

# Regulatory Committee

10.00am, Monday, 7 August 2023

## Short-term Lets Licensing Scheme - Update

Executive/routine

Wards

All

Council Commitments

### 1. Recommendations

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- 1.1 Regulatory Committee is asked to:
  - 1.1.1 Note the outcome of the Judicial Review of the Council's Short-Term Lets Licensing Policy and Conditions;
  - 1.1.2 Note that the Council has decided not to appeal the judgement;
  - 1.1.3 Note that the Short-term Lets Licensing Policy and Conditions at Appendix 2 have been amended to take the Court's decision into account;
  - 1.1.4 Agree the Short-Term Lets Policy and Conditions will be reviewed commencing no later than June 2024 as set out in paragraphs 4.25 and 4.26;
  - 1.1.5 Note that a separate legal advice paper was previously provided by the Council's Legal Service prior to agreement of the Policy and Conditions on 29 September 2022; and
  - 1.1.6 Discharge the actions arising from the motions agreed by the Council on [22 June 2023](#) and by this Committee on [6 February 2023](#) and agree to refer this report to the Planning Committee for noting.

**Paul Lawrence**

Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: [andrew.mitchell@edinburgh.gov.uk](mailto:andrew.mitchell@edinburgh.gov.uk) | Tel: 0131 529 4208

## Short-term Lets Licensing Scheme - Update

### 2. Executive Summary

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- 2.1 This report provides an update on the outcome of a Judicial Review of the Council's Short-term Lets (STL) Licensing Policy and Conditions Framework in the Court of Session, following the issuing of the Court's opinion on 8 June 2023 and subsequent interlocutor setting out its decision on 22 June 2023. The report also addresses the terms of the amended motion agreed by the Council on [22 June 2023](#).
- 2.2 The report also sets out proposed next steps for the STL licensing scheme following the Court's judgement, and the Council's decision not to lodge an appeal. It explains the amendments to the licensing policy and conditions necessary to reflect the Court's opinion and subsequent interlocutor setting out its decision.
- 2.3 An update is also provided on other items which have taken place at a national level in respect of STLs, including updated guidance issued by Scottish Government and seeks to discharge any outstanding remit from the Council and Committee relating to the STL Licensing Scheme.

### 3. Background

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- 3.1 The Council has previously called for additional regulation of the STL sector through changes to planning classifications and the introduction of a licensing system. The relevant factors are set out more fully in previous Committee reports and there remains significant public interest about the operation of the STL sector.
- 3.2 Following the commencement of the [Civic Government \(Scotland\) Act 1982 Licensing of Short Term Lets \(Order 2022\) \(the 2022 Order\)](#), which brings short-term letting within the scope of licensable activities covered by the statutory provisions of the Civic Government (Scotland) Act 1982 ('the 1982 Act'), on 29 September 2022 the Council adopted a licensing policy and additional conditions for STLs.
- 3.3 The STL licensing scheme opened for applications on 1 October 2022. Initially operators who were already operating a short-term let at that date had until 1 April 2023 to apply for a licence, but the Scottish Government extended this date until 1 October 2023. Where an application is received from such an operator prior to 1 October 2023, the operator can continue to operate the short-term let until the application is finally determined.

- 3.4 Committee had agreed to keep the STL licence system under regular review and made a commitment to review the position with respect to the duration of STL secondary let licences within 18 months of commencement of the licensing scheme (i.e. March 2024). That 18 month period commitment reflected the original deadline date of 1 April 2023 for applications from existing operators. In practice very few existing operators have applied thus far. Anecdotal information suggests that this may have been due to operators awaiting the outcome of the judicial review proceedings. Appendix 1 shows the number of applications received and determined as at 1 August 2023.

## 4. Main report

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### Outcome of Judicial Review

- 4.1 Following adoption of the STL Licensing Policy by Regulatory Committee on 29 September 2022, a number of businesses operating in that sector (‘the petitioners’) raised a legal challenge in the form of a judicial review (JR). The JR hearing took place on 11 and 12 May 2023 at the Court of Session, and on 8 June 2023 the Court issued its opinion. The Council was successful in defending large parts of the STL policy, however the petitioners were successful in challenging certain aspects of the policy, as explained below.
- 4.2 The legal challenge to the policy largely focused on how the Council intended to treat applications for secondary letting (STLs where the property is not the host’s primary residence). The Council had agreed to adopt measures which included restricting the ability of STL operators in tenemental and shared main door properties to obtain STL licences on the basis that such premises were considered to be unsuitable for use as STLs. This policy measure was set out in the policy as a “rebuttable presumption”, explaining to applicants that STL licences for tenemental and shared main door properties would only be granted in exceptional circumstances. This approach and other measures were aimed at protecting residents from long-standing concerns about the negative impacts of secondary letting, particularly in tenemental properties.
- 4.3 The key aspects of the policy dealing with secondary letting which were challenged were as follows:
- 4.3.1 The presumption against the grant of STL secondary letting licences in tenemental and shared main door properties;
  - 4.3.2 The presumption against issuing temporary STL licences for all secondary letting;
  - 4.3.3 The restriction of STL secondary letting licences to a one year period only when other licence types had a duration of three years;
  - 4.3.4 The difference in fees charged by the Council between House in Multiple Occupation (HMO) licences and those charged for STL licences;
  - 4.3.5 The Council’s approach to licensing was oppressive given the planning controls available; and
  - 4.3.6 The lawfulness of the condition requiring carpets in secondary letting properties.
- 4.4 The Council’s planning controls on STLs were not challenged as part of the JR and the judgement has no effect on them.

- 4.5 The Council was successful in defending large parts of the policy and the Court did not criticise any aspect of the Council's consultation or the evidence base which it used to reach its decision. The challenges in relation to the different fees set for HMO licences and STL licences, the period of the licence and how the licensing and planning systems work together were unsuccessful (4.3.3 to 4.3.5 above).
- 4.6 The Court ruled that the presumption against secondary letting in tenemental, and shared main door properties went too far, particularly as these properties would in any event require planning permission. The Court also considered that the rebuttable presumption in the policy stating that the grant of STL licences for secondary letting in tenemental property would be exceptional, did not reflect the evidence provided by the Council that any well-run property would have a reasonable prospect of being granted a licence. The Court also ruled that the restriction on issuing temporary licences went too far and could not be justified. Finally, the Court agreed that the 'carpet condition' as originally worded was unduly onerous and disproportionate and could not be justified (4.3.1, 4.3.2 and 4.3.6 above).
- 4.7 A further court hearing on the terms of the Court's order took place on 22 June 2023. This followed on from the issue of the Court's opinion on 8 June 2023. Counsel for the Council were successful in persuading the Court to grant an order as proposed by the Council, rather than the wider order sought by the petitioners which would have resulted in the Council's entire policy on secondary letting being declared unlawful. The Council was also successful to a more limited degree in reducing the amount of expenses sought by the petitioners.
- 4.8 The Council gave an undertaking to the Court that it would clarify its position regarding how renewal applications would be dealt with, and this information has now been published on the Council's website [Licences-permits-applications](#). In effect, the clarification is consistent with the long-standing position that unless there is a material change in circumstances or complaint, the Council would expect to grant a renewal unless there had been a change of policy.
- 4.9 The Council also gave an undertaking to update the STL policy with information on renewal applications, and the policy (as amended to take account of the court order) now includes information on renewals at paragraphs 4.31 to 4.34 (of the Policy) to reflect the undertaking given to the Court.
- 4.10 Following the Court's decision, the Council sought legal advice on the prospects of success should it seek to appeal. Following consideration of that advice, consultation with Group Leaders and licensing spokespersons from each group, and taking account of the fact that any appeal would create continued uncertainty with regard to the STL licensing scheme, the Council decided not to lodge an appeal. Accordingly the Council must now implement the steps necessary to comply with the Court's decision.

### **Current STL Licensing Policy**

- 4.11 The Court's decision means that the Council's STL policy remains intact. However, there is a requirement to delete all references to the following three areas in the policy, since these have been quashed by the court:

- 4.11.1 The presumption against the grant of STL secondary letting licences in tenemental and shared main door properties;
  - 4.11.2 The presumption against issuing temporary STL licences for all secondary letting;
  - 4.11.3 The condition requiring carpets in secondary letting.
- 4.12 The following paragraphs of the policy originally agreed on 29 September 2022 are therefore deleted: 2.9, 4.13 - 4.16, 4.18 - 4.20. So too is Standard Condition 9 in Appendix 2. The remaining sections of the policy have been renumbered accordingly.
- 4.13 Taking account of these deletions and the additional text on renewals, the updated policy which is currently in effect is set out at Appendix 2.
- 4.14 The remainder of the STL policy remains intact. It is important to note that this means that the Council has an STL licensing policy in effect and can continue to process and determine applications for STL licences without being required to consult on, and thereafter agree, the terms of a new STL policy.

### **Revised STL Licensing Policy**

- 4.15 The fact that the policy remains largely intact and has not been struck down provides options for next steps. Taking each aspect of the policy that was successfully challenged in turn, the undernoted paragraphs explain what this means in practice and sets out the intended next steps, subject to Committee agreement.

### **Suitability of Tenemental Property for Secondary letting**

- 4.16 The issue which has been most contentious, and which was subject to the most scrutiny in the JR hearing, is whether tenemental and shared main door properties would be suitable for STL licences. The aspect of the policy which has been struck down would have required any applicant for secondary letting in such properties to overcome a rebuttable presumption in the Council's policy against the grant of STLs in tenemental and shared main door properties. Applicants would have had to persuade Committee of the exceptional circumstances which applied in their individual cases and why a STL licence should be granted, taking into account the presumption against the grant of a STL licence. The Court ruled that this went too far and that ordinarily it would be for the Council exercising its planning functions to determine whether a particular property was suitable for short-term letting. The Court ruled that the Council could consider individual cases, but should not adopt a general position against these properties within its licensing policy.
- 4.17 Any application for secondary letting in a tenemental or shared main door property will not now have to show that it is suitable. Rather the onus will be on the Council to demonstrate why it considers that the property should not be granted a licence, having regard to the terms of the Council's policy and the statutory grounds of refusal set out in the 1982 Act. Typically, any such consideration would come from dealing with an objection or representation in relation to a licence application. If there was no such objection or representation there would generally be no reason for the Council not to grant the application, having regard to the Council's policy and statutory grounds for refusal of an application.

- 4.18 Any application for secondary letting, including in a tenemental or shared main door property, will still be required to demonstrate that they have the requisite planning permission which would ordinarily have already dealt with issues of amenity. Any complaints about the impact of a STL licence having been granted for secondary letting (including in a tenemental or shared main door property) can be responded to by enforcement activity and/or at renewal of the licence.
- 4.19 The Licensing service therefore intends to operate the licensing system for STL letting and, in particular, secondary letting without any further review of the licensing policy at this time. As set out below this will be kept under review.

### **Temporary Licences for Secondary Letting**

- 4.20 The previous policy stated that temporary licences were not suitable for secondary letting. That aspect of the policy has been deleted following the Court ruling. This means that the Council is obliged to accept such applications and must consider them against the revised policy and the terms of the 1982 Act.
- 4.21 It is anticipated that the most likely category of applicants for temporary licences will be owners of Houses of Multiple Occupation (HMOs) who are seeking to let their properties as STLs during the summer or other term time holidays.
- 4.22 It is therefore proposed to operate the STL system on the basis that temporary licences may be sought by all STL licence types including secondary letting, and such applications will be considered on a case by case basis and granted unless there is a clear reason to refuse an application. Further, it is important to note that there is no right under the 1982 Act for members of the public to object to the grant of a temporary licence, and therefore it is anticipated that all but exceptional cases will be granted by officers under delegated powers.
- 4.23 Where sequential applications for temporary licences are made for an individual property, meaning that it is operating over a continuous and extended period of time, the Licensing service will encourage the operator to seek an annual licence. If, as a result, there is a concern or unresolved complaints about the impact of that particular property, then such applications will be referred to Committee for determination.
- 4.24 For the avoidance of doubt, it is recommended that Committee agrees that the fee structure previously agreed on 29 September 2022 for temporary STL licences will also apply to secondary letting.

### **Additional Licence Conditions**

- 4.25 The Court's judgement struck down additional licence condition STL9, which required carpeting or similar floor covering in all secondary letting. This condition has therefore been deleted from the additional local conditions which will apply to STL licences. When considering objections or complaints on a case by case basis, the Council can consider attaching a similar condition. However, the onus will be on the Council to demonstrate that it is reasonable and proportionate to do so in the circumstances of that case, rather than as a general approach. Applicants for STLs would have the right to make representations about any such condition at the time of determination.

### **Revised STL Licensing Policy**

- 4.26 It is acknowledged there may be concern that the deletion of elements of the STL policy could cause anxiety for residents in that they may now consider that

the protections from any adverse impacts of STLs to be insufficient. Equally, it is acknowledged that the challenge to the policy has added uncertainty for STL operators seeking to understand the Council's agreed licensing scheme. If the Council were to decide to review its STL licensing policy in full at this time, then this could add to a continuation of that uncertainty at a crucial time in the run-up to the 1 October 2023 deadline for existing operators. It is therefore recommended that a review is not commenced at this time beyond the amendments required to the policy to take account of the decision in the JR and the Council's commitment to the Court to add information about the renewal of STL licences to the policy.

- 4.27 As explained above, the Council committed to review the period of grant for STL secondary licences within 18 months (i.e. by March 2024). That date was intended to be 12 months after the deadline for existing operators to have submitted an application (31 March 2023). However, this deadline has been delayed by six months due to legislative change. It is therefore recommended that any such review and its terms should be considered in a report to Committee before the summer recess of 2024. If the operation of the revised policy in respect of impact on secondary letting, temporary licences and additional licence conditions causes unforeseen concerns, then this would provide an opportunity for Committee to decide the need for a wider review at that time.
- 4.28 An issue around the correct interpretation of the paragraph in the legislation dealing with temporary exemptions has been raised with the Council subsequent to the Judicial Review. Paragraph 4.17 of the Council's STL policy reflects the relevant Scottish Government guidance to licensing authorities in that it states that only one exemption may be granted in any 12 month period. This restriction to a single exemption has been questioned. The Council has received advice on this and a further report on this point will be provided once officers have considered the advice and liaised with relevant stakeholders, including the Scottish Government.

### **Outstanding Remit from Regulatory Committee on 6 February 2023**

- 4.29 There is an outstanding remit to update Committee on the date for existing operators to apply for a STL Licence. This was delayed by the Scottish Government amending the STL legislation and moving the effective date from 1 April 2023 to 1 October 2023. As at the date of writing, the position of Scottish Ministers is that no further delay will be required, but the Scottish Government continues to be under pressure from the STL sector to agree to a further delay. The practical effects of the revised date and the uncertainty arising from the JR in Edinburgh are that most existing operators have not yet applied for an STL licence. It is acknowledged that some will also be awaiting the outcome of planning applications, and this could be a further factor in respect of the low numbers of STL applications received.
- 4.30 The Licensing service expects (and has advised Scottish Government) that the vast majority of STL applications will be received in the final few weeks before the 1 October 2023 deadline. If there is any change to the current transitional arrangements then Committee will be so advised at the earliest opportunity.

## **Revised Guidance to Licensing Authorities**

- 4.31 The Scottish Government originally published guidance for licensing authorities in March 2022. The guidance was drafted with input from a stakeholder working group, to which the Council contributed.
- 4.32 On 30 June 2023 the Scottish Government produced revised guidance for licensing authorities, having taken on board feedback from SOLAR's short-term let working group, of which Council officers and Visit Scotland's Industry Advisory Group formed a part. Revised guidance was also issued for hosts and operators. Along with providing feedback as part of the SOLAR working group, Council officers provided feedback directly to Scottish Government on behalf of the Council. Links to the updated guidance can be found in section 8 of this report. The determination of any application will take into account all guidance which is relevant at the time of consideration.

## **5. Next Steps**

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- 5.1 The revised policy will be published and kept under review. An update report will be submitted before the summer recess in 2024 setting out the scope of any required review of the STL policy.

## **6. Financial impact**

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- 6.1 Any costs incurred for implementing policy are not currently included within the service budget, however the fees previously set by the Council are intended to recover these costs.
- 6.2 Information on the full cost of defending the JR is not yet known and will be provided to Committee once available.

## **7. Stakeholder/Community Impact**

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- 7.1 The report previously provided to Committee on [29 September 2022](#) set out the required information for this section. There has been no change to the policy other than that which is required as a result of the court judgement.
- 7.2 Paragraph 4.25 and 4.26 sets out when it is intended to further review the policy at which time a full consultation with stakeholders will be completed.

## **8. Background reading/external references**

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- 8.1 [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#)
- 8.2 Short-term Lets: New Licensing Powers Consultation – Regulatory Committee – [31 March 2022](#)
- 8.3 Short-term Letting in Edinburgh Update – Corporate Policy and Strategy Committee – [14 May 2019](#)
- 8.4 [Short-Term Lets – Part 1 – Guidance for hosts and operators – Scottish Government](#)
- 8.5 [Short-Term Lets – Part 2 – Supplementary guidance for licensing authorities, letting agents and platforms – Scottish Government](#)



## **9. Appendices**

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- 9.1 Appendix 1 – Current STL Application Figures
- 9.2 Appendix 2 – Updated STL Licensing Policy following the Interlocuter of the Court dated 22 June 2023

## **Appendix 1**

Applications granted.	144
Applications refused.	0
Applications withdrawn.	12
Applications in process	123
<b>Total STL applications received.</b>	<b>279</b>

Figures as at 1 August 2023

## **Appendix 2**

# **City of Edinburgh Council Short-term Lets Licensing Policy**

## **Introduction**

- 1.1 The City of Edinburgh Council (“the Council”) is required to regulate short-term lets (STLs) through the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (the 2022 Order), which brings STL within the scope of licensable activities covered by the statutory provisions of the Civic Government (Scotland) Act 1982 (the 1982 Act).
- 1.2 The Council’s Regulatory Committee agreed this policy on 29 September 2022 following two periods of public consultation.
- 1.3 The Council must prepare a statement of its policy with respect to the exercise of its functions in relation to the licensing of STL. This policy provides information on the following areas:
  - 1.3.1 Licence Duration and Renewal
  - 1.3.2 Temporary Licences
  - 1.3.3 Temporary Exemptions
  - 1.3.4 Additional Conditions which will apply
  - 1.3.5 Compliance and Enforcement
- 1.4 This policy provides guidance for prospective applicants, existing licence holders and those who may wish to object to an application. The Council will have regard to the terms of its policy when determining applications. This policy will be reviewed and revised when necessary.
- 1.5 The key aims of licensing are the preservation of public safety and order and the prevention of crime. A specific licensing regime for STL allows the Council to take into account local circumstances when setting out its licensing policy and to exercise appropriate control and regulation to ensure any STL premises licensed meet the requisite safety standard.

## **Key Dates**

- 1.6 Owners or operators of STL accommodation should note the key dates for the implementation of the STL licensing scheme set out below:

Date	Hosts operating a STL before 1 October 2022	Never operated a STL before 1 October 2022
1 October 2022	<ul style="list-style-type: none"> <li>• You can continue to operate your premises as a STL - must comply with existing laws and regulations;</li> <li>• You must apply to the Licensing Authority where your premises is situated for a STL licence before 1 April 2023; and</li> <li>• If your STL Licence application is refused by the Licensing Authority you must stop using your premises as a STL within 28 days of the decision</li> </ul>	<ul style="list-style-type: none"> <li>• Must not operate a STL without a licence being granted by the Licensing Authority where your premises is situated;</li> <li>• If you wish to operate a STL you must apply to the Licensing Authority in which your premises is situated;</li> </ul>
1 October 2023	<ul style="list-style-type: none"> <li>• Can only operate without a licence if a STL licence application has been submitted to the Licensing Authority where your premises is situated, and it has not been refused; and</li> <li>• You must stop operating as a STL if your application is refused by the Licensing Authority, subject to appeal</li> </ul>	Same as above
1 July 2024	All hosts must have a STL licence.	Same as above

## Definition of a Short-term Let as set out in the 2022 Order

- 2.1 As per the terms of the 2022 Order, “short-term let” (STL) means the use of residential accommodation provided by a host in the course of business to a guest, where all of the following criteria are met –
- 2.1.1 The guest does not use the accommodation as their only or principal home
  - 2.1.2 The STL is entered into for commercial consideration
  - 2.1.3 The guest is not –
    - An immediate family member of the host,
    - 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 education institution, or
    - An owner or part-owner of the accommodation
  - 2.1.4 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
  - 2.1.5 The accommodation is not [excluded premises](#), and
  - 2.1.6 The STL does not constitute an [excluded tenancy](#).
- 2.2 “Secondary letting” means a short-term let consisting of the entering into of an agreement for the use of accommodation which is not, or not part of, the licence holder’s only or principal home.
- 2.3 “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.
- 2.4 “Home sharing” means a short-term let consisting of the entering 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.
- 2.5 “Accommodation” includes the whole or any part of a premises.
- 2.6 “Host” means a person who is the owner, tenant or person who otherwise exercises control over occupation and use, of the accommodation which is the subject of a STL.
- 2.7 “Guest” means a person who occupies accommodation under a short-term let.
- 2.8 It must be noted that the above definitions are set out in legislation and the Council has no discretion in this regard.

## Types of Short-term Let Licence

- 3.1 The Council will consider licence applications for the following types:
- a. Secondary Letting
  - b. Home Letting
  - c. Home Sharing or
  - d. Home Letting and Home Sharing

## STL Application Process

- 4.1 Where appropriate, the Council will grant a STL licence for the following time periods:
- a. Secondary Letting – 1 year
  - b. Home Letting – 3 years
  - c. Home Sharing – 3 Years
  - d. Home Letting and Home Sharing – 3 Years
- 4.2 An application for the grant, variation or renewal of a full licence must be made to the Council together with the appropriate fee and layout plan, as well as providing copies of the following certification – *please only provide copies of documents as originals will not be returned*:
- a. Annual Gas Certificate (for accommodation with a gas supply)
  - b. Current Electrical Installation Condition Report
  - c. Annual Portable Appliance Test Certificate
  - d. For secondary letting only, Planning permission under the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) for the use of the premises as a STL; or proof that an application for planning permission has been made under the 1997 Act, which has not yet been determined; or proof that planning permission is not required (for example, a certificate of lawfulness).
- 4.3 As part of the application process, applicants will be required to confirm, by self-declaration, that the following documentation is held for the accommodation:
- a. Current Fire Safety Risk Assessment – (required for new and any

subsequent renewal applications or where there has been a change to the number of occupants)

- b. Current Energy Performance Certificate
  - c. Current Building Insurance Certificate
  - d. Current Public Liability Insurance Certificate
  - e. Current legionella risk assessment
  - f. Annual Emergency Lighting Certificate (Secondary letting only, for accommodation with 5 occupants and above)
- 4.4 An application, whether for a new licence or the renewal of an existing licence, will only be considered as complete if it comprises of the completed application form accompanied by all copies of required certificates and layout plan. Any applications deemed to be incomplete will be returned and not processed.

Notice of Application (excluding temporary licences and temporary exemptions)

- 4.5 The applicant must display a notice of the application on or near the premises where it can be conveniently read by the public. The notice must be displayed for 21 consecutive days from the date the application is lodged with the Council. A copy of a display notice can be downloaded from the Licensing Service website. As soon as possible after the expiry of the period of 21 days, the applicant shall submit to the Council a certificate (available online) which states that a notice was duly exhibited for the required period.
- 4.6 The notice will include the following information, as required by the 1982 Act:
- a. The type of licence applied for (Secondary Letting, Home Letting, Home Sharing or Home Letting and Home Sharing);
  - b. If applying as an individual, the applicant's full name and address. If not applying as an individual, the full name of the organisation together with the registered or principal office address, names of directors or persons responsible for the management of the premises;
  - c. Person responsible for the day to day management of the premises
  - d. Address of the STL premises;
  - e. The number of bedrooms in the premises;
  - f. The maximum number of occupants for the premises;
  - g. Details of any other SLT licences that have been granted to the applicant (included on the application form);

- h. The name and address of the owner(s) where the applicant is not the owner of the premises or on the land on which the premises is located (included on the application form);
  - i. Confirmation that the owners consent to the application for the property to be used as a STL (included on the application form);
  - j. Where objections and representations in relation to the application can be made to, the 28 day timescale for submitting an objection or representation and the statutory requirements of an objection or representation (in writing, providing name and address etc).
- 4.7 The application fee table for licence applications can be found [here](#)
- 4.8 Applicants should note that the application fee is non-refundable in the event of the licence application being refused or being withdrawn prior to determination. To view the Council's policy on refunds, click [here](#).

#### Evidence of Operation as a STL before 1 October 2022

- 4.9 Where an applicant has been operating a STL before 1 October 2022, the applicant will be required to certify this when submitting a STL licence application. Checks to confirm this may be made by the Council.

#### Links With Planning

- 4.10 On 27 July 2022, Scottish Ministers approved plans to designate the City of Edinburgh Council area as a STL control area. It requires residential accommodation owners wholly letting accommodation, which is not their principal home, as a STL in the Council area, to apply for planning permission for a 'change of use' to a STL. The designation came into effect on 5 September 2022.
- 4.11 It is a mandatory condition of licence that a host or operator has planning permission or has made an application for planning permission where all of the following conditions apply
- a. The accommodation is in a STL control area;
  - b. The accommodation is being used for secondary letting; and
  - c. It is a dwelling house. *(Notwithstanding the definition of a dwelling house in the Town and Country (Use Classes) (Scotland) Order 1997, the definition of dwelling house for the purposes of this policy shall include flatted residential accommodation).*
- 4.12 In these circumstances, the host or operator must have made an application for planning permission or already have planning permission or have proof that planning permission is not required before they apply for a licence.



## Temporary Licences

- 4.13 As per paragraph 7(1) of Schedule 1 of the 1982 Act, the Council can issue temporary licences for STL, which may be granted for a duration of up to 6 weeks. Temporary licences cannot be renewed under the 1982 Act.
- 4.14 Any temporary licence which is issued will be subject to the mandatory conditions of licence, as set out in the 1982 Act.
- 4.15 Temporary licences will also be subject to the additional conditions set out in the Council's STL Conditions Framework.
- 4.16 The fee for temporary licence applications can be found [here](#)

## Temporary Exemptions

- 4.17 As per paragraph 1A of Schedule 1 of the 1982 Act, the Council can grant a temporary exemption to the requirement to have a STL licence. Under the terms of the 1982 Act, temporary exemptions can be issued for a specified single continuous period not exceeding 6 weeks in any period of 12 months. The 6 weeks limit on a licence is a maximum, and not a default.
- 4.18 The Council may grant temporary exemptions to the requirement to obtain a STL licence in certain circumstances as set out below:
  - a. During Edinburgh Festival Fringe and Edinburgh International Festival
  - b. During Edinburgh's Christmas & Hogmanay Festive Period
  - c. For Major Sporting Events
  - d. For Major International Events
- 4.19 Temporary Exemptions will be issued for the following types of let:
  - a. Home Letting;
  - b. Home Sharing;
  - c. Home Letting and Home Sharing; and
  - d. Secondary Letting
- 4.20 The licensing service will aim to process and determine a temporary exemption application within 3 months of the application being received.
- 4.21 Any temporary exemption which is issued will be subject to the mandatory conditions of licence, as set out in the 1982 Act.
- 4.22 Temporary exemptions will also be subject to the additional licence conditions set out in the Council's STL Conditions Framework at appendix two.

4.23 The fee for a temporary exemption application can be found [here](#)

#### Accommodation Inspections

4.24 Inspections of STL accommodation, as part of the application process, will be undertaken on a risk-based approach.

#### Making an Objection or Representation

4.25 It is possible for any person to submit an objection or representation in respect of the grant of an application for a full STL licence. Objections must be made in writing (emails are accepted) and sent to the Licensing Service ([licensing@edinburgh.gov.uk](mailto:licensing@edinburgh.gov.uk)) within 28 days of the application being advertised. If an objection is lodged out with this period, it must explain why it has been lodged late. It would then be a matter for the Council to consider the explanation and if it is satisfied that there is sufficient reason why the objection was not made in the time required.

4.26 The 1982 Act does not provide for objections or representations in respect of temporary licence applications or temporary exemption applications.

4.27 To be considered as competent, objections or representations should include the following information:

- a. The name and address of the person or organisation making the objection or representation
- b. The accommodation to which the objection or representation relates
- c. The grounds of objection or representation, and
- d. The objection or representation must be signed by the objector, or on their behalf

#### Determining an Application

4.28 Each STL application will be considered on its own merits having regard to the terms of the relevant statutory provisions, Scottish Government guidance and this policy. The process by which an application is determined will be in accordance with the Council's Committee terms of reference and the scheme of delegation.

#### Timescale for Determining Applications

4.29 Under the terms of the 1982 Act, the Council has 9 months in which to determine a STL application from the date it is received with all the required documentation.

4.30 For those applications which were received prior to 1 April 2023 where the STL operated prior to 1 October 2022, the Council will have 12 months to determine the application.

#### Renewal Applications

- 4.31 Under the 1982 Act, if an application for a STL licence renewal application has been made to the Council before the expiry date of the current licence, the licence will continue in effect until a final decision has been made by the Council on the renewal application. Where an appeal has been lodged with the sheriff clerk within 28 days of the decision, the existing licence will remain in effect until such time as the appeal has been determined by the Sheriff Court.
- 4.32 The process for applying for a renewal of a STL licence is the same as when applying for a new STL licence, as set out above. As with new applications, the Council requires to consider applications for renewal of licences taking into consideration the statutory grounds for refusal of a licence set out in the 1982 Act. Temporary licences cannot be renewed under the 1982 Act.
- 4.33 However, an existing STL licence is likely to be renewed unless there has been a change of circumstances since the last determination of the licence. Such circumstances could include any changes to STL regulation or the Council's STL licencing policy; enforcement action by the Council in respect of the existing licence; and any objections or representations received regarding the renewal application under the 1982 Act. Where any of these circumstances apply then the renewal application may be referred to a meeting of the Licensing Sub-Committee for determination

#### Material Change in Circumstances

- 4.34 The licence holder must notify the Council in writing, as soon as is reasonable, where there is a material change in circumstances affecting the licence holder or the STL accommodation.

#### Compliance & Enforcement

- 4.35 The Council will seek to work with hosts, residents and other interested parties to ensure compliance with legislative requirements and to be satisfied the accommodation is safe for use.
- 4.36 General enforcement costs will be included in the fees for new and renewal STL licence applications. The Council will charge a separate fee to a licence holder for a visit to their accommodation, where the visit results from their failure to comply with licence conditions or a complaint relating to the accommodation. The Council notes the Scottish Government guidance on frivolous or vexatious complaints in this regard.
- 4.37 Where complaints are received in relation to the operation of a licensed STL accommodation, the Council will seek to resolve it through engagement with the host or operator in the first instance.

- 4.38 Information on how to make a complaint in against a STL licence holder or in respect of the operation of the licenced STL can be found on the Licensing Service website.
- 4.39 Where appropriate other enforcement options will be considered, which include:
- a. Additional licence conditions applied on determination of an application or through variation of an existing licence;
  - b. Compliance notices;
  - c. Variation, suspension or revocation of licence; or
  - d. Report to the Procurator Fiscal of any alleged offences under the 1982 Act.
- 4.40 A fee will be charged for an inspection following a complaint, where it is found that there are also compliance issues, whether or not those are the issues that were the subject of the complaint.
- 4.41 Where a fee is charged for inspections, the Council will produce a report of its findings to the host or operator within 28 days of the inspection.

## Conditions

- 5.1 The Council can grant or renew a STL licence on such terms and conditions as it considers appropriate. This will typically take the form of the mandatory conditions, applicable to all STL accommodation by way of the 2022 Order, as well as the additional conditions agreed by the Council's Regulatory Committee on 29 September 2022.
- 5.2 Under the 2022 Order, there are specific conditions which the Council must attach to all types of STL licence. These are known as the "mandatory conditions" and are found at appendix one of this policy. It should be noted that the Council has no power to amend these mandatory conditions.
- 5.3 The 2022 Order affords the Council the power to set certain conditions, where necessary, which can address any local concerns or issues. These are known as "additional conditions". These conditions are found at appendix two and shall apply to every full licence granted, varied or renewed by the Council, unless they have been expressly excluded or varied. The additional conditions shall also apply to every temporary licence or temporary exemption granted or varied by the Council.
- 5.4 It is an offence to operate a STL without a licence or contravene a condition of any granted licence. Licence holders alleged to be breaching the conditions of their licence may be referred to the Licensing Sub-Committee for consideration of suspension or revocation of the STL

licence.

## **Review**

6.1 This policy will be reviewed every three years or more frequently, if required

## Appendices

### 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) 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 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.

## Appendix 2 – 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>	An emergency contact telephone number for the licence holder and/or management shall be available and notified to the Council for 24-hour contact purposes for emergencies or antisocial behaviour from the accommodation.
<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.