



Regulation of Short Term Lets

Summary Note

The Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021 has brought significant change to the regulation of short-term letting in Scotland. This is in implementation of the government's planning policies which has introduced the following:

1. A licensing regime for short-term lets in Scotland; and
2. Local authorities given the power to designate "short-term let control areas" in which planning permission would be required to change the use of a property from residential to a short-term let property.

The Licensing Regime

The relevant legislation is the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 which came into force on 1 March 2022. Following the Order coming into force the Scottish Government published detailed guidance on the legislation for further reading:

Scottish Government, Short Term Lets in Scotland Licensing Scheme: Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms - <https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-2-supplementary-guidance-licensing-authorities-letting-agencies-platforms-3/>

Scottish Government, Policy Note: The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order SSI 2022/32- <https://www.gov.scot/publications/short-term-lets/>

After some initial delay, the regime will commence from October 2023.

As a result, from 1 October 2023, a host of a short term let will require to have a licence granted by the relevant licensing authority before being able to operate.

The legislation refers to the terms "Host" and "Guest". Host is widely defined essentially meaning anyone who has control over the property. It is expected to be an owner but could also cover a tenant or other occupier who will be operating the property as a short-term let.

How does the legislation define a Short Term Let?

Although stating the obvious, it is only a Short Term Let which requires a licence. The definition of a short-term let is laid down in the regulations as follows:

“the use of residential accommodation provided by a host in the course of business to a guest, where all of the following criteria are met:

1. *The guest does not use the accommodation as their only or principal home;*
2. *The short-term let is entered into for commercial consideration;*
3. *The guest is not:*
 - a. *An immediate family member of the host;*
 - b. *Sharing the accommodation with the host for the principal purpose of advancing the guest’s education as part of an arrangement made or approved by a school, college or further or higher educational institution; or*
 - c. *An owner or part owner of the accommodation;*
4. *The accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household;*
5. *The accommodation is not excluded accommodation;*
6. *The short-term let does not constitute an excluded tenancy.”*

One point to note from the above definition is there is no time limit for a short-term letting. In saying that, many longer lettings may fall within the ambit of PRTs, however, this cannot always be assumed.

It must be the provision of accommodation “in the course of business”. Note, however, that it does not matter whether the use of the short term letting is for business or leisure.

Excluded Accommodation in which a Licence is not required:

1. An aparthotel;
2. Licensed premises;
3. Hotel;
4. Hostel;
5. Residential accommodation where personal care is provided to residents;
6. Hospital or nursing home;
7. Residential school, college or training centre;
8. Secure residential accommodation (e.g. prison, secure hospital);
9. A refuge;
10. Student accommodation;
11. Accommodation which otherwise requires a licence for use for hire of overnight stays;
12. Accommodation which is provided by the guest;
13. Accommodation which is capable, without modification, of transporting guests to another location;
14. A bothy; or

15. Accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employees duties.

The below table provides some specific examples which consider whether a licence will be required:

<u>Type of Activity</u>	<u>Is a Licence needed?</u>
Offering accommodation via Airbnb or other short-term letting platform in the summer months	Yes
Offering accommodation via Airbnb or other short-term letting platform all year round	Yes
Glamping let	Yes, unless within a park with a caravan site licence
Taking in a lodger	Sometimes, eg not if the property is the lodger's only or principal home, or the lodger is a close relation
House-swap	Yes, if a commercial arrangement
Dog or house-sitting arrangement	No
Private residential tenancy	No
Student residential tenancy	No
Operating a hotel	No, if already licensed under the Licensing (Scotland) Act 2005
Operating a bed and breakfast	No, if already licensed under the Licensing (Scotland) Act 2005
Operating a care home	No
Timeshare arrangement	No

Four types of short-term lets

The 2022 Licensing Order sets out four types of short-term lets, these are:

1. Secondary Letting

This is where the accommodation is not, or not part of, the host's only or principal home.

2. Home Letting

This is where the accommodation is, or is part of, the host's only or principal home but the host will be absent during the let.

3. Home Sharing

This is where the accommodation is, or is part of, the host's only or principal home and the host will be present during the let.

4. Home Letting and Home Sharing

This is a mixture of 2 and 3 above where the host may be present for some of the time.

For the purpose of the application, the applicants require to identify which licence they wish to apply for.

How many licences?

Where accommodation is on a single premises then only one licence is required. For example, a bed and breakfast set up would require one licence only. However, one owner who has three separate premises but offering the same accommodation type will require three separate licences. The rule of thumb is one property, once licence.

The Application Form

The application form is made in writing to the relevant local authority and is required to be signed by the applicant or their agent.

The following is a summary of the information required to be submitted as part of the application:

1. The type of short term licence to be applied for – i.e secondary or home letting.
2. Full details of the applicant, including full name and address, contact number as well as all addresses held within the last 5 years. Note that details must also be provided for any employee or agent who will be carrying out the day-to-day management of the property if it is not to be the applicant.
3. If the applicant is a company or other entity type, then full details of the entity should be included together with the full details of all directors and employers/agents who will be carrying out the day-to-day management of the short term let.
4. If the applicant is not the owner, then the owner's details must be provided together with a declaration from the owner consenting to the application.
5. If the applicant is a co-owner, then the details of all other co-owners must be given as well as their consent to the application.
6. The full property details must be given together with the number of bedrooms.
7. The applicant must disclose details of any other short-term licences they hold.

There is also a "fit and proper" test for the applicant. If the applicant has, for example, relevant convictions, provided misleading information as part of the application or is banned from being a private landlord then this will likely count against the applicant.

Temporary Licence

A temporary licence is one which lasts for up to 6 weeks unless the applicant has also applied for a permanent licence. In this case, the temporary licence may continue in effect until that application is determined.

Fees

This is local authority specific although the legislation states that fees must be reasonable.

The current fees set out by Perth and Kinross Council are as follows:

Secondary Letting for 1-2 Guests: £350

Secondary Letting for 3-6 Guests: £530

Secondary Letting for 7-10 Guests: £900

Secondary Letting for 11+ Guests: £1600

For the full fee scale, please see https://www.pkc.gov.uk/media/50149/Short-term-Let-Fees/pdf/Short-Term_Let_Fees.pdf?m=638086035991930000

Determination of applications

Each application is allocated a unique licensing number, this can be used as a temporary licence number.

The application requires to be advertised either online or in a local newspaper. This will be done by the local authority and a site notice must also be displayed for 21 days. There is then a 28 day period to lodge objections.

There are four grounds for refusing an application:

1. The applicant is not a “fit and proper” person.
2. The let will be carried on by a person other than the application and if that person has applied the application would be refused.
3. The property is not suitable to be subject to a short-term let having regard to (i) its location, character or condition, (ii) the nature and extent of the proposed short-term let, (iii) the kind of persons likely to be in the property, (iv) the possibility of undue public nuisance, or (v) public order or public safety.
4. There is other good reason for refusing the application.

The licence only lasts for a maximum of three years and its details are entered into the local authority’s register of licence applications.

If a licence application is refused, there are limited grounds for appeal to the Sheriff Court.

Mandatory Licence Conditions

There are a number of conditions which must be met by the licence holder, to summarise these are:

1. Agents
Only the named licence-holder can carry out the day-to-day management of the letting. If other persons are involved then they must be named on the application.

2. Types of Licence
The type of licence which is stated on the application may only be operated at the property.
3. Fire Safety
There must be satisfactory detection equipment in respect of the fire and carbon monoxide installed. There must also be records so confirm that upholstered items meet fire safety regulations.
4. Gas Safety
There must be an annual inspection of any gas-supply equipment. If it fails for any reason then short-term letting is forbidden until remedial works are undertaken.
5. Electrical Safety
The licence holder is required to ensure that all electrical equipment is in a reasonable state of repair and in proper and safe working order. An EICR must be prepared on fixed installations and PAT testing in relation to all moveable appliances.
6. Water Safety- Private Supplies
If there is a private water supply, there must be compliance with the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017, SSI 2017/282.
7. Water Safety- Legionella
There is a requirement to assess the risk from exposure to legionella within the property.
8. Safety and Repair Standards
The property is required to be safe for residential use and where appropriate meet the typical repairing standard in chapter 1 of part 1 of the Housing (Scotland) Act 2006.
9. Maximum Occupancy
The number of guests living in the property must not exceed the number permitted by the licence.
10. Display of Information
A certified true copy of the licence and the licence conditions, fire, gas and electrical safety information, details of how to summon the assistance of the emergency services and copies of safety reports.
11. Planning Permission
If the property is located in a short-term let control area and requires planning permission then this needs to be applied for.

12. Listings

Any listing or advertisement for the short-term let must include the licence number and a valid EPC rating.

13. Insurance

There must be valid buildings insurance for the duration of each short-term let.

14. Fees

Fees due to the licensing authority must be paid on demand.

15. False or Misleading Information

The licence-holder must not provide any false or misleading information to the licensing authority.

Sanctions

The requirement to have a short-term license in place takes effect from 1 October 2023. It is a criminal offence to commence operating a short-term let without holding a licence in the absence of a reasonable excuse.

Temporary Exemptions

It is possible to apply to the licensing authority for a temporary exemption from the licensing requirements. The period for the temporary exemption cannot exceed six weeks.

The Scottish Government policy note states that this may be used where the licensing authority needs a significant amount of additional capacity over a short period eg festivals, sports events. Licensing authorities were required by 1 October 2022 to publish a policy statement in relation to temporary exemptions.

Short Term Let Control Areas

The relevant legislation implementing the introduction of short term control areas is the Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021.

A local authority has the power to designate an area within its remit as a "Control Area". As a result, any property within such an area will require planning permission to change its use from a dwellinghouse to short term let accommodation. In planning speak, it constitutes a development and there will require planning consent.

Note the exceptions at S26B(3)(b) of the Town and Country Planning (Scotland) Act 1997, which is where the tenancy constitutes a Private Residential Tenancy or where all or part of the property is the only or principal home of the landlord.

There is currently only one Short Term Let Control Area- City of Edinburgh (entire local authority area).

Highland Council has also had part of its area – Badenoch and Strathspey – approved by the Scottish Ministers as a control area. It is likely that more will follow, particularly in areas where there is large demand for short term lettings.

There has already been litigation on the 2021 Regulations involving City of Edinburgh Council. A judicial review was launched by petitioners who operated a short term let business in Edinburgh. Each local authority is able to issue its own policy note in respect of short-term letting. As part of the policy note produced by City of Edinburgh Council, it stated there was to be a “rebuttable presumption” against the grant of a short-term licence in respect of secondary letting in tenement or shared main door accommodation. The Court held that it is unlawful to make such a distinction. As a result, the Council will have to reconsider its general approach in light of the decision with no distinction permitted in terms of private and shared door accommodation.

For further information, please contact any of our solicitors at J & H Mitchell W.S.

*Although carefully prepared, this Fact Sheet is intended as a guide only.
Specific and specialist legal advice should be sought on individual situations,
including the precise content of any charitable constitution,
Policies, Register of Interests, Remuneration Agreement, etc.*

© J & H Mitchell W.S.

This is one of a series of Fact Sheets by J. & H. Mitchell W.S..

Others can be found at www.jandhmitchell.com

2017 edition