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**REPORT TO: LICENSING COMMITTEE ON 22<sup>ND</sup> JUNE 2022**

**SUBJECT: THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022**

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

**1. REASON FOR REPORT**

- 1.1 The reason for this report is to inform the Committee of the requirement to introduce a new licensing regime for Short Term Lets in Moray and of the work in progress to deliver this and to seek agreement to recommend to Council for an amendment to the existing Scheme of Delegation to deal with the new licence type.
- 1.2 This report is submitted to the 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**

**It is recommended that the Committee:-**

- 2.1 **Note the requirement to introduce a new licensing regime;**  
2.2 **Note the ongoing work to progress this;**  
2.3 **Note the short timescale and the potential additional resource requirements to implement a complete new regime;**  
2.4 **Note and agree a light touch approach to the introduction of the licensing regime with the requirement to keep the matter under review; and**  
2.5 **Recommend to the Council that the existing licensing scheme of delegation be amended to include short term lets.**

**3. BACKGROUND**

- 3.1 The Civic government (Scotland) Act 1982 Licensing of Short Term Lets Order 2022 ("the Order") **came into force on the 1 March 2022**
- 3.2 The Order amends the Civic Government (Scotland) Act 1982 to introduce a new licensing regime for short term lets under that Act. Therefore the licence regime will follow the standard processes set by the 1982 Act.
- 3.3 The definition of a short term let means the use of residential accommodation provided by a host in the course of business to a guest and includes certain

other criteria e.g. the guest is not related to the host and the guest does not use the accommodation as their principal home. There is no minimum time for the letting.

- 3.4 Short-term lets can offer people a flexible and cheaper option when travelling, and have contributed positively to Scotland's tourism industry and local economies across the country. The Scottish Government has put in place this licensing scheme to ensure basic safety standards are in place across all short-term lets operating in Scotland, while also providing discretionary powers to licensing authorities to address the needs and concerns of local communities. Improved visitor experience and confidence will benefit tourism and the economy.
- 3.5 The Regulations provide for the licensing of Short term Lets in order to:
- a) ensure all short-term lets are safe;
  - b) facilitate licensing authorities in knowing and understanding what is happening in their area; and
  - c) assist with handling complaints and effectively address issues faced by neighbours.
- 3.6 The Scottish Government has developed guidance in consultation with the [Short-Term Lets Stakeholder Working Group](#) comprising a wide range of industry, local authority and community stakeholders. This non-statutory guidance was published on 22 March 2022. It is split into two parts: Part 1 is for hosts and operators (**Appendix 1**) and Part 2 (**Appendix 2**) for Scottish licensing authorities, letting agencies and platforms facilitating short-term lets in Scotland.
- 3.7 The idea of short term lets has been debated for a considerable time. However it can be seen that the idea has only relatively recently been finalised by the Scottish Government. It has also been introduced as a requirement on local authorities in the same year as local government elections which has created additional time pressure on the planned introduction. In reality this has meant officers have a matter of a few months to implement a whole system for a new licence type.
- 3.8 It is also fair to say that, whilst the Scottish Government wishes to introduce the licence regime, it also wishes local licensing authorities to minimise the cost to the local trade. As will be explained in more detail below this presents the licensing authority with a problem. Licensing is supposed to be self funding i.e. licence fees must be designed to recover the cost to the council of providing the licensing function. Therefore the more onerous the system, the more expensive it will become to operate and the higher the fees will be to recover that cost.
- 3.9 Key dates are:
- **01 October 2022** introduction of licensing regime and acceptance of applications
  - **01 April 2023** all existing operators to apply for a licence by this date
  - **01 July 2024** all existing operators to obtain a licence by this date

- 3.10 Licensing staff have been working in the background on developing the new licence type. There is a large amount of work to do and it is being made much more difficult by the short timescale.
- 3.11 Implementation is also hampered by many unknown quantities, the most important of which is the likely number of short term lets. Given the wide definition detailed above, the number of likely licence applicants is simply not known. The Scottish Government has estimated approximately 600-700 in Moray. Various websites that advertise short term lets indicate the figure may be higher. Licensing staff have also engaged with local trade bodies. Judging by all information available it could be 600 or it could be as many as 900. This makes a huge difference to the processing requirements and the likely fee structure.
- 3.12 As stated licensing staff have been working on developing a full licence process. Issues that Committee should be aware of include:
- a) It is a relatively straightforward process to develop forms and guidance in paper format;
  - b) Licensing staff have been working on information gathering and dissemination to better inform the process. This is proving difficult when competing with all other council services for ICT time;
  - c) The council uses bespoke licensing software known as Uniform for the processing of licence applications-options for extending this are currently being explored;
  - d) Unfortunately it is not a quick or easy process to develop online forms. For other licence types the Council relies on the Gov.uk website that developed a standard online application process. Unfortunately short terms lets are not within the scope of the Gov.uk site. So the council would have to develop its own. A truly online system would enable users to fill in forms online and that would then directly populate the council's licensing database. In the absence of a truly online solution it will be necessary for admin staff to re-key all data into the Uniform system. That is a labour intensive process.
  - e) Therefore it is certain that the licensing service will require additional administrative resources to process a large number of applications. This is likely to be one additional administrative post -but any decision to seek to increase the staffing within the legal services admin team will be reported to the relevant committee if required at the relevant time. This and all other costs will need to be built into the licence fees.
  - f) It is proposed that consultation with relevant internal and external partners takes place as it does with other licence types. That would include the following partners: Building Standards, Environmental Health, Planning, Police Scotland and Fire and Rescue Scotland. There is no specific provision for consultation with the police but it is proposed that, as with all licence types, such consultation takes place. The decision will then lie with the police as to whether or not they wish to respond to the consultation. Application forms will ask applicants if they have sought relevant planning permission and/or building warrant approval. Whilst licensing will not

duplicate other regulatory regimes but it may alert other services to regulatory issues.

- g) Licensing staff have consulted with other council services (Environmental Health, Planning, Building Standards and Mail Room). The purpose of this internal meeting was to discuss the impact the Short Term Lets Licensing regime would have on existing services who are already under pressure. The concerns raised were consistent in that, in order to undertake a full review of licence consultations, examine plans, check records, undertake any necessary inspections and respond within strict timescales (28 days for Civic Government licences) further resources would be required. For example Environmental Health stated that they would require an additional member of staff to conduct the processing of the licence consultations as well as staff to undertake inspections. If licensing is to be self funding then it will be necessary to look at the views and the impact of implementing this regime has across all council services who would be involved.
- h) Licensing staff have therefore looked at the possibility of relying on other means of satisfying as many of the requirements as possible to reduce the administrative burden. This is the only approach that can be taken to reduce costs and also to reduce the likely fee for the applicants. Examples include having regard to pre-existing accreditation/inspections by other organisations. Travel and/or trade bodies offer varying accreditations for short term lets. Another option is self-declaration whereby applicants self certify facts which will significantly reduce the need for inspections and consultations thereby reducing some of the pressure on some of the services within the Council. As with all licensing applications, it is an offence to deliberately make a false statement on the application and this provides a degree of comfort in respect of self certification.
- i) Officers are not suggesting that inspections will never take place. Where there is a significant need for an inspection there will be one. This will be allowed for in a specific and separate inspection fee that would only be payable if a visit was warranted.
- j) The licence will be subject to a prescribed set of standard conditions that apply to all licences, as set out in the guidance. The licensing authority will also have the power to add such further conditions to licences as it considers necessary.
- k) The default position for the Civic Government licence is that it is granted for a period of 3 years, although the Committee has the power to grant a licence for a shorter period. It is proposed that in the absence of issues, licences granted under delegated powers will be granted for 3 years. This means that the application process will be cyclical. Approximately 600-900 licences will need to be renewed each 3 years. This complicates any additional staffing provision by making demand for time cyclical and that would have to be factored into calculations.

3.13 All proposals together would put the licence process on what could be termed a "light touch" approach.

- 3.14 The Guidance provides that the licensing authority may charge such fee as is necessary to: (a) consider the application; (b) cover any inspection; (c) the anticipated cost of monitoring compliance including any inspection; and (d) the reasonable anticipated cost of enforcement. The fee must not exceed the reasonable cost so is designed to be cost recovery as with other licence fees. However, unlike other licence fees, there is specific statutory authority to recover the anticipated cost of ongoing inspection and enforcement rather than just processing the application. It can be seen from this that fees could rapidly increase by the introduction of a full licence process as opposed to the light touch approach.
- 3.15 The Scottish Government has stated it would like licensing authorities to minimise the burden on the trade. That means keeping fees as low as possible. The Scottish Government set out what it thought would be average indicative fees in its Business and Regulatory Impact Assessment, estimated to be between £214 and £436 to cover a 3 year licence. To keep fees at that level will be difficult on a light touch approach and would simply not be possible on a full consultation and inspection process. The fee for a full, in detail process would increase estimates dramatically. As stated, with the unknown quantities this is something that is going to be very difficult to gauge.
- 3.16 If we consider the licence type of Houses in Multiple Occupation (HMO's) for comparison purposes. The Council employs an HMO officer. Other than that all licensing processing and consultations comes from existing resources as application numbers are low. HMO fees range from £1800 to over £3340 per application, depending on the number of occupants. Short term lets would appear to require multiple new members of staff across the council to service an in depth process with large numbers of applicants.
- 3.17 There is no requirement for the licensing authority to produce a general statement of policy for the the Short Term Let Licence. Indeed a full policy statement is not normal for Civic Government licence types. However guidance does appear to require a policy on the use of Temporary Licences and Temporary Exemptions. Temporary licences are not generally used in Civic licensing as the cost of processing a temporary licence for up to 6 weeks is not much lower than the cost of processing a 3 year licence. Temporary exemptions may be used for special events taking place in an area and again it is suggested that this is suitable for light touch and delegation.
- 3.18 As with other licence types it is proposed that most applications will be determined under delegated powers and the delegated powers list should be amended accordingly to include this specific licence type..
- 3.19 Officers will be reporting to Committee in full at the next meeting on the 7 September 2022 with details of progress. This is expected to include a full draft process, forms and guidance and options in respect of likely fees for approval and implementation.
- 3.20 A further meeting has been set for the 21<sup>st</sup> September in case it is required for final adjustments to the process.
- 3.21 The recommended option is likely to take a light touch approach to the licence type in order to minimise the administrative burden and therefore the likely fee

for applicants. If accepted by the Committee the light touch approach will be kept under review and updates will be reported to the Committee as required.

#### **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**

Policy and Legal implications have been explained above.

##### **(c) Financial implications**

The costs associated with the new licence types represents a large amount of staff time engaged in gathering and presenting information. Considerable staff time has been required to develop a full application process and this time currently is being met from existing budgets.

Licensing is legally required to be self funding so the council is required to set fees so as to ensure, as far as possible, that the income from applications covers the cost to the council of providing the licensing function. The cost includes all associated costs across all council services involved in processing applications or responding to consultations or dealing with monitoring and compliance issues.

##### **(d) Risk Implications**

None identified. It is a legal requirement to implement this new licence types introduced by new legislation. The requirement is to have everything in place by the 1<sup>st</sup> October 2022. There is no penalty to the council for failing to meet this deadline but it may have a knock-on effect in terms of the trade being able to obtain a licence in time for the final deadline of **01 July 2024**

##### **(e) Staffing Implications**

Staff time for developing the licence type is being met from existing resources currently however there is increasing pressure across all services.

Licensing will require to increase its administrative provision in order to process the likely number of applications but this will be addressed at the appropriate stage.

In addition anything other than a light touch approach to licensing will require increased staffing provision across multiple services within the council.

Licensing staff would need to liaise with other services over the likely recruitment, cost and cost recovery provision for additional staff.

**(f) Property**

There are no property implications arising from this report.

**(g) Equalities/Socio Economic Impact**

No impact identified over and above the usual equalities considerations for licensing where the licensable activity cannot take place without a licence in place. This can affect the livelihood of licence applicants.

**(h) Climate Change and Biodiversity Impacts**

No additional impact identified. Most short term lets are already trading as such and this is just a legal requirement to obtain a licence for such activity.

**(i) Consultations**

Formal consultation is not required at this time but the licensing team will continue to engage with interested parties.

5 **CONCLUSION**

- 5.1 **The Committee is invited to note the requirement to introduce a short term licensing regime, note the progress made and the difficulties faced including timescales. Note and approve plans to continue with a light touch approach in relation the Short Term Lets Licence that will be kept under review and the planned changes to the scheme of delegation and staffing provision.**

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Background Papers:

Ref: