

# **Short Term Lets in Scotland Licensing Scheme**

## **Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms**

**March 2022**

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## 1. Introduction

- 1.1. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022<sup>1</sup> was approved by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022.
- 1.2. The Scottish Government has developed this guidance in consultation with the [Short-Term Lets Stakeholder Working Group](#) comprising a wide range of industry, local authority and community stakeholders. This non-statutory guidance is split into two parts: Part 1<sup>2</sup> is for hosts and operators and Part 2 for Scottish licensing authorities, letting agencies and platforms facilitating short-term lets in Scotland. It should not be interpreted as offering definitive legal advice and, if in doubt, you should seek your own legal advice.
- 1.3. Separate guidance has been produced in respect of planning considerations for hosts and operators and **Planning Circular 1/2021** to assist planning authorities in establishing short-term let control areas. Hosts and operators must comply with both planning and licensing law.

### (a) Purpose of guidance

- 1.4. This Guidance Part 2 is designed to help licensing authorities implement a licensing scheme in their area which is:
  - in line with the Scottish Government's overall policy aims for the licensing of short-term lets (see Guidance Part 1);
  - efficient, effective and proportionate; and
  - customised to the licensing authority's local policies and the needs and circumstances of the licensing authority's local area.
- 1.5. It is desirable for licensing authorities to work collaboratively with other licensing authorities to facilitate consistency in operational approach, where it is possible to do so; the aim being to tailor schemes to local needs, but to minimise unwarranted variation in the overall processes.

### (b) Language used in Guidance Part 2

- 1.6. The glossary for Guidance Part 1 has effect for this Guidance Part 2.

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<sup>1</sup> [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(legislation.gov.uk\)](#)

<sup>2</sup> <https://www.gov.scot/isbn/9781804351307>

1.7. We additionally use the following terms from the 1982 Act and Licensing Order, where the circumstances require it:

**“applicant”** means the person making the application for the licence, normally the host or operator; and

**“licence holder”** means any one of the persons named on the licence application including, but not limited to, the host or operator.

### **(c) Updates**

1.8. Ownership of this guidance rests with the Scottish Government and the latest version will always be available at: [Short-term lets: regulation information - gov.scot \(www.gov.scot\)](http://www.gov.scot). We will notify licensing authorities of any updates.

### **(d) Information for applicants (and the application form)**

1.9. The Scottish Government expects licensing authorities to take active steps to publicise their licensing schemes to raise awareness amongst current and potential short-term let hosts and operators.

1.10. One of these steps is for licensing authorities to have a dedicated section on their website for their short-term let licensing scheme where hosts and operators can find all the information that they need to apply and comply. This should include:

- links to Scottish Government guidance;
- fees for applications and renewals (and any other fees);
- additional information and guidance about relevant policies, additional conditions or measures specific to the licensing authority area;
- the application form; and
- how to make an appeal

1.11. Licensing authorities should also consider writing to existing hosts and operators as part of an awareness raising campaign. This could include:

- properties registered on the non-domestic rates roll as self-catering, B&Bs or guest houses;
- properties registered as second homes and paying council tax, as they may be used occasionally as short-term lets; and

- properties that have been granted planning permission to operate as a short-term let.
- 1.12. The Scottish Government would like hosts and operators to be able to conduct as many transactions as possible with licensing authorities in an online or electronic format. It is therefore desirable for licensing authorities to work towards a digital first approach (in line with Scottish Government's Digital Strategy). Online information should be provided in line with [Scottish Government's digital accessibility requirements](#) and be compatible with assistive technology.
- 1.13. Licensing authorities are expected to still have paper copies of relevant information, and the application form, available upon request for people who cannot access them online, and provide support to access online services at their offices.

### ***Application checklist***

- 1.14. Licensing Guidance Part 1 (Annex B) has an application checklist for hosts and operators. Licensing authorities may wish to augment this application checklist to cater for any additional conditions or other specific requirements and make this available on their website.

### **(e) Information for residents and neighbours**

- 1.15. In addition to the information on their website set out at 1.10, it would also be helpful for licensing authorities to include information on:
- how to make a complaint (licensing and planning authorities might wish to consider how to join up and triage complaints, see **chapter 6**);
  - how to report suspected unlicensed short-term lets and breaches of licence conditions; and
  - how to raise an objection after becoming aware of an application (licensing and planning authorities might consider how to join up and triage licensing and planning processes and objections, see **chapter 6**).

## 2. Licence types and policies

### (a) Four types of licence

- 2.1. Licensing authorities can grant one of four types of licence for short-term let accommodation. The licence granted must be for either:
- a) secondary letting;
  - b) home letting;
  - c) home sharing; or
  - d) home letting and home sharing.
- 2.2. Home sharing and home letting concern the use of the host or operator's only or principal home whereas secondary letting makes use of a separate premises.

### (b) General policies

- 2.3. Each licensing authority should have regard to their planning authority's objectives and policies, including:
- the local development plan;
  - other relevant planning policies; and
  - any intended or designated control areas.
- 2.4. Licensing authorities must develop a policy on **temporary exemptions** see paragraph 2.9 and are also expected to develop policies on:
- **licence duration and renewal** - see paragraph 2.5;
  - **temporary licences** – see paragraph 2.20;
  - **additional conditions** – see **chapter 5**; and
  - **compliance and enforcement** – see **chapter 6**;

### (c) Licence duration and renewal policy

- 2.5. Licensing authorities may decide to grant a licence for a period of up to 3 years initially, after which it needs to be renewed. Licensing authorities may grant licences for different time periods to different applicants and/or for

different types of short-term let licence. Licensing authorities are expected to provide clear and transparent criteria for doing so.

- 2.6. Licensing authorities must specify the duration and expiry date of each licence on the licence itself. The duration applies from the date on which the licence comes into force. Where an application is made to renew a licence, the licence will continue to have effect until such a time as a decision is made on the renewal.
- 2.7. The Licensing Order allows licensing authorities to renew licences for such periods as they see fit (there is no time limit)<sup>3</sup>. However, licensing authorities must set out the circumstances in which they would use the power to set a licence period in excess of three years. Licensing authorities are encouraged to renew licences for a period of three years, unless they have good reasons to do otherwise.
- 2.8. The Scottish Government expects licensing authorities to consider how they will ensure compliance with licence conditions for the duration of licences. This might include whether and how often they would want to see certain documentation or make visits during the licence period. This need not be a blanket approach, as the need to visit a premises during the licence period would depend on various factors.

#### **(d) Temporary exemptions policy**

- 2.9. Licensing authorities may grant temporary exemptions to the requirement to have a licence<sup>4</sup>. They can do this for a specified single continuous period not exceeding 6 weeks in any period of 12 months. The 6 week limit is a maximum, and not a default. In order to obtain a temporary exemption from the requirement to have a licence, hosts and operators must apply for a temporary exemption, where this is offered by a licensing authority.
- 2.10. Licensing authorities must publish a temporary exemptions policy statement on their website and keep it under review. As a minimum it must publish a policy on or before 1 October 2022 and on or before 1 October every three years thereafter.
- 2.11. Licensing authorities must consult with such persons as they consider appropriate in preparing and reviewing their temporary exemptions policy statement. Their temporary exemptions policy statement must include information regarding:
  - the fees chargeable for a temporary exemption application; and

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<sup>3</sup> Paragraph 8 (duration of licences) of schedule 1 to the 1982 Act as modified by the Licensing Order.

<sup>4</sup> Paragraph 1A of schedule 1 to the 1982 Act.

- the time period within which the licensing authority will finally aim to determine the application.
- 2.12. Licensing authorities may also decide to adopt a policy of granting temporary exemptions for specific types of licences (for example home sharing and home letting only), if they wish. This could be used to facilitate those that are interested in trying out home sharing or home letting to do so by making an application for a temporary exemption or temporary licence before deciding whether or not they wish to do this permanently, requiring a full licence application.
- 2.13. Licensing authorities may also attach conditions to an exemption. The Scottish Government therefore expects licensing authorities' policy statements to include:
- a) the likely conditions attached to an exemption;
  - b) the grounds for granting or refusing an application for an exemption, including any classes of premises (or types of licence) for which an exemption would not be granted; and
  - c) information about how a decision can be appealed.
- 2.14. Licensing authorities can check and enforce any conditions that are attached to a temporary exemption. Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator.
- 2.15. Licensing authorities have the power to consult the Chief Constable and the Scottish Fire and Rescue Service in respect of applications for temporary exemptions.
- 2.16. Licensing authorities can grant or refuse an application for a temporary exemption. If they grant a temporary exemption, they should provide the host or operator with a temporary exemption number (like a licence number), see **chapter 4**.
- 2.17. Where a licensing authority does not want to use their powers to grant any exemptions, they can comply with this duty by publishing a statement on their website to the effect that applications for exemptions will not be granted under any circumstances.

### ***Interaction with planning policy***

- 2.18. Planning policies still apply, although these will not commonly affect smaller scale home sharing and home letting<sup>5</sup>. However, they are relevant for secondary letting, especially within control areas.
- 2.19. For very large, one-off events (such as the Commonwealth Games, Olympics or COP26), the Scottish Ministers can make a special development order to grant planning permission for change of use for an area and to require discontinuance of use after a certain period. In such circumstances, temporary exemptions could be granted in respect of secondary letting without any concern about breach of planning control.

### **(e) Temporary licences policy**

- 2.20. Licensing authorities may also decide to grant temporary licences<sup>6</sup>. The Scottish Government expects licensing authorities to develop and publish a policy setting out:
- the licensing authority's criteria for issuing temporary licences;
  - the fees payable; and
  - any additional conditions which apply (in addition to the mandatory conditions which apply to all licences, including temporary licences).
- 2.21. It is desirable for licensing authorities to clearly state if there is an application form specifically to apply for temporary licences (and or exemptions). Please note that in applying for a temporary licence, hosts and operators must still comply with all the mandatory conditions.
- 2.22. Licensing authorities must consult the Chief Constable and Scottish Fire and Rescue Service in respect of an application for a temporary licence.
- 2.23. A temporary licence may be granted for a duration of up to six weeks, or longer if the host or operator has also made an application for a full licence. If they have applied for a licence, their temporary licence will last until their licence application is finally determined (this includes an appeal if one has been lodged within 28 days of the decision).

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<sup>5</sup> Whether planning policies apply to home letting and home sharing depends not least on the number of rooms being let compared with the number of rooms on the premises.

<sup>6</sup> Under paragraph 7(1) of schedule 1 to the 1982 Act.

- 2.24. The issuing of a temporary licence to a host or operator who is also making a licence application does not extend the time for the licensing authority to dispose of the licence application.
- 2.25. Licensing authorities should issue a temporary licence number to accompany a temporary licence, see **chapter 4**.

### **3. Setting licence fees**

#### **(a) Balancing costs and revenues**

- 3.1. Licensing authorities are responsible for establishing and running the short-term let licensing scheme in their area and can recover the costs of establishing and running the scheme through fees<sup>7</sup>.
- 3.2. Licensing authorities must determine their own fees and fee structures to recover establishment and running costs specific to their area. Licensing authorities must review their fees from time to time to ensure that revenue from fees remains in line with the running costs of the licensing scheme<sup>8</sup>.
- 3.3. Licensing authorities are experienced in running other forms of licensing schemes and keeping costs down. In line with this, the Scottish Government expects licensing authorities to have regard to minimising costs through:
  - economies of scale;
  - integrating service delivery with other housing and licensing functions;
  - using online and digital verification where possible, for example through photo and video evidence instead of a visit; and
  - taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

#### **(b) Chargeable activities**

- 3.4. Licensing authorities may charge fees for the following:
  - licence applications;
  - licence renewal applications;
  - temporary exemption applications;
  - issuing of duplicate licences;
  - their consideration of a material change of circumstances or in premises and their disposal of the matter;

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<sup>7</sup> Paragraph 15(2)(a) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>8</sup> Paragraph 15(2)(a) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

- issuing a certified true copy of any entry on the public register; and
- visits to premises where the visit is necessary because of a failure of the host or operator (see paragraph 3.13 below).

3.5. Licensing authorities may wish to set a fee structure that is based on some premises requiring inspection (risk based approach) but apportion the costs across all applications to charge one fee level.

3.6. Alternatively, they may decide to split these costs into component parts, publishing a cost for a licence application fee and a separate cost where an inspection is required (for example, if a concern is flagged by Police Scotland or the Scottish Fire and Rescue Service). This could also be combined with a policy, for example, which set out that the need for routine inspections might be minimised if the documents submitted as part of an application (such as floor plans, photos, videos, certificates etc.) were sufficient to:

- verify compliance with mandatory licence conditions; and/or
- determine the maximum occupancy number.

3.7. This approach may help to ensure applicants provide sufficient evidence when submitting the application. Where licensing authorities choose to adopt such an approach, we would expect them to provide clear guidance to applicants on the information/format of information they'd require in order to grant an application without a physical inspection of the premises. An example fee structure based on this approach is set out below:

	Guest capacity	Licence application /renewal fee	Licence application / renewal inspection fee (where required)	Licence application / renewal fee (where inspection required)
Home sharing and home letting licence	1 or 2	£x	£y	£x+y
Secondary letting licence	1 or 2	£a	£b	£a+b

- 3.8. Licensing authorities may decide to allow hosts or operators to pay an ongoing subscription in place of the application and/or renewal fee, should they wish to do so<sup>9</sup>.
- 3.9. Licensing authorities must not charge neighbours or others for handling complaints or objections.
- 3.10. Licensing authorities may charge for applications to vary the terms of a licence. When deciding the level of fee it will charge, it is desirable for licensing authorities to consider how the level of any fee charged may act as a disincentive for hosts and operators to keep them informed.
- 3.11. Revenue from fines in respect of licensing offences (see **chapter 6**) do not go to the licensing authority.

### ***Publicising the fees***

- 3.12. Licensing authorities are expected to publish their fees in respect of their licensing scheme and should give reasonable notice of any changes.

### ***Fees for visits to premises***

- 3.13. Licensing authorities may charge a fee to a host or operator for a visit to their premises, where the visit results from their failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious.
- 3.14. A fee may be charged for an inspection following a complaint, where it is found that there are compliance issues, whether or not those are the issues that were the subject of the complaint.
- 3.15. Where a fee is charged for such a visit, the licensing authority must produce a report of its findings to the host or operator within 28 days of the inspection<sup>10</sup>. Where a report is not provided within 28 days of the inspection, the licensing authority must refund the fee charged to the licence holder.

### ***Refunds and refused applications***

- 3.16. In general, fees are not refundable. The Scottish Government expects licensing authorities to publish their policy on refunds so that hosts and operators are clear on the position before they make an application.
- 3.17. Whether or not a licensing application is granted, the licensing authority will incur significant costs in processing the application. Licensing authorities must

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<sup>9</sup> Powers at paragraph 15(3) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>10</sup> Required by Paragraph 15(4) of Schedule 1 to the 1982 Act, inserted by the Licensing Order.

ensure, prior to an application being granted, the applicant is only charged the costs relating to the processing of their application. If the application is refused, the fee charged for the processing of the application itself need not be refunded.

- 3.18. Please be aware that the fee charged for processing the application should not include enforcement costs. This was determined at the Supreme Court in the case of *R v. Westminster City Council (2017)*<sup>5</sup>. The licensing authority may charge fees to cover enforcement costs once the application is granted (normally through monitoring and/or renewal fees).
- 3.19. Where a licensing authority refuses to consider an application because the host or operator needs to obtain planning permission (see **chapter 6**), the licensing authority does not need to refund the fee paid. However, the licensing authority must not charge a further fee in respect of a resubmitted licensing application made within 28 days of planning permission being granted.

### **(c) Parameters for setting fees**

- 3.20. Licensing authorities may take account of the following criteria in determining the amount of fees to charge:
- the size of the premises;
  - the number of rooms at the premises;
  - the number of guests who can reside at the premises;
  - the type of short-term let;
  - the duration of the period for which the premises are made available for use as a short-term let (but note that licensing authorities cannot set limits on nights on licences for secondary letting); and
  - the extent to which the licence holder has complied with the conditions of the licence (which might affect a renewal fee).
- 3.21. The Scottish Government expects licensing authorities to consider each of these criteria, even if they subsequently deem some may not be suitable for their local circumstances.
- 3.22. The Scottish Government does not expect licensing authorities to set a uniform flat fee, as this might disproportionately benefit hosts and operators of larger premises and adversely affect home sharing, bed and breakfasts and smaller self-catering operators.

3.23. The Scottish Government recommends as a minimum that licensing authorities establish a licence fee structure that takes account of the following:

- **type of licence** with lower fees for home sharing and home letting licences than for a secondary letting licence; and
- **guest capacity** - the intended maximum number of guests, as requested by the host or operator on their application form.

3.24. Note that a licensing authority may specify a maximum occupancy for safety reasons that is lower than the number of guests an applicant has requested. In this instance licensing authorities may choose to, but do not have to, refund the difference between the fee paid and the fee that would have been paid had the application specified the maximum occupancy figure.

3.25. Within this recommended fee structure, licensing authorities may decide to group guest numbers into bands. An example banded fee structure is set out below:

<b>Guest capacity (people)</b>	<b>Home sharing and home letting licence</b>	<b>Secondary letting licence</b>
1 or 2	£ [ ]	£ [ ]
3 or 4	£ [ ]	£ [ ]
5 or 6	£ [ ]	£ [ ]
7 or 8	£ [ ]	£ [ ]
9 to 12	£ [ ]	£ [ ]
12 to 20	£ [ ]	£ [ ]
20+	£ [ ]	£ [ ]

## 4. Handling licence applications

4.1. Licensing authorities will be familiar with the processes under the 1982 Act for determining licence applications. This chapter focuses on obligations and considerations that are specific to the short-term let licensing scheme.

### (a) Additional information from applicants

4.2. Licensing authorities may request, and the Scottish Government recommends they do request, additional information on licence application forms<sup>11</sup>. The following information, if requested, would need to be included in the public register<sup>12</sup>:

- the number of bedrooms in the premises,
- data on availability and occupancy,
- contact details for the manager of the premises, if different from the applicant, and
- the Energy Performance Certificate rating.

4.3. Requesting data on availability and occupancy could be useful to licensing authorities in better understanding the level of short-term let activity and help to determine the maximum occupancy number.

### (b) Planning considerations

4.4. A licensing authority may refuse to consider a licensing application if the host or operator of a dwellinghouse within a short-term let control area needs planning permission but does not have it<sup>13</sup>. This power is designed to assist licensing authorities in handling applications for secondary letting but licensing authorities can use it in other circumstances too, such as letting rooms in your own home. Further details can be found in planning guidance for hosts and operators<sup>14</sup>. The licensing authority has 21 days from receipt of a valid application to decide to refuse to consider the application on these grounds.

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<sup>11</sup> The 1982 Act allows for applications to include “such other information as the authority may reasonably require” (paragraph 1(2)(e)) and allows the licensing authority to “make such reasonable enquiries as they think fit” (paragraph 4(1)).

<sup>12</sup> See paragraph 14(4)(m) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>13</sup> Paragraph 2A of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>14</sup> <https://www.gov.scot/isbn/9781804351925>

- 4.5. If a licensing authority refuses to consider an application for this reason, they must tell the host or operator within seven days and explain why they are refusing to consider the application.
- 4.6. A host or operator who has subsequently obtained planning permission (or a certificate of lawfulness of use or development), can resubmit their licensing application and the licensing authority must not charge any additional fee, provided the host or operator submits their application within 28 days of obtaining planning permission (or certificate).
- 4.7. Existing hosts or operators who have made a licence application by 1 April 2023 can continue to operate in the time it takes for their licence application to be finally determined, which means it is granted, refused or the licensing authority refuses to consider the application because it considers that use of the premises for a short-term let would constitute a breach of planning control.
- 4.8. Before 1 April 2023, licensing authorities cannot determine a licence application on the basis it breaches planning control unless they have given existing hosts a chance to submit an application for planning permission or for a certificate of lawful existing or proposed use or development (“CLUD”). Licensing authorities can determine a licensing application before this date where planning permission or a CLUD has already been refused.
- 4.9. The applicant has three months to submit an application for planning permission or for a CLUD. If they do not do so within three months, the application is finally determined for these purposes and the applicant must cease providing short-term lets. The deadline for all short-term lets to be licensed has therefore been extended from 1 April 2024 to 1 July 2024.

#### ***Links with control areas***

- 4.10. The high-level policy purpose behind control areas is as follows:

*to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.*

- 4.11. It is a mandatory condition that a host or operator has planning permission or has made an application for planning permission where all of the following conditions apply:
  - their premises is in a control area;
  - they are using it for secondary letting; **and**

- it is a dwellinghouse.
- 4.12. In these circumstances, the host or operator must have made an application for planning permission or already have planning permission before they apply for a licence. In most cases, planning applications are determined within two months<sup>15</sup>.
- 4.13. Licensing authorities should be aware that planning authorities could designate control areas affecting licensed premises after they have been licensed. Licensing authorities should ensure that licensed hosts or operators who may be affected by the designation of a control area are alerted as part of the planning authority's consultation process.
- 4.14. Licensing authorities should give licensed hosts and operators a reasonable opportunity to comply with this mandatory condition by submitting a planning application. The host or operator should do this as soon as possible after the control area is designated.
- 4.15. Where a control area is designated, licensing authorities should publish details of this on their website. This will assist hosts in determining whether or not to apply for a licence, in the knowledge that planning permission or a certificate of lawful use or development will be required.

#### ***Where planning permission is refused***

- 4.16. Licensing authorities should be advised by planning authorities where they refuse planning permission for short-term lets (see **Planning Circular 1/2021**). The licensing authority should then ensure that any application or licence contingent on the planning permission is refused, varied or revoked as appropriate.
- 4.17. Note that it will not always be necessary for an application to be refused or licence to be revoked. For example, a host or operator may have a licence to let out one bedroom in their own home but have submitted an application to vary the licence, and an accompanying planning application, in order to let out three bedrooms. In this case, the applications might be declined but the existing licensed activity can continue.

#### **(c) Licence numbers**

- 4.18. Licensing authorities must issue a unique licence number to existing hosts and operators who apply for a licence before 1 April 2023, as soon as reasonably practicable after an application for the licence has been made<sup>16</sup>.

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<sup>15</sup> Scottish Government: [Getting Planning Permission](#).

<sup>16</sup> Paragraph 2(1A) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

This is known as a provisional licence number (not to be confused with a licence number for a temporary licence) and is to allow existing hosts to continue operating until their application has been determined (licensing authorities have until 31 March 2024 to do this).

- 4.19. Provisional licence numbers will not be issued to new hosts from 1 October 2022, or anyone applying after 1 April 2023, as they cannot operate whilst their application is being determined.
- 4.20. The Scottish Government expects licensing authorities to issue licence numbers in a consistent format across Scotland. This consistency is to aid with data handling (see **chapter 7**) and to assist letting agencies and platforms in being able to host the licence number provided by the host or operator in their listings. The format is set out and explained in this chapter and specified in **Annex A**.
- 4.21. This expectation for consistency in format also applies to:
  - temporary licences; and
  - temporary exemptions.
- 4.22. This means that all hosts and operators in Scotland providing short-term lets will have such a number. For ease, we will call this the licence number throughout the rest of this chapter.
- 4.23. The format of the licence number, alongside information contained in the public register, will allow anybody to identify:
  - a) the licensing authority who issued the licence (and therefore the area to which the licence relates);
  - b) the type of short-term let to which the licence relates (public register); and
  - c) the type of licence (or exemption).
- 4.24. The licence number will also include a 5 digit number issued by the licensing authority. The overall licence number will be unique across Scotland when combined with the header data set out in 4.23.

## **(d) Notifying residents and neighbours**

- 4.25. Applicants have responsibility for giving notice<sup>17</sup> of an application for a new, or renewal of a, short-term lets licence.
- 4.26. Applicants are required to display a site notice at or near the premises so that it can be conveniently read by the public for a period of 21 days beginning with the date on which the application was submitted to the licensing authority.
- 4.27. A notice must state—
- a) that an application has been made for a licence,
  - b) the main facts of the application<sup>18</sup>,
  - c) that objections and representations in relation to the application may be made to the licensing authority, and
  - d) how to make objections or representations.
- 4.28. Applicants are required by para 2(4) of schedule 1 to the 1982 Act to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired.
- 4.29. A template site notice and certificate of compliance have been included in Licensing Guidance Part 1, however, licensing authorities may wish to develop their own forms for applicants to use.

## ***Objections***

- 4.30. An objection must specify the grounds, but the grounds are not limited by, or defined in, the 1982 Act<sup>19</sup>.
- 4.31. Licensing authorities may entertain late objections if they are satisfied there is a sufficient reason as to why it was not made on time. Where a licensing authority entertains a late objection, they must satisfy themselves as to the sufficiency of the reason for lateness and explain why they have decided to entertain the objection.

## **(e) Maximum occupancy condition**

- 4.32. It is a mandatory condition that hosts and operators ensure that they do not exceed the maximum number of guests for their premises. This includes

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<sup>17</sup> Paragraph 2 of schedule 1 to the 1982 Act, has been significantly modified by the Licensing Order.

<sup>18</sup> The details are specified in paragraph 2(3) of schedule 1 to the 1982 Act, inserted by the Licensing Order.

<sup>19</sup> Paragraph 3(1)(b) of Schedule 1 to the 1982 Act.

making the maximum occupancy clear on adverts and listings and in booking terms and conditions.

- 4.33. Hosts and operators will state in their application how many guests they would like to accommodate. It would be helpful if licensing authorities could set out how it will determine maximum occupancy, to enable hosts and operators to understand how this will be calculated.
- 4.34. The Scottish Government expects licensing authorities to consider criteria (a) and (b) below when determining maximum occupancy. They may also wish to take other factors into account as relevant, such as (c), using the lowest of these numbers to determine maximum occupancy:
- a) the number requested on the application form
  - b) the maximum number that can be accommodated safely (broken down to the number of adults and the number of children)
  - c) the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours
- 4.35. In order for licensing authorities and Scottish Fire and Rescue Service to undertake an assessment of the maximum number of guests that can be accommodated safely, it is desirable for licensing authorities to ask applicants to submit (as part of their application) floor plan(s) for their premises indicating room sizes, fire escape routes and accommodation intended for guests with mobility impairment. Licensing authorities may also wish to ask for plans to show the location of any steps, stairs, elevators or lifts in the premises, as well as the extent and boundary of the building – if relevant.

### ***Children***

- 4.36. Licensing authorities may choose to specify on a licence that guests may bring a certain number of small children under a specified age limit and these would not count towards the occupancy of the premises. Children above the age limit and any additional children of any age would count towards the occupancy. Licensing authorities may wish to set the age limit as under 10 years, which is in line with the reference to children in the context of housing within the Housing Act (Scotland) 1987.

## 5. Setting additional licence conditions

### (a) Whether to set additional conditions

- 5.1. In addition to the mandatory licence conditions, which apply to all short-term lets across Scotland, licensing authorities may impose additional conditions<sup>20</sup>.
- 5.2. Additional conditions can help licensing authorities to respond to local challenges and concerns specific to certain models of short-term letting (for example, secondary letting in tenement flats).
- 5.3. An additional condition must not be used to tackle a breach of an existing condition (whether it is a mandatory or additional condition); enforcement notices should be used for this purpose – see **chapter 6**.
- 5.4. A central policy objective of short-term let licensing is to ensure that the accommodation provided is safe. Where the licensing authority considers that there are significant risks to safety and security, it may be more appropriate to:
  - refuse an application;
  - delay granting an application;
  - issue an enforcement notice;
  - vary or suspend a licence; or
  - revoke a licence.
- 5.5. Some of these measures are temporary and allow remedial action to be taken and the licensing authority to be content that the risk has been reduced or removed appropriately.

### *The issues that might be addressed*

- 5.6. Some of the issues raised by residents and communities in relation to short-term lets, through the public consultation, research and elsewhere, include:
  - overcrowding of the property;
  - noise and nuisance, including drunkenness, smoking and drug-taking;

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<sup>20</sup> Section 3B of the 1982 Act gives licensing authorities the power to determine conditions to which licences are to be subject (“standard conditions”) which we are calling “additional conditions” in this guidance because they are additional to the mandatory conditions.

- litter or other mess in communal areas;
- failure to maintain the property in a good state of repair;
- failure to maintain, or contribute to the cost of, communal area repairs and increased wear and tear;
- damage to property (e.g. from key boxes affixed to walls); and
- unlawful activity (e.g. using the property as a brothel).

5.7. Additional conditions allow licensing authorities to tackle many of these issues whilst still allowing the premises to be used for short-term lets.

## **(b) Scope of additional conditions**

5.8. Licensing authorities have broad powers around which premises have additional conditions attached to them. Different additional conditions may be determined:

- in respect of different licences, or different types of licence; or
- otherwise for different purposes, circumstances or cases.

5.9. Licensing authorities cannot use additional conditions to contradict, modify or dilute mandatory conditions.

## **(c) How to publicise additional conditions**

5.10. Licensing authorities must publish their additional conditions, and failure to do so means the conditions have no effect.

5.11. The Scottish Government expects licensing authorities to:

- include additional conditions on the licence documentation provided to the host or operator;
- publish their additional conditions on their website, together with the criteria and circumstances they will use to determine when these apply.

## **(d) How to draft an additional condition**

### ***Preliminary***

5.12. Licensing authorities are experienced in applying the Civic Government (Scotland) Act 1982 and, in determining whether additional conditions are appropriate, will wish to be satisfied that:

- the matter is not already covered by the requirements of the 1982 Act, Licensing Order or mandatory conditions;
- the matter is not already sufficiently covered by other legislation (i.e. already unlawful and enforceable);
- the matter is sufficiently serious to merit an additional condition, rather than a verbal warning, letter or memo;
- the matter is not a breach of an existing condition in which case an enforcement notice should be used – see **chapter 6**; and
- the proposed additional condition does not contradict the requirements of the 1982 Act, Licensing Order or mandatory conditions.

5.13. It is advisable for licensing authorities to consider if an additional condition might have unintended consequences that are potentially as severe or worse than the issue to be addressed. For example, measures to limit noise indoors might lead to guests making noise outdoors instead.

### ***Making it SMART***

5.14. It is good practice for licensing authorities to ensure the format and wording of additional conditions are:

- (i) **Specific** (unambiguous – anyone can understand what is meant by the condition);
- (ii) **Measurable** (enforceable – the licence holder will know when they have complied or are complying with the condition);
- (iii) **Action-oriented** (place a duty and clear action on the licence holder to do or prevent something);
- (iv) **Realistic** (is it reasonable to expect the condition is achievable); and
- (v) **Time-bound** (where there is an action to be completed, rather than an on-going action).

### ***Structure***

5.15. The Scottish Government expects any additional condition to be set out in four parts:

- (i) **Issue** – what is the issue or problem with the premises or short-term let activity?

- (ii) **Reasoning** – why is the additional condition required? There should be **general** and **specific** reasoning relating to the condition. This will help the licence holder understand that the specific action they are being asked to take is fair because it is to ensure a general outcome that applies in other similar circumstances. It will also help the licensing authority defend the condition should it be appealed and allow the Procurator Fiscal to explain the background should the matter ever proceed to the criminal courts.
- (iii) **Action** - what must the licence holder do?
- (iv) **Deadline** – when any specific actions must be completed by?

### **Example**

#### Issue

*Upon inspection of the guest accommodation, the paths around the property were found to have uneven slabs at various locations, namely to the front and the side of the property.*

#### Reasoning

*General: All parts of a short-term let, both internally and externally, shall be maintained in a reasonable state of repair to the satisfaction of X Council and be free from any defect liable to prejudice the health and safety of the occupants.*

*Specific: Uneven slabs along the footpath, are a trip hazard and may cause a guest to trip and fall over.*

#### Action

*The licence holder must ensure that:*

- 1. Repair work is carried out to lift and relay or renew the slabs at the uneven areas on the pathways around property, ensuring that the path is level and free of trip hazards.*
- 2. Access to the uneven areas of the pathways around the property is prohibited until the repair work (set out at 1 above) has been carried out.*

#### Timeframe

*The works outlined above at (1) must be completed as soon as reasonably practicable but no later than [date].*

### **(e) Prohibited condition: limits on nights**

5.16. Licensing authorities must not impose an additional condition limiting the number of nights a property may be used for secondary letting. The policy intention behind this is to ensure premises are not left empty for large periods each year<sup>21</sup>.

5.17. This condition does not apply to home sharing and home letting.

### **(f) Template additional conditions**

5.18. The Scottish Government has included suggested templates for the following issues:

- antisocial behaviour;
- privacy and security;
- noise;
- littering and waste disposal;
- damage to property.

5.19. Licensing authorities are encouraged to adopt this format when determining additional conditions to ensure consistency across Scotland.

#### ***Antisocial behaviour***

5.20. While there are already a range of powers available to licensing authorities to deal with antisocial behaviour through provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, there are levels of noise and disturbance that may fall short of being described as a statutory nuisance but are considered unacceptable in planning terms (and licensing terms).

5.21. Licensing authorities may wish to include a condition requiring the licence holder to manage their premises in a way to prevent anti-social behaviour as far as reasonably practicable, and to effectively deal with any instances of anti-social behaviour.

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<sup>21</sup> Paragraph 5(2B) of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

#### **Template additional condition**

1. *The licence holder must take reasonable steps to manage the premises in such a way as to seek to prevent and deal effectively with any antisocial behaviour by guests to anyone else in the short-term let and in the locality of the short-term let.*
2. *The licence holder must take reasonable steps to:*
  - *ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests;*
  - *deal effectively with any disturbance or nuisance arising within or from the premises, as soon as reasonably practicable after the licence holder is made aware of it; and*
  - *ensure any vehicles belonging to guests are parked lawfully, for example explaining where any designated parking spaces are to be found and highlighting any local rules.*

#### **Privacy and security**

- 5.22. Licensing authorities may wish to impose conditions to ensure that the privacy and security of neighbours is safeguarded. While terms will vary depending on the exact circumstances, the following template could be used where there is a shared entrance through which both guests and residents pass.

#### **Template additional condition**

1. *The licence holder must manage the premises in such a way as to respect and protect the privacy and security of neighbours.*
2. *The licence holder must ensure:*
  - *guests know and understand any particular rules applying to shared areas and entrances;*
  - *guests understand that shared doors should be properly and securely closed after use; and*
  - *the provision of access codes or keys to guests cannot be used by guests to gain access to shared areas after they have finally departed.*

#### **Noise**

- 5.23. Licensing authorities may wish to impose conditions to minimise noise impact on neighbouring properties to short-term lets, particularly those in flatted, terraced or semidetached dwellings. Only conditions which are strictly necessary in the specific circumstances should be attached to a licence.

5.24. Noise conditions could include:

a) Physical moderations to the property in order to minimise noise impact on neighbours, such as:

- replacing wood floors with carpeted or vinyl flooring; or
- installing door closers to prevent doors being slammed.

b) Installation of noise monitoring kit within the premises to log noise, and notify the owner of any noise above a certain specified dB limit. Limits to be specified based on time of day, with lower noise limits overnight. Licensing authorities should be aware that noise monitoring kit within the premises is not useful in respect of noise occurring in external areas; and noise monitoring in external areas presents a range of challenges, including respect for the privacy of others and identifying the source of the noise.

5.25. Licensing authorities may want to set specific standards for floor coverings in certain circumstances.

5.26. Where physical alterations are required, licensing authorities may wish to physically inspect the property, or accept photographic or video evidence that the alterations have been completed to their satisfaction.

5.27. Where licensing authorities wish to require installation of noise monitoring kit, they may want to specify (subject to the capability of the kit and/or service provider):

- the appropriate specification and location for installation of the kit;
- day and night limits;
- any monitoring logging requirements (for example the time interval for logging noise); and
- the protocols for notification of a breach to the host, and to the licensing authority if necessary.

5.28. In considering the appropriate location for noise monitoring equipment, licensing authorities may wish to consider whether it would be both appropriate, and feasible, to request the installation of noise monitoring kit in shared areas such as tenement stairwells. On one hand, if noise monitoring kit was installed in a tenement stairwell it may be difficult to determine who was responsible for the noise (guests or neighbours). However, if it was combined with noise monitoring kit within any short-term let operating in the

stairwell it may be possible to determine and attribute noise disturbances by comparing the logs of both sets of noise monitoring kits.

#### **Template additional conditions**

*The licence holder must ensure that the bedrooms, living room and hallway in the premises are carpeted.*

*The licence holder must ensure that noise monitoring equipment [of type x] is maintained in full working order [in location y] and that the maximum reading does not exceed [a] decibels between 7 am and 11 pm, nor [b] decibels between 11 pm and 7 am.*

- 5.29. Licensing authorities may wish to attach conditions relating to particularly noisy activities. For example, introducing a prohibition on guests checking in and checking out from a short-term let within a defined time period, to minimise noise impact in common areas, particularly from luggage. Where licensing authorities choose to apply this condition, the prohibition should normally be between 11 pm and 7 am to ensure consistency across Scotland.

#### **Template additional condition**

*The licence holder must take reasonable steps to ensure that guests do not first arrive or finally depart from the property between the hours of 11 pm to 7 am. The licence holder must advise guests of this as part of their booking terms and conditions.*

*(Note: “reasonable steps” allows for exceptions, such as significantly delayed transport.)*

### ***Littering and waste disposal***

- 5.30. There are fixed penalties of £80 for littering and £200 for fly tipping. Alleged offenders are required by law to provide their name and address to enforcement officers <sup>22</sup>.
- 5.31. Penalties can be issued by Police Scotland, by licensing authorities, and by public bodies including Loch Lomond and the Trossachs National Park.
- 5.32. Littering could occur within common areas in properties with shared facilities, such as tenements, as well as public areas within the vicinity of a short-term

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<sup>22</sup> [Managing waste: https://www.gov.scot/policies/managing-waste/litter-and-flytipping/](https://www.gov.scot/policies/managing-waste/litter-and-flytipping/)

let. In both instances, it would be difficult to attribute any instances of littering to a particular property, or guest within a property.

- 5.33. Visitors using residential waste provision can put a strain on shared facilities. For example, short-term lets within a tenement creating a larger amount of waste due to increased turnover of guests and cleaning than a typical residential flat, putting strain on communal bins. Note, however, that waste from businesses operating secondary lets should not be treated as household waste but rather as commercial or trade waste; it cannot be placed in communal bins.

**Template additional condition**

1. *The licence holder must provide adequate information on, and facilities for, the storage, recycling and disposal of waste.*
2. *The licence holder must advise guests of:*
  - *their responsibilities;*
  - *the use of the bins / sacks provided for the premises; and*
  - *the location of the nearest recycling centre or recycling point.*
3. *The licence holder must:*
  - *clearly label bins as belonging to the premises;*
  - *ensure that guests manage their waste in compliance with (2), including when they depart; and*
  - *maintain the bin storage area and the exterior of the premises in a clean and tidy condition.*

**Damage to property**

- 5.34. With regard to preventing damage to public and private property:

**Template additional condition**

*The licence holder must not affix a key box, or other device to facilitate guest entry to the property, to any public or jointly owned private infrastructure without prior written permission of the relevant authority or owner(s). The licence holder must be able to produce the permission to the licensing authority on request.*

## 6. Complaints and enforcement

### (a) Handling complaints

- 6.1. Complaints about hosts and operators can be considered under powers in the 1982 Act<sup>23</sup>. Anybody may make a complaint to a licensing authority about the way that hosts and operators are operating their short-term lets, although complaints are most likely to be received from neighbours and guests. Complaints from neighbours may be about an actual, or suspected, short-term let. Whether the complaint is from a guest or a neighbour, it may be justified or unjustified.
- 6.2. As a general principle, licensing authorities should seek to try to resolve a complaint through engagement with the host or operator in the first instance. If this is not successful, then the procedures under the 1982 Act should be used.

#### *From guests*

- 6.3. In the first instance guests should raise any concerns with their host or operator, letting agency or platform. If they remain unsatisfied or the issue is sufficiently grave they may contact the relevant licensing authority. Licensing authorities are expected to establish a clear process for handling contact from guests.

#### *From neighbours*

- 6.4. Neighbours might complain about the following, for example:
- the number of people staying at the premises;
  - noise, disturbance or instances of antisocial behaviour;
  - issues around maintenance, guests in common areas and accumulation of refuse (especially in flats or tenements); or
  - suspected unlicensed short-term lets.

Complaints about suspected unlicensed operators should be directed to Police Scotland.

#### *Clear information*

- 6.5. In order to assist guests, neighbours and others in making a complaint, the Scottish Government expects licensing authorities to publish details on how

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<sup>23</sup> Specifically, paragraphs 11 and 12 of Schedule 1.

complaints can be made on their webpage, including: grounds that would not be considered valid for a complaint, relevant contact details, and estimated timescales for acknowledging and responding to complaints.

### ***Triage and redirection***

- 6.6. Licensing authorities may wish to provide a single portal to cover both licensing and planning matters for short-term lets, which would direct the complaint to the relevant local authority department, rather than expecting neighbours to understand whether their concern is a licensing or planning or other matter.
- 6.7. Licensing authorities may need to direct some complaints to planning authorities, letting agencies, platforms, VisitScotland, Police Scotland or other bodies for further investigation.

### ***Case management***

- 6.8. Keeping records of complaints and their outcomes will be important evidence for licensing authorities to maintain, in order to have an accurate picture of the compliance or otherwise of hosts or operators.
- 6.9. Licensing authorities may wish to note that VisitScotland operates a fully traceable complaints procedure for businesses in their quality assurance scheme. Complaints, depending on their nature, are recorded and either dealt with immediately (a business is asked to respond to any points of concern raised) and/or made visible to their Quality & Tourism Advisor team for addressing at the time of their next grading visit. In all cases, a reassessment of accommodation standards is made at subsequent live visits (usually on a biennial basis) and the appropriate award is allocated.

### ***Speed of turnaround***

- 6.10. The Scottish Government expects complaints to be acknowledged within five working days and complainants to be appropriately kept up to date with the progress of their complaint; sometimes this may simply be advising them of the outcome.

### ***Assessing complaints***

- 6.11. Some complaints will require enforcement action from the licensing authority. Options for enforcement action are set out in paragraphs 6.27 and following below.
- 6.12. Some complaints may not require enforcement action from the licensing authority, for example:

- where the licensing authority determines that the complaint is frivolous or vexatious;
- the complaint relates to a matter which has already been investigated and the complaint was found to be unjustified;
- action has already been taken or is in progress; or
- the complaint relates to a matter which is outside the scope of the licensing scheme, for example around the quality of the stay.

### **(b) Taking a risk-based approach to ensuring compliance**

6.13. The expectation is that licensing authorities will take a risk-based approach to ensuring compliance, this includes allowing self-certification where appropriate and only using inspections where there are grounds to do so.

6.14. Some of the factors they may wish to consider when deciding whether to carry out an inspection of a particular premises might be:

- other accreditation obtained by the host or operator;
- feedback from Police Scotland and the Scottish Fire and Rescue Service, who may have their own views, suggestions or requirements around risk assessment and prioritisation;
- peculiarities of the operation (e.g. unconventional accommodation);
- pattern of complaints associated with the host, operator or premises;
- intelligence from other inspections (which may indicate a higher incidence of issue or non-compliance with hosts or operators or premises of that type or in that area); and
- reputational evidence (where available) from guest reviews and internet profile.

6.15. Licensing authorities will determine the appropriate balance of:

- self-declaration from hosts and operators;
- checking relevant documentation;
- allowing for third-party accreditation; and

- visits to premises by licensing authority and other local authority officials.

6.16. There is no specific liability on licensing authorities in terms of a “failure to inspect”; the licensing authority’s duties to consider an application and grant a licence, and thereafter to ensure adherence with a licence’s conditions, remain in line with the 1982 Act provisions and the current licensing framework.

### **(c) Third party accreditation**

6.17. It is entirely for licensing authorities to determine what they will accept from hosts and operators to demonstrate compliance with the mandatory conditions, and any additional conditions which the licensing authority has attached. Licensing authorities may wish to consider accepting third party evidence, accreditation or certification from bodies such as Quality in Tourism or Visit Scotland in lieu of visiting premises in some circumstances. This may provide efficiencies for licensing authorities, whilst still ensuring that minimum mandatory standards are met. This might be particularly beneficial in the case of remote, rural premises.

### **(d) Identifying unlicensed short-term lets**

6.18. Licensing authorities, letting agencies and platforms all have a role to play in identifying and eliminating unlicensed short-term lets.

6.19. While licensing authorities are obliged to maintain a public register of licensed short-term lets and update this on a quarterly basis, it is desirable for the register to be updated as often as possible to provide an accurate record that can be checked to find out whether a licence for a short term let premises: has been granted or refused, is being determined, has been revoked or has lapsed.

#### ***Proactive action by the licensing authority***

6.20. Licensing authorities should consider how they will monitor whether there are hosts or operators in their area that are trading without a valid short-term lets licence.

#### ***Proactive action by letting agencies and platforms***

6.21. Hosts and operators are allowed to advertise their properties without a licence. However, from 1 October 2022 new hosts and operators cannot accept bookings until they have obtained a licence. After this date letting agencies and platforms should not allow a booking to be made by a new host/operator until a licence number can be provided.

- 6.22. Existing hosts that have been trading on or before 30 September 2022 may continue to accept bookings after 1 October 2022 but only if they have applied for a licence by 1 April 2023 and once it has been determined, the licence is granted. Licensing authorities are expected to issue a provisional licence number on receipt of a licensing application to facilitate this. By 1 July 2024, existing hosts should not be trading unless they have been granted a full licence.
- 6.23. Where it appears that a host or operator is attempting to operate without a licence when one is required, or where the letting agency or platform has other concerns about breaches of licence conditions (e.g. bookings being taken for numbers of guests that exceed the maximum occupancy), they are expected to report these to the relevant licensing authority.
- 6.24. Hosts and operators:
- must ensure that any advert or listing placed on or after they are granted a licence includes their licence number;
  - are advised to make clear in their terms and conditions that the booking is conditional on the guests' compliance with the licensing scheme.
- 6.25. Letting agencies and platforms should take steps to help hosts and operators comply with this.
- 6.26. The Scottish Government has specified a consistent licence number format for the whole of Scotland (see **ANNEX A**). Letting agencies and platforms are expected to undertake checks to identify any inconsistencies between the licence type and the listing. For example, where a host/ operator is using a home sharing and home letting licence number but advertising the property as being a whole property let, as evidenced by, for example, it not being their billing or contact address.

### **(e) Options for enforcement action**

- 6.27. The options for enforcement action for licensing authorities provided through the Licensing Order and 1982 Act are:
- additional licence conditions on application (or through variation) – see **chapter 5**;
  - enforcement notices – see paragraphs 6.28 and following below;
  - variation, suspension or revocation of the licence – see paragraphs 6.32 and following below; or

- pursuance of prosecution in respect of offences under the 1982 Act – see paragraphs 6.37 and following below.

## **(f) Enforcement notices**

- 6.28. Licensing authorities have the power<sup>24</sup> to serve enforcement notices. Where complaints, visits to premises, or other information, suggest that any licence condition has been breached, licensing authorities can require a licence holder to take action to put it right. This will usually be done by serving an enforcement notice (“non-compliance” or “improvement” notice). Such notices must set out the matters constituting a breach or a likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.
- 6.29. Enforcement notices can also be served if a licence condition is felt likely to be breached, for example, a host or operator is advertising property with a maximum capacity of ten guests in breach of a licence condition specifying no more than eight. This would be evidenced in a listing or advertisement.
- 6.30. The format of an enforcement note may be similar to an additional condition (see **chapter 6**). An enforcement notice must specify—
- the matters constituting the breach or likely breach<sup>25</sup>,
  - the action to be taken by the licence holder, which the licensing authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach, and
  - the date by which the action must be taken.
- 6.31. If satisfactory action is not taken by the required date(s) to address the issues set out in a notice, licensing authorities have powers to vary, suspend or revoke a licence.

## **(g) Variation, suspension and revocation**

- 6.32. A licensing authority may vary, suspend or revoke a licence in certain circumstances, see Guidance Part 1. Licensing authorities may do this without serving an enforcement notice if the seriousness of the breach justifies urgent action.
- 6.33. The procedures to follow for variation, suspension and revocation are set out in schedule 1 to the 1982 Act.

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<sup>24</sup> Paragraph 10A of schedule 1 to the 1982 Act, as inserted by the Licensing Order.

<sup>25</sup> See the Policy Note (**Paper 2**) for more information.

6.34. Hosts and operators can appeal against being served with a notice of variation, suspension or revocation. Hosts and operators can take bookings and provide accommodation whilst they appeal a revocation or suspension and they have 28 days in which to lodge an appeal.

### ***Variation***

6.35. A licensing authority may vary the terms of a licence on any grounds they think fit<sup>26</sup>. They can do this at any time. They can do this following an application made to them by the licence holder or of their own initiative.

### ***Suspension or revocation***

6.36. Licensing authorities may order the suspension or revocation of a licence<sup>27</sup> if in their opinion—

- the licence holder is no longer a fit and proper person to hold the licence;
- the licence holder is managing the property on behalf of someone who would have been refused the grant or renewal of the licence;
- the short-term let is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
- a condition of the licence has been contravened.

Where the licensing authority revokes a licence, no further application can be made by that host or operator in respect of that premises within one year of the date of revocation.

## **(h) Offences under the 1982 Act**

6.37. Section 7 of the 1982 Act<sup>28</sup> sets out four offences, as set out below. These currently attract fines on the standard scale<sup>29</sup>:

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<sup>26</sup> Paragraph 10 of schedule 1 to the 1982 Act.

<sup>27</sup> Paragraph 11 of schedule 1 to the 1982 Act.

<sup>28</sup> Section 7 of the 1982 Act.

<sup>29</sup> As set out at section 225 of the Criminal Procedure (Scotland) Act 1995.

<b>Level on the scale</b>	<b>Maximum fine</b>
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

### ***Operating without a licence***

- 6.38. It is an offence, without reasonable excuse, to carry on an activity for which a licence is required without having such a licence. Depending on the activity, different punishments apply. The default is a fine not exceeding level 4 on the standard scale.
- 6.39. The Scottish Government intends to increase the maximum fine to £50,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.
- 6.40. Only imprisonment may be a sufficient deterrent in rare and extreme cases. The Scottish Government intends to make provision for imprisonment as a last resort for hosts who continue to operate without a licence. Imprisonment could be useful where the potential revenue for the host or operator from continuing to operate without a licence exceeded the maximum fine and the host or operator was continuing to operate in flagrant disregard of the law.

### ***Failing to comply with a licence condition***

- 6.41. It is an offence to fail to comply with a licence condition, though it is a defence to have used all due diligence to prevent the offence. The default is a fine not exceeding level 3 on the standard scale.
- 6.42. The Scottish Government intends to increase the maximum fine to £10,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.
- 6.43. The maximum occupancy condition limits the number of guests in the premises. Breaching this condition might lead to significantly more revenue. The fine for failing to comply with the licence condition must outweigh the profit made from such a breach.
- 6.44. Note that some mandatory conditions are also enforceable through other legislation. Hosts and operators must include an EPC rating in their listing

where they are required to have a valid EPC certificate for the premises under building standards legislation. A host or operator who fails to hold a valid EPC certificate, where required to have one under building standards legislation, can be fined as follows as a minimum<sup>30</sup>:

- £500 for failing to hold a valid EPC certificate; and
- £500 for failing to display a rating on any property listing.

***Failing to notify a change etc.***

6.45. It is an offence for a licence holder, without reasonable excuse, to:

- a) fail to notify the licensing authority of a material change of circumstances (level 3 on the standard scale),
- b) make or cause or permit to be made any material change in the premises (level 3 on the standard scale),
- c) fail to deliver the licence to the licensing authority (level 1 on the standard scale).

***Making a false statement***

6.46. It is an offence to make a false statement in an application (level 4 on the standard scale).

6.47. The Scottish Government intends to increase the maximum fine to £10,000 through provision in a suitable Bill early in this session (2021-26) of the Scottish Parliament.

6.48. Licensing authorities should be aware that some hosts or operators may make a false declaration about where they live, in order to apply for a home sharing or home letting licence, rather than a secondary letting licence. The host or operator may be attempting to obtain a licence with a lower fee and to avoid planning controls.

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<sup>30</sup> [Energy Performance Certificates: introduction - gov.scot \(www.gov.scot\)](https://www.gov.scot)

## 7. Licensing data

### (a) Introduction

- 7.1. Licensing authorities are required to maintain a public register of short-term let licences, and share the content of the register with Scottish Government on an ongoing regular basis in a format that enables analysis of the information. By 1 July 2024, Scotland will have accurate up-to-date data on the number of short-term lets operating (based on licence applications), and their exact location (as well as other relevant data).
- 7.2. As data controllers, licensing authorities are responsible for ensuring compliance with UK General Data Protection Regulations, this includes storage, handling and disposal of all data related to licence applications they receive. The Data Protection Impact Assessment (DPIA)<sup>31</sup> sets out further detail for licensing authorities, as data controllers, on:
- data controllers and safeguards;
  - data security;
  - anonymity and pseudonymity;
  - data handling procedures;
  - storage and disposal of data; and
  - identification methods.
- 7.3. Licensing authorities must not keep personal data for longer than needed. Licensing authorities are responsible for storing data and disposing of it when it is no longer needed. Personal information must only be held for as long as it is necessary for the effective administration of the licensing scheme.
- 7.4. Licensing authorities may share personal data, for specific purposes, as follows:
- Within and between local authorities, Scottish Fire and Rescue Service and Police Scotland as part of the notification process in order to carry out background checks.
  - With other licensing authorities, to share the reasons for suspending, varying or revoking a licence with each other<sup>32</sup>. This might be relevant for example if a host/operator is deemed no longer fit and proper to hold a licence in one area and is also licensed by more than one licensing authority.

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<sup>31</sup> Impact assessments contained within: [Short-term lets – licensing scheme and planning control areas: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/short-term-lets/licensing-scheme-and-planning-control-areas-consultation-analysis)

<sup>32</sup> Paragraph 14A of Schedule 1 to the 1982 Act, as inserted by the Licensing Order.

- Publication in the public register of licences, see paragraphs 7.7 and following below.
- Quarterly submissions to Scottish Government, so that data on licences from each local authority can be amalgamated at a national level, and to review against policy objectives. No personal data will be published in Scottish Government reports on short-term letting activity.
- With letting agencies and platforms, or any person involved in advertising or listing of a property of the fact that:
  - unlawful unlicensed premises are being advertised or listed; or
  - a licence has been suspended or revoked (or varied where the variation affects the maximum occupancy of the property). This will allow letting agencies and platforms to remove adverts or listings or require amendment if they are inaccurate.

7.5. Further details on data processing can be found in the DPIA in the [2020 consultation report](#). Information about the processing of personal data is set out section C of the DPIA.

## **(b) Managing the data**

- 7.6. The lawful basis and objectives for collecting, processing and sharing the data (set out in the DPIA) require licensing authorities to:
- a) collect sufficient data for monitoring and enforcement purposes, including setting out requirements for the sharing of relevant information between licensing authorities for hosts and operators with premises in more than one area (**operational data**).
  - b) share data, including the number, type and location of short-term lets, with Scottish Government in a consistent format on an ongoing regular basis (**analytical data**). The Scottish Government will combine data into a national database for subsequent analysis but will not include personal data in its report. Operational and analytical data is expected to be shared using the same format and data field specifications as in the public register, with any additional fields appended.
  - c) publish and maintain a register of short-term let licences and their status (granted, refused, being determined, revoked, lapsed etc.), which can be accessed and searched by members of the public (**public register**). Licensing authorities must publish the register on a quarterly basis.

## **(c) The public register**

- 7.7. The specification for the register is set out at **Annex B** with the data fields. Licensing authorities must:
- a) make the register available to the public electronically, in a searchable format - this could be done through publishing an Excel spreadsheet with suitable user instructions and protections; and
  - b) publish or update their register on **at least** a quarterly basis. By 1 October 2023, the Scottish Government expects licensing authorities to provide more frequent or live updates where it is possible to do so.
- 7.8. The requirement to identify whether the short-term let is within either of the two national parks in Scotland is to assist them in identifying short-term let activity within their boundaries (which are not necessarily contiguous with licensing authority boundaries).
- 7.9. The structure and specification of licence numbers are explained in **chapter 4** and **Annex A**.
- 7.10. Licensing authorities can remove data from the register of data in respect of:
- licences that have been revoked for more than 12 months; or
  - licences that have been surrendered.
- 7.11. Note that, reasons for revoking a licence may be appropriate to retain for longer than 12 months if it is likely to be relevant in determining any new application for a licence by the host.

## **(d) Data sharing with Scottish Government**

- 7.12. The data to be shared regularly will include the contents of the public register, in a format that enables analysis of the information. In addition to the data fields that must be included in the public register, SG also wishes to collect the following data and expects LAs to ensure these fields are included in their data collections and provided to SG as part of quarterly returns. This will ensure consistent data across Scotland and facilitate robust analysis:
- Date application determined;
  - Licence expiry date;
  - UPRN;
  - Application outcome (selecting one of the following reasons):
    - Applicant(s) not fit and proper;
    - Premises not suitable;

- Planning permission required and not held;
- Other (free text).

- 7.13. This information will allow for monitoring of application processing times, average length of time a licence is granted for, and common reasons for applications being refused in order to monitor and evaluate the policy.
- 7.14. In order to minimise the volume of data transferred from licensing authorities to Scottish Government we do not expect it will be necessary to transfer data for every entry on the public register in each quarterly data extract. Data extracts may include the following:
- New applications / additions to the public register;
  - Entries that have been removed from the public register;
  - Licence records where one of the data fields has changed (e.g. status has changed from 'being determined' to 'approved').
- 7.15. The Scottish Government intends to work with licensing authorities over the coming months to finalise the data specification for the data to be shared with Scottish Government on a regular basis. This is likely to involve use of ProcXed to design and manage data collection from licensing authorities.
- 7.16. Licensing authorities may choose to, but need not, include some or all of the additional fields set out in para 7.12 within their public registers.

## Annex A

### Licence number specification

The licence number will comprise 8 characters, three of which are alphabet (capital letters) and 5 of which are digits (D):

**A<sub>1</sub>A<sub>2</sub>-DDDDD-A<sub>3</sub>**

The leading two characters (A<sub>1</sub>A<sub>2</sub>) will identify the licensing authority:

Aberdeen City	<b>AC</b>
Aberdeenshire	<b>AS</b>
Angus	<b>AN</b>
Argyll and Bute	<b>AR</b>
Clackmannanshire	<b>CL</b>
Dumfries and Galloway	<b>DG</b>
Dundee	<b>DD</b>
East Ayrshire	<b>EA</b>
East Dunbartonshire	<b>ED</b>
East Lothian	<b>EL</b>
East Renfrewshire	<b>ER</b>
Edinburgh	<b>EH</b>
Falkirk	<b>FK</b>
Fife	<b>FI</b>
Glasgow	<b>GL</b>
Highland	<b>HI</b>
Inverclyde	<b>IN</b>
Midlothian	<b>ML</b>
Moray	<b>MO</b>

Na h-Eileanan Siar	<b>ES</b>
North Ayrshire	<b>NA</b>
North Lanarkshire	<b>NL</b>
Orkney	<b>OR</b>
Perth and Kinross	<b>PK</b>
Renfrewshire	<b>RN</b>
Scottish Borders	<b>SB</b>
Shetland	<b>SH</b>
South Ayrshire	<b>SA</b>
South Lanarkshire	<b>SL</b>
Stirling	<b>ST</b>
West Dunbartonshire	<b>WD</b>
West Lothian	<b>WL</b>

The 5 digits will be issued by each licensing authority.

The final character (A<sub>3</sub>) will denote the type of “licence”:

- E** Temporary exemption
- T** Temporary licence
- P** Provisional licence number issued on receipt of a licence application
- F** First (full) licence
- R** Renewed licence

**Example**

<b>A</b>	<b>C</b>	<b>-</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>-</b>	<b>E</b>
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This number relates to a temporary exemption (E) in Aberdeen City (AC). The type of short-term let (e.g. home sharing) will be displayed on the public register.

## Annex B

### Public register specification

**Note:** to be completed and agreed. Constrained types and formats (e.g. postcode) to be specified.

CONTENT	TYPE / FORMAT	DESCRIPTION	M/O <sup>33</sup>
<b>Applicant Name</b>	Full Name	The applicant's full name*	M
Title	Title		O
Forenames	String (repeatable)	<i>*Mandatory only where an application is made by or on behalf of a person other than a natural person</i>	M
Surname	String	<i>*Mandatory only where an application is made by or on behalf of a person other than a natural person</i>	M
<b>Premises address</b>	Address	Address	M
Address Line 1	String	First line of address	M
Address Line 2	String	Second line of address	O
Address Town	String	The town component of the address	M
Address County	String	The county component of the address	M
UK Postcode	Postcode	The postal code	M
UPRN	Number	Unique Property Reference Number	O
<b>Council Ward</b>	Ward	The council ward in which the premises is located	M
Ward	Ward (constrained type)		M
<b>Application details</b>	Date	Key dates	M
Date of application	Date (dd-mm-yyyy)	The date the application was received	M
Date application determined	Date (dd-mm-yyyy)	The date the application was determined	O
Licence expiry date	Date (dd-mm-yyyy)	The date the licence expires	O
<b>Status</b>	Status	Status of the application	M
Application status	Status (constrained type)	Whether the application has been granted, refused, being determined, revoked, lapsed, suspended.	M

<sup>33</sup> Mandatory / Optional

<b>CONTENT</b>	<b>TYPE / FORMAT</b>	<b>DESCRIPTION</b>	<b>M/O<sup>33</sup></b>
<b>Application outcome reason</b>	<b>Reason</b>	<b>Reason (for refusals only)</b>	<b>M</b>
Refusal outcome reason	Reason (constrained type)	Reason given for the outcome: applicant(s) not fit and proper; premises not suitable; planning permission required and not held; other (free text).	M
<b>Type of premises</b>	<b>Premises</b>	<b>The type of premises to which the application relates</b>	<b>M</b>
Type of premises	Premises (constrained type)	e.g. detached home, semi-detached home, terraced home, flatted dwelling, unconventional dwelling, bed and breakfast, guest house etc.	M
<b>Short-term let type</b>		<b>The type(s) of short-term let</b>	<b>M</b>
Short-term let type	STL Type (constrained type)	One of home sharing, home letting, home sharing and home letting; or secondary letting	M
<b>Maximum occupancy</b>	<b>Number</b>	<b>The maximum occupancy as specified on the licence</b>	<b>M</b>
Maximum occupancy	Number (integer)	Maximum number of guests allowed to reside in the premises	M
<b>National Park</b>	<b>National Park</b>		<b>M</b>
National Park	National Park (constrained type)	Indicates whether the short-term let is within either Loch Lomond and the Trossachs National Park or the Cairngorms National Park or neither.	M
<b>Licence number</b>			<b>M</b>
Licence number	Licence number	As specified in <b>Annex A</b> .	M
<b>Number of bedrooms</b>	<b>Number</b>	<b>Number of bedrooms in the premises</b>	<b>O</b>
Number of bedrooms	Number (integer)		O
<b>Occupancy data</b>			<b>O</b>
Year	Year (yyyy)	Year to which data relates	M
Nights available	Number (repeatable)	Nights available, repeatable for each property	O
Nights occupied	Number (repeatable)	Nights occupied, repeatable for each property	O
<b>Manager</b>	<b>Name</b>	<b>Name</b>	<b>O</b>
Title	Title		O
Forenames	String (repeatable)		M

<b>CONTENT</b>	<b>TYPE / FORMAT</b>	<b>DESCRIPTION</b>	<b>M/O<sup>33</sup></b>
Surname	String		M
Company name	String	Company name if management is provided by a company	O
Address Line 1	String	First line of address	M
Address Line 2	String	Second line of address	O
Address Town	String	The town component of the address	M
Address County	String	The county component of the address	M
UK Postcode	Postcode	The postal code	M
<b>EPC rating</b>	<b>EPC</b>		<b>O</b>
EPC rating	EPC (constrained type)	Rating A to G	O



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