
ARGYLL AND BUTE COUNCIL'S SHORT TERM LET LICENSING SCHEME

1.0 EXECUTIVE SUMMARY

- 1.1 This is a briefing report to Committee on the arrangements for the Council's Short-term Let Licensing scheme. Council will consider the attached report on the 29 September 2022 with recommendations to approve the licensing policy, additional conditions, fees and charges; agree initial priorities; and amend the Council's Scheme of Delegation giving authority to the Executive Director with responsibility for Regulatory Services, to authorise the environmental health service to deliver the new licensing regime.
- 1.2 This work has been very challenging and carried out in a very short timescale. The Scottish Government expects each local authority to develop its own scheme, subject to compliance with legislative requirements and guidance, including its own charging and fee structures. As a result, and to ensure the Council has a formal licensing system in place of the 1 October 2022, it has been necessary to take this report to Council on the 29 September 2022 for consideration and approval of the scheme and fees, without the opportunity for early consideration by the Planning, Protective Services and Licensing Committee.
- 1.3 The licensing scheme was introduced 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 across Argyll and Bute. This is therefore a statutory obligation of the Council going forward.
- 1.4 The Council carried out a formal public consultation on initial draft proposals over a three-week period that ended on the 5 August 2022. There was a very healthy and generally positive response and the key outcomes from the consultation have influenced the final scheme and licensing policy
- 1.5 A new licensing system is ready for Committee consideration and meets the Council's new statutory duty. No additional resources have been provided by the Scottish Government to deliver the scheme but recruitment is ongoing to establish a new short-term let licensing team.

1.6 The licensing scheme will be self-financing from fee income. The Council have assessed all relevant information and databases to identify the total number of short-term accommodation premises in Argyll and Bute that fall within this licensing scheme. The Council's Non-Domestic Rates (NDR) statistics indicate 2,650 properties although the actual numbers are likely to be significantly greater. Unfortunately, despite taking advantage of a number of different databases available to the Council, it is impossible to provide an exact total. A cautious approach has however been taken in setting fees and charges and resourcing for the licensing scheme, and income/expenditure levels will be closely continuously monitored.

1.7 **Recommendations:**

The PPSL Committee is asked to recommend to Council that they:

- a. note the considerable work undertaken to develop the new licensing regime in a challenging timescale, and without any additional funding or resourcing from the Scottish Government.
- b. welcome the high level of responses to the public consultation, and recognise that many of the issues raised have been incorporated into the final licensing regime.
- c. approve the Short-term Let licensing regime, Licensing Policy, additional conditions and fee and charges as set out in sections 5.4 and 5.6
- d. note the intention to focus on "New hosts" initially until resources in place.
- e. amend the Council's Scheme of Delegation to delegate responsibility for the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 to the Executive Director with responsibility for Regulatory Services, to enable the Council's Environmental Health Service to authorise officers to deliver the Short-term Let licensing regime

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2.0 INTRODUCTION

- 2.1 This report seeks approval of the arrangements for the Council's Short-term Let Licensing scheme. 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 Local authorities must introduce a new mandatory licensing system for short-term lets for the 1st October 2022 to receive applications from existing and new "hosts" and thereafter determine them. The scheme will cover a wide range of residential accommodation including, but not exclusively, self-catering properties, B&B's, guesthouses, glamping pods and yurts.
- 2.3 Despite the challenging timescale, a licensing system has been developed for Committee consideration and approval. This process has involved considerable work by an Officer Steering Group, formal public consultation on draft proposals, the development of an in-house digital information management system to make and receive applications, a new licensing policy, and a fees and charges structure. The outcomes from public consultation have influenced the final licensing system.

3 RECOMMENDATIONS

- 3.1 The PPSL Committee is asked to recommend to Council that they:
- a. note the considerable work undertaken to develop the new licensing regime in a challenging timescale, and without any additional funding or resourcing from the Scottish Government.
 - b. welcome the high level of responses to the public consultation, and recognise that many of the issues raised have been incorporated into the final licensing regime.
 - c. approve the Short-term Let licensing regime, Licensing Policy, additional conditions and fee and charges in sections 5.4 and 5.6.
 - d. note the intention to focus on "New hosts" initially until resources in place.

- e. amend the Council's Scheme of Delegation to delegate responsibility for the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 to the Executive Director with responsibility for Regulatory Services, to enable the Council's environmental health service to authorise officers to deliver the Short-term Let licensing regime.

4 DETAIL

- 4.1 An Officer Steering Group has developed the new Short-term let licensing regime to meet the Council's statutory duty. This work has been challenging and has involved a formal public consultation on draft proposals, the development of an in-house digital information management system to make and receive applications, a new licensing policy, and a fees and charging structure. Subject to approval, the Council will be in a position to receive applications initially from new hosts, until new posts have been recruited which is likely to be December 2022. The scheme is to be managed and delivered by the Council's environmental health service as there are synergies with their existing work in private landlord registration, houses in multiple occupation and caravan site licensing.
- 4.2 The public consultation on the Council's draft policy statement for short-term let licensing ended on 5th August 2022. In total 552 responses were received, with a significant majority of respondents agreeing with the Council's proposals. The recommendations in this report have been developed from an analysis of the consultation are detailed in **Appendix 1**, have been agreed by the Council's Short-term Let Steering Group and are built into the proposed scheme, namely:
 - i. The consultation supports including children under the age of 10 in setting occupancy levels.
 - ii. The consultation supports the adoption of all of the proposed additional conditions as set out in the draft policy statement with minor modifications.
 - iii. The consultation identifies that the Council should consider providing temporary exemptions from the requirement to hold a licence. This is an important flexibility for island communities and in relation to events such as the Tarbert series and the Cowal Games. There requires to be some protection for the security of tenure of private tenants.
 - iv. The consultation identifies a role for temporary licences to be considered in limited circumstances, for example, to ensure that short-term lets can continue as going concerns when being sold from one operator to another.
 - v. Fees and charges were inevitably controversial and attracted much comment. The setting of differential fees for home letting and home sharing compared with secondary lets was nevertheless generally supported, in line with Scottish Government guidance.
 - vi. The proposed fee structure was more controversial, with most respondents dissatisfied that the actual fee levels could not be included in the consultation.

- 4.3 **Licensing Policy.** The licensing policy (**Appendix 2**) details the key details of the scheme for Council's approval. This provides the policy against which applications will be considered and specifies arrangements for temporary exemptions, temporary licences planning control areas, conditions and a range of other critical areas.
- 4.4 **Licensing Processes.** The processes generally mirror the Council's existing civic government licensing processes, and are being adapted to meet the short-term let licensing requirements. The draft policy was part of the recent public consultation and amended to reflect public feedback.
- 4.5 **Additional Conditions.** All licensed short-term lets will be required to comply with a set of mandatory conditions that apply across all of Scotland. The mandatory conditions are set out in the Order and Councils have a discretionary power to impose additional conditions for short-term let premises. Recognising some of the current issues relating to let accommodation, draft additional conditions covering the areas of antisocial behavior, littering and waste disposal, noise control in flats properties, and damage to properties, guest safety (hot tubs, swimming pools, barbecues and other equipment) were consulted on. These were amended in light of consultation responses, and legal advice has confirmed that they are not "ultra-vires" and can be defended if challenged. The proposed additional conditions are detailed in Appendix 2.
- 4.6 **Temporary Licences.** Whilst not initially intending to issue temporary licences, consultation feedback identified that there would be instances where temporary licences would be appropriate. The main area would be in the sale of a licensed property, where a grant of a temporary licence would allow the property to continue to operate, as the licence is specific to the owner and not the short-term property. The Council's licensing regime includes temporary licences.
- 4.7 **Temporary Exemptions.** The Order provides temporary exemptions to the requirement for a licence for a single continuous period not exceeding 6 weeks in any 12-month period. This could cover major events where accommodation is provided in homes and other properties for a short period. Initially, the Council's draft scheme did not intend to provide for this exemption, but following public consultation, this has been incorporated into the licensing policy
- 4.8 **Short-term Let Control Areas.** The Order permits planning authorities to establish Short-term Let Control Areas requiring a dwellings within the designated areas used for secondary letting on a short-term basis within the designated areas, to obtain planning approval for a "material change of use". This is not a ban on short-term lets but allows planning policies to assess the use of a dwelling. **No Short Term Planning Control Areas will be in place at inception of the Councils' Short Term Let Licensing regime on the 1st October.** Careful consideration on the impact of the scheme on housing supply, tenure and availability is required and must be "data driven". This work will commence in 2023.
- 4.9 There is currently no staffing capacity within the existing licensing, or environmental health teams, to take forward the short-term let licensing

regime and the determination of large volume of applications in the 21 months following the 1st October. This will require a permanent core team of 1 Team Lead, 1 Enforcement Officer and 1 Licensing Assistant with another Licensing Assistant and Licensing Officer employed on a fixed term contract. Additional Temporary Licensing Assistants will be required at busy times, although recruitment of a Modern Apprentice will also assist the team and at the same time offer a job opportunity for a young person. These posts are currently advertised and the team should be in place early December. Prior to recruitment, public expectations will be managed through active communication with the short-term let sector and wider general public.

5 Fees and charges

- 5.1 The Scottish Government did not provide any additional funding to local authorities to develop and implement this new duty, and consequently the scheme will need to be self-financing through short-term let licensing income. Each local authority is required to set its own fees and charges having regard to Scottish Government Guidance “Short Term Lets in Scotland Licensing Scheme- Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms”. These fees must cover all expenditure associated with delivering and enforcing the short-term let licensing regime.
- 5.2 There is some uncertainty about the total number of short-term accommodation premises in Argyll and Bute will fall within this licensing scheme. The Council’s Non-Domestic Rates (NDR) statistics indicate 2,650 properties although the actual numbers are likely to be significantly greater. Unfortunately, despite taking advantage of a number of different databases available to the Council, it is impossible to provide an exact total at this time. Consequently, to project expenditure to deliver the new licensing scheme and in develop a charging regime, an estimate was used, informed by all relevant data at our disposal. A cautious approach has also been adopted, assuming 3,500 properties, and the Council’s fees will be revised again once all properties once have been licensed and in advance of the next 3 year licensing regime. Fees will be being increased, or decreased accordingly, subject to income and expenditure levels.
- 5.3 The Scottish Government recommend that local authorities establish a fee structure that takes account of the **type of licence** with lower fees set for home sharing and home letting licences than for secondary letting licences; and **guest capacity** in terms of the maximum number of guests.
- 5.4 Following careful consideration and taking into account the views from the consultation, the weighting and bandings have been reduced. A standard fee was based on the Council’s existing civic government licence fees (£524; £452 and £271) as short term let licensing mirror these processes. The mid-range fee of £452 was adopted to minimise the potential for over recovery of fees based on estimated properties requiring a short-term let licence. Applying a weighting and banding structure (see **Appendix 3**) consistent with Scottish Government guidance, the following fees are therefore proposed to cover a three year license period for each property:

Guest capacity applied for (including children under the age of 10)	Home sharing or home letting licence	Secondary letting licence
Up to 4	£226	£316
5 to 8	£316	£452
9 to 12	£497	£678
13 to 20	£633	£904
21 and over	£814	£1130

For comparison, the House in Multiple Occupation license fee for premises with 10 or more people is £1,101. The lowest fee of £226 under this model is also less than the lowest standard band of other Civic Government license fees of £275. An example of this is a license for a window cleaner.

- 5.5 Projected costs to deliver the licensing scheme are £1.32M (million) over a three-year period to March 2026, including start-up costs for 22/23. Projected fee income is worst-case scenario (based on the 2,650 properties) is £1.03M with mid-range (based on 3,500 properties) of £1.37M.
- 5.6 The legislation permits the recovery of enforcement costs where an intervention is required to properties arising from ongoing complaints or whether there is a failure to comply with conditions relating to the premises. The decision to charge will be based on the principles of proportionality in accordance with Councils and Regulatory Services Enforcement Policy and the Scottish Government's Strategic Enforcement Code. This has been built into the proposed additional charges outlined below.

Additional charges	
Temporary Licence	50% of fee
Variation in Licence/change in circumstances	£77
Certified copy of licence/duplicate licence	£41
Temporary exemption application	50% of fee
Enforcement charge (Hourly rate)	£94.30

6 CONCLUSIONS

- 6.1 The short term licensing scheme detailed in this report meets the mandatory duty placed on the Council for short- term let accommodation. The Council carried out a public consultation on the proposed scheme and made changes to the initial proposals. Concerns from the business community have been expressed that fees are likely to be excessive and adversely impact on their ability to continue trading. The fees put forward by this report are designed to simply recover all costs occurred by the Council and in no way considered excessive. The fees proposed equate to £76 annually (licensing fees cover a 3 year period) for a small bed and breakfast with less than 4 guests; and £151 annually for a self-catering property for 6 guests.

- 6.2 This is only the first stage of the process as we need to recruit staff as detailed in this report and then deliver the licensing scheme. The council as Planning Authority for much of Argyll and Bute together with the Loch Lomond and the Trossachs Parks Authority will also require to consider the necessity for any Short-term Let Planning Control Areas to be introduced.

7 IMPLICATIONS

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| 7.1 | Policy | Consistent with the Council's Corporate Plan and new 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 | Meets Councils new mandatory duty under Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, |
| 7.4 | HR | New 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) Councils 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 |
| 7.8 | Customer Service | Consistent with customer charter |

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

Policy Lead: Councillor Kieron Green

For further information: Alan Morrison, Regulatory Services and Building Standards Manager

20 September 2022.

Addendum – Report to Council on 29 September 2022