

# **WEST DUNBARTONSHIRE COUNCIL**

## **Report by Manager of Legal Services**

### **Special Meeting of the Licensing Committee – 13 September 2022**

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

#### **1. Purpose**

- 1.1** To provide the Committee with information on the new powers that have been given to local authorities to regulate short-term lets in the form of a licensing scheme. This report details what powers are available to the Council in relation to mandatory and discretionary controls under the legislation. It also sets out the timeline for the implementation of those powers.
- 1.2** To set out the preparatory work that has been carried out by officers and the issues the Council will have to consider as a result of the legislation coming into force;
- 1.3** To seek approval of the terms of the draft Short-Term Lets Policy to be effective from 1 October 2022.

#### **2. Recommendations**

It is recommended that the Committee:

- 2.1** Note the commencement of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 on 1 March 2022;
- 2.2** Note that, as a result of the provisions of the legislation, local authorities must open a licensing scheme for short-term lets by 1 October 2022;
- 2.3** Note the challenges the Council faces in relation to the implementation of this licensing scheme;
- 2.4** Approve the draft Short-Term Lets Policy comprised in Appendix 1 to the report, subject to any minor amendments agreed by the Manager of Legal Services in consultation with the Convenor to accommodate any significant observations from the Loch Lomond and the Trossachs National Park Authority.

#### **3. Background**

- 3.1** On 19 January 2022, The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("the Order") was approved by

the Scottish Parliament. The Order came into force on 1 March 2022 and inserts new legislative provisions into the Civic Government (Scotland) Act 1982 ("the Act").

- 3.2** The Order introduces a new mandatory licensing system for short-term lets which local authorities are required to establish by 1 October 2022.
- 3.3** Prior to the introduction of the legislation, there was no requirement to licence short-term lets and, therefore, local authorities did not have the ability to regulate these types of premises.
- 3.4** The licensing scheme was brought in by the Scottish Government with the aim to ensure short-term lets are safe, address issues faced by neighbours, to facilitate local authorities in knowing and understanding what is happening with regard to short-term lets in their area and allow them to handle complaints effectively. It also enables local authorities to ensure the people providing short-term lets are suitable providers. The legislation aims to make sure that the economic and tourism benefits from short-term lets are balanced with the needs and concerns of local communities.
- 3.5** The short-term let licensing scheme will cover a wide range of residential accommodation including, but not exclusively; self-catered properties, B&B's, guest houses, glamping pods and yurts.
- 3.6** The licensing scheme includes new mandatory safety requirements that will cover every type of short-term let. These are set out in the legislation as mandatory conditions of a licence. It 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 may be carried out with the Council's Environmental Health Service and Planning and Building Standards Services. The Environmental Health Service will undertake any on-site compliance checks required for applications, taking a proportionate and risk-based approach.
- 3.7** The Council also has the discretion to apply further appropriate conditions to address any local concerns. The draft policy, which includes proposed additional conditions, has been drafted and is set out in Appendix 1 of this report. The additional conditions will only be applied to those licenses where it is considered necessary by the Committee.
- 3.8** The Order sets out a timetable for the implementation of the licensing scheme. This has been set out at Appendix 2 of this report.
- 3.9** 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. Under these regulations, the Council, as planning authority, can establish areas where any property operating as a short-term let for more than 28 days a year have to apply for planning consent as it is considered a change of use. There are currently zero (0) control areas in West Dunbartonshire.

#### **4. Main Issues**

**4.1** The proposed scheme, in Appendix 1 is considered to sufficiently address the requirement to balance the economic and tourism benefits from short-term lets with the needs and concerns of local communities referred to in Paragraph 3.4 of this report, and also with the need to ensure a safe environment for those using the facilities.

**4.2** The introduction of a mandatory licensing scheme and the adoption of discretionary powers, as well as new planning regulations, will present a significant number of issues for the Council as set out below:

##### Timescales for the implementation of the licensing regime

**4.3** The Scottish Government delayed the introduction of the legislation by a year but did not extend the timescales for local authorities to have to start accepting applications. The guidance for local authorities was only published on 25 March 2022 and the Council must be in a position to accept applications by 1 October 2022, at the latest. This has become more challenging given the vacancies in key staff, timetabling with local government elections, member training and summer recess of Committees.

##### Volume of Applications

**4.4** Introducing a licensing scheme on the scale of the short-term let sector in West Dunbartonshire Council area will be a significant undertaking for the Council to effectively deliver. From research carried out by Council officers, figures suggest that there are approximately 150-200 properties that will require to be licensed within the West Dunbartonshire Council area. This will result in a substantial increase in workload and will place an additional pressure on staff processing applications.

##### Committee time

**4.5** There is the potential for business of the Committee to become pressured by the volume of applications requiring Committee determination. Any application which attracts an adverse representation or objection (from a member of the public, Police Scotland, Fire Service

or Council department) will require to go to the Committee for a formal hearing. Consideration needs to be given to the capacity of Committee meetings and whether changes will need to be made to processes, including amending delegated powers and/or other business to allow for this volume.

## **5. People Implications**

- 5.1** Staff time for developing the Policy has been met from existing resources however there is increasing pressure across all services. The Licensing and Environmental Health departments will require to monitor workload and may require to seek an increase in their administrative provision in order to process the likely number of applications.

## **6. Financial and Procurement Implications**

- 6.1** Licensing authorities are required to charge fees in respect of processing and determining applications. The Civic Government (Scotland) Act 1982 states that licensing fees must be sufficient to cover the authority's administrative expenses. This doesn't just include staff time and ongoing associated expenses, but all the work involved in getting the licensing scheme up and running.
- 6.2** Council officers have worked to establish the costs involved in the preparation of the scheme to date and the ongoing costs of administering the scheme. This includes consideration of the level of staff and estimated time required in processing an application through to the cost of Committee time and any potential appeals.
- 6.3** Licensing Services operate a cost recovery model, utilising a band system with regular fee reviews being carried out. This banded system aims to ensure that each licensed activity is effectively cost neutral on others by recovering the portion of costs attributable to that activity. Inevitably adding such a potentially large and resource intensive activity may impact overall on the resourcing available and / or the charge for the bands but that can only be assessed over time. Based on the information available to date, the indicative fee is anticipated to be in Band E that is currently set at £766.
- 6.4** The legislation also enables enforcement costs 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.
- 6.5** Having considered the closest comparators for the nature of the licenses and the likely staff involvement it is considered that Band E represents the most likely scenario but this will be monitored over the coming 18 months (to allow for full uptake of the scheme) and a report will be brought to a future Committee advising whether the Band requires to be changed, whether to continue to review matters for more information, or whether to confirm Band

E as the most appropriate.

## **7. Risk Analysis**

- 7.1** It is a legal requirement to implement the Short-Term Let Policy. This requires to be in place by 1 October 2022. Failure to do so would result in reputational and possible financial loss for the Council.

## **8. Equalities Impact Assessment (EIA)**

- 8.1** No issues were identified when carrying out an Equalities Impact Assessment screening exercise.

## **9. Strategic Environmental Assessment**

- 9.1** The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 9.2** Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 9.3** The information contained within this report has been considered under the Act. However, no action is required as the Act does not apply to the matters presented in this report.

## **10. Consultation**

- 10.1** Due to the time constraints, a public consultation was not carried out on the draft policy. Key trade associations, the Association of Scotland's Self-Caterers and AirBnB, were provided the opportunity to comment on the draft policy. The responses are set out in Appendix 3.
- 10.2** Loch Lomond and the Trossachs National Park, as Planning Authority for Loch Lomond, were also provided the opportunity to comment on the draft policy. It is noted that this consultation was issued late in the process and verbal update will be provided if these are received before Committee.
- 10.3** Comments from services including the Council's Planning and Environmental Health services have been reflected within the report and policy.

## **11. Strategic Assessment**

- 11.1** In terms of the Council's Strategic Priorities, the purpose of licensing is to protect the welfare of the community, including vulnerable people.

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**Date:** 29 August 2022

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**Appendices:** Appendix 1 – Draft Short-term Lets Policy  
Appendix 2 - Short Term Let implementation timeline  
Appendix 3 - Consultation Response from Association of  
Scotland's Self-Caterers

**Background Papers:** The Civic Government (Scotland) Act 1982 (Licensing of  
Short Term Lets) Order 2022  
The Town and Country Planning (Short Term Let Control  
Areas) (Scotland) Regulations 2021  
Civic Government (Scotland) Act 1982

**Wards Affected:** All Council Wards.

