

Short -Term Lets Policy

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1. Introduction

1.1 West Lothian Council (“the Council”) is required to regulate short-term lets (STLs) through the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 (the 2022 Order), which brings STL within the scope of licensable activities covered by the statutory provisions of the Civic Government (Scotland) Act 1982 (the 1982 Act).

1.2 The Council Executive agreed this policy on DATE TBC following a public consultation.

1.3 The Council must prepare a statement of its policy with respect to the exercise of its functions in relation to the licensing of STL. This policy provides information on the following areas:

- licence duration and renewal
- temporary licences
- temporary exemptions
- additional conditions which will apply
- compliance and enforcement

1.4 This policy provides guidance for prospective applicants, those who are granted a licence and those who may wish to object to or make representations regarding an application. The Council will have regard to the terms of its policy when determining applications. This policy will be reviewed and revised when necessary.

2. Definitions

Unless the Policy states otherwise, the definitions below shall apply throughout it:

1982 Act means the Civic Government (Scotland) Act 1982;

2008 Regulations means The Energy Performance of Buildings (Scotland) Regulations 2008;

2010 Act means the Equality Act 2010;

2018 Act means the Data Protection Act 2018;

2022 Order means The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022;

Accommodation includes 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 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) pipes fuel supply, (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;

Commercial Consideration includes (a) money and (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;

“the Council” means West Lothian Council, a Local Authority in terms of the Local Government (Scotland) Act 1994 having its principal place of business at West Lothian Civic Centre, Livingston, EH54 6FF as Licensing Authority

Guest means a person who occupies accommodation under a Short-Term Let;

Home Letting means a short-term let 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;

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 dwelling house, 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;

Licensing Authority means the licensing authority responsible for the processing of STL licences under the 1982 Act;

Personal Care means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash);

Refuge means accommodation used wholly or mainly for persons who have been subject to an 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;

Scottish Fire and Rescue Services is a body corporate established under the Police and Fire Reform (Scotland) Act 2012 and having its registered headquarters at Westburn Drive, Cambuslang, G72 7NA;

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;

Short-Term Let or STL has the meaning given in section 6.1 of this Policy;

Short-Term Let Control Area has the meaning provided in section 26B of the Town and Country Planning (Scotland) Act 1997;

Short-Term Let licence or **“STL licence”** means a licence for a short-term let;

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) the landlord is (i) a university or constituent college, school or hall of a university; (ii) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980, (iii) a designated institution within the meaning of section 44(2) of the Further and Higher Education (Scotland) Act 1992, (iv) an institution for the provision of further education within the meaning of

section 135 (1) of the Education (Scotland) Act 1980 which is administered by the education authority, (v) a college of further education which is managed by a board of management in terms of part 1 of the Further and Higher Education (Scotland) Act 1992 , (vi) an association approved under Regulation 8 of the Further Education (Scotland) Regulations 1959, (vii) The Royal College of Surgeons of Edinburgh; or if planning permission for the construction, conversion or change of use of the building (or part of the building) of which the let property forms part was given on the basis that the let property would be used predominantly for housing students, and the landlord is an institutional provider of student accommodation;

Part means a part of this policy;

Policy means this short term lets policy;

Police Scotland means the police service of Scotland having its headquarters at Tulliallan Castle, Kincardine;

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, a host's only or principal home;

Type of Short-Term Let means one of the following purposes: secondary letting; home letting; home sharing; or home letting and home sharing.

3. Purpose of Policy/Approach of the Council

The Council's Policy identifies the Council's approach to the regulation of STL and the processes to be followed relating to applications for licences of this kind. In producing this Policy, the Committee has taken into consideration the Scottish Government's Short Term Lets in Scotland Licensing Scheme Guidance dated March 2022.

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

The Council recognises 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 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'.

4. Background to Licensing STL

The Scottish Government brought into force The Civic Government (Scotland) Act 1982 (Licensing of Short- term Lets) Order 2022 on 1 March 2022. This 2022 Order introduced a licensing scheme for STL, which requires all STL to be licensed by 1 April 2024. Prior to the introduction of the 2022 Order, there was no requirement to licence STL in Scotland. The 2022 Order provides for changes to be made to the 1982 Act to reflect this new STL licence being introduced.

5. Consultation Process

The Council undertook a public consultation from 31 October 2022 to 18 November 2022 (both dates inclusive) on the proposed policy in relation to the licensing of STL within West Lothian. This consultation sought views on a draft policy and sought responses on the following matters:

- temporary exemptions;
- temporary licences;
- duration of licences;
- additional conditions attached to a licence;
- maximum occupancy calculation; and
- any additional comments on the draft policy

The consultation document was available on the Council's Short-Term lets webpage <insert link>and the Council consulted with a number of key stakeholders including local Community Councils, Police Scotland, Scottish Fire and Rescue Service, Visit West Lothian, West Lothian Chamber of Commerce, the Federation of Small Businesses and The Association of Scotland's Self-Caterers.

Following completion of the consultation, the Council at a meeting on DATE TBC agreed this Short-Term Lets Policy.

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

6.1 Definition of "Short -Term Let"

It should be noted that the definition of a STL is defined in law and not by the Council. The 2022 Order defines a STL as follows:

"short-term let" 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,
- (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 section 6.2 below), and
- (f) the short-term let does not constitute an excluded tenancy (see section 6.3 below).

For the purposes of the definition detailed above, the 2022 Order provides that 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.

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,

A "qualifying relative" means a parent, grandparent, child, grandchild or sibling,

- (c) two people are to be regarded as siblings if they have at least one parent in common,
- (d) a person's stepchild is to be regarded as the person's child,
- (e) 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

6.2 Excluded Accommodation

As detailed in section 6.1 above, the 2022 Order provides for certain accommodation to be regarded as "excluded accommodation" and therefore there is no need for the owners or operators of these types of accommodation to hold a STL licence.

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

- (a) an aparthotel,
- (b) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
- (c) a hotel which has planning permission granted for use as a hotel,
- (d) a hostel,
- (e) residential accommodation where personal care is provided to residents,
- (f) a hospital or nursing home,
- (g) a residential school, college or training centre,
- (h) secure residential accommodation (including a prison, young offenders' institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),
- (i) a refuge,
- (j) student accommodation,

- (k) accommodation which otherwise requires a licence for use for hire for overnight stays (not including an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (l) accommodation which is provided by the guest,
- (m) accommodation which is capable, without modification, of transporting guests to another location,
- (n) a bothy, or
- (o) accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

6.3 Excluded Tenancies

As detailed in section 6.1 above, under the definition of STL within the 2022 Order, one of the criteria for a STL is that it does not constitute an excluded tenancy. The 2022 Order defines an “excluded tenancy” as a tenancy which falls within any of the following definitions:

- (a) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984);
- (b) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988);
- (c) a short-assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988);
- (d) a tenancy of a croft (within the meaning of section 3 the Crofters (Scotland) Act 1993);
- (e) a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts, 1886 to 1931) applies;
- (f) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001);
- (g) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001);
- (h) a 1991 Act tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003);
- (i) a limited duration tenancy (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003);
- (j) a modern limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003);
- (k) a short-limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003);
- (l) a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003);
- (m) a private residential tenancy (within the meaning of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016); or
- (n) a student residential tenancy.

7. Different Types of STL Licences

Under the 1982 Act there are four different types of STL licences that can be applied for. These are:

- (a) secondary letting;
- (b) home letting;
- (c) home sharing; or
- (d) home letting and home sharing

Home sharing and home letting involve the use of the host's only principal home. Secondary letting does not relate to the use of the host's principal home, it is a separate premises.

The application form will ask for you to confirm what type of STL licence you are applying for when submitting your application. You must select one of the above types of the licence.

Further information on who can submit a STL licence application can be found at section 11.1 below.

8. Planning Considerations before Applying for a STL Licence

8.1 Planning Permission

In this section the following definitions apply:

Flat means a separate and self-contained residential premise whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally; and

House means a residential premise with a dedicated private entrance which may be detached from any other premise or attached via a vertical separation but is not separated horizontally from any other premise and meets the terms of Class 9 of The Town and Country Planning (Use Classes) (Scotland) Order 1997.

Under the 1982 Act, a preliminary ground for refusing to consider a STL licence 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 by virtue of section 123 (1)(a) or (b) of that Act.

The Council is aware that in current legislation in relation to short term let accommodation:

- Unless for home sharing, all flats require planning permission;
- Houses do not require planning permission;
- Houses will need to be checked on a case-by-case basis to confirm that the definition of a house in 8.1 is met; and
- Renting room(s) in a house may not require planning permission.

To avoid the Council having to use the preliminary ground of refusing to consider applications based on planning grounds, the Council agrees that a pre-requisite in applying

for a home letting STL licence or a secondary letting STL licence, where the premises is a flat, is that the applicant must have:

- planning permission or a certificate of lawfulness issued by the Council as Planning Authority for the use of the premises as short term let accommodation, sui generis in terms of The Town and Country Planning (Use Classes) (Scotland) Order 1997; or
- a certificate of lawfulness confirming that the extent of the use does not amount to a material change of use.

Either the planning permission or certificate of lawfulness must be provided with your application. The Council will not accept your application without one of these documents, or confirmation that planning is not required, for these types of STL licences.

Subject to section 8.2 below, an applicant is unlikely to require planning permission for:

- home sharing whether the premises is a flat or a house;
- secondary Letting where the premises is a house, or
- home Letting where the premises is a house.

8.2 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 Zones which would require any change of use for a premises to obtain planning permission. In addition, Short-term Let Control Areas would require all STL licence applications, for any of the four types of licences to have planning permission (where required) before applying for a licence. At present there are no Short-term Let Control Areas in place in West Lothian.

If any Short-term Let Control Areas are introduced in West Lothian in the future, then applicants and licence holders should note that where planning permission may not be required at present for a STL licence (as detailed in section 8.1 above) this position could change. These licence holders should note that it is a mandatory condition of a STL licence, that if the premises falls within a Short-term Let Control Area the licence holder must ensure that an application for planning permission under the Town and Country Planning (Scotland) Act 1997 has been made or is in force. This means that if a Short-term Let Control Area is introduced during the period of your STL licence, where planning permission was not initially required at the time of applying and being granted a STL licence, detailed in section 8.1 above, you would have to apply for planning permission. If you did not apply for planning permission or a certificate of lawfulness as applicable, or if you continued operating your STL once planning permission or a certificate had been refused you would be in breach of a licence condition and enforcement action may be taken.

The Council recognises the current position in West Lothian regarding Short-term Let Control Areas could change and will ensure this policy is reviewed to take account of any Short-term Control Areas that may be introduced in West Lothian in the future.

It should be noted that the introduction of any Short-term Let Control Area would fall under the Council as Planning Authority to implement, not the Council as the Licensing Authority.

9. Temporary Exemptions

Under paragraph 1A of Schedule 1 of the 1982 Act, the Council can grant a temporary exemption to the requirement to have a STL licence. Under the terms of the 1982 Act, temporary exemptions can be issued for a specified single continuous period not exceeding 6 weeks in any period of 12 months. The 6 weeks limit on a licence is a maximum, and not a default.

The Council will consider granting temporary exemptions from the requirement to obtain a STL licence for particular events taking place in and around West Lothian for all four types of letting mentioned in paragraph 7 above. Any temporary exemption which is issued will be subject to the mandatory conditions of licence as set out in the 1982 Act. Temporary exemptions will also be subject to the additional licence conditions set out in the Council's STL Conditions Framework at Appendix 2.

The Council will aim to process and determine a temporary exemption application within 3 months of a fully completed application being received. However, in order to ensure as far as possible that applications are able to be determined in advance of the event it is recommended that applications are made at least four months prior to the event.

10. Temporary STL Licences

Under paragraph 7 of Schedule 1 of the 1982 Act, the Council can grant temporary STL licences. Such licences can be granted for periods not exceeding 6 weeks and may be able to be processed quicker as the site notice provisions do not apply. Temporary licences cannot be renewed but where a competent application is also made for a full STL licence within the application period or during the time that a temporary licence is in effect the temporary licence continues in effect until the full licence application is determined.

The Council will issue temporary licences and any temporary licence which is issued will be subject to the mandatory conditions of licence, as set out in the 1982 Act. Temporary licences will also be subject to the additional conditions set out in the Council's STL Conditions Framework.

11. Application Process

11.1 Making an Application

All applicants for STL licences (including renewal, exemptions and variation), irrespective of the type of STL licence being applied for (secondary letting, home letting, home sharing; or home letting and home sharing) must complete the STL licence application form available online at [insert link](#) together with the appropriate documentation and fee. Please see the webpage for details of fees.

An application for a STL Licence, under the legislation, can be made by a person other than the owner of the premises. Where this is the case the applicant must ensure they provide the relevant consents from the owner(s) as detailed in section 11.3 (d).

Part of the application form will require the applicant to provide a declaration to the Council that they can comply with the mandatory conditions attached to a STL licence, including all the documentation detailed within these conditions. Further information on the mandatory conditions can be found at section 12.1. Applicants should be mindful that the Council's officers can request any documentation referred to in the mandatory conditions at any time during the consideration of an application or the period of the licence, if granted. Applicants should also note that a breach of a condition is a criminal offence under the 1982 Act.

It should be noted that if an applicant has had a STL licence application refused by the Council then the applicant cannot apply for a STL licence within one year of the date of the refusal unless there has been a material change of circumstances. An applicant who has been refused must contact the Council by email to stl@westlothian.gov.uk if they wish to apply within a year of the date of refusal. The Council determines if the change is material, not the applicant.

Applicants who operated a STL prior to 1 October 2022 will be given a provisional STL licence number once their fully completed STL licence application is submitted to the Council, with all the required documentation as detailed in section 11.3 below, before 1 April 2023. This is to enable those operators to continue to operate a STL while their application is being considered. It should also be noted that this provisional STL licence number will cease when the application is determined.

11.2 Renewal

Under the 1982 Act, if a competent application for a STL licence renewal application has been made to the Council before the expiry date of the current licence, the licence will continue in effect until a final decision has been made by the Council on the renewal application. If a renewal application is refused the existing licence will remain in effect for a period of 28 days from the date of the decision. This is the appeal period, and where an appeal has been lodged, the licence remains in effect until such time as the appeal has been determined by the Court.

The process for applying for a renewal of a STL licence is the same as when applying for a new STL licence. Guidance for applicants is on the Council's webpage [insert link](#)
In relation to the documentation that should be submitted with a renewal application please see section 11.3 below.

11.3 Documentation Required with an Application

Applicants should be aware that an application will not be treated as a competent application and processed without the following documentation (where applicable):

(a) Planning Permission or a Certificate of Lawfulness

In relation to all applications for STL licences involving home letting or secondary letting where the premises is a flat, the applicant must provide evidence that the premises has planning permission or a certificate of lawfulness issued by the Planning Authority for the use of the premises as short stay accommodation or a certificate of lawfulness confirming that the extent of the use does not amount to a material change of use. This must be submitted with the STL application. As detailed in section 8, an application submitted without either of these documents will not be considered by the Council.

(b) Floor/Layout Plan

All applicants for the grant of a STL licence will be required to submit a floor plan of the premises, scale 1: 50 showing at least the following:

- 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;

For renewal applications, where there has been no change to the layout of the premises a floor plan would not be required with the application.

For variation applications, where the variation relates to a change to the layout of the premises, a floor plan would be required with the application.

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

Where an applicant has been operating a STL before 1 October 2022, the applicant will be required to certify this when submitting a STL licence application. Checks to establish this may be made by the Council.

(d) Consent from Owner(s)

Where owner is not the applicant

As detailed in section 11.1 an application for a STL licence does not have to be made by the owner of the premises. However, where an applicant other than the owner of the premises applies to the Council for a STL licence, the applicant must provide consent from the owner, or if the title to the premises is held by more than one owner, all owners or a person authorised to act on behalf of the owner(s) with written confirmation from one of the owners that the agent is authorised to act for all the owners.

Where one or more owners

Where the premises is owned by more than one person (shared ownership) all owners will have to declare that they consent to the application, if one owner is submitting the application. These declarations would be required with the application.

It is the responsibility of the person making the application to give accurate information on the form (see the declaration section on the form) and this may involve making enquiries with the owner(s) as to whose name title to the property is held in. Please note that the Council may require additional documentation to be submitted with an application. Where this is the case, the Council will advise the applicant directly of this.

11.4 Duration of Licences

Under the 1982 Act the Council can grant a STL licence for a period of three years or such shorter period as the Council determines.

In relation to applications to renew STL licences, the Council can extend the duration of a STL licence for a period of three years or such shorter other period as the Council determines.

The Council's policy is that it will grant all STL licence applications for a period of three years unless there is a good reason for granting them for a shorter period.

The law does not allow licences granted under the 1982 Act to be transferred. In the event of the death of an STL licence holder, the STL licence will be deemed to have been granted to the executor and will remain in force for a period of 3 months from the date of the licence holder's death, unless previously suspended or revoked. Where the Council is satisfied that it is necessary for the purpose of winding up the estate, on request, in writing, by the executor, the Council may extend the period further.

Licences held in the names of companies, partnerships and organisations will come to an end when the legal entity holding the licence is dissolved or otherwise no longer exists in law. Applicants should seek legal advice regarding which name a licence should be held in.

11.5 Variation

At any time, the holder of a STL licence can apply to the Council to vary the terms of the licence. There is no requirement to advertise a variation however, the Council will consult with Police Scotland and the Scottish Fire and Rescue Service before determining a variation application.

12. Conditions Attached to an STL Licence

12.1 Mandatory Conditions

Under the 2022 Order there are certain conditions which the Council must attach to a STL licence, irrespective of the type of STL licence granted, whether it is secondary letting, home letting, home sharing or home letting and home sharing. These are known as “mandatory conditions” and are detailed at Appendix 1.

It should be noted that the Council has no power to amend these mandatory conditions.

All applicants should ensure, prior to applying to the Council for a STL licence of any type, that they are able to comply with the mandatory conditions attached to a licence. Applicants should also note that in terms of listing their premises as a licensed STL, as required under mandatory condition 14, the listing must include the licence number (provided by the Council) and the valid energy performance certificate rating (if this is required for the premises in accordance with the 2008 Regulations).

12.2 Additional Conditions

To cater for more localised matters, the Council is also able to attach additional conditions to STL licences where necessary. These additional conditions are detailed in Appendix 2. In addition, the Council's advisors may in certain circumstances suggest additional conditions for particular premises when they are responding to applications and any suggested conditions will be copied to applicants for comments.

It should be noted that the Council cannot impose an additional condition which limits the number of nights a premises may be used for secondary letting.

12.3 Maximum Capacity

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.

All applications will ask the applicant to confirm the number of guests they would like to accommodate in the premises. The Council do however have to provide a maximum number of guests who can stay on the premises at any one time on the STL licence when it is issued. This is known as the “maximum capacity”. The Council, taking into account the information provided on the application form and layout plan, will calculate the maximum capacity in the following way:

The maximum number of persons in relation to a premises is whichever is the lesser of (a) or (b):

- I. The number specified in Table 1 below in relation to the number of rooms in the house available as sleeping accommodation for guests,

- II. The aggregate for all such rooms in the premises of the numbers specified in column 2 of Table 2 in relation to each room of the floor area specified in column 1.

Please note that any room with a floor area less than 50 square feet (4.65 sq. M.) cannot be considered for calculating the capacity within table 1 or 2 below.

It should be noted that a room is available as sleeping accommodation if it is of a type normally used in the premises as a living room or as a bedroom. The Licensing Authority will not include children under 2 years of age when calculating the maximum capacity.

Table 1

Number of rooms (this should include living room and bedrooms if used as sleeping accommodation within the premises)	Number of persons
1	2
2	3
3	5
4	7
5+	2 for each room

Table 2

Column 1 - Floor area of each room	Column 2 - Number of persons
90 sq. ft. (8.36 sq. m.) or more	2
50 sq. ft. (4.65 sq. m.) or more but less than 90 sq. ft (8.36 sq. m.).	1

12.4 Breach of a STL Licence Condition

The 1982 Act provides the Council with the power to serve an Enforcement Notice on a STL licence holder, where the Council considers that a condition of the STL licence has been breached. The Enforcement Notice will detail the following:

- (a) the matters constituting the breach or likely breach;
- (b) the action to be taken by the licence holder; and

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

It should be noted that a breach of a condition is a criminal offence under the 1982 Act however an Enforcement Notice can still be served on the licence holder even if criminal proceedings have begun or are taking place.

As detailed in section 15 below, the Council will only take enforcement action where it is deemed necessary and appropriate.

13. Unlicensed STL

The Council recommends that people take their own independent legal advice on whether or not their accommodation would require a STL licence. The Council cannot provide legal advice on whether or not a premises requires a STL licence. Operating without a licence when one is required by the law is a criminal offence. Decisions on whether unlicensed hosts will be reported to the Procurator Fiscal will be made by Police Scotland. Unlicensed STLs should be reported to Police Scotland. The Council has no power to take any action against unlicensed STL.

14. Monitoring and Compliance of Licensed STL

Taking into account section 12.4 above, the Council recognises the importance of having compliance issues monitored in order to ensure licensed STL are not causing an unnecessary nuisance to the community, nearby residents or neighbours. As such it will carry out a risk-based approach to enforcement, with officers using a range of escalating informal measures, prior to an Enforcement Notice being issued and subsequently consideration of a suspension or revocation of the licence. A licence holder must be able to provide any documentation referred to in the mandatory conditions, to the Council upon request. Failure to do so may result in an Enforcement Notice being issued or the STL licence being suspended or revoked. Council officers may conduct inspections of STLs where issues have been identified either in the application or as a result of complaints and a fee will be charged for such inspections.

15. Complaints

The Council considers that it is essential that licensed STL are operated in accordance with the 1982 Act and the licence conditions. The Council's powers under the 1982 Act represent a key protection for the community where problems relating to the operation of a STL cannot be resolved amicably by the licence holder and the complainer.

Complaints from guests

In the first instance, the Council would expect any concerns from guests to be raised with the host or operator and where this cannot be resolved they should contact the Council.

Complaints from neighbours

In the first instance, the Council would expect concerns from neighbours to be raised with the licence holder and where this cannot be resolved they should contact the Council.

Information on how to make a complaint can be found on the Council's webpage at <insert link>

16. Fees

The Council's fee structure will be published on the STL webpage.

Appendix 1 – Mandatory Conditions

Agents

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

Type of Licence

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

Fire Safety

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—
 - (a) fire or suspected fire, and
 - (b) the presence of carbon monoxide in a concentration that is hazardous to health.
4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988

Gas Safety

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

Electrical Safety

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

Water Safety: Private Water Supplies

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

Water Safety: Legionella

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

Safety and Repair Standards

- 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.

Maximum Occupancy

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

Information to be Displayed

- 12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests—
 - (a) a certified copy of the licence and the licence conditions,
 - (b) fire, gas and electrical safety information,
 - (c) details of how to summon the assistance of emergency services,
 - (d) a copy of the gas safety report,
 - (e) a copy of the Electrical Installation Condition Report, and
 - (f) a copy of the Portable Appliance Testing Report.

Planning Permission

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—
 - (a) an application has been made for planning permission under the 1997 Act and has not yet been determined, or
 - (b) planning permission under the 1997 Act is in force.

Listings

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.

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.

Payment of Fees

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

False or Misleading Information

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

Interpretation for the Mandatory Conditions

In these conditions —

"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,
- (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 (iv) below 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,

"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.

Appendix 2 – Additional Conditions

1. The licence holder shall provide guests, no later than two days from the booking date, with an information leaflet on how to dispose of refuse (including general and recyclable refuse) properly and appropriately from the licensed premises.
2. The licence holder shall take all reasonable steps to ensure that the appropriate refuse facilities (for both general and recyclable refuse) in line with West Lothian Council's current policy on the storage and collection of refuse, are available at all times either in the communal areas surrounding the premises or within the premises boundary where there are no communal areas, for the disposal of refuse by guests.
3. The licence holder shall ensure that the refuse facilities at the premises and in the communal surrounding areas of the premises are used appropriately at all times by the guests.
4. The licence holder shall act reasonably in relation to the payment of their share of all maintenance costs, insurance costs and repair costs of areas in common relative to the premises and in all dealings with any other owners and any relevant factor.
5. The licence holder shall ensure that any undisputed invoice or notification of their share of maintenance costs, insurance costs and repair costs received in respect of common areas relative to the premises is paid in full in adherence to the payment terms stipulated.
6. The licence holder shall ensure that all common areas are regularly inspected and any defects brought to the attention of the other owners and any relevant factor, with the licence holder making payment of the appropriate share of any costs to rectify such defects.
7. The licence holder must act reasonably in relation to the management of the licensed premises in respect of any dealings with neighbouring residents of the premises.
8. The licence holder shall take all necessary measures to ensure that no antisocial behaviour, noise or other statutory nuisance arises within or from the licensed living accommodation or within any common parts of the property.
9. The licence holder must take reasonable steps to investigate any complaint made by residents of neighbouring properties relating to the behaviour of any guests at or in the vicinity of the licensed premises.
10. The licence holder must act reasonably in relation to the management of the licensed premises in respect of any dealings with neighbouring residents of the premises.
11. The licence holder must take reasonable steps to investigate any complaint made by residents of neighbouring properties relating to the behaviour of the licence holder's guests at or in the vicinity of the licensed premises.
12. The licence holder must submit a certificate of compliance to West Lothian Council within 14 days of the licence taking effect confirming that they have provided emergency contact details to all neighbouring residents of the premises.
13. The licence holder shall ensure that, access is permitted to West Lothian Council Officers in connection with carrying out statutory duties, whether any inspections are scheduled or unannounced.
14. The licence holder must take reasonable steps to ensure that guests do not first arrive or depart from the property between the hours of 11pm to 7am. The licence holder must provide this information as part of their booking terms and conditions. Reasonable steps, allow for exceptions, such as significantly delayed transport.