
NORTH AYRSHIRE COUNCIL

26 September 2022

Special Meeting of the Licensing Committee

Title:

Licensing of Short Term Lets-The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022

Purpose:

1. To inform the Committee on the Legislative changes that introduced a mandatory licensing scheme for Short Term Lets.
 2. To Inform the Committee of the Consultation responses received to the draft policy statement, and that the Committee consider whether there should be any proposed changes to the terms of the draft scheme, including any suggested additional licensing conditions that the Committee deem may be required, and thereafter, to seek approval of the draft policy statement.
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Recommendation:

That the Committee notes the current progress in preparation for implementation for the Short Term Lets scheme- and thereafter determines and approves the terms of Short Term Lets Policy after consideration of the consultation responses and officers' comments thereon. In addition, that the Committee requests that within 18 months from April 2023, that a further report be brought back by officers to the Committee detailing a review of the operation of the Short Term Lets scheme in North Ayrshire, including the level of fee(s) charged and the operation of the conditions in practice.

1. Executive Summary

To inform the Committee as to the new mandatory Short Term Lets ("STL") licensing scheme that has been recently brought in by the Scottish Government. In addition, the report to the Committee outlines the proposed draft policy on Short Term lets that has been subject to a full public consultation. The Committee require to consider the terms of officers' comments and consultation responses and now determine the Council's policy on Short Term Lets. In addition, it is anticipated that the Council will wish to request that a report be brought back to a future Licensing Committee outlining the experience of the licensing scheme in practice.

2. Background

- 2.2 On the 1st March 2022, The Scottish Government brought into force The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("2022 Order"). The Scottish Government stated that the legislation was developed in response to concerns raised by residents and communities about the impact of short-term let properties on their local communities, including noise, antisocial behaviour and the impact on the supply of housing in some areas. The STL scheme is a mandatory requirement that covers the whole of the Council's area and is being implemented by an extension of the Civic Government (Scotland) Act 1982. The Council are bound to follow the implementation scheme timescale that has been set by the Scottish Government.

- 2.3 A STL is defined as:

"A "Short-Term Let" means - - the use of residential Accommodation, - provided by a Host, - in the course of business to a Guest, - where the Short-Term Let is entered into for Commercial Consideration, except where any of the "STL Exemptions" apply."

This 2022 Order introduced a new mandatory licensing scheme for STLs, which requires all STL to be licensed by 1 April 2024. Existing hosts will have until 1st April 2023 to apply for a licence and are subject to transitional provisions between 1st October 2022 and 1st April 2023. More on below.

- 2.4 The law applies to accommodation used as STLs. This covers houses, flats and rented rooms. Further information is contained at : [Short-term lets: regulation information - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/short-term-lets-regulation/information/pages/1.aspx).

There are three main separate types of STLs:

1. Secondary Letting (where the STL relates to accommodation which is not the Host's home).
 2. Home Sharing (where the STL relates to accommodation which is the Host's home for example, a bed and breakfast).
 3. Home Letting (where the STL relates to accommodation which is the Host's home).
- 2.5 All licensing authorities must be able to accept licensing applications on or after 1 October 2022, and the authority must also have a policy in place. Accordingly, there was a public consultation carried out on the terms of a draft policy for North Ayrshire : [Short-term let licence \(north-ayrshire.gov.uk\)](https://www.north-ayrshire.gov.uk/short-term-let-licence). The Consultation ran from the 4th August until the 9th September 2022, and contained a section on "frequently asked questions" about the scheme. The scale of STLs within North Ayrshire is expected to be of a high number with initial estimates ranging from 500 to 1,000 properties. However, the true figure is at this stage unknown. In response to this Officers set up an internal working group across many Council service areas to consider the many detailed and involved aspects of this new licensing scheme. This group will continue to meet as required in terms of the

operation of the new scheme.

2.6 The draft policy statement on STLs covers several matters and areas including:

- How the Council deal with Licence applications
- What conditions does a STL Licence have?
- What is the 'Maximum Capacity'?
- What are the STL Exemptions?
- What is 'Excluded Accommodation'?
- What are 'Excluded Tenancies'?
- NAC Policy on Temporary Exemptions
- NAC Policy on Temporary Licences
- How will the Council monitor compliance?
- How will the Council deal with complaints?
- What information is public?

2.7 The new licensing scheme has attracted a lot of publicity and comment at a national and a local level. This is reflected in the relatively high consultation response to a consultation on the terms of the draft policy statement, and there have been various queries on the implementation and enforcement of the new mandatory licensing scheme. 46 responses have been received, and officers have provided an analysis on the consultation responses received to help inform the Committee's deliberations.

2.8 The Scottish Government issued Guidance to Local Authorities on the 18th March 2022 : [Short term lets - licensing scheme part 2: supplementary guidance for licensing authorities, letting agencies and platforms - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/short-term-lets-licensing-scheme-part-2-supplementary-guidance-for-licensing-authorities-letting-agencies-and-platforms/pages/2-1-introduction.aspx). Given that there has been such a relatively short time to introduce the scheme and plan for the implementation of the new licensing scheme, this has created numerous challenges for officers. Some of these challenges have been the Local Government Election period, the requirement to fully consider the terms of the Scottish Government Guidance and thereafter, to consult on the policy and bring the draft policy statement to the new Licensing Committee to determine any policy position of the Council going forward.

2.9 There are several issues and matters for the Committee to consider in terms of the new licensing scheme for STLs. Some of these are highlighted below and are to be read in conjunction with the draft policy statement :

Consultation responses and the consideration of the responses by the Committee

Attached at appendix 3, are details of the consultation responses received. Members will note that many are of a technical and involved nature, and officers at appendix 4 and 5 have provided an overview and analysis of the comments received.

Members will have the opportunity at the Committee to hear from other Council departments who have been invited to attend at the Committee, should Members wish to ask further about any consultation responses from them and to obtain a view from their respective service areas. At pages 77-78, appendix 3 there are comments from the planning department. Reference is also made to appendix three, pages 95 through to pages 99 and the comments from protective services and waste strategy and contracts. There has been a request from departments

within the Council for additional conditions to be added by the Committee with respect with waste services matters.

Conditions to be imposed in terms of a licence

The draft policy statement has adopted in the main the mandatory conditions stated in terms of the suggested Scottish Government Guidance. The Committee may, after consideration of the responses, determine that additional conditions, at this stage, be adopted. In any event, it is the proposal from officers that there should be an inbuilt review of the operation of conditions in practice, and that a report brought back to the Committee within 18 months from April next year ; that being the point where existing hosts will require to apply for a licence. This would allow an opportunity for the new licensing scheme to 'bed down' in practice, for the conditions to be reviewed and any emerging issues and recommendations to be reported back to the Committee. As it is a new licensing scheme, this would allow officers to assess the scheme in practice and propose to the Committee any suggested revisions to its policy statement and conditions thereon.

It is also worthy of note, at this stage, that several other Regulatory regimes have powers regarding their functions so, to avoid duplication with licensing scheme conditions no additional conditions have been proposed at this stage by officers, other than in terms of the duration of licence.

Level of Fees to be set and the duration of licence

The level of fees proposed are as detailed at page 53 of the draft policy. This is on a cost recovery basis in terms of the Civic Government (Scotland) Act 1982. The fee for a STL licence depends on:

- (1) the type of STL licence being applied for and
- (2) the maximum number of Guests being applied for
- (3) whether the Application is for grant or renewal

The fees proposed are as at annex J in the draft STL policy :

1. Grant Fees

	Maximum Occupancy applied for (4 or under)	Maximum Occupancy applied for (5 or more)
Secondary Letting	£250	£400
Home Letting or Home Sharing (or both)	£125	£275

2. Renewal and Recurring Fees

	Maximum Occupancy applied for (4 or under)	Maximum Occupancy applied for (5 or more)
Secondary Letting	£200	£350

Home Letting or Home Sharing (or both)	£75	£225
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The proposed fees consider the terms of the Scottish Government Guidance and also, are comparable to fees proposed by some other Local Authorities. As it is a new licensing scheme, it is difficult to ascertain costs of processing and determining such applications and accordingly, it is suggested that the level of fees and other relevant matters may be subject to future review and report to this Committee.

Other fees that may require to be set are in terms of costs of enforcement activities and there is provision in the Guidance for these to be recovered separately. These are for premises which require inspection after ongoing complaints or where there is a failure to comply with conditions relating to the premises. These fees are not yet specified within the policy, but will be further considered with service departments, and should they be determined as required then they will be published online to give fair notice to applicants of any costs.

In terms of the duration of the licence, the suggested period of a full licence is 3 years. Under existing draft proposals, a licence would then be renewed, similar to the position in liquor legislation and that a fee would be paid in advance for the renewal period. It is for the Committee to determine what this period should be and officers will further outline to the Committee the rationale for such a proposal which, is as outlined in the draft policy for consideration.

Renewal of licence proposal

Art. 15(3) of STL Order states that:

“15(3) A licensing authority may provide for annual or other recurring fees.”

It is proposed in the draft policy statement that a Licence may be renewed on the condition that the Licence-Holder pays the Local Authority a recurring fee for each ten (10) year period, in advance. The first 10-year payment is due when the Host lodges the Renewal Application. The amount of a recurring fee is equal to the Renewal Fee which would be due applicable on the assumption that the Renewal Application was lodged on the Expiry Date of the Licence. Future Recurring Fees are due on the 10th, 20th, 30th anniversaries of the Expiry Date, and their amounts are determined by the Renewal Fee which would otherwise be charged on the relevant anniversary.

The proposal is not to have a '10-year licence', but rather a Licence which (once renewed), the only requirement being that on applying for renewal, and at 10-year intervals after that, the Host should pay the equivalent of an application fee.

Compliance with the Licensing Scheme

The Scottish Government Guidance states that:

6.13. The expectation is that licensing authorities will take a risk-based approach to ensuring compliance, this includes allowing self-certification where appropriate and only using inspections where there are grounds to do so.

In terms of the draft policy statement, it is proposed that the Council will adopt a risk-based approach to identify problematic properties and to concentrate the regulatory process on them. Officers will require, as the scheme beds down in practice, to assess the number of properties that are subject of the licensing scheme and develop planning for risk-based enforcement activities and to deal with potential complaints about the operation of such properties.

Planning-Short term lets

In addition to the introduction of the licensing scheme for short-term lets, new planning regulations were brought into force in April 2021. The Town and Country Planning (Short-Term Let Control Areas) (Scotland) Regulations 2021 provide a mechanism for the Council, as planning authority, to establish short-term let “control areas” which aim to help manage high numbers of short-term lets. There are currently no control areas in North Ayrshire. The consideration of whether a Short-Term Let control area (“STLCA”), would be required is a planning matter and is not a licensing Committee consideration. Further reference is made at appendix three, pages 77-78 to the consultation response received from planning.

Under current planning legislation, planning permission *may* be required for a change of use where a dwelling house – or any other building – is used for short-term lets anywhere within North Ayrshire, regardless of the property being within a STLCA or not. The key issue is whether the planning authority considers that the change of use is, in planning terms, material - taking account of issues such as increased occupancy of the property, frequency of changes of occupants, impact on local amenity and on direct neighbours, etc. There is no definition of what constitutes a material change of use from residential to short-term letting. Whether a material change of use has occurred, and planning permission is therefore required, is a matter of fact and degree for the relevant planning authority to consider on a case-by-case basis.

Fit and proper person test and consultation with Council departments

The new licensing scheme will also include a ‘fit and proper’ test to assess whether an applicant is suitable to be the holder of a licence. Every licence application will require consultation with Police Scotland and the Scottish Fire and Rescue Service. In addition, consultation will be carried out with Council departments and members of the public can also make representations and objections too. There will be processing challenges in terms of timescales, especially in the early operation of the scheme with the expected high number of applications for this new licensing scheme and ongoing matters that may need to be determined by the Committee.

Confirmation Scheme for Existing Operators

It is proposed that the Council create a free-of-charge non-statutory confirmation scheme for existing operators based on the scheme described in Annexes G and H. This would allow existing operators, subject to various checks, to receive a confirmation number that would allow them to avail themselves of the transitional provisions that allow existing operators a period of until 1st April 2023 to apply for a licence. The Convenor has agreed that there should be such a scheme, and the Licensing Section propose to implement it before the Licensing Requirement commences on 1 October 2022.

It should be noted:

- The Host's request for "Confirmation" will **not** be a 'licence application'
- if the Council issue the Confirmation this will **not** be a 'licence' and
- the issue of a 'Confirmation' will **not** remove the Hosts' need to apply for a Licence no later than 31 March 2023.

Policy on Temporary exemptions from the Short Term Lets scheme

It is proposed in the draft policy statement not to grant exemptions in any case, with one exception (1982 Act, Sch.1, Para. 1A(4)). The reason for this policy is that the STL Licensing legislation has been introduced to maintain safety standards and prevent nuisance, so it is advised to the Committee that it considers that it is not appropriate to grant temporary exemptions – apart from a single exception. The exception being that the host will in writing state that:

- a) *that the specified Premises will cease to be used as a STL of any “Type of Short-Term Let” at the end of the shorter of these periods – six (6) weeks from the date of Application for a Temporary Exemption, or – from the date of Application until 31 March 2023, and (b) will not be used for a period of twelve (12) months after that date (unless a STL Licence has been granted) (Part 16, page 15 of the draft STL policy)*

In addition, it is not proposed that there are temporary licences issues issued under Short Term Lets, and that all applications go through the full required licensing process.

Issues of certification and responses to consultation

Members will note from the consultation responses received that a number of queries have been raised as to the level of detail required to support applications. There have been concerns raised about being able to exhibit the certification evidence required on the Isle of Arran. This relates to architectural drawings and certification with gas and electrical professionals. These points are noted by officers and the level and form of information required is stated in the draft policy. These are matters that will be subject of review by Officers as to what is submitted in terms of a licensing application. Accordingly, the Committee should be aware at this stage that there may be real challenges in complying with mandatory conditions and providing sufficient information for the Authority to suitably process licences. This is a matter that requires to be brought to the attention of the Committee at this stage, and officers will continue to liaise with stakeholders and applicants as to the submission of such required detail and the processing of applications.

3. Proposals

The draft policy has been subject of public consultation. Officers have outlined a draft policy that has been subject of numerous detailed responses. It is proposed that Members :

1. Consider the terms of the consultation response, analysis of such responses and officers' comments and thereafter
2. Determine the terms of the draft policy, and whether officers should report back to Members of the Committee on the operation of the scheme in practice.

4. Implications/Socio-economic Duty

Financial

- 4.1 There will be financial implications for persons that will require to apply for a licence for the first time for such an activity that is now required to be regulated under a mandatory licensing scheme. The scale of fees proposed are set out in the draft policy. Scottish Government Guidance has been considered thereon. It is proposed that there will be a fee review in respect of the scheme at a later date. There may be financial implications for operators with the proposed renewal fee being paid up front. This has been suggested by officers to ease the burden on operators where there are no compliance issues and for properties that are unlikely to be subject of any review, complaint, and monitoring activity on an ongoing basis. There is mechanism to bring such hosts back to the attention of the Committee should there be cause to do so.

Human Resources

- 4.2 There will be intensive resource implications for staffing and departments involved in the enforcement of the STL scheme. While a fee can be charged, there is a requirement for additional resources to be allocated in the early stages of the scheme to the licensing team to deal with the practical implementation and challenges of this new scheme. Consideration will be required as to the resourcing related to dealing with any complaints and the expected enforcement activities that may be required. Officers will meet with service departments on a regular basis to monitor such and resourcing requirements as the scheme beds down in practice and more is known about the level of enforcement activity required and/or required visits to properties.

Legal

- 4.3 It is a Legal requirement in terms of the said Order for the Council to implement a mandatory STL scheme and have a policy thereon.

Equality/Socio-economic

- 4.4 The Clerk has considered these duties in preparing this Report and any specific impacts will be evaluated where appropriate. This is a draft policy statement for approval which follows Scottish Government Guidance thereon.

Climate Change and Carbon

- 4.5. This report has been considered in respect of the Council's duties under The Environmental Assessment (Scotland) Act 2005 though, no action is required in respect of the matters raised in this report.

Key Priorities

- 4.6 An effective licensing system, for example monitoring the 'fit and proper' status of applicants for licences, and the safety and suitability of accommodation to the public, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "People and communities are safe".

Community Benefits

- 4.7 Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Consultation has taken place on the terms of the proposed draft policy statement. There was full public consultation on the terms of the consultation from the 4th August to the 9th September 2022. The Consultation responses will be considered by the Committee before determining the policy statement for North Ayrshire. In addition, internal departments, within the Council, that will also be involved in the implementation and any required enforcement and monitoring of the licensing scheme going forward, have been consulted also and their responses have been attached also at Appendix 5.

Aileen Craig
Head of Democratic Services

For further information please contact, Raymond Lynch, Senior Manager-Legal Services ,
on: RaymondLynch@north-ayrshire.gov.uk

Background Papers

Appendix 1-Draft Short Term Lets Policy for North Ayrshire Council.

Appendix 2-Consulation response form for the draft Short Term Lets policy consultation .

Appendix 3-Consulation responses to the draft Short Term Lets Policy.

Appendix 4-Analysis of Short Term Lets responses.

Appendix 5-Officer comments on responses to the consultation on Short Term Lets.

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Important
<p>This document is <u>only</u> a draft.</p> <p>It is being published to invite comment from the public. It does not show the Licensing Committee's settled view on any matter, and where the document says things like "The Council consider ..." this does not mean that the Committee have <u>decided</u> – this draft is only published for the purpose of facilitating discussion.</p>

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Licensing Policy Statement on Short-Term Let Licensing



Note
<p>In this document "STL" means "Short-Term Let" and "NAC" means North Ayrshire Council. Annex A contains definitions of other terms, and these are shown <u>underlined</u>.</p>

Contents

PARTS

1. The role of the Council
2. The approach of the Council
3. Scottish Government Guidance
4. Where can I find more information?
5. Are you a 'New Host' or an 'Existing Host'?
6. Important Dates
7. How the Council deal with Licence applications
8. What is a "Short-Term Let"?
9. What are the "Types of Short-Term Let"?
10. What conditions does a STL Licence have?
11. What is the 'Maximum Capacity'?
12. What are the STL Exemptions?

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13. What is the 'Immediate Family Member' exemption?
14. What is 'Excluded Accommodation'?
15. What are 'Excluded Tenancies'?
16. NAC Policy on Temporary Exemptions
17. NAC Policy on Temporary Licences
18. Before you apply for a Licence
19. What information do I have to give Guests?
20. What do I have to put in listings or adverts?
21. How will the Council monitor compliance?
22. How will the Council deal with complaints?
23. What information is public?

ANNEXES

Annex A - Definitions
Annex B - "Repairing Standard"
Annex C - Mandatory Licence Conditions
Annex D - Licence Duration
Annex E - Enforcement
Annex F - Better Regulation
Annex G - Existing Hosts
Annex H - NAC Confirmation for Existing Hosts
Annex I - Planning legislation
Annex J - Fees
Annex K - What Documents do I need?
Annex L - What documents do I have to give Guests?
Annex M - Unique Licence Numbers

1. The role of the Council

North Ayrshire Council are the "Licensing Authority" under the Civic Government (Scotland) Act 1982. That Act regulates the licensing of many activities which are not covered by

- the Alcohol Licensing legislation (the Licensing (Scotland) Act 2005, or
- the Landlord Registration scheme (the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8)
- the Gambling Act 2005;
- the statutes regulating activities involving animals.

The 1982 Act covers several activities, including the operation and driving of Taxis and Private Hire Cars, Street Trading and Markets, and Public Entertainment.

On 1 October 2022 this list will extend to a further activity: the operation of a Short-Term Let. This is as a result of a change in the Law which applies across Scotland, and Councils have no choice about:

- whether or not the new system should apply in their areas at all, or
- whether it should apply throughout the Council area or only in certain parts.

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This document:

- sets out the Council's approach to the regulation of STL, and
- explains the processes to be followed relating to applications for licences of this kind.

2. The approach of the Council

The Council recognise that there are several objectives which the STL Licensing scheme should seek to achieve, and that the scheme should balance several factors:

- protecting public safety
- securing compliance with Licence Conditions
- treating complaints both from Guests and neighbours effectively
- limiting Hosts' costs and their administrative burden in having to repeatedly re-apply for Licences
- limiting the Council's regulatory burden in inspecting and monitoring

Accordingly the Council will adopt a risk-based STL system where risk assessments will influence several aspects of the scheme. The general approach of the Council is 'light touch'.

For example, although Licences will normally be granted for the 3-year maximum permitted by Law, the position will be different when the Council are later asked to renew the Licence. The Council could time-limit a renewal but would start with the presumption that the renewed licence might be without limit of time.

Instead, there would be an extra condition - that at the time of applying for renewal and at 10-year intervals forever after, the Host should pay the equivalent of the renewal fee as a 'recurring fee'.

This is similar to the arrangement which already operates for alcohol-licensed premises like pubs, restaurants and shops: the Licence is granted 'forever', but the Premises have to pay an Annual Fee each October, and the Licensing Board will only deal with the particular Premises again if:

- there is a complaint (leading to a Review Hearing)
- the Licence-Holders themselves request a change to the Licence, such as a variation of hours, capacity etc. or a Transfer on the sale of the business, or
- the Licence-Holders don't pay the Annual Fee (the Board might give them more time, but eventually they'll probably revoke the Licence).

So if a STL Host observes the Licence conditions, complies with the legislation, and pays the 'recurring fee', there would be no need:

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- for the Host to incur every few years the time and expense of re-applying, or
- for the Council to process the application,

but (as with most other kinds of Licence) there would still be the possibility of review action if there was a complaint.

See Annexes:

- D - Licence Duration
- E - Enforcement
- F - Better Regulation
- G - Existing Hosts
- H - NAC Confirmation for Existing Hosts
- J - Fees

for more information.

3. Scottish Government Guidance

This Policy provides guidance for potential Licence applicants and members of the public on the licensing of STL within North Ayrshire.

In producing this Policy Document the Committee have taken into consideration the Scottish Government's Short Term Lets in Scotland Licensing Scheme Guidance published on 18 March 2022. This is at:

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

The Guidance is in two parts:

Part 1: Guidance for Hosts and Operators

This is at:

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

You may find this helpful, especially "Annex B: Application checklist".

Part 2: Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms

This is at:

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

4. Where can I find more information?

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The 1982 Act is published on a free Government Internet site:

<https://www.legislation.gov.uk/ukpga/1982/45/contents>

This Policy Statement document often refers to **Schedule 1** ("Licensing—Further Provisions as to the General System") which is set out at the end of the 1982 Act. This sets out the procedural rules for most Licensing functions under the 1982 Act, and the direct link to Schedule 1 is:

<https://www.legislation.gov.uk/ukpga/1982/45/schedule/1>

The Order which adds STL Licensing to the 1982 Act is:

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, No. 32

The Order is published on the same Internet site:

<https://www.legislation.gov.uk/ssi/2022/32/contents/made>

This Order is referred to in this document as the "STL Order".

The new Licensing system will apply throughout North Ayrshire. There are some STLs which do not need Licences (see Part 12 - "STL Exemptions" below).

The STL Order introduced a licensing scheme for STL and requires all STL to be licensed by 1 April 2024. Prior to the introduction of the 2022 Order, there was no requirement to license STL in Scotland.

5. Are you a 'New Host' or an 'Existing Host'?

Many of the rules apply differently depending on whether you are a 'New Host' or an 'Existing Host'.

- 'Existing Host' - if you are already using these Premises as a Short-Term Let;
- "New Host" - you have not used these Premises as a Short-Term Let

NAC have special procedures to assist Existing Hosts - see Annexes

G - Existing Hosts

H - NAC Confirmation for Existing Hosts

You will be treated as a New Host:

- if you have used these Premises as a Short-Term Let in the past but are not so using them on the date of your Application

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- if you are using, or have used, other Premises as a Short-Term Let but you are not currently using the Premises covered by the Application as a STL.

6. Important Dates

Date	"Existing Hosts"	"New Hosts"
Saturday 1 October 2022	<ul style="list-style-type: none">• You can continue to operate your premises as a STL as before (you must still comply with existing laws)• You must apply for a STL licence;• You have a "Deemed Licence" until Saturday 1 April 2023 (unless the Council refuse your Application earlier)• If your STL Licence application is <u>refused</u> by the Licensing Authority you must stop using your premises as a STL within 28 days of the decision (subject to appeal to the Sheriff)	<ul style="list-style-type: none">• Must <u>not</u> operate a STL without a licence being <u>granted</u> by the Council• you can <u>apply</u> for a STL Licence but you cannot <u>operate</u> a STL unless and until your application has been granted.
Saturday 1 April 2023	<ul style="list-style-type: none">• Can only operate <u>without</u> a licence if you have applied for a STL Licence (but only while the application is still pending); and• If your STL Licence application is <u>refused</u> by the Licensing Authority you must stop using your premises as a STL within 28 days of the decision (subject to appeal to the Sheriff)	[Saturday 1 April 2023 has no relevance to New Hosts and the position remains: <ul style="list-style-type: none">• Must <u>not</u> operate a STL without a licence being <u>granted</u> by the Council• you can <u>apply</u> for a STL Licence but you cannot <u>operate</u> a STL unless and until your application has been granted.]
Monday 1 April 2024	<ul style="list-style-type: none">• All hosts must have a STL licence.	<ul style="list-style-type: none">• All hosts must have a STL licence.

7. How the Council deal with Licence applications

This description of the Licensing process in NAC applies to everything the Licensing Committee are responsible for (such as the operation and driving of Taxis and Private Hire Cars, Street Trading and Markets, Public Entertainment and - from 1 October 2022 - the operation of a Short-Term Let).

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The Licensing functions of NAC are carried out by the Licensing Committee, which is a Committee of Elected Members. The Council have a "Delegated Powers" arrangement, which authorises the Clerk to the Licensing Committee and other officers in the NAC Licensing Section to grant Licence Applications if

(a) there are no Objections, adverse Representations or adverse consultation responses made by any of:

- Police
- Scottish Fire and Rescue Service (SFRS)
- NAC Departments
- Members of the public

and

(b) the Application does not breach any NAC Policy.

without reference to the Licensing Committee.

For example, over 90% of Applications for Taxi Driver's Licences are granted under Delegated Powers only a few weeks after the Applications are lodged with NAC, and never need to be considered by the Licensing Committee.

We expect that the position with Applications for STL Licences will be similar, and that the most Licence Applications will be dealt with under Delegated Powers.

If we have one or more of:

- Objections,
- Representations which we consider to be adverse to your Application, or
- an issue with NAC Policy,

your case must be referred to the Licensing Committee (as it is now outside "Delegated Powers"). The Licensing Committee will decide if your case needs a Hearing. If there is a Hearing then you will be invited to attend, and if you cannot attend then you are entitled to send NAC written representations (by letter or email)

The Committee meet in Council Chambers at Cunninghame House, Friars Croft, Irvine. For many months during the Coronavirus Emergency the Committee met remotely, using video-conferences where licence applicants dialled-in, but now the Committee are meeting in-person, as they did before Coronavirus.

The Council have to consider the potential reasons for refusal set out in 1982 Act, Sch. 1, Para. 5(3) which are (briefly) that the Licensing Authority consider that

- the Applicant is not a 'fit and proper person'
- the Premises are not suitable for their proposed use

DRAFT for consultation

- there is another good reason for refusing the Application (for example, because of previous breaches of legal requirements).

Following usual practice, any Hearing of your case will be in private following a Resolution made under Local Government (Scotland) Act 1973, Section 50A(4), so the only people present will be:

- you
- representatives of the Police/SFRS/NAC Departments
- any members of the public who have made Objections or Representations.

You are entitled to be present and to be represented by a Solicitor or Advocate. If you do not intend to be present or represented, you can send a written statement of your position. You should ensure that this statement arrives at the Licensing Section before 12 noon on the last business day before the Committee date. Email:

licensing@north-ayrshire.gov.uk

We advise you to set 'delivery receipt' or equivalent before you send your email.

Please note that although you are free to obtain independent legal advice and representation, the Council will not pay for either.

If you do not attend, are not so represented, and do not send a statement:

- (a) The Committee may still deal with the case,
- (b) The Sheriff is likely to reject any Appeal (1982 Act, Schedule 1, Paragraph 18(2))

The same rules apply to members of Committee in STL as in any other kind of licensing: Members of the Committee must take account of the terms of the Councillors' Code of Conduct published by the Standards Commission for Scotland which sets out the need to ensure:

- that there is a proper and fair hearing for all regulatory decision making and
- that there is no suggestion of pre-judging or bias in the consideration of any applications before the Committee.

Members of the Committee may declare an interest and choose not to participate in the decision making of any licensing matter in respect of which they have had any prior involvement either personally or in their capacity as a Councillor if they feel that such prior involvement would compromise their impartiality.

8. What is a "Short-Term Let"?

A "Short-Term Let" means -

DRAFT for consultation

- the use of residential Accommodation,
- provided by a Host,
- in the course of business to a Guest,
- where the Short-Term Let is entered into for Commercial Consideration,

except

where any of the "STL Exemptions" apply (see Part 12 - "What are the STL Exemptions?" below).

9. What are the "Types of Short-Term Let"?

The STL Order defines "Type of Short-Term Let" as one of the following purposes—

- (a) Secondary Letting,
- (b) Home Letting,
- (c) Home Sharing, or
- (d) Home Letting and Home Sharing.

(Definition in STL Order, Sch. 3, Para. 18)

This definition is important because your Licence will state one of these - (a) to (d) - and you can only use the Premises for that purpose. This is because one of the Mandatory Conditions of the STL Licence is:

"2. *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." (STL Order, Sch. 3, Para. 2)*

There are further definitions in Para. 18:

"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 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"

DRAFT for consultation

*"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"*

Home Sharing and Home Letting concern the use of the Host's only principal home.

Secondary Letting does not relate to the use of the Host's principal home.

The application form will ask for you to confirm what "Type" of STL Licence you are applying for. You must select one of the above types of the licence.

10. What conditions does a STL Licence have?

(a) Mandatory Conditions

Any STL Licence anywhere in Scotland has the "Mandatory Conditions" set out in STL Order, Schedule 3. These conditions apply automatically to all Licences in Scotland, and NAC cannot change them. See Annex C - "Mandatory Licence Conditions" for more information.

As well as the national Mandatory Conditions, each Licensing Authority are also able to attach "Standard Conditions" to 1982 Act Licences. See part (b) of this Section, below.

Breach of a licence condition, whether a Mandatory Condition or a Standard Condition can be enforced, and may lead to one or more of:

- Prosecution
- Revocation or Suspension of the Licence:
- Variation of the Licence:
- "Enforcement Notice" served on the Licence-Holder

See Annex E- "Enforcement" for more information.

(b) Standard Conditions

With one exception, NAC do not intend to apply any Standard Conditions to STL Licences.

The exception is the "recurring fee" condition for renewed Licences. If a licence is renewed 'without limit of time', it will have an additional condition requiring payment of a "recurring fee" both:

- at the time of applying for renewal, and;
- every ten (10) years afterwards.

If the most recent decision of the Council has been:

- to grant a Licence for the Premises or

DRAFT for consultation

- to renew the Licence for a fixed period

there is no recurring fee.

If a recurring fee is not paid when it is due then the Council can revoke your Licence.

11. What is the 'Maximum Capacity'?

(a) Why is this important?

One of the mandatory conditions that is attached to all STL licences is that the licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence: this is the "Maximum Capacity".

The Maximum Capacity you apply for will set the fee you have to pay, so it's in your interests not to apply for a high capacity if there's a possibility that we might set a lower limit - you might end up paying a higher fee, but it would not be refunded or reduced.

(b) How is this set?

We will look at your application form and your Layout Plan, and will follow these rules.

The Maximum Capacity is whichever is the lower of:

- (a) The number specified in Table 1 below in relation to the number of rooms in the house available as sleeping accommodation for Guests (counting living rooms and bedrooms), and
- (b) The aggregate for all such rooms in the premises of the numbers of people specified in column 2 of Table 2 in relation to each room of the floor area specified in column 1.

Table 1

Number of Rooms	Maximum Capacity (Guests)
1	2
2	3
3	5
4	7
5 or more	2 for each room

Table 2

Column 1 Floor area of each bedroom or living room	Column 2 Number of Persons
90 sq. ft. (8.36 sq. m.) or more	2

DRAFT for consultation

50 sq. ft. (4.65 sq. m.) or more but less than 90 sq. ft (8.36 sq. m.)	1
---	---

Notes

1. no account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.
2. a room is 'bedroom' ("available as sleeping accommodation") if it is of a type normally used in the premises as a living room or as a bedroom.
3. children under 2 years of age are not counted when calculating the Maximum Capacity.

(c) How do I tell the Council what Maximum Capacity I want?

All grant applications will ask you to say how many Guests you want to accommodate in the premises.

We will not expect you to state this this when you apply for renewal as we will assume that you are applying for the same Maximum Capacity as the Premises offer the same accommodation as before, unless you specify a different figure or your Licence has previously been changed to a different capacity.

(d) How do I request a change in Maximum Capacity later?

If you want to change the Maximum Capacity:

- when you apply for renewal, you should complete that part of the application form
- at any other time apart from renewal: you should apply to us for 'consent for a material change' (in NAC we call this an "Amendment", but other Councils might have a different name). There is no form for this and a letter will do. There is a fee: see Annex J - "Fees". The Law is in 1982 Act, Sch. 1, Para. 9(2).

Either way, you should give us information to support your request, for example a new Layout Plan showing that the accommodation has been expanded.

12. What are the STL Exemptions?

There is no need for a STL Licence if any of these apply:

- (a) the Guest uses the Accommodation as their only or principal home (if they do, there might be a need for Landlord Registration with the Council under separate legislation, so the Host should check with NAC to see if Landlord Registration is needed);

DRAFT for consultation

- (b) the Guest is not an Immediate Family Member of the Host (see Part 13 - "What is the 'Immediate Family Member' exemption?"),
- (c) the Guest is not 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
- (d) the Guest is not an owner or part-owner of the Accommodation,
- (e) 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,
- (f) the Accommodation is not Excluded Accommodation (see Part 14 - "What is 'Excluded Accommodation'?")
- (g) the Short-Term Let does not constitute an Excluded Tenancy (see Part 15 - "What are 'Excluded Tenancies'?")

The Council cannot provide legal advice on whether or not premises are excluded from requiring a STL licence. Owners should take their own independent legal advice on this.

13. What is the 'Immediate Family Member' exemption?

You do not need a STL Licence if the Guest is an Immediate Family Member of the Host.

There are further definitions of "Qualifying Relationship" and "Qualifying Relative".

No STL Licence is needed if the position is (a), (b) or (c):

(a) "Qualifying Relationship"

The Guest and the Host are:

- (i) married to each other,
- (ii) in a civil partnership with each other, or
- (iii) living together as though they were married,

(b) "Qualifying Relative"

The Guest and the Host are related as:

- parent - child
- grandparent - grandchild or
- sibling - sibling
- step-parent - step-child

where:

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- two people are to be regarded as siblings if they have at least one parent in common,
- a person is to be regarded as the child of another person, if the 'child' is being or has been treated that person's child

(c) Combinations

The exemption also extends to situations where the Host and the Guest are connected through a combination of "Qualifying Relationship" and "Qualifying Relative".

14. What is 'Excluded Accommodation'?

This is defined in Paragraph 1 of Schedule 1 to the STL Order. There are many examples of Excluded Accommodation, including:

- (a) an Aparthotel,
- (b) Premises with a Premises Licence under the alcohol licensing legislation (the Premises covered by an unconfirmed "Provisional Premises Licence" or an "Occasional Licence" would not be "Excluded Accommodation"),
- (c) a hotel which has Planning Permission granted for use as a hotel,
- (d) a Hostel,
- (e) a Refuge,
- (f) a Bothy, or
- (g) 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.

15. What are 'Excluded Tenancies'?

This is defined in Paragraph 2 of Schedule 1 to the STL Order. There are many examples but what they have in common (with one exception) is that they are already regulated under other legislation (it is common for licensing statutes to be worded like this to avoid duplication). An example is the 'Private Residential Tenancy'.

The exception is the "Student Residential Tenancy".

16. NAC Policy on Temporary Exemptions

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The Licensing Authority may, on application, grant an exemption from the requirement to obtain a Short-Term Let Licence in relation to a specified property or properties and during a specified period (which must not exceed 6 weeks in any period of 12 months). (1982 Act, Sch.1, Para. 1A, as added by STL Order, Sch. 2, Para. 6).

NAC have elected **not** to grant exemptions in any case, with one exception (1982 Act, Sch.1, Para. 1A(4)). The reason for this policy is that the STL Licensing legislation has been introduced to maintain safety standards and prevent nuisance, so the Committee consider that it is not appropriate to grant temporary exemptions - apart from a single exception.

The exception is that where a Host undertakes in writing:

(a) that the specified Premises will cease to be used as a STL of any "Type of Short-Term Let" at the end of the shorter of these periods

- six (6) weeks from the date of Application for a Temporary Exemption, or
- from the date of Application until 31 March 2023, and

(b) will not be used for a period of twelve (12) months after that date (unless a STL Licence has been granted),

the Licensing Authority will entertain that Application.

The fees chargeable for a Temporary Exemption application are set out in Annex J - "Fees". The time period within which the Licensing Authority will reach a final decision on a temporary exemption application is six (6) months after the application. Hosts wishing a Temporary Exemption should apply with this processing time in mind. The Council may inspect the Premises before deciding whether or not to grant the Temporary Exemption, and may attach conditions to it (1982 Act, Sch.1, Para. 1A(3)).

This is the Statement of Policy required by 1982 Act and is effective on 1 October 2022. It will be reviewed every three (3) years afterwards (1982 Act, Sch.1, Para. 1A(4)-(6)).

17. NAC Policy on Temporary Licences

In general, the 1982 Act allows (but does not oblige) a Licensing Authority to grant a Temporary Licence (1982 Act, Sch. 1, Para. 7). For example, fairgrounds and short-term markets lasting only a few days often use Temporary Licences.

Temporary Licences follow a shortened version of the procedure which applies to 'full' applications.

There are two types of Licence under the 1982 Act:

[1] Full Licence

[2] Temporary Licence

DRAFT for consultation

[a] Full Licence

This lasts up to 3 years, and is renewable indefinitely. An example would be a permanent fairground (as well as Licences for business activities, such as driving and operating taxis). The procedure is set out in Schedule 1 to the Act, and includes:

- a requirement to display a site notice for 21 days, to alert the public to the proposal and to inform them of their right to make state objections and representations (Para. 2(2)); the site notice is displayed at or near the Application Premises (if there are any), and is often tied to a lamppost or railings;
- a procedure for third parties to state objections and representations (Para. 3);
- a right of appeal to the Sheriff by the unsuccessful Applicant or third party (Para. 18).

[b] Temporary Licence

This lasts a maximum of 6 weeks, although it is often requested for only a few days. It is not renewable. A common example is a temporary fairground. The procedure is also set out in Schedule 1, but this is substantially modified by Paragraph 7:

- there is no requirement to display a site notice (as Para. 2(2) is disapplied by Para. 7(3));
- there is no procedure for third parties to state objections and representations (as Para. 3 is disapplied by Para. 7(3));
- there is no right of appeal to the Sheriff (as Para. 18 is disapplied by Para. 7(5)).

[c] Policy

Given the considerations below, the Licensing Authority will **not** entertain applications for Temporary STL licences.

(a) Lack of full consultation

One of the objectives in introducing the STL Licensing scheme was to allow Councils to control the concentration of STL premises as they can be the source of nuisance suffered by neighbours. Therefore the neighbours were given the 'full licence' rights to know about STL proposals and to state their views. The Licensing Authority do not think it is appropriate to defeat one of objectives in introducing the STL Licensing scheme by allowing Hosts to circumvent neighbours' rights by applying for Temporary Licences.

(b) Safety and suitability

The STL Licensing legislation has been introduced to maintain safety standards and prevent nuisance. This implies that the Council should have an opportunity to inspect Premises which seek Licences to assess whether or not they are suitable and safe for their proposed use. The short time-scales commonly associated with Temporary Licences (which also lead to a lack of full consultation) may mean that the Council have only a few days or weeks to

DRAFT for consultation

make a decision before the Licence is proposed to take effect - so it is likely to be impossible for the Council to carry out an appropriate assessment in the short time available.

18. Before you apply for a Licence

Before you apply for a STL licence of any Type, you should check that you can comply with the Mandatory Conditions attached to the STL licence (see Annex C - "Mandatory Licence Conditions").

You should give particular attention to:

- Part 19 ("What information do I have to give Guests?")
- Part 20 ("What do I have to put in listings or adverts?")

The Council have no involvement in this but Hosts should review their insurance policies to check that they, their Guests, and their Guests' property are covered.

19. What information do I have to give Guests?

One of the Mandatory Conditions your Licence has automatically is Condition 12 ("Information to be displayed"). This requires the licence-holder to provide documentation to Guests:

"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) 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."*

See Annex L - "What documents do I have to give Guests?".

The Licensing Authority or Civic Licensing Standards Officer may ask to see these documents. Failure to produce or have all the documents required may result in an Enforcement Notice being issued or the STL Licence being suspended or revoked.

20. What do I have to put in listings or adverts?

This is covered by Mandatory Condition 14(1):

"14.—(1) 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."

(a) the licence number is the number which the Council will give to your case and will be on all correspondence from us (This is called the "Unique Licence Number" - see Annex M - "Unique Licence Numbers");

(b) The "Energy Performance Certificate" (see Annex L - "What documents do I have to give Guests?", heading "Energy Performance").

21. How will the Council monitor compliance?

The Licensing Authority recognise the importance of having compliance issues monitored in order to ensure Licensed STLs 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 Civic Licensing Standards Officer using a range of escalating informal measures, prior to an Enforcement Notice being issued and subsequently a complaint being made to the Committee in relation to the STL Licence inviting the Committee to consider holding a Hearing as to the possible revocation or suspension of the STL Licence.

22. How will the Council deal with complaints?

(a) General approach

It is essential that Licensed STLs are operated in accordance with the 1982 Act and the licence conditions.

However the general approach of the Council is 'light touch' (see Annex F - "Better Regulation").

Accordingly the Enforcement procedures under the 1982 Act are to be seen as a last resort, where problems relating to the operation of a STL cannot be resolved amicably by the licence holder and the complainer, possibly with the Council's Civic Licensing Standards Officer or other Council officers acting as mediators.

DRAFT for consultation

If the Council consider that a problem exists but that the Host can fix it, they should be given a chance to do so.

(b) Complaints from Guests

In the first instance, the Licensing Authority would expect any concerns from Guests to be raised with the Host or operator and only where this cannot be resolved they should contact the Licensing Authority.

(c) Complaints from Neighbours

Similarly, in the first instance the Licensing Authority would expect concerns from neighbours to be raised with the Licence Holder, and only where these cannot be resolved should the neighbours contact the Licensing Authority.

See the webpage for our Licensing **Board** :

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

Under the heading "Objections and Complaints about Licensed Premises".

The Licensing Board deal with licences for alcohol-selling Premises, like public houses, restaurants and off-sale shops, and the Board sometimes deal with complaints about alcohol premises which are similar to the complaints from neighbours of rented accommodation. So the documents on that webpage:

- "advice"
- "Complaint/Premises Licence review application"

will be useful. In particular the part of the second document under the heading "North Ayrshire Licensing Board/North Ayrshire Council - ASB Diary". This form is used to give details of alleged incidents of Antisocial Behaviour ("ASB") involving Licensed Premises (or rented houses).

23. What information is public?

It is a statutory requirement that the Licensing Authority maintain a public register of STL Licences. This is part of the "Licensing Register" which can be accessed from the Licensing Authority's webpage:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/licences-and-permits.aspx>

Listings have to show the Licence Number. When you apply, we will allocate your Application a reference number.

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=== ANNEXES ===

Annex A - Definitions

In this Policy Statement document words which are defined in the legislation are underlined:

“1982 Act”

means the Civic Government (Scotland) Act 1982,

“Accommodation”

includes the whole or any part of a Premises,

“Aparthotel”

means 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,

“Bothy”

means 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,

“Certificate of Lawfulness of Use or Development”

means a certificate under section 150 or 151 of the Town and Country Planning (Scotland) Act 1997.

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"Civic Licensing Standards Officer"

has the definition in section 45G of the 1982 Act;

"Commercial Consideration"

includes—

- (a) money,
- (b) a benefit in kind (such as provision of a service, or reciprocal use of Accommodation),

"Councillors' Code of Conduct"

means the Code of Conduct published by the Standards Commission for Scotland under the Ethical Standards in Public Life etc. (Scotland) Act 2000.

"Electrical Installation Condition Report"

means a report containing the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the Premises inspected,
- (c) the name, address and relevant qualifications of the person who carried out the inspection,
- (d) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (e) any defect identified,
- (f) any action taken to remedy a defect,

"Energy Performance Certificate"

means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008,

"Excluded Accommodation"

means Accommodation described in paragraph 1 of schedule 1 to the STL Order;

"Excluded Tenancy"

means a tenancy described in paragraph 2 of schedule 1 to the STL Order;

"Gas Safety Report"

means a report containing the following information—

DRAFT for consultation

- (a) the date on which the appliance or flue was checked,
- (b) the address of the Premises at which the appliance or flue is installed,
- (c) a description of and the location of each appliance or flue checked,
- (d) any safety defect identified,
- (e) any remedial action taken,
- (f) confirmation that the check undertaken complies with the requirements of an examination of—
 - (i) the effectiveness of any flue,
 - (ii) the supply of combustion air,
 - (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both,
 - (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
 - (v) its operation so as to ensure its safe functioning,
- (g) the name and signature of the individual carrying out the check, and
- (h) the registration number with which that individual, or that individual's employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998,

"Guest"

means any person who occupies Accommodation under a Short-Term Let, ("Where the Accommodation is let to more than one person under a Short-Term Let, references in this Order to the Guest are to any one of those persons." : STL Order, Article 2(2)).

"Holder of the Licence"

means any person to whom a Short-Term Let Licence has been granted or jointly granted,

"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,

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"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 a Short-Term Let.

"Hostel"

means 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,

"House"

(a) means any living accommodation which is, or which is capable of being, occupied as a separate dwelling (other than a Mobile Home or any other living accommodation which is not a building), and

- (b) includes—
 - (i) any part of the living accommodation (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others, and
 - (ii) any yard, garden, garage, out-house or other area or structure which is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others),

(this is the definition of "House" in Housing (Scotland) Act 2006, Section 194)

"Immediate Family Member"

A person ("A") is an Immediate Family Member of another person ("B") if A is—

- (a) in a Qualifying Relationship with B,
- (b) a Qualifying Relative of B,
- (c) a Qualifying Relative of a person who is in a Qualifying Relationship with B, or
- (d) in a Qualifying Relationship with a Qualifying Relative of B.

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"Licensing Authority"

North Ayrshire Council are the "Licensing Authority" under the Civic Government (Scotland) Act 1982 and the STL Order,

"Mobile Home"

Has the meaning set out in the Mobile Homes Act 1983, Section 5 (which applies the definition of "Caravan" in the Caravan Sites and Control of Development Act 1960; see The Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 No. 219).

"Police Service of Scotland" ("Police Scotland")

Established under the Police and Fire Reform (Scotland) Act 2012.

"Personal Care"

has the same meaning as in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

"Premises"

means the Accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence

(Note: the "licence" meant here is:

- the permission given by the Host to allow the Guest to use the Accommodation, and **not**
- the "STL Licence" granted by the Council)

"Qualifying Relationship"

Two people are in a Qualifying Relationship with one another if they are—

- (i) married to each other,
- (ii) in a civil partnership with each other, or
- (iii) living together as though they were married,

"Qualifying Relative"

This means a 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 the person's child,
- a person ("C") is to be regarded as the child of another person ("D"), if C is being or has been treated by D as D's child.

DRAFT for consultation

"Refuge"

means 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.

"Repairing Standard"

means the steps which the Holder of the Licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006,

"Scottish Fire and Rescue Service" ("SFRS")

Established under the Fire (Scotland) Act 2005 and the Police and Fire Reform (Scotland) Act 2012,

"Serviced Apartment"

means 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,

"Schedule 1"

means Schedule 1 to the Civic Government (Scotland) Act 1982 ("the 1982 Act"). Schedule 1 is set out at the end of the 1982 Act and contains most of the procedural rules for Licences, such as: how to apply for a Licence; how the Council deals with the Application; and what action the Council can take later to vary, suspend or revoke a Licence.

"Short-Term Let" (or "STL")

means the use of residential Accommodation provided by a Host in the course of business to a Guest, where **all** of the following criteria are met—

- (a) the Guest does not use the Accommodation as their only or principal home,

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- (b) the Short-Term Let is entered into for Commercial Consideration,
- (c) the Guest is not—
 - (i) an Immediate Family Member of the Host,
 - (ii) 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
 - (iii) 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 schedule 1), and
- (f) the Short-Term Let does not constitute an Excluded Tenancy (see schedule 1),

"Short-term Let Control Area"

This has the meaning provided in section 26B of the Town and Country Planning (Scotland) Act 1997. This statute relates to the Planning legislation, not the Licensing legislation, and it is not within the powers of the Licensing Authority to designate a STLCA or to vary a designation.

"Site Notice"

When a person applies to the Council for a Licence involving the use of Premises like a house, they have to display a public "Site Notice" at or near the Premises. Often Site Notices are tied to lamp-posts or railings, or pinned to a door. The Site Notice summarises the proposal, and the Site Notice is displayed so that the public, such as neighbours, are alerted to the proposal, and to their chance to state objections or representations to the Council about the proposal. The Site Notice must be displayed for at least 21 days, and afterwards the Licence Applicant must give the Council a Certificate confirming that this display had happened.

"STL Order"

This means the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order, 2022 No. 32. This is the Order which extended the Licensing rules in the Civic Government (Scotland) Act 1982 (which already covers several activities, including the operation and driving of Taxis and Private Hire Cars, Street Trading and Markets, and Public Entertainment) to Short-Term Lets.

"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,

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“Student Accommodation”

means residential Accommodation which has been built or converted predominantly for the purpose of being provided to students.

“Student Residential Tenancy”

means 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 2016 Act applies,

“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.

“Tolerable Standard”

This is set by the Housing (Scotland) Act 1987, Section 86. The requirements are set by the Scottish Parliament and can be varied by the Scottish Government. The standard is currently:

(a) the House must be structurally stable;

(b) the House must be substantially free from rising or penetrating damp;

(c) the House must have satisfactory provision for natural and artificial lighting, for ventilation and for heating;

(ca) the House must have satisfactory thermal insulation;

(d) the House must have an adequate piped supply of wholesome water available within the House;

(e) the House must have a sink provided with a satisfactory supply of both hot and cold water within the House;

(f) the House must have a water closet or waterless closet available for the exclusive use of the occupants of the House and suitably located within the House;

(fa) the House must have a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the House;

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- (g) the House must have an effective system for the drainage and disposal of foul and surface water;
- (ga) the electricity supply must comply with the relevant requirements in relation to "the electrical installation" for the purposes of that supply; ("the electrical installation" is the electrical wiring and associated components and fittings, but excludes equipment and appliances);
- (h) the House must have satisfactory facilities for the cooking of food within the House;
- (i) the House must have satisfactory access to all external doors and outbuildings;
- (j) the House must have satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;
- (k) the House must have satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health.

"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.

Annex B - "Repairing Standard"

In the STL Order, one of the "Mandatory Licence Conditions" in Sch. 3 is:

"10(2) 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."

When does this apply?

The "Repairing Standard" applies to most STL Accommodation but it does not apply to:

- mobile homes (caravans) or
- any other living accommodation which is not a building.

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This is because the "Repairing Standard" only applies to a "House", which is defined by Housing (Scotland) Act 2006 Section 194:

"(a) means any living accommodation which is, or which is capable of being, occupied as a separate dwelling (other than a mobile home or any other living accommodation which is not a building), and

(b) includes—

(i) any part of the living accommodation (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others, and

(ii) any yard, garden, garage, out-house or other area or structure which is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others)"

What is the "Repairing Standard"?

The Housing (Scotland) Act 2006:

- requires a Landlord to ensure that the House meets the Repairing Standard at the start of the tenancy - this duty does **not** depend on the Tenant reporting the issue to the Landlord - the Landlord should have carried out a pre-tenancy inspection before the tenancy started;

- requires a Landlord to ensure that the House meets the Repairing Standard at all times during the tenancy - but the 'during the tenancy' duty only applies if either the Tenant notifies the Landlord, or the Landlord otherwise becomes aware, that work is needed to comply with the Repairing Standard. Once the Landlord knows, the necessary work should be done withing a reasonable time;

- gives the First-tier Tribunal power to make orders about Landlords (The First-tier Tribunal is a Tribunal which deals with a wide range of statutory systems, and not just housing. The part of the First-tier Tribunal that deals with the landlord duties is called the "Housing and Property Chamber". These duties used to be enforced by the Sheriff Court.)

The Landlord's duty to repair and maintain a rented House is set out below: "What are the 'Repairing Standard' duties?".

What are the 'Repairing Standard' duties?"

The Repairing Standard is defined by Section 13 of the Housing (Scotland) Act 2006.

The requirements are set by the Scottish Parliament and can be varied by the Scottish Government, and are currently:

(a) the house is wind and watertight and in all other respects reasonably fit for human habitation, (the 2006 Act instructs that regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any Building Regulations)

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(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,

(c) the installations for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, both:

- installations in the house, and

- installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others),

(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,

(When the Repairing Standard was set, it included Paragraphs (f) and (g), but these were repealed later)

(h) the house meets the Tolerable Standard. (The Tolerable Standard is a minimum standard for human habitation, and is set by separate legislation.)

Both Councils and the First-Tier Tribunal have to have regard to Guidance issued by the Scottish Ministers on:

- (a) the condition of pipes supplying water for human consumption,

- (b) electrical safety standards in relation to—

- (i) installations for the supply of electricity, and

- (ii) electrical fixtures, fittings and appliances,

- (c) installation of a fixed heating system,

- (d) equipment for detecting fire and for giving warning of fire or suspected fire,

- (e) the Tolerable Standard,

- (f) the type of emergency exit locks to be fitted to common doors in tenements,

- (g) equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health,

- (h) the provision for, and safe access to, a food storage area and a food preparation space.

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Why does the "Repairing Standard" apply to Short-Term Let Accommodation?

When the Housing (Scotland) Act 2006 was first enacted, the Repairing Standard did not apply to holiday homes where the Guest's stay did not exceed 31 days - the Landlord's repairing obligations applied to homes where the tenant lived.

But the STL Order changed this, so now the 2006 Act has an exception to an exception:

"12. *Tenancies to which repairing standard duty applies*

(1) *This Chapter applies to any tenancy of a House let for human habitation unless it is— ...*

*(f) a tenancy of a House which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the House for a holiday **unless the tenancy is a Short-Term Let.***"

The final words in (f) were added by the STL Order, which also added to the Housing (Scotland) Act 2006 new sub-sections 12(3) and 12(4):

"(3) *For the purposes of this Chapter, a Short-Term Let is a type of tenancy (and the terms landlord, let and tenant are to be construed accordingly).*

(4) *In this section, a Short-Term Let has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022."*

So if a "House" is a "Short-Term Let", the "Repairing Standard" duties apply to the "Host". But if the STL Accommodation is a Mobile Home or anything else which is not a building, these duties don't apply.

Annex C - Mandatory Licence Conditions

These are set out in Schedule 3 to the STL Order and apply automatically to all STL Licences.

1. 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.

2. 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.

Note: "Type of Short-Term Let"

This is defined in Paragraph 18 below and means one of the following purposes—

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- (a) Secondary Letting,
- (b) Home Letting,
- (c) Home Sharing, or
- (d) Home Letting and Home Sharing.

Further definitions in Para. 18:

“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 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"*

3. Fire safety

3. 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.

4. [Fire safety - furnishings]

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.

5. Gas safety

5. 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

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until the works necessary to bring the appliance to the required safety standard have been carried out.

6. 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—

- (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.

7. [meaning of "Competent"]

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.

8. 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.

9. 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.

10. Safety & repair standards

10.—(1) The Holder of the Licence must take all reasonable steps to ensure the Premises are safe for residential use.

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(2) 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.

11. 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.

12. 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) 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.

13. 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(24) (“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.

14. Listings

14.—(1) 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.

(2) 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.

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15. Insurance

15. 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.

16. 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.

17. False or misleading information

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

18. Interpretation

18. In this schedule—

“Electrical Installation Condition Report”

means a report containing the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the Premises inspected,
- (c) the name, address and relevant qualifications of the person who carried out the inspection,
- (d) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (e) any defect identified,
- (f) any action taken to remedy a defect,

“Energy Performance Certificate”

means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008,

“Gas Safety Report”

means a report containing the following information—

- (a) the date on which the appliance or flue was checked,
- (b) the address of the Premises at which the appliance or flue is installed,

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- (c) a description of and the location of each appliance or flue checked,
- (d) any safety defect identified,
- (e) any remedial action taken,
- (f) confirmation that the check undertaken complies with the requirements of an examination of—
 - (i) the effectiveness of any flue,
 - (ii) the supply of combustion air,
 - (iii) subject to head (iv), its operating pressure or heat input or, where necessary, both,
 - (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
 - (v) its operation so as to ensure its safe functioning,
- (g) the name and signature of the individual carrying out the check, and
- (h) the registration number with which that individual, or that individual's employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998,

“Holder of the Licence”

means any person to whom a Short-Term Let Licence has been granted or jointly granted,

“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,

“Premises”

means the Accommodation which is the subject of an application for a Short-Term Licence or the subject of a Short-Term Licence,

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“Repairing Standard”

means the steps which the Holder of the Licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006,

“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,

“Short-Term Let”

has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022,

“Short-Term Let Licence”

means a licence for a Short-Term Let, and

“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.

Annex D - Licence Duration

The length of a STL Licence might be different at the Grant stage from the Renewal stage.

The Expiry Date of the Grant depends on whether the Host is an "Existing Host" or a "New Host".

Once the Licence has been granted by the Council, it will not matter whether the Host would previously have qualified as an "Existing Host" or was only a "New Host".

1. Grant - Existing Host

If we grant a STL Licence to an Existing Host, the Licence duration of three (3) years will run from Saturday 1 April 2023, so the Licence will have an Expiry Date of 31 March 2026. If the Host wants to renew the Licence after that, they should apply before that date in 2026.

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The Licence runs from Saturday 1 April 2023 because that is the date that the Existing Host's 'Deemed Licence' (automatically granted under the Transitional Provisions in the STL Order) expires. We will do this to maximise the length of the Licence and to ensure that there is a seamless transition from the 'Deemed Licence' to the Council-granted Licence.

2. Grant - New Host

If we grant a STL Licence to a New Host, the Licence will be granted for approximately 3 years. The exact duration varies from one case to the next, because the Council grant Licences set to expire on the last day of the month preceding the anniversary of the grant.

For example, if the Council grant a Licence on 20 June 2023, it will have an Expiry Date of 31 May 2026. If the Host wants to renew the Licence after that, they should apply before that date in 2026.

3. Renewal

Once granted (whether the Host was an "Existing Host" or a "New Host"), the default position is that the Licence will be renewed without limit of time.

However, if the Council receive any one or more of:

- (a) an adverse consultation response (a comment from the Police, Scottish Fire and Rescue, or a Council Department which is unfavourable to the Application)
- (b) an objection or
- (c) an adverse representation

the case will be referred to the Licensing Committee, and they will start from the position that, if renewed, the Licence should be renewed only for fixed period not exceeding 3 years.

If the Committee renew for a fixed period, the new duration will follow the previous Expiry Date. For example:

In the example above (of a grant decision on 20 June 2023 and an Expiry Date of 31 May 2026):

- the Licence would have expired on 31 May 2026 had there been no renewal application, but
- it will have been kept in force by the Licence-Holder lodging a renewal application.

If the case was then referred to the Licensing Committee, and the Committee renewed the Licence for a fixed period of 3 years, the new Expiry Date would be 31 May 2029.

4. Actions during the currency of the Licence

As with any Licence under the 1982 Act, the Council have powers during the currency of the Licence. These are set out at Paragraphs 10, 11 and 12 of the 1982 Act, Schedule 1.

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- Variation (Paragraph 10)
- Ordinary Suspension or Revocation (Paragraph 11)
- Emergency Suspension (Paragraph 12)

If they uphold a complaint, the Licensing Committee might order both:

- Variation (Paragraph 10)
- Ordinary Suspension (Paragraph 11)

For example:

- they might suspend a Licence for a period, and/or
- they might vary a Licence (e.g. reducing a fixed duration or applying a fixed duration to a Licence that had previously been renewed without limit of time, or varying the Maximum Occupancy, or the permitted "Type of Short-Term Let").

5. Leap Years

If an Expiry Date is 29 February and the Committee renew for, or vary a Licence to, a fixed duration, so that the Licence now expires in February in a year that is not a Leap Year, the Expiry Date is 28 February (Licences always expire on the last day of the month).

For example, if a Licence would otherwise have expired on 29 February 2028 but the Committee limit the duration to two (2) years, the Expiry Date is 28 February 2030.

6. Why are renewals granted without limit of time?

(a) The rule for other 1982 Act Licences

The STL system is implemented as an add-on to the Civic Government (Scotland) Act 1982, but with variations. Usually 1982 Act Licences have a maximum duration of 3 years, and must then be renewed, again with a maximum duration of 3 years, as CG(S)A 1982, Sch. 1, Para. 8(2) is:

- "8(2) Subject to the provisions of this paragraph, a licence shall have effect—
- (a) for a period of three years from the date when it comes into force; or
 - (b) for such shorter period as the licensing authority may decide at the time when they grant or renew the licence."

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(b) The STL RENEWAL rule

However, the STL Order extends this (but only for renewals, not grants) by adding to the 1982 Act's (a) and (b):

*"(c) for such longer period as the Licensing Authority may decide at the time when they **renew** a Short-Term Let Licence." (The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 No. 32, Sch. 2, Para. 10, **emphasis added**)*

North Ayrshire Council's policy is to renew all STL Licences (regardless of the "Type of Short-Term Let") with a duration 'without limit of time', for the following reasons.

(c) The Provision of Services Regulations

A licence granted by the Council is an "Authorisation" under the Provision of Services Regulations 2009 (S.I. 2009-2999).

Reg. 16 ("Duration of authorisation") is:

*"16.—(1) An authorisation granted to the provider of a service by a competent authority under an authorisation scheme must be **for an indefinite period**, except where—*

(a) the authorisation—

(i) is automatically renewed, or

*(ii) **is subject only to the continued fulfilment of requirements**,*

(b) the number of available authorisations is limited by an overriding reason relating to the public interest, or

(c) a limited authorisation period can be justified by an overriding reason relating to the public interest.

...

*(4) This regulation does not prevent revocation or suspension of an authorisation when the conditions for authorisation are no longer met." (**emphasis added**)*

In Reg. 16(1), only (a) applies -

(b) cannot apply since we must make available as many Licences as there are STL properties.

(c) cannot apply as there is no overriding reason - the Scottish Parliament, by enacting (c), have accepted that STL Licences might last much more than 3 years

In (a), the phrase "is subject only to the continued fulfilment of requirements" does not apply either:

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Although STL Licences - like most Licences - are subject to Conditions requiring the Licence-Holder to do things repeatedly, the Licence itself does not itself automatically cease if the Licence-Holder fails to do whatever is required.

Instead, the Licence can be reviewed by the Licensing Committee. This is the action referred to in Reg. 16(4). They might decide to revoke it, but they might also decide:

- to suspend the Licence,
- to issue an Enforcement Notice requiring the Licence-Holder to take specified remedial action
- to do nothing.

In all these situations, the Licence continues. Many cases of breach of conditions may not even reach the Licensing Committee, because Council officers will have explained to the Host what they need to do, and they've done it.

(d) "Period"

In the 1982 Act, sub-paragraph (c) uses the word "period", which suggests that the Licensing Authority should fix the length of the renewal (e.g. a period of X years, as opposed to saying 'without limit of time'). This is not the effect:

Sub-paragraphs (a) and (b):

- were part of the original 1982 Act, which is Primary legislation made by the United Kingdom Parliament, and
- the 1982 Act was passed before the Provision of Services Regulations 2009,

but

Sub-paragraph (c):

- is only the result of Secondary Legislation made by Scottish Ministers, and
- was made after the Provision of Services Regulations 2009 so must be read with them in the background (see below "EU-derived legislation continues to apply post-BREXIT").

So (a) and (b) prevail over the Provision of Services Regulations 2009, but (c) does not.

The Council have had regard to the Scottish Government Guidance on this point but have disregarded it on the view that it is recommending that Councils should break the Provision of Services Regulations 2009.

In any case, if NAC fixed a period of, say, 200 years, this would be tantamount to saying 'without limit of time': given the Council's risk-based approach and the possibility that Licences can be reviewed if the Council believe that the Licence Conditions have been breached, there is no reason not to apply the 'without limit of time' model.

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(e) EU-derived legislation continues to apply post-BREXIT

Although the Provision of Services Regulations 2009 originated with the European Union "Services Directive", they were made by the United Kingdom Government and applied the Directive in the United Kingdom by amending domestic Law. They remain Law in the U.K. and are substantially unchanged by the BREXIT-related amendments that came into force on 31 December 2020.

The Regulations are "EU-derived domestic legislation" as defined by European Union (Withdrawal) Act 2018, Section 1B.

Sub-section 1B(2) is:

"EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after Exit Day, subject as follows."

("Exit Day" means 31 January 2020 - Section 20)

The phrase "subject as follows" refers to a list of legislation. This list does not include the STL Order.

Section 1B(2) reflects the view referred to as "The supremacy of EU law" - see:

- European Communities Act 1972, Section 2(1), and
- Report of the "Select Committee on the Constitution" of the House of Lords prepared when the United Kingdom Parliament considered the Bill which became the European Union (Withdrawal) Act 2018 (Chapter 5: "The 'supremacy principle' "):

<https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/69/6908.htm>

7. NAC Policy Statement

The STL Order goes on to say

*"(2A) A Licensing Authority may decide to **renew** a Short-Term Let Licence for such longer period under sub-paragraph (2)(c)—*

(a) in respect of different licences, or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

*(2B) A Licensing Authority must publish, in such manner as they think appropriate, the circumstances (if any) in which they will renew a licence for such longer period under sub-paragraph (2)(c)." (**emphasis added**)*

NAC take a risk-based approach to STL regulation. Once a person has held a Licence for 3 years, the NAC expect to be able to judge whether or not the renewal should be time-limited.

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The model of 'infinite duration with the possibility of review' is already the case for alcohol Premises Licences under the Licensing (Scotland) Act 2005, Section 28 (licences for public houses, restaurants, nightclubs and off-sales shops etc.). This replaced the system based on the Licensing (Scotland) Act 1976, whereby Licences lasted 3 years at a time and the Licence-Holder had to apply to the Licensing Board for renewal again and again.

Under the 2005 Act, once the Premises Licence has been granted, the Premises may well never come before the Licensing Board again. If there is cause (for example, a "Review Application" under Section 36 - making a complaint) then - if the Board uphold the complaint - they can revoke, suspend or vary the Premises Licence (Section 39).

North Ayrshire Council's policy is to renew all STL Licences (regardless of the defines "Type of Short-Term Let") with a duration 'without limit of time'.

8. If the Licence-Holder dies

The STL licence will automatically be deemed to have been granted to the Executor and will remain in force for a period of 3 months from the date of death, unless previously suspended or revoked.

If we are satisfied that it is necessary for the purpose of winding up the estate, the Executor can send us a written request to extend that period further.

Annex E - Enforcement

Breach of a licence condition can be enforced by:

(1) Prosecution

by the Police charging and reporting to the Procurator Fiscal (breach of a Licence Condition is a criminal offence subject to a fine of up to £1,000 (1982 Act, Section 7(2));

(2) Revocation or Suspension of the Licence

by the Council (by revoking or suspending your STL Licence: The Council would be able to take action immediately, and would not have to wait until the conclusion of any criminal proceedings: 1982 Act, Sch. 1, Para. 11, especially Paras. 11(2)(d) and 11(3)); If the Council consider that the licensed activity is causing or is likely to cause a serious threat to public order or public safety then they may impose an immediate 6-week 'emergency suspension' without a Hearing or prior notice to the Licence Holder, pending a Hearing. The authority to order an 'emergency suspension' had been delegated by the Council to the Clerk to the Licensing Committee, who will exercise that authority after consultation with the Convenor of the Licensing Committee (Para. 12); Persistent and/or serious breaches of Licence conditions are likely to lead to Revocation or Suspension;

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(3) Variation of the 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 of any 1982 Act Licence on any grounds they think fit. Before doing so the Licensing Authority must, at least 7 days before the proposed variation is to be considered, notify:

- The Holder of the Licence
- Police
- Scottish Fire and Rescue Service (SFRS)

of the proposed variation give them all an opportunity to be heard by the Authority on that day (1983 Act, Sch. 1, Para. 10).

An example of a proposed variation might be to reduce the Maximum Occupancy of the Premises. One of the Mandatory Conditions is

"11. 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." (STL Order, Sch. 3, Para. 11)

The Licensing Committee might get representations from SFRS or NAC Departments recommending that this be reduced on safety grounds.

Another possible variation would be where it was suggested that Premises which were already licensed as one "Type of Short-Term Let" were not suitable for that Type, and that the Licence should be varied to another Type.

If the variation was agreed to, it would not come into force for at least the 28-day period available for an appeal to the Sheriff Court, so an existing STL would continue to be lawful, with the previous Maximum Occupancy (the Guest would not be evicted immediately) but the Guest (or Guests beyond the previous Maximum Occupancy) could not remain beyond 28 days unless there was an appeal pending in the Sheriff Court (Para. 10(5)), as otherwise there would be a breach of the relevant Mandatory Conditions:

Condition 2 ("Type of licence")

Condition 11 ("Maximum Occupancy")

(4) "Enforcement Notice" served on the Licence-Holder

If the Licensing Authority consider that any condition included in a Short-Term Let Licence has been, or is likely to be, breached (regardless of whether the Licensing Authority have taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach, they may serve an "Enforcement Notice" on the holder of the STL Licence. An Enforcement Notice must specify—

- (a) the matters constituting the breach or likely breach,

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(b) the action to be taken by the licence holder which the Licensing Authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach,

(c) the date by which the action must be taken.

A condition of an Enforcement Notice is itself deemed to be a condition of a Licence, so failure to comply may lead to prosecution or revocation or suspension of the STL Licence. (See 1982 Act, Sch. 1, Para. 10A(2), as added by STL Order, Sch. 2, Para. 11)

Annex F - Better Regulation

The Law

The licensing process will involve input from officers across the Council, such as Planning, Housing and Protective Services, and also input from the Police and Scottish Fire and Rescue. We will adopt a risk-based approach to identify problematic properties and to concentrate the regulatory process on them, using our best endeavours to minimise the burden on the majority of those engaged in Short-Term Letting.

We cannot eliminate burdens completely, as the legislation approved by the Scottish Parliament sets minimum standards which all operators must meet, but the Council are also regulators who are legally-obliged to observe the Regulatory Reform (Scotland) Act 2014, Section 4(1):

"In exercising its regulatory functions, each regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so."

The "Code of Practice"

Regulators must have regard to the "Code of Practice" published by Scottish Ministers. This is at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2015/01/scottish-regulators-strategic-code-of-practice/documents/scottish-regulators-strategic-code-practice-pdf/scottish-regulators-strategic-code-practice-pdf/govscot%3Adocument/Scottish%2Bregulators%2527%2Bstrategic%2Bcode%2Bof%2Bpractice.pdf>

The "Better Regulation Principles"

Councils must have regard to the "Better Regulation Principles": regulatory functions should be exercised in a way that is:

- transparent
- accountable
- proportionate
- consistent and
- targeted only where necessary

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However, the application of these Principles must give way to any statute requiring things to be done.

How the Council will apply the Principles

We will endeavour to apply the new Licensing consistently with the Principles, but there are limits to what we can legally do.

To take a few passages from the Code of Practice:

"2. Regulators should ...

Adopt risk and evidence based protocols which help target action where it's needed and help to ensure the achievement of measurable outcomes."

"3. Regulators should be enablers and carry out their activities in a way that helps businesses and regulated bodies to comply and also grow sustainably. Regulators should:

- Deliver an efficient, effective and timely service and minimise business compliance costs, where possible, by reducing unnecessary bureaucracy and delays.

- Help those they regulate to design simple and cost-effective compliance solutions to improve confidence and day to day management control.

- Work collaboratively with other regulators and those they regulate to anticipate, generally, and to understand and address compliance challenges associated with strategic innovations or growth plans."

Taking those recommendations in turn:

1. We hope to achieve a simple and quick system whereby an operator will simply complete a Licence Application for and, after a period of weeks for the necessary consultation with internal and external agencies, the Council will grant the Licence under Delegated Powers, with few cases being referred to a Hearing of the Licensing Committee;

2. Our website will contain information and advice, and officers both in the Licensing Section and across the Council will always be on hand to discuss cases with operators;

3. We will adopt procedures whereby the various agencies involved collaborate, share information and seek to avoid unnecessary duplication.

There are two regulatory systems covering Short-Term Lets:

1. the Planning legislation was amended to allow local Councils to decide whether or not Short-Term Let properties required Planning Permission. North Ayrshire Council do not currently propose to apply that legislation, so STL Operators will not have to pay for Planning Permission.

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2. However the new Licensing rules are different: they were imposed nationally, and local Councils have not been given a choice, and so the scope for North Ayrshire Council to lessen the burden placed on STL operators is limited.

Annex G - Existing Hosts

The STL Order contains "Transitional Provisions" for existing Hosts (STL Order, Article 7) which mean that if you apply for a STL Licence:

- on or after 1 October 2022, and
- before 1 April 2023

you can continue to operate a STL, even though you are not yet licensed.

A "Transitional Provisions" arrangement is common when a new Licensing system is introduced, and is here referred to as a "Deemed Licence" (it's not really a 'Licence', but the Law grants you temporary immunity from prosecution, which would otherwise be the normal result of operating without a Council Licence).

The Deemed Licence continues until:

- (a) the date the Council grant the Licence Application, or
- (b) if the Council decide to refuse the Application, for 28 days after that. If the Council refuse and the Host appeals to the Sheriff, the Deemed Licence continues until the Sheriff makes a decision.

Licence Processing period

The Law requires the Council to make a decision on a STL Licence application (to grant or to refuse) within a set period counted from the date that the Application was lodged. The period depends on whether the Applicant is a 'New Host' or 'Existing Host':

- New Hosts: 9 months
- Existing Hosts: 12 months

The Law is 1982 Act, Section 3(1), as amended for Existing Hosts by the STL Order, Article 7(2)).

Assistance for Existing Hosts

Since it is possible that the Council may take several weeks or months to process Applications, but in appreciation of the fact that Existing Hosts may want an official document to show tenants, the Council are adopting a procedure to assist Existing Hosts who have applied for a STL Licence in the period 1 October 2022 to 31 March 2023 (both dates inclusive): see "Council Confirmation" below.

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Even if the Host has applied for a Licence shortly after 1 October 2022 we cannot guarantee to grant Licences by the time bookings start in 2023. This is because there is always the possibility of Objections, Representations or adverse consultation responses by any of:

- Police
- Scottish Fire and Rescue Service (SFRS)
- NAC Departments
- Members of the public

If we have one or more Objections, Representations or Consultation responses which we consider to be adverse to your Application, your case must be referred to the Licensing Committee (as it is now outside "Delegated Powers"). The Licensing Committee might not make a decision in your case before the date the booking starts.

NAC Confirmation

Existing Hosts may wish to ask the Council to issue written confirmation from the Council that the STL Licence applied for is likely to be granted. These Hosts can request Confirmation:

- by written request sent
- no earlier than 56 days after the date the Council received the application.

The Council will send the Host an email in the form set out in Annex H ("Council Confirmation of Application by Existing Host") but only in the circumstances set out in the note to the form.

Annex H - NAC Confirmation for Existing Hosts



Council Confirmation of Application by Existing Host

Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022

This Confirmation will only be issued in the circumstances set out in the note.

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Licence Number:	[NAC ref]
Host:	[name]
Accommodation address:	[address & postcode]
"Type of Short-Term Let" applied for	<p style="text-align: center;"><u>[one of the following:]</u></p> <p>(a) <u>Secondary Letting</u>,</p> <p>(b) <u>Home Letting</u>,</p> <p>(c) <u>Home Sharing</u>, or</p> <p>(d) <u>Home Letting</u> and <u>Home Sharing</u>.</p>
Maximum Occupancy requested:	[Number of Guests]
Date Application lodged with the Council:	[date]

North Ayrshire Council, the Licensing Authority for the purposes of the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 confirm:

- that the Host has applied for a Short-Term Let Licence for the above Accommodation;
- that that Application was received by the Council no later than 31 March 2023;
- that the Council accept that the Transitional Provisions in the Article 7 of the Order apply;
- that the Consultation process for that Application (including any inspection of the Accommodation, if the Council deem this appropriate) has been completed by the return to the Licensing Authority of responses from the Police, Scottish Fire and Rescue and all Council consultees;
- that there are no objections or adverse representations made by any of the members of the public within the period prescribed by the Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 2;
- that there are no responses to 'reasonable enquiries' which are adverse to the Application under Paragraph 4 of that Schedule;
- that the Licence applied for:
 - is likely to be granted for the "Type of Short-Term Let" applied for and for the "Maximum Occupancy" requested;
 - will expire on 31 March 2026 - If the Host applies on or before then to renew the Licence, the Licence will continue after that date until the Council have made a decision on the renewal application;
 - can be later revoked, suspended or varied by the Council under Paragraphs 10 to 12 of that Schedule.

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pp Raymond Lynch
Clerk to the Licensing Committee
North Ayrshire Council

Note

*This confirmation will only be issued if **all** of these conditions apply:*

- 1. the Licence Applicant is an Existing Host (not a New Host);*
- 2. the Host has applied for a STL Licence for the Accommodation no later than 31 March 2023;*
- 3. at least 56 days have passed since the Host applied;*
- 4. there is no outstanding request by the Council for information or documents from the Host; and*
- 5. either:*
 - the Council have decided that an inspection of the Accommodation is not appropriate, or*
 - such an inspection was carried out no less than 14 days before the date of the request for confirmation.*

and only:

- after the period allowed for consultation, objections and representations (usually 28 days counted from the date the Council received the Host's Application) has expired; and

- it is 'clear' – there are no:

(a) adverse consultation responses ('adverse' means unfavourable to the application),

(b) objections, and/or

(c) adverse representations.

If there are any of (a), (b) and/or (c) then this Confirmation will not be issued. The Confirmation will not be issued if the Council consider that an inspection of the Premises is appropriate but that inspection has not been carried out, or at least 14 days have passed since that inspection.

Annex I - Planning legislation

(a) The present position

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The operation of a Short-Term Let is also covered by the Planning legislation. This is separate from the Licensing legislation and the NAC Licensing Committee have no powers to grant Planning Permission.

Councils have been given the ability to choose whether or not the owners of STL properties have to apply for Planning Permission, by designating a "Short-term Let Control Area" (STLCA). NAC at present have no plans to make a designation

Owners of STL property should:

- take independent advice on whether or not they need Planning Permission, or
- ask NAC's Development Management Department

NAC's Development Management Department has a webpage "Do I need planning permission?" at:

<https://www.north-ayrshire.gov.uk/planning-and-building-standards/do-i-need-planning-permission.aspx>

and their email for general inquiries is:

eplanning@north-ayrshire.gov.uk

(b) Short-term Let Control Areas

Under The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 the Planning Authority **can** introduce "Short-term Let Control Areas" (STLCAs) which would require any change of use of Premises to obtain Planning Permission. In addition, STLCAs would require all STL licence applications, for any of the four types of licences to have Planning Permission (where required) before applying for a STL Licence.

At present there are no Short-term Let Control Areas in place in North Ayrshire.

(c) If a STLCA is designated after your STL Licence is granted

If the position changes, and Premises are in a STLCA (even if designated after your STL Licence was granted or last renewed) then a Mandatory Condition of the STL licence will apply:

"13. *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(24) ("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

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(b) Planning Permission under the 1997 Act is in force." (STL Order, Sch. 3, Para. 13)

This means that if a STLCA is introduced during the period of your STL Licence, even if Planning Permission was not initially required at the time that you applied for and were granted a STL Licence, you would have to apply for either:

- Planning Permission or
- a "Certificate of Lawfulness of Use or Development"

If:

- you did not apply for one of these, or
- you continued operating your STL once Permission or a Certificate had been refused,

you would be in breach of a licence condition and enforcement action may be taken, both by the Police and Council (see Section "Enforcement").

Under the STL Order, a preliminary ground for a Council refusing to consider a STL licence application is that the use of the Premises for a STL would constitute a "Breach of Planning Control" under the Town and Country Planning (Scotland) Act 1997, Section 123(1).

The action described is:

- to refuse to consider the Application, as opposed to
- to decide to refuse the Licence.

The Licensing Authority are entitled to reject an Application at an early stage, without processing it fully, in much the same way as they would reject an Application which was unsigned, incomplete or lacked the appropriate fee.

Annex J - Fees

The fee for a STL licence depends on

- (1) the type of STL licence being applied for and
- (2) the maximum number of Guests being applied for
- (3) whether the Application is for grant or renewal

The level of fees charged in the Financial Year 1 April 2022 to 31 March 2023 is shown below. The Council's charges of all sorts, including licensing fees, are revised each year shortly before the start of the Financial Year usually in line with the Consumer Prices Index published by the Office of National Statistics.

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The fee is assessed on the basis of the Application

If the Council:

- refuse the Application (whether for Grant, Renewal or Variation of the Licence, or for Consent to a Material Change),
- grant it for less than was applied for (such as a different "Type" or a lower Maximum Capacity), or
- later vary the licence so that it is less than was granted (such as a different "Type", setting a lower Maximum Capacity, or removing 'without limit of time' status from a Licence previously renewed),

the fee is **not** refunded in whole or in part, and is not credited against future fees, with one exception.

Exception: 'Recurring Fee'

The exception arises in the case of renewal:

If the Licence-Holder has requested renewal without limit of time (and has accordingly paid the 'Recurring Fee' in addition to the 'renewal fee'), but the Council either:

- refuse the renewal or
- grant it but only for a fixed period,

then the Council will refund or credit the Recurring Fee, but the Application Fee for the renewal will not be refunded, reduced or credited.

Transfer of the Premises

If the Host sells the Accommodation during the currency of the Licence, and the new owner wishes to continue operating the Accommodation as a STL, the Host (seller) will apply for a Variation of the licence, inviting the Council to substitute the buyer as the Host.

(a) If the Council grant the Variation application:

the Licence continues, with the only change being that the buyer is now shown as the Host.

(b) If the Council refuse the Variation application:

the Licence stops 28 days after the Council's decision (subject to appeal to the Sheriff by the seller - the current Host, not the buyer). If there is no appeal then the Licence ceases as the Licence-Holder no longer has a right to occupy the Premises (having sold them). The new owner will have to apply for a new Grant of a Licence. The new owner will be entitled to continue operating the STL while the new Application is pending, but must stop:

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- if the Application is refused (subject to appeal to the Sheriff) or
- if the Application is rejected on a preliminary basis because it involves a "Breach of Planning Control" (for example, if the area where the Premises have been designated as a "Short-Term Let Control Area" under the Planning legislation, the Licensing Authority may reject a STL Application if it lacks both Planning Permission and a Certificate of Lawful Use. If the Host later obtains one or other, the Host may re-apply)

Table of Fees

1. Grant Fees

	Maximum Occupancy applied for (4 or under)	Maximum Occupancy applied for (5 or more)
Secondary Letting	£250	£400
Home Letting or Home Sharing (or both)	£125	£275

2. Renewal and Recurring Fees

	Maximum Occupancy applied for (4 or under)	Maximum Occupancy applied for (5 or more)
Secondary Letting	£200	£350
Home Letting or Home Sharing (or both)	£75	£225

Renewals which are granted without limit of time also have "Recurring Fees" (see below). Renewals which are granted for fixed period do not.

3. Other fees

These fees do not depend on either the Maximum Occupancy or the Type of STL.

Variation Application (1982 Act, Sch. 1, Para. 10) - £58

Application for Consent for a material change (1982 Act, Sch. 1, Para. 9(2)) (called in NAC "Amendment") - £35

Temporary Exemption Application (6-week exemption) (1982 Act, Sch. 1, Para. 1A) - £50

4. Recurring Fees

Art. 15(3) of STL Order is:

"15(3) A licensing authority may provide for annual or other recurring fees."

If a Licence is renewed indefinitely, it will be on condition that the Licence-Holder pays the L/A a recurring fee for each ten (10) year period, in advance. The first 10-year payment is

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due when the Host lodges the Renewal Application. The amount of a recurring fee is equal to the Renewal Fee which would be due applicable on the assumption that the Renewal Application was lodged on the Expiry Date of the Licence. Future Recurring Fees are due on the 10th, 20th, 30th anniversaries of the Expiry Date, and their amounts are determined by the Renewal Fee which would otherwise be charged on the relevant anniversary.

Example

A Licence was granted on 15 June 2023, with a 3-year Duration and an Expiry Date of 31 May 2026. The Licence-Holder applies to the Council in 2026 for renewal and this is granted 'without limit of time'.

The Licence-Holder will pay:

- (a) the 'Renewal fee' shown in the Table above, and***
- (b) the 'Recurring Fee' of the same amount as the 'Renewal Fee'.***

If the Council agree to renew the Licence 'without limit of time', the Host does not have to apply again for Renewal, but every ten years will have to pay a 'Recurring Fee'. The next 'Recurring Fee' will be due on 31 May 2036 and the amount due will equal the renewal Fee that would be charged if someone was applying for Renewal on that date.

If the Premises are sold during the ten-year period, it will be for the buyer and seller to agree between themselves if and how the recurring fee should be apportioned between them. The Council are not involved in this.

The Recurring Fee will **not** be refunded in whole or in part, and cannot be credited against other money due to the Council, if the Premises:

- later cease to be used as a STL or
- later become exempt from needing a STL Licence (for example, because they are later occupied by a relative of the Host, or they later become subject to an 'Excluded Tenancy').

Annex K - What Documents do I need?

We will refuse to accept an application to grant or renew a licence if:

- the application form is not completed
- the application form is not signed by everyone who is to appear as a Licence-Holder (all the Joint Holders, including the Day-to-day Manager)
- the form does not have all the supporting documentation described below, or
- you have not paid the fee set by NAC.

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Although there is currently no Short-term Let Control Area designated in NAC under the Planning legislation, if there is one in force when you apply covering the Premises then you will have to be able to show that your application does not involve a 'breach of planning control'. If you do not then NAC would be entitled to reject your application for that reason as well. That would be rejection, not refusal: if you later got either:

- a grant of Planning Permission or
- a Certificate of Lawful Use or Development,

you could re-apply.

(a) Layout Plan

All applicants for the grant of a STL licence will be required to submit six (6) copies of a Layout Plan of the Premises.

The Layout Plan must be drawn by an architect, surveyor or similar professional. at a scale of no less than 1:50. A hand-written Layout Plan is not acceptable. Hosts can re-use professionally-drawn plans prepared for other purposes (such as an application for a Building Warrant or Planning Permission, but are responsible for arranging the permission of the copyright-holder).

The Layout Plan must show:

- Rooms – living area/bedrooms/bedrooms available for guests;
- Room sizes, including bedrooms;
- Fire escapes;
- Location of heat/smoke alarms;
- Location of fire doors; and
- Location of stairs/elevators/lifts;

We need 6 copies because your Application will be considered by:

- Two Council Departments - "Protective Services" and "Housing"
- Police Scotland
- Scottish Fire and Rescue

and we need two copies in the Licensing Section, one to prepare your Licence document and the other for our records.

For amendment ("consent to material change") or variation applications, where the proposal relates to a change to the layout of the premises, we need six (6) copies of the proposed new Layout Plan.

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For renewal applications, where there has been no change to the layout of the premises a Layout Plan would not be required with the application. If there has been a change, we need six (6) copies of the proposed new Layout Plan.

When the Licence of other proposal is approved, we will mark the Layout Plan with a Notice such as:

"1 June 2023

This is the Layout Plan approved in relation to the Licence granted under number NA00123F

*(signed) William O'Brien
Solicitor (Licensing)"*

(b) Location Plan

In addition to the Layout Plan, you must give us a Location Plan, at a scale of no less than 1:1,500, showing the Premises in relation to streets and other buildings. An aerial photograph (such as a map taken from the Internet) is an acceptable alternative, as is a Location Plan shown as an inset on the Layout Plan.

Again we need six (6) copies if the Location Plan is not shown as an inset on the Layout Plan.

(c) Evidence of Operation as a STL before 1 October 2022

Where an applicant applies as an 'Existing Host', we will need the applicant to certify this when submitting a STL licence application. Checks to establish this may be made by the Licensing Authority.

(d) Consent from owner(s)

An application for a STL licence does not have to be made by the owner of the premises. However, if not the owner, the applicant provide consent from the owner or the owner's Solicitor (or if the Premises are owned by more than one person) all of them (or a Solicitor authorised by all of them).

Annex L - What documents do I have to give Guests?

In this Annex, "MC" means the Mandatory Conditions that automatically apply to a STL Licence. These are in Schedule 3 to the STL Order.

NAC Housing have a www "Advice for private Landlords" at:

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<https://www.north-ayrshire.gov.uk/housing/private-sector-housing/private-landlords-advice.aspx>

This has several links to other documents and webpages that you may find useful.

MC 12 is:

"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) 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."*

When you apply for the grant or renewal of a Licence you will be asked to confirm that your Premises comply with the obligations to have safety installations and regular checks.

Non-compliance with any obligation will be regarded a major concern and:

- applications which do not confirm compliance with these requirements will be considered for refusal, and
- Premises with Licences where these requirements have not been fulfilled will be considered for Enforcement Action, which may involve the revocation of the Licence.

Please be aware that we can request copies of the relevant certificates at any time.

MC 3: Fire and smoke heat detection, and Carbon Monoxide detection

Mandatory Condition 3 is:

"3. 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."*

MC 3(a): Fire and smoke detection, and Carbon Monoxide (CO) detection

There should be at least:

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- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes (normally the living room/lounge),
- one functioning smoke alarm in every circulation space on each storey, such as hallways and landings, or in main room if no landing in upper storey,
- one heat alarm in every kitchen,
- all alarms should be ceiling mounted, and
- all alarms should be interlinked.

Mains operated alarms (with battery backup) are permitted, as are tamper proof, sealed, long-life lithium battery alarms. The expiry date should be visible on each alarm.

For further detailed information please see <https://www.gov.scot/publications/fire-safety-guidance-private-rented-properties/>

Please provide clarification and confirmation in relation to this requirement.

MC 3(b): Carbon monoxide (CO) detection

This applies if your rental property or properties have appliances that use carbon-based fuel.

Hosts have an obligation to ensure that a detection system is installed in all properties you rent where there is:

- fixed combustion appliance (excluding an appliance used solely for cooking) or
- a fixed combustion appliance in an inter-connected space, for example, an integral garage
- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) - the CO detector should be sited outside the room as close to the appliance as possible

CO detectors should be powered by a battery designed to operate for the working life of the detector. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date. Hard wired mains operated CO detectors with fixed wiring (not plug in types) may be used as an alternative, provided they are fitted with a sensor failure warning device. For further information please visit <https://www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/>

Please provide clarification and confirmation in relation to this requirement.

MC 4: Furniture and Furnishings (Fire Safety)

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

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are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988.

MC 5: Gas safety

MC 5 is:

"5. 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."

As a Host you are legally required to commission a Gas Safe registered engineer to carry out an annual gas safety check at your rental property / properties and issue a Gas Safety Certificate (CP12 Certificate). By law a copy of the Gas Safety Certificate should be given to your Guests

A Gas Safety Certificate confirms that the gas installation is safe, and all gas appliances are safe and free from danger. A regular gas safety check can ensure there is no risk to the occupants due to the gas supply, and that all pipework, flues and appliances are installed and maintained correctly.

MC 6: Electrical safety

You have to give Guests both:

- a copy of the Electrical Installation Condition Report, and
- a copy of the Portable Appliance Testing Report ("PAT check")

There is a document to download on the Scottish Government website: "Electrical installations and appliances in private rented properties: guidance":

<https://www.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/>

MC 6(a): Electrical Installation Condition Report

As a Host you are legally required to have a current Electrical Installation Condition Report (EICR) or Electrical Installation Certificate (EIC) for all your rental properties that use electricity.

A copy of the most recent electrical safety inspection reports must be provided to Guests.

DRAFT for consultation

As a Host you are required to ensure that regular electrical safety inspections are carried out and EICRs / EICs are completed by a suitably competent registered electrician, and that anything that fails to pass the inspection is replaced or repaired immediately.

MC 6(b): Portable Appliance Testing Report ("PAT check")

If you have supplied any movable electrical appliances, you need a *PAT check* (appliances belonging to the Guest do not need a PAT check). PAT checks cover:

- portable equipment and
- larger appliances and equipment fixed to a surface or wall.

Items that require PAT testing in a property include:

Fridges
Ovens
Microwaves
Kettles
Toasters
Dishwashers
Washing machines
Tumble dryers
Vacuum cleaners
Televisions
Lamps
Heated towel rails
Extension leads

PAT checks must also be done at least every 5 years but if the electrician recommends more frequent checks (which they usually will for the PAT check) then the Host should follow their advice on frequency.

MC 8: Water safety: private water supplies

MC 8 is:

"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."

This condition does not apply if Scottish Water supply the rental property. Approximately 97% of properties in Scotland are supplied by Scottish Water.

However, if your rental property uses a private water supply for drinking water then you should be aware of the 2017 Regulations. The main objective of the regulation is to ensure the provision of clean, safe drinking water and to deliver significant health benefits to those using private water supplies.

For further information please visit <http://dwqr.scot/private-supply/regulatory-information/>

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ScotGov have a www: "Risk assessing your private water supply":

<https://www.mygov.scot/risk-assess-private-water-supply>

Please clarify whether your property / properties have a public or private water supply, and if it is a private water supply confirm that you are aware of and comply with the relevant Regulations.

MC 9: Water safety: legionella

MC 9 is:

"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."

Legionnaires' disease is a potentially fatal form of pneumonia caused by the inhalation of small droplets of contaminated water containing Legionella. All water systems can provide an environment where Legionella may grow and water storage tanks are only one area of possible risk. Hosts have a duty to ensure a legionella risk assessment is carried out periodically on their property or properties to help guard their Guests against any risk of getting the illness from contaminated water. I have attached a template Risk Assessment which can be used for this purpose.

Please confirm when the Risk Assessment has been carried out. It would be prudent to retain the relevant documentation and you should ensure that you are aware of the findings and are planning for when the next assessment will be undertaken.

If you have a public water supply, we will accept that this condition is already met. In effect, your 'legionella risk assessment' would be:

"My house is connected to Scottish Water's mains supply. They will check for legionella etc., so my risk assessment is simply 'there is no risk' "?

If you have a private supply, there are risk assessment templates on the internet.

MC 10: Safety & repair standards

MC 10 is:

"10(1) The Holder of the Licence must take all reasonable steps to ensure the Premises are safe for residential use.

(2) 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."

See Annex B for an explanation of the term "Repairing Standard".

The "Repairing Standard" includes common areas, like closes and gardens:

Hosts who own flat/tenement rental properties are required to be aware of their responsibilities for repairing common areas, such as:

DRAFT for consultation

- the ground (solum) on which your building stands (but not always the garden)
- the foundations
- the external walls - but individual owners are responsible for the part of these walls that lies in their flat
- the roof (including the rafters)
- other structural parts of the building such as beams, columns and load bearing walls
- the close and stairs (when they are not mutual)
- staircases in blocks of flats.

To find out exactly what applies in your building, you need to read your Title Deeds. You can source a copy of your title deeds at <https://scotlis.ros.gov.uk>

Where a property factor is employed to take charge of repairs and maintenance of a block of flats or a tenement it is important to note that the ultimate responsibility regarding this obligation still sits with the Host.

MC 15: Insurance

MC 15 is:

"15. 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."

If you rent out a property in Scotland that is a flat or tenement you are required to have appropriate building insurance. Tenements are defined as buildings or parts of buildings which comprise of two or more flats, at least two of which are divided from each other horizontally.

The Tenements (Scotland) Act 2004, Section 18, provides that in a tenement:

- each owner must effect and keep in force a contract of insurance against the 'Prescribed Risks' (which are set by regulation - see below) for the reinstatement value of that owner's flat and any part of the tenement building attaching to that flat as a pertinent; and
- any other owner may by notice in writing request the owner of a flat in the tenement to produce evidence within 14 days of that insurance and payment of the premiums.

In a tenement many owners contribute together to maintain a Common Insurance Policy, but where there is no Common Insurance Policy the statutory duty falls on each individual owner.

DRAFT for consultation

The 'Prescribed Risks'

These are set out in the Schedule to The Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 No. 16 (in force 1st May 2007):

"Prescribed Risks

The risk of damage to a Flat or any part of a Tenement building attaching to that Flat as a pertinent caused by:

- (a) fire, smoke, lightning, explosion, earthquake;*
- (b) storm or flood;*
- (c) theft or attempted theft;*
- (d) riot, civil commotion, labour or political disturbance;*
- (e) malicious persons or vandals;*
- (f) subsidence, heave or landslip;*
- (g) escape of water from water tanks, pipes, apparatus and domestic appliances;*
- (h) collision with the building caused by any moving object originating outside the building;*
- (i) leakage of oil from fixed heating installations; and*
- (j) accidental damage to underground services."*

If you have answered No or N/A to this obligation please clarify and confirm that you do not own any rental properties which are flats or tenements. Alternatively, please confirm that you are now aware of your requirements in relation to this obligation.

Energy Performance

Energy Performance Certificates (EPCs) have been a legal requirement for rental properties since 4 January 2009. Only existing tenancies which started before that date would not be subject to the requirement to have an EPC. In all other cases a valid EPC must be made available, free of charge, to prospective new Guests. Failure to comply with this requirement may lead to a penalty charge notice of £500. A Host should obtain an EPC prior to offering a property up for rent.

EPCs provide information on how energy efficient your property is, how it could be improved, and are valid for 10 years. If there is an existing Guest at the point of EPC expiry there is no requirement to provide that Guest with a renewed certificate.

Hosts should also be aware of the Scottish Government's minimum standards for energy efficiency in the private rented sector and The Energy Efficiency (Domestic Private Rented

DRAFT for consultation

Property (Scotland) Regulations 2020, the implementation of which has been delayed due to the COVID-19 crisis.

Annex M - Unique Licence Numbers

When you apply for a Licence or Temporary Exemption your case will be allocated a reference number (the STL Order calls this the “Unique Licence 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, in the form:

NA00123P

The first two letters identify the Licensing Authority, e.g. “NA” for North Ayrshire.

The last letter shows the type of application, exemption or Licence:

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

F - First (full) licence

R - Renewed licence

E - Temporary exemption

T - Temporary licence

The Licence number does not show the “Type of Short-Term Let” (e.g. “home sharing”), but this will be displayed on the public register.

Example “NA00123P”

This would mean that the Host has applied for a Licence, so that case has been provisionally allocated a reference number. The case is 123rd to be received at the Council. If the Licence is granted, the reference on the licence documents we issue will change to “NA00123F”.

Consultation Response Form

Licensing Policy Statement on Short-Term Let Licensing



You do not have to use this form and you might prefer to send a letter or email but it will help us get a picture of public views if people use this form.

Send us your views to:

Raymond Lynch
Clerk to the Licensing Committee
North Ayrshire Council,
1st Floor,
Cunninghame House,
IRVINE.
KA12 8EE

Email:
RaymondLynch@north-ayrshire.gov.uk

no later than 12.00 noon on Friday 9 September 2022.

About You

Your name	
Postcode	
E-mail Address	

How are you completing this form?

I am completing this form as ...

a member of the public	
------------------------	--

a Councillor	
an MSP	
a representative of a Community Council	
a representative of a Trade Association	
If you represent a Community Council or Trade Association, which one?	

Do any of these apply to you?

(one or more might apply to you)

I operate a Short-term Let	
I have stayed in Short-term let	
I am Short-term let neighbour	
None of these apply to me	

What type of Short-Term Let?

There are three types of Short-Term Let. A Licence has to say what type is allowed.

Secondary letting <i>letting of property where you do <u>not</u> normally live (e.g. holiday homes)</i>	
Home letting <i>letting all or part of your home whilst you are <u>absent</u></i>	
Home sharing <i>letting all or part of your own home whilst you are living there (e.g. B & B)</i>	
This does not apply	

What Listings Agency was used?

Many STLs are listed by an agency.

Air'BNB	
---------	--

Cottages and Castles	
Holiday Lettings Scotland	
VisitArran	
Another agency	
No agency was used	
I don't know	
This does not apply	
If you said 'another agency', which one?	

Your views on North Ayrshire Council's Draft Licensing Policy Statement

You can give your views on anything in the Draft Licensing Policy Statement, but to assist you we have highlighted some issues that people might have views about.

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?		
Why do you think that?		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		

--

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, **but** can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?		
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		

Finally

Thank you for your comments.

<u>Data Protection Information: Data Protection Act 2018 and GDPR</u>
<i>We will use any information given to us when it is necessary for the operation of the Licensing system authorised by Law. The information you give us will be kept by us for no more than two (2) years after the Closing Date for this consultation. The information on this form will not be publicly-available but we may publish anonymised summaries or statistical surveys, for example "67% of people answered the question 'yes'". For more information, see the Council's "Fair Processing Notice" on:</i>
<u>https://www.north-ayrshire.gov.uk/fair-processing-notice.aspx</u>
<i>If you are unable to access the website ask us for a paper copy.</i>

**North Ayrshire Council
Short-Term Let Licensing consultation
Responses**

**** NAC Consultation Response Form**

The Council's website included an optional form which respondents could use, giving their views on 5 particular issues. Most respondents did not use the form, and used an email instead, but where they did this is set out below.

**** Crossheadings**

Crossheadings such as "(a) plans" have been added by North Ayrshire Council to make it easier for anyone reading the consultation responses to locate the respondent's comments on the particular issue.

**** Redaction**

Respondents to the consultation are anonymised by the redaction of names, addresses and other personal data and are instead referred to by number. Where necessary, text has been redacted "[[...]]".

**** Heading**

This is in two parts, e.g. 'Host/Arran'. If the Respondent does not give information the entry is "NS" ("not specified")

1. Respondent type

Choices:

- Host (includes Trade Associations)
- Guest
- Neighbour
- Not specified (NS)

2. Location

Choices:

- Arran
- Cumbræ
- Mainland
- (or specific Mainland town or village)
- Location not specified

**** Responses went to:**

Raymond Lynch (Snr Manager / Legal Services) <RaymondLynch@north-ayrshire.gov.uk>

[1] Host/Arran

Hi Raymond

I have 3 x self catering units on Arran.

I have read through the draft paper on short term licensing for North Ayrshire and on the whole I am pleased you have adopted a light touch approach. I have a couple of comments:

(a) plans

The requirement for detailed Architectural drawings. Is this really necessary? It seems overkill and is going to be costly and difficult to find someone locally to produce the plans.

(b) sale

My second comment relates to new licensees and the timescale for granting licenses. If someone were to buy an existing self catering property then they would not be able to honour existing bookings. This is going to make it difficult to sell properties which are currently run as self catering businesses with goodwill. Is this something that can be reviewed?

Many thanks

[2] Host/Arran

This respondent sent 3 emails:

- (a) 07 August 2022 17:38
- (b) 04 September 2022 11:21
- (c) 06 September 2022 11:28

(a) 07 August 2022 17:38

Hi Raymond,
These are my comments.

(a) recurring fee

Positive

I like the idea of a renewal without a time limit but with a recurring annual fee to pay.

(b) plan

Negative

The layout plan is simply beyond the resources that we will have available to us on the island. It is hard enough to find tradesmen, professional architects, surveyors or similar professional is simply too much for us find and is NOT necessary in the NAC area.

(c) PAT

PAT - (note I don't add testing its in the acronym. You know perfectly well that "PAT testing is not a legal requirement but can count towards the maintenance of electrical equipment which is a legal obligation of the Electricity at Work Regulations 1989. There is also no legal requirement to apply PAT testing stickers onto tested appliances but these can help for appliance management purposes."

It is not worth the pad the results are written on. It's pathetic that some people spend good money on this - lucky my husband is deemed competent by 20 years in Health and Safety to carry ours out. This should be removed.

The most likely source of a fire/safety issue is some hair tongs that some 15-year old along on holiday - not my fridge or kettle.

This point needs clarity.

Please note:

PAT Testing Certificates, Records & Results

There is no law which requires detailed records to be kept, although some system of recording what you have tested, and when, is certainly a good idea. Our advice is, as ever, to keep it simple! In many cases, depending on your business, an exercise book with hand written records is perfectly acceptable!

Many people use a simple Microsoft Excel Spreadsheet to keep their PAT Testing Records - a sample you can use is here: [PAT Testing Records Spreadsheet](#)

(d) Agents

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.

I don't understand what this means. We advertise and book via a national holiday website. A local company runs the cottage and a housekeeper fits into the maintenance/cleaning regime. We are asked if maintenance is needed to accept the cost of more than £XX. So where does the advertising/booking company fit in, the housekeeper or the maintenance company?

Am I applying for a licence, or the national company, the local company maintaining the cottage or the housekeeper.

DEFINITIONS are needed URGENTLY. Just wondering if anyone dealing with this understands the sector?

(e) Death

IF the license holder dies... Have you really considered the implications of 3 months for :

a) probate

b) the guests holidays in 4 months time

This transfer of the license is going to kill people wanting to use scottish self catering as at any moment their holiday might be cancelled.

The time frame for new hosts to get a licence being 9 months is excessive. At most it should be 9 months - possibly 4 months if the host already has a license up and running.

(f) Existing Hosts

Page 47 - Assistance to existing hosts - you refer to bookings for 2023 but that we won't know if we get a license prior to taking bookings, probably not even before April when the season really gets going. I ALREADY HAVE BOOKINGS FOR 2023 - people book a year in advance.

(g) Existing Host acquiring a new property

Have you considered the situation for existing hosts of a self-catering cottage being a host to a new /business/property. Is it the property or the host that is licensed? If it is the host then a second license being granted should be quicker. I assume the New Host on page 47, licensing period belongs to the concept of new hosts, not a current, licensed host with a new property coming on stream. .

(b) 04 September 2022 11:21

Hello

Capacity

We have been reading the details of the STL consultation and have big concerns regarding the maximum capacity figures.

We want to raise the issue of a double room with space either side of the bed for bedside tables and 48 inches beyond the end of the bed for a chest of drawers and the access to a walk in wardrobe which would not meet the requirements.

The dimensions of 90sq ft and 50sq ft seem very large and I wonder how many other cottages will fail this test and become uneconomical. I genuinely can't see that these sizes are required in this situation at [[address]] where we currently have 2 doubles and a single.

Please reconsider the sizing of rooms calculations.

(c) 06 September 2022 11:28

Plans proposals may be Ultra Vires

Hello

I am wondering if the potential requirement for a location plan would not be considered ultra vires?

In a nutshell my concerns are:

the size of bedrooms - apply this either only to new properties rather than existing self-catering properties and only then where you believe there is a proven issue (by way of the licensing committee)

Providing floor plans under the guise of safety.

Providing 6 copies of correct ratio plans by architect, surveyor or similar profession. If floor plans are a requirement are estate agent plans OK?

Certified copy of licence - surely this is completely unnecessary as we don't certify the EPC or EICR.

Location plan.

Regards

[[name]]

3. Host/Arran

Hello

I've tried to understand the 65 page draft...I attended an ASSC meeting today which gave an overall understanding of the license but not specifically to NAC requirements.

(a) 10-year duration, light touch

My impressions are the 10 year plus renewal and the light touch approach seems very good ideas.

Any responsible self catering owner will have all the mandatory policies and certifications in place so shouldn't be too much of a problem.

(b) plans

The request for copies of scaled professionally drawn up plans is unrealistic. Surely room sizes would be sufficient?

(c) NAC resources

I'm very concerned that our livelihoods are at stake here and hope NAC is putting adequate personal in to deal with the deluge of applications!

(d) 2023 bookings

I feel that the rules for new short term let businesses are very unfair and could lead to a business not being able to start to trade for a longtime..missing the whole season...if NAC are not able to process the applications very very quickly. Most bookings are made between now and January for the next season (2023). Maybe they should be given a temporary license to enable them to set up and take bookings , with deposits being ringfenced.

I hope these comments are in some way helpful

4. Host/Arran

(a) how to prove Existing Host status

Good afternoon,

Reading the draft short-term let policy on the NAC website, I understand that I will have to be able to demonstrate that I am already using the property as an STL. Please can you advise how I will be required to demonstrate that. At present I do not operate as a business but as a private person so I do not have a license or other official certificate to prove this.

Thank you for your guidance.

Kind regards

5. Host/Arran

Hi Raymond,

I've reviewed the Draft Short Term Let Policy that's been published and have some feedback and queries please.

(a) Maximum Capacity

1) Section 11 - Maximum Capacity:

a) I noted that as per Note 2 at the top of page 12 that a living room is classed as a bedroom for the purposes of calculating the maximum capacity. This does sound confusing, however I assume this is to ensure that the property overall has sufficient living space for the appropriate number of guests. Can you please confirm that there is no requirement for the living room to actually have a sofa bed or bed in it to be included as a bedroom when calculating the maximum capacity figure.

(b) bunk beds

b) In table 2 the room sizes to determine the number of person for neither room seem to take account of the use of bunk beds.

(c) size of room?

Also the size at which a room can then accommodate more than 1 guest seems too big. A 7.5 metre room can accommodate 2 beds with furniture.

Kind regards

[[name]]

6. Host/Cumbræ

Good afternoon, I presently own and run two small apartments on Cumbræ, and have now read the draft proposal for the new licencing of short term lets, coming in in October '22.

I would like clarification on a point, and would also like to register my concern over a couple of points.

(a) Maximum Capacity

Section 11_ Maximum Capacity. : The table in this section refers to the number of rooms which might be available for sleeping. Available rooms seem to be defined as either a bedroom or a living room. For those of us who have the traditional “ room and kitchen layout “ which is

of course so common in Millport , I am unsure if I can define the living room /kitchen as a room. If not this would appear to limit my sleeping to two people, despite the fact that the bedroom has ample space for a double bed and also a single “ day bed” which can be used as an additional bed for a third guest. Could this be clarified please?

(b) typo

Section 12B: This reads “ There is no need to apply for a licence if any of these apply

- 1) The guest is not an immediate member of the family “ My thinking is this is a typo?

(c) "qualifying relative" definition

Section 13 seems to contradict this position, but the extremely narrow definition of a qualifying relative , namely a guest must be : parent/child, grandparent /grandchild , sibling or step sibling to the Host is potentially a bombshell to those islanders who own a second property but do not let it commercially. Is the intention here to prevent any of those owners from allowing, say, a cousin to stay free of charge ? Have I misunderstood this? I would point out that I am not in this position myself but many, many island owners are using their flat as a non commercial second home and permit other relatives to stay . Will they all require a licence?

(d) temporary licences

Section 17 states that no temporary licences will be allowed. Given the extreme pressure on the accommodation during Scooter Rally, Country and Western weekend and September weekend this seems a disaster waiting to happen.

I await your reply with interest

[[name]]

7. Host/Arran

Hi

We currently provide 'holiday lets' in a self catering static caravan in [[place]] on the Isle of Arran - link to our advert giving details below:-

[[www omitted]]

(a) do static caravans need a STL Licence?

Having looked at the draft Short-term let policy document on North Ayrshire Council's website, I am unclear as to whether owners of static caravans will need an STL Licence.

I am fairly sure that our static caravan falls within the definition of a 'caravan' as per the Caravan Sites and Control of Development Act 1960 (*Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer)*), and therefore falls within the definition of 'mobile home' as per the draft policy document (see definitions below), and as such would not need a licence, but I would be grateful for confirmation of this.

I look forward to hearing from you as to whether we will need to apply for a STL Licence in respect of the static caravan.

Many thanks for your help.

[[name]]

Extract from Draft Short-term Let Policy Document - North Ayrshire Council

"House" (a) means any living accommodation which is, or which is capable of being, occupied as a separate dwelling (other than a Mobile Home or any other living accommodation which is not a building)

"Mobile Home" Has the meaning set out in the Mobile Homes Act 1983, Section 5 (which applies the definition of "Caravan" in the Caravan Sites and Control of Development Act 1960; see The Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 No. 219).

8. Host/Cumbrae

Hi there Raymond,

Hoping you can help us with some further information please. We own holiday accommodation on Cumbrae and having read the draft proposals for the short-term let licensing scheme for NAC, there are a few queries / comments we have if we may.

(a) 'immediate family member' exemption

Section 12 states: "(b) the Guest is not an Immediate Family Member of the Host (see Part 13 - "What is the 'Immediate Family Member' exemption?")"

Section 13 states: "You do not need a STL Licence if the Guest is an Immediate Family Member of the Host"

This seems contradictory. If a property is being let in exchange for payment, should it not fall under STL regardless of immediate family status or not? The exemption may be seen as a way of circumventing the requirement for a license.

With regards to the documents required:

(b) plans

- The proposal states

"All applicants for the grant of a STL licence will be required to submit six (6) copies of a Layout Plan of the Premises. The Layout Plan must be drawn by an architect, surveyor or similar professional. at a scale of no less than 1:50. A hand-written Layout Plan is not acceptable".

This will cost in the region of £400 to £600 as a rough estimate if drawn up by an architect or surveyor. There are apps that many builders use (for example 3D design). Could this be considered as acceptable for layout plans please, reducing the burden on hosts.

(c) Energy Performance Certificates

- Energy Performance Certificates – we got one when we purchased the property in 2019, however have made significant changes to improve the energy performance since then.

To save further costs are we able to still use the original energy certificate (as they are valid for 10 years) or would this have a negative impact on the license application?

Any advise you can offer would be greatly appreciated.

Thank you very much

Kind Regards

[[name]]

9. Neighbour / NS

It is of great benefit to have a register of STL properties. Can the process also include provision for owners to make representation to the council where neighbouring properties are not kept to standards required for example repairs, rubbish disposal and also vice versa. This would help all neighbourhoods to have a central point of contact if issues need resolved to benefit whole community.

Kind Regards

[[name]]

10. Host/Arran

***** Note**

**Representation 10 is from DF who gives a postcode in Bury St Edmunds, Suffolk
Representation 38 is from MF who gives the same postcode and has the same surname,
and also gives a STL address on Arran**

Dear Mr Lynch,

Firstly, thank you for the consultation document and form that you and your colleagues have published on the proposed rules on short term lets.

I have a short term let property in North Ayrshire. The property sleeps ten people in five bedrooms, and has been popular with multi-generational family groups for a long time, with many families coming back year after year. Organizing such groups means the families cannot book last minute and many book a year in advance.

I have taken this into account in my answers as I hope the licensing regime can be adjusted to give those booking a year in advance the certainty they need and confidence that their holidays can go ahead as planned.

I hope my comments are helpful and if you think there are any points that I need to clarify please do let me know. I would be happy to follow up by email if it helps.

Best wishes and thank you.

[[name]]

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	x	
Why do you think that? <i>Because we want to encourage families to holiday in North Ayrshire and have a good choice of accommodation, and sometimes a family has been going to a holiday home for many years, and as the children grow they like to keep coming back. If there is space for a camp bed, sometimes it adds to the fun of a holiday (which is usually no more than a week in our experience) but after the age of 10 it is important the child has a proper bed in a proper bedroom.</i>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		X
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>I think the proposals are "light touch" in the context and additional conditions will only add to the challenge that those operating holiday accommodation businesses already face, especially after the challenge of Covid. Additional conditions will inevitably lead to additional cost, and result in increasing prices. The cost of living crisis means that families are facing tough times and holidays are more important than ever, but also more difficult to afford than ever. Many UK families choose self catering holidays in the UK because they cannot afford hotels, foreign trips or other more expensive accommodation, so increasing cost on those least able to afford it seems tough in these times.</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	X	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<p><i>When there is a natural disaster leading to the need for accommodation (but hopefully that won't be an issue), but more likely is the need for an exemption when someone has died owning a STL business, and the heirs need to sort out the estate. This is mentioned in the consultation, but sometimes it takes at least a year to sort out an estate. Unless there is a process to deal with licences to the estates of deceased licensees, there is a risk the death of a business owner will mean holidays booked in the property owned by them (although up to a licence standard) have to be cancelled.</i></p> <p><i>Also there should be some process for the transfer of a licence to the new owners of a STL property, so their licence can be carried on by the new owner without risking the holidays booked there when owned by the previous owner.</i></p>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of

a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?	X	
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>Death of an owner, transfer of a business to a new owner.</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	x	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>Its only fair that the licence fees bear some relation to the size of the business being licenced.</i>		

[Extra Text]

My other comments (which refer to the death of owners and transfer of businesses too) are:-

We have a five bedroom STL property that sleeps ten people. Many people book a year or more ahead, so they need certainty that the license that is in place when they book, will remain in place, and that they will not find the holiday is cancelled because of the termination of the license.

The consultation comes across as an attempt to create a scheme that has been imposed on NAC from central Government and they are certainly doing it with a light touch, but at the same time respecting the spirit and intention of the new law on STLs.

There are a few comments on the practicalities from the perspective of a host trying to run a business that takes bookings, sometimes more than a year in advance:-

1. Terms?

1. What do existing hosts have to put in their terms and conditions for bookings taken now, but for holidays after April 2023, just in case they don't get the license and then cannot allow the guest in.

2. Typo?

2. It must be a typo but Section 12 appears to say (have I read it right ?) that you don't need a licence if you are letting to someone who "*is not an Immediate Family Member of the Host*". However the rest of document makes it clear you do need a licence to let to a stranger.

3. Insurance

3. Section 18 includes the words :- *Hosts should review their insurance policies to check that they, their Guests, and their Guests' property are covered.* Although most hosts will have cover for third party risks, I don't think that extends beyond risk of injury caused by a problem at the property. I am sure that Guest Property is not covered. The question is whether Hosts can exclude that obligation and still get a licence (it looks like they can). It is something for the guest's travel insurance rather than the host but guests need to be told to insure their possessions and have travel insurance.

4. Planning Permission & terms

4. Although NAC confirm they have no plans to declare a "Short-Term Let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(24) ("the 1997 Act")" if they were to do so, during the currency of a licence, there would be a requirement for hosts to get planning permission.
If that application fails, then the lettings would have to stop. Hosts who are conscious of their contractual obligations to their guests, some of whom book a long way into the future, should perhaps put a clause in their terms and conditions that makes it clear the booking will be cancelled if NAC or other statutory authority impose a planning or other regulatory requirement that prohibits the use of the property for STLs. This will worry some guests and add to uncertainty for them.

5. Sale & terms

5. If a hosts wants to sell, the new owner can apply for a variation of the licence. However it could be refused and the new owner would not be able to continue the STL business. So when taking bookings a long way into the future, hosts should ensure they are happy to carry on owning the property that long, so they can honour those bookings. If they are not, because of the risk of a buyer not getting a licence, they should insert a clause in their terms and conditions that gives the current owner the chance to cancel the booking in the event of a sale (which won't be popular with guests).

6 Joint Owners?

6. Can the licence be granted to joint owners of a STL property ? It looks like it can ? Note that if the licence holder dies the licence expires three months later although NAC have discretion to allow the executor to run it for longer. It often (usually) takes longer than three months to get an executor appointed and not all estates have executors until the family can sort out who will do what. There is a risk that bookings more than three months after the death can't go ahead because of the death of the host and ending of the licence. Can that three month period be extended to a year and will there be an automatic assumption that it can be renewed in the executors or heir's name as long as they are fit and proper ? Presumably if a joint licence holder dies, the surviving licence holder can carry on with the licence without the need for a variation ? It would be good if this could be clarified.
Thank you.

11. Host/Irvine

Hello Raymond,

Attached is a completed Short Term Lets Licensing Consultation form for your review and I have included the body of this email at the end of the form for ease of reference and sharing.

Please know that I am fully aware that this scheme is an additional administrative burden placed on councils and that I appreciate your review of my considerations.

The following comments relate to Irvine, which Planning indicated was not likely to be deemed a Short-Term Let Control Area.

We have been visiting Irvine from abroad for almost two decades and our only issue has been the lack of self-catering options, especially with pedestrian-friendly access to the train. We finally purchased a flat as a future retirement home and because we were unable to visit family and friends in Irvine for extended periods without the prohibitive cost of staying in a hotel. Rather than have the flat sit empty while not in use, we felt others might be interested in the same accommodation - and they are. The vast majority of our guests have indicated they have been looking for options for extended stays in Irvine for years, are planning to return, and are pleased to have a full kitchen and laundry facilities - all within close proximity to public transport. These cost-saving and environmentally sustainable measures are providing our guests with the opportunity for longer stays - resulting in an economic benefit to Irvine and surrounding areas - especially significant now that work for the revitalization of the harbour has begun. A quick Google search of Irvine self-catering options (with an actual kitchen and washing machine) will generate only a couple of options with pedestrian-friendly access to the train. Transport access is vital as many of our guests come from abroad and do not have a vehicle - the train allows them to explore various parts of North Ayrshire and the rest of Scotland with little effort.

Some comments and ideas regarding specific items in the draft:

- We agree safety is key and there should be stringent standards. We already complete annual gas inspections, PAT testing, are up to date with our electrical inspections and carry public liability insurance - without a licensing scheme in place. Our letting agents require valid health and safety certificates, fire plans and proof of liability insurance as part of our contract. Perhaps STLs working in tandem with a reputable letting agency

could minimise council workload as checks are already mandatory to operate with many agencies. Submission of contracts, certificates and supporting documents could serve as proof of compliance. We are confident letting agencies would be amenable to partnerships as they are expressing concern over the impending STL legislation in Scotland and the associated viability for current operators.

(a) plans

- Drawings - the expense and challenge of obtaining professional drawings will be prohibitive for many otherwise qualified STL operators. Is there an alternative to this, or is there a health and safety purpose for this specific standard? Perhaps understanding the meaning behind this would allow us to work together to determine positive options and outcomes.

(b) Neighbour notification

- Posting for neighbours This is the most- concerning element of the scheme and will likely result in the shuttering of countless existing well-managed STLs across Scotland. Regardless of actual incidents, most of us have heard the horror stories of Airbnb stag dos - and neighbours will understandably balk at the idea of mayhem interrupting their peaceful way of life. This will likely be the final straw for operators that have already suffered a beating during the past two years.

(c) MINIMUM stay?

Would council consider a minimum length of stay to mitigate disruption to neighbours to address some of these concerns? Operators accepting a seven-day minimum could perhaps avoid public posting by using a model similar to the granting of a Temporary Licence. Our own avoidance strategy for "stag do" crowds includes: utilising a letting agency that is focused on longer-term stays - seven-day booking minimum, implementing a significant housekeeping bond and hiring a local property management firm to clean, inspect, maintain and personally interact with all of our guests - before and during stays. We have taken these steps for our own liability/maintenance concerns and out of respect for others in our building. This strategy has thus far eliminated the attraction of those interested in displaying anti-social behaviours .

(d) Absence of nuisance = 'grandfather'?

The absence of evidence of nuisance for existing operators could provide justification for a grandfathered system under the Temporary Licence model - to provide an equitable balance between the risk of disturbance to neighbours and a responsibly managed holiday let. If legitimate complaints were raised, the operator would then be forced to apply for the standard licence complete with public posting. Simply put, if neighbours have not been impacted negatively by an existing STL, is there a reason to invite objections that could result in the shuttering of highly sought-after accommodation in an underserved area?

(e) could Council require deposit?

Perhaps a significant annual deposit from operators to council could act as an additional incentive for maintaining the peace and appropriate facility management. The deposit would be forfeited in the case of a substantiated claim to address the additional resources required for enforcement and council staff.

While we support licensing and feel that safety and order must be a priority in our community, we are hopeful a balance between regulation and viability of short-term lets in North Ayrshire can be maintained.

Thank you for providing this opportunity to share feedback and help support this initiative,

[[name]]

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests. The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? [NO] Why do you think that?

Occupancy rates are set for safety reasons - fire etc - and any person staying in a property must be accounted for.

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions. You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? [NO] Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks. There can be views either way: - there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but - the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards. What do you think?

YES NO Do you think there should be any temporary exemptions? [YES] Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

True self-catering accommodations in Irvine (laundry, full kitchen) are almost non-existent. Providing an affordable and sustainable option for peak times is excellent for the region. Regarding standards - perhaps a deposit, as well as a portal for key safety documents - electrical, gas could be established as a quick reference for temporary exemption scheme

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that). Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply. So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? [YES] Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

The absence of evidence of nuisance for existing operators could provide justification for a grandfathered model to provide an equitable balance between the risk of disturbance to neighbours and a responsibly managed holiday let. If legitimate complaints were raised, the operator would then be forced to apply for a standard licence complete with public posting. Simply put, if neighbours have not been impacted negatively by an existing STL, is there a reason to invite objections that could result in the shuttering of highly sought-after accommodation in an underserved area?

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges. The general approach might be this: - The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control. - The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? [NO] Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

Unless the licencing process is more labour intensive for a secondary letting, the costs should be the same. Rentals are not guaranteed for any configuration and penalising hosts with the capacity to house more guests isn't justified. Penalties for noise, police, fire etc can be levied which is a more accurate reflection of utilisation of council resources.

12. Host Trade body: ASSC/Scotland

From: Fiona Campbell <fiona@assc.co.uk>

Sent: 18 August 2022 15:57

To: Raymond Lynch (Snr Manager / Legal Services) <RaymondLynch@north-ayrshire.gov.uk>

Subject: ASSC Response to North Ayrshire Council Consultation on Short-Term Let Licensing

Introduction

The Association of Scotland's Self-Caterers welcomes the opportunity to respond to North Ayrshire Council's consultation on their Short-Term Let Licensing Policy Statement. As the main trade association for the self-catering sector in Scotland, the ASSC hopes that our expertise and insight can help inform the approach taken by the Council. We have always strived to work collaboratively and proactively with both local and national government stakeholders to ensure a balanced and proportionate outcome for all. We wish to make clear that the ASSC is not averse to regulation; but we do challenge policies that are pursued while lacking a firm evidence base which will damage the livelihoods of our members.

Self-catering properties have been a longstanding presence in communities for generations, especially in rural communities, and provide an economic boost for local areas and enhance Scotland's tourist accommodation offering. Such self-catering properties are legitimate, bona fide businesses whose owners depend on the money generated for their livelihood – it is not a hobby or a way to supplement their income. This is entirely separate from the 'homesharing' concept, or those amateur operators who utilise online marketing platforms but are not subject to the same levels of existing regulation.

With the competition to maintain standards, holiday let owners often spend money more frequently on additional property maintenance than they would on their own property. Their guests spend money in local food shops, cafes, gift shops, restaurants, tourist attractions etc – many of which would simply be unviable without visitor spending. Self-catering currently boosts the Ayrshire economy by £32m per annum according to Frontline Consultants.

Given the importance of ensuring a sustainable recovery, and the significance of this measure for the livelihoods of our members in this region, we would respectfully encourage North Ayrshire Council to work as closely as possible with the sector and to minimise the regulatory burden on small business. We are, however, heartened by the 'light touch' approach from the Council, as described in the Policy Statement, as this is the best means to help small businesses in these challenging times.

Founded in 1978, the Association of Scotland's Self-Caterers (ASSC) are the leading source of knowledge on short-term letting and holiday homes in Scotland and are the only trade body

representing the interests of the traditional self-catering sector. We represent over 1,400 members, operating tens of thousands of self-catering properties throughout Scotland, from city centre apartments to rural cottages, to lodges and chalets, to castles. The ASSC commits its members to maintaining the principles of “quality, integrity, cleanliness, comfort, courtesy and efficiency” and to offering visitors to Scotland consistently high standards within their self-catering properties.

**** [NAC Consultation Response Form](#)**

[1. Occupancy levels and children](#)

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests. The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can choose to set the age limit as ‘under 10 years’.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? [NO]

Why do you think that?

The ASSC do not believe that children under the age of 10 should count towards the occupancy limit. This age limit is appropriate and reflects Scottish Government guidance which is in line with the reference to children in the context of housing within the Housing Act (Scotland) 1987. There is a clear difference between a child and an adult and that should be reflected in maximum occupancy requirements.

[2. Additional conditions](#)

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions. You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? [YES]

Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

The ASSC believes that North Ayrshire Council should adopt additional conditions in relation to:

(i) noise monitoring in shared residential buildings; and

(ii) community accreditation and mediation.

However, on any additional conditions applying to noise, there has to be a causal link to issues from those premises. One example where such conditions have been shown to work is Barcelona, where this was introduced by local government, and further information is available in the ASSC’s Forward Together paper (see ASSC, Forward Together: A Collaborative Approach to Short-Term Letting, Url:

<https://www.assc.co.uk/policy/forward-together-a-collaborative-approach-to-short-term-letting>

Licensing authorities cannot be allowed to set restrictions on premises where there is a perception there may be an issue. Restrictions should not be put in place where there is potential or existing issues in the vicinity of the premises unless it can be shown the issues occurring in the vicinity originated specifically from the short term let premises.

In addition, applying numerous additional conditions would not be in fitting with the 'light touch' approach highlighted by the Council in the policy statement paper. If North Ayrshire Council seeks to attach any additional conditions to short-term letting properties, care should be taken not to duplicate the mandatory conditions. What the ASSC have witnessed in some other local authorities is not only unnecessary duplication, but conditions which are completely unenforceable and which will merely burden the licensing authority. If the Council cannot enforce these, it is incompetent and leaves the Council open to judicial review. Many of the additional conditions are part of the basic management of a property and could be instead be delivered by a clear and robust Code of Conduct, such as that devised by the ASSC (see: <https://www.assc.co.uk/policy/code-of-conduct/>).

Many of the draft policy statements from other local authorities exhibit a presumption of bad practice against the short-term let industry, from issues such as anti-social behaviour to littering, which we find incredibly disheartening and disappointing given the immense economic opportunities the sector provides to Scotland, as well as the fact that many businesses in the area have been a welcome part of the community for decades.

In terms of North Ayrshire Council's short-term let licensing regime, the ASSC would therefore advise following these basic three principles:

- Take care not to duplicate the mandatory conditions if choosing to apply additional conditions;***
- Ensure that any additional condition(s) taken forward is evidenced, enforceable and cost-effective for the Council; and***
- Work closely with the self-catering sector throughout the implementation phase and beyond to protect the valuable economic contribution the industry makes to the area.***

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

YES NO Do you think there should be any temporary exemptions? [NO]

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

The ASSC has generally been supportive of granting temporary exemptions in other local authority areas, for instance in City of Edinburgh Council, as there can be instances where it may be beneficial for the local tourist economy to provide these where there is a large influx of visitors, due to events such as the Festival and Fringe. Alternative forms of accommodation, such as short-term lets, are integral to housing all those involved – whether participants, organisers or visitors. The same could be said for Glasgow City Council as the city had the challenges of hosting COP26 last year.

At the current time, we do not believe there are events of equivalent scale in the North Ayrshire which would compare in order to justify a temporary exemption. We therefore support the proposed approach by North Ayrshire Council on this matter. Should circumstances change and the Council seeks to entertain the issue of temporary exemptions, we believe that all mandatory and additional conditions should apply to all types of short-term let, including those with a temporary exemption. This ensures consistency and a level playing field in the application of the regulations.

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that). Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? [NO]

Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

We support the proposed approach by North Ayrshire Council on this matter. Should circumstances change and the Council seeks to entertain the issue of temporary licences, we believe that all mandatory and additional conditions should apply to all types of short-term let, including those with a temporary licence. This ensures consistency and a level playing field in the application of the regulations.

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? [NO]

Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

The estimated fees for short-term let licences – both grant, renewal and recurring, as well other fees – appear reasonable. We also commend North Ayrshire Council's proposed approach to licence renewal at ten-year intervals. However, in terms of the process in determining the fees, the Council proposes to differentiate between homesharing/letting and secondary letting. We would like to ascertain the reason for this differentiation given that the same checks will be undertaken on the properties and how this relates to cost recovery. We would also be keen to understand what figures the Council hold on the number of secondary lets and homesharing properties there are within the area.

Overall, the fees attached to short-term let licencing are meant to be based on the principle of cost recovery – therefore, the ASSC believes that fees should not be set at a level greater than the amount necessary to recover establishment and running costs. If a fee structure with costly, disproportionately high fees was introduced, this will reduce accommodation capacity in the region and will damage the industry at a time when we need to work towards a sustainable recovery.

We would refer the Council to Scottish Government guidance which highlights ways to keep costs down, including:

(a) economies of scale;

(b) integrating service delivery with other housing and licencing functions;

(c) using online and digital verification where possible, for example through photo and video evidence instead of a visit; and

(d) taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

It is imperative that any fees are kept as low as possible given the environment many small businesses find themselves in. In this regard, we wish to highlight our proposal which we believe could assist with an efficient and cost-effective way of securing compliance with the Licencing Order.

The ASSC have worked in partnership with Quality in Tourism to promote a self-declaration model with risk-based inspections by the licencing authority.

Overall, this approach has four main advantages:

- It minimises the work required by the licencing authority to set the system up and renew licences;***
- Allows the licencing authority to focus its inspection resources on a risk-based basis;***
- Requires responsible behaviour and compliance by the operators; and***
- Minimises the additional costs to operators (which will have to be absorbed as an additional business cost and/or passed on to the very visitors we want to visit your area to boost our economic recovery).***

We understand that local authorities across the country are facing severe pressure on their resources and we believe this system can go some way to help with the administrative challenges associated with the licencing regulations. We would be delighted to meet with officials to discuss this in further detail to see whether it would be appropriate for North Ayrshire Council.

Plans

Finally, in terms of a related issue on cost to business, we wish to comment Annex K (a) Layout Plan.

A technical layout plan will necessitate an expensive piece of work by a contractor which will be another cost on legitimate small businesses operating without issue for decades. This will be on top of the cost of a licence fee, compliance with existing regulations, the mandatory and additional conditions, not to mention other factors such as rising energy costs. Unless pertaining to maximum occupancy, there is absolutely no need for a floor plan.

Chief Executive of the Association of Scotland's Self-Caterers
e: fiona@assc.co.uk

13. Neighbour/Cumbræ

"I am writing to you as a neighbour of short term let's to let you know that I agree entirely with the councils draft proposals they are long overdue short term let's have a major impact on my day to day life and sadly lead to overflowing unsorted bins .dog faeces in my vegetable patch .cigarette butts and condoms in my flowers. Disruption at night due to drunk idiots shouting and swearing and threats of violence and abuse when I try to complain to the proprietor who is letting .In my opinion before the council finalise the details of the legislation the most important thing the council should be doing is assuring the people of Cumbræ that the legislation will be rigoursly enforced as the amount of letting done on the side is shocking and must cost the council a lot in lost revenue A local council officer is needed on the island again with regards to health and safety building control licensing trading standards etc it is literally like the Wild West over here now"

14. Host/Arran

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests. The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? [YES]

Why do you think that?

"Yes, I think that that children under 10 should not count towards occupancy limit."

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions. You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? [NO]

Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks. There can be views either way: - there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a

particular event, but - the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards. What do you think?

YES NO Do you think there should be any temporary exemptions? [NO]

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

"I don't believe that temporary exemptions would be required in North Ayrshire."

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that). Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply. So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? [NO]

Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges. The general approach might be this: - The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control. - The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? [NO]

Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

"I do not agree that the fees for Home sharing/Letting should be lower than those for Secondary letting. Expenses for Secondary lettings are much higher than those for Home sharing/letting as they are obviously shared. Secondary letting expenses are solely for the let, no sharing involved. You state that Home sharing/lettings have more control as they are sharing the property but I think you will find that a large proportion of Secondary lettings are attached to the main property or in the grounds and therefore will have the same level of control. Plus the licence will ensure that all STL's are controlled as per the rules. However, I agree that the fees should be linked to maximum occupancy but are confused as to how this is assessed. How can 1 room have occupancy of 2 persons and 2 rooms 3 persons? Why not 4? I understand from the consultation document that the fees will be due on application and then 3 years later at renewal and then every 10 years? Or have I misunderstood that?"

Plans

I would also like to make a comment regarding the proposal for a 6 copy layout plan. I am at a loss to understand why it should be necessary to create an additional huge cost to businesses that are bringing in a large proportion of funds in tourism. Why not a simple drawn layout or a visit from the council to check sizes etc. I can't believe anyone is going to try and make their property larger or smaller as that won't have any positive effect for their licence as it could be spot checked at any time. Also, I believe NAC have plans in their system for many properties which in my case were used to calculate non-domestic rates."

15. Neighbour/Irvine

Attached please find my response to your consultation on short-term lets.

I would be interested to find out what the outcome is, and what the Council's reaction is, to my remarks on Section 2. "Additional Conditions".

Anne Dunlop
Secretary, The Moorings Residents' Association

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?		X
Why do you think that?		
<i>If it's a flat, children under 10 are too noisy, they tend to run around and upset anybody living in the apartment beneath them</i>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?	X	
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>The host must be available to show the visitors the accommodation which will negate the use of a key pad; if the apartment is above ground floor there must be carpetting in the bedrooms, hall and living room; adequate information must be provided regarding waste disposal; there should be a no smoking policy/no drugs policy within the building; the car parking area (if appropriate) must be identified before arrival; the accommodation must not be arrived at or vacated between the hours of 10.30pm and 7.00am.</i>		

3. Temporary Exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		X

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

<i>There's too many problems with this kind of let as the development I live in has only flatted accommodation.</i>
--

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		X
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>The neighbours don't have the chance to comment and the Host would be circumventing the rules.</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2

Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	X	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>Need a level of control.</i>		

16. Neighbour/Largs

Dear Raymond Lynch,

Short Term Let Licensing

I have just completed the Consultation Response Form on the Council's Licensing Policy Statement. The form is less than adequate to represent my views and hence this letter. I have the. read and understood the 65 pages of the Council's Draft for consultation Licensing Policy Statement on Short-Term Let Licensing.

General

This draft exhibits scant attention to the reasons for the mandatory introduction of the licensing of short term lets by the Scottish government. Indeed the Approach of the Council states that the general approach is to be 'light touch'.

As I understand it, the reasons for the introduction of this scheme are several and serious. One is that in certain areas of Scotland the uncontrolled proliferation of short term letting is injurious to community interests, to the hotel and catering trades and has implications for local government services. Further the rise in the number of these letting arrangements has been shown to have a profound effect on the availability of rented housing and flats/houses for sale have been placed beyond the reach of people on ordinary incomes as the market has been distorted.

While it may be argued that these conditions do not prevail in North Ayrshire, this would be complacent and wrong. There is evidence in Largs of flats and houses being sold for the specific purpose of short term letting and the arrival of agencies with shop front presence to service these property interests .

Further, as has been seen especially but not exclusively in Edinburgh and Highland, the impact on ordinary citizens can be dramatic with the proportion of short term letting reaching over 30 or 40% of dwellings in certain areas. This is clearly a national problem and locally a light touch diminishes these stated needs as outlined.

Indeed, one has to wonder at the tenor of this NAC draft Licensing Policy Statement. If it is to be light touch, why bother? Why deceive the public into believing that something may be done when there may in reality be no intention to act to control this

situation, nor the excesses and abuses of individual 'hosts' of short term lets. There is mention of the desire 'not to inconvenience hosts' but there is nothing to say that the growth of these commercial letting initiatives should be restricted or even controlled.

There is no mention of restricting the number of licenses in one ward, nor any mention of restrictions on the amount that can be charged. Light touch government allows the market to decide, yet the market knows and cares nothing for the implications or consequences of laissez faire on the wider public.

How the Council will deal with Licence Applications and How the Council Will Deal with Complaints from Neighbours

I have no wish to expound at greater length than necessary. But I would like the committee to base a policy on my own and my neighbours' direct experience of short term letting in our 6-flatted Largs block.

We have one flat in the block which for the last two summers has been let short term on airbnb. We discussed with the owner our views that such a business would contravene the specific terms of deeds which prohibit commercial operations of any type in this building. But last year he set up anyway and the first we knew was when washing was hung out by the first tenants on the front. The 'host' then refused to even discuss. There have been issues with waste and bin management which the host has refused to discuss - he was issued with a letter from Environmental Health last year about failure to have bins emptied [he'd put all of his bins under lock and key so neighbours could not be neighbourly and put them out for collection ourselves]. He is obstructive in the matter of common repairs and refuses to contribute to shared costs of common ground/garden maintenance. He stole a bin three weeks ago from an .88 year old single lady neighbour and a 77 single lady neighbour who both live alone. When another neighbour remonstrated with him and asked him to discuss this, the host phoned the police and accused the neighbour falsely of assault. With of course no further action by the police who spent an entire evening interviewing all the mostly very elderly neighbours. His 2-bedroomed flat was listed on airbnb for £184 per night.

We have sent two solicitor's letters to this man and recently a letter signed by all of the other 5 owners in the block asking for his views on this situation to which of course he has not replied in any way that engages with the issues, and latterly has not replied at all. He will not discuss face to face either. He will barely make eye contact.

So it would be useful if the committee in agreeing a policy would take the above kinds of matter into account. This type of host should have no licence. His neighbours should be able to complain and be heard by the Licensing Committee. I could of course arrange for the other owners to sign this letter but to be honest we are all heartily sick of this situation and worried that the next property that comes up for sale in this block will go the same way,

I will copy this to my local councillor and I look forward to hearing from you. Yours sincerely;

[[name]]

[** NAC Consultation Response Form](#)

1. Occupancy levels and children

YES NO Do you think children under the age of 10 should not count towards the occupancy limit?

"D/KNOW"

2. Additional conditions

YES NO Do you think there should be any additional conditions? [YES]

"While Some short term lets are not a nuisance, others are. And the number of SLTs in one ward is a concern."

3. Temporary exemptions

YES NO Do you think there should be any temporary exemptions? [NO]

"It's the thin edge of the wedge scenario. Short term needs should be met by hotels and guest houses."

4. Temporary Licences

Do you think there should be any Temporary Licences? [NO]

"I can think of no justification for short term licensing - another this end of the wedge"

5. Licence Fees and charges

Do you think this is the right approach? [YES]

17. Host/Arran

Dear Mr Lynch,

My wife and I have operated [[address]] on the Isle of Arran for the past 18 years, and are a fully registered business with NAC. We pay business rates, business insurance (including public liability), business refuse, all business utilities, including telephone and broadband, as well as a plethora of other associated business related charges e.g. credit card facilities, PRS, PPL, etc.

We have a fully integrated fire alarm system that is checked annually with regular PAT testing, and are compliant with EICR and food hygiene regulations.

Our understanding of the proposed STL policy and it's definition is that it will apply to anyone who lets out their own home, either in full or in part. We do neither. Our 'home' is the residential part of the building, (for which we pay residential rates on) that just happens to be attached to our business, the guest house.

We have attempted to get some clarification on where we stand, but have found the proposals to be extremely confusing, with no one able to provide a definitive answer. We assumed that a business such as ours would be exempt, as we are already licensed with NAC.

We do recognise the need for some legislation and control over STL's, particularly in city centres like Edinburgh, however long standing businesses like ourselves located on a rural tourist reliant island should not be part of it.

Given the fact that businesses are not included in the current energy price cap of the impending energy crisis, enforcing a further mandatory cost of a license fee at exactly the same time as escalating energy costs will be both crippling and an economic disaster for the tourist industry, leaving many with no alternative but to cease trading.

We hope that you will be able to clarify our position soon to at least inform us how we stand regarding the STL licensing fee, so that we are able to carry out some financial planning into 2023 and beyond.

Kind Regards

18. Host/Skelmorlie

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests. The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? YES

Why do you think that?

" [...] has been an exclusive-use short-term let for approximately 10 years. We employ 3 full-time staff and many ancillary service providers including cleaners, linen providers, groundsmen, window cleaners, etc. My guests themselves also provide considerable input into the local economy when they hire local caterers, entertainers and other service providers. We also have a significant impact on the immediate local economy as our guests make use of local ferries, tourist attractions, cafes, pubs and shops.

In my opinion, children under 10 should not count towards our occupancy limit. We very often accommodate multi-family groups or multi-generation families. Almost all children under 10 will share a room with their parents when they are away from home. This is my experience both as a parent and as a host.

I have 12 bedrooms and 2 sitting rooms. Under current STL legislation as I understand it, we could therefore host up to 28 guests excluding under 10s. However, under the NA proposal, if for example, I am accommodating 6 families each with 2 with young children, I would end up with just 6 of my 12 bedrooms used. A very strange situation indeed and one which is not sustainable for the future of my short term let.

Given the scale and location of our house, it is of no use whatsoever to the general housing market. It is also a listed building which involves considerable cost to maintain as a legacy for future generations. We are therefore obliged to generate an income from the property to allow us to maintain it appropriately.

The STL legislation already involves considerable additional expense and overhead without this additional burden of limiting guest number to include under 10s. We would therefore ask that under 10s should not be counted towards our occupancy limit, particularly as the Scottish Government did not deem it necessary to do so."

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? NO

Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

"The Scottish Government has conducted a long and detailed consultation process to reach the current STL legislation. Respectfully, I feel that North Ayrshire has no need to impose further burdens on an industry that provides considerable employment and local economic benefit. In my opinion, any further requirements should be benefit driven i.e. can the council demonstrate a specific need and benefit for additional rules when the Scottish Government did not. North Ayrshire has also stated a preference for a 'light touch' in this regard. This would imply no additional requirements."

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

YES NO Do you think there should be any temporary exemptions? NO

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

"None – if existing short term lets are subject to these rules, then all short term lets should be subject to the same rules. Otherwise, there would be nothing preventing a host setting up a short term let for 6 weeks every summer without abiding by any of the rules that the rest of us are subject to."

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last

longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply. So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? YES

Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

"Where an existing operator has not had a licence granted within the legislated time frame, a temporary licence should be issued. Particularly in the event that the host can demonstrate a commitment to resolving any particular issues preventing the issue of a licence. It may also be the case that a significant backlog in applications might prevent the issue of a licence within the legislated timeframe in which case the council should be obliged to offer a temporary licence."

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? NO

Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

"In my opinion, the assumption that there is less control over Secondary Lets is

fundamentally flawed. My property has 4 people living within the grounds, all of whom are responsible for various aspects of the care and maintenance of the house and management of the guests.

Also, larger, secondary letting properties are already subject to considerable additional costs over those which a small home share may bear. It seems unfair to add to this burden of costs unnecessarily.

It also seems reasonable to assume that larger properties, secondary lets and home shares will be subject to the same checks by the council and that the licence fee should therefore be the same. This is in keeping with the principle of 'cost recovery' for the licence scheme in general."

19. Host/Arran

Evening Raymond,

Having read over the draft policy there are clear positives and negatives from NAC's take on the situation.

(a) 10-year licensing

Positives - the mention of a rolling license for 10 years would be great. We are all exhausted with form filling for the sake of form filling. I am sure those at NAC are sick of checking forms for the sake of it also.

(b) Mobile Home – capacity

Negatives - As a provider of mobile home style lodge accommodation the most concerning aspect for me is the potential for room capacity size restrictions that would deem a bunk room under 4.65 sq.m only to be suitable for 1 person to stay in. I have a family lodge that was designed for a young family of 4; 2 adults in a king room and 2 young children in a cabin bunk room. We have set the rule that children must be under 10. Am I now to turn away families of 4 and only take business from families of 3? This room is no smaller than that seen on cruise ships or in a caravan. The lodge, when built, passed all building control checks only two years ago when permissions were sought - why is it now no longer considered safe for a family of 4?

I also do not understand when looking at the draft copy why anything deemed a 'living room' would be considered as a safer sleeping option than a proper mattress in a cabin bunk room. How are NAC judging what is suitable sleeping arrangement in a living room? Does it have to contain a fold down sofa bed, a reclining chair or is the hard floor and perhaps just sleeping on top a sofa enough?

Please reconsider the capacity/room size stipulation as this does not make sense. It moves the goalposts too far for accommodation providers who have for many years let out albeit cosy, but perfectly safe, accommodation.

Thanks,

20. Host/Arran

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?		*
Why do you think that?		
<i>Would complicate insurance as well as putting demands on beds Under 2 years of age should not count. Travel or other cots used for sleeping and this would fit with airlines and most other holiday accommodation</i>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		**
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>Enough to do with proposed rules</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	&*	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>Many reasons, mainly for large events</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>Not sure actually, I would not apply as I am a full time business, but others would have more relevant views</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.

- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?		**
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<p><i>I m not clear as to why home sharing or letting should be different fee</i></p> <p><i>This is surely a grey area as the AirBnB model of home sharing is clearly abused in cities and, how would you be able to check this?</i></p> <p><i>Not easy to answer</i></p>		

21. Host/NS

After reading the proposal's for the licensing I feel I need to voice a few of my concerns.

Firstly I would like to point out I can totally understand why some form of licensing should be put in place but feel you are targeting all under one section.

One rural holiday cottage let is totally different to a multi occupied building in a residential city area.

Many people staying in a rural tradition Scottish cottage enjoy the charm and rustic feel. I feel some of the issues raised in the licensing are totally over the top.

(a) plans

I live on a Scottish island. Having floor plans drawn up would be difficult, expensive and maybe impossible over winter months to do?? Especially taking the ferries into account! Surely photos of the cottage for our customers are plenty for them to make an informed decision themselves.

(b) occupancy

Again specifically saying bedroom sizes. Surely again on websites these can be seen by our customers.

Existing holiday let's with good reviews speak volumes themselves.

I can not begin to tell you the stress this is causing. The unknown on our livelihood is an awful nightmare to be hanging over us.

I am also stressed thinking about doing all the paperwork correctly and accurately. I am not brilliant with computer's and already worrying.

I hope you take into consideration all of the above.

Yours sincerely

[[name]]

22. Host/NS

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	X	
Why do you think that?		
<i>Children are not adults and therefore I do not believe they should count towards total occupancy numbers</i>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		X
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>I believe we are covered by Fire regulations, health and safety and as a provider pride myself in delivering a high quality experience. I feel any further additions would be onerous and add additional cost</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		X
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>In my area I do not think there is any event which would require additional accommodation</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		X
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?		X
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>I believe as we are all being governed by the same legislation then the fees should be the same for home sharing ad secondary letting. I believe just because I am not on site I still monitor and control my accommodation either by email, feedback, utilising housekeeper etc</i>		

[Extra Text]

(a) plans

(b) occupancy

Finally

I am very concerned regarding the room size guidance and the requirement for architectural floor drawings. The cost of getting drawings done will be expensive. I have a very old cottage and it has been a family home for years and operating as self catering since 2016. I do not feel it is appropriate to determine occupancy on the size of a bedroom. Persons visit us due to the high standard of accommodation, its location and ambience. I feel that the impact on occupancy due to room size may affect my overall occupancy and ultimately my income.

Thank you for advising you hope to operate a "light touch" approach

23. Host/Arran

[Extra Text]

Dear Mr Lynch

Re' North Ayrshire's draft short term let policy document.

As the owner and operator of a holiday cottage on Arran here are my views on the draft, which I hope will contribute to the forthcoming Licensing Committee meeting.

1. Licence duration

1. I appreciate North Ayrshire's light-touch approach to the issue of re-licencing. It is a relief that the three year cycle will not be enforced (with the subsequent problems of taking future bookings) and the draft plans seem appropriate to the task the Council wants to achieve. Thank you for making this part of the process easier for STL owners.

2. Plans

2. I object to the requirement for a full layout plan of the premises drawn up by an architect or professional. This will be costly and will take a long time to organise as every STL owner on the island will be pursuing a limited number of available professionals at the same time. It will inevitably lead to delays. I do feel that the council should trust the owners to provide a simple list of the rooms and their sizes, particularly for smaller premises. Maybe larger houses with a complicated floor plan should provide plans, but my cottage has a simple two bedroom layout. Owners will not want to over-fill their properties: this leads to extra wear and tear and damage and most owners will be happy to set a reasonable maximum occupancy.

3. Not a 'host'

3. I object to being called a "host". I am an owner and operator who has been running a professional holiday let for more than 10 years and I have never "hosted" any guests. I do not advertise through AirBNB and I object to the use of language recently generated by a business model that I do not use.

My completed consultation response form is attached.

Thank you for taking my views into consideration.

Best regards

[[name & address]]

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	x	
Why do you think that?		
They are easily accommodated on an airbed or similar.		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		x
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	x	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>Special events on the island i.e. weddings, mountain week, highland games etc where demand can outstrip supply.</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment

- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and

- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		x
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	x	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		

24. Host/Arran

** NAC Consultation Response Form

"The proposals run the risk of infringing an owner's peaceful enjoyment of his/ her property in terms of ECHR protocols"

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

"This should be set by the operator, acting reasonably, even if monitored by the Council – but not dictated by the Council."

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	Y	
Why do you think that?		
<i>"The child's footprint is light and they are there at their parents' choosing. I would recommend a cut-off point of 8 years."</i>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		Y
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>"There has never been a need for any of this on the Isle of Arran to date, so it is an over-reaction to the situation in Edinburgh"</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		Y
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>"This would cause huge uncertainty for guests wanting to make a booking and if license to trade were removed the Council would be held accountable for compensation to both the guests and the hosts."</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		Y
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>"This would cause huge uncertainty for guests wanting to make a booking and if license to trade were removed the Council would be held accountable for compensation to both the guests and the hosts."</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?		Y
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<p><i>"Charges for non-domestic rates could be increased and this whole thing dealt with by the Assessors department.</i></p> <p><i>It is certain that insisting that a second bedroom can only accommodate a single person is WRONG. Most standard bedrooms are designed to sleep two and, anyway, this is a matter for the guest and the owner to agree upon – not the commisars of the local Council."</i></p>		

25. Host/Arran

Dear Raymond Lynch,

Thank you for the opportunity to respond to this new legislation while it is being drawn up. The reasons for it being introduced are clear and I'm sure it will provide measures of standard that should be guaranteed for all guests. I have been running my holiday let on Arran for ten years and am happy to say that the majority (75%) of my guests return each year, so I must be doing something right. However I do feel that some of the conditions to be met are rather excessive and I have outlined them in this email.

I am attaching my response to the draft Short Term Licensing conditions proposal document. While I have responded to the suggested topics in the form I would also like to add some extra comments.

(a) EPC rating

In the 'Responsibilities' section there are quite a number of conditions that are to be met. While I agree, and in fact already adhere to most of them, including fire regulations and PAT testing etc. I would want to argue that having a copy of a EPC rating is completely irrelevant for somebody booking a week in a holiday let, especially where the electrical costs are already included.

(b) Plans

Also having a technical scale floor plan is an additional expense and will not be used by guests who book my property. They are choosing it based on the location, the maximum occupancy and the cost. If it is needed by North Ayrshire to approve the license I can provide room dimensions without going to the expense of having professional plans drawn up.

(c) Legionella Risk Assessment?

Legionella Risk Assessment? Is this relevant to small scale properties. I would have thought it was only where larger scale tanks are used and water is left standing for long periods of time.

(d) No need to show Guests documents

It will take me some considerable time, and extra money, to gather together all the paperwork and meet the additional conditions that is required to be left in a folder for visitors to not read. They are more interested in what activities there are on Arran. If you are granting the licence to my business, the visitors should be assured that all the safety conditions have been met. They won't need written evidence, other than my licence number.

I provided all the financial information that was required in May of this year, something that again took some time to gather together, however nobody has bothered to acknowledge receipt of this. Is it just being kept on record or will it be used as part of the license application?

Many thanks again for this opportunity to respond, I really do appreciate it and hope that the 'soft touch' approach can be applied to an industry which is already dealing with Covid fallout and unreliable ferry services. It's not an easy time to be running a holiday let.

Very best regards

[[name]]

** NAC Consultation Response Form1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can choose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	x	
Why do you think that?		

The majority of my guests are families with children. Each child gets a bed. Unless they use a cot in which case they are under three years old. Under the age of 5 would be better.

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		x
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>There are already too many additional conditions to be met</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		x
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>This creates an unlevel playing field. If new legislation is being imposed on the majority of businesses then don't create loop holes for the few who will take advantage.</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		x
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>I can't see such a situation arising where my business is situated. Except of course in the school summer holidays when a fast buck is to be made by those who are not operating a proper business.</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?		x
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>The costs of running a Secondary Let is very high as we are dependent on paying local contractors (and therefore giving employment) for maintenance and housekeeping, not to mention extra insurance and</i>		

mortgage costs. Why should secondary letting agents be asked to pay more when our running costs are higher?

26. Host/Arran

Dear Members of The Licensing Committee

Consultation Response - Licensing Policy Statement on Short-Term Let Licensing

Thank you for giving us the opportunity to respond to your Licensing Policy Statement on Short-Term Let Licensing.

We appreciate that these new regulations are a sincere attempt to address some serious issues in particular places in Scotland. It is clear from the draft proposal that the Council recognises that the regulations are potentially catastrophic for the tourist industry in North Ayrshire, particularly Arran.

The draft proposal is to be applauded for proposing a light-touch approach to short term let licensing. This approach will help achieve the Council's key objectives and will hopefully avoid crushing our fragile tourism industry in North Ayrshire.

We have completed the response form on page 11 of this letter, but also present our thoughts on each item sequentially below. Our apologies for its length. Your policy will have a huge impact on North Ayrshire holiday lets and a potentially disastrous impact on tourism as a whole, so we have given a great deal of thought to each response.

Our main concern is that the licensing scheme will be too costly and burdensome on shortterm let operations. This concern has clearly been addressed in the draft proposal, but there are a few places where we think it may be improved.

In North Ayrshire, the short-term let sector is barely profitable, because it operates only for part of the year, from May through until September, and rarely achieves full occupancy during this period. The regulations are aimed principally at areas of Edinburgh, where the season is far longer, occupancy levels are greater, rents are much higher and the sector can better afford the cost and administrative burdens.

Our comments are primarily intended to suggest ways of mitigating the effects of the regulations to allow North Ayrshire holiday let businesses a chance to survive and time to adjust. Despite everyone's best endeavours, we expect the sector to contract by 40% to 60% in North Ayrshire as a direct result of these new regulations.

[[name]]

1. The role of the Council

Although broadly true, we feel that this section perhaps understates the discretion that Licensing Authorities have in the matter; different licensing responsibilities are discharged with varying levels of enthusiasm, resources and commitment by different authorities, depending on the perceived scale of the issues addressed by the various schemes in the locale that the authorities operate.

2. The approach of the Council

This section rightly identifies the key objectives, but we would like to suggest one addition (anti-competitive impact) and a few wording changes (in italics):

- Protecting public safety
- Securing *long-term* compliance with Licence Conditions
- *Swiftly, effectively and fairly dealing* with complaints from *members of the public that lie within the scope of the regulations*
- *Minimising* the administrative and cost burden on Hosts *and the consequent impact on the cost, competitiveness and availability of short-term lets in North Ayrshire*
- Limiting the Council's regulatory burden in inspecting and monitoring
- *Mitigate against the anti-competitive impacts that licensing may have on a small sector of the industry, to their competitive detriment compared with other industry sectors, inadvertently favouring other sectors, at home or abroad*

An objective of protecting public safety almost goes without saying, but such an open-ended commitment is difficult to achieve without disproportionate control. We would like the wording to somehow include the concepts of proportionality and risk-based enforcement, but perhaps these are covered adequately elsewhere.

We are not sure that it is wise for the Council to get involved in complaints from Guests, which are likely to include frivolous or non-relevant matters, but also restricting it to Guests and neighbours excludes other people that may have legitimate grievances, competing Hosts, for example. It is clear that the Council will need an effective triage process to weed out any vexatious or out-of-scope complaints, otherwise Hosts may be prevented from operating their business by baseless or irrelevant complaints.

The draft proposal is to be applauded for proposing the Council adopt a ***light-touch risk-based approach*** to short term let licensing. We would like to suggest that this to be expanded slightly to be a ***light-touch risk-and-evidence-based approach***. This is important, because, at the moment, there is no evidence that a licensing scheme is even needed in North Ayrshire, so to impose onerous conditions based on instinct or imperfect analysis could needlessly destroy an industry and damage the North Ayrshire economy. An evidence-based approach would also allow time for the sector to adjust the new regulations without fear of crippling penalties being applied for infringement of poorly-understood or not terribly relevant requirements.

It would make sense for evidence to be collected over a transition period of, say, two years to confirm the magnitude of the issue and to allow an informed assessment of how the ***light-touch risk-and-evidence-based approach*** was working. It would be helpful if a statement were made in The Policy that no enforcement action would be taken during this two-year transition period, except in extreme circumstance, but that, instead, the Licensing Committee would work with the Hosts to secure compliance.

It is excellent that the Proposal suggests that the Council starts with the presumption that the renewed licence might be without limit of time. This shows that the Licensing Committee genuinely care about the objectives they have set themselves and genuinely care about the burden on hosts and the regulatory burden on the Council. Aligning the approach with the practice adopted with alcohol licenses seems eminently sensible.

5. Are you a 'New Host' or an 'Existing Host'

The distinction between New Hosts and Existing Hosts seems unnecessarily restrictive and burdensome. It would seem reasonable to define New Hosts as Hosts that have never held a license and never operated a short-term let applying for a license for premises that have never had a license and that have never operated as a short-term let and to define Existing Host as all other circumstances. This would shift the bulk of the burden to entirely new applications and, rightly, make the assumption that where either the premises or the host are familiar with the obligations of short-term let then they can be trusted, initially, to discharge their obligations properly.

We suggest the categories are renamed:

1. Entirely New Applications
2. Other Applications

This simplification would have many advantages:

1. It would reduce the regulatory burden on the Council, particularly during transition.
2. It would reduce the burden on the applicants, particularly during transition.
3. It would base the licensing process on the light-touch presumption that everything will be compliant, which is the presumption behind the Existing Host definition.
4. It would enable seamless transfer of licenses between Hosts, for example when responsibility for operating short-term lets passes within a family, such as when a family member dies or retires mid-season, or when a Host sells a short-term let as a going concern, something that is highly likely during the transition, when older hosts cannot face the regulatory burden.
5. It would enable existing operators to bring on-stream short-term lets at short notice and so help to re-establish economies of scale at the new levels dictated by the increased regulation and so would help alleviate the turmoil during transition.

6. Important Dates

We suggest that this is updated to include dates of a 'summer holidays' period where short-term licenses or temporary exemptions would be automatically granted to alleviate accommodation shortages and ease the transition to the new regulation, e.g. Friday 23 June 2023 to Sunday 20 August 2023. This would allow evidence to be gathered over whether or not such temporary licenses should be routinely granted in the future.

7. How the Council deal with Licence applications

We applaud the common-sense approach of using Delegated Powers for considering applications in line with the approach used for Applications for Taxi Driver's.

Our only concern is that Taxi Drivers are less likely to be subjected to vexatious and unreasonable complaints than holiday lets. This issue doesn't affect us personally, as we don't

have any near neighbours, but we know of some holiday lets where neighbours will use every opportunity to complain, because relationships have broken down between the Host and the neighbour. Vexatious complaints could become a burden to the Licensing Committee.

Perhaps wording could be changed as highlighted in italics below

(a) there are no Objections, adverse Representations or adverse consultation responses made by any of:

- Police
- Scottish Fire and Rescue Service (SFRS)
- NAC Departments

(b) there are no Objections, adverse Representations or adverse consultation responses from members of the public or where any Objections, adverse Representations or adverse consultation responses from members of the public have been already considered in substance by the Licensing Committee previously or have been dismissed as vexatious and without merit by the Clerk to the Licensing Committee or other officers in the NAC Licensing Section and

(c) the Application does not breach any NAC Policy.

We appreciate this wording change may be at odds with some interpretations of the definition of Delegated Powers, but common sense and natural justice dictates that there should be some sort of triage process, formal or informal, to avoid there being a heavy burden on the Licensing Committee and licensing process and to avoid responsible Hosts from being prevented from operating their legitimate business by vexatious and unreasonable neighbours or by others with no connection to the locality.

In-Person Attendance at Committee Meetings

A large proportion of North Ayrshire Hosts will be located on Arran, which means it will be significantly more difficult and expensive for them to attend a License Committee meeting in person, which is their legal entitlement. For Arran Hosts, attending meetings in person would require at least one day off the island with overnight accommodation and with winter weather and ferry disruption this may stretch into several days, costing hundreds of pounds in accommodation and lost earnings (many Arran Hosts have other occupations). It is discriminatory, prejudicial and unfair not to give Arran Hosts the opportunity to attend meetings remotely if this opportunity has been previously provided to others. It would also discriminate against other Hosts with mobility difficulties. We suggest the following amendment:

The Committee meet in Council Chambers at Cunninghame House, Friars Croft, Irvine. Videoconference facilities, where licence applicants dial-in, will be available on request.

9. What are the "Types of Short-Term Let"?

The different type of licenses and the associated Mandatory Conditions are clear enough, but we believe there is scope to introduce a simplification that would reduce the regulatory burden for the North Ayrshire Council and for Hosts generally.

In North Ayrshire, and particularly on Arran, there are many different circumstances in which a property might be offered for short-term let and they may often vary throughout the year or week by week or from year to year. The STL regulations attempt to grapple with this complexity by use of multiple categories, but this attempt fails to reflect the dynamic nature of the sector, particularly in North Ayrshire. Clearly the regulations are designed to impose the largest burden on those parts of the sector that are causing the biggest issue on the streets of Edinburgh.

If the regulations had been in force for the last five years, then we can think of several instances when the category under which we were operating would have changed and the idea that we should have had to apply for a new license each time seems ridiculous.

For centuries, people on Arran have supplemented their income by moving out of their main home into a 'backhouse' for the summer and letting out their main house and for the rest of the year letting out the 'backhouse' as low-cost accommodation for locals. This tradition continues today and is part of the culture of the region and part of island life.

These regulations threaten to destroy this part of island life. The Mandatory Conditions state that

The Holder of the Licence may only offer the Type of Short-Term Let for which the licence has been granted" (STL Order, Sch. 3, Para. 2)

, but, Annex E - Enforcement section, introduces the concept of varying the *license type*. There doesn't appear to be anything to prevent the Council allowing the *License Type* to be dynamically changed during the period of the License, by either the Licensing Committee (as part of an enforcement) or by the Host as part of a change of operating model. Section 3 - Variation of the Licence says:

*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 of any 1982 Act Licence on any grounds they think fit.*

We propose that, when granting licenses, the Licensing Committee simply grant a STL license, leaving the type of license to be dynamically updated in an online register. This approach would reduce the regulatory burden on the Council and save Hosts from having to make multiple applications throughout the year to reflect changing circumstances. The Host would then simply register online the license type of the license under which they were choosing to operate for a given period. Similarly, other aspects of the license could also be dynamic, such as License Holder's name, and thus allow STL Licenses to be passed between family members, to Executors, or to new owners, when STL businesses are sold as going concerns.

It seems that a dynamic online register is necessary for other dynamic aspects of the licensing process, such as the Enforcement provisions in Annex E, where the Council would need a process for license Revocation or Suspension or Variation (e.g. Maximum Occupancy) and for other eventualities, such as the death of the License Holder (Annex D, section 8.) In this way, the process would comply with Mandatory Conditions, provide flexibility for Hosts and minimise NAC's regulatory burden.

[10. What conditions does a STL Licence have?](#)

(b) Standard Conditions

North Ayrshire are to be applauded for choosing not to apply any of the standard conditions apart from the one relating to recurring fee, which itself seems sensible and pragmatic.

However, we would point out that very few STL businesses in North Ayrshire operate for long periods of time, so the renewal fee every ten years seems inconsistent with the relatively transitory nature of businesses within the sector. It would probably be more realistic to collect a small renewal fee annually, rather than a larger one every ten years. This would make it easier for businesses to budget for, account for and arrange payment of the renewal fee. The license could be valid for ten years, with fees being collected annually.

11. What is the 'Maximum Capacity'?

It is understandable why 'Maximum Capacity' is so important to areas like Edinburgh, where STL operators can make a lot of money by cramming as many people as possible into properties, heedless of the impact on neighbours, but tourism in North Ayrshire operates very differently. The vast majority of STLs in North Ayrshire are let to families, a small number of close friends or extended families, so it is not in the interest of STL operators to cram people into their properties, as repeat business is very important to us.

We suggest that Maximum Capacity be renamed Maximum Theoretical Capacity, as it Clarifies that the number may bear no relation to the actual number of occupants or the scale of any potential problem.

One of the iniquities of the STL regulation is the assumption that fees and regulatory burden should target Maximum Theoretical Capacity. Maximum Theoretical Capacity is an unreliable measure of the need for regulation, the nuisance to neighbours or the profitability of the enterprise, although it may possibly be a reasonable rule-of-thumb in parts of Edinburgh,. A much more accurate measure would be number of guest nights per year.

For example, a six bedroomed farmhouse located in a remote part of Arran with no close neighbours and let out for six weeks of the summer, to supplement the farm income, might have a Maximum Theoretical Capacity of 12 people, but only accommodate, say, 315 person nights in those six weeks and generate an income of £5,400, as there isn't a great deal of demand for such high-capacity and remote accommodation. Whereas a two bedroomed cottage in, say, Lamlash might have a Maximum Theoretical Capacity of 4 people, but, because it is a more popular location, a more popular type of letting unit and has a much longer season, might reasonably expect to be fully let for at least half the year and accommodate, say, 2,028 person nights and generate a gross income of £20,800.

In this example, the remote Arran farmhouse that causes none of the problems that STL regulations are intended to address would end up paying the bulk of the fees out of a fraction the income. In practice, these places will stop offering STL, the local economy will be deprived of the income and larger groups of holidaymakers will simply choose to holiday in England or elsewhere, depriving North Ayrshire of their spend during their holiday and the regulations will have failed in their purpose.

To overcome this issue, we suggest that, instead of Maximum Theoretical Capacity, fees should be based on Estimated Total Guest Nights per Year. Any existing STL operator will be able to provide an accurate estimate based on previous year's figures, because usually charging structures include a per person premium, e.g. when advertising with AirBnB. Any Entirely New Host could estimate their Estimated Total Guest Nights per Year based on those for similar properties in the area. Presumably licensing details will be available online, so these figures would be open to public scrutiny and challenge. This sort of self-assessment is common in other spheres of government, such as taxation, so there seems no reason why it should not work in STL licensing.

(d) How do I request a change in Maximum Capacity later?

Rather than applying for 'consent for a material change' ("Amendment"), we propose that Maximum Theoretical Capacity and Estimated Total Guest Nights per Year be included in an online register, along with other material details of the license, and open to public scrutiny and open to be updated by the Hosts, from time to time to reflect the reality of their operations. This proposal would achieve several objectives

- It would make the fee system fairer
- It would reduce the administrative burden of managing amendments
- It would keep concerned members of the public and officials updated on the reality of STL operations rather than rely on an abstract, out-of-date and inappropriate measure
- It would eliminate the Council's regulatory need to physically monitor Maximum Theoretical Capacity
- It would allow STL Hosts to flex their operating model to reflect business opportunities and challenges
- It would eliminate the uncertainties and inaccuracies involved in assessing Maximum Theoretical Capacity and reduce the materiality of any inaccuracy or misunderstanding
- It should be easy to build an online register such the automatic notifications of change to material facts are sent to the Clerk to Licensing Committee, other officers in the NAC Licensing and members of the public or public bodies that have registered an interest in a particular license

12. What are the STL Exemptions?

It is assumed that these Exemptions have been detailed in the STL regulations and are not North Ayrshire's interpretations. It would help if this were stated explicitly where this is the case.

13. What is the 'Immediate Family Member' exemption?

It is difficult to imagine how any of the exemptions could ever be monitored or enforced, which highlights the difficulties these measures bring to the North Ayrshire Council's Licensing Committee. We believe that North Ayrshire Council is right to adopt a light-touch approach to STL licensing, as it would be easy to spend disproportionate resources monitoring and enforcing an activity that is currently a very minor problem in North Ayrshire.

16. NAC Policy on Temporary Exemptions

NAC have elected not to grant exemptions in any case, with one exception (1982 Act, Sch.1, Para. 1A(4)). The reason for this policy is that the STL Licensing legislation has been introduced to maintain safety standards and prevent nuisance, so the Committee consider that it is not appropriate to grant temporary exemptions - apart from a single exception

It is disappointing that NAC have decided not to grant temporary exemptions. We ask that NAC reconsider their position on this.

We accept the purpose of legislation is to maintain safety standards and prevent nuisance, but there is no evidence that these are issues in North Ayrshire, so it seems reasonable to use the power to grant temporary licenses to mitigate the transition, to avoid causing more serious problems than the ones the legislation is designed to prevent.

We recognise that NAC may view temporary exemptions as an administrative burden that they can well do without, but the Council also have a duty of care to the people of North Ayrshire and unless they use this power the economic repercussions will be severe.

We acknowledge that the one exemption allowed under the draft policy is a transitional arrangement designed to allow Hosts either more time to leave the industry or more time to apply for a license than would otherwise be the case, but since there are virtually no short-term lets in the period from October 2022 until the end of March 2023 the temporary exemption is of no value.

Proposed Temporary Exemptions Process for Summer 2023

We propose that temporary exemptions be granted to any Hosts seeking to operate STLs during the summer holidays of 2023. This is proposed to help alleviate the chronic shortage of STL accommodation that will arise during this period, particularly on Arran, owing to a flood of people leaving the market exacerbating a situation where supply already outstrips demand. It would be tragic if families were deprived of their annual holiday on Arran because no transitional arrangements had been made - families that may never return. If this transitional arrangement proved successful, then consideration might be given to making it a permanent annual feature, in line with a light touch risk-and-evidence-based approach.

To minimise the administrative burden of our proposed policy on temporary exemptions being used for transitional arrangement, we suggest that NAC simply set up an online register where Hosts can express their wish to obtain a temporary exemption for a given period not exceeding six weeks during the summer holidays of 2023. We note that there is no requirement to display a site notice for or any procedure for third parties to state objections and no right of appeal, but do not anticipate this being an issue, since this would be for transitional purposes and there is no great history of STLs being a particular problem in North Ayrshire.

Proposed Temporary Exemptions Process for Arran During Ferry Disruptions

We propose that temporary exemptions be granted to any Host seeking to operate STLs during any period of disruption to the Arran ferry service. This policy on temporary exemptions is proposed to help ensure that no families are forced to sleep in the open during periods of ferry disruption. It frequently happens that a large number of people are stranded on the island by ferry disruption at peak times, when often all existing accommodation is fully booked. In these emergency situations it is imperative that the island is able to open up all forms of accommodation to prevent people being left to sleep in the open. Unfortunately, under current arrangements, the Ferry terminal and other public buildings remain closed in these circumstances and there are no beds or bedding available if they were. We suggest that such exemptions be free of charge and be deemed to have been applied for and granted during any period of ferry disruption where people are prevented from returning to the mainland by cancelled ferries or inadequate capacity. This policy would seem to be consistent with the Council's policy on fairgrounds and short-term markets lasting only a few days and would demonstrate NAC's awareness of the special provisions required for Arran.

(c) Policy

We protest that the proposed policy on Temporary Licences is unreasonable and ill-advised. We believe that the considerations cited are not compelling, as we lay out below.

Note: The labelling of the two considerations sections (a) and (b) within a section named (c) Policy is confusing, so should perhaps be relabelled (i) and (ii) instead.

(a) Lack of full consultation

It is right that there should be provision for full consultation on applications for long-term STL license application, as any nuisance the legislation is designed to prevent would be long-term. It seems wrong for the Licensing Authority to take the same approach where any nuisance will be short-term, especially during a transitional or emergency period and particularly where there is no great evidence of there being a significant nuisance problem in North Ayrshire. To insist on full consultation for a temporary license seems inconsistent with the Council's avowed policy of adopting a light-touch risk-based approach, since, based on the evidence, the risk is low.

Permitting Temporary Licenses for transitional and emergency periods would not be allowing Hosts to circumvent neighbours' rights, as the circumstances and timing of such licenses would be heavily constrained and would be respecting the human right to fair treatment of forsaken tourists and beleaguered Hosts.

(b) Safety and suitability

STLs on the Isle of Arran and elsewhere in North Ayrshire have a long history of providing safe and suitable accommodation. The sector relies heavily on repeat business, personal recommendation and customer online ratings. Approximately 60% of our custom comes from repeat business; we simply would not survive commercially if the accommodation we provide was not both safe and suitable. Our customers are very effective arbiters of whether the accommodation we provide is safe and suitable. Licensing legislation is not going to improve this situation except in a few crowded cities and neither temporary licenses to ease the transition to licensed operation or temporary licenses to alleviate human suffering in emergency situations are going to undermine the objectives of the licensing legislation.

Note: Citing the aim of 'preventing nuisance' in both sections suggests that the policy on Temporary Licenses is hard to justify.

21. How will the Council monitor compliance?

We recognise that monitoring compliance issues is important to any licensing legislation; it is vital that the Licensing Authority monitor compliance to sustain their light touch approach and to allocate their resources efficiently.

The Licensing Authority are to be applauded for adopting a risk-based approach to monitoring; this seems eminently sensible. We suggest that the wording be amended to include the words 'evidence-based', because risk cannot be accurately assessed without evidence. At the moment there is obviously no evidence of non-compliance, so it may be prudent to ramp-up monitoring resources slowly. It is our belief that there will be little or no deliberate non-compliance within North Ayrshire.

In the STL sector, there is considerable scope for self-monitoring and public-monitoring, by placing material details of licenses online. This means that Guests, competing Hosts and other members of the public would perform the monitoring function, so hopefully the Licensing Authority monitoring responsibilities will not be onerous.

We appreciate that North Ayrshire Council have historically found it expensive and inconvenient to operate services on the Isle of Arran, but we trust that this will not lead to delays in issuing licenses to Arran Hosts owing to delays in monitoring or inspection visits to Arran-based premises.

22. How will the Council deal with complaints?

(a) General approach

It is excellent that the Licensing Authority are proposing that a light touch approach will be adopted for dealing with complaints, as it is an area that can become fraught. We are pleased that Hosts will be given a chance to fix any problems and that Enforcement procedures will be used as a last resort.

It would be helpful if the proposals included a statement to the effect that the Licensing Authority do not anticipate taking enforcement action in 2023 or 2024, except in exceptional circumstances. This would aid the transition by setting expectations, particularly for Hosts that are unfamiliar with bureaucratic procedures and who are very anxious about the new regulations. Many STL Hosts on Arran and probably elsewhere are relatively elderly, as few young people can afford property, so will probably struggle with the licensing procedures more than people in other licensed trades.

(b) Complaints from Guests

We were a little surprised to see that Licensing Authority are willing to consider complaints from Guests, although we note the caveats in the wording. We were wondering if the Licensing Authority also consider complaints from customers of other licensed activities, such as licensed premises, taxis, fairgrounds and market stalls. If so, it seems to be inviting administrative burden unless the legislation specifically prescribes it.

For example, the only complaint we have received in five years of STL operation was from a woman that complained when we kept her deposit when she cancelled a holiday at short notice, as explicitly stated in our terms and conditions; it was remarkable how persistent she was in carrying her complaint to every conceivable body in a vain attempt to bully us into returning her deposit. If possible, we would recommend simply omitting Complaints from Guests from the Policy.

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests. The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can choose to set the age limit as 'under 10 years'.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? [YES]

Why do you think that?

"Parents of children under 10 may choose to accommodate their children unconventionally, e.g. in carry cots or 'topping and tailing' two to a bed, and the person operating a holiday let would have no knowledge of or control over this practice."

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions. You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? [NO]

Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

"The mandatory conditions are onerous to regulate and onerous to comply with; Additional Conditions would increase the regulatory burden on the Council, increase pressure on the beleaguered STL sector, introduce anticompetitive inequalities between different regions and risk Killing the Goose that Lays the Golden Egg, economically. There is no evidence or justification for introducing Additional Conditions in North Ayrshire; when such evidence emerges is the time to consider whether to introduce Additional Conditions."

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks. There can be views either way: - there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but - the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards. What do you think?

YES NO Do you think there should be any temporary exemptions? [YES]

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

"Temporary exemptions should be allowed to cover such things as:

- 1. A transitional period to allow the sector time to adapt***
- 2. Periods of abnormally high demand, e.g. cultural events, peak season events***

3. Times of emergency or unforeseeable events, e.g. ferry cancellations in adverse weather or mechanical failure, where families stranded on Arran would otherwise have nowhere to sleep

There is no evidence that any premises in North Ayrshire are unsafe or have ever been, historically. The problems that the Licensing scheme is designed to prevent are almost exclusively restricted to Edinburgh, so North Ayrshire can afford to take a more relaxed approach to regulations, which may otherwise destroy an industry that is vital to the North Ayrshire economy and important to its cultural heritage. There is a strong argument for wholesale temporary exemptions to be applied automatically each summer for the duration of the school holidays, because otherwise the whole tourism industry will needlessly be severely harmed owing to a shortage of accommodation brought about by regulations that address issues that evidence suggest only arise in regions outside North Ayrshire."

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that). Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply. So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? [YES]

Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

"Temporary Licenses should be granted as a way to mitigate some of the damage to the North Ayrshire tourism industry that will occur as a result of these regulations, by mitigating the impact during transition. They should also be granted as a common sense response exceptional circumstances, such as ferry disruptions or one-off cultural events, such as music festivals. There is a particularly strong argument for allowing temporary licenses during the transition, when there are bound to be

1. Uncertainties about the adverse impact of some measures

2. Administrative difficulties

3. Ignorance amongst those impacted about their obligations and responsibilities

4. Uncertainties among those operating holiday lets over whether it is worth the cost, effort and stress of continuing to operate their business, so temporary licenses would allow them a longer period to assess whether it is worth continuing in business and help them to make an informed decision.

Temporary licenses should be automatically granted to anyone for whom there is no evidence of any of the issues that the Licensing scheme is designed to prevent; North Ayrshire will have a record of complaints, so it should be easy to establish whether there are any complaints against the applicant (whether unfounded or not).

Temporary licenses should be automatically granted to any new holiday-lets. This would give the public and the licensing authority a short period to assess whether the self catering holiday let is being operated responsibly, before a formal application is made Temporary Licenses should be granted to people seeking to let out their property for only short periods of the year, e.g. the 6/8 weeks of the summer holidays, as otherwise the full burden of the regulations will prevent them doing so, which would cause a serious shortage of accommodation and consequently damage the tourist industry without evidence of necessity."

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges. The general approach might be this: - The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control. - The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? [YES]

Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

"In principle we agree that the fees should be linked to the profitability of the enterprise and agree that Maximum Occupancy correlates somewhat to profitability. In practice there is no fair way allocate fees and charges. In practice there are wide variations in profitability that are not related to occupancy levels. For example, a small two bedroomed cottage in a popular destination, like Lamlash, will command a much higher weekly rent, be rented out for a higher proportion of the year and be far more profitable than, say, a five bedroomed farmhouse in a remote location. We propose fees are calculated using a combination of factors:

- **A fixed fee per self-catering unit**
- **A fixed fee per Maximum Theoretical Occupancy**

- ***A fixed fee per Estimated Annual Guest Night occupancy, based on self-assessed occupancy figures for the previous year (i.e. the number of person nights)***

The latter would act like a discount for people entering the business. There are already many other forms of self-assessment that are in common use."

27. Host/Arran

Dear Raymond

VisitArran response to Short Term Let Consultation

Firstly, it is our opinion that the timing of this implementation is all wrong, with ever increasing energy costs, not to mention the general cost of living crisis, following two years of difficulty for the short term let sector. VisitArran wants to register our support for the short term letting industry as a whole in refuting the value of additional bureaucracy when businesses and thereby local economies are already struggling, not to mention the added burden to local authorities.

As such, VisitArran is supportive of the Scottish Tourism Alliance (STA), Association of Scotland's Self Caterers (ASSC) and other industry bodies in their requests to Scottish Government to put any unnecessary additional and pending regulations on hold, including STL Licencing.

Secondly, we do appreciate that this is Scottish legislation and as such North Ayrshire must conform with any implementation. However, we do have some concerns that have been raised with regards to the **Draft Policy for STL from NAC** that I would hope to raise with you:

Occupancy levels and Children.

- Room size and capacity of such, is extremely unrealistic for many businesses who have strived to offer accommodation that meets their market needs. For NAC to determine adequate room size, does not take into account the character of many self catering properties. As an example, a double room in a cosy cottage may not be as large as that in a modern build – but the visitors choosing the cosy cottage have done so for that reason – they do not wish a modern build with lots of contemporary space. Likewise twin/bunk rooms. It's also not clear – are living rooms to be included? A sofa bed sleeping two may be in a living room determined large enough to sleep five! People choose accommodation because it suits their personal needs, and any local legislation must take this into account. If properties are being asked to conform to fire and safety legislation (which most do already) what does it matter in terms of room capacity – this is surely at the visitors discretion. **We would ask that room size and capacity is reflected in the individual property type.**

- It is also strange that glamping is included when hostels, aparthotels and bothies are not. By their very nature, glamping offers limited sleeping space in return for a more 'adventurous and experiential stay'. By limiting room occupancy by metres sq, this will restrict the number of people to be accommodated, often within one family – who have chosen to stay in this way. In addition, there are plans in for a new Aparthotel in Brodick – which is actively boasting in publicity that they will not require to conform. **We would therefore ask that some clarification is given to this within the new licence structure.**

- The Scottish Government recommendation is for children under 10 to be excluded from occupancy levels and this seems a sensible suggestion, given that young children will often 'bunk up' with family and friends. Their needs differ greatly from adults and the legislation should reflect this. **Therefore we would ask that children under 10 are not included in occupancy.**

Licence Fees and Charging

- VisitArran welcomes the 'soft touch' approach demonstrated by NAC, which will I am sure be welcomed. Any application for a Temporary Licence will only use similar resource. **Therefore, we are supportive of the recurring fees structure and also the proposal not to entertain Temporary STL licences.**

Information for Guests

- We recognise this is a mandatory condition, however Energy Performance Certificates (EPCs) are very dependent on the algorithms used by any specific surveyors, which can be variable. It is also obviously impacted by thickness of walls, nature of windows, insulation factors and type of boiler. Whilst on Arran many businesses are striving to be as environmentally carbon neutral as possible, there are limited fuel options on the island and older properties, by their very design, may be disadvantaged. **We would ask that the decision to include this is reconsidered locally to take account of the type of property licenced.**

Thank you for your consideration of these matters

Kind regards

Sheila Gilmore, Chief Executive VisitArran

28. Host/Cumbrae

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	x	
Why do you think that?		
<i>I think its reasonable for children under 10 to sleep in the same room as parents (provided the room is large enough, as defined in the draft)</i>		

Occupancy levels in the draft tables are a bit confusing and seem overly restrictive - see note at the end of this questionnaire .

It doesn't apply to our premises, but many stl operators currently have large "family" rooms that can comfortably accommodate 4 people , and licencing terms as in the draft would seem to preclude this .

This restriction could well give rise to an issue as mentioned in section 3 here (temporary licences) "there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event " – if occupancy levels are not overly restrictive, then this situation would be less likely to arise .

I understand though there's a balance to be struck between ensuring stls are not overcrowded , and allowing local economies to thrive through not overly restricting numbers of holidaymakers .. and I don't envy the decision makers their task!

****I think that the maximum occupancy section of the consultation draft is very unclear, and would like clarification - it reads as though stls with 5 or more rooms can have 2 people per room, but a 2 room stl's maximum will be 3 people - I think it should be equitable and see no reason why an adequately sized room (as defined in the draft) should not sleep at least 2 people. ****

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		x
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<p><i>If the motivation for the law is safety then I think that it is well covered by the legislation as it stands . It puts stls on an equal footing with residential and commercial rental properties in terms of electric and gas safety inspections, PAT testing etc. I think it's good it's so comprehensive and sets high safety standards in an area that was largely unregulated . I'm very conscious of health and safety requirements, but have been to some absolutely shocking holiday lets (literally shocking, in one case , with a faulty socket in a caravan !) where standards were unacceptable. I'm unsure if static caravans are included in the legislation , but if not I feel they should be .</i></p>		

The only other thing I can think of, in the context of areas where available housing stock is in short supply, is a limit on the number of licences/ properties that can be held by one person or organisation. This would be hard to enforce, as properties/ licences could be held in a partner's or relative's name to get around this,

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		x
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>There seems little point in legislating to ensure safety, then potentially flouting safety just to meet demand - best that the initial legislation addresses potential fluctuations in visitor numbers (through, for example, reasonable maximum occupancy calculations that ensure safety but are not overly restrictive)</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and

- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		x
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>It would be unfair on neighbours if, after 1st Oct, they were unable to have a voice (as every neighbour of an existing STL applying for a licence will during the "grace" period following implementation)</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	x	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>"I'd say that premises with a max occupancy of over 6 could pay more as their ratio of income to running costs is likely to be much higher – holiday homes sleeping 2-5 seem to command roughly the same rental fees, whereas larger places can charge a lot more .</i>		
<i>I think a standard rate across all types of stl would be fair (and I say this as someone who will shortly operate a home let rather than a secondary let when we move permanently to the area and live in the premises in winters, so would stand to benefit from a reduced fee) For home letting, the owner will not be present so doesn't have more control as stated above . I think all stl operators have equal responsibility to ensure safety measures are in place, and that secondary and home letting operators still can put in place</i>		

measures to ensure there's no nuisance to neighbours , so a stepped rate of charges is not required or warranted .(you could have a home share operator who parties with the guests, or a secondary let operator who has arrangements in place with neighbours to be notified of any issues in order to deal with them !)"

If the fees charged are to cover the costs of the Council of administering the licence scheme., then it's pretty much the same cost for all types of let and so charges should be the same .

29. Host/NS

Good afternoon Raymond

I currently have an apartment that I use for short term letting. It's my intention to apply for a STL licence within the time frame set out in NAC website. i.e. between 1 October 2022 and 1 April 2023.

Can you please advise:

- a) whether planning permission is or will be needed for change of use;
- b) if NAC consider landlord/tenant letting registration similarly? i.e. a business;
- c) the typical criteria for granting or refusing an application.

Best regards

[[name]]

30. Host/Arran

**** NAC Consultation Response Form**

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?		No
Why do you think that?		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		NO
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<i>The STL regulations are already too extensive, without adding any more.</i>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	Yes	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>When there is a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?	Yes	
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>Where a letting house falls short of one or two requirements, allowing time for them to be put in place.</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	Yes	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>For the reasons stated above.</i>		

31. Host/Arran

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?		X
Why do you think that?		
<p>Because any child requiring a bed rather than a cot adds significantly to wear and tear, energy use and potential noise impact on neighbours. Eg. If occupancy is 4 adults there would be nothing to stop two couples, each with 3 children under 10 years staying ie. An extra 6 people.</p> <p>It is reasonable to exclude from capacity numbers children under 2yrs who sleep in cot.</p>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		X
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<p><i>We applaud the NAC light touch and risk based approach to implementing this legislation and in minimising any additional conditions.</i></p> <p><i>Provided mandatory safety issues are covered we feel that any extra conditions may be difficult/expensive to administer and enforce and may additionally deter hosts from making properties available for letting – thereby impacting the tourist economy adversely.</i></p>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?		X
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>We don't believe there should be temporary exemptions. Many events involving a large-scale influx of people would be predictable and planned. Allowing temporary exemptions would compromise safety and suitability. It needs to be fair for all operators and allowing exemptions could enable unscrupulous hosts from taking advantage of the regulations.</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		X
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>We agree with the approach that NAC is proposing regarding Temporary Licences.</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	X	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<p><i>We agree that "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences.</i></p> <p><i>We agree that fees should be linked to the Maximum Occupancy but would suggest the following bandings: 1-4, 5-8, 9+</i></p> <p><i>However, the overall revenue from fees should remain the same (to achieve cost recovery of the scheme) so that larger and/or absentee hosts pay relatively more than smaller and/or resident hosts.</i></p> <p><i><u>Licence Renewal:</u> We applaud the NAC proposal to issue renewed licences on a "Without limit of time" basis and a recurring fee every 10 years.</i></p>		

Finally Plans

Architect Drawings: Annex K (a) Layout Plan We do not believe that architect/surveyor drawings are required. We do not believe drawings are required but, if they are, then lower grade drawings (eg. Similar to estate agent plans) should suffice.

32. Host/Largs

Hi,

I have some feedback on the short-term let draft proposal.

I fully understand the need to ensure the health and safety of all guests and the requirement for a good standard of accommodation, and I already have many of the requirements such as EICR, Gas safety, Fire alarms etc..

However I have a few concerns as follows:

(a) plans

1. The need for an architect/ surveyor drawn layout I believe presents a problem both in terms of ability to get such a thing within the timescales and the cost of that. I recently refurbished our own home and, before the pandemic, there was a waiting time of between 3 and 6 months to get an architect to come to the house in Largs. This I expect to be much worse post pandemic because of the backlog of projects. The other issue is the not insignificant cost of this- there are charges to come to the house and then the charges for creating the drawing. This would probably be several hundred pounds.

(b) room size

2. The minimum size of room set at 50 square feet seems high. There are many older properties where single bedrooms are less than 50 square feet. Is this a legal standard, and if not can this be reviewed?

(c) 'thermal insulation'

3. On page 27 there is a note stating ' the house must have satisfactory thermal insulation'. What does this actually mean? I have a property built in 1890 with thick stone walls, and no loft, making it extremely difficult to add any thermal insulation, albeit the thick walls give good insulation themselves. We have double glazing throughout.

(d) Site Notice

4. A site notice has to be displayed at the let property for 21 days and we are to give the council a certificate confirming this. How is this going to work and again there must be a cost involved. For example do we put the notice up, and then get someone in authority to check this randomly during the 21 days, and then ask for a certificate. It seems rather unclear how this will work in practice and who should provide the certificate, and the associated cost.

Thank you.

Regards,
Graeme Ross

33. Host/NS

Dear Sir

Concerns

Layout Plan & Location Plan

After reading the Draft Consultant Document.

(a) Plans

I would be concerned about the feasibility of obtaining a layout plan that must be drawn by an architect, surveyor or a similar professional to the detail required on the Draft Document. Considering the number of premises requiring to submit a plan with the application is there a list of qualified professionals who would be able to complete a plan ?

Do you have an average cost of obtaining the Layout plan to the detail required on the Draft ?

(b) cost of fire doors

The rough cost associated with installing fire doors in a self- contained holiday let property.

(c) inspection

Will all properties be inspected to ensure they meet all requirements ?

Looking forward to your reply.
Yours Sincerely

34. Host/Arran

Dear Raymond,

I am contacting you with regard to the consultation on the above.

I am the owner of three short term let properties on Arran (secondary letting) which have been operating for over twenty years. I have never had any problems whatsoever with any of the guests at any of them throughout this time, with many returning year after year.

On reading the draft policy statement I would like to comment on a few points.

(a) age of children

No. of guests in property - I think children should be included if they are of age to sleep in a bed i.e. not an infant in a cot.

(b) plans

Why is there a need to have an exact room size in the floor plans? Guests don't book accommodation on the size of rooms - most websites show the space in the rooms on the many photographs.

(c) no temporary exemptions

I also don't think there should be temporary exemptions.

(d) fees

Re. fees - I think the fee should be the same for all types of letting as same number of guests able to stay regardless of whether secondary, home letting or home sharing.

(e) PAT testing

PAT testing - I note that you include fridges, freezers, tumble dryers, washing machines, dishwashers, and ovens in your list, does this apply to built in appliances? If so, who is responsible for any damage to kick boards or the machines themselves when taking out to do the test? None of the paid qualified testers who I have had to employ to do my PAT testing in the past have never mentioned any of the many built in appliances that I have in my properties. Please clarify.

Yours sincerely,

35. NAC Planning

Alistair Gemmell (Strategic Planning Manager) 07.09.2022

Consultation Response - Licensing Policy Statement on Short-Term Let Licensing (Draft for Consultation):

Annex C – 13. Planning Permission

In the interests of clarity, we would recommend that this condition should read along the lines of either an application for planning consent or a Certificate of Lawful Use has been **approved or submitted and not refused**.

If an application has been submitted but not yet been determined, it raises the question of what is to happen if the application was refused. This point is addressed at Annex I, part (c) but could be usefully clarified here.

Additionally, the addition of the wording "has not yet been determined" to proposed part 13(a) adds a qualification that is not within the powers of the Holder of the Licence i.e., the Holder of the Licence cannot ensure that the application has not been determined, they can only ensure the application has been submitted (or approved).

Annex F – Better Regulation

Under the heading "There are two regulatory systems covering Short-Term Lets" with regard to point 1: as noted below, planning permission may still be required to operate a STL.

Annex I – Planning Legislation

As noted within Annex I, we can confirm that there are no current plans to introduce a short-term lets control area under Section 26B of the Town and Country Planning (Scotland) Act 1997 (as amended) in North Ayrshire or any part thereof.

There have been no approaches from either Communities or Elected Members seeking the creation of a Control Area and the Planning Service will adopt an evidence-based and collaborative approach to considering the requirement for such areas as part of preparing North Ayrshire Council's next Local Development Plan (LDP3).

It may be useful to note within the policy here that under current planning legislation, planning permission **may** be required for a change of use where a dwelling house – or any other building – is used for short-term lets anywhere within North Ayrshire, regardless of the property being within a STLCA or not. The key issue is whether the planning authority considers that the change of use is, in planning terms, material - taking account of issues such as increased occupancy of the property, frequency of changes of occupants, impact on local amenity and on direct neighbours, etc. There is no definition of what constitutes a material change of use from residential to short-term letting. Whether a material change of use has occurred, and planning permission is therefore required, is a matter of fact and degree for the relevant planning authority to consider on a case-by-case basis.

That said, we support the requirement for planning consent being a Mandatory Condition **only** with a STLCA. The vast majority of STL will not require planning permission and necessitating all STLs to formally regularise their planning status – which can only be done through a formal application – would be overly burdensome to both Hosts and the planning authority.

36. Host/Arran

Hi

Thank you for the information on the proposed Short term let licence information for our rental property on Arran.

I agree that there is a requirement to licence short term lets due to the party flats culture in Scotland's major cities and the need to protect public safety. and I am a member of the ASSC, Visit Arran and Visit Scotland.

The address of my property is [[address and website]] and the property comes under secondary letting and we have been trading for a number of years.

Through the ASSC we have complied with the requirement for holiday letting including EICR, PAT Testing ,Fire Risk Assessments and EPC to ensure our lodge is fully compliant with proposed STL legislation.

The lodge is a purpose built holiday lodge within a holiday lodge setting and the lodge cannot be occupied full time.

My concerns regarding the proposals centre around costs and occupancy.

There will be costs involved to provide layout plans and licence cost and will my property be financially viable to rent out in the future.

I am concerned that i am unable to accept any bookings for 2023 as a licence may not be granted and that by accepting bookings now and then to cancel in the future, I would be in breach of contract with the renter and could be taken to court

Kind Regards

37. Host/Arran

[\[\[extra text\]\]](#)

Dear Mr Lynch

Thank you for asking for views on the NAC draft proposals for the short term let licensing scheme. As an existing holiday let operator on my farm on the Isle of Arran, I very much welcome the opportunity to offer my views, which I hope can be considered prior to the NAC policy being finalised.

Some background about my business:

I am proud to adhere to the highest standards in my business and to be a member of the ASSC (Association of Scottish Self Caterers), VisitArran, and VisitScotland. My customers appreciate that, and frequently give the accommodation I offer and my business approach 5 star reviews.

Following two very problematic years due to the pandemic, this is my first full year of operation, and I am encouraged to already be welcoming back returning guests. However, I have yet to actually make any profit, and expect that I will be lucky to just cover costs for several years to come. I have previously run successful high quality self catering establishments in other parts of Scotland, and was attracted to settle in Arran for the excellent quality of life here and the potential offered by [\[\[place \]\]](#) both as a farm and as a quality self catering offering.

I have no issue with regulation, provided it is reasonable and proportionate. It is most regrettable that the Scottish Government has finally passed this STL legislation and seems to be insistent that it is implemented without delay, despite the considerable challenges currently being faced by business and councils throughout Scotland, and the lack of empirical evidence that this legislation is necessary or desirable for Scotland's struggling tourist industry.

That said, I very much welcome the "light touch" approach taken by NAC towards STL legislation, which is to be commended. In particular, the fee structure appears to be reasonably low cost (although see my comments below regarding your question about the different levels of fees being proposed), and I welcome the presumption that, once granted, licences will be deemed to be issued in perpetuity subject to the business operating without issue and on payment of a renewal fee every 10 years. All of that is a refreshingly pragmatic approach on the part of the Council, and I am grateful for it in these uncertain times following two very disrupted years due to the pandemic. All businesses need support from the Council, not to be hamstrung by additional bureaucracy.

There are some matters contained in the draft which to me appear to be onerous on operators, and I would be pleased if the Council could see its way to reconsidering

whether these are in fact necessary for the smooth and efficient operation of the STL Licensing scheme.

1. The stipulations on minimum room sizes

While my accommodation would comfortably meet these requirements, there are many quaint old cottages on Arran let out for holidays that would not meet these minimum requirements. Historically it is not uncommon that rooms in rural cottages were scarcely larger than a double bed, and many visitors appreciate the charm of the “old fashioned” way of doing things when on holiday. I cannot think of a time when I have been asked by a prospective customer to give the dimensions of a bedroom, it is not high on the list of priorities for customers when looking for holiday accommodation.

Holiday lets are not “homes”, and it seems unfair and inappropriate for minimum room size stipulations to be made on properties that are designed to be used for short periods only.

I have to ask why the Council has decided that it is appropriate to place restrictions on holiday letting related to room sizes, and which part of the legislation requires this.

2. The maximum occupancy:

The policy as drafted will have significant practical difficulties for existing operators. For example: a one bedroom cottage with a double sofa bed in the lounge is not untypical in holiday lets, and would usually be advertised for a maximum of 4 guests who would be perfectly happy with that arrangement. Notably, this type of arrangement frequently exists in hotels as well as self catering. A self catering cottage would obviously be more spacious than a hotel room containing a double bed and sofa bed to accommodate up to 4 adults, so it seems odd to restrict the maximum occupancy to 3 per the NAC draft policy. The effect of this would immediately curtail bookings for many existing businesses.

Being practical, it would be very difficult for operators and the Council to “police” such a stipulation – some operators might not be aware that a guest has arranged for there to be two people sleeping on the sofa bed, rather than the one they put on their booking form, for example.

Would that situation, over which the operator has no say, of itself potentially place the licence in jeopardy?

Similarly the formula that the Council proposes combining the total number of rooms and the size of rooms to determine maximum guest numbers. This seems very complicated and inconsistent - eg two rooms allows a maximum of three guests, but 5 rooms allows 2 per room, so a total of 10.

There are also situations whereby family rooms exist with a double bed and a set of bunk beds for children. The Council’s proposals will make this arrangement impossible, particularly as the Council proposes that all children over 2 years (rather than 10 years as allowed for in the legislation), will count in the occupancy numbers. On a practical note, successful holiday let properties typically balance the numbers of bedrooms and bed spaces with living and dining spaces, as well as the numbers of

bathrooms. For example, for a property sleeping 6, the customer expectation would be for it also to have adequate dining space to seat 6, as well as sufficient lounge accommodation for 6 people to sit together comfortably.

The draft policy does not reference the ratio of bed spaces to living and bathroom accommodation, and to do so would be unwieldy and difficult, so I am not suggesting the Council should do so. However, I would be pleased to understand what data the Council has on the relative sizes of accommodation and occupancy numbers advertised for short term lets in North Ayrshire, and how the Council has arrived at this formula for deciding maximum occupancy.

Is there truly an issue with people being packed in like the proverbial sardines. with beds being shoehorned in every available space?

In my experience the holiday let offering on the Isle of Arran is generally of very high quality, with no issues relating to overcrowding. In my own case, I have a one bedroom cottage with two living areas. I let this for a maximum of two adults, as that appears to me appropriate and it fits with my business model. Yet according to the draft policy, I could have a maximum occupancy of 5.

Responsible operators will only let the property to a number of people appropriate for the size and style of the property. I see no evidence that operators in North Ayrshire are “packing people in, regardless”, and I feel aggrieved that responsible businesses may be being penalised unfairly for historical issues that may have grabbed headlines elsewhere.

It seems to me that a more reasonable approach, particularly for existing operators, would be to determine the maximum occupancy according to what is currently being advertised or in line with the maximum occupancy the owner requests in their application. The fact that customers are already booking the property would suggest that the market is content with the overall balance of bed spaces and living and bathroom spaces contained within it. Ultimately, the market will determine whether customers will wish to continue to book and if they don't like the way a property is arranged then I doubt the operator will survive for long!

My understanding is that other Scottish councils are adopting a more light touch approach in this regard.

3. Requirements in draft LPS

3. Some of the requirements contained in the draft seem onerous for operators:

a) Plans

The requirements for hard copies of professionally drawn plans.

The draft policy from NAC stipulates a requirement for 6 hard copies of a professionally drawn floor plan of the accommodation. This seems very onerous, and will incur significant cost and be quite challenging to obtain before the end of March 2023 (our island location always means additional difficulty in securing professional services.)

Why has the Council decided that floor plans are necessary?

Can you advise what part of the legislation requires such a level of detail?

If plans are necessary, why do they need to be in hard copy? Why can't these be sent electronically in line with the focus on "digital first" administration?

A professionally drawn plan is a significant additional cost to doing business, on top of the licence fees, compliance with all existing regulations, and licence conditions, and that is before we mention the rocketing price of energy which is extremely concerning. Arran is not on the national gas network, and in common with many, I use oil for heating and hot water. Heating oil is not subject to any price cap, and the cost of oil is already rocketing, having more than doubled over the last year. Electricity is about to suffer the same fate. It is very difficult, if not impossible, for operators to pass these increased costs on to holiday let customers.

I would ask that the Council can reconsider whether professionally drawn plans are essential. My understanding is that not all Councils are making this requirement.

b) Certified Copies of documents:

Similarly, the requirement to have "certified copies" of the licence and licence conditions available in the property for guests to look at (Per Annex L 12 (a).) I have no issue with my licence number (assuming my application is approved) being made available in my marketing materials, which would confirm a licence has been granted; the existence of a licence would verify that all licensing matters have been complied with.

If all advertising and marketing materials must carry the licence number, why does a "certified" copy of the relevant licence document have to be made available to customers in their accommodation?

Compare this requirement for a certified copy of the licence, to the Landlord Registration Scheme, where anyone can check the current status of any landlord online via the national electronic register.

The guidance to Local Authorities does state that there is a presumption towards "digital first", so I would assume that there will be a central electronic register where the existence of a licence for the property could be checked by anyone who wishes to do so.

The problem in an island location of finding someone to certify copies, and the associated cost seems onerous. I would be pleased to understand where the legislation stipulates this as a requirement and if the Council would be prepared to reconsider this requirement for STL licenses, or approach Government to suggest this is changed to a "copy " of the licence to be made available.

c) "fire, gas and electrical safety information"

Also in Annex L, I would also be pleased for further clarification on the meaning of "(b) fire, gas and electrical safety information"

Is this a fire evacuation procedure? Is it instruction manuals for any gas and electrical

appliances? Is it the gas and electrical inspection reports that are specifically listed as separate requirements?

I would be pleased to understand precisely what the Council is expecting hosts to provide to guests under this requirement. I believe I already comply with it, but would appreciate clarification.

I appreciate that this legislation is new to all of us, and that it is a difficult time for Councils. I hope that the introduction of this scheme can take place smoothly. Many thanks for seeking views at this stage and I look forward to hearing from you in due course.

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted. Scottish Government Guidance says that Councils can choose to set the age limit as 'under 10 years'.

YES NO Do you think children under the age of 10 should not count towards the occupancy limit? [YES]

Why do you think that?

"Children are not adults, and the occupancy limits should not apply to them."

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

YES NO Do you think there should be any additional conditions? [NO]

Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?

"The mandatory conditions are bad enough to have to abide by. Please don't make the licensing process any more onerous than it is already. The mandatory conditions are more than sufficient and it may be that over time there will be scope for government to reconsider whether they are all in fact necessary or desirable."

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

YES NO Do you think there should be any temporary exemptions? [NO]

Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?

"There should be a level playing field for all. If I have to jump through lots of hoops and incur the expense of obtaining a licence to operate, it feels unfair that others may operate without having to go through the same process. The only circumstances might be if the Council becomes inundated with applications which it cannot process in time and in order to maintain business continuity, a temporary exemption or licence is issued. Ideally I would support the pausing of the implementation of this legislation until the tourism industry has recovered better from the impact of the pandemic closures."

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and

- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

YES NO Do you think there should be any Temporary Licences? [NO]

Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?

"There should be a level playing field for all. If I have to jump through lots of hoops and incur the expense of obtaining a licence to operate, it feels unfair that others may operate without having to go through the same process. The only circumstances might be if the Council becomes inundated with applications which it cannot process in time and in order to maintain business continuity, a temporary exemption or licence is issued. Ideally I would support the pausing of the implementation of this legislation until the tourism industry has recovered better from the impact of the pandemic closures."

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

YES NO Do you think this is the right approach? [NO]

Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?

"I am unclear why there should be such a difference in cost if the same checks have to apply to each type of licence. It would seem fairer for the charges to all be reduced to the same level as home sharing or home letting."

The Council might wish to consider offering discounts for prompt applications. Or multiple applications from the same licence holder with a number of letting properties.

I am unclear why larger properties should be subject to more checks and therefore be more expensive to licence than smaller ones?

It seems to add an additional layer of complication.

Tying the maximum occupancy to room sizes is very odd indeed for properties used for holiday lets. In my experience, people don't check the size of the bedroom before they book, room size is simply not a major consideration for customers. These are not homes, but short term accommodation used for holidays, and the requirements of users of holiday accommodation can be very different from their requirements for their long term home.

Does the Council have data about how many of each type of property exist in North Ayrshire? How has the Council used this data to set the proposed fee structure? In the interests of transparency, this data and the calculations used to arrive at these figures should be made public without delay."

38. Host/Arran

See also Representation 10

[\[\[extra text \]\]](#)

Dear Mr. Lynch,

Thank you for the opportunity to comment and I very much appreciate that NAC are adopting the "soft touch" approach. We believe that a registration scheme would have been far more appropriate, especially so soon after covid having such a devastating effect on the hospitality industry, however, we also appreciate that this is out of your control.

For context, our STL property is a 5 bedroom, 5 bathroom extended and restored crofters' cottage in Brodick that we have been letting out for about 10 years. We are usually close to fully booked from the end of March until November. Before COVID we usually had a booking for New Year and used to have a handful of short breaks at other times as well. Since COVID and the unreliability of the ferry, we have only had bookings for New Year during the low season, although this year we are honouring a booking for a short break earlier in the year which was cancelled because of the ferries. It has been difficult to lower our prices in the off season because of escalating fuel prices (even with an air source heat pump).

Annex K - What Documents do I need to supply to register

I completely understand the need to be up to date with all safety aspects of our property and all the expenses involved with that. However, the expense and logistics of having to provide measured floor plans as well seems overly onerous. I am also sure that there is a limited supply of people able to provide them on Arran during the next 6 months. Please could you reconsider the requirement to do this.

For the future... Our property is about 150 years old and has been insulated with 4" Kingspan on all external walls, double glazed, fitted with an air source heat pump, sun pipes, LED lighting and our EPC rating is D. At the present time there is very little we can do to improve this. If it becomes compulsory for STLs to have a C or more, then we would be forced to stop trading. People seem to be very happy to stay in a "character property" that is part of Arran's history.

Thank you again for the opportunity to comment and very best wishes,

[[name]]

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	X	
Why do you think that?		
<p><i>I wouldn't want more than 10 people who need to sleep in a bed in our property because our bedrooms aren't large enough to take extra beds. I also wouldn't want people sleeping on the sofas. However, I think it would be unfair to have a blanket ban when properties have plenty of space for bunk beds or put up beds. I'd also like the opportunity to use my own discretion if there was an exceptional case. Eg We once had a family who were regular visitors, who asked if they could have a child stay in a camp bed, which they brought with them. They knew the size of the bedrooms so were aware that he'd have to sleep in another room.</i></p>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		X
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<p><i>We feel that there are already an enormous amount of responsibilities, both financial and administrative, that go with the management of our STL and would be grateful not to have any more than necessary.</i></p>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	X	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<p><i>Please see below comments re emergency accommodation if needed during busy times</i></p>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, **but** can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?	X	
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<p><i>I think that being on an island, there should be some provision for people to offer short term accommodation in case of unprecedented circumstances. Eg when Arran had exceptional snowfall and subsequent power failures. Also when there have been problems with the ferries, as there are bound to be for the next few years. Luckily most of the problems so far have occurred in the 'low' season, but if something were to happen in 'high' season it would be useful to have something in place.</i></p>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.

- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	X	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<p><i>My answer is really YES and NO! If it costs the council more to license a larger property then that seems very fair. However, if the admin involved is exactly the same then maybe it's not. We have a larger property and will more than likely make more money during the busy times, however, during the low season people are far more likely to book a short break for a smaller property than a large one, so our bookings are very sparse in winter. (We only have one booking from the end of October until end of March at this stage.) Not helped by the state of the ferries and having to increase our prices because of escalating utility bills.</i></p>		

39. Host/Arran

Dear Raymond Lynch,

Having read the draft regarding the short term let licensing my concern is with the room sizes. I find this proposal incredibly troubling. People do not choose their holiday accommodation on the size of the bedrooms. In the 12 years since operating my cottage as a holiday let I have not once been asked about the size of my bedrooms prior to a booking, or received any negative feedback regarding the size of the bedrooms once guests have departed after their holiday. My cottage comfortably sleeps four and I've continued to have regular returning families over the years with only positive feedback from every guest that has stayed.

Scotland is a country full of stunning holiday cottages and accommodation dating back decades, especially on the islands. My own cottage was built in the early 1900's. These cottages are full of character, with cosy rooms and details which only adds to their appeal for guests, and are actively sought by guests who want the traditional cottage holiday.

By reducing the numbers allowed to stay in accommodation, due to room size, this also reduces the number of tourists that would come to the island. If a cottage goes from accommodating four to then only being allowed to accommodate three the island loses a visitor that would otherwise have been spending money in the local shops, gift shops, bars, restaurants and tourist attractions. I cannot understand why the government would actively want to reduce tourism numbers in Scotland especially after the last two years. It makes absolutely no sense and also comes at a time when small businesses and the tourism sector will, once again, be hard hit, this time due to the energy crisis. If holiday accommodation can provide visitors, who in turn help the local economy then surely that is a positive thing so why try to reduce the numbers.

Best wishes

40. Host/Arran

Hi Raymond

I have a couple of points I wanted to make in relation to the the NAC draft Licensing Policy Statement on Short-Term Let Licensing.

1. Difficult to follow draft LPS

I found it difficult to follow the draft policy on license renewal.

2. Plans and process

As someone who will be applying for a license, I feel the application process proposed, is onerous, specifically in relation to the requirement to provide drawings of the property. If, as suggested, the requirement is for the plans to be professionally drawn, I believe this will be very expensive and difficult to arrange, given the limited number of surveyors and architects available locally.

I hope the above is helpful.

Thank you

[[name]]

41. Host/Arran

Hello Mr Lynch

Please find attached my response to the Council's consultation on the above. I would just point out I have made some additional points at the end of the document.

** NAC Consultation Response Form

1. Occupancy levels and children

The law requires that any Short-Term Let Licence must set a maximum limit on the number of guests.

The Council can set the limit so that children under a specified age are not counted.

Scottish Government Guidance says that Councils can chose to set the age limit as 'under 10 years'.

	YES	NO
Do you think children under the age of 10 should not count towards the occupancy limit?	X	
Why do you think that?		
<p><i>Why deviate from the Scottish Government guidance and differ from many other local authorities? In my experience there has been on occasions people turning up at our Guest House with young children that were not on the booking, it would be harsh to turn them away because it would take us over the number allowed. It is not unusual for young children to sleep in their parents rooms (where there is space), especially for short stays ie one or two nights.</i></p>		

2. Additional conditions

The law sets many mandatory conditions, which automatically apply to every STL Licence in Scotland. Councils have no choice about that, but Councils do have a choice to add additional conditions.

You might think that there are already rules about these other things, so there is no need to put them in the Licence.

	YES	NO
Do you think there should be <u>any</u> additional conditions?		X
Why do you think that? If you think there should be Additional Conditions, what things do you think should be covered?		
<p><i>Additional conditions would make it different than the national requirements and I do not think they are necessary</i></p>		

3. Temporary exemptions

The Council have the option to grant temporary exemptions, which means that premises would not need a Licence for up to 6 weeks.

There can be views either way:

- there might be a short-term demand for extra accommodation for a large influx of visitors over a short period for a particular event, but
- the aim of the Licensing scheme is to ensure that premises are safe to let, so temporary exemptions should not be allowed because they might reduce standards.

What do you think?

	YES	NO
Do you think there should be <u>any</u> temporary exemptions?	X	
Why do you think that? If you think there should be temporary exemptions, what sort of situation do you think these should cover?		
<i>Generally I think there shouldn't be any because if there is a reason to apply the standards why would they not be needed. However on Arran there are sometimes tourists are stranded by ferry issues and I think this could be a situation where it might be useful to have temporary exemptions, however how this would work in practice I am not sure.</i>		

4. Temporary Licences

The Council can grant Temporary Licences. These last up to 6 weeks, but can last longer if the Host also applies for a full licence (which lasts up to 3 years, and is renewable after that).

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply.

So a neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about (legally, the Council can suspend a Licence, but this only happens if the Licensing Committee accept that there is clear evidence of

a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff).

The rules are explained in Part 17 of the Draft Licensing Policy Statement.

	YES	NO
Do you think there should be <u>any</u> Temporary Licences?		X
Why do you think that? If you think there should be Temporary Licences, what sort of situation do you think these should cover?		
<i>Unsure of the need for this and it would create uncertainty</i>		

5. Licence Fees and charges

The Council's draft Licensing Policy Statement (at Annex J) sets out a possible scheme for fees and charges.

The general approach might be this:

- The fees for "Home Sharing" and "Home Letting" Licences should be lower than for "Secondary Letting" licences. This reflects the position that the owner lives there and has a greater level of control.
- The fees should be linked to the Maximum Occupancy, so that (for example) Premises which can accommodate 4 Guests pay more than Premises which can accommodate 2 Guests (in each case ignoring the possibility that sometimes the Guest will be a child under a set age)

	YES	NO
Do you think this is the right approach?	X	
Why do you think that? If you think there should be another approach, what factors do you think the Council should look at?		
<i>It seems a fair approach, however only if the same approach applies to hotels and their licensing fees. I also note the Scottish Governments intention was the scheme should pay for itself and not more, I would hope the costings have been done for this.</i>		

[\[\[extra text \]\]](#)

Minimum Size/Capacity

I am unsure whether there is a need for a minimum bedroom standard especially in Guest Houses like ours, where there is a large lounge for guests to us. I certainly would not like to see the space standard be made bigger. Our bedrooms comply with the current proposal but if this changed it would make our business unviable. What is required in a bedroom for B&B's and Guest Houses, many for short stays differs from what is required in a home. If bedrooms are considered too small guests can review hosts and other guests can choose to book a room or not based on the information.

Layout Plans

To have a technical layout plan would be an unnecessary expense, in addition it is not always easy to get such professionals to carry out such a thing in a timely manner. If they have to travel to the island it will add an additional cost not faced by mainland operators.

Gas Safety Report

Can this say – where applicable? On Arran it will often be the case there is no gas to the property.

Light Touch Approach

I welcome the Council's sensible approach to having 10 year licenses on renewal.

42. NAC Housing and Protective Services response

From: Stewart Mackenzie (Team Manager / Protective Services)
<stewartmackenzie@north-ayrshire.gov.uk>

Sent: 08 September 2022 15:05

Housing And Public Protection (Protective Services and Housing Strategy & Development)

Comments and Observations on the Consultation for the Draft Procedures for North Ayrshire Councils Short Term Let Licensing for Housing and Public Protection

1. The introduction of the Short Term Let legislation will require significant input from services across the Council. This will need to be resourced accordingly to meet the required objectives. The most immediate cross service input will be required when services, including those in Housing and Public Protection (HPP), are consulted on new applications; the potential requirement to physically visit the premises; any subsequent enforcement of the Short Term Let legislation and the ongoing enforcement of other legislation which might be identified e.g. Health and Safety at Work, Private Water Supplies legislation etc.

In order to facilitate the objectives the following points should be considered during the development of the policy:-

- a. A clear and consistent process and/or matrix will require to be developed to determine what checks need to be undertaken by HPP at the initial application stage. To have an effective and efficient system, the licensing team administering the process

will need to ensure that applications are valid and competent and accompanied by the required documents prior to commencing the consultation process.

b. A protocol will require to be developed to determine the best method of enforcing any breaches of licence conditions and for responding to complaints about same. This will be required to avoid multiple and duplicate complaints coming into various Council services. It is anticipated that there will be a significant volume of these in the initial stages of implementation and that the Civil Licensing Standards Officer will manage this process. HPP acknowledge that there will be situations where Building Standards, Environmental Health or the Private Sector Housing Teams may need to step in and take enforcement under the services own specific legislation. This will require to be a dynamic approach with full cooperation by all services.

Legionella

2. It is recommended that Legionella Risk Assessments should be required given that there may be long periods with no usage of water in some properties. This is consistent with other legislation.

3. HPP are aware of, and are indeed impacted by, current constraints, particularly on Arran, in relation to procuring electrical, EPC and other safety certificates. In this regard, consideration is also required on the best method of ensuring that required annual checks are kept up to date, during the period of the initial three-year licence and beyond.

4. Whilst perhaps not a direct consideration for the policy, HPP have concerns that owners may decide to sell rather than apply for a STL licence, which may have an impact on the housing stock and indeed tourism, particularly on Arran.

Licence duration

5. Full consideration needs to be given to both the positives and negatives of issuing a licence without expiry after the initial three years are finished. The types of property being considered are likely to fall below the tolerable standard over time without the Council having any knowledge. If a license without time is considered the best option to move forward with, a robust and resourced system of enforcement, as noted in above, requires to be maintained on an ongoing basis.

6. Whilst perhaps not a direct consideration for the policy, it should be noted that the Environmental Health Team will be the responsible body for the enforcement of Health and Safety at Work in these premises. There will be an associated increase in workload once the premises become known.

Private Water Supply

7. Properties on a Private Water Supply will require to be redesigned as non-exempt, which will require 5 yearly risk assessments of the supply, as well as annual sampling to ensure water quality is maintained. This will attract an additional charge to the owners of the properties (currently £261 annually) and consideration should be given to signposting this in the STL process, along with any other consequential charges which may arise from other Council services or partners.

Environmental Health

8. Given past and ongoing experience, and the future more visible profile of STL premises, there is a likelihood that they will be the subject of complaints with regards to noise/safety from jacuzzi/hot tubs/pools etc, as well as air quality/public health issues with wood burners/chimineas etc. Whilst it might not be practical or advantageous to apply non-mandatory licence conditions, cognisance should be given to the significant additional workload for the Environmental Health team, and as noted above, a commitment to effective and ongoing multi service enforcement is required.

Building Standards

9. Given the type of properties being considered, there is a likelihood that Building Standards issues will be uncovered, particularly where the properties have been altered, converted or built without the required building warrant and associated completion certificate. Consideration needs to be given to which point these checks are to be undertaken and if any non-compliance issues will be considered in the SLT process. There is likely to be a significant workload relating to this and the above-mentioned commitment to effective and ongoing multi service enforcement is required.

Stewart Mackenzie
Team Manager
Environmental Health (Public Health and Pollution)
Housing and Public Protection
Place
North Ayrshire Council
Cunninghame House
Friars Croft
IRVINE
KA12 8EE

43. NAC Waste Resources

Rationale for adding additional Litter and Disposal conditions to North Ayrshire Councils

Draft Policy on Short-Term Let Licensing (GEN24)

As noted within Short Term Lets in Scotland Licensing Scheme Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms: **5.2. Additional conditions can help licensing authorities to respond to local challenges and concerns specific to certain models of short-term letting (for example, secondary letting in tenement flats).**

North Ayrshire Council – Waste Resources have two local challenges which additional conditions for Littering and Waste Disposal would support.

1. use of residential waste provision

The first challenge is where visitors use of residential waste provision places a strain on the use of waste containers and non-compliance with statutory duty of care obligations, as supported by guidance within **Short Term Lets in Scotland Licensing Scheme Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms: 5.33.** Visitors using residential waste container provision can put a strain on shared communal household waste storage facilities. For example, short-term lets within a tenement/flatted

property creating a larger amount of waste due to increased turnover of guests and cleaning than a typical residential flat, putting strain on household communal bins. Note: the waste from businesses operating secondary lets should **not** be treated as household waste, but treated as commercial or trade waste and it cannot be placed in communal household bins.

An additional condition which places a responsibility on the licence holder to provide adequate information on, and the services they have in place for, the storage, recycling and disposal of waste, would help Waste Resources reduce the potential strain on shared waste facilities, where this is an issue and support licence holders on their compliance journey. This challenge can be supported by additional condition A as set out below.

2. Using correct bins for recycling

The second challenge is to reduce contamination and improve the quality of the recyclate which we collect in line with the Council's approved 'Right Stuff Right Bin' policy. Visitors to North Ayrshire come from all over Scotland, UK and many come from overseas. Where visitors are likely to have differing recycling collection services from the services in place in North Ayrshire. This can, in turn cause confusion with which container should be used for each recyclate, causing recyclable materials to be contaminated which impacts on the services provided by Waste Resources. Also, visitors may be unaware of when containers should be placed out for collection and returned which can add to contamination concerns and levels, as well as cause access issues on public highways.

Additional conditions which place a responsibility on the licence holder to guide and advise guests of the local service provision would help reduce contamination of recyclable material and thus improve the quality of the recyclate which is collected in North Ayrshire. This challenge can be supported by additional condition B and C as set out below.

Requirements to be imposed

The Scottish Government have included a Littering and Waste Disposal Template within the guidance noted in **Short Term Lets in Scotland Licensing Scheme Part 2 Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms**. Waste Resources have amended the template to suit the challenges noted above.

A. The licence holder must provide adequate information on, and the services they have in place for, the storage, recycling and disposal of waste.

B. The licence holder shall be responsible for advising residents of the refuse collection day and for making arrangements for the presentation of bins for collection at the appropriate time and day, including returning the bins to the curtilage of the licenced property.

C. The licence holder must advise guests of:

- *Their responsibilities;*
- *The use of the bins etc., provided for the premises; and*
- *The location of the nearest recycling area or recycling point.*

D. The licence holder must:

- *Clearly label bins as belonging to the premises;*
- *Ensure that guests manage their waste in compliance with (B), including when they depart; and*
- *Maintain the bin storage area and the exterior of the premises in a clean and tidy condition*

Robert Robb
Asst Manager
Waste Strategy & Contracts

***** Responses received after the Consultation closed on Friday 9 September 2022**

44. Neighbour/Cumbræ

Sent: 12 September 2022 10:50

Good morning, Raymond,

I am a resident of Millport, and I only found out about the short-term licencing at the weekend, and I see NAC were looking for public views.

I know I have missed the boat as the info should have been in before now.

I don't even know if I am approaching the right person with my complaint, if not I am sure, you can point me in the right direction.

I live at [[address]], there are 9 flats in this block, 2 of which are holiday homes used by the owners and 1 which was bought earlier this year by a non-resident.

The non-resident lets her flat out to holiday makers which was not a problem until this weekend, we had previously asked her to remind her guest to keep dogs off the drying green and away from communal areas.

This weekend was a bit of a nightmare as the man she had staying in her staycation flat had 3 large dogs with him, these dogs ran riot through our garden.

Done their business all over the grass, we approached the owner and politely ask him to take his dogs away from the communal area and to keep them under control.

Whilst the owner picked up the dog's mess, on Sunday morning he done the same, let the dogs run riot, I had messaged the owner and asked her to contact him, never happened.

This man was very abusive to my husband.

I would like to see the licencing terms make mention to owners who let out property's (especially in flats) some rules.

Additional Conditions

Like always keeping dogs off drying greens, a reminder that all bins by each property should be put out by the owner and not left to others.

Please accept my apologies if this has been sent to the wrong person.

Kind regards,

45. Host/Cumbrae
Two emails:

(a) Sent: 12 September 2022 20:56, Subject: STL

Raymond I have an SLT in Millport and have just realised I e missed the deadline for consult. Can you keep me informed.

At present I am in objection to a licence for 4 meaning I can only sleep 3 when my flat can take 4.

I would also like to know if I have to change internal doors to fire doors and I don't agree with architect layout

Thanks,
Sincerely,

(b) Sent: 13 September 2022 07:48, Subject: SLT in Millport

Raymond

My apologies for the abruptness of the email I sent (in a massive hurry) last night. I have many plates spinning at the moment and realised with all the happenings of last week I hadn't contributed to the consult on SLT Would you please keep me informed about the progress of the new licence as I understand from [[Respondent]] that she received an email updating her about its progress and a meeting that's to be held?

I am all for a licence that protects the public having last year fully refurbished a run down property and believe that no-one should have to stay in a place not diy for purpose but have some reservations regarding some aspects of the licence.

(a) capacity

I can sleep four but according to the draft proposal may only be allowed to take 3 which excludes most family occupancies and will make people look at larger properties and have to pay more which will likely put most off from coming at all and excludes the smaller licence holders so I would like to see 3 being allowed to stay in a one bedroom flat with a kitchen diner sofa bed so that we can take a family of four please.

(b) Plans

(c) Fire doors

One of other councils has done away with news for the architect plan and also I read in government website about perhaps fire doors being required internally if you could please shed light on that?

Many Thanks,
Sincerely

46. Host/Cumbrae

Dear Sir,

I have a holiday let at the above address and would like to receive a letter of comfort with regards to renting it prior to my application for the Licence to rent being finalised.

(a) Capacity

I have concerns that I have a kitchen come living area which has a bed settee in it and that the Draft Licence document is slightly unclear as to how many people (adults and children) I can host in my one bed, one bathroom kitchen come living room flat. This being put forward for discussion would be appreciated.

(b) Plans

Also the section on whether or not Architects' drawings are required needs clarification as I know this will be a large expense even though my flat is relatively small.

(c) Fire doors

Also, are fire doors required if there are proper fire exits in the building?

I believe some councils have an executive summary list of required points and a telephone help line, perhaps NAC could also adopt this format.

Please advise if there is another channel that I should go through to request the Letter of Comfort.

I look forward to hearing from you or a member of your team in the near future.

Kind regards,

See Appendix 5 for explanation of the column headings

R	Type	Location	Q1	Q2	Q3	Q4	Q5	V1	V2	V3	V4	V5	V6	V7	V8	V9
1	Host	Arran						X	X							
2	Host	Arran						X	X		X				X	
3	Host	Arran						X			X	X				
4	Host	Arran										X				
5	Host	Arran											X			
6	Host	Cumbræ				Y			X				X			
7	Host	Arran												X		
8	Host	Cumbræ						X		X					X	
9	Neighbour	NS														
10	Host	NS	Y	N	Y	Y	Y									
11	Host	Irvine	N	N	Y	Y	N	X								
12	Host	NS	N	Y	N	N	N	X								
13	Neighbour	Cumbræ														
14	Host	Arran	Y	N	N	N	N	X					X			
15	Neighbour	Irvine	N	Y	N	N	Y									
16	Neighbour	Largs		Y	N	N	Y									
17	Host	Arran														
18	Host	Skelmorlie	Y	N	N	Y	N						X			
19	Host	Arran									X		X	X		
20	Host	Arran	N	N	Y		N									
21	Host	NS						X					X			
22	Host	NS	Y	N	N	N	N	X					X			
23	Host	Arran	Y	N	Y	N	Y	X			X					
24	Host	Arran	Y	Y	Y	Y	Y	X			X		X			
25	Host	Arran	Y	N	N	N	N	X							X	X
26	Host	Arran	Y	N	Y	Y	Y				X	X	X			
27	Host	Arran	Y			N					X		X		X	
28	Host	Cumbræ	Y	N	N	N	Y						X			
29	Host	NS														
30	Host	Arran	N	N	Y	Y	Y									
31	Host	Arran	N	N	N	N	Y	X			X					
32	Host	Largs						X					X		X	
33	Host	NS											X		X	
34	Host	Arran	N		N		N	X							X	
35	NAC - Planning															
36	Host	Arran						X				X				
37	Host	Arran	Y	N	N	N	N	X					X		X	
38	Host	Arran	Y	N	Y	Y	Y	X							X	
39	Host	Arran											X			
40	Host	Arran						X								
41	Host	Arran	Y	N	Y	N	Y	X			X		X		X	
42	NAC Housing/Prot. Serv.										X				X	X
43	NAC Waste Resources															

Submissions made after consultation closed

44	Neighbour	Cumbræ		Y												
45	Host	Cumbræ						X					X		X	
46	Host	Cumbræ														

Summary:

Overall responses:
(using RESPONSE FORM)

Y	13	5	9	8	11
N	7	15	11	12	9
All	20	20	20	20	20

21	3	1	10	4	17	2	12	2
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Hosts: 'Y' or 'X'	13	2	9	8	9
Hosts: 'N'	6	15	9	10	9

Neighbours: 'Y' or 'X'	0	3	0	0	2
Neighbours: 'N'	1	0	2	2	0

Total Responses (of 46: using Response Form or email or both)	
Hosts:	38
Neighbours:	5

The totals do not always match because some Respondents:

- did not use the NAC Response form, and/or
- only answered some questions and not others.

The totals do not always include the 3 from NAC Departments.

North Ayrshire Council Short-Term Let Licensing consultation Officer comments on Responses to the Consultation

The Appendices

The Report on the Committee's Agenda includes Appendices:

Appendix 1: the draft Licensing Policy Statement (here 'LPS')

Appendix 2: the optional Consultation Response Form published on the NAC website

Appendix 3: a single document containing all 46 responses (where appropriate, redacted to remove personal data like names, email addresses, and telephone numbers; to anonymise Respondents they are identified by number and described by 'Type/Location' where possible (or 'NS' if 'not specified'), e.g. 'Host/Arran')

Type	Location
Host	Arran
Neighbour	Cumbræ
Guest	Mainland
Other/NS	Mainland place

Appendix 4: an EXCEL spreadsheet summarising responses

Appendix 5: this document: "Officer comments on Responses to the Consultation".

Status of draft LPS

The draft published on the Council's website starts with this statement:

"This document is only a draft.

It is being published to invite comment from the public. It does not show the Licensing Committee's settled view on any matter, and where the document says things like "The Council consider ..." this does not mean that the Committee have decided – this draft is only published for the purpose of facilitating discussion."

This statement was included because the publication of previous consultations on other matters has prompted some people to mis-represent the Council as having decided on policy without public consultation.

Summary

There have been a total of 46 responses to the consultation:

Hosts: 38

Neighbours: 5

Guests: 0
NAC Departments: 3

This figure of 46 includes 43 received before the close of the Consultation period on Friday 9 September 2022 at 12.00 noon, and 3 after (1 Neighbour, 2 Hosts).

The form of responses

This varies. NAC put an optional Consultation Response Form on their website. This asked 5 specific questions, and the Respondent could answer 'yes' or 'no'. Either way the form invited the Respondent to say 'why do you think that?' and as appropriate invited the Respondent to suggest what Additional Licence Conditions might be appropriate, or in what circumstances might it be appropriate to allow Temporary Exemptions and/or Temporary Licences.

Over half the respondents did not use the form at all. Of those who did, some did not answer all the questions, or raised other matters (most commonly, about Plans and Occupant Capacity calculation).

The form asked 5 questions. In addition, many of the Hosts replied giving views on a number of issues. In the spreadsheet (Appendix 4), the questions are numbered Q1..Q5 and the views are numbered V1..V9.

Q1 ... Q5 are (briefly):

Q1 - Do you think children under the age of 10 should NOT count towards the occupancy limit?

Q2 - Do you think there should be ANY 'Additional Conditions'? (and if so, what?)

Q3 - Should there be 'Temporary Exemptions' (so premises would not need a Licence for up to 6 weeks)? (if so, what should they be available for?)

Q4 - Should there be 'Temporary Licences' (lasting up to 6 weeks, without the usual neighbour-notification rules)? (if so, what should they be available for?)

Q5 - do you think the NAC approach to Licence Fees & charges is correct? What should be the factors?

V1 ... V9 are (briefly):

V1 - plans

V2 - sale/inheritance

V3 - 'Qualifying Relative'

V4 - Permanent licence with recurring fee idea

V5 - Existing Hosts

V6 – Occupant Capacity

V7 - treatment of caravans

V8 - Energy Performance Certificates / PAT Testing / Documentation / Fire doors / Gas safety

V9 - Legionella Risk Assessment / Private water supplies

Only Hosts raised 'V' matters. Neighbours did not.

The Spreadsheet (Appendix 4)

The Committee's Background Papers include a spreadsheet which lists the 46 responses and summarises them (on the 'Summary' tab) e.g.

"How many people answered Q1?"

"How many Hosts said 'Yes' to Q2?"

"How many Neighbours said 'No' to Q3?"

The totals do not always match because some Respondents:

- did not use the NAC Response form, and/or
- only answered some questions and not others.

Q1 - Do you think children under the age of 10 should NOT count towards the occupancy limit?

This question was answered by 20 Respondent (19 Hosts, 1 Neighbour).

The overall response was: 'Yes' = 13, 'No' = 7

13 Hosts answered 'yes', 6 Hosts answered 'no', and the only Neighbour who answered said 'no'.

Q2 - Do you think there should be ANY 'Additional Conditions'? (and if so, what?)

This question was answered by 20 Respondents (17 Hosts, 3 Neighbours).

The overall response was: 'Yes' = 5, 'No' = 15

2 Hosts answered 'yes', 15 Hosts answered 'no', and all 3 Neighbours said 'yes'.

NAC Waste Resources also seeks Additional Conditions.

For: (Association of Scottish Self-Caterers)

"The ASSC believes that North Ayrshire Council should adopt additional conditions in relation to:

(i) noise monitoring in shared residential buildings; and

(ii) community accreditation and mediation. " (Respondent 12)

For: (Residents' Association)

*"The host must be available to show the visitors the accommodation which will negate the use of a key pad;
"if the apartment is above ground floor there must be carpetting in the bedrooms, hall and living room;
adequate information must be provided regarding waste disposal;
there should be a no smoking policy/no drugs policy within the building;
the car parking area (if appropriate) must be identified before arrival;
the accommodation must not be arrived at or vacated between the hours of 10.30pm and 7.00am." (Respondent 15)*

For: 'minimum stay' condition?

"Would council consider a minimum length of stay to mitigate disruption to neighbours to address some of these concerns? Operators accepting a seven-day minimum could perhaps avoid public posting by using a model similar to the granting of a Temporary Licence. Our own avoidance strategy for "stag do" crowds includes: utilising a letting agency that is focused on longer-term stays - seven-day booking minimum, implementing a significant housekeeping bond and hiring a local property management firm to clean, inspect, maintain and personally interact with all of our guests - before and during stays. We have taken these steps for our own liability/maintenance concerns and out of respect for others in our building. This strategy has thus far eliminated the attraction of those interested in displaying anti-social behaviours." (Respondent 11, Para. (c))

For: Deposit condition?

"Perhaps a significant annual deposit from operators to council could act as an additional incentive for maintaining the peace and appropriate facility management. The deposit would be forfeited in the case of a substantiated claim to address the additional resources required for enforcement and council staff." (Respondent 11, Para. (e))

Against:

"Enough to do with proposed rules" (Respondent 20)

Against:

"The mandatory conditions are bad enough to have to abide by. Please don't make the licensing process any more onerous than it is already. The mandatory conditions are more than sufficient and it may be that over time there will be scope for government to reconsider whether they are all in fact necessary or desirable." (Respondent 37)

Against:

"We feel that there are already an enormous amount of responsibilities, both financial and administrative, that go with the management of our STL and would be grateful not to have any more than necessary." (Respondent 38)

Comment1. ASSC view

Additional Conditions should not be used to duplicate or supplement existing regulatory legislation. NAC Environmental Health may use noise monitoring equipment if they are investigating a possible 'Statutory Nuisance' under the Environmental Protection Act 1990 Sections 79 and 80.

If there is a noise nuisance:

- If they think appropriate, they can serve 'Abatement Notices' on the persons responsible for the nuisance, and failing identification of those persons, on the occupiers or owners
- They - or complaining neighbours - are entitled to make a complaint to the Licensing Authority under 1982 Act, Schedule 1, Paragraph 11.

Neither of these things require there to be conditions in the Licence, and it would be unnecessary to add conditions.

Why should all Hosts be required to monitor noise? They can be advised to, as good practice, but how can that duty be enforced? The STL legislation imposes numerous requirements, but one thing it doesn't do is to require Hosts to keep records of noise monitoring. If they don't have to keep records, how are the Licensing Authority to determine that the Hosts are not monitoring noise? And if no noise nuisance is said to exist, what does it matter whether or not the Host is monitoring the absence of noise nuisance? Is it not more useful to have witnesses, whether neighbours or Council officers, who can say that they experienced noise, which is evidence the Committee would need anyway before concluding that action should be taken under the relevant provisions of 1982 Act, Sch. 1 when considering:

- the grant or renewal of a Licence – Para. 5(3)(c)
- the revocation or suspension of a Licence – Para 11(2)(c)

It is not explained what "community accreditation" is. Mediation is already a part of the "Better Regulation" approach (see Annex F – "Better Regulation") and there would be no purpose in creating a condition which merely duplicated what the Law already expected.

2. Residents' Association

- (a) Keypad: Since STL properties may well be owned by people living far away, this condition would effectively penalise them for owning property, which they are entitled to do (ECHR, Prot. 1, Art. 1);
- (b) carpet: The choice of floor covering is a matter of the owner's personal taste and the State has no right to interfere. How would Councils enforce this without inspecting each STL house/flat repeatedly, and keeping records of the carpets in each room?
- (c) waste disposal: that might be the subject of recommendations in a Code of Practice, not licence conditions (see "Generally ..." below);
- (d) no smoking/no drugs – it is wrong to use Licence conditions to duplicate statutory provisions. If things happen which are already illegal (e.g. criminal offences under the Misuse of Drugs Act 1971 are matters for the Police); no Licence conditions can give the Police powers they don't have anyway, so (apart from the ultra vires objection – see below "Generally ...") these Conditions would achieve nothing. The Council will not have officers available 24 hours a day to detect crime;
- (e) car parking: as for (c);
- (f) curfew 10.30pm to 7.00am: how does one stop Guests arriving in those times? Who will enforce this condition? The Guests will typically be travellers – what if they arrive at 1.00 a.m. and say "we'd had planned to arrive at 10.00 p.m. but we were delayed"?

3. No "minimum stay" condition

The Council cannot impose a "minimum stay" condition. The Council cannot restrict the Host-Guest freedom of contract. If a Host chooses to let out the STL for only a few days at a time, and the Council purport to stop this, they infringe the Host's rights under the European Convention on Human Rights, Protocol 1, Article 1. That Article permits interference with that right in specified circumstances, but none of these are likely to arise with a STL. The Article is:

"Art. 1 - Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

4. No deposit condition

There is no legal power for Licensing Authorities to require a deposit. Statutory authorities can charge money if and insofar as statute permits it. There are therefore provisions about charging fees (1982 Act, Sch. 1, Paras. 1(1)(c) and 15). There are no such provisions authorising Councils to take deposits. If there were, these would require to regulate deposits

being consigned, and the destination of interest, and the resolution of disputes, e.g. if the Council contends that the deposit has been forfeited, and the Host disagrees, who decides?

5. Generally, there should be no Additional Conditions.

It is the officer's view that the objectives which NAC Waste Resources and others proposing Additional Conditions should instead be achieved by recommendations contained in a Code of Practice which might be prepared by the NAC Departments concerned and published on their websites.

There should be no suggestion:

- that the contents of the Code of Practice are 'licence conditions' or
- that the Licensing Committee are likely to take alleged breaches of the Code of Practice into account in deciding whether or not to revoke, suspend or renew a Licence.

There are numerous decisions of the Courts which set out the general position that it is improper and unlawful ("ultra vires") for a Licensing Authority to have Licence conditions which seek to duplicate other statutory regulatory systems or to purport to 'fill in the gaps' where Parliament have omitted to legislate.

The practical effect of making, say, arrangements for bins, a matter for Licence Conditions is that breach of a Licence Condition is a criminal offence, so that an allegation relating to bins, dog-fouling or the other matters suggested for "Additional Conditions" might be Police matters.

This is because the STL system is an example of the Licensing system based on the Civic Government (Scotland) Act 1982, which already regulates numerous different business activities. Licence-Holders who are alleged to have breached a Licence Condition set by the Licensing Authority can be charged by the Police for the criminal offence created by 1982 Act, Section 7(2).

The Licensing Authority can separately take action, involving a Hearing on whether or not the Licence should be revoked or suspended (1982 Act, Schedule 1, Paragraph 11) but it is likely that the Licensing Authority will defer dealing with the case if criminal court proceedings are pending, to await the outcome of the court proceedings (often months after the alleged offence).

If there were "Additional Conditions" purporting to regulate things which the Licensing Committee have no powers to regulate, the Committee might find themselves being expected to adjudicate on matters that are truly the jurisdiction of the Sheriff Court (e.g. whether or not a Host was entitled to withhold a Guest's deposit).

Also, making Additional Conditions risks giving rise to unwarranted expectations that the Council are likely to take action about complaints about bins, dog-fouling etc.

Q3 - Should there be 'Temporary Exemptions' (so premises would not need a Licence for up to 6 weeks)? (if so, what should they be available for?)

This question was answered by 20 Respondents (18 Hosts, 2 Neighbours).

The overall response was: 'Yes' = 9, 'No' = 11

Hosts were equally divided ('Yes' = 9, 'No' = 9). Both Neighbours said 'No'.

For:

"Temporary exemptions should be allowed to cover such things as: 1. A transitional period to allow the sector time to adapt ..." and "Proposed Temporary Exemptions Process for Arran During Ferry Disruptions" (Respondent 26)

Against:

"There seems little point in legislating to ensure safety, then potentially flouting safety just to meet demand - best that the initial legislation addresses potential fluctuations in visitor numbers (through, for example, reasonable maximum occupancy calculations that ensure safety but are not overly restrictive)" (Respondent 28)

Against:

"There should be a level playing field for all. If I have to jump through lots of hoops and incur the expense of obtaining a licence to operate, it feels unfair that others may operate without having to go through the same process. The only circumstances might be if the Council becomes inundated with applications which it cannot process in time and in order to maintain business continuity, a temporary exemption or licence is issued. Ideally I would support the pausing of the implementation of this legislation until the tourism industry has recovered better from the impact of the pandemic closures." (Respondent 37)

Comment

1. TEs should not be used to create a second 'Transitional Period'

The creation of a Transitional Period is not an appropriate use of Temporary Exemptions. There is already a transitional period (1 October 2022 to 31 March 2023): Article 7 of the STL Order (see draft LPS Part 5 "Are you a 'New Host' or an 'Existing Host'?" and Annexes G "Existing Hosts" and H "NAC Confirmation for Existing Hosts"). During this period 'Existing Hosts' can continue to operate, without a Licence, provided that they apply for a Licence by 31 March 2023. If they do apply by that date, they can continue without a Licence until the Council make a decision to grant or refuse the Application.

2. What if the Committee DO allow TEs?

If the Committee do decide to allow Temporary Exemptions, they should determine

- (a) what fee Hosts should pay for applying for a TE (in the draft LPS, the suggested fee is £50 - Annex J "Fees", Part 3 "Other fees"). This would be a fixed fee, and would be same whether the TE requested was one day or the maximum 6 weeks per 12-month period)
- (b) the time period within which the Licensing Authority will reach a final decision on a TE application (Para. 1A(8)(b)) – it is suggested that this time period should be at least 28 days, to allow for any consultation;
- (c) whether or not the Licensing Authority requires to consult the Chief Constable and the Scottish Fire and Rescue Service in relation to a Host's application (if the Host was applying for a Licence, that consultation would happen automatically, but with TEs it is up to the Council: (Paragraph 1A(2))
- (d) whether or not the TE should have any conditions (Paragraph 1A(3)).

3. Delegation to Convenor?

The Committee could delegate to the Convenor to authorise the issue of Temporary Exemptions for accommodation (perhaps limited to Ardrossan?) as and when Calmac inform NAC of ferry problems, where the TEs were limited to the expected period of the loss of service.

4. Annual Events

The Committee could also designate events such as the Arran Music Festival, where the event happens every year but the exact dates are not know far in advance, so that each year, once the dates are known, the Convenor might authorise a statement to be published on the Licensing website such as:

"Short-Term Let Licensing – Temporary Exemptions

The Council has determined that Temporary Exemptions may be granted to Hosts of Short-Term Let Accommodation in the area below for the period below:

1 June 2024 to 17 June 2024 [Arran/Cumbrae/Mainland/North Ayrshire]

Hosts may apply for a Temporary Exemption for specified property or properties (one Application may cover more than one property).

This direction is made under Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 1A (as inserted by The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022, Schedule 2, Paragraph 6)."

Q4 - Should there be 'Temporary Licences' (lasting up to 6 weeks, without the usual neighbour-notification rules)? (if so, what should they be available for?)

This question was answered by 20 Respondents (18 Hosts, 2 Neighbours).

The overall response was: 'Yes' = 11, 'No' = 9

Hosts were divided ('Yes' = 8, 'No' = 12). Both Neighbours said 'No'.

For:

"Section 17 states that no temporary licences will be allowed. Given the extreme pressure on the accommodation during Scooter Rally, Country and Western weekend and September weekend this seems a disaster waiting to happen. " (Respondent 6)

For:

"The absence of evidence of nuisance for existing operators could provide justification for a grandfathered model to provide an equitable balance between the risk of disturbance to neighbours and a responsibly managed holiday let. If legitimate complaints were raised, the operator would then be forced to apply for a standard licence complete with public posting. Simply put, if neighbours have not been impacted negatively by an existing STL, is there a reason to invite objections that could result in the shuttering of highly sought-after accommodation in an underserved area?" [Respondent 11, Para. (d)]

For:

"I think that being on an island, there should be some provision for people to offer short term accommodation in case of unprecedented circumstances. Eg when Arran had exceptional snowfall and subsequent power failures. Also when there have been problems with the ferries, as there are bound to be for the next few years. Luckily most of the problems so far have occurred in the 'low' season, but if something were to happen in 'high' season it would be useful to have something in place." (Respondent 38)

Against:

"There should be a level playing field for all. If I have to jump through lots of hoops and incur the expense of obtaining a licence to operate, it feels unfair that others may operate without having to go through the same process. The only circumstances might be if the Council becomes inundated with applications which it cannot process in time and in order to maintain business continuity, a temporary exemption or licence is issued. Ideally I would support the pausing of the implementation of this legislation until the tourism industry has recovered better from the impact of the pandemic closures." (Respondent 37)

Comment

1. If the Committee do allow Temporary Licences

... they should determine:

- (a) what fee should be charged;
- (b) what consultation (if any) should take place beyond the mandatory consultation with the Police and SFRS that always happens with any TL (should any Council departments be involved?)

2. Alternative suggestion

Rather than allow for "Temporary Licences", the Hosts could apply for a "Full Licence" and indicate in advance that they would accept a condition:

"The Licence is granted subject to a condition that the Accommodation will not be used as a Short-Term Let at any time outside the single period of six (6) weeks, which in each year:

- commences on the first day that the Accommodation is so used and
- ends on the date six (6) weeks later,

where the 'first day' is to be a day in the period [date to be specified by the Host when applying] and three (3) months later."

This arrangement has advantages:

(a) cheaper for Hosts

They would pay a single 'full' Licence fee, as opposed to 3 x 6-week Temporary Licence fees. While the draft LPS suggests that "Temporary Licences" should not be used for STLs, here is an illustration of a situation where they are currently available.

The NAC Table of Fees for 'Public Entertainment Licences' for fairgrounds, includes:

"Public Entertainment Licence (Commercial Premises with Fairground) (Full) - £398.00

Public Entertainment Licence - Temporary Licence (maximum duration of 6 weeks, and not renewable) - £323.00"

So if a full Licence was available, the fee over 3 years would be £398, whereas 3 Temporary Licences would cost £969. In practice few 'full' Licences are granted for fairgrounds, for reasons which are not relevant to STLs.

(b) better for neighbours

Because Temporary Licences follow different rules from full licences, the usual rules giving neighbours the chance to comment on the licence application don't apply. So a

neighbour might discover that there is a Short-Term Let next-door which is operated on a Temporary Licence:

- which was granted without the neighbour having a chance to comment
- which could last for months because the 'Host' (the Landlord) has also asked the Council for a full licence, and
- which the neighbour can do little about

Legally, the Council can suspend a Licence, but:

- given that the 'temp' only lasts 6 weeks anyway, there is a chance that it will have expired by the time that the Licensing Committee come to consider whether or not to suspend;
- the Licensing Committee can probably only intervene if there is a serious threat to public order or public safety (the emphasis is on 'serious' – a noise nuisance or littering is unlikely to qualify – compare Para. 12, 1982 Act. Sch. 1 with Para. 11); and
- suspension only happens if the Licensing Committee accept that there is clear evidence of a nuisance and even if the Committee agree to suspend, the suspension is postponed if the Host appeals to the Sheriff

The lack of neighbour consultation means that the use of "Temporary Licences" (under Para. 7 of 1982 Act, Sch. 1) should not be extended beyond their existing uses, e.g. for temporary fairgrounds. The legislation permitting them was passed 40 years ago, at a time when third party rights protected by the European Convention on Human Rights did not get the attention which they do now.

The Council require to balance competing rights:

(a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights. If the Board were being asked to permit nuisance (by granting or varying a Licence), their decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).

(b) The Licence-Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. There is no precedent for a Council having liability for failing to prevent a nuisance. The Council are not obliged to close Premises or to impose such a substantial restriction that Premises become uneconomic.

3. *No 'grandfather rights'*

There are no 'grandfather rights' for STLs. Legislation only has 'grandfather rights' where there already is a Licence, and the scheme is being superseded by new legislation. If that happens, it is common that the new legislation will have a procedure which (in effect) says:

"If you already had a Licence under the 'old' legislation then, if you are making no substantial changes to your Premises (sometimes called a 'like-for-like' approach), you will probably get a Licence under the 'new' legislation if you apply"

For example, this happened in 2008-2009 with alcohol licensing, where Premises which already had a Licence under the Licensing (Scotland) Act 1976, which was due to be repealed on 1 September 2009, applied for a Licence under the Licensing (Scotland) Act 2005, and similarly when the Gambling Act 2005 replaced old legislation about betting shops, gaming machines etc..

This could not happen with STL Licensing, because they have never been licensed before, so there is no room for a 'like-with-like' comparison.

Instead the STL Order contains 'Transitional Provisions' - see the references in the draft LPS to 'Existing Hosts'. The 'Transitional Provisions' are intended to smooth the licensing process for 'Existing Hosts'. However, these provisions do not exclude consideration of the local environment. Whether the Host is a 'New Host' or an 'Existing Host', the Licence Application would have to follow the 'full Licence' procedure, which involves the display of a Site Notice at or near the Accommodation and the possibility of objections or representations from the public.

It would be possible for a Council to say

"This Host is already established, but we consider that this Accommodation is unsuitable for use as a STL. The fact that it's been used for years as a STL does not prove it's 'suitability'. Since we are satisfied that it is not suitable, we must refuse (1982 Act, Sch. 1, Para. 5(3)(c))"

Q5 - do you think the NAC approach to Licence Fees & charges is correct? What should be the factors?

This question was answered by 20 Respondents (18 Hosts, 2 Neighbours).
The overall response was: 'Yes' = 11, 'No' = 9
Hosts were equally divided ('Yes' = 9, 'No' = 9). Both Neighbours said 'Yes'.

For:

"It seems a fair approach, however only if the same approach applies to hotels and their licensing fees. I also note the Scottish Governments intention was the scheme should pay for itself and not more, I would hope the costings have been done for this. "
(Respondent 41)

Comment:

1. Basis

Several Hosts questioned the assumptions on which the suggested fee structure was based. To an extent this depends upon informed estimates and is likely to be refined with experience of the STL Licensing scheme. While the Departments who will be engaged in processing applications already have experience of other housing scenarios (Landlord Registration, and the Licensing of Houses in Multiple Occupation) and therefore already have some idea of the amount of officer time involved in processing a case (particularly where the Premises have to be inspected), the fee structure may over time require to be modified in line with a risk matrix, whereby most properties will be classified as 'low risk', and requiring minimal inspection and supervision, whereas other properties will be classified as 'high risk' and require more attention. So that the same fees are charged to all properties, while ensuring cost-recovery (as required by statute: 1982 Act, Sch. 1, Para. 15(2)), there will be a flat fee. This is because fees must be determined before the Application is lodged (1982 Act, Sch. 1, Para. 1(1)(c)). Since it is not possible to determine "low risk"/"high risk" before the Application is lodged, the only course of action is to charge a flat fee.

2. Hotels

NAC cannot set fees for hotels. Even if a hotel has a Licence under the separate alcohol-licensing legislation, the fee for that licence cannot be related to the charges the hotel makes of guests.

HOSTS' VIEWS

V1 – plans

This was the most common of the 9 views raised by Hosts (no Neighbours raised particular views beyond the Questions, e.g. Neighbours often suggested Additional Conditions).

Of 38 Hosts, 21 raised this issue. Typical views were that the suggestion in the draft LPS:

- that plans prepared by an architect, surveyor or similar professional should be used, and
- that handwritten plans were not acceptable

were too onerous and expensive.

Many of the Hosts were on Arran and Cumbrae, and made the point that it is hard enough to obtain the services of an architect etc. on the islands at the best of times, and that this would be compounded if many STL Hosts were trying to get plans prepared at the same time.

The reason that the draft LPS contained this was that the Scottish Government favour a Licensing system which:

- is closer to that which already exists for "Houses in Multiple Occupation", where detailed plans are required,
- as opposed to "Landlord Registration", where there are no plans at all.

If the Committee have comments from SFRS and NAC departments, they might consider that a hand-drawn plan would be acceptable provided that it contained sufficient detail of the locations of fire alarms, fire exits, and the dimensions of rooms, so that the capacity of the rooms can be determined.

V2 - sale/inheritance

Of 38 Hosts, 3 raised issues relating to sale or inheritance.

"If the license holder dies... Have you really considered the implications of 3 months for :

a) probate

b) the guests holidays in 4 months time

This transfer of the license is going to kill people wanting to use scottish self catering as at any moment their holiday might be cancelled.

The time frame for new hosts to get a licence being 9 months is excessive. At most it should be 9 months - possibly 4 months if the host already has a license up and running" (Respondent 2)

Comment

1. Inheritance / Death of Licence-Holder

The period of 3 months in the case of the death of the licence-holder is prescribed by statute. The Council cannot change it. The text in draft LPS Annex D ("Licence Duration"), part 8 ("If the Licence-Holder dies") summarises the effect of the statute.

1982 Act, Sch. 1, Para. 8(3):

"In the event of the death of a Holder of a Licence ... that Licence shall be deemed to have been Granted to his executor and shall, unless previously revoked, Suspended or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the Licensing Authority may from time to time, on the Application of the executor, extend or further extend that period if they are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable."

It is not open to the Council to extend the period of 3 months except on a case-by-case basis.

'Probate' is a term of English Law. The term in Scots Law is 'Confirmation' and the succession rules are different.

The Council are not legally entitled to determine succession rights and members of the public should contact the Sheriff Clerk at Kilmarnock Sheriff Court:

Sheriff Court House,
St Marnock Street,

Kilmarnock,
KA1 1ED

Telephone 01563 550024

Email: kilmarnock@scotcourts.gov.uk

The website of "Scottish Courts and Tribunals" has general advice: "Dealing With a Deceased's Estate in Scotland" at:

<https://www.scotcourts.gov.uk/taking-action/dealing-with-a-deceased%27s-estate-in-scotland>

Note that this is general advice and is not tailored to the particular circumstances of a case.

The Licensing Authority are not able to give advice on the law of succession.

2. Deemed Grant period

The time period for the processing of a licence application (9 months) is set by legislation and cannot be changed by NAC.

It is the maximum time available to a Council to make a decision on a Licence application (if the Council fail to make a decision to grant or refuse by the 'Deemed Grant' date, the Law assumes that the Licence has automatically been granted, with a duration of one year).

The Council endeavour to determine licence applications well within the 'Deemed Grant' period: officers are entitled to grant Licence Applications under Delegated Powers only weeks after the Applications are lodged (as further explained in draft LPS Part 7 ("How the Council deal with Licence applications")).

The rules the Council must follow do not change for the fact that a Host already has a Licence for another STL: each application must be looked at by the Council on its own merits - for example, suppose that a Host applies for a STL for house X, and that application receives objections from neighbours living near house X. The Council could not disregard those objections on the basis that the same Host already had a STL for house Y. It might be that the Licensing Committee would be satisfied that the Host appreciated the neighbours' concerns, and was likely to address them, but that would be a decision for the Licensing Committee after hearing from all parties. The Committee could not say:

"This Host already has a STL so we'll fast-track the procedure, and ignore the neighbours' legal rights to state objections."

3. Sale

The draft LPS already seeks to address one concern by providing for the 'amendment' of a licence, replacing the seller's name with that of the buyer. This is a novel application of the legislation (the Civic Government (Scotland) Act 1982). The 1982 Act does not contain a provision for the transfer of licences (unlike the separate legislation for alcohol-licensing, the

Licensing (Scotland) Act 2005, Sections 33 to 35; some other licensing statutes contain a transfer procedure, but not all).

A respondent says that if someone were to buy an existing self-catering property then they would not be able to honour existing bookings, which would make it difficult to sell properties which are currently run as self-catering businesses with goodwill.

The respondent is mistaken. The situation is covered in the draft LPS: "Annex J - Fees", under the headings:

- "Transfer of the Premises"
- "3. Other fees"

The selling Host is applying to NAC for "Consent for a Material Change" (Civic Government (Scotland) Act 1982 Act, Sch. 1, Para. 9(2)) (called in NAC "Amendment"). The draft LPS suggests a fee of £35.

It would be for the parties to arrange this privately, as the buyer and seller of a public house, restaurant, off-sales shop or other Premises licensed to sell alcohol arrange to have the Premises Licence transferred at the date of settlement: either:

- the seller requests NAC to issue the consent, and tells NAC that the consent should be regard as conditional, with the seller only confirming that the "Amendment" should proceed when the sale has actually settled, or
- the buyer applies, producing written evidence of the seller's consent.

Either way, NAC prepare the transfer and are ready to complete it as soon as the parties agree it should be finalised.

There is no prescribed form for the application for consent, and a letter from the seller would do, provided that it gave the same details of the buyer as the Police would expect if the buyer was applying for a STL Licence:

- full name (including any other names used in the past 5 years)
- postal address & postcode (& any other addresses used in the past 5 years)
- place of birth
- date of birth

and it specified:

- the proposed date of transfer
- the address & postcode of the Accommodation
- the Licence Number

It is possible that NAC will place a form on the website, similar to the one already used under the alcohol legislation.

Some Hosts suggest that either Temporary Exemptions or Temporary Licences might be used, but neither is appropriate.

V3 - 'Qualifying Relative'

Of 38 Hosts, 2 raised issues relating to the definition of 'Qualifying Relative'.

There is nothing that the Council can do about this, as the definition and the associated provisions are prescribed by the legislation.

Apart from correcting a typo – the word 'not' should appear, so that the sentence in Part 12(b) should read:

"(b) the Guest is an Immediate Family Member of the Host (see Part 13 - "What is the 'Immediate Family Member' exemption?")"

we believe that the draft LPS contains an accurate summary of the legislation (barring one typo). The question of whether or not the legislation is contradictory is not one the Council can answer.

V4 - permanent licence with recurring fee idea

Of 38 Hosts, all 9 who expressed a view on this indicated agreement with the general approach of:

- granting an initial Licence lasting 3 years and
- then approaching an application for renewal with the starting assumption that it should be granted without limit of time (subject to an Additional Condition requiring the Licence-Holder to pay a fee every 10 years, starting from the date of the renewal application).

NAC Housing and Protective Services suggest 3-year Licences should be the norm.

For:

"1. I appreciate North Ayrshire's light-touch approach to the issue of re-licencing. It is a relief that the three year cycle will not be enforced (with the subsequent problems of taking future bookings) and the draft plans seem appropriate to the task the Council wants to achieve. Thank you for making this part of the process easier for STL owners." (Respondent 23)

"It is excellent that the Proposal suggests that the Council starts with the presumption that the renewed licence might be without limit of time. This shows that the Licensing Committee genuinely care about the objectives they have set themselves and genuinely care about the burden on hosts and the regulatory burden on the Council. Aligning the approach with the practice adopted with alcohol licenses seems eminently sensible." (Respondent 26)

"Licence Renewal: We applaud the NAC proposal to issue renewed licences on a "Without limit of time" basis and a recurring fee every 10 years." (Respondent 31)

*"I welcome the Council's sensible approach to having 10 year licenses on renewal."
(Respondent 41)*

Against:

"5. Full consideration needs to be given to both the positives and negatives of issuing a licence without expiry after the initial three years are finished. The types of property being considered are likely to fall below the tolerable standard over time without the Council having any knowledge. If a license without time is considered the best option to move forward with, a robust and resourced system of enforcement, as noted in above, requires to be maintained on an ongoing basis." (Respondent 42 – NAC Housing & Protective Services)

Comment

1. Licence Duration

Annex D - "Licence Duration", Part 6 "Why are renewals granted without limit of time?" explains the legal basis of the 'permanent licence'. The concerns of NAC Housing and Protective Services can be addressed by recognising that strictly-speaking no licence is ever truly 'permanent', if by that it is meant "once the Council have granted, they can do nothing about it."

Licensing Authorities must still look at individual cases on their merits. For example, the alcohol-licensing legislation already provides that "Premises Licences" (for pubs, restaurants, off-sales shops etc.) are "permanent", but this depends on the Premises continuing to observe their legal duties. It remains the case that if there was, say, a complaint against a noisy public house or an allegation that the Licence-Holder had breached Licence Conditions, the Licensing Board could review the Licence, and take any action appropriate, up to revoking or suspending the Licence. All STL Licences are subject to the mandatory conditions set out in STL Order (set out in Annex C - "Mandatory Licence Conditions") and the stated duration of the Licence, whether it is stated to last 3 years or 'without limit of time' does not alter the facts that the Licence has those conditions and that the Council can take enforcement action.

It is in the interests of both Hosts and the Council that where appropriate the Licence should be renewed without limit of time, since in the majority of cases this will reduce the time and expense on all sides.

2. It's NOT a 10-year Licence

The proposal is not to have a '10-year licence', but rather a Licence which (once renewed) has indefinite duration, the only requirement being that on applying for renewal, and at 10-year intervals after that, the Host should pay the equivalent of an Application fee.

3. ANNUAL fee?

One Host suggested that the 'recurring Fee should be charged annually, rather than every 10 years. The reason that a 10-year interval was chosen was that experience of the Alcohol licensing scheme (where Premises Licences for public houses etc. have an Annual Fee due every October) has shown that the collection of the fees places a heavy burden on staff and on Licence-Holders (if they fail to pay the fee on time, they may be served with a 'Breach of Condition Notice' and eventually may go before the Licensing Board). Since there are likely to be more STL Licences than there are alcohol Premises Licences (there are about 380) the resources involved in reminding Licence-Holders, monitoring payment, and generally acting as debt-collectors will place an unnecessary demand on Council resources.

4. Proportionately lower fees

Another difference between alcohol licensing and the STL proposal is that the alcohol Annual Fee is proportionately high compared with the cost of applying for the Licence in the first place:

Alcohol fees vary from Category 1 (where it costs £200 to apply for the Licence and the Annual Fee is £180) to Category 6 (where it costs £2,000 to apply for the Licence and the Annual Fee is £900).

In contrast, if the STL fee is effectively spread over 10 years, it might be only about £50 annually.

V5 - Existing Hosts

North Ayrshire Council will without legal obligation and free-of-charge establish a system whereby 'Existing Hosts' can seek confirmation from the Council that they benefit from the 'Transitional Provisions'.

This confirmation is **not** a licence, but these provisions mean that the Hosts can **continue** to operate without the grant of a Licence until:

- (1) if they **do not** apply for a Licence, until 31 March 2023; and
- (2) if they **do** apply for a Licence before that date, until such time as the Council decide whether to grant or to refuse it.

The legislation does not require Councils to issue such confirmations and North Ayrshire Council have adopted this system to allow 'Existing Hosts' to obtain something 'official' which they can show to their Guests and Listing Agencies.

This confirmation is in addition to the "NAC Confirmation for Existing Hosts" set out in Annex H to the draft LPS.

A Respondent raises the issue of an 'Existing Host' acquiring a new property.

The focus of the Licensing system is on two questions, not one:

- whether or not the Host is a 'fit and proper' person, and
- whether or not this Accommodation is 'suitable' to be used as a STL

The fact that a Host has other properties does not establish that this Accommodation is suitable. While the Council's previous experience of the Host in relation to other properties might assist an assessment of whether or not the Host is 'fit and proper' (for example, if the Council know that other properties are well-managed and that the conditions of those Licences are observed), it remains the case that:

1. the Council are always legally-obliged to consult both the Police and the Scottish Fire and Rescue Service (1982 Act, Sch. 1, Para. 2),
2. The Host must display a Site Notice at or near this Accommodation; and
3. The public can make objections or representations.

It would be possible for a Council to say

"This Host is already known to us and the other houses are well-managed, but we consider that this Accommodation is unsuitable for use as a STL. The fact that it's been used for years as a STL does not prove it's 'suitability'. Since we are satisfied that it is not suitable, we must refuse (1982 Act, Sch. 1, Para. 5(3)(c))"

V6 – Occupant Capacity

Many Hosts raised this issue. A common theme was that, if the proposed rules were applied, an existing STL might only be allowed to accommodate fewer Guests than before.

This is important because it is a Mandatory Condition that STL Premises do not exceed the specified Maximum Occupancy.

This question is for NAC Housing or Protective Services to advise the Committee.

V7 - treatment of caravans

A caravan or Mobile Home is "Accommodation" so it needs a STL Licence. The significance of the definition of "House" is that, because a Caravan or Mobile Home is not a "House" (as defined), the "Repairing Standard" does not apply.

So of the two conditions which apply to STLs generally, only one applies to caravans or Mobile Homes:

"10.—(1) The Holder of the Licence must take all reasonable steps to ensure the Premises are safe for residential use.

(2) 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."

Only Para. 10(1) applies to caravans or Mobile Homes. See draft LPS, Annex B - "Repairing Standard".

V8 - Energy Performance Certificates / PAT Testing / Documentation / Fire doors / Gas safety

This relates to a variety of questions, which are either:

- matters which the Council can do nothing about, because they are required by the legislation, or
- matters on which the Licensing Section cannot offer advice on (e.g. what energy rating should my boiler be?").

V9 - Legionella Risk Assessment / Private water supplies

"Legionella Risk Assessment? Is this relevant to small scale properties. I would have thought it was only where larger scale tanks are used and water is left standing for long periods of time. " (Respondent 25)

"2. It is recommended that Legionella Risk Assessments should be required given that there may be long periods with no usage of water in some properties. This is consistent with other legislation." (Respondent 42, NAC Housing/Protective Services)

Comment

There are two separate mandatory conditions:

"8. 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(23).

9. 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."

As these conditions are mandatory, NAC have no power to vary or dis-apply them.

Other matters raised by Hosts

1. Neighbour Consultation

Several Hosts say there does not need to be a Site Notice. On the contrary, the STL Licensing scheme is an example of Licensing regulated by the Civic Government (Scotland) Act 1982, so the procedures in Schedule 1 to that Act apply - including the mandatory

display of a Site Notice - Paragraph 2(2) - (6). The Council cannot dispense with compliance - only the Scottish Government can.

The Council cannot avoid a Hearing if there are Objections or Representations to a Licence Application, regardless of whether or not the Host believes the comment to be unmerited, frivolous or vexatious - the Law requires a Hearing (1982 Act, Schedule 1, Paragraph 3, also the 'fair hearing' requirement of European Convention on Human Rights Article 6(1)).

2. Complaints

"(b) Complaints from Guests

We were a little surprised to see that Licensing Authority are willing to consider complaints from Guests, although we note the caveats in the wording. We were wondering if the Licensing Authority also consider complaints from customers of other licensed activities, such as licensed premises, taxis, fairgrounds and market stalls. If so, it seems to be inviting administrative burden unless the legislation specifically prescribes it." (Respondent 26)

The Council can't not entertain complaints from Guests - the same rules apply to STL Licensing as to any other activity regulated by the 1982 Act (Schedule 1, Paragraph 11), where complaints are entertained.

The Licensing Committee deal with complaints by carrying out a two-stage process.

The first stage is the preliminary assessment of the complaint, and the investigation officer's report. This preliminary assessment is conducted in private. The Committee consider whether the complaint has a bearing on the Licence

The Committee decide either:

- to dismiss the complaint without further procedure, or
- to continue to a Hearing on a later date, when the Licence-Holder, the complainer, and any relevant third parties, are invited to give their accounts to the Committee.

At the Hearing, the Committee hear all parties and then decide whether or not:

- the complaint should be upheld and
- if so, what action should be taken.

A Licensing Committee which allows a complaint to proceed to the second stage, a Hearing, are only saying

"Taking what is said at it's highest, all we can say is that this complaint is not frivolous or vexatious. It may be that, after Hearing all parties, we are satisfied that the situation was indeed as the complainer alleges, so we might consider sanctions against the Licence-Holder, but it may also be that we are not so satisfied."

The alcohol-licensing legislation contains a similar unfettered right for anyone to make a Review Application to the Licensing Board: Licensing (Scotland) Act 2005, Section 36).

Whether or not the Licensing Committee decide to proceed to a Hearing on the complaint depends on their preliminary assessment of whether or not the

3. PAT testing ("Portable Appliance Testing")

Some respondents comment:

- (a) that "PAT testing" is not a legal requirement, and
- (b) that it should be unnecessary for them to have electrical safety certificates for domestic appliances provided for Guests to use in STLs.

it is a legal requirement and cannot be varied by the Council: since the requirement for PAT certificates arises from **Mandatory** Conditions which are imposed nationally by Law, and which individual Councils cannot vary or dis-apply, it is not appropriate for Council officers to comment on the opinion that the requirement is unnecessary.

The Mandatory Conditions in Schedule 3 to the STL Order include:

"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—

(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."*

4. Who holds the Licence: the Host, the Booking Agency, the housekeeper or the maintenance company?

One of the Mandatory Conditions is

"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."

A respondent comments:

- The host advertises and books via a national holiday website.
- A local company runs the cottage
- there is a housekeeper for maintenance and cleaning
- if the maintenance costs more than a set amount, a maintenance company is engaged.

So the respondent asks who is applying for a licence:

- the host
- the booking website,
- the housekeeper, or
- the maintenance company?

Comment

1. BOTH hold the Licence

Para. 1 is another national **Mandatory** Condition (STL Order, Schedule 3), so individual Councils cannot vary or dis-apply it. It is not appropriate for NAC officers to comment when the Respondent says "Just wondering if anyone dealing with this understands the sector?" In answer to the same Respondent's comment about the lack of definitions, the draft LPS contains numerous definitions, taken from the legislation: "Annex A – Definitions".

The answer to the question "who holds the Licence?" is that both

- the Host and
- the Housekeeper

hold the Licence. Both are named on the Licence and both must sign the Licence Application. This is because they are "Joint Licence Holders". The Housekeeper is the "Day-to-Day Manager" (commonly "DDM").

IMPORTANT: If the named DDM stops working at the Accommodation then the other Licence-Holder must apply for a new Licence within 6 weeks, or else the existing Licence ceases (see below "If DDM ceases").

2. Statutory references

The STL Order applies, with modifications, the licensing system that has for many years regulated several business activities: the Civic Government (Scotland) Act 1982. This legislation caters for the situation where the Licence-Holders might not be carrying out the day-to-day management of the licensed activity themselves, so instead they nominate a "Day-to-Day Manager" (commonly "DDM"). Statutory references below.

In the STL situation, if the Host is not going to carry out the day-to-day management of the Accommodation personally (for example, in "Secondary Letting"), the Licence Application must give details of the person who is – the "Day-to-Day Manager".

Both the Host and the DDM are treated as "Joint-Holders" of the Licence because Para. 5(8) of Schedule 1 to the 1982 Act:

"5(8) Where a Licensing Authority Grant a Licence in respect of which an employee or agent has been named under Paragraph 1(2)(b) or (c)(iv) above, the Licence shall be Granted jointly in the names of the Applicant and of the employee or agent, and in such a case any reference in this Schedule or in Part I or II of this Act to the Holder of a Licence includes a reference to one or both of those persons, as the case may require."

The provisions referred to deal with the situation where a Licence is held by either:

- a **natural person** (a named person) - Para. 1(2)(b) – or
- a **non-natural person** (like a Limited Company registered at Companies House, where the directors are natural persons) – para. 1(2)(c)(iv)

Para. 5(8) means that a Day-to-Day Manager is deemed to be a Joint Licence-Holder (Para. 5(8)), whether the Licence-Holder is a natural person or a non-natural person.

The existence of a DDM must be disclosed on the licence application form, with the same sort of details that the Police would need to vet the Applicant. Any application for the grant or renewal of a 1982 Act Licence requires the Applicant to specify various information (Para. 1(2)), including:

- (1) Applicant is a Natural Person:

"... his full name, address and date and place of birth and, where the Applicant himself is not to be carrying on the day-to-day management of the activity in relation to which the Application is made, the full name, address and date and place of birth of any employee or agent who is;" (Para. 1(2)(b));

- (2) Applicant is **not** a Natural Person:

"... where the Application is made by or on behalf of a person other than a natural person, ... (iv) the full name, address and date and place of birth of any employee or agent who is to carry on the day-to-

day management of the activity in relation to which the Application is made;" (Para. 1(2)(c)(iv)).

3. If DDM ceases

This consequence to a 1982 Act Licence (such as a STL Licence) is the result of Para. 8(4): Where one of the Joint Licence-Holders "ceases to be such", the Licence remains 'in force' for a further 6 weeks. There is no provision for extension of that 6-week period (contrast the power to extend the period for executors to wind up an estate: Para. 8(3)).

If the remaining Licence-Holder applies within that period of 6 weeks for a further Licence (nominating a new DDM), the 'old' Licence is extended to the end of the 'new' application process and any appeal (in much the same way as an appeal against refusal of licence keeps the 'old' licence alive pending appeal).

If there is **no** further Application within that 6-week period, the 'old' Licence ceases to be 'in force' and the remaining Holder cannot operate under it.

If he applies for a Licence after the 6-week period then the 'old' Licence has lapsed, and so the 'new' application is processed as it there had never been a previous Licence: the Applicant (he is no longer a 'Licence-Holder') cannot operate unless and until the new Application is Granted.

What he should consider is making two Applications:

(1) the 'full' three-year Licence, and

(2) a Temporary STL - this is subject to the Licensing Committee making policy on when, if ever, it is appropriate to apply for a Temporary Licence for a STL. Although a TL normally has a 6-week duration and is not renewable, that duration is deemed extended if a 'full' Application is also made: Para. 7(6).

It is not simply a question of nominating a new DDM (the 1982 Act is unlike the separate legislation for alcohol licensing – if a 'Designated Premises Manager' leaves a public house, restaurant or off-sales shop then the Licence-Holder can follow the quick and cheap 'Minor Variation' procedure within 6 weeks to nominate a new DPM). There is no equivalent to this in STL legislation.

4. Procedure for change of DDM?

Given that Housekeepers will frequently change, the Committee should consider whether or not a Para. 9(2) "material change" application, which could be delegated, could be considered.

This could only be granted within the 6-week period of the 'ceased' provision.

NAC could not entertain an application after the 6-week period, because the Law would itself have terminated the licence, so it could not later be 'amended' because there'd be nothing to vary.

5. Breach of European Convention on Human Rights

"The proposals run the risk of infringing an owner's peaceful enjoyment of his/ her property in terms of ECHR protocols" (Respondent 24)

That is not a matter for the Council. The STL Order was made by Scottish Ministers and affirmed by the Scottish Parliament. Therefore NAC are obliged to apply the Order unless and until either the Courts or the Scottish Parliament direct otherwise.

In relation to both Temporary Exemptions and Temporary Licences, the Respondent states:

"This would cause huge uncertainty for guests wanting to make a booking and if license to trade were removed the Council would be held accountable for compensation to both the guests and the hosts."

The Respondent is mistaken. There could be no claim against the Council. If there is liability, it is on the Hosts, because when they enter into a booking to provide accommodation at a future time, they are warranting to the Guest that they will in fact have the ability to provide it then. The situation is the same as if a passenger today books a Taxi to take him to the airport next month, and between now and then the driver is disqualified from driving by the Sheriff Court. The passenger could not sue the Sheriff Court - he had no contract with them.

6. Ultra Vires

"I am wondering if the potential requirement for a location plan would not be considered ultra vires?" (Respondent 2, email (c))

When an act by a Local Authority is described as "Ultra Vires", that means it is said to be "beyond statutory powers, and so illegal.

There is nothing "ultra vires" about what the Council are doing. They are implementing a statutory scheme as they have been instructed by the Scottish Parliament. In particular, it is not ultra vires to ask for plans or for "a certified copy of the licence":

A STL Licence Application is under the Civic Government (Scotland) Act 1982, so the procedure is in Schedule 1.

Para. 1(2) is:

*"An Application under Sub-Paragraph (1) above shall specify— ...
(e) such other information as the authority may reasonably require."*

Whether the application seeks a 'full' Licence or a 'temp', the potential grounds for refusal in Para. 5(3) apply, including 5(3)(c) - the premises are unsuitable due to various factors, including public nuisance and safety. So it's 'reasonable' for the Council to ask for plans.

The Council have the power to make 'reasonable eNeighbouruiriies' (Para. 4) so Licensing Authorities routinely consult other Departments in the Council (in NAC, for example Protective Services, Housing). They are not obliged to rely on the mandatory consultation with Police/SFRS under Para. 2(1).

This is particularly the case with STLs. One possibility, with a view to reducing costs for Hosts, is to have officers view plans, as opposed to travelling to the house to view inside and out. If they didn't have plans or photos, how else could they respond to the application except by visiting - so should the fees be increased?

7. Certified copy of Licence

A Respondent writes:

"b) Certified Copies of documents:

Compare this requirement for a certified copy of the licence, to the Landlord Registration Scheme, where anyone can check the current status of any landlord online via the national electronic register.

The guidance to Local Authorities does state that there is a presumption towards "digital first", so I would assume that there will be a central electronic register where the existence of a licence for the property could be checked by anyone who wishes to do so." (Respondent 37)

The requirement to have documents to show Guests is imposed by national regulation and is not something NAC can change. The Council will accept documents as email attachments, but the statutory requirement relates to something different: what should be shown to Guests.

The comparison with the Landlord Registration scheme is not correct - the database there is operated by the Scottish Government centrally and covers the whole of Scotland, whereas the STL Licensing scheme will be operated by 32 Councils across Scotland. There is to be a Licence Register but it will not contain electrical certificates etc.

The requirement to have "a certified copy of the licence" is a mandatory condition (STL Order, Sch. 3, Para. 12) so a Council cannot be accused of ultra vires actings since they cannot do otherwise than to apply the conditions prescribed by Law.

Para. 12 is:

"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) 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."*