



Briefing: Short-term lets – licensing scheme and planning control areas: Consultation Analysis

Executive Summary

- The Scottish Government have published their response to the consultation on short-term let licensing and control areas.¹ They are pressing ahead with their plans, stating that there is “*insufficient reason to delay*”, and the secondary legislation will be laid at the Scottish Parliament in December 2020.
- This is to ensure that local councils can make progress in establishing licensing schemes and control areas from April 2021 “*to address what is a pressing issue for some of our communities*”.
- The Scottish Government claim that they have not ignored the impact of Covid-19 on the tourism sector, highlighting that they have amended their proposals so that hosts have until 1 April 2023 to apply for a short-term let license.

Consultation Overview

- The Scottish Government received 1086 consultation responses, the same number as the earlier 2019 consultation, and engaged through 20 virtual workshops and events at which 423 people attended.
- The document provides a summary of the consultation process, how the Scottish Government took into account the impact of Covid-19, and then sets out the main points made in respect of the definition of a short-term let, licensing and planning, and the Scottish Government’s response to those three areas.
- It also sets out the six impact assessments associated with the proposals (but not the BRIA).

Next Steps

- The Business Regulatory Impact Assessment will be published separately next week, alongside the SSIs. The SSIs will be discussed at the Scottish Parliament’s Local Government and Communities Committee and will also have to be approved by the whole parliament.
- The regulations are expected to come into force on **1 April 2021**.
- The Scottish Government intends to produce two guidance documents in **Spring 2021**, one for local authorities and the other for hosts/platforms.
- Councils will have until **April 2022** to open their licensing scheme for applications.
- Existing hosts in Scotland will have until **1 April 2023** to apply for a licence no matter where in Scotland they operate.
- By **April 2024**, all hosts providing short-term let accommodation in Scotland should be licensed.

¹ Scottish Government, *Consultation report on proposals for a licensing scheme and planning control areas for short-term lets in Scotland* (December 2020). Url: <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-consultation-analysis/>

a. **Implementation Timetable & Covid-19 (see Chapter 4 of consultation document)**

“Perhaps the greatest number of comments centred on whether to proceed with regulation at this time or to delay it.” (Kevin Stewart MSP, Ministerial Foreword)

“A number of respondents raised the issue of the timing of these proposals and whether the Scottish Government had taken the impact of COVID-19 on the tourism sector into account.” (Executive Summary)

“We are not placing additional requirements on hosts in the midst of the COVID-19 pandemic...I am aware, of course, of the impact of the pandemic. Following the consultation, we have removed local authority discretion to set a deadline shorter than one year for existing hosts to make an application for a licence. We did this to help make the scheme easier to understand and enforce for all those working across local authority areas but it also means that existing hosts in Scotland will have until 1 April 2023 to apply for a licence no matter where in Scotland they operate. I very much hope that tourism in Scotland will have recovered strongly from the impact of the pandemic by that point.” (Kevin Stewart, Ministerial Foreword).

Scottish Government Response: Use of powers under the Control Area Regulations are entirely at local authorities’ discretion, so we see no need to amend the coming into force date for these Regulations.

- The Scottish Government previously failed to acknowledge the impact of Covid-19 on the sector when setting out the proposals but are now at pains in this response to say that this has been taken into account.
- A considerable amount of respondents mentioned the timing of these proposals and whether the Scottish Government had taken the impact of COVID-19 on the tourism sector into account.
- While the tourism sector raised the impact of COVID-19 on their businesses, **some local authorities raised the impact of COVID-19 on their ability to process current licensing scheme applications, never mind an additional scheme.**
- However, **they see no grounds to delay the first milestone** (April 2022 for the opening of licensing applications) as they need to respond to *“those communities who are suffering”*. They also note, in a worse case scenario, *“an amending instrument in the next Parliament could be used to push back the implementation date.”*

a. **Definition of a Short-Term Let (see Chapter 5)**

- **Unconventional dwellings:** the Scottish Government agree that static unconventional dwellings should be included within the scope of the Licensing Order.
- **Purpose-built student accommodation** (i.e., halls of residence): this is already covered by HMO legislation so should not be included.
- **Aparthotels:** should not fall within scope of planning regulations and aparthotels comprising whole buildings should not fall under the LO.
- **Relationship to the PRS and HMOs:** they are not changing the boundaries of what falls within the definition of a PRS tenancy or an HMO but working only in the domain not covered by these regimes
- **Accommodation provided as part of a person’s work:** tied accommodation should be excluded from the definition.

- **Definition of a family:** they will broaden the family exemption to cover a wider range of family relationships
- **Educational stays with families:** they will exclude home sharing with the host(s) for the principal purpose of advancement of the guest's education
- **Arrangements for lodgers:** the landlord-lodger arrangement is more akin to a flat share so there will be no change.

b. Planning Control Areas (see Chapter 6)

- **Material change of use:** the Scottish Government will issue guidance in respect of: (a) what constitutes a material change of use with respect to the use of dwellinghouses as short-term lets outside control areas; and (b) relevant considerations in determining a planning application in respect of change of use to a short-term let in any area.
- **Reverting to residential use:** the Scottish Government will provide clarification through guidance.
- **Revocation of planning permission:** they will not make provision mirroring the advertisement consent process at this time and will set out in guidance the existing powers available to local authorities in respect of secondary letting with planning permission already granted. They will set out in guidance that local authorities should consider applying a discontinuation condition of 10 years when granting planning permission for secondary letting in a control area.
- **Removal of permitted development rights:** there should be no such permitted development right within control areas and there is no change required to give effect to this. Further, there is, and will be, no permitted development right outside control areas either.
- **Process for establishing a control area:** (1) Planning authorities should consult on proposals for control areas; (2) Community councils should be notified as part of the awareness raising of consultation; (3) Ministers will be asked to approve control areas and variations which expand the area they cover; and (4) Ministers will be notified of variations which reduce their extent or when control area designations are cancelled.
- **Transitional arrangements:** the Scottish Government will set out more details in guidance to assist local authorities in applying control area designations effectively. They provided the following clarification:

“If, after a short-term let control area is designated, the use of a dwellinghouse is changed to secondary letting this use will constitute a material change of use and will require planning permission.

If the use of a dwellinghouse has been changed to secondary letting before a short-term let control area is designated, then under the current law planning permission would be required if:

a) the change of use was a material change of use, and

b) the change of use occurred in the last 10 years (assuming no enforcement action had been taken in the meantime).

This means that, where long-standing businesses can evidence use as short-term let for more than 10 years (without previous enforcement action), they can continue to operate in control areas.”

c. **Licensing (see Chapter 7)**

- **Mandatory conditions²:** the Scottish Government will amend the mandatory conditions to: (1) add a new condition relevant to properties with private water supplies; (2) set the minimum level of public liability insurance at £5 million; and (3) make other modest improvements to, for example, electrical safety provisions.
- **Condition on planning permission:** the Scottish Government will modify the mandatory licensing condition to limit it to control areas. In other areas, they will not require local authorities to ask about planning permission on licensing application forms (although they may use their discretionary powers to set additional conditions).
- **Conditions on taxation and mortgage or tenancy terms:** they will not include reference to taxation or mortgage or tenancy agreements as part of the mandatory licensing conditions. The Scottish Government will set out in guidance for hosts and platforms that hosts should be aware of these obligations and satisfy themselves that they comply with them ahead of submitting an application for a licence.
- **Other licence conditions which local authorities may require:** the Scottish Government will set out options that local authorities may wish to consider in guidance. They want to avoid “*arbitrary inconsistency in similar conditions*” across councils – if this approach does not work, they will bring an amending order setting out a menu of discretionary conditions in the next Parliament.
- **Fees:** it will be a mandatory condition of a licence for the fees to be paid on a timely basis.
- **Application process:** the Scottish Government will clarify the provision in the Licensing Order so that fit and proper person checks are carried out on all those with an interest in the property, including joint owners and all those involved in the day-to-day management of the property. They will also not use the term “host” in the Licensing Order and will work with stakeholders on the right terminology for guidance.
- **Fit and proper person:** the Scottish Government will set out the grounds for what constitutes a fit and proper person in guidance, rather than in the Licensing Order.
- **Notification requirements:** the Scottish Government will give local authorities responsibility for notifying neighbours of a licensing application and any significant proposals for variation and will set out details about who should be notified about licensing or planning applications (beyond neighbours) in guidance.
- **Variation, suspension and revocation:** any host who continues to operate can be fined for operating without a licence. Reporting an offence is a matter for local authorities to manage. If a licence application is going to be revoked, or an application refused, they expect the local authority to act reasonably with respect to any guests staying at the accommodation at this time, and work with the applicant or licensee to make suitable arrangements before any offence would be declared or reported. The Scottish Government will set out in guidance that hosts should refund guests for any days paid for that could not be provided following refusal, suspension or revocation.
- **Offences and fines:** None of the three increases to the maximum level of fine can be made through secondary legislation and they aim to make these changes early in the next Parliament through provision in a suitable Bill.

² A revised list of mandatory requirements is set out in Annex C of the consultation paper.

- **Imprisonment for operating without a licence:** they will amend the Licensing Order in the next Parliament (through an amending order or provision in a suitable Bill) to make provision for imprisonment as a last resort for hosts who continue to operate without a licence.
- **Renewal and notification of changes:** the Scottish Government will remove the three-year limit on the duration of a licence at renewal. Licensing authorities must set out the circumstances in which they would grant licences for longer than three years on renewal. They will also move the burden of notification of neighbours on application from the host to the licensing authority. This will also apply to renewal applications. Licensees must notify local authorities of any (proposed) changes that affect the conditions of their licence.
- **Temporary licences and exemptions:** the Scottish Government will apply 1982 Act provision on temporary licences without amendment. The 1982 Act sets a duration of six weeks, which would address concerns in relation to the use of temporary licences for the Edinburgh Festival and other events that last a number of weeks. They will allow licensing authorities to be able to exempt, on application, the use of premises for short-term lets from the requirement to have such a licence: (a) in respect of any particular occasion; or (b) for a specified single continuous period not exceeding 6 weeks in any period of 12 months.
- **Data sharing with platforms:** It will be an offence for a host to operate without a licence. The primary duty rests with the host to cease advertising and cease operating. When a licence is refused or revoked, the host must take down listings on platforms.

Impact Assessments

The consultation document also provides a summary of the following six impact assessments (excluding a BRIA):

- A Children's Rights and Wellbeing Impact Assessment (CRWIA)
- The results summary of Equalities Impact Assessment (EQIA)
- A Data Protection Impact Assessment (DPIA)
- A summary assessment against the Fairer Scotland Duty aims
- An Island Communities Impact Assessment (ICIA)
- A summary of the pre-screening document for the Strategic Environmental Assessment (SEA).