

Dumfries and Galloway Council - Short-term Lets Licensing Policy

1.0 Introduction

The Scottish Government has introduced Short-term Lets Licensing to ensure that the short-term lets sector provides good quality accommodation alongside high management standards. Under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Order”) approved by the Scottish Parliament on 19 January 2021 all short-term let properties in Scotland will require a license. This is to ensure they are safe and the people providing them are suitable. The Short-term Lets Licensing Order came into law on 01 March 2022.

The licensing scheme will require all licensed short-term lets to comply with mandatory conditions which will apply across Scotland. Additional conditions can also be decided by Local Authorities. Dumfries and Galloway Council will need to check that the premises are compliant with all conditions.

2.0 Timescales

All Scottish local authorities are required:

- To establish a short-term let licensing scheme by 01 October 2022.
- Existing hosts and operators will have until 1 April 2023 to apply for a licence.
- All short-term lets in Scotland will have to be licensed by 1 July 2024.

3.0 Definition

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
- (f) The short-term let does not constitute an excluded tenancy

- **Commercial consideration** - this includes money and/or a benefit in kind (such as a provision of a service or reciprocal use of accommodation).
- **Guest** – this means a person who occupies accommodation under a short-term let
- **Host** – this means a person who is the owner, tenant or person otherwise in control over occupation and use of the accommodation which is the subject of the short-term let
- **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 were married to them)
 - Is you or your Partner's: parent or grandparent, child or grandchild or brother or sister
 - Is the Partner of one of your: parents or grandparents, children or grandchildren, or brothers or sisters

4.0 Excluded Accommodation

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

- an aparthotel
- 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
- residential accommodation where personal care is provided to residents
- 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
- student accommodation,
- accommodation which otherwise requires a licence for use for hire for overnight stays
- accommodation, which is provided by the guest,
- accommodation, which is capable, without modification, of transporting guests to another location
- a bothy
- 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.

There are four types of short-term lets licenses:

- **secondary letting;** - a short-term let involving the letting of property where you do not normally live
- **home letting;** - using all or part of your home for short-term lets whilst you are absent
- **home sharing;** using all or part of your own home for short-term lets whilst you are there
- **home letting and home sharing.** - hosts principal home

A separate licence is required for each premises. However, a single licence may be issued in respect of unconventional accommodation where there is more than one separately bookable property on the site.

A separate licence for short-term lets within the same dwellinghouse is not needed. For example, if two rooms are let out in a home, that would be covered by one licence.

If you have an HMO licence for your property, you will still need a short-term let licence if it is also to be used for short-term lets.

5.0 Applying for a licence

All applicants must complete an online short-term let licence application form. However, paper applications will be available on request. Applicants should pay the application fee as part of the application process.

5.1 Notice:

- Under the terms of Civic Government (Scotland) Act 1982 (the Act), all applicants who apply for a short-term let licence must display a 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.
- The notice shall state that an application has been made for a licence, the main facts of the application, 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 required to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired. A template will be provided to the applicant when an application is submitted.

5.2 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 Dumfries and Galloway Council, as the licensing authority (the Council) to consider an objection or representation, it 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
- received by the Council within 28 days from when the notice of application is displayed
- Anonymous objections or representations will not be considered.
- The objection should be relevant to the statutory grounds that can be taken into consideration when refusing an application. These are set out in the Act:
 - The applicant or anyone else detailed in the application form is not a fit and proper person to be the holder of a licence;
 - The activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused.
 - The premises is not suitable for the conduct of the activity, having regard to: The location, character or condition of the premises
 - The nature and extent of the proposed activity.
 - The possibility of undue public nuisance, public order; or public safety
 - Where there is other good reason
- It should clearly detail the reasons for the objection/representation
- 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 policy

A threshold of 5 objections or adverse representations will be required per Short-term Let License application within the 21-day notice period before it is required to go in front of the Licensing Panel for consideration.

6.0 Determination of application

6.1 Fit and Proper Person Test:

- Every applicant should be aware of the statutory mandatory grounds of refusal including the fit and proper person test.
- Licensing authorities are responsible for determining whether you are a fit and proper person to be the holder of a licence for short-term lets. Consideration will be given to a range of information including relevant criminal convictions, other relevant information provided by Police Scotland, any previous disqualifications from being a private landlord, previous revocations of an HMO licence and providing false or misleading information in your application form.
- If there are less than 5 objections or adverse representations to a short term let licence application, the application will be authorised under delegated powers if all mandatory and any additional conditions are met unless there are objections/representations that raise a substantive matter that the Authorised Officer considers ought to be placed before the Panel for consideration.

6.2 Licensing Panel:

- If the threshold of 5 objections or adverse representations is submitted in relation to a short-term let licence application, the application could be subject to a hearing at a meeting of Dumfries and Galloway Council Licensing Panel.
- The person(s) submitting the objection or representation will be invited to attend the meeting of the Dumfries and Galloway Council Licensing Panel and speak to their objection/representation. You will be given at least 14 days' notice of the hearing date.
- The applicant or their representative will also be invited to attend the meeting and given the opportunity to state why the application should be granted.
- The Panel will be able to ask questions of the parties and, thereafter, decide whether to grant or refuse the application.
- Applications will be heard in public unless required to be taken privately on the grounds of disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973
- Both the applicant and the person(s) making an objection/representation can request a statement of reasons for the decision
- If your application for a licence is refused, you cannot reapply for a licence within 1 year of that decision, unless there has been a material change in your circumstances since then.

6.3 Right of appeal:

- The applicant and the person(s) making an objection/representation have a right of appeal to the Sheriff Court.
- However, they only have this right if they have taken every opportunity to state their case to the Panel as has been made available.
- The Sheriff can uphold an appeal only if the sheriff considers that the licensing authority erred in law, based their determination on any incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
- Any appeal must be lodged by way of a summary application with the relevant Sheriff Clerk's office within 28 days of the date of the decision appealed against.
- Parties should seek their own independent legal advice in relation to an appeal.

7.0 Licence Duration and Renewal

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 duration of the licence applies from the date on which the licence comes into force. This will be specified on the licence together with the expiry date of the licence.
- When an application is made to renew a licence timeously, the existing licence will continue in effect until such time as a decision is made on the renewal application.

- A licence shall have effect-
 - for a period of 3 years from the date when it comes into force; or
 - for a period as the licensing authority may decide at that time when they grant
 - It is not anticipated that licences will be renewed for a period of longer than 3 years.

8.0 Licence Conditions

The Act sets out a number of mandatory license conditions which apply to all short-term let across Scotland. **Appendix 1**

www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-2-supplementary-guidance-licensing-authorities-letting-agencies-platforms-2

In addition to the mandatory licence conditions which apply to all short-term lets, licensing authorities may impose additional conditions. These enable the licensing authority to respond to local challenges and concerns relative to specific types of short-term letting.

Short-term Lets Licensing Applications which do not meet all of the mandatory conditions at the application stage will be refused.

9.0 Temporary exemptions

The Council will not be granting temporary exemptions under any circumstances. This position will be kept under review.

10.0 Temporary licences

The Council will not be granting temporary licences under any circumstances. This position will be kept under review.

11.0 Compliance and enforcement

11.1 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.

11.2 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

11.3 Existing hosts/operators:

- Existing hosts/operators must apply for a short-term let licence by 1 April 2023
- If you have been trading on or before 30 September 2022, you may continue to accept bookings after 1 October 2022 but only if you have made a licence application by 1 April 2023.
- 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.

Complaints about suspected unlicensed hosts/operators can be directed to Police Scotland.

11.4 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 if a licence holder has not used all due diligence to prevent the offence.
- 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.

11.5 Complaints about licensed short-term lets:

- In the first instance, any concerns about short-term let's should be raised with the host/operator or letting agent/platform. If the issue is sufficiently severe, then the Council may become involved.
- A complaint must be relevant to the matters that the Council can take into consideration.
- The Council can consider matters relating to the suitability of the licence holder, threats to public safety or public order or whether a condition of the licence has been contravened.
- These issues could include a host/operator exceeding the number of people staying at the premises, serious disturbance or antisocial behaviour or concerns about the maintenance and safety of the premises.
- Please note that 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.

- Premises site visits may be undertaken by the Council as part of an investigation into a complaint.

11.6 Enforcement:

- Some complaints may require enforcement action from the Council.
- Enforcement action could include additional licence conditions being attached, enforcement notices or variation, suspension or revocation of the licence or in more serious circumstance pursuing a prosecution.
- An enforcement notice must set out the matters constituting a breach or likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.
- If the matter is not addressed satisfactorily by the licence holder, the Council may then consider a variation, suspension or revocation of the licence.

11.7 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.

12.0 Suspension or revocation of a licence

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

A licensing authority may order the suspension or revocation of a license if in their opinion

- the holder of the licence 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 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. The effect of the suspension shall be that the licence shall cease to have effect during the period of suspension.

12.0 Planning Permission

12.1 Control Areas:

- There is a separate legislative process from licensing which allows the Council, as planning authority, to establish short-term let control areas.
- The purpose of control areas is to help planning authorities manage high concentrations of secondary letting (where it affects 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.

For further information, the Council's Planning Department can be found at - www.dumgal.gov.uk/planning

13.0 Fees

Licensing authorities are required to charge fees in respect of processing and determining, the consideration of applications. They must ensure that the fees are sufficient to cover their administrative expenses and are reviewed periodically. Fees are published on the Council's website and will be subject to periodic review.

Licensing fees are non-refundable. Whether or not a licensing application is granted, the Council incurs significant costs in processing the application.

The Council can consider the following criteria in the process of determining the fees:

- The size of the premises
- The number of rooms at the premises
- The number of guests who can reside at the premises
- The type of short-term let

14.0 Complaints

Complaints about the application of this policy can be made directly to the Council's Housing and Licensing Standards Service or can be submitted online at:

www.dumgal.gov.uk

Customers can also:

Email commentsandcomplaints@dumgal.gov.uk

Call 01387 260467

Write to:

Freepost RTHK-RAGT-KTHT
Information Governance Team
Council Headquarters
English Street
Dumfries
DG1 2DD

Information required will be:

- Customer full name and contact details
- How they would like us to contact them
- As much information as possible about the complaint
- What has gone wrong; and
- What outcome they are seeking

We will always try to respond to your complaint quickly, within **5 working days** or less, if we can. Most complaints are resolved at this stage but if you are still unhappy there are further steps you can take.

Appendix 1 – Mandatory licence conditions

Agents

- 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

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

Fire safety

- The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—
 - (a) fire or suspected fire, and
 - (b) the presence of carbon monoxide in a concentration that is hazardous to health.
- 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

- Where the premises has a gas supply—
 - (a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
 - (b) 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

- 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—
 - (a) ensure that any electrical fittings and items are in—
 - (i) a reasonable state of repair, and
 - (ii) proper and safe working order,
 - (b) 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,
 - (c) ensure that, following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,
 - (d) 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.

- 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

- 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

- 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

- 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

- 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

- 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) a certified copy of the licence and the licence conditions,
 - (b) fire, gas and electrical safety information,
 - (c) details of how to summon the assistance of emergency services,
 - (d) a copy of the gas safety report,
 - (e) a copy of the Electrical Installation Condition Report, and
 - (f) a copy of the Portable Appliance Testing Report.

Planning Permission

- 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—
 - (a) an application has been made for planning permission under the 1997 Act and has not yet been determined, or
 - (b) planning permission under the 1997 Act is in force.

Listings

- 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—
 - (a) the licence number, and
 - (b) 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

- The holder of the licence must ensure that there is in place for the premises—
 - (a) valid buildings insurance for the duration of the licence, and
 - (b) valid public liability insurance for the duration of each short-term let agreement.

Payment of fees

- 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

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