary licence duration will extend until their full licence application is determined.

11.4. Hosts and operators that apply for a temporary licence will still have to comply with all the mandatory conditions and any additional conditions deemed applicable.

11.5. It is anticipated that temporary licences will be used by hosts or operators that only require a short term let for a specific event that runs for 6 weeks or less or where a host or operator wishes to trial providing a short term let.

12. Compliance and enforcement

12.1. Unlicensed short term lets

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

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

New hosts/operators

- From 1 October 2022 you **cannot** accept bookings until you have obtained a short term let licence
- From 1 October 2022, you **cannot** operate while your short term let application is being determined

Existing hosts/operators

- Existing hosts/operators must apply for a short term let licence by 1 April 2023, at the latest.
- If you have been trading on or before 30 September 2022, you may continue to accept bookings after 1 October 2022 but only if you have made a licence application by 1 April 2023.
- You can continue to operate for the time it takes for your licence application to be finally determined.
- A provisional licence number will be provided to you on receipt of a licence application

- By 1 July 2024 you should not be trading unless you have been granted a full licence

12.1.3. 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.

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

12.2. Licensed short term lets

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

12.2.2. Hosts and operators must ensure that they comply with all the mandatory and any additional conditions on their licence. It is a criminal offence to fail to comply with a licence condition if a licence holder has not used all due diligence to prevent the offence.

12.2.3. It is also a criminal offence for a licence holder, without reasonable cause, to fail to notify the licensing authority of a material change of circumstances.

12.2.4. The Council may undertake premises site visits as part of the application process and throughout the duration of the licence to ensure compliance with licence conditions.

12.3. Complaints about licensed short term lets

12.3.1. In the first instance, guests should raise any concerns about their short term let with their host/operator or letting agent/platform. If the issue is sufficiently severe, then the Council may become involved.

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

12.3.3. The Council can consider matters relating to the suitability of the licence holder, threats to public safety or public order or whether a condition of the licence has been contravened.

12.3.4. These issues would include a host/operator exceeding the number of people staying at the premises, serious disturbance or antisocial

behaviour or concerns about the maintenance and safety of the premises. These complaints can be directed to stl@highland.gov.uk

12.3.5. Please note that the Council cannot consider complaints in relation to the quality of a guest's stay or specific contractual matters between the guest and the host/operator as this is outside the scope of the licensing scheme.

12.3.6. Complaints will aim to be acknowledged within 5 working days. A full response advising you of the outcome may take some time if the complaint requires further investigation. The complaint may also need to be directed to other departments within the Council such as Planning, Environmental Health or other services such as Police Scotland or Scottish Fire and Rescue Service for input. Complainants will be kept up to date with progress if there is a delay in a full response being provided.

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

12.4. Enforcement

12.4.1. It is possible that some complaints may require enforcement action from the Council.

12.4.2. The Act provides for several options for enforcement action if justified. This includes additional licence conditions being attached, enforcement notices or variation, suspension or revocation of the licence or in more serious circumstance pursuing a prosecution.

12.4.3. 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.

12.4.4. If the matter is not addressed satisfactorily by the licence holder, the Council may then consider a variation, suspension or revocation of the licence.

12.4.5. 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.

13. Variation of a licence

- 13.1.** A licensing authority may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms on any grounds they think fit.
- 13.2.** A variation application cannot, however, be used to substitute a new holder of the licence for the existing one i.e. effectively to transfer a licence.

14. Suspension or revocation of a licence

- 14.1.** A licensing authority may, whether upon a complaint made to them or not, suspend or revoke a licence.
- 14.2.** A licensing authority may order the suspension or revocation of a licence if in their opinion-
- the holder of the licence is no longer a fit and proper person to hold the licence
 - the licence holder is managing the property on behalf of someone who would have been refused the grant or renewal of the licence
 - the short-term let is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
 - a condition of the licence has been contravened
- 14.3.** The period of suspension can be the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix. The effect of the suspension shall be that the licence shall cease to have effect during the period of suspension.

15. Third party accreditation

- 15.1.** The Council will consider third party evidence, accreditation or certification from certain approved bodies to demonstrate compliance with the mandatory and any additional conditions of a licence.
- 15.2.** 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.

16. Planning permission

- 16.1. There is a separate legislative process from licensing which allows the Council, as planning authority, to establish short term let control areas.
- 16.2. The purpose of control areas is to help planning authorities manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood) and to restrict or prevent short term lets in places or types of buildings where it is not appropriate.
- 16.3. Outside of a control area, it is for the planning authority to consider whether any change of use of a dwelling house is material and, therefore, requires planning permission. This is determined on a case by case basis.
- 16.4. Within a control area designated by a planning authority, such a change of use will always require planning permission. The host or operator must make an application for planning permission or already have planning permission before they apply for a licence.
- 16.5. It is a mandatory condition of the licence that a host or operator has planning permission or has made an application for planning permission where their premises is in a designated control area, they are using it for secondary letting and it is a dwelling house.
- 16.6. Information in relation to areas within The Highland Council proposed to be designated by the Council, as planning authority, as a short term control area can be found at - https://www.highland.gov.uk/info/161/planning_and_building_standards/991/short-term_let_control_area
- 16.7. Hosts and operators must comply with both planning and licensing law.
- 16.8. 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.

- 16.9.** 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.
- 16.10.** 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.
- 16.11.** The applicant has 3 months to submit a planning application. If the applicant does not do so within 3 months, the licence application can be determined for these purposes and the applicant must cease providing short term lets.
- 16.12.** Please note that planning authorities could designate control areas after a premises has already obtained a short term let licence. Licence holders would be given a reasonable opportunity to comply with the mandatory condition by submitting a planning application as soon as possible after the control area is designated. If planning permission is refused, this may result in the licence being refused, varied or revoked as appropriate.
- 16.13.** Hosts and operators are, therefore, encouraged to engage with the Council's planning department **prior** to submitting a licence application to confirm whether they require planning permission or a certificate of lawful use of development.
- 16.14.** Details for the Council's planning department can be found at - https://www.highland.gov.uk/info/161/planning_and_building_standards

17. Equality

- 17.1.** 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.
- 17.2.** Prior to the Committee implementing this policy an equality impact assessment was undertaken. This can be viewed using the following link [*to be inserted once the decision is made*].

18. Fees

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

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

18.3. The Council has considered the following criteria in the process of determining the fees:

- The size of the premises
- The number of rooms at the premises
- The number of guests who can reside at the premises
- The type of short term let

Application and renewal – full licence

Guest capacity (people)	Home sharing and home letting	Secondary letting
[tbc]	[tbc]	[tbc]
[tbc]	[tbc]	[tbc]
[tbc]	[tbc]	[tbc]

Other types of application	Fee
Temporary licence application	[tbc]
[Temporary exemption application]	[tbc]
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]

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	
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DRAFT

Appendix 1 – Contact details

Telephone – 01349 886609

Email – stl@highland.gov.uk

Area offices:

Caithness, Sutherland and Easter Ross
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Council Offices, Caithness House, Market Place, Wick, KW1 4AB

Inverness, Nairn Badenoch and Strathspey

The Highland Council, Town House, Inverness, IV1 1JJ
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Ross, Skye and Lochaber

The Highland Council, Charles Kennedy Building, Achintore Road, Fort William, PH33 6RQ
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The Highland Council, Tigh Na Sgire, Park Lane, Portree, IV51 9GP

Appendix 2 – Hearing procedure

DURING THE HEARING

1. The Chair will introduce the Members and Officials present. If the representations/objection(s) were submitted timeously and there are no spent convictions to be considered, then proceed directly to number 4.
2. If the representation/objection (from the Police or any other party) has been received late the Committee must hear details as to why the representation/objection was late and be satisfied that there is sufficient reason why it was not made in the time required. If they agree that then the representation/objection can be heard otherwise it should be disregarded. The process to be followed should be that the objector is invited to provide reasons as to why the submission was late. Members may ask any follow up questions of the objector. The applicant must then be asked if they have any objections to the late submission being accepted. The Committee must take all comments into account when deciding whether to accept the late submission.
3. If spent convictions are to be referred to then the guidance notes for spent convictions should be followed for each conviction. The Committee should resolve to go into private whilst considering spent convictions.
4. The hearing procedure below should now be followed:

a	The Licensing Officer will present the report to the Committee
b	The applicant or the party who has initiated the hearing will present their case first
c	The presenting party shall be entitled to provide information in support of their application, representation or objection (as applicable).
d	Any other interested party will have the opportunity to ask the presenting party relevant questions.
e	The Committee Members will have the opportunity to ask the presenting party relevant questions.
f	Any other interested parties will then present their case in turn and be entitled to provide information in support of their application, representation or objection (as applicable)
g	Any other interested party will have the opportunity to ask the presenting party relevant questions.
h	The Committee Members will have the opportunity to ask the presenting party relevant questions

i	The Chair will invite the applicant, or the party who has initiated the hearing, to briefly summarise their points if they wish.
j	The Chair will invite the other interested parties to briefly summarise their points if they wish.
k	The Chair will ask the applicant, or the party who has initiated the hearing, and all parties making representations, that they are satisfied that they have said all they wish to.
l	At the sole discretion of the Members, the Committee may decide to retire to consider the representations/objections in private.
m	<p>The Committee will invite the parties to return to the meeting and the Chair will invite Members to take a decision.</p> <p>NOTE: If during private deliberations, the Committee receive advice on a legal submission from the Clerk which is contrary to the view of the party making the submission or the Committee believe additional information would be relevant, then these points should be raised with the parties, in public, prior to any decision being made.</p>

DECISION

A determination of the case will be made at the conclusion of the hearing and all parties will be notified of the decision in writing within 7 days of the hearing and shall be advised of his/her right to seek written reasons and appeal to the Sheriff Court.

If the decision of the Committee is to suspend, refuse or refuse to suspend a licence, a relevant person has a right to request within 28 days of the meeting, the Committee's reasons for arriving at their decision. Unless the circumstances of the case justify immediate suspension, the suspension shall not take effect for 28 days from the date of the decision.

Appeals against the decision of the Committee must be lodged with the Sheriff Clerk within 28 days of the date of the decision.

Appendix 3 – Mandatory licence conditions

Agents

1. Only those named as a holder of the licence can carry out the day to day management of the short-term let of the premises.

Type of licence

2. The holder of the licence may only offer the type of short-term let for which the licence has been granted.

Fire safety

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—

(a) fire or suspected fire, and

(b) the presence of carbon monoxide in a concentration that is hazardous to health.

4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988

Gas safety

5. Where the premises has a gas supply—

(a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,

(b) if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

Electrical safety

6. Where there are electrical fittings or items within the parts of the premises which are for guest use, or to which the guests are permitted to have access, the holder of the licence must—

(a) ensure that any electrical fittings and items are in—

(i) a reasonable state of repair, and

(ii) proper and safe working order,

(b) arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,

(c) ensure that, following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,

(d) arrange for a competent person to—

- (i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and
- (ii) date label and sign all moveable appliances which have been inspected.

7. In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006(2).

Water safety: private water supplies

8. Where the premises are served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

Water safety: legionella

9. The holder of the licence must assess the risk from exposure to legionella within the premises, whether or not the premises are served by a private water supply.

Safety & repair standards

10.(1) The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.

(2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

Maximum Occupancy

11. The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

Information to be displayed

12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests—

- (a) a certified copy of the licence and the licence conditions,
- (b) fire, gas and electrical safety information,
- (c) details of how to summon the assistance of emergency services,
- (d) a copy of the gas safety report,
- (e) a copy of the Electrical Installation Condition Report, and
- (f) a copy of the Portable Appliance Testing Report.

Planning Permission

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—

- (a) an application has been made for planning permission under the 1997 Act and has not yet been determined, or
- (b) planning permission under the 1997 Act is in force.

Listings

14.(1) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes—

(a) the licence number, and

(b) a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with the Energy Performance of Buildings (Scotland) Regulations 2008

(2) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises is consistent with the terms of the short-term let licence.

Insurance

15. The holder of the licence must ensure that there is in place for the premises—

(a) valid buildings insurance for the duration of the licence, and

(b) valid public liability insurance for the duration of each short-term let agreement.

Payment of fees

16. The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.

False or misleading information

17. The holder of the licence must not provide any false or misleading information to the licensing authority.

Interpretation

18. In this schedule—

“Electrical Installation Condition Report” means a report containing the following information—

(a) the date on which the inspection was carried out,

(b) the address of the premises inspected,

(c) the name, address and relevant qualifications of the person who carried out the inspection,

(d) a description, and the location, of each installation, fixture, fitting and appliance inspected,

(e) any defect identified,

(f) any action taken to remedy a defect,

“Energy Performance Certificate” means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008,

“gas safety report” means a report containing the following information—

(a) the date on which the appliance or flue was checked,

(b) the address of the premises at which the appliance or flue is installed,

(c) a description of and the location of each appliance or flue checked,

- (d) any safety defect identified,
- (e) any remedial action taken,
- (f) confirmation that the check undertaken complies with the requirements of an examination of—
 - (i) the effectiveness of any flue,
 - (ii) the supply of combustion air,
 - (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both,
 - (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
 - (v) its operation so as to ensure its safe functioning,
- (g) the name and signature of the individual carrying out the check, and
- (h) the registration number with which that individual, or that individual's employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998,

Appendix 4 – Additional licence conditions

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

- 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 1st 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 1st 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

9. Maintenance of property

- i. 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
- ii. Where there is a hot tub provided at the premises, the holder of the licence shall ensure: -
 - i. that it is suitably located and maintained so as to ensure it can be safely operated and used by guests;
 - ii. that suitable and sufficient cleaning and disinfection procedures are in place;
 - iii. that guests are provided with clear instructions on its safe use and any restrictions on its use;
 - iv. that it is kept securely covered when not in use.

10. Requirement to produce on demand any policy, certificate etc.

- i. The licence holder shall require to produce 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.

**PUBLIC CONSULTATION SURVEY – SHORT TERM LET POLICY AND
CONDITIONS**

1. YOUR DETAILS

First Name	
Surname	
Email address	
Post code	

2. WHICH OF THE FOLLOWING APPLY TO YOU?

Short term let host/operator	
Short term let user	
Short term let neighbour	
Other (please specify)	

3. THE COUNCIL HAS THE OPTION TO GRANT TEMPORARY EXEMPTIONS TO THE REQUIREMENT TO HAVE A LICENCE FOR A PERIOD UP TO SIX WEEKS. THIS WOULD NEED TO BE APPLIED FOR.

THIS COULD BE FOR A LARGE INFLUX OF VISITORS OVER A SHORT PERIOD FOR A PARTICULAR EVENT. THE COUNCIL IS NOT PROPOSING TO USE THIS APPROACH GIVEN THAT THE MAIN REASON THE LEGISLATION IS BEING BROUGHT IN IS TO ENSURE THAT PREMISES ARE SAFE TO LET.

DO YOU AGREE WITH THE APPROACH TO NOT GRANT TEMPORARY EXEMPTIONS?

YES	
NO	

IF NOT, PLEASE STATE WHY AND PLEASE SPECIFY ANY PARTICULAR EVENTS WITHIN THE HIGHLAND COUNCIL AREA THAT SHOULD BE CONSIDERED FOR A TEMPORARY EXEMPTION

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4. IT WILL BE A MANDATORY CONDITION OF A SHORT TERM LET LICENCE THAT HOSTS AND OPERATORS ENSURE THEY DO NOT EXCEED THE MAXIMUM NUMBER OF GUESTS FOR THEIR PREMISES.

THE COUNCIL MAY CHOOSE TO SPECIFY ON A LICENCE THAT GUESTS MAY BRING CHILDREN UNDER A SPECIFIED AGE AND THESE CHILDREN WOULD NOT COUNT TOWARDS THE OCCUPANCY OF THE PREMISES. SCOTTISH GOVERNMENT GUIDANCE STATES THAT LICENSING AUTHORITIES MAY WISH TO SET THE AGE LIMIT 'AS UNDER 10 YEARS'

SHOULD CHILDREN UNDER THE AGE OF 10 COUNT TOWARDS THE OCCUPANCY OF A PREMISES?

YES	
NO	

IF YES, PLEASE STATE WHY

--

5. THE COUNCIL HAS THE POWER TO SET ADDITIONAL CONDITIONS FOR SHORT TERM LET PROPERTIES. ALL SHORT TERM LETS WHICH ARE GRANTED A LICENCE WILL BE REQUIRED TO COMPLY WITH A SET OF MANDATORY CONDITIONS WHICH APPLY ACROSS ALL OF SCOTLAND. THE COUNCIL HAS PROPOSED A NUMBER OF THE ADDITIONAL CONDITIONS WHICH ARE SET OUT IN THE POLICY STATEMENT

DO YOU AGREE WITH THE PROPOSED ADDITIONAL CONDITIONS?

YES	
NO	

IF NO, PLEASE SPECIFY WHICH ONES AND PROVIDE YOUR REASONS

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6. SHOULD ANY OF THE PROPOSED ADDITIONAL CONDITIONS ONLY BE APPLICABLE TO CERTAIN TYPES OF SHORT TERM LET LICENCES (i.e. SECONDARY LETTING, HOME LETTING OR HOME SHARING) OR CERTAIN TYPES OF PROPERTIES (i.e. FLATS, SEMI DETACHED PROPERTIES etc) OTHER THAN ALREADY SPECIFIED WITHIN THE CONDITIONS?

YES	
NO	

IF YES, PLEASE SPECIFY WHY AND WHICH TYPES OF LICENCES/ PROPERTIES SHOULD BE EXEMPT

--

7. THE COUNCIL HAS THE ABILITY TO GRANT TEMPORARY SHORT TERM LET LICENCES. THESE CAN BE GRANTED FOR A DURATION OF UP TO 6 WEEKS. DO YOU THINK THAT THE COUNCIL SHOULD INTRODUCE TEMPORARY LICENCES?

YES	
NO	

IF NO, PLEASE SPECIFY WHY

--

8. IF TEMPORARY LICENCES ARE INTRODUCED, SHOULD THE ADDITIONAL LOCAL CONDITIONS APPLY?

YES	
NO	

IF NO, PLEASE SPECIFY WHY

--

9. IF TEMPORARY EXEMPTIONS TO A LICENCE ARE INTRODUCED, SHOULD THE ADDITIONAL LOCAL CONDITIONS APPLY?

YES	
NO	

IF NO, PLEASE SPECIFY WHY

--

10. ARE THERE ANY TYPES OF PROPERTY THAT YOU THINK WOULD NOT BE SUITABLE AS A SHORT TERM LET?

YES	
NO	

IF YES, PLEASE STATE YOUR REASONS

--

11. ARE THERE ANY OTHER AREAS OF THE POLICY DOCUMENT OR THE PROPOSED ADDITIONAL CONDITIONS THAT YOU WISH TO MAKE COMMENTS ON?

YES	
NO	

IF YES, PLEASE PROVIDE YOUR COMMENTS BELOW

--

12. ARE THERE ANY OTHER AREAS IN RELATION TO THE LICENSING OF SHORT TERM LETTING THAT YOU WISH TO COMMENT ON?

YES	
NO	

IF YES, PLEASE PROVIDE YOUR COMMENTS BELOW

--

Agenda Item	10.ii
Report No	HC/16/22

HIGHLAND COUNCIL

Committee: Highland Council

Date: 30 June 2022

Report Title: Establishing a Short-Term Let Control Area for Ward 20: Badenoch and Strathspey

Report By: Executive Chief Officer Infrastructure, Environment & Economy

1 Purpose/Executive Summary

- 1.1 This report informs Members of the outcome of the statutory consultation process for the establishment of a Short-Term Let Control Area for Ward 20 (Badenoch and Strathspey) which was agreed to be undertaken by the Economy & Infrastructure Committee (ECI) at its meeting on 2 December 2021.
- 1.2 The report also invites Members to determine, in light of the consultation responses, if they wish to submit the proposal to designate Ward 20 (Badenoch and Strathspey) as Short-Term Let Control Area to Scottish Ministers for formal approval.

2 Recommendations

- 2.1 Members are asked to:-
 - i. note the new and emerging legislation to control and manage Short-term lets (STL) as summarised in Section 4;
 - ii. consider the consultation feedback and the potential implications that a STL Control Area will have on communities within Ward 20 (Badenoch and Strathspey) as set out in **Appendix 1** and summarised in Section 5; and
 - iii. Based on the consultation feedback and available evidence, agree to apply to Scottish Ministers to designate Ward 20 (Badenoch and Strathspey) as a Short-Term Let Control Area and to delegate authority to Officers to:-
 - a) submit the STL Control Area proposal to Scottish Ministers;
 - b) following the decision by Scottish Ministers bring back a further report to the Economy & Infrastructure Committee confirming the outcome and outlining the next steps, including the date of the commencement of the Control Area; and

- c) arrange a Member's workshop to discuss the differing planning policy options for considering and determining planning applications for secondary letting within the STL Control Area.

3 Implications

- 3.1 **Resource** – The work undertaken in progressing the STL Control Area for Ward 20 to date has been extensive and has involved a significant number of officers across a variety of services prioritising this work which has negatively impacted on other work streams.
- 3.2 Should the progression of the Badenoch & Strathspey STL Control Area be agreed the statutory process would have to be met from existing Service budgets and by existing staff resource.
- 3.3 The ongoing need to consider and determine STL planning applications within the STL Control Area will have an ongoing impact on performance, staffing and budgets. The Council will need to consider whether the additional fees generated can be utilised to support the resource needed to process these new applications.
- 3.4 **Legal** – The Council has the power under Section 26B of the Town & Control Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019, to designate a STL Control Area.
- 3.5 **Community (Equality, Poverty and Rural)** – The aim of returning STL properties back into full-time residential units has the potential to increase the full-time rural population and increase housing supply which will support the equality of Highland rural areas. Conversely, the loss of tourist accommodation and the potential resultant loss of tourists could have a negative impact on businesses and incomes within the Control Area.
- 3.6 **Climate Change / Carbon Clever** – The anticipated outcome of returning STL properties back into full-time residential units will, arguably, reduce the need to build additional housing to satisfy full-time occupancy demand, thus reducing the need to develop Highland finite land resource and use finite building materials, in pursuance of the Council Climate & Ecological Emergency declaration. However, it might necessitate the development of additional 'tourist accommodation' to compensate for the loss of STL being moved back into full-time housing.
- 3.7 **Risk** - The risks (and benefits) of the STL Control Area for Ward 20 are explored in detail, as part of the body of this report.
- 3.8 **Gaelic** – No direct impacts.

4 Background and Context

- 4.1 Following Ward 20 Members concern over the number of dwelling houses within Badenoch and Strathspey being lost to secondary letting at the Highland Council meeting on 9 September 2021 at the specific request of Ward 20 Members, it was agreed that the Council would pursue the consideration of establishing a Short-term Let Control Area across Badenoch and Strathspey.
- 4.2 This detailed consideration of establishing this Short-term Let Control Area across Badenoch and Strathspey was undertaken at ECI Committee meeting on 2 December

2021, where a detailed report outlining the issue that secondary letting is having across Badenoch and Strathspey was presented. Members thereby agreed to advance to the formal consultation stage of the process.

- 4.3 This formal consultation ran for a 6-week period, from 31 January 2022 until 7 March 2022, via the Council online engagement software. The online consultation was also supported by a public information video outlining the issues around secondary letting and both the positive and negative implications establishing a Short-term Let Control Area could bring.
- 4.4 Officers also made direct contact via email, with all Community Councils within Ward 20, the main website organisations offering this type of accommodation and the main trade organisations. The engagement process was also aided by the Cairngorm National Park Authority who contacted local business partnerships.
- 4.5 During the six-weeks consultation period, a total of 332 responses were received, all are summarised in **Appendix 1** and the salient points are discussed in detail as part of the main body of this report.
- 4.6 Additionally, the engagement exercise asked for comments/feedback on the Council draft 'Statement of Reasons' for establishing the Short-term Let Control Area for Badenoch and Strathspey. Following feedback (which is again discussed in the main body of the report), an updated version of the Council Statement of Reason is contained in **Appendix 2**.

5 Review of Consultation Responses

- 5.1 As noted above, during the six-weeks consultation period, a total of 332 responses were received. Out of these 52% were from private individuals, 44% from Short-term let operators/management companies and the remainder were local businesses/business organisations/the National Park (9) and from Community Councils (5).
- 5.2 Given the near 50 / 50 split between local residents and STL Operators/management companies who responded to the consultation, it is unsurprising that the results are equally split at 45% each way as to whether the Council should establish a Short Term Let Control Area for Badenoch and Strathspey. The remaining 9% were unsure at the time of completing the survey.
- 5.3 Included in the above numbers, are responses from the Association of Scotland's Self-Caterers, Shepherd Wedderburn on behalf of Airbnb, the Cairngorm Business Partnership and the Cairngorm National Park Authority (CNPA). These responses are also included as part of the Summarised Consultation Responses at **Appendix 1**.
- 5.4 The majority in favour of the STL Control Area noted the likely outcome would be homes being returned to local full-time occupation, either for sale or long-term rental and at a price/availability suited to the local market. The results of this would safeguard the character of the locale, whilst creating more resilient local communities, where younger families could be based and employed locally.
- 5.5 The CNPA and many others broadly welcomed the STL CA proposal as one tool to manage housing pressures in the area, whilst noting a possible consequence of the STL CA is that properties, which have been historically used for secondary letting might just become second homes that are used less often and therefore contribute less to the local economy.

- 5.6 On the other hand, those arguing against the creation of the STL Control Area state that the importance of secondary letting for the tourism sector in Badenoch & Strathspey is vastly undervalued and the restriction of supply and addition of further regulation will have a significant negative effect on the local tourist and employment markets.
- 5.7 Many respondents note that STL owners utilise the services of numerous local suppliers (including laundry services, window cleaners, gardeners, firewood suppliers, construction trades and food & drink suppliers), they invest heavily in their properties and the users of the properties spend significant monies locally visiting attractions, utilising local shops, cafes and services.
- 5.8 The Association of Scotland's Self-Caterers along with numerous other contributors highlighted that STL are a longstanding presence in Highland communities and provide an economic boost for local areas and enhance Scotland's tourist accommodation offering. Many of which are owned and operated by local people, thus providing them employment and a good income and, as such a Control Area risks impacting significantly on the very communities it is trying to help.
- 5.9 These contributors go on to note that parallels can therefore not be drawn with the proposed STL CA being advanced in Edinburgh (currently the only other Local Authority progressing a STL CA), as they argue such a large city has numerous other sources of employment and it is not primarily reliant on tourism as the main source of income, unlike Badenoch & Strathspey.
- 5.10 A high number of objectors, again including the Association of Scotland's Self-Caterers and Cairngorm Business Partnership raise the issue that the Council has not undertaken any specific economic impact assessment work as to the likely impacts the control of secondary letting within the Control Area will create. Whilst this assertion is correct, there is nothing preventing Member's deferring decision and commissioning such work if felt necessary.
- 5.11 Regardless, if the respondent supported or objected to the creation of the Control Area, an overriding theme was that the STL Control Area is just one small part of a wider housing policy and the housing issues in Ward 20 (and much of the UK) will only be solved by providing a mixture of new housing (both affordable and regular), more houses made available for long term lets and tourism organisations providing staff accommodation for seasonal workers rather than through the STL CA.
- 5.12 The issue of second homes was raised by both sides. However, the STL Control Area is limited to the control of secondary letting only and does not cover second homes, which accounts for about 10% of all homes across the B&S Housing Market Area. Furthermore, a number of objectors to the STL Control Area noted that it is likely the number of second homes within B&S will increase as a result of the STL Control Area, as a percentage of current secondary let homes are unlikely to transfer back into the open housing market and instead owners might retain them as 'second homes'.
- 5.13 The STL CA for Badenoch & Strathspey is being advanced at the request of the Local Ward 20 Members and was agreed at the Council meeting on 9 September 2021 and currently the Council is not working to progress a Control Area elsewhere within the Council area. Under Section 26B of the Town & Control Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019 (the 1997 Act) the Scottish Government has given planning authorities the power to designate '...all or part of their

area as one or more (short term let) control area...' and therefore, there is no barrier to establishing a Control Area limited to Ward 20: Badenoch & Strathspey.

- 5.14 With regards to the Council draft Statement of Reasons, 48% of respondents agreed with the Statement of Reason (SofR), whilst 51% did not agree with it. Again, the main objections to the SofR relates to the economic value that secondary letting in terms of tourist overall spend contributes to the local economy and the fact that adding additional regulatory process to the STL market, especially given the commencement of the STL licensing scheme in October 2022 will not increase the availability of housing for the local market.
- 5.15 Conversely the respondents who supported the SofR, were of the opinion that it was balanced and proportionate and the STL CA would help to resolve some of the issues around housing supply within Badenoch & Strathspey.
- 5.16 Most contributors who had concerns over the SofR, which include Airbnb, the Association of Scotland's Self-Caterers and the Cairngorm Business Partnership have grave concerns over the evidence base the project is being progressed upon, Noting the evidence is 'Qualitative' and is not specific to secondary letting and instead relates to a wider 'tourist accommodation' and/or 'second home' market. As such, they argue the Council's own evidence does not justify the promotion of a STL CA.
- 5.17 The response from Airbnb goes on to note that the previous Committee Report '...fails to consider projected stock increase in the Area and whether that is likely to address need and demand without the need for the introduction of a Control Area...this information is readily available through the Council's Housing Land Audit and also through the recently published Housing Need and Demand Assessment 2020..' with the same respondent noting that the Council's Housing Land Audit concludes that '...existing planned developments provide an adequate supply of available housing land across the Highland area...'
- 5.18 At the time of the previous report to Committee the HNDA & HLA were not approved and did not obtain 'robust and credible' status until 23 December 2021. Therefore, the data they contained was not considered as part of the previous report and, whilst some of the point raised are relevant, they were not part of the previous consideration.
- 5.19 In addition, to the specific comments related to the establishment of the STL Control Area, several other comments were raised by respondents, which are summarised below:
- 5.20 A high number of contributors noted that the STL Control Area proposal was being advanced at the same time of a STL licensing scheme, in general this licensing scheme was supported by all parties (subject to appropriate costs and requirements).
- 5.21 However, many respondents questioned bringing both systems of control in concurrently, given the costs both will inflict on a market which was badly affected by COVID and the uncertainty which exists around both systems.
- 5.22 Additionally, a high number of contributors questioned if adopting control of secondary letting alone would bring about any meaningful change and argued that a whole housing focus approach should be adopted which included the support for greater house building (both affordable and open market).
- 5.23 The Council along with its partners (including the CNPA) is working hard to deliver greater affordable housing across the Badenoch & Strathspey Housing Market Area, but this will take time to deliver the benefits and to ensure the Council is making best

use of all the housing stock, and it is considered appropriate to consider all housing control mechanisms.

- 5.24 A large number of comments regardless if they support or object to the proposal, raised the issue of 'second homes' – these are homes where no one resides full time, but are also not considered as secondary let. Undoubtedly, there is a high number of these across B&S (and much of Highland) and the Council has little power to prevent more homes being lost to this sector and it is accepted that the STL CA might increase this form of housing stock.
- 5.25 The only option available to the Council to control second homes, is to charge full Council Tax, which the Council is already doing. If an owner is willing to pay the additional revenue, the Council has no other legislative powers.
- 5.26 A number of comments from both sides of the argument, agree that it is hard to make definitive comments in the absence of detailed planning policy, with which the Council will determine the planning applications a STL Control Area would create.
- 5.27 This assertion is noted and is to a degree accepted, Officers had planned to progress this work further by now. Unfortunately, this work has been delayed.
- 5.28 However, Council is reviewing the options around the policy landscape and plan to hold a Member's workshop over the summer to discuss the policy options with Members (assuming Members vote to progress with the STL CA) and then present a report to the E&I Committee in August 2022 before holding a public consultation exercise.
- 5.29 A number of representations, whilst in support of the STL CA, make comment that the CA should not be retrospective and not require existing properties which are used for 'secondary letting' the need to apply for planning permission.
- 5.30 The legislation surrounding the STL CA requirements is specific and will require all properties used for secondary letting to either obtain planning approval or if they have been used for a period of greater than 10years as a STL to obtain a 'Certificate of Lawfulness'.
- 5.31 It would be open for Members as part of the Planning Policy work (see Sections 5.23 - 5.25 above) to develop a policy which would support existing properties utilised for secondary letting. Which whilst not removing the need to obtain planning approval, this could give existing operators some certainty in terms of the planning application outcome.

6 Next Steps

- 6.1 As demonstrated in the body of this report, the consultation response feedback is equally split in support of and against a STL Control Area. Many respondents questioning the robustness of the data used to progress the work and if the full economic value of the secondary let market has been fully considered.
- 6.2 However, on balance and given the clear decision of Members at the previous two committees it is recommended that based on the evidence available and consultation

feedback, the evidence supports the designation of Ward 20 as Short-Term Let Control Area and the Council should apply to Scottish Ministers to designate Ward 20 (Badenoch and Strathspey) as Short-Term Let Control Area.

- 6.3 Officers will prepare and submit the required information to Scottish Minister at the earliest opportunity and progress the planning policy work, including the organisation of a Member's Workshop, over the summer.
- 6.4 It is clear that there is interest from across the Council area in the work being undertaken for Badenoch & Strathspey. It is important that this initial Control Area is progressed, the policy to support it is developed and the process implemented and assessed to inform the consideration of any further roll out.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

Date: 13 June 2022

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Background Papers: **Appendix 1** – Summarised Consultation Responses
Appendix 2 – Updated Statement of Reasons (showing tracked changes)