

# Regulatory Committee

10.00 am, Monday, 13 May 2024

## Short Term Let Licensing Policy – Temporary Exemptions

Executive/routine  
Wards

All

### 1. Recommendations

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1.1 Regulatory Committee is asked to:

- 1.1.1 Note the concerns about the availability and price of Short Term Let accommodation during August;
- 1.1.2 Note the proposed trial changes to the Council's application form for temporary exemptions from the licensing requirement and revised guidance on such applicants;
- 1.1.3 Agree to a trial revision of the application fee to £120 for an application for temporary exemption from the Short Term Let Licensing requirement, for Home Letting and Home Sharing only;
- 1.1.4 Agree to a trial amendment to the additional and mandatory conditions for Home Letting and Home Sharing, set out at paragraphs 4.18 - 4.20, from any future grant of temporary exemption from the licensing requirement; and
- 1.1.5 Determine whether the trial amendment should attach mandatory conditions 5 and 15 in whole or in part to any future grant of a temporary exemption from the licensing requirement.

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## Short Term Let Licensing Policy – Temporary Exemptions

### 2. Executive Summary

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- 2.1 This report suggests amending the Short Term Let licensing policy to permit, on a trial basis, the granting of exemptions for Home Sharing and Home Letting (from the requirement to obtain a Short Term Lets licence for a period of six weeks). The report also suggests that the trial should include an amendment to the existing fee structure, to bring the application fee for the trial period in line with the charge for an application for an annual Short Term Lets licence for Secondary Letting for applicants already holding a House of Multiple Occupation (HMO) licence. Separately, the report also suggests amending the conditions attached to any exemptions granted.

### 3. Background

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- 3.1 Under the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short Term Lets Order 2022](#) ('the 2022 Order'), which brought short term lets ('STL') within the scope of licensable activities covered by the statutory provisions of the [Civic \(Scotland\) Act 1982](#) ('the 1982 Act'), new powers were given to local authorities to regulate STL by means of a licensing scheme.
- 3.2 On 29 September 2022, Committee agreed a [policy and conditions](#) with respect to STLs in the City of Edinburgh. [Amendments](#) to that policy were agreed on 1 May 2023, following a Judicial Review. Following legal advice, a [small amendment](#) was made to the policy regarding temporary exemptions on 4 December 2023.

### 4. Main report

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#### Temporary exemptions from STL Licensing

- 4.1 The Council adopted a STL licence policy and, as permitted by discretionary powers under the 2022 Order, decided to include the facility for temporary exemptions from the requirement to obtain a STL licence. The effect of a temporary exemption is similar in legal effect to the granting of a licence, and any exemption granted is subject to any conditions that the Council decides to attach. The principal benefit to

any person granted an exemption is that the full process that normally accompanies a licence application is not required. There is no public consultation, only consultation with the Chief Constable and Chief Fire Officer, and there is no right to object to an exemption.

- 4.2 Committee will recall that when it consulted on whether to include provisions for temporary exemptions within its policy, a significant number of respondents opposed this, with 63% in [the second consultation](#) not supporting the use of temporary exemptions. However, other respondents argued that, for the festivals or events that take place in the city, the ability to obtain temporary exemptions was important to meet the demand for accommodation during these peak periods.
- 4.3 Committee agreed to include provision for temporary exemptions within the policy but exercised its discretion to attach both Mandatory and Additional licence conditions (Appendix 1) to any temporary exemption granted. This is consistent with the statutory powers available to the Council and is similar in approach to the granting of a temporary exemption for Late Hours Catering Licences (which is the only other similar example where an exemption from licensing is permitted within the 1982 Act).
- 4.4 Elsewhere in Scotland, the picture is mixed with, half of Scottish local authorities having provision for temporary exemptions. A sample of the costs of obtaining these is detailed at Appendix 2.

#### **Availability of STL accommodation during August**

- 4.5 Edinburgh plays host to a number of significant festivals during August each year, including the Edinburgh International Festival and Edinburgh Festival Fringe. These coincide with the school holiday period when thousands of additional visitors arrive in the city. This has always placed pressure on available accommodation, with prices often charged at a higher rate than during other periods.
- 4.6 Concerns have been expressed that the availability of STL accommodation is particularly challenging for those seeking accommodation for August 2024. It is reported that availability is lower and the properties which are available are significantly more expensive than they were in previous years. In part, this is being attributed to the STL licensing system discouraging individuals who may have previously Home Let or Home Shared during that period.
- 4.7 Multiple factors add pressure to the availability of visitor accommodation. The introduction of both the STL licensing scheme and STL planning control area are undoubtedly factors. It has also been suggested that acute demand for housing, coupled with the lifting of restrictions on rent rises on 1 April 2024, has meant that the student population is less likely to vacate HMO rented properties over the summer. This may be a result of not being able to secure the property on return or worry that the landlord will have increased the rent (as rent protections only apply for current tenancy agreements). Additionally, current demand for temporary accommodation for homeless people has resulted in thousands of potential beds in the guest house and hotel market providing this vital accommodation.

### **Proposed trial of amended fees for ‘Temporary Exemptions’**

- 4.8 Committee may be aware that there is a mistaken perception that the 2022 Order gives the Council discretion to remove the licensing requirement from STLs which are used for either Home Letting or Home Sharing. This is not the case, and in general an annual licence would be required. However, the legislation allows an alternative option to apply for an exemption from the licensing requirement for up to six weeks instead of requiring an annual licence. This would provide applicants for temporary exemption with the benefit of a simpler process and faster determination time due to the reduced scope of statutory consultation and the absence of potential for objections.
- 4.9 The Council could consider a temporary trial measure which would reduce the cost, administrative burden and, where appropriate, the conditions attached when a temporary exemption is obtained. This would allow for an assessment of whether such measures increase the number of applications for temporary exemptions for Home Letting and Home Sharing during 2024. If successful, this could be reflected in any amendment to the policy which is due to be consulted on this summer.
- 4.10 The cost of an application for temporary exemption is currently £250, reflecting the costs of operating the system which the Council needs to recover. A trial is proposed (for Home Letting and Home Sharing only) to reduce this fee to £120.
- 4.11 The vast majority of Secondary Let properties will be operating on a commercial basis or within the HMO sector, and thus owners of Secondary Let properties will generally require the ability to let for more than six weeks. Therefore, the proposed application fee for temporary exemption (Home Letting/Home Sharing) is equivalent to the annual STL licence for secondary letting for applicants already holding an HMO licence.
- 4.12 It is considered that this proposed amendment is proportionate to support the provision of Home Letting and Home Sharing which, in turn, will benefit property owners and help address the acute issue that the city faces in the August Festival period.
- 4.13 Fees will be reviewed later in 2024 based on feedback from the consultation and this trial.

### **Application form and guidance for applicants seeking temporary exemptions**

- 4.14 It is acknowledged that the current STL application form is lengthy and detailed. This has to be considered in the context of ensuring that the licensing authority and consultees have all the information required to prevent delay in assessing the application. Therefore, it is intended to trial a shorter form for temporary exemption applications. This will be made possible by some of the changes to conditions attached to the exemption proposed below.
- 4.15 ‘Frequently Asked Questions’ (FAQs) have been added to the Licensing webpage. They offer guidance to prospective applicants on how to apply and what is required

in order to apply for an exemption or a licence. The FAQs are updated when new information or guidance is available.

- 4.16 As the Universities in Edinburgh are providers of accommodation which is utilised for 75% of the year, discussions are ongoing regarding the flexibility and potential availability of the remaining 25% being utilised to support the festivals' and visitors to the city via the Short Term Let Licensing scheme.

### **Revised conditions - Temporary Exemptions**

- 4.17 Attaching conditions to temporary exemptions, whether mandatory or additional, is at the discretion of the Licensing Authority. Concerns have been raised about potential costs being a burden which will discourage homeowners from offering Home Letting and Home Sharing. In particular, the costs of safety testing could reduce any additional income generated from the letting.
- 4.18 Despite the concerns raised, it is recommended to retain all additional licence conditions, as these are designed to encourage good practice, prevent nuisance to neighbours, and do not impose any additional costs on the STL exemption holder. It is anticipated that most operators will already be operating in a way that would give effect to the additional conditions.
- 4.19 With regard to mandatory conditions during the trial period, it is proposed to remove the following from the grant of any future temporary exemption, as it could be argued that these conditions would be unreasonably onerous on a typical homeowner seeking to let the property for a short period. A full copy of the conditions has been provided at Appendix 1:
- 4.19.1 Condition 1 - use of named agent only;
  - 4.19.2 Condition 4 - keeping of records for upholstered furniture to show compliance with safety regulations;
  - 4.19.3 Conditions 6 (b-d) and 7 - requirements for annual electrical safety inspection and portable appliance testing;
  - 4.19.4 Conditions 8 and 9 - private water supplies and legionella testing;
  - 4.19.5 Condition 10 (2) - detailed requirements to comply with the Housing Repairing Standard;
  - 4.19.6 Conditions 12 (c-f) - a copy of gas, fire and electrical safety certification to be provided to guests;
  - 4.19.7 Condition 13 - for planning permission as a condition of licence; and
  - 4.19.8 Condition 14 - relevant to advertising the STL including licence number.
- 4.20 It is proposed to retain the following mandatory conditions during the trial period when granting a temporary exemption. These are either conditions which do not impose additional costs (in effect, requirements for good practice and transparency) or reflect a basic safety requirement which homeowners would ordinarily be able to comply with without additional costs:

4.20.1 Conditions 2, 11 and 17 - requirement only to trade as the type of STL for which the exemption has been granted for; not to exceed the maximum number of occupants permitted by the exemption; and not to supply false or misleading information to the licensing authority;

4.20.2 Condition 3 - requirements for fire safety equipment to warn of fire, suspected fire or carbon monoxide;

4.20.3 Condition 6 (a) - requirement to ensure that electrical equipment is in a reasonable state of repair and in proper safe working order;

*NB - as above it is recommended that the more detailed testing and certification requirements should be disapplied.*

4.20.4 Condition 10 (1) - requirement to take all reasonable steps to ensure the premises are safe for residential use;

4.20.5 Condition 12 (a-b) - requirement to display of the licence and conditions and relevant fire, gas and electrical safety information; and

4.20.6 Condition 16 - requirement to pay any fees due to the licensing authority.

4.21 Good practice would be for any homeowner to arrange for annual gas safety testing and building contents insurance, but it is acknowledged that there is no specific legal duty to do so. Public liability insurance is a protection for guests where it is in place, but it is not normally required to be put in place by homeowners. Committee is therefore asked to determine if it would be necessary and proportionate to retain the following conditions for temporary exemptions during the trial period, or alternatively if it would be reasonable to remove these conditions for future temporary exemptions:

4.21.1 Condition 5 - requirement for annual gas safety checks and if an appliance thereafter does not meet the required standard, it cannot be used.

4.21.2 Condition 15 - requirement to have both buildings insurance and public liability insurance.

## 5 Next Steps

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5.1 If Committee approve the recommendations in this report and determine the mandatory conditions for temporary exemptions, the amended trial policy will take effect immediately. Officers will report to Committee on any issues arising as part of the work to review the overall STL policy later this year.

5.2 It is expected that further changes may be made to the statutory provisions around temporary exemptions later this year when the Scottish Government introduces secondary legislation to amend the 2022 Order. Any such amendments will be reflected in any changes to the STL policy following the planned review later this year.

## **6 Financial impact**

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- 6.1 The revised fee has potential to affect the Council's financial position. Work is being undertaken to assess whether technology can assist in offsetting this potential loss of income in the longer term.
- 6.2 Officers will report back to the Committee later in the year on the financial sustainability of reduced application fees for temporary exemptions for Home Letting and Home Sharing.

## **7 Equality and Poverty Impact**

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- 7.1 Home Letting and Home Sharing have potential to generate income for households which might be affected by poverty and/or the cost-of-living crisis.

## **8 Climate and Nature Emergency Implications**

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- 8.1 Not applicable.

## **9 Risk, policy, compliance, governance and community impact**

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- 9.1 A policy decision of this nature is required to be rational and proportionate with regard to measures adopted to achieve the policy aims. It should identify the material considerations which the decision maker has taken into account.
- 9.2 It has been identified that the policy aim of seeking to increase availability of short term accommodation during August may be achieved by making alterations to fees and conditions for a particular class of short term letting activity, namely Home Letting and Home Sharing, and that the proposed alterations are proportionate for the reasons set out in the body of the report. With regard to fees, paragraph 15 of Schedule 1 to the 1982 Act provides that the Council may determine different fees for different purposes and sets out a range of factors which may be taken into consideration when deciding on the level of fees, including the type of short term let and the length of time for which the property is available.

## **10 Background reading/external references**

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- 10.1 Report to Regulatory Committee (29 September 2022) – [Short Term Lets Policy – Update After Consultation](#).
- 10.2 Report to Regulatory Committee (1 May 2023) – [Short Term Lets Policy – Minor Updates](#).

## 11 Appendices

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Appendix 1 - Mandatory and Additional licence conditions

Appendix 2 – Application fees for temporary exemptions



## Appendix 1

### Mandatory 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.

#### 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 and 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 certified copy of the licence and the licence conditions,
  - fire, gas and electrical safety information,
  - details of how to summon the assistance of emergency services,
  - a copy of the gas safety report,
  - a copy of the Electrical Installation Condition Report, and
  - 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 19971 ("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—
- an application has been made for planning permission under the 1997 Act and has not yet been determined, or
  - 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—
- the licence number, and
  - 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—
- valid buildings insurance for the duration of the licence, and
  - 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 for the Mandatory Conditions 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, any defect identified,
- (e) any action taken to remedy a defect.

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

**"gas safety report"** means a report containing the following information—

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

**"holder of the licence"** means any person to whom a short-term let licence has been granted or jointly granted,

**"home letting"** means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host's only or principal home,

**"home sharing"** means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host's only or principal home,

**"premises"** means the accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence,

**"repairing standard"** means the steps which the holder of the licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006,

**"secondary letting"** means a short-term let consisting of the entering into of an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home,

**"short-term let"** has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,

**"short-term let licence"** means a licence for a short-term let, and

**"type of short-term let"** means one of the following purposes—

- (a) secondary letting,
- (b) home letting,
- (c) home sharing, or
- (d) home letting and home sharing.

## **Additional Conditions**

### **Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 - Additional Short-term Let Licensing Conditions**

<b>STL 1</b>	The licence holder must ensure that advice to guests on action to be taken in the event of an emergency is clearly and prominently displayed within the accommodation.
<b>STL 2</b>	To secure and maintain public order and safety and to prevent undue public nuisance, the licence holder must have in place, so far as is reasonably practicable, arrangements, (such as the provision of keys or other means of entry and egress) which at all times permits the quiet and orderly entry to, and egress from, the licensed property by any persons occupying the said property as a STL.
<b>STL 3</b>	The licence holder must make the licence, including any conditions, available to guests within the accommodation where it can be conveniently read.

<b>STL 4</b>	The licence holder must take reasonable steps to manage the accommodation in such a way as to prevent and deal effectively with any anti-social behaviour by guests while in the STL or any shared areas and while entering or leaving the accommodation or any shared areas.
<b>STL 5</b>	<p>The licence holder must take all reasonable steps to manage the premises in such a way as to prevent undue nuisance to neighbours. The licence holder must have due regard to the privacy and security of neighbours.</p> <p>The licence holder must ensure:</p> <ul style="list-style-type: none"> <li>• Any particular rules applying to shared areas and entrances are communicated to guests;</li> <li>• Guests understand that shared doors should be quietly and securely closed after use.</li> </ul>
<b>STL 6</b>	<p>An emergency contact telephone number for the licence holder and/or management shall be available and notified to</p> <p>the Council for 24-hour contact purposes for emergencies or antisocial behaviour from the accommodation.</p>
<b>STL 7</b>	The licence holder shall give a neighbour notification to every other household in the same building as the STL accommodation, and any adjoining premises within 28 days of the licence holder's receipt of the licence document, and annually thereafter while the accommodation is licensed as a STL. This will advise of the name of the licence holder or managing agent, a contact address, day-time telephone number and an emergency contact number.
<b>STL 8</b>	The licence holder shall ensure that adequate facilities are provided for the storage and disposal of refuse, and recycling. The licence holder shall be responsible for advising residents of the refuse collection day and for making arrangements for the presentation of bins for collection at the appropriate time and day.

## Appendix 2

Local Authority	Comments	Temporary Exemption fee (£)	Full licence (three years) fee range (£)
Angus		174.50	349-588
Dundee		155	310-3100
Fife		190-195	264-518
Perth & Kinross	Fees depending on let type	45-400	175-1,600
Renfrewshire	Temporary exemptions for major events	105	263-1,155
Scottish Borders		183-257	275-385
Shetland		33	94-208
Stirling		80-200	100-400
West Lothian	For major events	300	325-1,000