

Regulatory Committee

12.30p.m, Monday, 5 February 2024

Short Term Lets – Recommendations arising from Fatal Accident Inquiry

Executive/routine
Wards

All

1. Recommendations

- 1.1 Regulatory Committee is asked to:
 - 1.1.1 Note the content of this report and the response to the Scottish Courts and Tribunal Service; and
 - 1.1.2 Agree that any further work will be addressed in the review of the Short Term Lets Licensing Policy already agreed for 2024.

Paul Lawrence

Executive Director of Place

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Short Term Lets – Recommendations arising from Fatal Accident Inquiry

2. Executive Summary

- 2.1 A Fatal Accident Inquiry in respect of a death which occurred in a holiday cottage in the Angus area of Scotland resulted in all Scottish local authorities being asked to consider the Sheriff's findings.

3. Background

- 3.1 The Council licenses short term let accommodation under [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-Term Lets\) Order 2022](#).
- 3.2 The Council received a letter from the Scottish Courts and Tribunals Service (Appendix 1) with respect to the Sheriff's determination of a Fatal Accident Inquiry (FAI) under the [Fatal Accidents and Sudden Death etc \(Scotland\) Act 2016](#). (link to judgement included at 10.1 below).

4. Main report

- 4.1 The City of Edinburgh Council regulates short term lets (STLs) as required by [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-Term Lets\) Order 2022](#) ('the 2022 Order'), which brings STLs within the scope of licensable activities covered by the statutory provisions of the 1982 Act.
- 4.2 Following the death of a guest staying in short-term let accommodation in the Angus area, a FAI was convened. This established that the guest's death resulted from carbon monoxide poisoning from a faulty mobile gas cabinet. The FAI established that there were precautions which could reasonably have been taken which, had they been, might realistically have resulted in the death, or any accident resulting in the death, being avoided.
- 4.3 The outcome of the FAI led to the Sheriff making recommendations to all local authorities in Scotland with the aim of preventing further deaths. The recommendations were that local authorities should consider making it a condition

of any licence issued in terms of the 2022 Order that licence holders should provide specific gas safety information to guests (Appendix 2).

4.4 The Council was asked to respond to the findings of the FAI and its response is attached at Appendix 3. In summary:

4.4.1 Legal advice has been sought on whether the current mandatory conditions of licence for STL licences would cover the concerns raised by the Sheriff's determination; and thereafter

4.4.2 Consideration will be given to whether it would be appropriate to introduce additional licence condition(s) and will report to the relevant committee of the Council in spring 2024 about options for doing this.

4.5 The Council is aware that Scottish Government officials are considering this issue as part of the planned review of the STL licensing system, especially whether a mandatory condition would best address this concern. The Council continues to engage with this work.

4.6 In the meantime, the Council is inspecting all properties for secondary letting and has added a check of portable gas devices to the checklist to determine the extent of their use in that sector. This will help to inform the need for any additional licence condition.

5. Next Steps

5.1 Council officers will take advice from Legal Services with respect to any action required and will engage with the Scottish Government about the possibility of introduction of a mandatory condition.

5.2 Any further steps required by the Council as licensing authority will be addressed in the review of the Short Term Let Licensing Policy which will commence before the summer recess.

6. Financial impact

6.1 There is no direct financial impact on the Council.

7. Equality and Poverty Impact

7.1 Not applicable.

8. Climate and Nature Emergency Implications

8.1 Not applicable.

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

- 9.1 This report informs the Committee of recommendations made as a result of a Fatal Accident Inquiry (Appendix 1).

10. Background reading/external references

- 10.1 [FAI judgement - Scottish Courts website.](#)

11. Appendices

- 11.1 Appendix 1 – cover letter from Scottish Courts and Tribunals Service dated 13 October 2023.
- 11.2 Appendix 2 – Sheriff's recommendations.
- 11.3 Appendix 3 – City of Edinburgh Council response to letter from Scottish Courts and Tribunals Service dated 13 October 2023.

**Letter to parties to whom a recommendation is directed in an FAI determination
(non participant)**

Forfar Sheriff Court and
Justice of the Peace Court



SCOTTISH COURTS AND TRIBUNALS SERVICE

Forfar Sheriff Court, Market Street, Forfar, D08 3LA

Edinburgh Council
City Chambers
High Street
Edinburgh
EH1 1YJ

Your Reference:

Our Reference: FFR-814-22

Date: 13/10/2023

Dear Sir/Madam

Determination of the sheriff under the Inquiries into Fatal Accidents and Sudden Death etc. (Scotland) Act 2016

In the Inquiry into the death of Thomas Oliveri Hill

Please find enclosed a copy of the determination issued by the sheriff in the above inquiry. The sheriff in the determination, in terms of Section 26(1)(b) of the Act has made recommendations which might realistically prevent other deaths in similar circumstances. This brings the sheriff's involvement in the inquiry to an end.

Requirement to lodge a response:

In terms of section 28(1)(b) of the Act, as a person who was not a participant in the inquiry and to whom a recommendation has been addressed, you may send a response to the relevant recommendation/s for publication on the SCTS website, to the Scottish Courts and Tribunals Service (SCTS) setting out:

- details of what you have done, or propose to do, in response to the recommendation, or
- if you have: not done, or do not intend to do anything in response to the recommendations, the reasons for that.

Your response must be set out in style Form 6.2 in the court Rules (available on the SCTS website at <http://www.scotcourts.gov.uk>) and sent, in WORD format, by e-mail, to FAInotices@scotcourts.gov.uk

(Alternatively, if e-mail is unavailable, you should send your response to:
FAI Notices, ODBU, Scottish Courts and Tribunals Service, Saughton House,
Broomhouse Drive, Edinburgh, EH11 3XD.)

In terms of sec 28(5) of the Act SCTS must on receipt of the response, after considering any representations made, publish the response.

Withholding part or all of your response In terms of sec 28(4) - (6) of the Act you may, at the same time as lodging your response, apply to have all or part of the response withheld from publication. SCTS may also, at its own discretion and after consideration, withhold part of the response from publication. You will be advised in due course if a decision is taken to withhold any part of your response

The SCTS, other than publication, has no further responsibilities in relation to the responses submitted.

If you require any further information about the lodging of responses please contact the Operations Delivery Business Unit, on FAInotices@scotcourts.gov.uk

Yours faithfully


Sheriff Clerk Depute

Appendix 2

RECOMMENDATIONS

The Sheriff, in terms of section 26(1) (b) of the Act, and having regard to the matters mentioned in section 26(4) of the Act, Recommends that:

Local authorities in Scotland should consider making it a condition of any licence issued in terms of The Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 that licence holders provide specific gas safety information to guests, namely;

1. Written advice and guidance on what to do in the event of a carbon monoxide alarm sounding.
2. If there is a mobile gas cabinet heater in the accommodation, the manufacturer's instruction manual should be provided along with a warning that any such appliance should not be moved.

Appendix 3

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH SHERIFF COURT

Court ref: FFR-B14-22

RESPONSE

to the

DETERMINATION OF

SHERIFF PAUL BROWN

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016

IN THE

INQUIRY INTO THE DEATH OF

THOMAS OLIVER HILL

To: The Scottish Courts and Tribunals Service

1. **THE CITY OF EDINBURGH COUNCIL**, a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG (**the "Council"**), being a person to whom a recommendation under section 26(1)(b) was addressed, do respond as follows.
2. The Council has an interest in the inquiry but was not a participant in the inquiry. The Council, as licensing authority for the City of Edinburgh, has an interest in conditions for short term let licences.
3. The Council is actively considering and taking legal advice on whether the current mandatory conditions of licence and the additional conditions of licence which the Council has adopted for STL licences would cover the concerns raised by the Sheriff's determination. The Council will thereafter consider if it would be appropriate to introduce an additional licence condition(s) and will report to the relevant committee of the Council in Spring 2024 about options for doing this.

The Council is aware that Scottish Government officials are considering this issue as part of the planned review of the STL licensing system and will engage with this review.

In the meantime, the Council is inspecting all properties for secondary letting and has added a check of portable gas devices to the checklist to determine the extent of their use in that sector. This will help inform the need for any additional licence condition.