

## Short Term Lets Summary

### Introduction

This document seeks to provide those who own or operate short term lets within the Highland Council area with an understanding of what this new legislation means, in practice, as well as answer questions that you might have about this new licence.

**PLEASE NOTE THAT WE ARE STILL AWAITING THE PUBLICATION OF THE SHORT TERM LET GUIDANCE FROM THE SCOTTISH GOVERNMENT. WE ANTICIPATE THIS WILL BE MADE AVAILABLE IN MARCH 2022.**

Therefore, we appreciate that this document may not cover all the questions and answers you may have regarding the new regime, however, we will endeavour to continually review and update this document as and when we obtain further information and clarification from the Scottish Government.

### What is the purpose of this new licensing regime?

A new licensing regime has been introduced by the Scottish Government to help make sure that the economic and tourism benefits from short-term lets (STLs) are balanced with the needs and concerns of local communities.

The licensing scheme aims to ensure short-term lets are safe and the people providing them are suitable, under legislation approved by the Scottish Parliament. The licensing scheme will be regulated by the Civic Government (Scotland) Act 1982.

### Terminology

In this document, the following terms are used:

<b>“accommodation”</b>	means the room, rooms or property let to the guest(s) as a short-term let;
<b>“dwellinghouse”</b>	means, for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) such as a house, flat, cottage etc.;
<b>“existing host”</b>	means a host or operator who has used their premises to provide short-term lets before 1 October 2022 and who will apply for a licence to continue the same use;
<b>“guest”</b>	means a person occupying accommodation for the purposes of a short-term let;
<b>“home letting”</b>	means using all or part of your own home for short-term lets whilst you are absent;
<b>“home sharing”</b>	means using all or part of your own home for short-term lets whilst you are there;

“host” or “operator” or “you”	means a person or company providing accommodation for short-term letting, including commercial landlords (note that the host may not be the owner or person who lives at the property);
“secondary letting”	means a short-term let involving the letting of accommodation where you do not normally live, for example a second home;
“premises”	means the property and land on one site, normally premises have their own postal address;

### Do I need a Short Term Let Licence?

The use of residential accommodation for long term letting and short-term letting, is commonly recognised in Scotland. However, with the introduction of the new licensing regime for short-term lets, the law in Scotland is now making a distinction between short term lets and longer term lets. The way that longer term lets are entered into and contractually managed can vary, however, if you are a private landlord who is renting out a property under a lease or a tenancy agreement to a person that is not a family member and you are registered as a Scottish Landlord it is unlikely that the use of your residential accommodation will be considered as a short term let.

Short-term lets are accommodation that is let out and that meets the following criteria:

A short term lets licence may be required if you are providing accommodation to guests where:

- you have set out terms and conditions which your guest has accepted;
- the guest doesn't use the accommodation as their only or main place of residence;
- you are charging your guests; **and**

**none** of the following applies:

1. the guest is not a family member, or has a share in ownership of the accommodation;
2. your guests are staying principally for educational purposes as part of an arrangement that has been approved by a school, college, further or higher educational institution;
3. your guests are staying principally to provide services to you or work for you or members of your household (e.g., staying with you to provide healthcare or childcare services);
4. the accommodation does not fall into the category of [excluded accommodation](#); and
5. the terms and conditions of the accommodation does not fall into) the category of an [excluded tenancy](#).

If you remain unsure about whether your accommodation falls within the meaning of a Short Term Let, please seek independent legal advice.

### Excluded Accommodation

Schedule 1 of the Licensing Order defines excluded accommodation as:

- an aparthotel;
- accommodation which holds a premises licence under the Licensing (Scotland) Act 2005 and where the provision of accommodation is an activity listed in the operating plan;

- 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 (i.e., where a guest brings their own tent),
- accommodation, which is capable, without modification, of transporting guests to another location such as a yacht or canal boat;
- a bothy, or
- 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.

## Excluded Tenancies

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

- a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984(7)),
- an assured tenancy (within the meaning of section 12 of the 1988 Act),
- a short assured tenancy (within the meaning of section 32 of the 1988 Act),
- a tenancy of a croft (within the meaning of section 3 the 1993 Act),
- a tenancy of a holding situated out with the crofting counties (within the meaning of section 61 of the 1993 Act) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931(8)) applies,
- a Scottish secure tenancy (within the meaning of section 11 of the 2001 Act),
- a short Scottish secure tenancy (within the meaning of section 34 of the 2001 Act),
- a 1991 Act tenancy (within the meaning of section 1(4) of the 2003 Act),
- a limited duration tenancy (within the meaning of section 93 of the 2003 Act),
- a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
- a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
- 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 2003 Act),
- private residential tenancy (within the meaning of section 1 of the 2016 Act), or
- a student residential tenancy.

Further information regarding the above listed excluded tenancies can be found here: [https://www.highland.gov.uk/downloads/file/24917/excluded\\_tenancies](https://www.highland.gov.uk/downloads/file/24917/excluded_tenancies)

### Under what circumstances will I need more than one STL licence?

A licence is required for each premises in which you provide accommodation. Therefore, if you are letting out two rooms within your home you will only require one licence.

In addition, accommodation that is on a single premise requires only one short term let licence. For example, if you have a number of glamping pods within one site, it is likely you will require only one licence. However, if you own two neighbouring cottages, it is likely that you will require two separate licences.

If you have two properties located in different parts of Scotland that you use as short term lets, you will need to apply for separate licences from the relevant local authority where those properties are located.

For example, if you have a secondary letting in Aviemore and secondary letting in Edinburgh, you will need to apply for a STL Licence from Edinburgh City Council and The Highland Council.

### Will I need to apply for planning permission in addition to applying for a short term let licence?

Planning permission may be required where there is a material change in use of a dwellinghouse to provide a short term let. Whether or not this is the case will depend upon the circumstances and factors which apply to the particular change of use. Further information can be found at: <https://www.gov.scot/publications/short-term-lets-scotland-planning-guidance-hosts-operators/documents/>

To obtain advice on whether you will require planning permission for your short term let, you can either contact the duty planner line on 01349 886608 or alternatively submit your query via our [pre-application advice form](#) for which there will be a fee payable.

### What is a control area?

The Scottish Government have introduced the ability for The Highland Council, as planning authority, to introduce control areas for STLs.

Control areas **only** apply to secondary letting of dwelling houses and have been introduced to manage high concentrations of secondary lettings by restricting or preventing short term lets that affect the availability of residential housing and the character of the local community. Control areas also help local authorities ensure that homes are used to best effect in their areas.

The Highland Council, as planning authority, are currently progressing the designation of a control area for Badenoch and Strathspey (Council Ward 20) as a control area for Short Term Lets. The planning department are currently progressing this and expect the control area to be in force by late 2022.

## If a control area is in place, how will this affect my application for a STL licence?

If you have a premise which is or will be

- 1) in a designated control area;
- 2) you are using it as a secondary letting; and
- 3) it is a dwellinghouse

you must ensure that you have made enquiries about whether you require planning permission and as part of your application for an STL licence demonstrate to The Highland Council that you have:

1. already submitted an application for planning permission (if required); or
2. already have planning permission in place or a Certificate of Lawfulness; or
3. be subject to any exceptions set out under Annex B of the Short Term Lets Planning Guidance. Further Information can be found here:  
<https://www.gov.scot/publications/short-term-lets-scotland-planning-guidance-hosts-operators/documents/>

## When should I apply for a licence?

**From 1<sup>st</sup> October 2022, The Highland Council endeavours to begin accepting applications.** However, this timescale is subject to further information and clarification regarding this new licensing regime being received from the Scottish Government. If you are an existing operator of a short term let, you have until 1 April 2023 to submit an application for a STL Licence. Further details regarding these timescales can be found in the table below.

As it currently stands, the following timescales have been set out by the Scottish Government:

Period	Rules for hosts and operators
<b>Current position</b>	<ul style="list-style-type: none"><li>• If you are currently providing short term lets, you can operate without a licence. You should use this time to start enquiring as to whether you may require planning permission for your short term let and ensuring you have all the documentation in place to make a licence application</li></ul>
<b>By 1 October 2022</b>	<ul style="list-style-type: none"><li>• All existing hosts and new operators can now apply for a licence from The Highland Council.</li></ul>
<b>By 1 April 2023</b>	<ul style="list-style-type: none"><li>• All existing hosts and operators must have applied for a licence.</li><li>• Existing hosts and operators of short term lets can continue to operate without a licence, <b><u>but only if they have submitted an application</u></b> and it is being determined.</li></ul>

If I am a new operator setting up an STL after 1<sup>st</sup> October 2022, can I operate my short term let once my application has been submitted?

If you are a new host, you cannot operate a short term let until your application for a licence has been determined.

What information do I need to have before I submit an application?

Before you apply for a licence you should check whether:

1. any Highland Council planning policies affect your short-term let activity, including whether you may be affected by a control area; and
2. your premise is compliant with the mandatory conditions that are required through legislation and best practice. Further information can be found in our **Short Term Lets Checklist Document**.

Can I operate without a licence?

Operating without a licence is a criminal offence which may be subject to a fine of up to £5,000 or, in extreme cases, imprisonment. It is imperative that you apply for your STL licence in good time.

Do I need to let anyone know that I am applying for a licence?

It is your responsibility to notify residents and neighbours of your application for an STL licence or a renewal of an STL licence. You must do this by displaying a site notice at or near your premise, so that it can be conveniently read by the public. The notice must be displayed for a period of 21 days beginning from the date that your application was submitted to the Highland Council. Following the 21 day period, you must complete a form known as a certificate of compliance that certifies that you have complied with this procedure. The notice and certificate documentation will be sent to you once you have submitted an application.

Can anyone object to my application?

Objections may be made by neighbours or any other person who wants to raise an objection. All objections should be made within 28 days of public notice of the application being given. The Highland Council will provide you with copies of any objections received. You will also be given a chance to respond to any objections received in writing or at a hearing.

Whether you are a new host or an existing host, it is advisable that you speak to your neighbours before you submit an application for a licence to understand if they have any problems with your short term let or if they have any concerns about your proposal. This will provide an opportunity to engage and address any concerns ahead of submitting your application.

My neighbour wants to obtain an STL Licence, but I don't want a STL being run near my property, what should I do?

It is suggested that you take the time to speak to your neighbour to raise any concerns you might have about how the STL that is currently being run or your concerns about how a new STL may have an impact on you. If following discussion with your neighbour you are unable to reach a resolution, you can raise your concerns with The Highland Council by raising an objection or representation to the application. Your objection or representation should be in writing and lodged no later than 28 days following the date that public notice was given of the application.

Under this new licensing regime, The Highland Council has the power to consider complaints that concern how the premise will be run safely or, the appropriateness of the applicant running an STL.

You can consider making a representation in relation to the following:

- in support of an application; or
- provide suggestions as to further conditions that should be attached to the STL licence if it's granted.

You can consider objecting to the application on the basis of any of the following:

- the applicant is an unsuitable person to hold a licence by reason of having been convicted of an offence or any other reason;
- the activity would be carried out by a person other than the applicant, who, if he/she had made the application, it would have been refused;
- the STL is not suitable or convenient taking into consideration:
  - the location, character or condition of the premise;
  - the people that are likely to frequent the premise;
  - the possibility of public nuisance;
  - public order or public safety; or
- any other good reason.

**PLEASE NOTE THAT THE ABOVE LIST IS NOT EXHAUSTIVE AND IF YOU ARE UNCLEAR AS TO WHETHER YOUR CONCERNS FALL WITHIN THE REMIT OF PLANNING OR LICENSING, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.**

I only let out my property during certain times of the year, do I still need a licence?

If your property falls within the meaning of a short term let, you will require a licence regardless of how frequently or infrequently guests use your accommodation. If you offer your accommodation for several weeks during the year, you may be able to apply for a temporary licence or a temporary exemption to cover you for this period. Further information will be provided on this in due course.

### How long will it take to get a licence?

Once an application for an STL Licence has been submitted to The Highland Council, as licensing authority, they will have a period of up to 12 months to determine an application. The application will be required to undergo consultation with a number of external agencies including Police Scotland and Scottish Fire and Rescue Service as well internal departments including Planning, Building Standards and Environmental Health.

### How long does a licence last?

The legislation states that a licence shall have effect for a period of 3 years or other period that the Highland Council may determine, from the date when it comes into force or for such shorter period as the licensing authority may decide at the time when they grant or renew the licence.

### How much will a licence cost?

Local authorities are required to charge fees to fully cover the costs of establishing and administering the scheme. This also includes the consideration and determination of applications. Work is currently being undertaken to establish the level of fee required. Further information regarding fees will be provided as soon as possible.

### If my application is refused because I don't have planning permission, do I need to pay a second fee for my application for a licence to be considered again?

If your application was initially refused on the grounds that you required planning permission, which has been subsequently obtained, you can resubmit your licensing application at no additional cost, as long as you re-submit your application within 28 days of obtaining planning permission.

**PLEASE NOTE THIS DOCUMENT IS FOR GENERAL GUIDANCE ONLY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE. APPLICANTS ARE RECOMMENDED TO OBTAIN SEPERATE INDEPENDENT LEGAL ADVICE ON ANY OF THESE MATTERS.**