

Licensing Policy Statement

**Short-term Lets**

**2022**

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# Section 1: Introduction

**1.1** **Links to local Plans and Strategies:**

The Short-Term Lets Policy becomes effective from 1 October 2022 and links to:

* East Lothian Plan 2017-2027, Outcome 1.2 – Local businesses are thriving and the business base is expanding
* Economic Development Strategy, 2017-2022, Tourism
* Local Housing Strategy 2018-2023 (forthcoming LHS 2023-2028)
* Local Development Plan

**1.2** **Policy focus**

The Council’s Short-Term Lets Policy focuses on ensuring that an efficient, effective and proportionate licensing scheme is in place, which is customised to the needs and circumstances of the Council’s local area and supports applicants who wish to obtain a short-term let licence. The policy outlines how the Council will administer applications, collect fees and monitor short term lets.

**1.3 Procedure**

Detailed Procedures will guide officers through the processes involved.

# Section 2: Policy Purpose, Aims and Objectives

**2.1 Purpose of the Policy**

The Short-Term Lets Policy describes how the Council will manage the licensing of Short-term Lets, including setting out applicable fees, types of licence, refunds policy and complaints and enforcement procedures.

Copies of the Policy, Licence Conditions and the Council’s Procedures including the Short-Term Lets Application form and Checklist are available to applicants on the Council’s website, or, can be requested by emailing stl@eastlothian.gov.uk or by calling 01620 827664.

**2.2. Aims of the Policy**

The overall aim of the Policy is to ensure that the licensing scheme is:

* in line with the Scottish Government's overall policy aims for the licensing of Short-term Lets;
* efficient, effective and proportionate; and
* customised to the licensing authority’s local policies and the needs and circumstances of the licensing authority’s local area

**2.3. Objectives of the Policy**

The Policy will implement its aims through the following objectives:

* ensuring that the licensing scheme is effective, efficient and proportionate
* offering appropriate guidance and support to applicants using the licensing scheme
* ensuring the Council has a good knowledge and understanding of the local area with regards to short-term lets
* ensuring the safety of short-term lets through accommodation being offered, minimising the risk to guest and their families
* ensuring that those living in properties adjacent to short-term lets benefit from improved safety, especially risk of fire
* ensuring that noise, nuisance or anti-social behavior is tackled effectively
* minimising the risk of crime in the local authority area
* effectively monitoring the Policy and related procedures
* ensuring consistency with other policies and strategies

# Section 3: Legal Framework

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

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (the “2022 Order”) was approved by the Scottish Parliament on 19 January 2022 and came into force on 1 March 2022.

The effect of the Order is that from 1 October 2022, the use of accommodation for a Short-term Let is an activity for which a licence is required under the Civic Government (Scotland) Act 1982 (the “1982 Act”).

**3.2 Short-term Lets definition**

A Short-term Let means the use of residential accommodation provided by a host in the course of business to a guest, where:

* the guest does not use the accommodation as their only or principal home,
* the short-term let is entered into for commercial consideration
* the guest is not an immediate family member of the host, an owner or part-owner of the accommodation, or sharing the accommodation as part of an arrangement made, or approved by a school, college, or university
* 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
* the accommodation is not excluded accommodation and
* the short-term let does not constitute an excluded tenancy

**3.3 Short-term Lets Policy**

The 2022 Order requires East Lothian Council to have a Short-term Let licensing scheme in place by 1 October 2022.

In preparing this policy, East Lothian Council has had due regard to the Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms issued by the Scottish Government. This is available at [Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms.](https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-2-supplementary-guidance-licensing-authorities-letting-agencies-platforms-2/)

This policy should be read in conjunction with the 2022 Order and all relevant legislation, including but not limited to the 1982 Act, the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021, the Equality Act 2010, the Data Protection Act 2018 and the Antisocial Behaviour etc. (Scotland) Act 2004.

**3.4 Consultation on Short-term Lets policy**

In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. The paper noted the range of approaches adopted in cities and countries around the world and asked for opinions on the types of short-term lets which should be regulated and the controls which should be applied. In parallel with the consultation, the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas.

In May 2019, the Scottish Government commissioned research to address gaps in the available evidence on the impact of short-term lets on housing and communities. The research combined both secondary data analysis of information published by Airbnb and surveys of residents and hosts, and in-depth interviews involving residents, hosts, community actors and local businesses.

In addition, East Lothian Council has consulted with relevant internal departments on the draft policy and conditions documents.

# Section 4: Temporary Exemptions & Temporary Licences

**4.1 Temporary Exemptions**

Under the 2022 Order and related Guidance, Councils may grant temporary exemptions to the requirement to have a short-term let licence.

East Lothian Council does not intend to have a policy on temporary exemptions and would not be supportive of such applications.

**4.2 Temporary Licences**

Under the 2022 Order and related Guidance, Councils may decide to grant temporary licences.

It is not East Lothian Council’s intention to consider any applications for a temporary licence.

# Section 5: Licence Duration and Renewal

**5.1 Type of Licence**

There are four types of licence for short term let accommodation:

* secondary letting;
* home letting;
* home sharing; or
* home letting and home sharing

Home sharing and home letting concern the use of the Host or Operator's only or principal home, whereas secondary letting makes use of a separate premise.

**5.2 Duration**

The Council may grant a licence for a period of up to three years, after which it requires to be renewed. Each licence will have a reference number and will confirm the expiry date. The duration applies from the date on which the licence comes into force.

**5.3 Renewal**

Where an application is made to renew a licence, the licence will continue to have effect until such a time as a decision is made on the renewal. The Council intend to grant a renewal of a licence for a period of up to three years unless there are circumstances which justify a different time period.

# Section 6: Application Process

**6.1 Application Form and Checklist**

The applicant must complete and return a copy of the Short-term Let application form along with the appropriate fee and checklist, providing copies of all relevant evidence as well as documents to [stl@eastlothian.gov.uk](mailto:stl@eastlothian.gov.uk). Alternatively, applications can be submitted by post to:

Licensing

John Muir House

HADDINGTON

EH41 3HA

Application forms can be found [www.eastlothian.gov.uk](http://www.eastlothian.gov.uk)

**6.2 Notifying residents and neighbours**

Applicants are responsible for notifying residents and neighbours of their application for a new Short-term Lets Licence, or renewal of an existing Short-Term Lets licence. Applicants are required to display a Site Notice clearly at, or near the premises, so that it can be conveniently read by the public, for a period of 21 days, beginning with the date on which the application was submitted to the Council.

A Notice must state:

* that an application has been made for a licence
* the main facts of the application:

Where the applicant is a natural person:

* type of licence applied for;
* name and address;
* and where applicable, the name and address of anyone carrying on the day-to-day management of the activity

Where the applicant is other than a natural person:

* Name and address of the registered or principal office
* Names and addresses of directors, partners or other persons responsible for its management;
* and where applicable, the name and address of anyone carrying on the day-to-day management of the activity
* the address of the premises from where the activity is to be carried on
* that objections and representations in relation to the application can be made to the Council, and
* how to make objections or representations.

Applicants are required by the 1982 Act to provide a Certificate of Compliance to the Council as soon as possible after the 21 days has expired, confirming that they have displayed the Site Notice.

A template Site Notice and Certificate of Compliance can be found [www.eastlothian.gov.uk](http://www.eastlothian.gov.uk)

**6.3 Application Checks**

The Council must refuse an application for a Short-term Let licence if not satisfied that the applicant is a fit and proper person. The Council will carry out necessary checks to establish whether the applicant is a fit and proper person. This may include a visit to the premises, where required. The statutory consultees for this licensing scheme are Police Scotland and the Scottish Fire and Rescue Service.

The Council and Scottish Fire and Rescue Service may undertake an assessment of the maximum number of guests that can be accommodated safely.

The Council may also ask for plans to show the location of any steps, stairs, or lifts in the premises, as well as the extent and boundary of the building where relevant.

**6.4 Timescale**

The Council aim to make a decision within 21 days from the end of the consultation period (28 days).

**6.5 Public Register**

When a Licence has been granted, this will be recorded in the public register, which is available upon request.

The public register will include:

* licence number
* licence type
* number of bedrooms in the premises
* contact details for the applicant and/or agent of the premises
* the Energy Performance rating

The Council will maintain the public register of licensed short-term lets and update as often as possible, with reviews being carried out on a quarterly basis.

**6.6 Objections**

Anyone can make an objection or representation to the Council, about an application for a Short-term Let licence. The objection or representation should be made during the 21 day consideration period following the application being submitted. Late objections may be considered in some circumstances where reasons are provided.

An objection or representation should be submitted in writing to [stl@eastlothian.gov.uk](mailto:stl@eastlothian.gov.uk). Alternatively objections can be sent to:

Licensing

John Muir House

HADDINGTON

EH41 3HA

The objection and representation should set out the objector’s name and address, specify the nature of the objection or representation and state the address or reference number of the Short-term Let licence application.

An objection may be related to, but is not limited to, the following areas:

* whether the applicant is a fit and proper person;
* the location, character, condition or type of accommodation;
* whether the accommodation has relevant planning permission;
* the possibility of undue public nuisance, public order or public safety;
* whether there is a risk of affecting the privacy and security of neighbours; or
* whether there is other good reason for refusing the application.

The objection or representation cannot be treated confidentially. The Council will acknowledge the objection or representation and a copy will be sent to the applicant or their representative.

Once the application has been allocated to a meeting of the Licensing Sub-committee, the Council will send the objector a letter inviting them to attend the meeting to speak to the objection or representation. At the hearing, the objector will be provided with an opportunity to speak to their objection or representation and the applicant will be provided with an opportunity to respond.

Frivolous or vexatious objections or representations will not be considered.

**6.7 Fees**

A flat rate fee has been set by East Lothian Council, regardless of the type of licence applied for or the size of the let property. This policy will be reviewed as required. Details of fees can be found [www.eastlothian.gov.uk](http://www.eastlothian.gov.uk)

**6.8 Refusal of a Licence**

The Council will refuse an application for a Short-term Let licence where it is not satisfied that the applicant is a fit and proper person. The Council may refuse an application for a Short-term Let licence if the property is shown to be unsafe, or, there are significant risks to safety and security.

**6.9 Refunds**

The Council will **not refund** any fees charged for processing the application or renewal if the application is refused.

Where a licence is refused because the host or operator needs to obtain planning permission, the Council will not charge an additional fee in respect of a resubmitted application made within 28 days of planning permission being granted provided that the application for planning permission is submitted without undue delay.

**6.10 Appeals Process**

Applicants can appeal against a refusal of their Short-Term Let licence application. The appeal should be made within 28 days of being notified of the refusal and should be made to the Sheriff.

# Section 7: Licence Conditions:

**7.1 Mandatory Conditions**

The2022 Order requires all short-term let licenses across Scotland to apply the mandatory licence conditions. A list of the mandatory licence conditions is contained in Appendix 1.

**7.2 Maximum Occupancy Condition**

It is a mandatory condition that hosts and operators ensure that they do not exceed the maximum number of guests for their premises. This includes making the maximum occupancy clear on adverts, listings, as well as in booking terms and conditions.

Applicants will state in their application how many guests they would like to accommodate. The Council will consider the following criteria when determining maximum occupancy:

* the number requested on the application form
* the maximum number that can be accommodated safely (broken down to the number of adults and the number of children (under 2 years of age))
* the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours

A legible, accurate and measurable plan of the premises (preferably to a scale of 1:100) is required, indicating the following:

Room sizes, sanitary ware, cooking facilities, power outlets, lighting points and switches, accommodation intended for guests with mobility impairment and number of guests occupying each room.

**7.3 Additional Licence Conditions**

In addition to the mandatory licensing conditions, the Council will impose additional licence conditions to a short-term let licence. The Council will review its list of additional licence conditions on a regular basis. A list of the additional licence conditions can be found in Appendix 2.

Where the Council opts to impose a supplementary licence condition, it will set out the issue that is being addressed by the supplementary condition, the reasoning for the supplementary condition, the action required of the licence holder and the deadline for this action to be completed by.

The Council will review its list of additional licence conditions on a regular basis. A list of the proposed additional licence conditions can be found in Appendix 2. This list is not exhaustive.

# Section 8: Licence numbers

**8.1 Provisional Licence Numbers**

A unique licence number will be given to existing hosts and operators who apply for a licence before 1 April 2023. This is known as a provisional licence number and will allow existing hosts to continue operating until their application has been determined.

Anyone applying after 1 April 2023 cannot operate whilst their application is being determined.

**8.2 Licence Numbers**

Licence numbers will be issued in a consistent format to assist letting agencies and platforms in being able to use the licence number provided by the host or operator in their listings.

The format of the licence number, alongside information contained in the public register, will allow anybody to identify:

* the Council that issued the licence (and therefore the area to which the licence relates);
* the type of short-term let to which the licence relates (public register); and
* the type of licence issued

**8.3 Licence number specification**

The licence number will comprise of 8 characters, three of which are alphabetical (capital letters) and 5 of which are numerical digits (D):

For example: **A1A2DDDDDA3**

The leading two characters (A1A2) will identify the Council; East Lothian Council will use **EL**. The 5 digits will be issued by each Council.

The final character (A3) will denote the type of "licence" to be issued:

* **T**Temporary licence
* **P**Provisional licence number issued on receipt of a licence application
* **F**First (full) licence
* **R**Renewed licence

For example: **EL00001T**

This number relates to a temporary licence (T). The type of short-term let (e.g. home sharing) will be displayed on the public register.

# Section 9: Planning considerations

**9.1 Short-Term Let control area**

The Council may refuse to consider an application for a short-term let if the host or operator of a dwelling house within a short-term let control area needs planning permission but does not have it.

The high-level policy purpose behind control areas is as follows:

*“to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas”.*

It is a mandatory condition that a host or operator has planning permission, or, has made an application for planning permission, where all of the following conditions apply:

* they are using it for secondary letting; and
* it is a dwelling house.

In these circumstances, the host or operator must have made an application for planning permission or already have planning permission before they apply for a licence. In most cases, planning applications are determined within two months of being registered. Planning enquiries should be directed to [environment@eastlothian.gov.uk](mailto:environment@eastlothian.gov.uk)

East Lothian Council currently has no control areas designated and this will regularly reviewed.

**9.2 Licence refusals**

The power to refuse a licensing application is designed to assist the Council in handling applications for secondary letting but Councils can use it in other circumstances too, such as letting rooms in your own home. Further details can be found in planning guidance for hosts and operators.

The Council has 21 days from receipt of a valid application to decide to refuse to consider the application. Where an application is refused, the applicant can request a review within 21 days of the Council’s decision. Appeals should be sent to [stl@eastlothian.gov.uk](mailto:stl@eastlothian.gov.uk)

Alternatively, appeals can be sent by post to:

Licensing

East Lothian Council

John Muir House

HADDINGTON

EH41 3HA

If the Council refuses to consider an application for secondary letting, they will inform the host or operator within seven days of that decision and explain why they are refusing to consider the application.

Before 1 October 2023, the Council cannot determine a licence application on the basis it breaches planning control unless existing hosts have been given a chance to submit an application for planning permission or, for a Certificate of Lawful Use or Development ("CLUD"). The Council may determine a licensing application before this date where planning permission or, a CLUD has already been refused.

The applicant has three months from the date their application for a short-term let was submitted to lodge an application for planning permission or for a CLUD.

Where the Council has not received an application for planning permission during this time, the application is finally determined and the applicant can no longer provide short-term lets.

**9.3 Links with control areas**

Where a control area is designated, the Council will publish details of this on their website. This will assist hosts in determining whether, or not, to apply for a licence, in the knowledge that planning permission or a CLUD will be required.

The Council will give licenced hosts and operators a reasonable opportunity to comply with this mandatory condition by submitting a planning application. The host or operator should do this as soon as possible after the control area is designated.

The Council will ensure that licenced hosts or operators who may be affected by the designation of a control area are alerted as part of the planning authority's consultation process.

**9.4 Where planning permission is refused**

Where the Council refuse planning permission for short-term lets, the application or licence contingent on the planning permission will be refused, varied or revoked, as appropriate.

It will not always be necessary for an application to be refused, or licence to be revoked. For example, a host or operator may have a licence to let out one bedroom in their own home but have submitted an application to vary the licence, and an accompanying planning application, in order to let out three bedrooms. In this case, the applications might be declined but the existing licenced activity can continue.

# Section 10: Compliance and Enforcement Action

**10.1 Complaints**

Anyone may make a complaint to the Council about the way a host or operator is operating their short-term let.

Complaints regarding a short-term let should be sent to [stl@eastlothian.gov.uk](mailto:stl@eastlothian.gov.uk) for investigation. Alternatively complaints can be sent by post to:

Licensing

East Lothian Council

John Muir House

HADDINGTON

EH41 3HA

The Council will seek to try to resolve a complaint through engagement with the host or operator in the first instance.

Complaints will be acknowledged within ten working days and complainants will be appropriately kept up to date with the progress of their complaint. The Council will aim to respond to complaints within 21 working days. The Council will keep a record of all complaints made under this Policy.

Some complaints may require enforcement action from the Council, see section 10.4 of this Policy. A complaint against a short-term let licensed property may result in the Council undertaking an inspection visit to assess compliance. The Council reserves the right to charge the host or operator for any costs relating to an inspection visit.

The Council may need to direct some complaints to planning authorities, letting agencies, platforms, VisitScotland, Police Scotland or other bodies for further investigation.

Complaints regarding the Council’s operation of its Short-Term Lets Licensing Policy or Procedures will be investigated in accordance with the Council’s formal Complaints Procedure.

**10.2 Grounds for Complaints**

A complaint may be related to the following areas:

* whether the host or operator is a fit and proper person;
* the condition of accommodation;
* concerns regarding planning permission;
* undue public nuisance, public order or public safety;
* privacy and security of neighbours; or
* any other good reason.

Frivolous or vexatious complaints will not be considered.

**10.3 Identifying unlicensed short-term lets**

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

The Council, letting agencies and platforms all have a role to play in identifying and eliminating unlicensed short-term lets. The Council will use a number of methods to check and monitor whether there are hosts or operators in the East Lothian area, that are trading without a valid short-term lets licence.

**10.4 Enforcement Action**

The options for enforcement action for the Council provided through the 2022 Order and 1982 Act are:

* additional licence conditions on application (or through variation)
* enforcement notices
* variation, suspension or revocation of the licence
* pursuance of prosecution in respect of offences under the 1982 Act

### 10.5 Enforcement Notices

The Council has the powerto serve Enforcement Notices. Where complaints, visits to premises, or other information confirm that any licence condition has been breached, the Council will require the licence holder to take action to resolve the situation within a reasonable period

If informal measures do not result in resolution, the Council will serve an Enforcement Notice ("non-compliance" or "improvement" notice). The notices will set out the matters constituting a breach or a likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.

Enforcement Notices will also be served if a future breach of a licence condition is anticipated, for example, a host or operator is advertising property with a maximum capacity of ten guests, in breach of a licence condition specifying no more than eight. This would be evidenced in a listing or advertisement.

**10.6 Variation, suspension and revocation**

The Council may vary, suspend or revoke a licence in certain circumstances. The Council may do this without serving an Enforcement Notice if the seriousness of the breach justifies urgent action.

**10.7 Variation**

The Council may vary the terms of a licence on any grounds it thinks fit. The Council can do this at any time, including following an application made to it by the licence holder or of its own initiative.

**10.8 Suspension or revocation**

The Council may order the suspension or revocation of a licence,if in its opinion:

* the licence holder is no longer a fit and proper person to hold the licence;
* the licence holder is managing the property on behalf of someone who would have been refused the grant or renewal of the licence;
* the short-term let is causing or is likely to cause undue public nuisance, or, a threat to public order or public safety; or
* a condition of the licence has been contravened.

Where the Council revokes a licence, no further application can be made by that host or operator, in respect of that premises, within one year of the date of revocation.

**10.9 Appeals**

Applicants can appeal against a refusal of their Short-Term Let licence application.

Hosts and operators can appeal against the decision to vary, suspend or revoke a licence. The appeal should be made within 28 days of being notified of the refusal and should be made to the Sheriff.

Hosts and operators can take bookings and provide accommodation whilst they appeal a revocation or suspension and they have 28 days in which to lodge an appeal.

# Section 11: Policy Monitoring and Review

**11.1 Monitoring timescale**

The Team Leader – Licensing and Landlord Registration, will monitor the number of applications to the Short-Term Lets licensing scheme on a quarterly and annual basis.

**11.2 Review timescale**

The Short-Term Lets Policy will be reviewed after the first 12 months of the licensing scheme’s implementation. The Council will review the Policy every 3 years thereafter.

# Section 12: Appendices

**12.1 Policy Appendices**

**Appendix 1 –** What is a short-term let

**Appendix 2 -** Mandatory Licence Conditions

**Appendix 3 –** Additional Licence Conditions

**Apendix 4 –** Sample Short-term Lets licence

**Appendix 5 –** Public Notice of application for Short-term lets licence

**Appendix 6 –** Certificate of compliance

**Appendix 7 –** Application for short-term let licence

**Appendix 8** – Application checklist

**This document can be provided in large print, Braille or in an electronic format and can be translated into other community languages. Please contact the Council’s Communications Team at East Lothian Council, John Muir House, HADDINGTON, EH41 3HA, 01620 827827.**