

**SHORT-TERM LETS LICENSING SCHEME PROCESS**

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15. **Legislation**
* The Civic Government (Scotland) Act (Licensing of Short-term Lets) Order 2022 (“the Order”).
* The Civic Government (Scotland) Act 1982 (“the Act”).
1. **Application**

2.1 All applicants must complete either an online or paper short-term let licence application form. The application together with supporting documents should either be submitted online or by posting to Moray Council Licensing Team, Council Offices, High Street, Elgin, IV30 1BX.

2.2 Applicants should pay the application fee online, by telephone or by cheque made payable to The Moray Council. Full payment of the application fee should be made at the same time the completed application is submitted to Moray Council.

2.3 An application will not be processed until all necessary information has been provided and the fee paid. Unless and until a valid application is received the application will not be considered to have been made at all.

2.4 A unique licence number will be issued to existing hosts who apply before 1 October 2023 as soon as is reasonably practicable after a valid application has been made. This is known as a provisional licence number. Provisional licence numbers will not be issued to new hosts from 1 October 2022 or anyone applying after 1 October 2023 as they cannot operate whilst their application is being determined.

**3. Display Notice**

3.1 In accordance with the Act, all applicants who apply for a short-term let licence must display a notice for a period of 21 days beginning with the date on which a valid application was submitted to the licensing authority. The notice must be displayed at or near the short-term let premises so it can be conveniently read by the public.

**4. Return Certificate of Compliance**

4.1 Applicants are required to certify compliance that they have displayed the site notice as soon as possible after the 21 days has expired. Applicants can use the template provided with the application form for this purpose.

**5. Consultation**

5.1 A copy of the application will be sent to the following consultees:-

* Police Scotland
* The Scottish Fire and Rescue Service
* The Council’s Environmental Health Service
* The Council’s Building Standards Service
* The Council’s Planning Service

**6. Objections and Representations**

6.1 It is open to any member of the public to submit an objection or representation in relation to a short-term let licence application.

6.2 Moray Council will consider any objection or representation that is:-

* in writing (email is sufficient),
* specifies the grounds of the objection or the nature of the representation,
* specifies the name and address of the person making it,
* signed by the person making the objection or representation, and
* received by Moray Council within 28 days from when the notice of application is displayed.

6.3 Moray Council will not consider any anonymous objections or representations. Late objections or representations may be considered if Moray Council is satisfied that there is sufficient reason as to why it was not made in the time required. Any objection or representation should clearly set out the reasons for the objection/representation and why the applicant and/or the premises are not suitable.

6.4 The objection should be relevant to the statutory grounds that can be taken into consideration when refusing an application. These are set out in the Act as follows:-

* The applicant or anyone else detailed in the application form is not a fit and proper person to be the holder of a licence;
* Anyone named on the application form is disqualified from having a short-term lets licence.
* The activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;
* The premises is not suitable for the conduct of the activity, having regard to:-
	+ The location, character or condition of the premises,
	+ The nature and extent of the proposed activity,
	+ The kind of persons likely to be in the premises,
	+ The possibility of undue public nuisance, public order or public safety,
* The applicant would not be able to secure compliance with the mandatory licence conditions,
* The applicant would not be able to secure compliance with the standard conditions and any further conditions Moray Council seek to apply in respect of the application
* The application does not contain information required under paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or
* Where there is other good reason.

6.5 A copy of any competentobjection or representation received will be provided to the applicant and will include the name and address of the person making the objection or representation.

**7. Determination of an application**

7.1 Moray Council will consider the evidence that the applicant is compliant with the statutory mandatory conditions, that the people named on the application are fit and proper persons to be involved in short-term letting as well as any competent objections.

7.2 All those named on the application form is subject to the fit and proper person test. Consideration will be given to a wide range of information including relevant criminal convictions, other relevant information provided by Police Scotland, any previous disqualifications from being a private landlord, previous revocations of a Houses in Multiple Occupation Licence (“HMO”) and providing false or misleading information in the application form.

7.3 If there are no objections or adverse representations to a short-term let licence application, the application will be determined under delegated powers by the Head of Governance, Strategy and Performance Service.

7.4 If a competent objection or adverse representation is submitted in relation to the short-term let licence application, the application will be subject to a hearing at a meeting of Moray Council Licensing Committee.

**8. Licensing Committee Hearings**

8.1 The person submitting the objection or representation will be invited to attend the meeting of Moray Council’s Licensing Committee and speak to their objection/representation. At least 14 days notice of any scheduled hearing date will be given. Applications are heard in public unless required to be taken privately on the grounds of disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973.

8.2 The applicant and/or a representative on their behalf will also be invited to attend the meeting and given the opportunity to respond to any objection or representation and state why their application should be granted.

8.3 The Licensing Committee will be able to ask questions of all parties and will decide whether to grant or refuse the application.

**9. Application Decision**

9.1 Moray Council must grant an application unless there are grounds to refuse it.

* 1. The grounds for refusing a short-term let application are as follows:-
* anybody named on the application is disqualified from having a short-term lets licence;
* anybody named on the application is not a fit and proper person;
* some other person is benefiting from the activity who would be refused a licence if they made the application themselves;
* the premises are not suitable or convenient having regard to—
	+ the location, character or condition of the premises;
	+ the nature and extent of the proposed activity;
	+ the kind of persons likely to be in the premises;
	+ the possibility of undue public nuisance; or
	+ public order or public safety; or
* there is other good reason for refusing the application (this cannot be applied in a blanket fashion without considering the merits of a particular application).
* the applicant cannot demonstrate, or secure, compliance of the mandatory licence conditions
* the applicant cannot secure compliance with any other conditions Moray Council seek to apply in respect of the application.
* The application does not contain information required under paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or
* Where there is other good reason.

**10. Timescales for Determination of application**

10.1 Existing hosts who make an application before 1 October 2023 can continue operating whilst their application is being determined. Moray Council has 12 months to determine these applications beginning with the date a valid application was made. This extension to the time limit for determining an initial application is designed to assist Moray Council in managing the volume of applications received.

10.2 In all other cases, Moray Council has 9 months from the date a valid application is made to consider and ultimately determine each application for short-term lets.

10.3 If Moray Council fails to determine an application within the timescale set out above, the short-term let licence will be deemed to have been granted unless Moray Council is given an extension by the Court. If a short-term let licence is deemed to have been granted it is valid for the period of one year. The mandatory conditions that apply to all short-term lets would also apply to the deemed grant of a licence.

10.4 If Moray Council refuses an application for a short-term let, the applicant cannot reapply for a licence within one year of that decision unless there has been a material change in their circumstances since then.

**11. Notification of Determination**

**Initial validation stage**

11.1 When an application for a short-term let licence is made to Moray Council, an initial validation will be carried out by the Council’s Customer Service Team.

11.2 If the applicant does not meet the initial validation criteria above, an acknowledgment letter will be sent giving the applicant a period of 14 days from the date of the letter in which to provide the necessary information/pay the licence fee. If the applicant does not do so, the application and any supporting documents will be returned to the applicant having not been considered by Moray Council.

11.3 If a fully completed application form, checklist, and all supporting documents indicated as submitted on the checklist are provided together with full payment of the licence fee, the application will automatically move to the second validation stage.

**Second validation stage**

11.4 The Licensing Team administrative staff will carry out further validation checks. If the applicant has submitted a valid application, they will be notified in writing that a valid application has been received by Moray Council and advised to display the statutory Public Notice, at or near the premises. The application will still be subject to further administrative checks during the consideration process however the statutory period for consultation will start from the date of the valid application acknowledgement letter.

11.5 If the applicant needs to submit further information before their application can be treated as valid, they will be notified, in writing, of what information needs to be provided/action taken and they will be given a period of 14 days to do so. If the applicant does not do so, the application and any supporting documents will be returned to the applicant having not be considered by Moray Council.

**Consideration**

11.6 Once a valid application has been received, the application will move to the consideration phase which involves consultation. During the consideration stage of a short-term let application, if an inspection of the premises is deemed necessary, the applicant will be informed in writing and required to pay the inspection fee.

**Decision**

11.7 If the application is determined under delegated powers by the Head of Governance, Strategy and Performance Service, the applicant will be notified in writing and issued their short-term let licence.

11.8 If the application is subject to a hearing at a meeting of Moray Council Licensing Committee, the applicant will be notified in writing of the Licensing Committee’s decision within 7 days of the hearing date which determined the application and advised of the right to seek written reasons and of the right to appeal to the Sheriff Court.

**12. Right of Appeal**

12.1 An applicant and any person(s) making an objection or representation can appeal Moray Council’s decision by lodging a summary application with the relevant Sheriff Court. Any appeal must be lodged within 28 days of the date of Moray Council’s decision.

12.2 The Sheriff Court will consider whether Moray Council, in arriving at their decision;

* erred in law,
* based their decision on any incorrect material fact,
* acted contrary to natural justice; or
* exercised their discretion in an unreasonable manner.

12.3 If an appeal of the Council’s decision is upheld, the Sheriff may ask Moray Council to reconsider its decision or change Moray Council’s decision.

**13. Complaints**

13.1 Complaints about hosts and operators will be considered under powers in the Act. Moray Council will try to resolve a complaint through engagement with the host or operator in the first instance. If this is not successful then Moray Council will use the procedures under the Act.

13.2 Complaints from guests should be raised with their host or operator, letting agency or platform in the first instance. If they remain unsatisfied or the issue is sufficiently grave they may contact Moray Council.

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

13.4 As set out in Moray Council’s Statement of Licensing Policy for Short-term lets, Moray Council can consider matters relating to the suitability of the licence holder, threats to public safety or public order or whether a condition of the licence has been contravened.These issues would include a host/operator exceeding the number of people staying at the premises, serious disturbance or antisocial behaviour or concerns about the maintenance and safety of the premises. Complaints can be directed to licensing@moray.gov.uk. Complaints will be acknowledged within five working days.

13.5 Moray Council will not consider complaints in relation to the quality of a guest’s stay or specific contractual matters between the guest and the host/operator as this is outside the scope of the licensing scheme.

**14. Enforcement**

14.1 It is a criminal offence to carry on an activity for which a licence is required without having a licence and without reasonable excuse.

14.2 From 1 October 2022, new hosts/operators cannot accept bookings and cannot operate until they have obtained a short-term let licence in respect of the premises. This also applies to existing operators who establish new short-term let accommodation after 1 October 2022.

14.3 Existing hosts or operators that have been trading on or before 1 October 2022 may continue to accept bookings after 1 October 2022 but only if they have applied for a short-term let licence by 1 October 2023 and once it has been determined, the licence is granted.

14.4 By 1 January 2025, all hosts and operators cannot operate unless they have been granted a short-term let licence. This means, existing hosts should not be trading unless they have been granted a short-term let licence.

14.5 A public register of licensed short-term lets will be maintained by Moray Council which allows members of the public/guests/authorities to check the licensing status of a premises being used as a short-term let. Moray Council will update this on a quarterly basis.

14.6 Enforcement action may be required by Moray Council. The Act sets out several options for enforcement action if justified.

14.7 Moray Council may serve an enforcement notice.

An enforcement notice must specify:-

* The matters constituting the breach or alleged breach,
* The action to be taken by the licence holder which Moray Council considers necessary for the purposes of rectifying or, as the case may be, preventing the breach,
* The date by which the action must be taken,
* A condition of enforcement notice is deemed to be a condition of a licence.

14.8 Moray Council may serve an enforcement notice on a licence holder requiring the rectification or prevention of any breach of a condition of a licence other than the breach of a condition of an enforcement notice.

14.9 Moray Council may, at any time, whether or not upon an application made to it by the holder of a licence, vary, suspend or revoke a licence in accordance with the Act. Moray Council may do this without serving an enforcement notice if the seriousness of the breach justifies urgent action.