



## ASSC Briefing: Scottish Local Authority Licensing Schemes – Final Policies

### Introduction

- At 26<sup>th</sup> October, **25** local councils have now finalised their short-term let licensing policies and operators are able to submit applications. **7** local councils have not – of these, some have just recently finished consultations on draft policies, while others are still consulting.
- Aberdeenshire is not accepting applications until after January 2023, while Argyll & Bute is only accepting applications for new operators until 2023.
- Several local authorities, including Fife and Edinburgh, have acknowledged that their policies are open to legal challenge, which is now being explored.
- As a recent ASSC survey from October 2022 has shown, licencing continues to be a significant concern for the majority of businesses with over **70%** concerned about the licence not being granted. **87%** consider the scheme to be 'burdensome'. **49%** have considered stopping letting their property. A staggering **94%** of those that might sell up say that their property would not be available for affordable housing.
- Since the short-term let legislation was passed by the Scottish Government, and as we moved towards the implementation stage and licensing schemes going live across the country, the ASSC committed to supporting short-term let operators navigate through the legislation.
- Alongside stakeholder partners, the ASSC has hosted 26 Regulation Roadshow events<sup>1</sup>, with sessions open to operators of all types of short-term lets, as well as representatives from local authorities, agencies and anyone with an interest in the implementation of the legislation.

As councils have published their final short-term let licensing schemes, this briefing sets out the following:

- The large variation in fees set by councils across Scotland
- Different approaches taken by councils on planning permission
- Examples of additional conditions set by councils which set disproportionate costs on businesses and which go beyond the policy intentions of licensing.

### Short-Term Let Licensing Fees

- Based on information from local councils, the ASSC has analysed the short-term let licensing fees published so far which strongly indicates that the figures have not been set on a cost recovery basis.
- For those secondary lets accommodating four or more occupants, the **average fee for a license is over £1,000** which will have implications for the viability of many businesses.
- The Scottish Government's More Homes Division have suggested that ***"the majority of the fees published so far by local authorities ... fall within the estimate of £214 to £436 for a three-year licence predicted in the Scottish Government's Business Regulatory Impact Assessment, and follow our guidance to tailor according to licence type and accommodation size"***.
- However, regardless of these assurances, it is clear that they are clearly far higher than Landlords Register Fees, of which there are three: Principal Fee: £68; Property Fee: £16 (per let property); and Late Application Fee: £137. They are also higher than many HMO fees in a variety of local authority areas<sup>2</sup>.

<sup>1</sup> ASSC Regulation Roadshow Events: Supported by 25 DMOs / local authorities / trade partners; 2,290 miles travelled in person; face to face engagement with 3,298 people; and a total reach of 10,099\* (in person and videos watched).

<sup>2</sup> Page 78 <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2021/11/short-term-lets-business-regulatory-impact-assessment2/documents/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/short-term-lets-licensing-scheme-planning-control-area>

- As Table A below shows, the average fees for both homesharing/letting and secondary letting for those accommodating more than 4 occupants averages above £1,000. Such costs – coupled with compliance with existing regulation as well as energy price increases – may force some operators out of business.
- Additional costs will have to be passed onto guests in a price sensitive market. If this becomes too prohibitive, visitors simply won't choose to holiday using self-catering in Scotland, thereby damaging a key component part of our tourism industry.

Table A: Fees Compared – Homesharing/letting vs Secondary Letting	
Homesharing/letting 3 year license	Secondary Letting 3 year license
Fees range from £125 to £3600. Median = £1737 Average across all occupancy numbers = £817 Average up to 4 occupants = £396.35 Average from 4-10 occupants = £1006	Fees range from £250 - £5869. Median = £2809 Average across all occupancy numbers = £880 Average up to 4 occupants = £421 Average 4 occupants or more = £1274

- The secondary letting figures for City of Edinburgh, Dundee City Council and Perth & Kinross Council are particularly stark when compared to other local authorities for equivalent sized properties.
  - Edinburgh: 11-15 occupants is **£3,872** and for 16-20 occupants, it is **£5,869** - for a **one-year licence**;
  - Dundee: **£3,100** for 12-20 occupants on a three-year licence; and
  - Perth and Kinross: **£1,600** for 11+ occupants.
- Moreover, many councils are proposing that a short-term let licencing **application include a layout plan at scale 1:100** which should include a legend explaining the scale used and the symbols used. Such technical layout plans may necessitate an expensive piece of work by a contractor which will be another cost on legitimate small businesses operating without issue for decades. This will be in addition to the cost of a licence fee (currently unknown), compliance with existing regulations, the mandatory and additional conditions, not to mention other factors such as rising energy costs.
- It is further disappointing that **planning fees have increased in 2022**, with an additional 25% supplement for retrospective planning permission applications being introduced on 1<sup>st</sup> October 2022 by some local authorities<sup>3</sup>.

### Planning Permission

- Part of the licensing order for short-term let licensing includes provision for local authorities to ask for evidence of planning permission. Different local authorities are taking a different approach to this.
- The Scottish Government 2021 BRIA noted that: *“Costs related to planning are set out at Annex C1. Planning consent for a change of use might be expected to cost the applicant in the region of £520 to £1,000. It should be noted that this one-off cost only applies if a local authority requires planning approval for use of the property as a short-term let. Where this condition arises from existing planning law, these costs are already part of the business as usual. **Where the requirement arises because of the designation of control areas, then these costs only apply where there are concerns that short-term lets are imposing significant negative impacts on local communities.**”<sup>4</sup>*
- The BRIA quotes out of date figures, with planning application fees having increased in April 2022 to £600 per square metre, plus associated architectural drawings and advertising.
- **The requirement for planning permission may prevent the granting of a licence**, and not only if you are in a planning control area. Councils can exercise their right to preliminary refusal if there is no

[legislation-business-regulatory-impact-assessment-bria/govscot%3Adocument/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria.pdf](https://www.scotland.gov.uk/Information/Statistics/2021/02/legislation-business-regulatory-impact-assessment-bria/govscot%3Adocument/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria.pdf)

<sup>3</sup> <https://www.assc.co.uk/planning-fees-in-edinburgh/>

<sup>4</sup> Page 45 of BRIA

planning in place or applied for. Applicants will have three months to exhibit proof of planning consent or certificate of lawfulness (COL), or that they have applied for planning or a COL.

- Other local authorities are taking a more pragmatic approach and only requiring evidence of planning in Planning Control Areas.

### **Maximum Occupancy**

- The licence holder must ensure that the number of guests residing in the premises does not exceed the number specified on the licence. The BRIA Estimates “a **£22 one- off** cost to provide a dimensioned layout of the property, where this is needed. There may be additional costs in providing the local authority with information to justify a maximum occupancy that appears high (e.g. 10 people in a two-bedroom property)”<sup>5</sup>.
- However, various licensing authorities including Orkney and Argyll & Bute are going beyond this and asking for **floor plans** reflecting 2005 Act liquor licensing including premises drawings. These plans cost approximately £600+VAT to have drawn up and cannot be done by the operator themselves.

### **Additional Conditions**

- Some councils are applying much more onerous and widely ranging additional conditions than others. While the 2022 Order grants local authorities the power to set additional conditions, many are stretching the boundaries of the legislation.
- Many of the additional conditions are wholly unnecessary. **This is either due to a replication of mandatory conditions; that they do not relate to the provision of accommodation through short-term letting; or are not within the control of the individual operator.**
- Some councils are proposing that the licence holder must ensure that the **bedrooms, living room and hallway in the premises are carpeted**. Applying a condition that the licence holder must ensure that bedrooms, living room and hallway are carpeted is disproportionate and is yet another cost levied on businesses. This would not be asked of a private landlord renting out a property where noise complaints had been levelled by neighbours, so short-term lets operators should not be discriminated against in this manner.
- At a challenging time for small business, not only due to pandemic recovery but the impact of the cost of living crisis and in particular increased energy bills, these often unnecessary additional conditions will not only hit self-caterers in the pocket but will also burden resource-stretched councils.
- We have provided examples below of local councils who may be going beyond the policy intentions of licensing, or who have proposed disproportionate costs for small businesses.

### **Examples:**

#### **City of Edinburgh Council**

- Edinburgh’s policy confirms that “*secondary letting in tenement or shared main door accommodation is considered as unsuitable and there will be a rebuttable presumption against the grant of a licence in such circumstances.*”
- **This is ultra vires to licensing**, as it pertains to a planning consideration, not a safety consideration. It is conflating planning with licensing and falls outwith the intention and scope of the legislation. **This opens up the Council to likely legal challenge, which they acknowledged at committee.**
- Certificate of Lawfulness are being refused on the grounds that there was a break in use because of the government lockdown during COVID-19. The legal precedent quoted involves use of farm land for

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<sup>5</sup> Page 89 of BRIA

a motorbike circuit (with regards to the foot and mouth outbreak) and another farm with land used for aircrafts.<sup>6</sup>

- **City of Edinburgh Council will grant licences for secondary letting for one year only.** Meanwhile, North Ayrshire Council has taken a pragmatic approach and intends to offer a **licence for ten years** at first renewal. The vast majority of councils intend to offer licences for a maximum of **three years**.
- Unlike other councils, they require an **Annual Emergency Lighting Certificate** for secondary letting only.

### **Argyll and Bute Council**

- Argyll and Bute Council has approved additional conditions in relation to **bike hire, watercraft, swimming pools and ponds, and play equipment**, four completely unrelated activities to the activity of short-term letting.
- A short-term let concerns the provision of accommodation to a guest. Accommodation means any building or structure, or any part of that building or structure, that is being let out to visitors. Both mandatory and additional conditions should concern matters directly pertaining to short-term lets. Such proposed additional conditions from Argyll and Bute Council clearly do not relate to the provision of accommodation.

### **Highland Council**

- Highland Council propose limitations on the use of hot tubs after 10pm. It remains to be seen how this apparent **'hot tub curfew'** can be enforced by Council officers.
- Will Councils employ someone to ensure that guests are using hot tubs at appropriate hours? This appears to be another instance of short-term let businesses being discriminated against compared to other accommodation providers or types of property.

### **Fife Council**

- Fife Council (and others) are **excluding Guest Houses from the requirement for a licence**, despite assurances from Scottish Government that "Guest houses were listed as excluded accommodation in the original Licensing Order, as laid in December 2020. However, they were included in the draft Licensing Order that went to public consultation in June 2021. The rationale for their inclusion is set out in the 2021 consultation paper (item 1 in the table at page 12): [Short term lets - draft licensing order and business and regulatory impact assessment \(BRIA\): consultation - gov.scot \(www.gov.scot\)](#)" (Comment from David Manderson, More Homes, 23rd Feb 2022).
- Schedule 1, 1c states that Excluded Accommodation includes "a hotel which has planning permission granted for use as a hotel". It also excludes "hostels" in 1d. Both of the above fall under Use Class Order 7. A Guest House also falls under UCO7, but is not specifically mentioned as an exclusion (Guest Houses were specifically excluded in the previous iteration of the legislation). Fife Council are therefore interpreting it incorrectly.

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<sup>6</sup> Case officer's reasoning: "Case law has also determined that, where a break in an unlawful use has occurred, it is the fact of the break that matters rather than whether the break was of the applicant's choosing or enforced by Government regulations.". "...I consider it immaterial for present purposes that the interruption in the use was not the result of a freely made choice on the part of the Claimant. In the present context what matters is that the objectionable use actually ceased and there was no longer any need or opportunity for the local planning authority to take enforcement action".

## Orkney Council

- Orkney Council is asking for **floor plans** reflecting 2005 Act liquor licensing including premises drawings, “possibly professional prepared”, at a scale of 1:100 and a location plan at a scale of 1:1250 or 1:2500 for rural locations.
  - *floor plans should show the extent of the boundary of the building and the external and internal walls of the premises;*
  - *the location and names of any streets surrounding the building from which guests have access to the premises;*
  - *the location and width of each point of access to and egress from the premises;*
  - *the location and width of any other escape routes from the premises;*
  - *the location of any equipment used for the detection or warning of fire or smoke or for fighting fires;*
  - *the location of any steps, stairs, elevators or lifts in the premises;*
  - *any accommodation intended for guests with mobility impairment;*
  - *the number of rooms intended for sleeping; and*
  - *the maximum occupancy capacity of the building (excluding children under 10 years old).*
  - *A floor plan may include a legend through which the matters narrated above may be sufficiently illustrated by the use of symbols on the plan.*
- This is excessive given that the Order merely requires identification of maximum occupancy and that the licence holder must ensure that the number of guests does not exceed this. It is a heavy handed, onerous and burdensome approach for a small accommodation provider, which will incur considerable cost.

## North Ayrshire Council

- North Ayrshire Council have requested **formal architectural plans** and 6 copies by post!

## Perth & Kinross Council

- Perth & Kinross have published a [checklist](#) to identify if you need planning permission. The Council is therefore asking for planning as a pre-requisite to licensing.
- This suggests that if you have a hot tub, or external living area, or accept single sex bookings, you will require planning permission. The ASSC considers this to be going beyond the scope of the legislation and planning policy. Licensing is about the safety of an activity, not the use of the property.
- The same approach is being taken by **Highland Council, Stirling Council, Dumfries and Galloway Council, East Lothian and Angus Council**, amongst others.
- Planning permission applications and associated fees are significant.

## Stirling Council

- Stirling Council’s maximum occupancy stipulation is overly complicated. One of the mandatory conditions that is attached to all short-term let licences is that the number of guests residing on the premises does not exceed the number specified in the licence. The Council will require information to be submitted as part of the application process to determine the maximum capacity.

## Dundee City Council

- Dundee City Council, as well as Perth & Kinross, are asking for **£5 million public liability insurance** cover where the Scottish Government amended guidance during the 2021 consultation to state that only £2m is required.
- The council have also insisted on additional conditions including “sufficient drawer space for the storage of cutlery and cooking utensils” and “a minimum of one door separation between the toilet

and any area used in the preparation of food”, and requiring work surfaces must be impervious (marble work surfaces would therefore have to be replaced).

#### **Dumfries and Galloway Council**

- Dumfries and Galloway are asking for **details about occupancy over the past 3 years**, which is entirely unnecessary and is not a mandatory condition.

#### **Falkirk Council**

- This Council is asking **for proof that furniture and furnishings meet fire safety standards**. The BRIA suggested that this would not be onerous *“assuming suitable records have been kept (or can be readily obtained) with regard to existing upholstered furnishings and mattresses. (Usually, the furniture is labelled as such.)”*<sup>7</sup> As this is a new requirement, records will not have been kept. Is Falkirk Council therefore requiring operators to replace furniture and furnishings?

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<sup>7</sup> Page 82 <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2021/11/short-term-lets-business-regulatory-impact-assessment2/documents/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/govscot%3Adocument/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria.pdf>