



## **Briefing: Short Term Let Consultation**

### **Introduction**

- The Scottish Government maintain that their proposals are fair, robust and proportionate and balance the needs of local communities, tourism and operators. They argue that the previous consultation illustrated broad support for regulation from stakeholders.
- The Scottish Government will use the 1982 Civic Government Act + the Planning Act 2019 for the short term let regulatory framework.
- The consultation covers three main points: the definition of short-term lets, the establishment of control areas under the Planning Act; and the creation of licensing under the Civic Government Act. The tax treatment of short-term lets will be dealt with separately.<sup>1</sup>

### **Timeline**

- The consultation will run until **16<sup>th</sup> October**. The Scottish Government note that this was a shorter period of engagement than was originally intended but this was due to the delay caused by Covid-19.
- The consultation will inform the secondary legislation on the Licensing Order and Control Areas that will be laid in **December 2021**.
- The regulations will come into force on **1<sup>st</sup> April 2021**.
- There will, however, be some transitional arrangements for operators to comply and for local authorities to get ready. The Scottish Government will produce two guidance documents for each in **Spring 2021**.
- All local authorities must have a live licensing scheme open to receive licensing applications by **April 1<sup>st</sup> 2022**.
- All hosts must be licensed by **31 March 2024** at the very latest.
- In addition, the Scottish Government will monitor the effectiveness of the legislation post-implementation and do not rule out resorting to primary legislation in the next parliamentary session if necessary: *"I am willing to bring forward a Bill before Parliament in the next session if we continue to see issues; to do so now would result in unnecessary delay."*<sup>2</sup>

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<sup>1</sup> Andy Wightman MSP has tabled a PQ on this requesting more information. See: <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-31815&ResultsPerPage=10>

<sup>2</sup> Ministerial Foreword

## Main Areas of Consultation

### a. Definition of Short-Term Lets (Chapter 4)

*“For a short-term let to take place, a host offers short-term accommodation to one or more guests, i.e. it does not become the main residence of the guest(s).”<sup>3</sup>*

- The Scottish Government wish to arrive at a simple definition that is clear to understand and interpret.
- At 4.7 in the document, the Scottish Government set out the following in terms of the definition:

*“We are proposing to define a “short-term let” as a let where all of the following criteria are met:*

- a) **residential** - the let is made to one or more guests for them to reside at the accommodation;*
  - b) **accommodation** – the accommodation is all or part of a house or flat or serviced apartment (but it is not on the premises of a hotel or other class 7 premises in the UCO);*
  - c) **temporary** - the accommodation is not the guests’ only or principal home;*
  - d) **commercial** - the let is for commercial consideration (i.e. for money or benefit in kind to the host, such as provision of a service or reciprocal use of a property); and*
  - e) **excludes immediate family** – none of the guests are members of the same immediate family as the host or host’s household (i.e. father, mother, brother, sister, son or daughter).”<sup>4</sup>*
- The definition includes: (a) lets for work and leisure purposes and; (b) lets where the accommodation provided is a bed in a bedroom shared with other guests or a sofa bed in a living room. (I.e. it does not need to be exclusive use of a whole room.)
  - The definition excludes “unconventional dwellings” such as caravans, pods and mobile dwellings such as canal boats.

### b. Planning (Chapter 5)

*“It is important to note that a control area does not prohibit secondary letting within it, it merely requires planning permission; this is an important consideration in determining an appropriate process. We are proposing to require a similar process to that used to establish conservation areas; this seems appropriate as conservation areas have a similar effect in making planning permission mandatory within them.”<sup>5</sup>*

- The Control Area Regulations will be made by **section 26B of the 1997 Town and Country Planning Act** as inserted by the 2019 Planning Act.
- The Scottish Government are primarily **concerned with the use of dwellinghouses<sup>6</sup> for secondary letting<sup>7</sup>**. All secondary letting will fall within scope of control areas, where such areas have been established.

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<sup>3</sup>p13

<sup>4</sup> p14-15

<sup>5</sup> p19

<sup>6</sup> **The Scottish Government define a dwellinghouse** as: “a house or a flat or a cottage or any independent dwelling (i.e. with its own front door, kitchen and bathroom). This includes properties adjacent to, or on the same land as, the host’s principal residence.” p17

<sup>7</sup> **The Scottish Government define secondary letting** as: “a type of short-term let involving the letting of a room or rooms or the entire property, where the host does not normally live.”p9

- **The control areas will allow planning authorities to designate all, or parts of their area, as a control area. Within such a designated area, the use of a dwellinghouse for secondary letting is always deemed to involve a material change of use and requires planning permission.** Outside such areas, the current case-by-case consideration would continue to apply.
- At 5.7, the consultation document states: *“The requirement to seek planning permission in a control area would not, of itself, imply any predisposition to refuse consent. However, as planning applications are required to be determined in accordance with local development plans, it would be open to individual planning authorities to consider the inclusion of policies relating to short-term lets in their relevant local plans.”*<sup>8</sup>
- The Scottish Government propose that any planning permission which is granted would be valid for a **default period of ten years** (unless a longer or shorter period is set by the authority) but that local authorities should have the power to revoke planning permission after that time.
- On transitional arrangements, the Scottish Government propose that local authorities have the power to set a **grace period** during which a host may submit a planning application for an existing secondary let and during which no enforcement action would be taken against them.
- The Scottish Government also propose to remove permitted development rights within a control area.<sup>9</sup>

c. **Licensing (Chapter 6)**

- The licensing scheme will be established by the Licensing Order made by standard affirmative order under **section 44 of the 1982 Civic Government Act**. The overall policy rationale for licensing is to **ensure the health and safety of guests, hosts and neighbours**.
- **All short-term lets will require a license** and each licence will have a **unique reference number (URN)**. This means that it does not matter for how many or few nights per year the accommodation is advertised for short-term let, or actually let, a licence is still required. There are no exceptions.
- Local councils will have the power to introduce licensing conditions *“from a menu of options”* to address local concerns, e.g. imposing restrictions on noise levels at night or littering.
- While the licensing scheme will be operated by local councils, **the Scottish Government will specify mandatory conditions** that must apply across Scotland.
- Subject to Holyrood approving the Licensing Order, **local authorities will be able to implement a licencing scheme from 1 April 2021**.
- However, the Scottish Government recognise that some local authorities will be further ahead in terms of preparing for licensing. For that reason, they will **give local authorities discretion as to when they bring the provisions into force in their area**. However, all local authorities must have a live licencing scheme open to receive licensing applications by **1 April 2022**.
- **The mandatory conditions for the licensing scheme will apply across Scotland for all types of short-term let** and most of these relate to safety. At the application stage, some conditions will rely on **self-declaration** and others will require **verification**. Properties must be in compliance with the mandatory conditions at the time of application.

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<sup>8</sup> p18

<sup>9</sup> Currently, a dwellinghouse may be used for secondary letting for up to 28 days in any calendar year without a requirement for planning permission.

MANDATORY LICENSING CONDITIONS		
Condition	Self-Declaratory	Requires Verification
<b>Safety</b>		
Repairing Standard	X	
Displaying of licence in the accommodation	X	
Safety awareness	X	
Gas safety		X
Carbon monoxide safety		X
Electrical safety		X
Smoke detectors and heat alarms		X
Furnishings	X	
Legionella risk assessment	X	
Maximum occupancy		X
<b>Other</b>		
Display licence number	X	
Display EPC rating		X
Insurance cover	X	
Relevant tax will be paid	X	
Mortgage (or tenancy) compliance	X	
Planning permission and conditions	X	

- In addition to those mandatory powers above, **local councils will have discretionary powers to add license conditions to address local needs and concerns.** This could include:
  - Conditions on preventing anti-social behaviour
  - Limitations on property layout
  - Further limits on occupancy
  - Littering and waste management
  - Noise conditions (i.e. physical alterations such as replacing wooden floors)
  - Meeting guests on arrival
  - Arrival and departure curfews (e.g. not allowing guests to check-in or check-out between 11pm and 7am without reasonable excuse)
  - Additional data on letting (i.e. providing the local council with information on the number of nights their accommodation was let)
  - Prohibited condition: nights per year limit. The Scottish Government propose to prohibit local councils from setting a nights per year limit on secondary letting as a routine licensing condition.
  - Fees: to cover the cost of the establishment and running costs of licensing. While the Scottish Government will not specify the amount councils can charge, they intend to *“specify the parameters of the fee charging regime, within which we would expect local authorities to operate.”*<sup>10</sup>
- A licence can be granted for a period up to **3 years** and needs to be renewed thereafter. Local authorities will have flexibility as to the duration of licenses.

<sup>10</sup> p29

- They want to make the application process *“as straightforward as possible”* but set out some important steps that need to be followed:
  - Notification requirements: an applicant would need to notify neighbours within a 20m distance of the property, including all residents on a tenement stair and neighbouring tenement stairs
  - Links to any planning application: local councils could be given the power to combine the notification requirements so that neighbours are not notified twice about the same proposal.
  - Information required on an application: this will need to include information about the host and the property, including the mandatory safety requirements and other license conditions.
  - Local authorities will have the power to visit a property as part of the application process
  - Host checks: an applicant must be a *“fit and proper person”* to be licensed as a host (i.e. relevant criminal convictions, being disqualified as a private landlord, having had an STL or HMO licence revoked etc).
- The Scottish Government will make appropriate **transitional arrangements** to allow operators to continue operating until a licence has been granted or refused.
- At 6.85, they note: *“We anticipate that some authorities may receive large volumes of applications for licenses and planning permission and sufficient time needs to be allowed for these to be processed.”*<sup>11</sup>
- The Scottish Government are proposing to create **two grace periods** which follow each other and summarised their proposal in the following table. Local councils can determine the length of each grace period but the total may not exceed two years.

Period	Rules for hosts
First period	<ul style="list-style-type: none"> <li>• Existing hosts can operate without a licence</li> <li>• Existing hosts should use this time to make a licence application</li> <li>• New hosts must not operate without a licence</li> <li>• Any host must cease operating if their licence application is refused</li> </ul>
Second period	<ul style="list-style-type: none"> <li>• Existing hosts can operate without a licence but only if they have submitted an application and it has not been determined</li> <li>• New hosts must not operate without a licence</li> <li>• Any host must cease operating if their license application is refused.</li> </ul>
After the end of the second period	<ul style="list-style-type: none"> <li>• All hosts must have a licence</li> <li>• Any host must cease operating if their licence application is refused</li> </ul>

- The Scottish Government state that local councils should be *“able to recover the costs of any monitoring and enforcement work they undertake; the overall revenue from **all** fees should cover **all** establishment and running costs of the scheme.”*<sup>12</sup>
- On monitoring fees, the Scottish Government would like local authorities to be able to collect these either on renewal or as a subscription, collected no less often than annually.
- On site visits, **local authorities will have powers to inspect the property** and any records associated with the conditions. Councils will not be obliged to undertake any particular pattern of inspection – visits could be routine, triggered by a complaint – and a council must give a reasonable period of notice to the host of a routine visit. In addition, the Scottish Government

<sup>11</sup> p34

<sup>12</sup> p35

are proposing that local council should have the power to visit unannounced, *“and enter the premises forcibly if necessary”*, but *“only in very limited circumstances.”*

- Hosts will not be charged a fee for routine site visits for application or monitoring purposes but may be charged if a visit results from a breach of licence conditions. Local councils should also be able to charge a fee for any follow-up visits, or if a visit is required *“in response to one or more complaints, where it is found that there are compliance issues.”*
- The principal **controls and sanctions** for local councils will be: licence conditions imposed on application; enforcement notices; variation of licence conditions or suspension or revocation; and fines.
- The Scottish Government are proposing that the maximum level of a fine for operating without a licence should be £50,000; for failing to comply with a licence condition = £10,000; failing to notify a change = between £200-£1,000 depending on specific circumstances; making a false statement = £2,500.
- The Scottish Government are proposing to streamline the **renewal process** as much as possible and the consultation paper also outlines what this will entail.
- The Scottish Government also propose to grant local councils the power to waive some of the licensing requirements in certain circumstances (like that for late hours catering licenses). A council would be able to grant a **temporary licence** for *“homesharing and home letting”* through a simplified process where that council requires a significant amount of additional accommodation capacity over a short period (i.e. to support a large-scale event). This temporary licence must not last longer than 28 days in any calendar year.
- On data sharing, **local councils must maintain a register of hosts and licensed accommodation**. The Scottish Government will specify the data to be included in the register.
- Local authorities must publish an update to their register at least quarterly. The Scottish Government will amalgamate local authority data to produce a national report: *“This will ensure that we have a national picture of short-term let activity in Scotland.”*<sup>13</sup>