

**GUIDANCE NOTES**

**FOR**

**TRANSFER OF 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 apply for a transfer of an existing short-term let licence.

**DEFINITIONS**

**“transferee”** – the person to whom the licence is to be transferred under a transfer application.

**“transfer application”** – an application from a short-term let licence holder to transfer a short-term let licence to such persons as specified in the application.

**“short-term let licence”** – a short-term let licence issued by Moray Council.

**“licence holder”** – the named holder of a short-term let licence issued by Moray Council.

**“premises”** – the premises named on a short-term let licence issued by Moray Council.

“**licence transfer fee**” – fee payable when making a transfer application.

**HOW DO I APPLY TO TRANSFER MY SHORT-TERM LET LICENCE ?**

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

You can complete the application form electronically and email it to [licensing@moray.gov.uk](mailto: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 the suitability of the proposed transferee(s) and any others who will be involved in the day-to-day management of the premises listed on the application form.

**FEE**

The transfer application fee can be paid 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. 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 transfer application fee is calculated on a cost recovery basis. This means that, as far as possible, the fee represents the actual cost to the Council of processing the application. Once an application has been processed, those costs have been incurred. If the transfer application is refused the fee will not be refunded or reduced.

**THE APPLICATION FORM**

The application form is split into the following sections with two appendices:-

A. Licence Details

B. Applicant Information

C. Ownership of the Premises

D. Transferee Details

E. Day-to-Day Management of the Premises

F. Previous/Other Short-term Let Licence Details

G. Insurance

H. Criminal Convictions

I. Residence Outside the UK

J. Declaration

Appendix 1 – Style consent declaration - joint licence holders

Appendix 2 – Style consent declaration - owner(s).

**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 - Licence Details**

This section asks you to provide details of the short-term let licence held by the licence holder(s). You must enclose your short-term let licence with your application for transfer. If you cannot find your licence or it has been lost or stolen you need to report this to the Police. You will also need to apply for a copy licence and pay the relevant fee.

**Section B – Applicant Information**

Only the licence holder(s) or person authorised to act on behalf of the licence holder(s) can make a transfer application.

You must provide the full name and address (including post code) for all licence holders.

If there are joint licence holders, you must have the consent of each other joint licence holder for the transfer of the licence to the transferee. If consent is required, your transfer application will be refused if you do not provide it. You must provide:

a) a declaration from each other joint licence holder that they consent to the transfer application, or

b) a declaration from a person who is authorised to act on behalf of each joint licence holder stating that they consent to the transfer application on their behalf.

You can use the style/template declaration provided in Appendix 1 to the transfer application.

**Section C – Ownership of the Premises**

If you (as the current licence holder(s)) do not own the licensed 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 transfer application.

If you want to transfer your licence because the premises is being sold to someone else and the ownership is changing, the owner is the legal owner at the time the application is made by the licence holder(s).

If consent is required, your transfer application will be rejected if you do not provide it.

You must provide:

a) a declaration from each owner of the premises (or land on which the premises are located) that they consent to the transfer application, or

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

You can use the style/template declaration provided in Appendix 2 to the transfer application.

**Section D – Transferee Details**

Indicate whether the transferee is an individual or a corporate entity (e.g. a company, charity or trust) by ticking one box. If the transferee is self-employed running their own business you should tick “individual”.

You must identify all the people who need to be named on the application form.

**D.1 Individual Details**

If the transferee is an individual, you need to provide the following information for the transferee at section D.1;

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

**D.2 Corporate Entity**

If the transferee is a corporate entity (e.g. a company, charity or trust) you need to provide the following information for the transferee at section D.2;

* Full name of the corporate entity (if a company include the company number);
* 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.

**D.3 Joint Transferees**

If there is more than one transferee you need to provide details for all transferees.

Indicate whether the joint transferee is an individual or a corporate entity (e.g. a company, charity or trust) by ticking one box. If the transferee is self-employed running their own business you should tick “individual”.

**D.3.1 Individual details**

If the joint transferee is an individual, you need to provide the following information for the transferee at section D.3.1;

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

**D.3.2 Corporate Entity**

If the joint transferee is a corporate entity (e.g. a company, charity or trust) you need to provide the following information for the transferee at section D.3.2;

* Full name of the corporate entity (if a company include the company number);
* 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 E - Day-to-Day Management of the Premises**

If the transferee intends to appoint someone else to carry out the day-to-day management of the premises you need to provide full details for the manager at section E.

If an individual is appointed as the day-to-day manager, the following information needs to be provided for the individual;

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

If a corporate entity is appointed to manage the premises, the following information needs to be provided;

* full name of the corporate entity;
* the address of its registered or principal office; and
* the full 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 or trusts.

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

**Section F - Previous/Other Short-term Let Licence Details**

You need to confirm whether the proposed transferee, joint transferee(s) or day-to-day manager of the premises has held a short-term let licence. This includes licences issued by the Council and those issued by any other Scottish licensing authority. If the proposed transferee, joint transferee or day-to-day manager has held a short-term let licence you must provide the following details;

* licensee full name;
* name of the licensing authority; and
* type of short-term let licence held.

You also need to confirm whether the proposed transferee, joint transferee(s) or day-to-day manager of the premises has ever been refused a licence. This includes licences refused by the Council and those refused by any other Scottish licensing authority. If any of the individuals have been refused a licence before, you must provide the following details;

* full name of the individual;
* name of the licensing authority; and
* type of licence refused.

**Section G - Insurance**

This section asks you to provide details of both the buildings insurance and public liability insurance policies in place for the premises. The licence holder must ensure that there is valid buildings insurance for the duration of the licence in place for the premises. The licence holder must also ensure that there is valid public liability insurance for not less than £5 million in place for the premises for the duration of each short-term let agreement.

**Section H - Criminal Convictions**

This section asks whether the proposed transferee/joint transferees and any day-to-day manager has ever been convicted of any crime or offence. Please note, this includes driving fixed penalties. Full details of the need to disclose convictions appear on the Council’s 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.

**Section I – Residence Outside the UK**

If the proposed transferee/joint transferee/day-to-day manager named on the transfer application has 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 all the proposed transferees/joint transferees/day-to-day manager named on the transfer application.

If any proposed transferee or day-to-day manager named in the transfer application, **were born in the UK** but have lived in any other country within the ten years prior to the 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 any proposed transferee(s) or day-to-day manager named in the transfer application, **were born outwith the UK,** you must provide a Criminal Record Check from the country of origin for the time of residence there IF it was in the last 10 years, unless the relevant individual left that country without reaching the criminal age of responsibility. You must also provide a Criminal Record Check from any other country in which the proposed transferee or day-to-day manager 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 transfer 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 J – Declaration**

You and any joint applicants (or an agent on behalf of the applicant(s)) are required to sign and date the declaration confirming that all information provided on the transfer application form is true. If you are submitting the form 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 on the application or in connection with the making of the application.

**CONSULTATION – FIT AND PROPER PERSON CHECK**

Every proposed transferee/joint transferee or day-to-day manager named on the transfer application is subject to the fit and proper person check. The Council will determine whether all those named are fit and proper persons to offer accommodation for short-term let in the Moray area. The Council will assess the fitness of the proposed transferee(s) and any agents/day-to-day managers to be involved in providing short-term lets. In deciding this, the 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 the transfer application, the Council will consult with the following:-

* Police Scotland
* Moray Council Environmental Health Service

**TIMESCALES FOR DETERMINATION**

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

If the Council fails to determine the application within the timescale set out above, the transfer 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 and includes the following information about short-term let premises. You can view the latest public register on the Council’s website [here](http://www.moray.gov.uk/downloads/file156444.xlsx).