

**REVIEW OF ARGYLL AND BUTE COUNCILS SHORT-TERM LET LICENSING
POLICY**

1.0 EXECUTIVE SUMMARY

- 1.1 This report recommends changes to the Council's Short Term Let Licensing Policy to take account of issues which have arisen following a review of the scheme in the first 11 months and a letter from a solicitor, acting on behalf of the Association of Scottish Self Caterers (ASSC), advising of a possible judicial review against aspects of the Policy.
- 1.2 The licensing scheme was brought in by the Scottish Government under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, with the aim to ensure short-term lets are safe, address issues faced by neighbours, to facilitate local authorities knowing and understanding what is happening in their area, and handling complaints effectively. It also aims to balance the economic and tourism benefits from short-term lets with the needs and concerns of local communities to ensure the people providing short-term lets are suitable.
- 1.3 The Council's Short Term Let licensing scheme and Policy was approved by Council on the 29 September 2022 and has been in place since the 1 October 2022. Significant work was undertaken to establish a new team to take on this new statutory licensing scheme and this work has been challenging. As of the 28 August 2023, the Council had received 780 applications for short-term lets with 149 being from new hosts entering the sector, issued 158 licences with no refusals. The team are working through a backlog of applications. In response to representations by the sector, the Scottish Government extended the deadline for applications from existing hosts by six months to the 1 October 2023, and therefore the number of applications received is only 20% of predicted levels. This is a similar picture across Scotland and we await an influx of applications over September.
- 1.4 Amendments are necessary to the Council's Short-term Let Licensing Policy to address issues identified through operational work and a review by the Council's Legal Services in response to issues raised; the revised Scottish

Government Guidance to licensing authorities, and also to address the letter from a solicitor representing the ASSC, advising of a potential judicial review of the Council's Policy.

- 1.5 The licensing scheme is self-financing from fee income. Current application levels are only 20% of predicted levels due to the Scottish Government's six month extension, and a large number of applications from existing hosts are anticipated by the 1 October 2023.

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2.0 SUMMARY

- 2.1 The licensing scheme was brought in by the Scottish Government under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, with the aim to ensure short-term lets are safe, address issues faced by neighbours, to facilitate local authorities knowing and understanding what is happening in their area, and handling complaints effectively. It also aims to balance the economic and tourism benefits from short-term lets with the needs and concerns of local communities to ensure the people providing short-term lets are suitable.
- 2.2 This report recommends changes to the Council's Short Term Let Licensing Policy to take account of issues which have arisen following a review of the scheme in the first 11 months and a letter from a solicitor, acting on behalf of the Association of Scottish Self Caterers (ASSC), advising of a possible judicial review against aspects of the Policy.
- 2.3 Amendments are necessary to the Council's Short-term Let Licensing Policy to address issues identified through operational work and a review by the Council's Legal Services in response to issues raised; the revised Scottish Government Guidance to licensing authorities, and also to address the letter from a solicitor representing the ASSC, advising of a potential judicial review of the Council's Policy.

3 RECOMMENDATIONS

- 3.1 Members of the Planning, Protective Services and Licensing Committee are invited to:-
1. Consider this report and the revised Short-Term Let Licensing Policy detailed in Appendix 1; and
 2. Recommend to the Council approval of the revised Short-Term Let Licensing Policy.

4 DETAIL

- 4.1 The Council agreed its Short Term Let Licensing Policy on the 29 September 2022 as part of a range of measures to implement the Scottish Government's new licensing regime by the 1 October 2022 deadline. This Policy was informed by legislation, Scottish Government guidance and feedback from public consultation. The intention was that this Policy would be reviewed over the first year of the licensing scheme.
- 4.2 A review of the Council's STL Policy is necessary to address issues identified from operation of the Policy, to reflect changes to Scottish Government guidance to local authorities, lessons from the judicial review against Edinburgh Council's STL Policy and a review by the Council's Legal Services in response to issues raised. The judicial review against Edinburgh City Council related to their STL Policy for secondary let within tenement properties and their STL planning control designation, amongst other issues. In reviewing the judgement, there is minimal impact on Argyll and Bute Council's STL Policy.
- 4.3 The review process has been further informed by a letter dated 11 August 2023 from a solicitor acting on behalf of the Association of Scottish Self Caterers, highlighting a number of issues with the Policy and referring to a possible judicial review. Specific comments were made to our Policy for variations (section 13), temporary exemptions (section 10), temporary licences in section 12.1.2, the need for revised wording for timescales and revisions to our pre-application checklist to confirm that formal architectural drawing are unnecessary, The Council reviewed matters along with its external legal advisers with the intention of minimising the potential risk of a judicial review. These issues have been addressed in this Policy review.
- 4.4 The revised Short Term Let Policy (see Appendix 1) is provided for members' consideration and approval. The key changes are as follows:
- a) Amendments to the text to reflect the Scottish Government extension to the 1 October 2023 for existing hosts to make application and to future proof the Policy in areas relating to fees and charges. Reference and links to the Council's fee and charges is provided, together with indicative fees for 23-24, to negate the need for the Policy to be amended and approved by Council annually.
 - b) To amend the Hearings process, in light of learning from the first STL hearings by PPSL Committee on the 21 June 2023, and to provide consistency with the Councils civil government licensing hearing procedures. This was approved by PPSL Committee on the 23 August 2023 and this decision is reflected in changes to section 6 of the revised Policy.
 - c) To remove the additional conditions relating to the provision of bicycles, boats and watercraft, and play equipment which were generally welcomed through the public consultation in 2022. Further consideration and legal advice has identified that these are covered by other legislation and do not specifically relate to the property. The sector also advise that these are covered by public liability insurance. Accordingly, Appendix 4 of the revised Policy is amended to remove these additional conditions.

If approved, these conditions will be removed from licences already issued and not enforced.

- d) To amend the Policy to remove temporary exemptions and replace section 10 to state that the Council will not consider temporary exemption. The outcome from the public consultation in 2022 identified that 78% of respondents supported the position that we did not provide temporary exemptions, but 22% indicated that this was important to support rural and island communities. Accordingly, the Policy approved by Council on the 29 September 2022, allowed for temporary exemptions to the requirement for a licence for a single continuous period not exceeding 6 weeks in any 12-month period to cover major events where accommodation is provided in homes and other properties for short periods. This aspect of our Policy is challenged by the ASSC and on review it is considered that there is a need to amend the definition to align to the new Scottish Government Guidance (August 23) and to identify criteria for assessment. To date we have not received any applications and we are entering the period of the year when applications are unlikely due to reduced festivals and events. The impact of removing temporary exemptions is minimal and further work is required to consider this matter in more detail and benchmark with other local authorities. There is a mixed picture across Scotland with many of the other rural authorities, including Scottish Borders and Dumfries and Galloway, not providing temporary exemptions. Therefore, to provide time to consider this matter in more detail, and to minimise the risk of judicial review, Section 10 of the Policy is replaced with **“The Council will not grant temporary exemptions. This position will be kept under review”**.
- e) Amendments to fees and charges in section 17.5 to remove reference to temporary exemption and the 50% of the fee.
- f) Addressing the issues raised in the letter from the ASSC solicitor, the wording on the pre-application checklist has been amended to provide clearer guidance to applicants and in particular, confirming that drawings provided need not be formal architectural drawings.
- g) Section 12 (complaints and enforcement) has been amended to reflect the current status and deadlines with the application process.
- h) Section 13 Variation to Licence was challenged by the ASSC. On review, the legal advice supports the Council’s position, but suggest that revised wording would assist to make the position clearer. The revised Policy adds the following wording to apply to variations of licence where “the short term host is a corporate entity and the incoming purchaser is added as a director to that body corporate”.

5 SHORT-TERM LET LICENSING UPDATE

- 5.1 The last year has been challenging as the team were not fully recruited until March 2023, despite the scheme coming into effect on the 1 October 2023.

The initial focus was on establishing and training the team, developing processes and testing the Council's in-house on-line STL information management system, whilst responding to enquiries from hosts and considering applications. Priority given to applications from new hosts as existing hosts could still operate. The Scottish Government's decision for a six-month extension to the deadline for existing hosts to apply for a licence to the 1 October 2023 was beneficial in managing workload although it has delayed any consideration of short-term let planning control areas to 2024-25 as the exact number and location of short-term lets will not be known until after 1 October 2023.

- 5.2 There is a period of learning with any new licensing scheme and the last year has seen amendments to procedures, information to hosts and improvements to our ICT system. The Scottish Government also issued revised guidance to local authorities in August 2023. The Council also established regular meetings with ASSC and Wild Argyll in an effort to work with these agencies, respond to issues and support the sector across Argyll and Bute.
- 5.3 As of the 28 August 2023, the Council had received 780 applications for short-term lets with 149 being from new hosts entering the sector, issued 158 licences with no refusals. The team are working through a backlog of applications.
- 5.4 With the 1 October 2023 deadline for existing hosts to apply for a licence, the Council have a communication strategy in place encouraging hosts to make an application. It is anticipated that there will be in the region of 3,500 hosts and recruitment is ongoing for temporary staff to augment the SLT team as the Council have 12 months to determine applications from existing hosts. Enforcement issues relating to hosts who do not apply but continue trading, are unknown at this stage but being considered.

6 CONCLUSIONS

- 6.1 The Council has adequate arrangements in place to provide a short-term licensing scheme and the year ahead will be extremely challenging as the team assess and determine an anticipated 3,500 applications. This is likely to be impacted by possible enforcement action, delay from hosts, or third party consultees, in providing the right information and resourcing of the team given the Government provided the council with no additional resources to do this work.
- 6.2 Revisions to the Council's Short-Term Let Policy are necessary to support the licensing regime, the sector and to minimise any potential risk of judicial review. Members are encouraged to approve the revised STL Policy as detailed in **Appendix 1**.

7 IMPLICATIONS

- 7.1 Policy Consistent with the Council's Corporate Plan and statutory duty.
- 7.2 Financial The licensing scheme is to be self-financing from income levels. Estimates used to set fees and will be closely monitored. Fees will be reviewed regularly and for the next three year licensing period.
- 7.3 Legal (1) Meets Council's new mandatory duty under Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022, and associated guidance.
(2) Recognises expert legal opinion sought by the Council.
- 7.4 HR Additional temporary posts are being recruited funded by income.
- 7.5 Fairer Scotland
- 7.5.1 Equalities No adverse impact on protected characteristics and scheme impacts on all providers.
- 7.5.2 Socio-economic Ensures that let accommodation is safe, applies consistent standards across all sectors and protects communities.
- 7.5.3 Islands Licensing scheme will be consistently applied across the whole of Argyll and Bute.
- 7.6 Climate change Conditions support climate change and environment standards.
- 7.7 Risk (1) Council's legal duty will be met on approval of the scheme.
(2) Inadequate resources are in place to deliver the full scheme as of the 1 October, and situation will be managed to ensure we can receive and determine applications from "new hosts".
(3) Income does not fully cover expenditure or over-recovery. This will be monitored.
(4) Reduces the risk of a potential judicial review against the Council's STL Policy.
- 7.8 Customer Service Consistent with customer charter.

Kirsty Flanagan, Executive Director with responsibility for Development and Economic Growth

Policy Lead: Councillor Kieron Green

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13 September 2023.

Appendix I: Revised Argyll and Bute Short-term Let Licensing Policy