



REPORT TO: SPECIAL LICENSING COMMITTEE ON 21 SEPTMEBER 2022

SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 AS AMENDED BY THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2021 – SHORT TERM LETS

BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND ORGANISATIONAL DEVELOPMENT)

1. REASON FOR REPORT

- 1.1 To present to the Committee the process including Policy Statement and supporting documents for the provision of a new licencing regime for Short-term Lets (STLs) in Moray.
- 1.2 This report is submitted to Committee in terms of Section III (H) (1) of the Council's Scheme of Administration relating to the exercise of the function of the Council as licensing authority for The Moray Council area.

2. RECOMMENDATION

- 2.1 It is recommended that the Committee:
 - i. Consider, amend as necessary, and approve the full licence package including application form, fees and supporting documents to licence STLs in Moray produced at Appendix 1.
 - ii. Consider, amend as necessary, and approve the statement of licensing policy attached at Appendix 2 to this report.
 - iii. Agree recommendations for changes to the scheme of delegation as per paragraph 3.14 below and at Appendix 2 and commend those to Moray Council for formal approval.
 - iv. Agree a final date for the implementation of the complete licensing system for STLs as 1 October 2022.

3. BACKGROUND

- 3.1 The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 introduced new provisions within the Civic Government (Scotland) Act 1982 to require local authorities to introduce a scheme to license persons

who offer premises on short-term lets. This is a requirement and not an optional licence scheme.

- 3.2 Short-term lets is defined as “the use of residential accommodation provided by a host in the course of business to a guest, provided:
- the guest does not use the accommodation as their only or principal home, AND
 - the short-term let is entered into for commercial consideration, AND
 - the guest is not an immediate family member or sharing with the host for education purposes AND
 - the guest is not an owner or part-owner of the accommodation, AND
 - the accommodation is not for workers providing services to the host, AND
 - the accommodation is not excluded accommodation (excluded are things like hotels, hostels, residential care homes, school or student residential accommodation, secure accommodation like prisons and mobile accommodation), AND
 - the short-term let does not constitute an excluded tenancy (excluded are a long list of statutory tenancy types) .
- 3.3 This new licensing regime also provides local authorities with consequent powers to determine certain issues such as fees, policies, whether to introduce further controls and to determine individual licence applications.
- 3.4 At the meeting of this Committee on the 22 June 2022 officers explained the implications of the scheme. At that time the Committee agreed to adopt a light touch approach to the proposed licence scheme (paragraph 6 of the Minute refers). This meant use of self-certification for licence applicants where appropriate as well as the decision only to inspect a premises where it is considered necessary to do so.
- 3.5 Now, after extensive research and development, attached at **Appendix 1** is the final draft Moray Council STL application package for approval. The package includes application form, guidance, fee proposals, procedure and templates. . This application package is to be placed on the licensing pages of the council’s website in time to take effect on the agreed date of the 1 October 2022.
- 3.6 As stated, part of the package included at **Appendix 1** are proposals for fees. The amount of the fee has been the most frequently asked question in the run up to the implementation of the scheme. The Scottish Government asked Councils as licensing authorities to keep fees to a manageable level for businesses. Nevertheless the legal requirement is for licensing to be self-funding and for licensing authorities to recover from fees, as far as possible, the cost to the authority of providing the licensing function. Therefore there is little room for manoeuvre when it comes to fees. Officers from licensing and accountancy services have together undertaken a difficult cost gathering and calculating exercise. If licensing is to be self-funding then the fee must equate to the cost of processing. As processing is very similar for all applications it has not proved possible to justify a sliding scale of fees based on occupancy. It should be noted, however, that larger premises are more likely to require an inspection and so may incur an additional inspection fee. It should also be noted that the proposed fee scale has been based on estimates of expected application numbers of approximately 600. If application numbers fall below this then there is a risk that fee income will not cover expenditure.

Unfortunately there are no better estimates available. Fees will therefore need to be kept under review, as with all licence fees but it seems likely the first opportunity to affect overall fee income will be in 3 years' time.

- 3.7 The Scottish Government guidance included the possibility of introducing an annual fee. However there are no other civic government licence types with an annual fee. This is because there is minimal need for ongoing administration of licences after they have been granted. In relation to STL licensing it is impossible to assess the ongoing need for administering licences so it is difficult to justify an annual fee. Instead the fee proposals provide for an inspection fee and associated administration costs. A certain but limited amount of inspection has been built into the processing of licences. If a premises proves to be a source of complaints after granting of the licence then it may be necessary to arrange an inspection. At this point a further inspection fee will be charged to the licence holder in accordance with the general licensing principle of the polluter pays. There are already separate fees for matters such as a variation of a licence or provision of a duplicate licence in the event of its loss. It is proposed those fees will also apply to STLs as a civic licence type.
- 3.8 It should be noted that the fee proposed is the same for temporary licences as it is for permanent (3 year) licences. The conditions and regulation will also be the same. So whilst the council as licensing authority has the power to grant temporary licences it is anticipated there will little value or interest in them. The licence fee represents the cost of processing and there is little difference in processing between temporary licences and 3 year licences, making the former uneconomic. This is the same for other civic licence types.
- 3.9 As previously explained, existing operators have from the 1 October 2022 to 1 April 2023 to apply for any necessary STL licences. There is then a long stop date of the 30/4/2024 for the council to issue those licences and for all necessary persons to be licensed. After that time it will be a criminal offence for persons to undertake the licensable activity without the appropriate licence in place. Any new operators or existing operators who wish to let out new property will have to apply for a licence after the 1 October 2022 but must obtain the licence before they can start to take bookings.
- 3.10 The timescales detailed in paragraph 3.9 above are beyond the council's control. Officers have been working tirelessly on developing a full licence type for what may instantly become the licensing authority's largest licence group. The ultimate goal is to develop a fully online licence process that will be automated as far as possible. The technology is taking longer to develop than the time available largely because of delays in the Scottish Government producing a statistical specification. This specification has only been made available at the time of writing this report on 9 September. The system provider could not develop the relevant screens for the licence type without knowing what data would be required. So that has delayed the licence system progress. The Scottish Government has not provided a national system as is in place for planning. Therefore councils have been left to develop their own systems and Moray Council's ICT service is assisting licensing in developing an online form. The intention is then to purchase software that will facilitate direct population of the licensing database from the online form. This will not be available in line with the 1 October deadline. It will be done as soon as

possible but the exact timescale is not known. Therefore it is the intention of officers to try and encourage applicants to wait for the online system rather than submitting large amounts of paperwork that have the potential to overload administrative resources.

- 3.11 In addition to the licence package and also attached at **Appendix 2** is the proposed Statement of Licensing Policy for approval. The policy has not specifically been consulted upon with the public. This was because there is very little that is actual local policy as opposed to what could be termed general guidance, particularly national guidance from the Scottish Government. The policy can be kept under review and should matters arise that require the Committee's attention then officers will report to Committee.
- 3.12 The significant matters to refer to in terms of the draft policy are:
- 3.12.1 There are no proposed additional "local" conditions for either full or temporary licences as part of the light touch approach. This is another reason for the lack of formal consultation on the policy as policy impact is limited. It is felt that the raft of statutory mandatory conditions is sufficient to ensure the safe running of premises. In addition market pressures and the competition for customers should ensure that premises offered for STLs should be as good as they can be.
- 3.12.2 The scheme of delegation provides that officers can apply additional low level conditions to a licence application especially where recommended by a consultee. The policy at paragraph 10 describes the process for additional conditions. Where it becomes a major issue then the licence may be subject to a review before the committee.
- 3.12.3 The suggested policy confirms that temporary exemptions will not be granted. A temporary exemption is the power for the licensing authority to grant requests for temporary exemption to the licence requirements. Most likely such requests would be triggered by specific events and the likely types of events cannot be anticipated. In addition there is technically no de minimis for STLs in terms of the number of days a premises is let and temporary exemptions would be unregulated. In the scenario of a major local event triggering requests officers would report to Committee as necessary for a specific view on possible temporary exemptions.
- 3.12.4 The policy confirms that temporary licences, as an optional licence type, may be granted but, for reasons stated in relation to fees above, will not be attractive. A temporary licence can last for up to 6 weeks but there is no requirement for a public display notice. If an application is made (with further payment) for a full licence during the currency of a temporary licence then the temporary licence will continue unless and until the full licence application is determined. Mandatory conditions will apply to temporary licences.
- 3.12.5 The licence will determine the maximum occupancy for the STL premises and that will be set by reference to factors set out in the policy. Maximum numbers sought will be set out in the application form by applicants including numbers of people by reference to rooms. The

policy confirms that only children aged 10 or above will count towards occupancy figures and this is based on the context of housing legislation in particular the Housing (Scotland) Act 1987. Children under 10 years won't count towards maximum occupancy as they are deemed able to share with parents.

- 3.13 Public liability insurance is a requirement of legislation but does not specify a minimum sum insured. Insurance is as much for the protection of the operator as it is for customers. Within the proposed system the minimum public liability insurance level has been set at £5Million. This is in line with other existing licence types and anecdotal evidence from other licensing authorities.
- 3.14 In order for the licence system to run smoothly it is necessary to implement a system of delegated powers. The Scheme of Delegation is determined by the full Council. Therefore it is proposed that the Licensing Committee endorse the proposals for amendments to the Scheme of Delegation that will need to be placed before the full Council. The existing scheme is available at: <http://www.moray.gov.uk/downloads/file118705.pdf>
A document detailing the Scheme of Delegation with proposed changes detailed (that include some minor changes to tidy up existing anomalies) is attached as part of **Appendix 2**. It is proposed that this scheme be amended to include STLs as a licence type and make provision for matters specific to STLs in addition to the existing general powers for all licence types.

4 SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The provisions of licensing directly relate to the priorities within the 10 Year Plan in relation to healthier citizens, a growing and diverse economy and safer communities. Licensing exists to promote public safety, in this context for both staff and customers. Industries that undertake licensable activities can have positive effects on tourism and aid a growing economy.

(b) Policy and Legal

The Civic Government (Scotland) Act 1982 (Licensing Of Short-Term Lets) Order 2022 provides for a new licensing regime for STLs by amending The Civic Government (S) Act 1982. The Council as licensing authority are now required to licence short term let premises.

Therefore licences of this sort will follow the well established process set out in Schedule 1 to the Civic Government (S) Act 1982.

(c) Financial implications

The costs associated with the implementation of a licence type and ongoing administration represents a large amount of staff time. The time and associated costs for development has been met from existing budgets as one off costs. The time for processing of applications going forward will require

additional resources and the cost of the same are expected to be met from licence fees.

(d) Risk Implications

Human rights and equalities implications are discussed separately.

Delays occasioned by matters beyond the licensing authority's control could have meant a failure to deliver a licence system in time for 1 October leaving operators in the difficult position of not being able to apply for a licence they will need. A paper based system will be in place but not the preferred online system. However the Scottish Government's long stop date of 1 April leaves several months for applicants who are considered to be existing operators to apply and so some room for manoeuvre.

(e) Staffing Implications

Currently staff time is being met from existing resources. Going forward may require an additional staff resource as set out in the last report to the Committee on 22 June 2022. This will be kept under review based on the number of applications received. The suggested application fee has built in some additional resources for both additional administration, regulation and consultation.

(f) Property

There are no property implications arising from this report.

(g) Equalities/Socio Economic Impact

The Scottish Government consultation of 2020 included an Equalities Impact Assessment (EIA). A copy of the EIA is available to view at: <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-consultation-analysis/pages/11/>. The EIA concluded that the introduction of an STL licensing scheme does not give rise to any equality issues. Therefore the conclusion is that Moray's STL scheme does not give rise to any equality issues.

Nevertheless licensing in general does have the potential to impact on equalities. The licensing authority should take cognisance of human rights issues and the rights potentially engaged. These rights include the right to a fair trial (in terms of the application process), the right to private life and the right to peaceful enjoyment of possessions. Possessions may include not only the physical property in which a business is conducted, but arguably also the goodwill of a business and all rights attached to it. Other relevant legislation such as the Provision of Services Regulation should also be considered. Regulation 24 provides that any refusals of licences under the act must not discriminate against the applicant on the basis of nationality, they must be justified on the basis of public policy, and health etc. and any refusal must be proportionate.

(h) Climate Change and Biodiversity Impacts

There are no climate change and biodiversity impacts arising from this report.

(i) Consultations

Full consultation is not required by the legislation. Nevertheless officers have engaged with the trade and the public where possible. No formal consultation has been carried out in relation to implementation of the scheme but licensing officers have been in regular communication with the Scottish Government, national officer groups, trade bodies, individuals, partners and internal consultees. Ideas, feedback and queries have all fed into the process. As stated proposals for the fee structure have been developed in concert with accountancy service and internal partners.

5. CONCLUSION

- 5.1 The Committee is invited to consider and approve for publication the new process, fees, and all documents created for the new licence type of STLs including the policy and supporting documents to be the Licensing regime to start on the 1 October 2022.**

Author of Report: Sean Hoath
Background Papers:
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