

Regulatory Committee

10.00am, Monday, 2 October 2023

Short-Term Let Enforcement in Edinburgh

Executive/routine
Wards

All

1. Recommendations

- 1.1 Regulatory Committee is asked to:
 - 1.1.1 Note the approach to Short-Term Let ('STL') enforcement outlined within this report;
 - 1.1.2 Agree the additional enforcement inspection fee structure set out at Appendix 1;
 - 1.1.3 Agree to receive an annual enforcement report in 12 months outlining the number of complaints and related enforcement activity in relation to STL in Edinburgh;
 - 1.1.4 Agree to review the approach to STLs in Edinburgh in 12 months, including the inspection fee structure;
 - 1.1.5 Discharge the motion raised at the Regulatory Committee on 7 August 2023;
 - 1.1.6 Note that paragraphs 4.35 to 4.41 of the amended policy and conditions deal with compliance and enforcement, ask for a briefing to members setting out further detail about how compliance and enforcement will be managed, and in particular how members of the public may report suspected unlicensed STLs and whether, and in what circumstances, the council would consider proactive enforcement; and
 - 1.1.7 Note that a further report will be presented within two cycles on points around the policy which were raised subsequent to the Judicial Review, and that the report will set out further details on the Council's approach to compliance and enforcement.

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Executive Director of Place

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Report

Short-Term Let Enforcement in Edinburgh

2. Executive Summary

- 2.1 This report provides an overview of the Council's approach to the enforcement of the [Civic Government \(Scotland\) Act 1982 Licensing of Short-Term Lets \(Order 2022\)](#) ('the 2022 Order'). This report and enforcement approach does not cover Planning enforcement, which is separately regulated. More information on the planning approach is available [here](#).

3. Background

- 3.1 The Council has previously called for additional regulation of the Short Term Lets (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. There remains significant public interest about the operation and enforcement of the sector.
- 3.2 The commencement of the 2022 Order, which brought STL within the scope of activities covered by the licensing 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 which were subsequently amended on 7 August 2023 to take account of the outcome of a Judicial Review.
- 3.3 The STL licensing scheme opened for applications on 1 October 2022. Operators who are already operating a STL at that date can continue to operate the STL until the application is finally determined. The majority of STL applications are expected in September 2023. As at 18 September 2023, 703 applications had been received.

4. Main report

General Enforcement Approach

- 4.1 The Council will seek to work with operators, residents and other interested parties to ensure compliance with legislative requirements and to be satisfied that STL accommodation is safe and appropriate for use. The Council's approach is to

engage, educate, encourage and take appropriate enforcement action where required.

- 4.2 All decisions about appropriate enforcement action will reflect current legal guidance, codes of practice, Crown Office guidance and the Scottish Regulators' Strategic Code of Practice.

Customer Contact and Complaints

- 4.3 Where a complaint is received in relation to the operation of licensed STL accommodation, in the first instance the Council will seek to resolve it through engagement with the host or operator. Information on how to make a complaint about a STL licence holder or the operation of a licensed STL can be found on the [Licensing Service webpages](#).
- 4.4 Where initial advice and guidance has not been successful or the complaint is of a more serious nature, the complaint will be passed to the Licensing Enforcement and Trading Standards teams to investigate.

Unlicensed Short-term Lets

- 4.5 Where a complaint about an unlicensed STL is received or proactively identified, in the first instance a letter will be sent advising of the legal requirement to be appropriately licensed for STL accommodation and the consequences of non-compliance, including specifying the relevant offence(s). The operator will be further advised to apply for a relevant licence within 14 days or face further enforcement action.
- 4.6 Further non-compliance will result in a formal written warning, and officers will then liaise with Police Scotland should any further enforcement action be required. This may include a report to the Crown Office and Procurator Fiscal Service.
- 4.7 Complaints in relation to unlicensed trading will be prioritised based on risk, which may include an assessment of, for example, a neighbour complaining about ongoing detrimental impact on their lives, or an identified concern about the safety of the property. Where an application is received and there are no ongoing issues, the Council would not normally pursue the enforcement action (set out in paragraph 4.6) pending the determination of the licence. If an application is refused, and any appeal is determined, should an unlicensed trader continue to operate then this would be a priority for a report to the Crown Office and Procurator Fiscal Service with a view to prosecution.
- 4.8 Committee is asked to note that there are no powers to serve notice to require an unlicensed premises to cease trading, or to serve the equivalent of a rent penalty or rent suspension notice. Therefore, while it is anticipated that such cases will be rare, the position remains that persistent non-compliance will be dealt with by reporting to the Procurator Fiscal. This will inevitably require evidence to be gathered and submitted as part of the report, and the Court process and associated timescales thereafter are outwith the control of the Council. During this period further issues will continue to be recorded and may be subject to further reporting to the Procurator Fiscal.

- 4.9 The Council will closely monitor the implementation and enforcement outcomes in relation to unlicensed STLs. Where issues are identified around any persistent problems or a lack of enforcement powers, the Council will seek to bring these to the attention of the Scottish Government's review of the STL licensing regime in the summer of 2024. This will include suggestions regarding where the existing legislation could be strengthened.

Enforcement Options and Outcomes

- 4.10 The Council's aim is to address any identified issues or complaints effectively, and to ensure compliance with applicable legislation and conditions of licence.
- 4.11 Where enforcement action is required, this will be taken using a graduated approach based on the history, nature and scale of the issue which has been identified. This may include informal action, referral to another agency, a written warning or an Enforcement Notice specifying the breach and required remedial action.
- 4.12 In more serious cases, a report will be submitted for the Licensing-Sub Committee's consideration which may seek variation, suspension, or revocation of the licence where the Council has concerns that:
- 4.12.1 The ongoing operation of the licence is likely to cause undue public nuisance; or
 - 4.12.2 The ongoing operation of the licence may be a threat to public order or public safety; or
 - 4.12.3 The licence holder is no longer fit and proper; or
 - 4.12.4 A condition of licence has been contravened.
- 4.13 In the most serious cases a report will be submitted to the Crown Office and Procurator Fiscal Service for consideration of prosecution, which could result in a fine of up to £2,500. Where appropriate a report will also be submitted to the Licensing Sub Committee as set out at 4.12 above.

Inspections and Additional Enforcement Fees

- 4.14 General enforcement costs covering unlicensed STLs and initial advice and guidance are included in the fees for new and renewal STL licence applications which were agreed by Committee on 7 August 2023. The legislation also allows the Council to charge additional fees for an inspection of a licensed premises where an operator has breached a condition of licence, or is the subject of a valid complaint ('additional enforcement inspections'). The Council notes the Scottish Government guidance with respect to frivolous or vexatious complaints, and in such cases no fee will be charged.
- 4.15 The fee structure at Appendix 1 is proposed for additional enforcement inspections reflecting the additional workload associated with complaint handling, including investigation, gathering evidence and visiting and inspecting properties. This fee structure will be reviewed in 12 months to ensure that it remains proportionate.

- 4.16 Where a STL has been subject to a visit and additional enforcement inspection, within five days of the visit the licence holder will receive a copy of the inspection report outlining the reasons for the visit, the outcome, any identified issues and any remedial action required.
- 4.17 Where multiple visits to one or more properties operated by one STL operator are required over a short period of time, other than for the first inspection, a minimum of three days will pass before costs are escalated to the next stage of the proposed enforcement inspection fee structure (Appendix 1).

Enforcement Resources

- 4.18 The Licensing Enforcement and Trading Standards teams within Regulatory Services will be primarily responsible for STL enforcement. These teams are already responsible for HMO and Landlord Registration enforcement activity.
- 4.19 Support from staff from other areas of Regulatory Services may be required to meet service demand, covering the day and nighttime economies where calls may be received about issues such as Antisocial Behaviour.
- 4.20 A review of service and resource demand will be included in the annual report presented to Committee in 12 months.

5. Next Steps

- 5.1 A review of the STL enforcement approach will be undertaken in 12 months, after the review of the STL Policy is conducted in 2024. This review will consider any necessary changes or improvements to the enforcement approach, including the enforcement inspection fee structure.

6. Financial impact

- 6.1 The new STL licensing regime will produce an increase in licensing income, which is expected to be balanced by increased administration and enforcement costs of this new licensing regime.

7. Equality and Poverty Impact

- 7.1 Matters described in this report have no relationship to the public sector general equality duty, thus there is no direct equalities impact arising from this report.

8. Climate and Nature Emergency Implications

- 8.1 No climate or nature emergency implications arise from the contents of this report.
- 8.2 There is no environmental impact arising from the contents of this report.

9. Risk, policy, compliance, governance and community impact

- 9.1 The new STL licensing regime contributes to the Council's strategic priority to create good places to live and work in Edinburgh.

10. Background reading/external references

- 10.1 [City of Edinburgh Council Short Term Let Policy.](#)
- 10.2 [Short term lets - licensing scheme part 2: supplementary guidance for licensing authorities, letting agencies and platforms.](#)

11. Appendices

- 11.1 Appendix 1 - Proposed fee structure.

Appendix 1 – Proposed fee structure

Description	Inspection Fee
<p>Frivolous or Vexatious complaint visits or inspections</p> <p>No fee will be applicable where any visits or inspections are in relation to complaints or allegations that are found to be unfounded, unsubstantiated, frivolous or vexatious, or otherwise not connected to the licensable activities of the premises.</p>	£0
<p>First Inspection</p> <p>No fee will be applicable for a first visit or inspection to a property which has not been previously visited in relation to any enforcement activity or in relation to any complaints received.</p>	£0
<p>Second and Third Inspections</p> <p>Subsequent inspection(s) following the first inspection, where a valid complaint has been substantiated or a breach of condition has been found.</p>	£100 (reduced to £60 if paid within 14 days)
<p>Premises requiring four or more Additional Enforcement Inspections</p> <p>It is expected that any licensed premises subject to four or more enforcement inspections will be referred to the Licensing Sub-Committee for consideration of suspension, variation or revocation of the STL Licence.</p>	£250