

# **SHORT-TERM LET LICENSING**

## **Public Objections and Representations**

*The foregoing contains general guidance in respect of objections and representations which can be raised by members of the public in connection with an application for a short-term let licence. If you have any specific questions regarding raising such objection or making such representation, please contact us by email to [STL@highland.gov.uk](mailto:STL@highland.gov.uk) or by post to The Highland Council, Charles Kennedy Building, Achintore Road, Fort William, PH33 6RQ.*

*Any legal opinions expressed in this guidance are those of the Council's in-house solicitors responsible for advising the Council on licensing matters. It is hoped that the guidance will assist members of the public wishing to object to short term let licence applications to understand the legislative constraints within which such applications must be determined.*

*However, the guidance is not provided as legal advice to applicants or objectors, nor should it be construed as preventing members of the public from raising, when submitting representation on particular short term let licence applications, any matter which they themselves consider relevant.*

*In addition, it is open to members of the public to take independent legal advice before submitting their representations.*

### **1. Objections and representations**

- 1.1.** It is open to any member of the public to submit an objection or representation in relation to a short-term let licence application.
- 1.2.** Under the terms of the Civic Government (Scotland) Act 1982 ("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 the application was submitted to the licensing authority at or near the premises so that it can be conveniently read by the public. In addition, details of all applications The Highland Council have received for short-term let licences are found on our public register, which is found on our website at <https://www.highland.gov.uk/stlpublicregister> . Please note, this is not a "live" register and is not automatically updated when a change is made to an application. For example, where a licence application is received or a licence issued, the published register will not be updated automatically, and any such change will only be reflected when the next register is published.

**1.3.** To enable The Highland Council, as a licensing authority (“the Council”) to consider an objection or representation, it must be:

- in writing (email is sufficient)
- specify the grounds of the objection or the nature of the representation
- specify the name and address of the person making it
- be signed off by them or on their behalf
- be received by the Council within 28 days from when the notice of application is displayed

**1.4.** Objections/Representations in relation to a short-term let licence application can be made either by email to [STL@highland.gov.uk](mailto:STL@highland.gov.uk) or by post to any of the following addresses:

- *The Highland Council, Caithness House, Market Square, Wick, KW1 4AB;*
- *The Highland Council, Tigh-na-Sgìre, Park Lane, Portree, IV51 9EP; or*
- *The Highland Council, Charles Kennedy Building, Achintore Road, Fort William, PH33 6RQ.*

**1.5.** Anonymous objections or representations will not be considered.

**1.6.** Late objections or representations may be considered if the Highland Licensing Committee is satisfied that there is sufficient reason as to why it was not made in the time required.

**1.7.** 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:

- The applicant or anyone else detailed in the application form is not a fit and proper person to be the holder of a 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
- Where there is other good reason (this does not include points which are not relevant in terms of the Act, points which are solely of conjecture, such as speculation over the type of persons who may stay in the property, or points which are frivolous or vexatious)

**1.8.** The objection/representation should detail clearly the reasons for the objection/representation and why the applicant and/or the premises are not suitable.

**1.9.** A copy of the objection or representation will be provided to the applicant and will include your name and address. All personal data will be processed in line with the following privacy notice:

[https://www.highland.gov.uk/directory\\_record/1046990/licensing\\_objections\\_representations\\_and\\_complaints](https://www.highland.gov.uk/directory_record/1046990/licensing_objections_representations_and_complaints)

**1.10.** In terms of further general guidance on short-term let licensing:

- Guidance notes on the process and the conditions which apply to a short-term let licence are found on our website at <https://www.highland.gov.uk/shorttermlets>
- Further guidance on short-term lets can also be found in the Scottish Government Guidance, found at <https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-1-guidance-hosts-operators-4/>
- in the Highland Council's Policy Statement, found at [https://www.highland.gov.uk/downloads/file/25349/stl\\_-\\_draft\\_policy\\_statement](https://www.highland.gov.uk/downloads/file/25349/stl_-_draft_policy_statement)
- Responses to our frequently asked questions are found at [https://www.highland.gov.uk/downloads/file/26023/short\\_term\\_lets\\_-\\_frequently\\_asked\\_questions](https://www.highland.gov.uk/downloads/file/26023/short_term_lets_-_frequently_asked_questions)

## **2. Determination of application where there is an objection/representation**

**2.1.** If an 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 the Highland Licensing Committee. Full details regarding the processing of a licensing application and the hearing procedure are found in our said Policy Statement.

**2.2.** The person submitting the objection or representation will be invited to attend the meeting of the Highland Licensing Committee and speak to their objection/representation. Both parties will be given at least 14 days' notice of the hearing date.

**2.3.** The applicant or their representative will also be invited to attend the meeting and given the opportunity to state why the application should be granted.

- 2.4. The Committee will be able to ask questions of both parties and, thereafter, decide whether to grant or refuse the application. The grounds for refusing an application are set out at paragraph 1.7 above.
- 2.5. Applications will be 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
- 2.6. A copy of the Council's hearing procedure can be found at **Appendix 1**.
- 2.7. Both the applicant and the person(s) making an objection/representation can request a statement of reasons for the decision within 21 days of the date of the decision. The statement of reasons will be produced by the Principal Solicitor – Regulatory Services/Solicitor – Regulatory Services within 10 days of that request.

### **3. Right of appeal**

- 3.1. The applicant and the person(s) making an objection/representation have a right of appeal to the Sheriff Court.
- 3.2. However, they only have this right if they have taken every opportunity to state their case to the Committee as has been made available.
- 3.3. The Sheriff can uphold an appeal only if the sheriff considers that the licensing authority erred in law, based their determination on any incorrect material fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.
- 3.4. Any appeal must be lodged by way of a summary application with the relevant Sheriff Clerk's office within 28 days of the date of the decision appealed against.
- 3.5. Parties should seek their own independent legal advice in relation to an appeal.

## Appendix 1 – Hearing procedure

### DURING THE HEARING

1. The Chair will introduce the Members and Officials present. If the representations/objection(s) were submitted timeously and there are no spent convictions to be considered, then proceed directly to number 4.
2. If the representation/objection (from the Police or any other party) has been received late the Committee must hear details as to why the representation/objection was late and be satisfied that there is sufficient reason why it was not made in the time required. If they agree that then the representation/objection can be heard otherwise it should be disregarded. The process to be followed should be that the objector is invited to provide reasons as to why the submission was late. Members may ask any follow up questions of the objector. The applicant must then be asked if they have any objections to the late submission being accepted. The Committee must take all comments into account when deciding whether to accept the late submission.
3. If spent convictions are to be referred to then the guidance notes for spent convictions should be followed for each conviction. The Committee should resolve to go into private whilst considering spent convictions.
4. The hearing procedure below should now be followed:

A	The Licensing Officer will present the report to the Committee
B	The applicant or the party who has initiated the hearing will present their case first
C	The presenting party shall be entitled to provide information in support of their application, representation or objection (as applicable).
D	Any other interested party will have the opportunity to ask the presenting party relevant questions.
E	The Committee Members will have the opportunity to ask the presenting party relevant questions.
F	Any other interested parties will then present their case in turn and be entitled to provide information in support of their application, representation or objection (as applicable)
G	Any other interested party will have the opportunity to ask the presenting party relevant questions.

H	The Committee Members will have the opportunity to ask the presenting party relevant questions
I	The Chair will invite the applicant, or the party who has initiated the hearing, to briefly summarise their points if they wish.
J	The Chair will invite the other interested parties to briefly summarise their points if they wish.
K	The Chair will ask the applicant, or the party who has initiated the hearing, and all parties making representations, that they are satisfied that they have said all they wish to.
L	At the sole discretion of the Members, the Committee may decide to retire to consider the representations/objections in private.
M	<p>The Committee will invite the parties to return to the meeting and the Chair will invite Members to take a decision.</p> <p><b>NOTE:</b> If during private deliberations, the Committee receive advice on a legal submission from the Clerk which is contrary to the view of the party making the submission or the Committee believe additional information would be relevant, then these points should be raised with the parties, in public, prior to any decision being made.</p>

## DECISION

A determination of the case will be made at the conclusion of the hearing and all parties will be notified of the decision in writing within 7 days of the hearing and shall be advised of his/her right to seek written reasons and appeal to the Sheriff Court.

If the decision of the Committee is to suspend, refuse or refuse to suspend a licence, a relevant person has a right to request within 28 days of the meeting, the Committee's reasons for arriving at their decision. Unless the circumstances of the case justify immediate suspension, the suspension shall not take effect for 28 days from the date of the decision.

Appeals against the decision of the Committee must be lodged with the Sheriff Clerk within 28 days of the date of the decision.