

**GUIDANCE NOTES**

**FOR**

**PROVISIONAL SHORT-TERM LET LICENCE APPLICANTS**

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

**Disclaimer**

**These notes have been prepared as an outline of the licensing provisions in connection with short-term lets introduced by The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 as amended. While every effort has been made to ensure accuracy, these notes are for general guidance only and do not constitute legal advice. It is the responsibility of the applicant to ensure that they comply with the provisions of the Act, any statutory instruments made thereunder, the conditions outlined in the schedule attached to your licence and any policy/guidance notes issued by Moray Council (“the Council”).**

**Under no circumstances does the Council or their employees or agents offer legal advice or accept liability of any description, including liability for negligence for any damages or losses (including without limitation, loss of business, revenue, profits, or consequential loss) whatsoever resulting howsoever including but not limited to the use of or inability to use this information. The Council accepts no responsibility for keeping the information in these pages up to date or liability for any failure to do so. If you are in any doubt you must seek advice from a solicitor.**

**Applicants should note that the Scottish Government has produced guidance for hosts and operators regarding licensing provisions in connection with short-term lets.**

**INTRODUCTION**

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 as amended (“the Order”) requires all short-term let premises in Scotland to be licensed by the licensing authority in whose area the premises are situated. This guidance provides information to applicants about how to make a provisional short-term let licence application.

An application for a provisional short-term let licence can be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed for use as a short-term let. **A provisional short-term let licence is of no effect unless and until it is confirmed.** Further details about confirming a provisional short-term let licence can be found on the Council’s website [here](http://www.moray.gov.uk/moray_standard/page_140819.html).

**DEFINITIONS**

**“provisional short-term let licence application” –** application for a provisional short-term let licence.

**“premises” –** means the accommodation which is the subject of an application for a provisional short-term let licence.

**HOW DO I APPLY FOR A PROVISIONAL SHORT-TERM LET LICENCE?**

Licences are issued by the Licensing and Regulatory Team within the Council’s Governance, Strategy and Performance Service. You will need to complete the provisional short-term let licence application form and submit this together with supporting documentation and the application fee to the Council.

You can complete the application form electronically and email it to licensing@moray.gov.uk. Alternatively, you can complete a paper copy and send it to Moray Council Licensing Team, Council Offices, High Street, Elgin, IV30 1BX.

The Council will assess your suitability and that of the other people named on the application form and your compliance with planning law. The Council will also assess the suitability of the premises IF built to the specification detailed in the application and IF used as proposed.

**FEE**

You 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 the Council. A Schedule setting out all Council fees relevant to the short-term let licence scheme can be found on the Council’s website [here](http://www.moray.gov.uk/moray_standard/page_39926.html).

The fee for a provisional short-term let licence application is calculated on a cost recovery basis only. This means that, as far as possible, the fee represents the actual cost to the Council of processing the application. Once the application has been processed, those costs have been incurred. If your application is refused, the fee will not be refunded or reduced.

**PLANNING CERTIFICATE**

**You must enclose a provisional planning certificate with your application.** A provisional planning certificate is a certificate signed on behalf of Moray Council’s Planning Service stating:-

(a) that planning permission, planning permission in principle or outline planning permission under the Town and Country Planning (Scotland) Act 1997 has been obtained in respect of the construction of the premises, or

(b) that no such planning permission is required.

Details about how to contact the Council’s Planning Service directly can be found on the Council’s website [here](http://www.moray.gov.uk/moray_standard/page_41734.html).

**THE APPLICATION FORM**

The application form is split into the following 9 sections;

A. Applicant details

B. Day-to-Day Management of the premises

C. Ownership of the premises

D. Previous/Other Short-term Let Licence details

E. Premises

F. Occupancy and availability

G. Criminal convictions

H. Residence outside of the UK

I. Declaration

**General Points on Completion**

* You must answer all questions as fully as you can as failure to do so may result in your application being returned to you. Your application will not be processed until you have provided all the necessary information. **Unless and until a valid application is received the application will not be considered to have been made at all.**
* Check what information and supporting documentation you will need and ensure you have this before submitting your application to the Council.
* The application should be completed in typescript, or where by hand, in block capitals in black ink.
* Where the question requires a “Yes” or “No” answer please strikethrough the answer which does not apply to you.
* Where the question asks you to tick one box only, please tick the box which indicates your answer.
* If you have other information relevant to your application that you wish to include or need additional space for your answers, use the “Additional Information Sheet” provided.

**Section A – Applicant Details**

Indicate whether you are applying for a licence for the premises as an individual or as a corporate entity (e.g. a company, charity or trust) by ticking one box. If you are self-employed running your own business you need to apply as an individual. You need to identify all the people who need to be named on the application form.

**A.1 Individual Details-** If you are applying as an individual, you need to provide the following information at A.1 Individual Details;

* your full name;
* your date and place of birth;
* your address;
* your address history for last five years; and
* e-mail and telephone number.

**A.2 Corporate Entity -** If you are applying as a corporate entity (e.g. a company, charity or trust) you need to provide the following information at A.2 Corporate Entity;

* your full name;
* full name of the corporate entity (if a company include the company number);
* the address of its registered or principal office; and
* the names, private addresses and dates and places of birth **of all** its directors, partners or other persons responsible for its management, including trustees in the case of charities and trusts.

**A.3 – Joint Applicants**

If you are jointly applying for a licence with another individual or company complete this section. Indicate whether the joint applicant is an individual or a corporate entity (e.g. a company, charity or trust) by ticking one box.

**A.3.1 Individual Details -** If the joint applicant is an individual, you need to provide the following information at A.3.1 Individual Details for the joint applicant;

* full name;
* date and place of birth;
* address;
* address history for last five years; and
* e-mail and telephone number.

**A.3.2 Corporate Entity -** If the joint applicant is a corporate entity (e.g. a company, charity or trust) you need to provide the following information at A.3.2 Corporate Entity for the joint applicant;

* full name of the corporate entity (if a company include the company number);
* the address of its registered or principal office; and
* the names, private addresses and dates and places of birth **of all** its directors, partners or other persons responsible for its management, including trustees in the case of charities and trusts.

**Section B – Day-to-Day Management of the Premises**

Where you intend to appoint somebody else to manage your property, you need to provide the same details irrespective of whether you are applying as an individual or a corporate entity.

If you are appointing an individual to manage your property, you need to provide the following information for the individual;

* full name;
* date and place of birth;
* address;
* address history for the last five years; and
* email and telephone number.

If you are appointing a corporate entity (e.g. a company, charity or trust) to manage the premises, you need to provide the following information;

* full name of the entity (including company number if a company);
* the address of its registered or principal office; and
* the full names and private addresses and dates and places of birth of all its directors, partner or other persons responsible for its management, including trustees in the case of charities or trusts.

If you have a letting agency to manage the premises, then your application form should name the directors, partners or others responsible for the letting agency. You do not need to name the employees of the agency. You do not need to name everyone with any involvement in your arrangements e.g. a cleaner or other people who enter the premises are not to be named for that reason alone.

Only those named as the licence holder can carry out the day to day management of the premises.

Please note, after a licence is granted if you decide to make different arrangements for the day-to-day management of the premises (e.g. passing responsibility to a letting agency) you must first notify and obtain approval from Moray Council. This approval needs to be sought by way of a variation of the licence.

**Section C – Ownership of The Premises**

If you do not own the premises (or the land on which the premises are located), or if you share ownership, you must have the consent of each owner (or each other owner) for the licence application. If consent is required, your application will be refused if you do not provide it.

You must provide:

1. a declaration from each owner of the premises (or land on which the premises are located) that they consent to the application, or
2. a declaration from a person who is authorised to act on behalf of each owner of the premises (or land on which the premises are located).

A style/template declaration is provided on the Council’s website [here](http://www.moray.gov.uk/moray_standard/page_140819.html).

**Section D – Previous/Other Short-term Let Licence Details**

You need to confirm whether you or anyone else named on the application has held a short-term let licence. This includes licences issued by Moray Council and those issued by any other Scottish licensing authority. If you or anyone else named on the application has held a short-term let licence, you need to provide the licensee’s full name, name of the licensing authority who granted the licence and the type of short-term let licence held on the application form.

You also need to confirm whether you or anyone else named on the application has ever been refused a licence. This includes licences refused by the Council and those refused by any other Scottish licensing authority.

**Section E – Premises**

Indicate the proposed type of short-term letting you will offer at the premises by ticking the relevant box.

* Secondary Letting – means the letting of premises where you do not normally live, for example, a second home.
* Home Letting – means using all or part of your own home (where you normally live) for short-term lets whilst you are absent, for example, whilst you are away on holiday.
* Home Sharing – means using all or part of your own home (where you normally live) for short-term lets whilst you are there.
* Home Letting and Home Sharing – means you use all or part of your own home (where you normally live) for short-term lets whilst you are living there and also for periods when you are absent.

Provide the full address of the premises you are seeking a licence for including the postal code and the premises name if relevant. To confirm the Moray Council Ward where the premises are located, tick the box next to the appropriate Ward. Further details about Wards can be found on the Council’s website [here](http://www.moray.gov.uk/moray_standard/page_52901.html).

You need to confirm whether or not the premises are located within a National Park by answering “yes” or “no”. If the answer is yes, please confirm the National Park where the premises are located by ticking the relevant box from the two options provided.

**E.1 – Description of the Premises**

Provide a general written description of the proposed premises. Please provide as much detail as possible. Try and write your description as though you are describing the premises to someone who does not know it at all. Describe the type of building e.g. is it detached, semi-detached, in a terrace, part of a tenement etc. Describe whether the premises is spread over a number of floors or if not state this. Describe where the premises are located e.g. in town centre, in a village, in rural/countryside location etc. Describe the type of properties surrounding the premises, e.g. residential area, commercial area, mixed residential/commercial shopping area etc. If the premises you are seeking a licence for is not a dwellinghouse but unconventional accommodation e.g. a glamping pod in a field, please describe the premises in as much detail as possible.

**Floor/Layout Plan**

You must include a detailed floor/layout plan with your application. We will accept your architect’s plans that have been created for planning purposes.

If there are any changes to your floor/layout plan you must notify the licensing team immediately. If a provisional licence is granted, any changes to the proposed plans will require a variation application.

**E.1.1 Rooms**

You must detail the total number of rooms within the premises as well as the total number of letting bedrooms, total number of beds available for use by the guests, total number of public rooms available for use by the guests e.g. lounge/dining room etc. and the total number of rooms used for the owners/manager’s private accommodation.

**E.1.2 Catering**

You must confirm whether or not you intend to offer catering at/on the premises. Please tick all the boxes that apply to your premises.

**Section F – Occupancy and Availability**

You must detail the total number of guests you would like to accommodate at any one time in the premises as well as a breakdown of the total number of both adult and child (aged under 10) guests.

It is a mandatory short-term let licence 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 and listings and in booking terms and conditions. Please note, while you are asked to indicate on the application form how many guests you would like to accommodate, that number is subject to verification and confirmation. Moray Council will determine the maximum occupancy permitted in terms of the licence. If you would like more information about how Moray Council will determine the maximum occupancy for short-term let licences, please see “Statement of Licensing Policy for Short-term Lets” [here.](http://www.moray.gov.uk/downloads/file144603.docx)

You must indicate how often you intend to make the premises available to guests by ticking the box that applies to you. If the available bandings do not reflect how often your premises will be available to guests, please use the space at “other please describe” to tell the Council in words what the availability will be.

**G – Criminal Convictions**

This section asks whether you, or anyone named on the application form has ever been convicted of any crime or offence. Please note that this includes driving fixed penalties. Full details of the need to disclose convictions appear on the website.

**Unspent Convictions**

Unspent Convictions must always be disclosed.

**Spent convictions**

A spent conviction is a criminal conviction that, under the Rehabilitation of Offenders Act 1974, can be treated as “spent” after a certain length of time. Although you are not required to disclose any convictions which are “spent”, the Police may raise an objection on the basis of any spent convictions you may have and the Council may thereafter decide to consider these if they are determined to be relevant to your application. If you think a conviction is spent you should seek independent legal advice.

Failure to disclose convictions is a criminal offence and any applicant failing to disclose a conviction may be reported to the Procurator Fiscal with a view to prosecution.

**H – Residence Outside the UK**

If you or anyone else named in the application have lived outside of the UK for a continuous period of 12 months or more you must provide details of all the Countries lived in. You must provide evidence of criminal history for you and anyone else named in the application.

If you, or anyone else named in the application, **were born in the UK** but have lived in any other country within the ten years prior to your application for a continuous period of 12 months or more you must provide a Criminal Record Check for all those countries for the relevant period(s).

If you, or anyone else named in the application, **were born outwith the UK** you must provide a Criminal Record Check from your country of origin for the time of residence there IF it was in the last 10 years, unless you, or anyone else named in the application, left that country without reaching the criminal age of responsibility. You must also provide a Criminal Record Check from any other country in which you, or anyone else named in the application, have resided for a continuous period of 6 months or more in the 10 years prior to the application.

In all cases, the Criminal Record Checks provided must:-

* have been obtained within the six months immediately prior to submitting the application; and
* be translated into English; and
* be verified by the relevant UK based Embassy or High Commission.

**Note**: The certificate must be produced before the licence can be granted. Whilst it is desirable for the applicant to produce the certificate with the application, it is not a strict requirement. This is so any applicant having difficulties will not be disadvantaged by delays to processing the application.

At the applicants choosing, the application can be accepted as valid without the convictions evidence but the evidence should be provided as soon as possible. In this way the convictions evidence will be a check rather than a validation. Applicants should still note, however, that the licence cannot be granted without the evidence having being produced. Therefore if the application is approaching the determination time limit without the evidence being produced, the application may be refused for failure to comply with administrative provisions.

If you are experiencing difficulties in obtaining a certificate then please contact the licensing team to discuss your options. It may be possible to accept alternative evidence, for example: evidence of checks having been carried out by another government body; affidavits; or character references. In cases where it is not possible to provide any satisfactory evidence, the application will be referred to the Licensing Committee for a decision. Therefore the application may be delayed pending the outcome of a hearing.

**Section I – Declaration**

You and any joint applicants (or an agent acting on behalf of the applicant(s)) are required to sign and date the following two declarations on the application form:-

**1. Display of Public Notice**

You and any joint applicants (or an agent acting on behalf of the applicant(s)) are required to sign declaring that you will display a public notice complying with the requirements of Paragraph 2(2) of the Civic Government (Scotland) Act 1982.

You must notify the public about your licence application by displaying a site notice at or near the premises so it can be conveniently read by the public. The site notice is displayed for a period of 21 days from the date a valid application is submitted to the Council. **The Council’s Licensing Team will tell you when your application is valid and send you the site and confirmation of display notices. You should display the site notice when we ask you to.**

Once the site notice has been displayed for a period of 21 days, you must complete the confirmation of display notice and return the confirmation together with the site notice to Moray Council at Council Offices, High Street, Elgin, IV30 1BX. You may also wish to consider submitting additional evidence demonstrating compliance such as a time stamped photograph of the site notice in situ.

 **2. Declaration that information on the application is true**

You and any joint applicants (or an agent acting on behalf of the applicant(s)) are required to sign and date the application confirming that all information provided on the application form is true. If you are submitting your application electronically, you can use an electronic signature.

Please note, it is an offence for any person to make a statement which they know to be false in the application or in connection with the making of the application.

**CONSULTATIONS**

Every person named on the application form is subject to the fit and proper person test. The Council will determine whether you, or anyone else named on the application form, is a fit and proper person to offer accommodation for short-term let in the Moray area. The Council will assess the fitness of the applicant(s) and any agents or day-to-day managers to be involved in providing short-term lets. In deciding this, Moray Council will take account of the following factors:-

* any relevant convictions and other relevant information obtained from Police Scotland,
* being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past,
* having had a licence for short-term lets or HMO revoked by any licensing authority,
* having had an application for short-term lets licence refused by any licensing authority; and
* providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.

When determining your application, the Council will consult with the following;

* Police Scotland
* Moray Council Environmental Health Service
* Moray Council Planning Service
* Moray Council Building Standards Service
* Public

**TIMESCALE FOR DETERMINATION**

The Council has the period of 9 months from the date a valid provisional licence application is made to consider and determine the application.

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

**PUBLIC REGISTER**

The Council is required to maintain a public register of short-term lets. The register is available to the public electronically. You can view the latest public register on the Council’s website [here](http://www.moray.gov.uk/downloads/file156444.xlsx).