**Dumfries and Galloway Council - Short-term Lets Licensing Policy Statement**

**Approved by Dumfries and Galloway Council’s Communities Committee at its meeting 25 August 2022 and further approved by said Committee at its meeting 6 June 2023 following revision of this Policy Statement.**

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**1.0 INTRODUCTION**

Dumfries and Galloway Council are the ‘Licensing Authority’ in terms of the Civic Government (Scotland) Act 1982 (1982 Act).

This Act regulates many licensing activities and, from 1 October 2022, these licensing activities were extended to include mandatory licensing of Short-term Lets via the

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”). This Order came into force 1 March 2022 and provides that, from 1 July 2024, all Short-term lets throughout Scotland will require a Short-term Lets licence.

In terms of implementing this new, mandatory licensing scheme, the Council undertook the following steps:

* It established a Short Term Lets Working Group with its initial meeting on 22 April 2022 with internal and external partners including Police Scotland, Scottish Fire and Rescue Service, Planning and Environmental Health;
* It also established sub groups within this Working Group and each sub group met periodically to discuss matters pertaining to that service in relation to the new regime (Appendix 2)
* Procured Short-Term Lets online cloud-based software on 5 July 2022 to allow online short term lets licence applications, to report objections and provide an online publicly accessible register
* It undertook individual and public meetings with relevant bodies to discuss the Council’s draft policy; This included meeting with the Association of Scotland’s Self Caterers, South of Scotland Destination Alliance and Discover Scotland in July 2022
* In terms of its legal obligation, it drafted this Policy Statement;
* Communities Committee at its meeting 25 August 2022 approved the terms of this Policy Statement and said Policy Statement was published on the Council’s website by 1 October 2022;
* A revised Policy Statement (being this Statement) was placed before Communities Committee at its meeting 6 June 2023 and was further approved;

**2.0 SCOTTISH GOVERNMENT GUIDANCE**

This Policy provides guidance for potential Licence applicants and members of the public on the licensing of Short-term Lets within Dumfries and Galloway.

In drafting this Policy Statement, the Council has taken into account the Scottish Government’s Short-term Lets in Scotland Licensing Scheme Guidance published on 18 March 2022 as follows:

<https://www.gov.scot/publications/short-term-lets>

This Guidance is in two parts:

Part 1: Guidance for Hosts and Operators which can be found at:

<https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-1-guidance-hosts-operators-2>

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-2>

**3.0 TIMELINES**

Prior to the introduction of the Order, there was no requirement to licence Short-term Lets in Scotland.

However, by virtue of this Order, all Scottish Local Authorities are now required:

* To establish a Short-term Lets licensing scheme by 1 October 2022;
* Publish a Short-term Lets Policy Statement by 1 October 2022 and keep under review said Policy Statement at least every 3 years thereafter;
* Existing hosts and operators have until 1 April 2023 to apply for a licence and
* All Short-term Lets in Scotland will require to be licensed by 1 July 2024 (subject to possible Exemptions: see paragraph 14 below).

Important dates for both Existing Hosts and New Hosts are as follows:

|  |  |  |
| --- | --- | --- |
| **Date** | **"Existing Hosts"** | **"New Hosts"** |
| **1 October 2022**  **1 April 2023**  **1 October 2023**  **1 July 2024** | • You can continue to operate your premises as a Short-term Lets licence as before   |  | | --- | | (you must still comply with existing laws)  • You must apply for a Short  Term Let licence;  • You have a "Deemed Licence" until Saturday 1 April 2023 (unless the Council refuse your Application earlier)  • If your Short-term Lets Licence application is **refused** by the Licensing Authority you must stop using your premises as a Short-Term Let within 28 days of the decision (subject to appeal to the Sheriff) |   Can only operate without a licence if you have applied for a Short-term Lets Licence (but only while the application is still pending); and  • If your Short-term Lets Licence application is **refused** by the Licensing Authority you must stop using your premises as a Short-term Lets within 28 days of the decision (subject to appeal to the Sheriff)  On 1 March 2023 the Scottish Parliament approved a six-month extension to the deadline for existing hosts. Existing hosts must apply for a licence before 1 October 2023 (previously 1 April 2023) and can continue operating while their application is being determined.All Hosts must have a Short-term Lets licence | • Must **not** operate a Short-Term Let licence without a licence being **granted** by the Council   * you can **apply** for a Short-   Term Let Licence but you cannot **operate** a Short-term Lets licence unless and until your application has been granted.  Saturday 1 April 2023 has no relevance to New Hosts and the position remains:  • Must **not** operate a Short-term Lets without a licence being **granted** by the Council  • you can **apply** for a Short-term Lets Licence but you cannot **operate** a Short-term Lets unless and until your application has been granted.  All Hosts must have a Short-term Lets licence |

**4.0 DEFINITIONS**

A Short-term Let is defined in the Order as the use of residential accommodation provided by a host in the course of business to a guest, where all the following criteria are met-

(a) The guest does not use the accommodation as their only or principal home

(b) The short-term let is entered into for commercial consideration

(c) The guest is not

* An immediate family member of the host
* 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
* An owner or part owner of the accommodation

(d) 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

(e) The accommodation is not excluded accommodation (see paragraph 5 below)

(f) The short-term let does not constitute an excluded tenancy (see paragraph 6 below)

The following are also defined in the Order:

* ‘**accommodation**’ includes the whole or any part of a premises
* **‘commercial consideration’** - includes money;

a benefit in kind (such as a provision of a service or reciprocal use of accommodation).

* ‘excluded accommodation’ means accommodation described in paragraph 1 of Schedule 1 to the Order (see paragraph 5 below)
* ‘excluded tenancy’ means a tenancy described in paragraph 2 of schedule 1 to the Order (see paragraph 6 below)
* **‘guest’** means a person who occupies accommodation under a short-term let
* **‘host’** means a person who is the owner, tenant or person who otherwise exercises control over occupation and use of the accommodation which is the subject of the short-term let
* "unique licence number" means a unique number which—

(a) is assigned to each application or licence, and

(b) contains a number or letters which—

(i) identifies the licensing authority, and

(ii) is used in every licence number assigned by the licensing authority.

* **Immediate family member** – a guest is deemed to be an immediate family member of the host if they are:
  + Your Partner (spouse, civil partner or someone you live with as if you are married to them)
  + Is you or your Partner’s: parent, grandparent, child , grandchild or sibling
  + Two people are to be regarded as siblings if they have at least one parent in common
  + A person’s stepchild is to be regarded as a person’s child
  + Is the Partner of one of your: parents or grandparents, children or grandchildren, or brothers or sisters

**5.0 EXCLUDED ACCOMMODATION (paragraph 1 Schedule 1 to the Order)**

Excluded accommodation means accommodation which is, or is part of:

* an aparthotel

(defined at paragraph 3(1) Schedule 1 to the Order as a residential building containing serviced apartments where

(a) the whole building is owned by the same person,

(b) a minimum number of 5 serviced apartments are managed and operated as a single business,

(c) the building has a shared entrance for the serviced apartments, and

(d) the serviced apartments do not share an entrance with any other flat or residential unit within the building),

* For the purposes of the above, ‘serviced apartments’ are defined at paragraph 3(1) Schedule 1 to the Order as:
* a flat or residential unit in respect of which—

(a) services are provided to guests (such as housekeeping, a telephone desk,

reception, or laundry),

(b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and

(c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units

* premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of the 2005 Act
* a hotel which has planning permission granted for use as a hotel - Self-catering property in the grounds of a licensed hotel would be excluded
* a hostel

(defined at paragraph 3(1) Schedule 1 to the Order as ‘a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons

(a) residential accommodation, and

(b) either or both:

(i) meals,

(ii) cooking facilities

* residential accommodation where personal care is provided to residents

(In terms of paragraph 3(1) Schedule 1 to the Order, ‘personal care’ has the same meaning as in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

* a hospital or nursing home
* a residential school, college or training centre
* secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks)
* a refuge

(defined at paragraph 3(1) Schedule 1 to the Order as ‘accommodation used wholly or mainly for persons who have been subject to any incident or pattern of incidents, of:

(a) controlling, coercive or threatening behaviour,

(b) physical violence,

(c) abuse of any other description (whether physical or mental in nature), or

(d) threats of any such violence or abuse’)

* student accommodation

(defined at paragraph 3(1) Schedule 1 to the Order as ’residential accommodation which has been built or converted predominantly for the purpose of being provided to students’)

* accommodation which otherwise requires a licence for use for hire for overnight stay

(in terms of paragraph 3(1) Schedule 1 to the Order, ‘licence’ does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006.

* accommodation, which is provided by the guest,
* accommodation, which is capable, without modification, of transporting guests to another location
* a bothy

(defined at paragraph 3(1) Schedule 1 to the Order as a ‘building of no more than two storeys which:

(a) does not have any form of:

(i) mains electricity,

(ii) piped fuel supply, and

(iii) piped mains water supply,

(b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and

(c) is 100 metres or more from the nearest habitable building’)

* accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee’s duties.

**6.0 EXCLUDED TENANCIES (paragraph 2 Schedule 1 to the Order)**

An excluded tenancy means a tenancy which falls within any of the following definitions—

* a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984),
* an assured tenancy (within the meaning of section 12 of the 1988 Act),
* a short assured tenancy (within the meaning of section 32 of the 1988 Act),
* a tenancy of a croft (within the meaning of section 3 the 1993 Act),
* a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the 1993 Act) to which any provisions of the Small Landholders (Scotland) Acts, 1886 to 1931**1** ) applies,
* a Scottish secure tenancy (within the meaning of section 11 of the 2001 Act),
* a short Scottish secure tenancy (within the meaning of section 34 of the 2001 Act),
* a 1991 Act tenancy (within the meaning of section 1(4) of the 2003 Act),
* a limited duration tenancy (within the meaning of section 93 of the 2003 Act),
* a modern limited duration tenancy (within the meaning of section 5A of the 2003 Act),
* a short limited duration tenancy (within the meaning of section 4 of the 2003 Act),
* a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the 2003 Act),
* a private residential tenancy (within the meaning of section 1 of the 2016 Act), or
* a student residential tenancy. (defined at paragraph 3(1) Schedule 1 to the Order as ‘a tenancy—

(a) the purpose of which is to confer on the tenant the right to occupy the let property

while the tenant is a student, and

(b) to which sub-paragraph (2) or (3) of paragraph 5 of schedule 1 (tenancies which

cannot be private residential tenancies) of the (Private Housing (Tenancies) (Scotland) Act 2016) applies.

**7.0 APPLYING FOR A LICENCE**

In terms of Paragraph 17, Schedule 2 to the Order, the type of short-term let means one of the following purposes—

(a) secondary letting,

(b) home letting,

(c) home sharing, or

(d) home letting and home sharing,

These are further defined, in terms of paragraph 17, Schedule 2 to the Order as follows:

‘home letting’ means a short-term let consisting of the entering into of an agreement

for the use, while the host is absent, of accommodation which is, or is part of, the

host's only or principal home,

‘home sharing’ means a short-term let consisting of the entering into of an agreement

for the use, while the host is present, of accommodation which is, or is part of, the

host's only or principal home,

‘secondary letting’ means a short-term let consisting of the entering into of an

agreement for the use of accommodation which is not, or is not part of, the licence

holder's only or principal home,

Home sharing and home letting concern the use of the host or operator’s only

or principal home whereas secondary letting does not relate to the use of the Host’s principal home.

You can only use the premises for the purpose stated in the licence.

A separate licence is required for each premises.

A separate licence for short-term lets within the same dwellinghouse is not needed. For example, if two rooms are let out in a single home, then only one short-term let licence is required.

If you have an HMO licence for your property, you will still require a short-term let licence if you meet all the short-term let requirements of the Order.

All applicants must complete an online short-term let licence application form. However, paper applications will be available on request if preferred. Applicants must pay the application fee from the outset of the application process when submitting an application.

**7.1 Unique Licence Number:**

A ‘unique licence number means a unique number which—

(a) is assigned to each application or licence, and

(b) contains a number or letters which—

(i) identifies the licensing authority, and

(ii) is used in every licence number assigned by the licensing

authority.".

When you apply for a Licence or Temporary Exemption your case will be allocated a unique reference number

The layout of this number will follow the “Licence number specification set out in Annex A of Part 2 of the Scottish Government guidance.

The licence number will comprise 8 characters, three of which are alphabet (capital

letters) and 5 of which are digits issued by each Licensing Authority.

The first two letters of the unique reference number ‘DG’ identify Dumfries and Galloway as the Licensing Authority.

DG00123F

The final character will denote the type of licence as follows:

**E** Temporary exemption

**T** Temporary licence

**P** Provisional licence number issued on receipt of a licence application

**F** First (full) licence

**R** Renewed licence

**7.2 Site Notice:**

* Under the terms of the 1982 Act all applicants who apply for a short-term let licence must display a site notice for a period of 21 days beginning with the date on which the application was submitted to the licensing authority at or near the premises so that it can be conveniently read by the public.
* This notice must state that an application has been made for a licence; shall include the statutory particulars of the application; state that objections and representations in relation to the application may be made to the Licensing Authority and how to make objections or representations.
* Applicants are also required to submit to the Licensing Authority a Certificate of Compliance certifying that they have displayed the site notice for a continuous period of 21 days at or near the premises in a place that can conveniently be read by members of the public. This signed Certificate must be submitted as soon as reasonably practicable following expiry of the 21-day display period. A template will be provided to the applicant when an application is submitted.

**7.3 Objections and representations:**

* Any member of the public can submit an objection or representation in relation to a short-term let licence application.
* To enable the Licensing Authority to consider an objection or representation, the objection or representation must be:
  + in writing
  + specify the grounds of the objection or the nature of the representation
  + specify the name and address of the person making it
  + signed by them or on their behalf
  + made to the Council within 28 days from the date the application was made to them (unless sufficient reason is given and accepted as to why it was not made on time)
* Anonymous objections or representations will not be considered.
* Whilst an Objection should normally cover one or more of the mandatory grounds of refusal detailed at paragraph 9, it need not be so limited.
* A copy of the objection or representation will be provided to the applicant and will include your name and address. All personal data will be processed in line with Council’s data protection policy

**8.0 DETERMINATION OF APPLICATION**

**Licensing Panel:**

**The Council’s Civic Government Licensing Panel (Panel) is the Committee that may determine applications for Short-Term let licence applications.**

Usually applications that attract five or more objections or adverse representation will be placed before the Panel for consideration. Applications that attract less than five objections/adverse representation will normally be determined via Officer Delegated Authority, unless one or more of those objections / adverse representations raises a substantive matter which the Authorised Officer considers ought to be placed before the Panel for consideration.

* In terms of procedure, the Objector or those making the representation will be given at least 14 days’ notice of the date and time of the Panel Hearing and shall be invited to attend said Hearing in order to speak to their objection/representation.
* The applicant and/or their representative will also be invited to attend the Hearing and shall be given the opportunity to speak to their application.
* The Panel will be able to ask questions of all parties and, based on all the information before them, make a determination in relation to the application.
* Applications will be heard in public unless exempt in terms of Schedule 7A to the Local Government (Scotland) Act 1973
* The applicant and/or the person(s) making an objection/representation can request a Statement of Reasons for the decision
* The applicant, objector/those submitting a representation may be represented by a third party which is usually – but not always – a Solicitor or Advocate.
* Where the Licensing Authority refuses an application for the grant or renewal of a licence they cannot, within one year of their refusal, entertain a subsequent application from the same applicant for the grant of the same kind of licence in respect of the same activity in the same area or, where the activity consists of or includes the use of premises or a vehicle or vessel, in respect of an activity consisting of or including the same use of the same premises, vehicle or vessel unless in their opinion there has been, since their refusal, a material change of circumstances.

**9.0 MANDATORY GROUNDS OF REFUSAL**

* The statutory mandatory grounds of refusal in terms of Schedule 1, paragraph 5(3) to the Act are as follows:
* A licensing authority shall refuse an application to grant or renew a licence if, in their opinion:

(a) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either—

(i) for the time being disqualified under section 7(6) of the 1982 Act, or

(ii) not a fit and proper person to be the holder of the licence;

(b) the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself;

(c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

(i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;

(ii) the nature and extent of the proposed activity;

(iii) the kind of persons likely to be in the premises, vehicle or vessel;

(iv) the possibility of undue public nuisance; or

(v) public order or public safety; or

* the applicant would not be able to secure compliance with:

(a) the mandatory licence conditions, and

(b) the standard conditions and any further conditions under sub-paragraph (1A)(b) to which the licence is to be subject,

* the application does not contain the information required under
* paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or".
* (d) there is other good reason for refusing the application;
* and otherwise shall grant the application.

**10. RIGHT OF APPEAL:**

* A person who requires the Licensing Authority to give them reasons for a decision may appeal to the Sheriff against that decision. However, they only have this right if they have taken every opportunity to state their case to the Panel as has been made available.
* An appeal must be made by way of summary application and be lodged with the sheriff clerk within 28 days from the date of the decision appealed against
* On good cause shown, the Sheriff may hear an appeal outwith the 28 day timeline
* The Sheriff can uphold an appeal only if the sheriff considers that the licensing authority erred in law, based their decision on any incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
* The above is a general guide and those who wish to appeal should seek their own independent legal advice

**11.0 LICENCE DURATION AND RENEWAL**

A licence shall have effect-

* + for a period of 3 years from the date when it comes into force;
* for such shorter period as the Licensing Authority may decide at the time when they grant or renew the licence or
* for such longer period as the Licensing Authority may decide at the time when they renew a short-term let licence

Whilst the Order gives the Licensing Authority discretionary power to renew licences for a period of more than 3 years, the Scottish Government’s guidance for Licensing Authorities on short-term lets advises Licensing Authorities to renew licences for a period of 3 years, unless they have good reasons to do otherwise.

The Policy of Dumfries and Galloway Council is that licences shall be renewed for a maximum period of 3 years only.

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* When an application is made to renew a licence before its expiry (or on cause shown, made up to 28 days thereafter), the existing licence will continue in effect until such time as a decision is made with regard to the renewal application.

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**12.0 LICENCE CONDITIONS**

Dumfries and Galloway Council currently do not intend to apply any Standard Conditions to Short-Term let licences, although reserves the right to consider each application on its own merits.

Mandatory conditions that attach in law are detailed at Appendix 1 to this Policy Statement.

**13.0 MAXIMUM OCCUPANCY**

Mandatory Condition number 11 (Schedule 3 to the Order) provides that the licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

Consistent with the suggestion as per the Scottish Government Guidance, children under 10 years of age will not be counted toward calculating the number of guests residing on the premises. Only those aged 10 years and above will be caught within calculations.

**14.0 TEMPORARY EXEMPTIONS**

Noting the discretionary power to grant – on an application made to it – a Temporary Exemption from the requirement to obtain a Short-Term let licence, the Council has elected not to grant any Exemptions in relation to any premises or class of premises.

This position shall be kept under review.

**15.0 TEMPORARY LICENCES**

Whilst the Council retains the discretionary power to grant temporary licences (up to a maximum 6 week period), its current position is that there generally shall be no grant of temporary licences.

This position shall be kept under review.

**16.0 COMPLIANCE AND ENFORCEMENT**

**16.1 Unlicensed Short-Term Lets:**

* It is a criminal offence to carry out
* an activity for which a licence is required without having a licence and without reasonable excuse.
* The Scottish Government has set out the following timescales for hosts and operators.

**16.2 New hosts/operators:**

* From 1 October 2022 you **cannot** accept bookings until you have obtained a short-term let licence
* From 1 October 2022, you **cannot** operate while your short-term let application is being determined

**16.3 Existing hosts/operators:**

* Existing hosts/operators must apply for a short-term let licence by 1 April 2023
* On 1 March 2023 the Scottish Parliament approved a six-month extension to the deadline for existing hosts. Existing hosts must apply for a licence before 1 October 2023 (previously 1 April 2023) and can continue operating while their application is being determined.
* You can continue to operate for the time it takes for your licence application to be finally determined.
* By 1 July 2024 you should not be trading unless you have been granted a full licence

A public register will be maintained of licensed short-term lets by the Council. This will allow members of the public to check the licensing status of a premises being used as a short-term let.

The Licensing Authority recognises the importance of having compliance issues monitored in order to ensure that licensed Short-Term lets are not causing an unnecessary nuisance to the community, nearby residents or neighbours. As such they will carry out a risk-based approach to enforcement, with the Housing and Licensing Standards Officer engaging on an informal basis to monitor compliance and attempt to resolve issues. If matters are not resolved informally, then an Enforcement Notice may be issued. A complaint may also be made to the Panel requesting it to consider possible suspension or revocation of the licence.

**Complaints about suspected unlicensed Short-Term Lets**

* may be directed to Police Scotland.

**Complaints about Licensed Short-Term Lets:**

* In the first instance, any concerns about short-term lets should be raised with the host/operator or letting agent. If the issue remains unresolved then the Housing and Licensing Standards Officer may become involved.
* The Council cannot consider complaints in relation to the quality of a guest’s stay or specific contractual matters between the guest and the host/operator as this is outside the scope of the licensing scheme. However, if there are concerns that the premises are not safe for residential use then this matter may be reported to the Council as a mandatory condition of the licence is that the holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.
* Premises site visits may be undertaken by the Housing and Licensing Standards Officer as part of an investigation into a complaint.

**16.4 Licensed short-term lets:**

* Hosts and operators must ensure that any advert or listing placed on or after they are granted a licence includes their licence number.
* Hosts and operators must ensure that they comply with all the mandatory and any additional conditions on their licence. It is a criminal offence to fail to comply with a licence condition unless a statutory defence is proven that the licence holder used all due diligence to prevent the commission of the offence.
* Breach of a licence condition is also a ground for revocation or suspension of a licence
* It is also a criminal offence for a licence holder, without reasonable cause, to fail to notify the Licensing Authority of a material change of circumstances.
* The Council may undertake premises site visits as part of the application process and throughout the duration of the licence to ensure compliance with licence conditions.

**16.5 Variation of a licence:**

* A Licensing Authority may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms on any grounds they see fit.
* A variation application cannot, however, be used to substitute a new holder of the licence for the existing one i.e., effectively to transfer a licence.

**17.0 SUSPENSION OR REVOCATION OF LICENCE**

A Licensing Authority may, whether upon a complaint made to them or not, suspend or revoke a license.

A Licensing Authority may (whether upon a complaint made to them or not) order the suspension or revocation of a licence if in their opinion

* the holder of the licence is not or is no longer a fit and proper person to hold the licence
* the licence holder is managing the property on behalf of someone who would have been refused the grant or renewal of the licence
* the short-term let has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
* a condition of the licence has been contravened

The period of suspension can be the unexpired portion of the duration of the licence, or such shorter period as the Licensing Authority may fix. Suspension can take effect immediately. The effect of the suspension shall be that the licence shall cease to have effect during the period of suspension.

Revocation of licence cannot take effect immediately. It can only take effect after a 28 day period in which the licence holder may appeal a decision and, if an appeal is lodged, until that appeal has been abandoned or determined in favour of the decision.

**18.0 PLANNING PERMISSION**

**18.1 Short-Term Let Control Areas:**

* These are defined in section 26B of the Town and Country Planning (Scotland) Act 1997 and permits the Council, as Planning Authority, to establish short-term let control areas.
* The establishment of these control areas are therefore not within the statutory remit of the Licensing Authority but the Council as Planning Authority.
* The purpose of control areas is to help Planning Authorities manage high concentrations of secondary letting (whereby it may affect the availability of residential housing or the character of a neighbourhood) and to restrict or prevent short-term lets in places or types of buildings where it is not appropriate.
* It is for the Council as Planning Authority to evidence concentrations of Short-term Let properties and assess the impact they have on local communities. If a short- term let premises is in a control area it is a mandatory condition of their licence that planning permission is secured.
* The Council can use refuse an application for a short-term licence if planning permission is outstanding.
* Hosts and operators must comply with both planning and licensing law and all other legal obligations.

The Council as Planning Authority currently has no designated Short-Term Let control areas.

However, where the Premises is in a Short-Term Let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(‘the 1997 Act’), the Holder of the Licence must, where the use of the Premises for a Short-Term Let requires Planning Permission under the 1997 Act, ensure that either:

* an application has been made for Planning Permission under the 1997 Act and has not yet been determined, or
* Planning Permission under the 1997 Act is in force.

For further information on planning matters, the Council’s Planning Department can be found at - [www.dumgal.gov.uk/planning](http://www.dumgal.gov.uk/planning)

**19.0 Fees**

Licensing Authorities may charge such reasonable fees as they may determine in respect of:

(a) applications made to them

(b) the issue of certified duplicate licences

(c) their consideration of a material change of circumstances

(d) the issue of certified true copies,

(e) an inspection of premises following—

(i) a failure to comply with a licence condition, or

(ii) a complaint relating to the premises (unless the complaint is frivolous

or vexatious).

In determining the amount of the different fees the Licensing

Authority—

(a) must seek to ensure that the total amount of fees receivable by the Authority is

sufficient to meet the expenses of the Authority in exercising their functions under

Parts I and II of the 1982 Act and Schedule 2 to the Order,

(b) may determine different fees for different purposes,

(c) may take into account the following criteria—

(i) the size of the premises,

(ii) the number of bedrooms at the premises,

(iii) the number of guests who can reside at the premises,

(iv) the type of short-term let,

(v) the duration of the period for which the premises are made available for

use as a short-term let, and

(vi) the extent to which the licence holder has complied with the conditions

of the licence.

Licensing fees are non-refundable even if an application is refused

Current fees are published on Dumfries and Galloway Council’s Short Term Lets page on the website.

**Appendix 1 – Mandatory licence conditions**

**In terms of Schedule 3 to the Order, a Short-Term let licence is subject to the following mandatory conditions:**

**Agents**

1. Only those named as a holder of the licence can carry out the day-to-day management of the short-term let of the premises.

**Type of licence**

2. The holder of the licence may only offer the type of short-term let for which the licence has been granted.

**Fire safety**

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of:

* fire or suspected fire, and
* the presence of carbon monoxide in a concentration that is hazardous to health.

4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988

**Gas safety**

5. Where the premises has a gas supply—

* the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
* if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

**Electrical safety**

6. Where there are electrical fittings or items within the parts of the premises which are for guest use, or to which the guests are permitted to have access, the holder of the licence must:

* ensure that any electrical fittings and items are in:

(i) a reasonable state of repair, and

(ii) proper and safe working order,

* arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,
* ensure that, following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,
* arrange for a competent person to:

(i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and

(ii) date label and sign all moveable appliances which have been inspected.

7. In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006

**Water safety: private water supplies**

8. Where the premises are served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

**Water safety: legionella**

9. The holder of the licence must assess the risk from exposure to legionella within the premises, whether or not the premises are served by a private water supply.

**Safety & repair standards**

10. The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.

Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

**Maximum Occupancy**

11. The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

**Information to be displayed**

12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests:

* a certified copy of the licence and the licence conditions,
* fire, gas and electrical safety information,
* details of how to summon the assistance of emergency services,
* a copy of the gas safety report,
* a copy of the Electrical Installation Condition Report, and
* a copy of the Portable Appliance Testing Report.

**Planning Permission**

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either:

* an application has been made for planning permission under the 1997 Act and has not yet been determined, or
* planning permission under the 1997 Act is in force.

**Listings**

14. The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes:

* the licence number, and
* a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with the Energy Performance of Buildings (Scotland) Regulations 2008

The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises is consistent with the terms of the short-term let licence.

**Insurance**

15. The holder of the licence must ensure that there is in place for the premises:

* valid buildings insurance for the duration of the licence, and
* valid public liability insurance for the duration of each short-term let agreement.

**Payment of fees**

16. The holder of the licence must pay any fees due to the Licensing Authority in respect of the licence on demand.

**False or misleading information**

17. The holder of the licence must not provide any false or misleading information to the Licensing Authority.

**Appendix 2 – List of Consultees**

* Economy and Resources – 26 January 2022 – Sub Group Meeting
* Police Scotland – 8 March 2022, 8 June 2022 - Sub Group Meeting
* Working Group - 22 April 2022, 29 April 2022 – Full Working Group Meeting
* Scottish Fire and Rescue Service 11 May 2022, 22 November 2022 - Sub Group Meeting
* Planning – 11 May 2022 - Sub Group Meeting
* Communications Team –  31 May 2022, 6 September 2022 - Sub Group Meeting
* Revenues/Assessors/Finance – 6 June 2022- Sub Group Meeting
* Legal/Enforcement/Licensing – 6 June 2022 - Sub Group Meeting
* Association of Scotland’s Self Caterers – 6 July 2022 – Teams Meeting with to discuss councils proposed policy
* Discover Scotland – 6 July 2022 – In person meeting to discuss Council’s Policy
* Licensing Team / Legal – 23 August 2022 - Sub Group Meeting
* Association of Scotland’s Self Caterers/South of Scotland Destination Alliance - Public Consultation online – 80 attendees – 31 August 2022
* Association of Scotland’s Self Caterers/South of Scotland Destination Alliance - Public Consultation at Dumfries College – 70 attendees – 1 September 2022
* Waste Management – 20 September 2022 - Sub Group Meeting
* South of Scotland Destination Alliance – 22 September 2022- Teams Meeting with to discuss councils proposed policy
* South of Scotland Destination Alliance - 12 October 2022 – Short Term Lets Webinar – 60 attendees
* Legal Service – 26 July 2022, 20 October 2022, 29 November 2022, 8 December 2022 - Sub Group Meeting