

# **Short Term Lets**

## **Consultation on a licensing scheme and planning control areas in Scotland**

**September 2020**

# **Short-Term Lets: Consultation No. 2**

## **CONTENTS**

### **Ministerial Foreword**

- 1. Executive summary**
- 2. Glossary of terms**
- 3. Introduction**
- 4. Definition of short-term lets**
- 5. Control Area Regulations**
- 6. Licensing Order under the 1982 Act**
- 7. Responding to the consultation**

### **Annexes**

- A. Design principles**
- B. Planning legislation**
- C. Mandatory licence conditions**

## Foreword by Kevin Stewart MSP, Minister for Local Government, Housing and Planning



I am pleased to present the Scottish Government's detailed proposals for the regulation of short-term lets in Scotland.

I believe our proposals for a licensing scheme and short-term let control areas set out in this paper are evidence-based and right for Scottish circumstances. We have worked quickly to develop detailed proposals and now we are using the powers that we have in the Civic Government (Scotland) Act 1982 and the

Planning (Scotland) Act 2019 to put in place a regulatory framework during this Parliament.

In April 2019, our first consultation set out our understanding of the benefits of and issues around short-term lets, the principles that would help to guide our approach, and some proposed approaches to regulation. We held consultation events throughout Scotland with residents, guests, hosts, platforms, businesses and local authorities. I heard first-hand about the benefits of, and the many issues around, short-term letting, and we received more than 1,000 consultation responses.

We also commissioned research to explore the impact of short-term lets on communities and neighbourhoods in five very different areas across our country.

The views and evidence from our consultation and research showed broad consensus for some form of regulation. I want to act now in order to allow local authorities and communities that face the most severe pressures to manage those more effectively.

The proposals for secondary legislation in this paper allow us to make progress in this Parliament to address a pressing issue for some of our communities, but they will not unduly curtail the many benefits of short-term lets to hosts, visitors and the Scottish economy. We will monitor and evaluate the impact of our proposals to ensure that they are effective and targeted. I am willing to bring a Bill before Parliament in the next session if we continue to see issues; to do so now would result in unnecessary delay.

I believe the proposals in this paper take a robust but proportionate and fair approach to the regulation of short-term lets.

**Kevin Stewart MSP**  
**Minister for Local Government, Housing and Planning**

# 1. Executive Summary

- 1.1. Short-term lets have become the subject of much controversy in some parts of Scotland and evoke strong opinions. Our 2018-19 Programme for Government made a commitment to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.
- 1.2. The Short-Term Lets Delivery Group was established in 2018 to assess the evidence base and the impact, positive and negative, of short-term lets, identify the existing powers councils have and explore whether further measures are required. The Group comprises officials from across relevant areas of government including: better regulation, community empowerment, economy, housing, licensing, planning, tax and tourism.
- 1.3. In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The 2019 consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. The paper noted the range of approaches adopted in cities and countries around the world and asked for opinions on the types of short-term lets which should be regulated and the controls which should be applied. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas.
- 1.4. In May 2019, the Scottish Government commissioned Indigo House, in collaboration with IBP Strategy and Research and Professor Rae from the University of Sheffield, to address gaps in the available evidence on the impact of short-term lets on housing and communities. The research combined both secondary data analysis of information published by Airbnb and surveys of residents and hosts, and in-depth interviews involving residents, hosts, community actors and local businesses. Five different areas were selected for study: Edinburgh's Central ward (the Old Town, New Town and Tollcross); Glasgow City Centre ward (Merchant City, Anderston and Yorkhill); East Neuk of Fife and Landward ward (coastal towns, excluding St Andrews); Fort William; and Skye.
- 1.5. Broadly speaking, the same themes, benefits and concerns were highlighted by people at consultation events, those responding to the consultation and the independent research. The reports on the consultation and research were published on 28 October 2019 and can be found here:  
<https://consult.gov.scot/housing-services-policy-unit/short-term-lets/>

- 1.6. On 8 January 2020, Kevin Stewart MSP, Minister for Local Government, Housing and Planning, [announced plans to regulate the short-term let sector](#) in the Scottish Parliament:

*“First, I intend to establish a licensing scheme for short-term lets using powers under the Civic Government (Scotland) Act 1982. Secondly, I am prioritising work to give local authorities the power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019. Finally, we will review the tax treatment of short-term lets to ensure that they make an appropriate contribution to the communities that they operate in.”*

- 1.7. Work to implement the regulations was paused in March 2020 because of the coronavirus (COVID-19) pandemic but resumed in July 2020. The Scottish Government aims to lay the regulations giving local authorities powers to license short-term lets and introduce control areas in December 2020 so that they can be in force by spring 2021.
- 1.8. This consultation covers the definition of short-term lets, the establishment of control areas under the Planning (Scotland) Act 2019 and the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982. The review of tax treatment is being progressed separately and is outside the scope of this consultation.
- 1.9. The purpose of this consultation is to help the Scottish Government ensure that the legislation laid at the Scottish Parliament in December is as efficient and effective as possible. We want your help in getting the details right. We are **not** consulting on whether to implement a licensing scheme or control areas **nor** the broad framework of the approach. For this reason, the response form is narrowly focused on identifying issues and solutions only.
- 1.10. The delay caused by COVID-19 means that this consultation is only open for one month (a shorter period of engagement than originally planned). **The consultation closes on Friday 16 October 2020.**

## 2. Glossary of terms

2.1. In this consultation paper, the following abbreviations in respect of legislation will be used:

<b>“the 1982 Act”</b>	means the <a href="#">Civic Government (Scotland) Act 1982</a> ;
<b>“the 1997 Act”</b>	means the <a href="#">Town and Country Planning (Scotland) Act 1997</a> ;
<b>“the 2016 Act”</b>	means the <a href="#">Private Housing (Tenancies) (Scotland) Act 2016</a> ;
<b>“the 2019 Act”</b>	means the <a href="#">Planning (Scotland) Act 2019</a> ;
<b>“the Control Area Regulations”</b>	means the statutory instrument being instructed under powers in section 26B of the 1997 Act (as inserted by section 17 of the 2019 Act);
<b>“GPDO”</b>	means the <a href="#">Town and Country Planning (General Permitted Development) (Scotland) Order 1992</a> ;
<b>“the Licensing Order”</b>	means the statutory instrument being instructed under powers in section 44 of the 1982 Act;
<b>“UCO”</b>	means the <a href="#">Town and Country Planning (Use Classes) (Scotland) Order 1997</a> (SI 1997/3061);

2.2. The following definitions are used in respect of the **actors** in the system:

<b>“accrediting organisation”</b>	means an organisation promoting higher industry standards and best practice for the short-term lets sector, by offering advice or certification to hosts;
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<b>“actor”</b>	means any one of the class of persons and organisations interacting with the Licensing Order and Control Area Regulations;
<b>“additional guest”</b>	means a person residing in the accommodation as part of a short-term let, accompanying the principal guest;
<b>“channel manager”</b>	means a person or organisation providing a service to a host which enables them to advertise and accept bookings through multiple platforms;
<b>“Destination Management Organisations” (DMOs)</b>	means an organisation providing commission-free marketing of accommodation by pointing to the host’s website or booking system (i.e. they do not take bookings directly);
<b>“guest”</b>	means a person occupying accommodation for the purposes of a short-term let;
<b>“holiday letting agency”</b>	means an organisation which takes responsibility for all aspects of making accommodation available for short-term lets (marketing, bookings, queries, cleaning etc.), i.e. offering all the functions of a hosting intermediary combined with those of a platform;
<b>“host” (or “licencee”)</b>	means a person or company providing accommodation for short-term letting, including commercial landlords (note that the host may not be the owner or person who lives at the property <sup>1</sup> );
<b>“hosting intermediary”</b>	means a person or company allowing hosts to outsource some or all of their functions in respect of services provided to guests during their stay;

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<sup>1</sup> Sometimes the host (in home sharing or home letting) may also be a tenant (i.e. the host is renting from a landlord). In other circumstances, the resident owner of the property may outsource the hosting to another person or organisation.

<b>“local authority”</b>	has its usual meaning and, for the purposes of this consultation, they are the planning authorities and licensing authorities;
<b>“neighbour”</b>	means, for our purposes, someone whose permanent residence is in close enough proximity to a short-term let to have a legitimate interest in its business, e.g. potentially affected by safety, noise, litter, nuisance;
<b>“platform”</b> (sometimes known as Online Travel Agencies or OTAs)	means an online marketplace, advertising or brokering service, such as Airbnb, booking.com and others, allowing hosts to offer properties for short-term lets;
<b>“principal guest”</b>	means the guest in whose name the booking is made and who is responsible for adherence with the terms and conditions of the booking;
<b>“trade association”</b>	means a body representing the interests of some or all hosts, and possibly other actors as well.

2.3. Additionally, the following definitions will be used:

<b>“2019 consultation paper”</b>	means <i>Short Term Lets: Consultation on a Regulatory Framework for Scotland</i> , Scottish Government (April 2019)
<b>“accommodation”</b>	means the room, rooms or property let to the guest(s) as a short-term let;
<b>“control area”</b>	means a short-term let control area designated under section 26B of the 1997 Act;
<b>“dwellinghouse”</b>	means, for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) such as a house, flat, cottage etc. <sup>2</sup> ;

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<sup>2</sup> I.e., taking its common law meaning as set out in [Planning Circular 10/2009](#).

<b>“PDR”</b>	means permitted development rights under the GPDO;
<b>“HMO”</b>	means a house in multiple occupation, being a property rented out by at least three (unrelated) people who share the bathroom or toilet and kitchen, and is the only or main residence of the people living there;
<b>“home sharing”</b>	means a type of short-term let involving the letting of a room or rooms where the host normally lives (i.e. their primary residence), <b>with the host in residence</b> <sup>3</sup> ;
<b>“home letting”</b>	means a type of short-term let involving the letting of a room or rooms or the entire property where the host normally lives (i.e. their primary residence), <b>when the host is absent</b> (frequently this is when the host is on holiday or away on business, for example) <sup>4</sup> ;
<b>“secondary letting”</b>	means a type of short-term let involving the letting of a room or rooms or the entire property, <b>where the host does not normally live</b> ;
<b>“short-term let”</b>	is as proposed in this consultation paper (see chapter 4);

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<sup>3</sup> This was called **sharing** in the 2019 consultation paper.

<sup>4</sup> This was called **swapping** in the 2019 consultation paper.

### 3. Introduction

- 3.1. The 2019 consultation paper set out the benefits and issues arising from short-term lets. It then set out some design principles which were widely accepted. The current version of the principles is at **Annex A**. We are developing our detailed proposals informed by the evidence gathered from consultation and research and based around these principles.
- 3.2. Stakeholders have been supportive of taking an evidence-led approach and ensuring we do no more or less than we need to deliver our policy objectives. It is important that the Licensing Order and Control Area Regulations do no more or less than address the issues with short-term lets, whilst preserving as much of the benefits as possible, and following the design principles.

#### Purposes of licencing, planning and taxation interventions

- 3.3. The high-level policy purpose behind each of the three interventions (licensing, control areas and taxation) is intended to be as follows:
- **Licensing** – to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively.
  - **Control areas** – to help manage high concentrations of secondary letting (where it affects the availability of residential housing and the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.
  - **Taxation** – to make sure short-term lets make an appropriate contribution to local communities and support local services.

#### Definition of a short-term let

- 3.4. We need a clear definition of short-term lets so that the Licensing Order and Control Area Regulations are consistent and people know what is and is not covered. The proposed definition is explained in **chapter 4**. To avoid the potential for dispute in planning and licensing, and to aid enforcement, we need a definition that is as simple to understand as possible and that can sensibly be determined.

#### The Control Area Regulations

- 3.5. The 2019 Act amends the 1997 Act to enable local authorities to designate control areas, where change of use planning permission would always be

required to operate a short-term let. Our proposals for how this will work are set out in **chapter 5**. The provision in primary legislation can be found at **Annex B** for ease of reference.

- 3.6. The Control Area Regulations will be made by section 26B of the 1997 Act as inserted by the 2019 Act. Section 17 of the 2019 Act came into force on 18 May 2020<sup>5</sup> for the purposes of making regulations under section 26B(5) of the 1997 Act.

### **The Licensing Order under the 1982 Act**

- 3.7. The top priority for the proposed licensing scheme is to ensure the safety of guests, hosts and neighbours. Local authorities will also be given the power to introduce licensing conditions from a menu of options to address local issues of concern, e.g. imposing restrictions on noise levels at night or littering. Finally, it will also enable local authorities to better understand how and where short-term lets are operating in their area. The licensing scheme is to be operated by local authorities but Scottish Government will specify the mandatory conditions which must apply across Scotland. Our proposals for how the licensing scheme will work are at **chapter 6**.
- 3.8. Chapter 6 sets out how the application process will work and what information hosts need to provide with the application form. It explains how the application fee and subsequent fees for monitoring and compliance might be raised. It explains the mandatory safety and other conditions which will apply across Scotland and the discretionary conditions which local authorities might choose to apply if relevant for their areas. It sets out how compliance will be monitored and the sanctions for failing to comply with licence terms and conditions. Finally, it sets out how local authorities and Scottish Government could share and publish data to help with enforcement and understanding of levels of short-term let activity across Scotland.
- 3.9. The licensing scheme will be established by the Licensing Order made by standard affirmative order under section 44 of the 1982 Act.

### **Next steps**

- 3.10. The Scottish Government intends to lay both the Licensing Order and the Control Area Regulations in December 2020. They are expected to come into force in April 2021. However, local authorities will require time to get ready to implement them and we need to make transitional arrangements to give hosts already operating short-term lets time to comply with the new regulations.

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<sup>5</sup> In the Planning (Scotland) Act 2019 (Commencement No. 4 and Transitional Provision) Regulations 2020 (SSI 2020/67).

3.11. In order to help local authorities and others prepare for the implementation of the new regulations, the Scottish Government intends to produce two guidance documents in spring 2021, one aimed at local authorities and the other for hosts and platforms.

## 4. Definition of a short-term let

- 4.1. 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)**. Most people have an intuitive sense of what constitutes a short-term let but we now need to define it precisely.

### The 2019 consultation paper

- 4.2. The 2019 consultation paper proposed that the following conditions had to be met in order for an arrangement to be considered a short-term let:
- a) *The accommodation is made available for use for letting for a cumulative period of 28 days or more in any rolling period of 365 days. This might mean, for example, that it is advertised as being available to let.*
  - b) *At least one of the lets commencing in the same rolling period is not a private residential tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.*
- 4.3. The 2019 consultation paper excluded private residential tenancies<sup>6</sup>, which require that the tenant occupies the property (or part of it) as their only or principal home. This meant that guests would not have the same rights in law as tenants.
- 4.4. It was noted that the definition could encompass any use to which the guests put the property (i.e. including letting for holiday or for work purposes).
- 4.5. The following were listed as exclusions in the 2019 consultation paper:
- a) *licenced hotels and B&Bs and self-catering properties on their premises,*
  - b) *women's refuges,*
  - c) *homeless hostels and other temporary accommodation for homeless people,*
  - d) *accommodation for asylum seekers,*
  - e) *child or adult care homes and other council premises,*
  - f) *student halls of residence (whether used by students or others),*
  - g) *hospitals, and*
  - h) *prisons.*

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<sup>6</sup> The definition of "private residential tenancy" is set out in Private Housing (Tenancies) (Scotland) Act 2016.

## 2019 consultation report

- 4.6. The 2019 consultation report<sup>7</sup> noted a range of possible types of accommodation. In developing a definition for short-term lets, we considered the full range of possibilities, which included:
- a) Conventional, independent (no shared facilities or concierge) and static homes, such as houses, flats and cottages (typically principal homes, second homes and holiday cottages).
  - b) Less conventional static accommodation (which may be independent or rely on shared facilities, such as park homes, static caravans, chalets, huts and pods).
  - c) Quasi-hotel accommodation (also static) comprising multiple properties in a tailored building, such as aparthotels and serviced apartments. For our purposes, it may be helpful to distinguish between a conventional hotel which additionally offers self-catering, serviced apartments on the premises and a standalone set of serviced apartments. (From a guest perspective, the main difference is likely to be the ability to order prepared food and access other hotel-like facilities present in the former and absent in the latter.) There are also so-called “ghost hotels”, where a single dwelling is let out to multiple independent guests and the host is not present<sup>8</sup>.
  - d) Mobile accommodation, primarily boats, such as canal boats and yachts. Depending on the water in which the boat is moored or travelling, the relevant authority may be Scottish Canals or a port authority.

## Proposed definition for the Licensing Order and Control Area Regulations

- 4.7. 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);

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<sup>7</sup> Paragraph 38 on page 20.

<sup>8</sup> These listings may look like private rooms to let in a primary residence, but each bedroom in a two-bedroom flat, for example, could be let out separately. The guests do not live with the host, but with another guest (or guests).

- 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).
- 4.8. With regard to condition (c), we considered stipulating that the let was made for period of less than 28 days. However, the condition that the accommodation is not the guests' only or principal home dovetails better with regulation of the private rented sector under the 2016 Act, making short-term lets and private rented tenancies mutually exclusive. It also avoids a loophole whereby lets longer than 28 days (for example in respect of a worker on a 3 month contract to work away from their principal home) might not be regulated under either system.
- 4.9. The definition **includes**:
- Lets for work and leisure purposes.
  - 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.)
- 4.10. But the definition **excludes** unconventional dwellings such as caravans, pods and mobile dwellings such as canal boats.
- 4.11. **All short-term lets will require a licence.** This is what Kevin Stewart MSP, Minister for Local Government, Housing and Planning, announced to the Scottish Parliament on 8 January 2020. 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 (but see paragraph 6.135 with regard to a power to grant exemptions).
- 4.12. We are proposing to take this approach because, first and foremost, it will help protect the safety of guests in all circumstances. Secondly, it is easy to understand and enforce. The fact that all hosts require a licence is easy to communicate to hosts, guests, platforms and neighbours. All platforms and holiday letting agents should require hosts to provide a licence number for each property; and guests should expect to see licence numbers when searching and booking accommodation. Finally, neighbours do not need to

perform complex calculations adding up stays over a year to see whether a host requires a licence.

- 4.13. All secondary letting will fall within scope of control areas**, where such areas have been established.

## 5. Control Area Regulations

- 5.1. All secondary letting (short-term lets of whole properties) will be in scope of the Control Area Regulations. Research commissioned by the Scottish Government into the incidence of short-term lets in Scotland found that, in May 2019, there were just under 22,100 active listings of whole properties on Airbnb; whilst other platforms are active in Scotland, Airbnb comprises a very substantial part of this market and this figure is indicative of the scale of activity.<sup>9</sup>
- 5.2. Planning is concerned with the material change of use of a building; for example, its impact on local amenity and the character of a neighbourhood or area, safety and impact on immediate neighbours. How an individual property is advertised, managed or operated is a matter for the licensing scheme.
- 5.3. Planning permission is required for some changes of use and not for others. For example, change of use of a house to a bed and breakfast or guesthouse where not more than two bedrooms (or a single bedroom if there are less than four bedrooms) is **not** considered development and this change does **not** require planning permission<sup>10</sup>. (This is important for home sharing or home letting.) But, for example, planning permission **is** required to convert a house into flats.
- 5.4. Here we are concerned about the use of dwellinghouses for secondary letting. The term dwellinghouse is used a lot in planning law. For the purpose of the Control Area Regulations, a dwellinghouse means 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.
- 5.5. Currently, planning authorities (usually the local authority) consider on a case-by-case basis whether use of a dwellinghouse for secondary letting constitutes a material change of use requiring planning consent.
- 5.6. The Control Area Regulations will allow planning authorities to designate all or part(s) 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.

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<sup>9</sup> <https://www.gov.scot/publications/research-impact-short-term-lets-communities-scotland/pages/4/>

<sup>10</sup> This is because both use as a house and a small bed and breakfast or guesthouse is included in class 9 of the UCO.

- 5.7. 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. Whether or not the various adverse impacts that have been cited are material planning matters in respect of any individual application, and what weight to attach to them in considering the application, would continue to be assessed on a case-by-case basis within a control area.
- 5.8. We are proposing that dwellinghouses used for secondary letting can revert to residential use without planning permission.

### **Revocation of planning permission**

- 5.9. As a primary purpose of control areas is to help manage high concentrations of secondary letting, we are proposing that, in a manner similar to advertising hoardings, 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. Without such a mechanism, the granting of planning permission for use of residential property for secondary letting is a one-way ratchet, in which the number of properties which can be used for this purpose would only ever increase.

### **Removal of permitted development rights**

- 5.10. Permitted development rights allow a change to happen without planning permission. Currently, a dwellinghouse may be used for secondary letting for up to 28 days in any calendar year without a requirement for planning permission<sup>11</sup>.
- 5.11. We propose to remove this permitted development right within control areas.
- 5.12. Retaining the permitted development right would allow the letting of a property for 14 weekends (Saturday-Sunday), 9 weekends (Friday – Sunday) or a continuous period of four weeks, for example, within an control area without the need to apply for planning permission. We consider this undermines the purpose of establishing a control area, adds to the complexities of enforcement and is confusing for neighbours.

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<sup>11</sup> Schedule 1 of the GPDO allows for a 28 day permitted development right (Class 15); this is calculated on a calendar, rather than a rolling year basis.

- 5.13. The change we are proposing would not, however, prevent planning authorities adopting policies that have the effect of reinstating it, if they so wished. This means, in effect, they are being given more discretion by this change. For example, planning authorities could have a policy of universally granting planning permission for secondary letting in a control area subject to a restriction on the period for which the dwellinghouse could be let. This might be useful for large, one-off events.

### **Process for establishing a control area**

- 5.14. In terms of the process which a local authority needs to follow to establish a control area, we have sought to strike the right balance between, on the one hand, proper consultation and evidence gathering, and, on the other, avoiding unproductive bureaucracy. 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<sup>12</sup>; this seems appropriate as conservation areas have a similar effect in making planning permission mandatory within them. The conservation area process requires some form of consultation (not specified in legislation) and notification to Ministers for approval.

### **Transitional arrangements**

- 5.15. We suspect that there are a number of instances of secondary letting across Scotland operating without planning permission having been sought (i.e. operating illegally, either wilfully or in ignorance). These cases will come to light as the licensing scheme is rolled out across Scotland, whether or not the secondary letting is taking place in a control area.
- 5.16. As a matter of policy, we want to encourage hosts to apply for licences (and planning permission where this is required). They will be discouraged from doing so if enforcement action is taken for prior operation without planning permission and/or they are prevented from continuing their business pending determination of their planning (and licensing) application.
- 5.17. Therefore, we 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. (Note that enforcement action is not normally taken following receipt of a planning application and pending its determination.)

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<sup>12</sup> As set out in sections 61 and 62 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

## 6. Licensing Order under the 1982 Act

- 6.1. All short-term lets will require a licence.
- 6.2. Research commissioned by the Scottish Government into the incidence of short-term lets in Scotland found that, in May 2019, there were just under 31,900 active listings on Airbnb. The majority (69%) of these active listings were for whole properties, with the remainder largely composed of private rooms (30%).
- 6.3. The licensing system aims to address the safety concerns and enable local authorities to better understand how and where short-term lets are operating in their area. The licensing system is to be delivered by local authorities but the Scottish Government will specify the mandatory and other possible conditions for the licence. Local authorities will have the power to introduce licensing conditions from a menu of options to address local issues of concern, e.g. imposing restrictions on noise levels at night or littering.

### Coming into force

- 6.4. Subject to the Scottish Parliament approving the Licensing Order, local authorities will be able to implement a licencing scheme from 1 April 2021. We recognise that some local authorities will be more advanced in their planning to do this than others. For this reason, we are giving 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.
- 6.5. Even when the scheme comes into force in a local authority area, transitional arrangements will be required to allow existing hosts time get a licence and local authorities time to process the licence applications, see paragraph 6.84 below.

### Mandatory conditions

- 6.6. The mandatory conditions for the licensing scheme will apply across Scotland (i.e. in all local authority areas) and for all types of short-term let. Most of these relate to safety. At the application stage, some conditions will rely on self-declaration and others will require verification. A list of all proposed mandatory requirements, and whether we consider they are likely to require verification or would be self-declaratory, is set out at **Annex C**. They are explained further below.
- 6.7. Properties must be in compliance with the mandatory conditions at the time of application. Where verification is required, it must be possible to complete

verification at the point an application is submitted. The method for verification shall be determined by the local authority. They might request photographs and documentary evidence or they may wish to visit the property to inspect it and/or relevant documentation.

- 6.8. Compliance with licence conditions is the host's responsibility (even where they are not the owner of the accommodation).

#### Existing standards

- 6.9. A number of standards and requirements already exist for residential properties including: the Tolerable Standard; the Repairing Standard; standard terms for HMO licensing; landlord registration requirements; and various Fire Regulations. The proposed mandatory conditions are drawn from these existing standards and requirements. Many hosts will already be complying with these standards as some are already legal requirements and others are a matter of good practice.

#### Repairing Standard

- 6.10. The Tolerable Standard is the minimum standard for all housing, and a home which falls below this standard is considered to be unfit for human habitation<sup>13</sup>.
- 6.11. The Repairing Standard is higher (and all housing which meets the Repairing Standard must meet the Tolerable Standard). Currently, private residential tenancies and HMOs are required to meet the requirements of the Repairing Standard. But tenancies of less than 31 days for the purpose of a holiday are not subject to the Repairing Standard.
- 6.12. There was a general consensus from consultation responses that there should be parity in standards between short-term lets and private residential tenancies. We consider it appropriate that short-term lets must meet the Repairing Standard.
- 6.13. A tenement flat does not fail the Repairing Standard if work cannot be undertaken due to the majority of owners refusing consent. We propose that this would apply to short-term let accommodation in tenements.

#### Displaying of licence in the accommodation

- 6.14. The host must display the licence in a prominent place within the property, alongside any licence conditions, so that guests can see it.

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<sup>13</sup> Set out in the Housing (Scotland) Act 1987 and amended in the 2006 Act.

## Safety awareness

6.15. The host must clearly and prominently display the following information in the property for guests to see:

- Information highlighting issues of electrical and fire safety in the property.
- Details of how to summon the assistance of emergency services if necessary.
- A copy of the Gas Safety Record.
- A copy of the Electrical Installation Condition Report (EICR).
- A copy of the Portable Appliance Testing Report (PAT).

## Gas safety

6.16. For all properties with a gas supply, the host must arrange for a gas safety check to be carried out by a gas safe registered engineer, on all gas pipes and appliances (for example fire, hob, oven and boiler) in the property which have been supplied by the host. This must be done every year.

6.17. After each annual check, the engineer signs a Gas Safety Record, which notes the results of the checks and confirms whether each gas appliance meets the safety standard it needs to. The Gas Safety Record should be made available for guests to see.

## Carbon monoxide safety

6.18. The host must ensure the accommodation has a way to warn if carbon monoxide is present in a concentration that is dangerous for people. The property must meet requirements in relation to satisfactory carbon monoxide detection as set out in the Tolerable Standard:

*“There must be installed a CO alarm which meets the requirements of BS EN 50291:2001 in the same room as any gas appliance.”*

## Electrical safety

6.19. The host must comply with the following conditions in relation to electrical safety:

- a) The host must ensure that all electric fittings and items in the property are in a reasonable state of repair and in proper and safe working order.

- b) As part of this duty to keep electric fittings and items in a reasonable state of repair, the host must arrange for an electrical safety inspection to be carried out at least every 5 years.
- c) That inspection must be carried out by a qualified person who then issues two reports:
- an Electrical Installation Condition Report (EICR) on any fixed installations; and
  - a Portable Appliance Testing Report (PAT) on moveable appliances - and the inspector should also stick a label on each tested item which sets out the inspection date, and each label should be signed by the inspector.

6.20. The host must make copies of both reports available for guests to see.

6.21. If the tester says that testing should be more frequent than once every five years (for example, once every 3 years), then the host must follow this advice.

#### Fire safety

6.22. The host must ensure compliance with Fire Safety Regulations made under Part 3 Fire (Scotland) Act 2005 which state that:

*“It is for the person or person with duties under the legislation to determine what fire safety measures are appropriate to provide on the basis of an assessment of risk.”*

6.23. All hosts must ensure that a suitable and sufficient Fire Risk Assessment is carried out to identify and determine what safety measures are appropriate for their particular property, and put in place those measures. Due regard should be given to [Fire safety guidance for existing premises with sleeping accommodation](https://www.gov.scot/publications/practical-fire-safety-guidance-existing-premises-sleeping-accommodation/)<sup>14</sup> guidance, with the property encompassing the accommodation as a “relevant premises”.

#### Smoke detectors and heat alarms

6.24. The host must ensure the property meets requirements in relation to satisfactory smoke and heat alarms as set out in the Tolerable Standard.

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<sup>14</sup> <https://www.gov.scot/publications/practical-fire-safety-guidance-existing-premises-sleeping-accommodation/>

## Furnishings

- 6.25. The host must ensure that all furnishings comply with the standards set out in the Furniture & Furnishings (Fire Safety) Regulations 1988 (as amended). This means all upholstered furniture (like settees, arm chairs and dining chairs with soft seat coverings), and all mattresses, should have labels attached to them which show that they meet these Regulations.

## Legionella risk assessment

- 6.26. The host must assess the risk from exposure to Legionella to ensure the safety of their guests, in accordance with HSE guidance on [Legionella and Landlords' Responsibilities](#)<sup>15</sup>.

- 6.27. This applies to all accommodation, not just those with a private water supply.

## Maximum occupancy

- 6.28. Overcrowding in a property can cause safety issues (for example by impeding quick and safe fire evacuation), as well as other concerns for neighbours, for example around noise or antisocial behaviour. Therefore, we propose that local authorities will specify a maximum occupancy condition with each licence. Local authorities must do this but may use their own criteria to set appropriate occupancy limits.
- 6.29. In the case of home letting or secondary letting, local authorities might want to set a figure based on the number of single and double bedrooms. For example, a property with four double bedrooms might have a maximum occupancy of eight people.
- 6.30. In the case of home sharing, the home will be occupied by not only the guests but also the host's household and any family or friends they have staying over. For home sharing, local authorities may wish to specify both:
- a) a limit to the number of guests staying in the property based on the size of the accommodation; and
  - b) a limit to the total number of people staying in the property **whilst guests are also staying**.
- 6.31. For example, if a host is letting one double bedroom in a two bed flat, the maximum occupancy would be two guests. But the local authority may also wish to specify that no more than four people in total stay overnight in the property whilst guests are residing.

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<sup>15</sup> <https://www.hse.gov.uk/legionnaires/legionella-landlords-responsibilities.htm>

- 6.32. In order to determine an appropriate maximum occupancy limit, local authorities may wish to request further information about the household size and physical space, such as floorplans showing sleeping areas including beds, bathrooms, living areas and kitchen facilities. Local authorities may also wish to physically inspect the property.
- 6.33. Local authorities will also have the power to set lower maximum occupancy limits for reasons other than safety (see paragraph 6.45), for example to manage noise and nuisance around larger properties.

#### Other mandatory conditions

- 6.34. Other mandatory conditions on hosts (not relating to safety directly) include:
- a) **Licence number** - the licence number must be displayed on any advert or booking platform.
  - b) **Energy Performance Certificate (EPC) rating** - the EPC rating must be displayed on any advert or booking platform<sup>16</sup>.
  - c) **Insurance** - the host must confirm that they have appropriate insurance cover for buildings and public liability.
  - d) **Taxation** - the host must confirm that they are aware of their obligations to pay tax on profit earned from short-term lets, as well as any local taxes for which they are liable.
  - e) **Mortgage (or tenancy) terms** - the host must confirm that letting the accommodation would not breach any mortgage lending conditions (or tenancy terms), if applicable.
  - f) **Planning permission** – the host must confirm they have applied for, or obtained planning permission (if required), that it remains current and that they are complying with any planning conditions.
- 6.35. The requirement (a) to display the licence number extends beyond the host to any platform, holiday letting agency or channel manager. It applies to any listing for a short-term let, whether published in print or electronically (e.g. website or app).

#### Other licence conditions which local authorities may require

- 6.36. Local authorities will have discretionary powers to add licence conditions to address local needs and concerns. These conditions can be applied

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<sup>16</sup> Having a valid EPC certificate when advertising a property is required by the Energy Performance of Buildings (Scotland) Regulations 2008.

generally (to all licences), in certain circumstances (e.g. tenement buildings) and individually to a specific licensee (though this is only likely if problems have arisen).

- 6.37. Some local authorities might want to set out standard conditions (which must be published) which would apply to all short-term lets in their area (possibly differentiating between the different types of short-term let).
- 6.38. We have set out below the conditions which local authorities might want to consider applying.

#### Preventing anti-social behaviour

- 6.39. There are already a range of powers available to local authorities to deal with antisocial behaviour through provisions in the Antisocial Behaviour etc. (Scotland) Act 2004. Incidents involving antisocial behaviour should be reported to the local authority who will be able to investigate and take appropriate action.
- 6.40. We wish to allow local authorities to be able to include a condition requiring the host to manage their property in a way to prevent anti-social behaviour as far as reasonably practicable, and to effectively deal with any instances of anti-social behaviour. This is common in HMO licence conditions.
- 6.41. Local authorities may wish to combine any discretionary condition relating to anti-social behaviour with a condition requiring hosts to meet all guests at the property (see paragraph 6.52 below) in order to explain safety arrangements, and set out house rules.

#### Limitations on alterations to property layout

- 6.42. Local authorities may wish to specify that no alterations may be carried out to the layout of the property without the prior written approval of the licensing authority. This could, for example, include an increase to the number of beds (for example replacing two single beds in a room with two bunk beds).
- 6.43. It may be the case that local authorities request this information as part of determining an appropriate maximum occupancy limit, as required by mandatory safety conditions. In which case, they may want to require the host to submit a floorplan of the property showing the following:
- bedrooms, including the number of beds per bedroom;
  - bathrooms and toilets;

- living areas, including details on any sleeping facilities within these areas, for example sofa beds; and
- kitchen facilities.

6.44. The floorplan should contain dimensions and/or areas for each room.

#### Further limits on occupancy

6.45. Local authorities must set occupancy limits as part of ensuring that the short-term let operates safely (see paragraph 6.28). However, the local authority may wish to set additional limits on occupancy (over and above those required for safety reasons) to help address other issues, such as noise, litter and anti-social behaviour.

#### Littering and waste management

6.46. Littering can be a problem in common areas in properties with shared facilities, such as tenements, as well as public areas within the vicinity of a short-term let.

6.47. Additionally, some short-term lets generate a larger amount of waste (due to increased turnover of guests and cleaning) than typical residential use, putting strain on waste storage and bins. This can lead to intentional or unintentional littering (from waste overflow).

6.48. Therefore, any reference to littering can be taken to extend to commercial premises using residential waste provision and putting a strain on shared facilities.

6.49. Local authorities may wish to require that adequate facilities must be provided for the storage and disposal of refuse, and recycling. They may wish to require the host to make the guests fully aware of their responsibilities.

#### Noise conditions

6.50. Local authorities may wish to impose conditions to minimise noise impact on neighbouring properties to short-term lets, particularly those in flatted, terraced or semi-detached dwellings. Noise conditions may include:

- a) physical moderations to the property in order to minimise noise impact on neighbours, such as:
  - replacing wood floors with carpeted or vinyl flooring;
  - installing door closers to prevent doors being slammed; or

- b) installation of noise monitoring kit within the property to log noise, and notify the host or hosting intermediary of any noise above a certain specified limit.

6.51. Where physical alterations are required, local authorities may wish to visit the property or accept photographic or video evidence that the alterations have been completed to their satisfaction.

#### Meeting guests on arrival

6.52. Local authorities may require the host to ensure that the principal guest is met in person on arrival to receive the keys to have the “house rules” (including relevant licence conditions) explained to them. This may be done by the host or hosting intermediary. Points to cover might include:

- a) maximum occupancy;
- b) being considerate of neighbours (noise and nuisance);
- c) waste and recycling arrangements; and
- d) security and departure arrangements.

6.53. This would also provide additional benefits to hosts in ensuring that the number of guests staying in the property was within the occupancy limit, as well as an opportunity to share local knowledge and recommendations with guests in order to improve the visitor experience, and promote local businesses.

#### Arrival and departure curfews

6.54. We consider that a meet and greet condition (as above) is preferable to setting a curfew, as it is easier to enforce and more flexible (e.g. if guest arrival is delayed through no fault of their own). However, local authorities may impose a condition prohibiting guest check-in and check-out from the property within a defined time period. This might help minimise noise impact in common areas, particularly from luggage.

6.55. To avoid arbitrary variation across Scotland, Scottish Government will set out in guidance the preferred approach to setting any such curfew. This might be, for example, that guests should not check-in or check-out between 11 pm and 7 am without reasonable excuse.

#### Additional data on letting

6.56. Local authorities may wish to require hosts to provide details to the local authority on the number of nights their accommodation was let. For example, they may wish to specify the following details:

- a) total number of (person-)nights let per year;
- b) total number of lettings per year; and
- c) total number of (person-)nights available to let per year.

6.57. This would provide useful additional data on short-term let activity in their area and potentially help with ensuring compliance with licensing conditions. This condition could be linked to monitoring and renewal processes.

Prohibited condition: nights per year limit

6.58. We propose to **prohibit** local authorities from setting a nights per year limit on secondary letting as a routine licence condition. For example, setting a 90 night limit may just mean that the property is unoccupied for 270 nights per year which is a wasted resource.

6.59. We may advise in guidance on other conditions that may not be appropriate because they could have unintended consequences.

6.60. Note that local authorities **would** be permitted to issue licences with specified shorter periods of letting for home sharing and home letting in conjunction with offering a discounted fee (see below).

## Fees

6.61. Local authorities will be able to charge fees to cover the establishment and running costs associated with the licensing scheme. Establishment costs including setting up the system and preparing staff to run the scheme. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs.

6.62. We will not be specifying the levels that local authorities should charge, as this will depend on the volume of activity in their area and their cost base. However, we intend to specify the parameters for the fee charging regime, within which we would expect local authorities to operate. Local authorities might wish to consider:

- a) Different fees for different types of short-term let, with lower fees for home sharing and home letting than for secondary letting.
- b) A non-refundable application fee in conjunction with a monitoring subscription fee (payable monthly or annually). Any monitoring fee payable with the application fee would be refundable if the application was refused. (Alternatively, local authorities might want to charge a fee on renewal.)

- c) Fees to vary by property size, with fees increasing based on number of rooms or occupants, as can be the case with HMO licencing, for example.
  - d) Discounts for low volume home sharing or home letting. For example, applying a 50% discount for someone only letting a spare room during August.
  - e) Incentives for compliance and disincentives for non-compliance. This might include, for example: granting longer licences on renewal (which has the effect of reducing the per annum fee cost to the host) if no issues have arisen; offering a discount on any monitoring fee if no issues have arisen; or charging a fee for visits resulting from a breach of licence conditions.
- 6.63. We do not expect local authorities to provide any refunds on fees paid, apart from in the circumstances in (b) above.
- 6.64. Local authorities will need to ensure their charging regimes are robust and fair, especially in respect of any changes requested or proposed by the host after a licence has been granted. There will be circumstances in which the change will mean that the host should be paying a different fee, for example because they want to accommodate more guests or operate for more of the year than qualifies for any discount. Similarly considerations apply where a host wishes to resume operation after a period without a licence; local authorities must avoid any perverse incentive for hosts to switch on and off a licence to minimise fees.
- 6.65. We will provide guidance to local authorities on how they might use the powers to set fees to best effect. Whilst we have provided a relatively broad empowering framework, some local authorities may choose to have a simple set of fees and others may choose a more elaborate structure; the choice will depend on local circumstances.

### **Application process**

- 6.66. An application for a licence will be for either:
- a) a licence which can cover both home sharing and home letting (i.e. where the host's home is being used); or
  - b) a licence for secondary letting.
- 6.67. A licence can be for granted for a period of up to 3 years, after which it needs to be renewed. Local authorities will have flexibility as to the duration of licences they grant and may grant licences for different time periods to different applicants provided they have clear and transparent criteria for doing so.

6.68. We are seeking to make the application process as straightforward as possible but there are some important steps which will need to be followed.

#### Notification requirements

6.69. We are proposing that the applicant needs to notify neighbours within a 20 metre distance of the property, including all residents on a tenement stair and neighbouring tenement stairs.

#### Links to any planning application

6.70. Where planning permission is also required, we propose to give local authorities the power to combine the notification requirements so that neighbours are not notified twice about the same proposal.

6.71. In some cases, planning permission will be required for secondary letting, either by virtue of the property being in a control area or by virtue of the local authority's planning policy. When an application for a licence is made in respect of secondary letting, either:

- a) planning permission is not required;
- b) planning permission is required and has already been obtained;
- c) planning permission is required and a concurrent planning application has been made; or
- d) planning permission is required and no application has been made.

6.72. Cases (a) and (b) present no difficulty (other than the local authority confirming the case) and the licencing application may proceed.

6.73. In cases (c) and (d), the local authority will have the power to refuse to consider the licensing application until the planning application has been made and determined or to pause the licensing application (and any statutory or other deadlines) until the planning application has been made and determined. Which of these approaches is more appropriate for each local authority may depend on the way their licensing and planning systems operate and/or the volumes of licensing and planning applications to be considered (remembering that the workload is not just generated by short-term lets).

6.74. The grounds for objection to an application must relate to the purposes of the licensing scheme or planning rules. For example, concerns relating to:

- a) safety (licensing)

- b) noise or nuisance (licensing)
- c) previous complaints (licensing)
- d) availability of residential housing (planning)
- e) impact on character of neighbourhood (planning) or
- f) the suitability of the building (planning).

Information required on an application

6.75. A licence application will need to include information about the host and the property, including the mandatory safety requirements and other licence conditions.

6.76. The application will need to include some details about the property:

- a) Address
- b) Who owns the property
- c) Number of bedrooms (and floor plan, if requested)
- d) HMO Licence Number (if applicable).

6.77. Some details about the applicant (host):

- a) Host contact details
- b) Other short-term let licences held by the host (if applicable).

6.78. Some details about the proposed short-term lets:

- a) Proposed maximum occupancy
- b) Type of short-term let licence applied for:
  - i. Home sharing (and occupancy) and/or home letting (and occupancy)
  - ii. Secondary letting
- c) Hosting intermediary contact details, including letting agent registration number (if applicable)
- d) Out of hours contact details (in case of emergency)
- e) Access arrangements for any local authority visits.

6.79. Additionally, the application form will include: information about mandatory licence conditions (see **Annex C**); any planning permission or application; and a list of neighbours notified.

#### Interaction with HMO licensing

6.80. We are proposing to keep HMO licencing and short-term let licensing separate: i.e. a short-term let licence is required, even if the host and property has an HMO licence already. This is because there is a difference between a property being occupied by longer-term residents and short-term guests. However, we are not requiring anybody applying for a short-term let licence to apply also for an HMO licence, even if the circumstances would otherwise require one.

#### Consultation with other bodies

6.81. The 1982 Act makes provision for consultation with statutory bodies, such as Police Scotland and Scottish Fire and Rescue Service, as part of the application process. There will be a significant volume of requests for information (given there are many thousands of short-term lets in Scotland) and we would encourage local authorities to consider collaborating with each other, and with Police Scotland and the Scottish Fire and Rescue Service, in terms of staffing and resourcing this work. We propose to ensure that local authority licencing officers have powers to consult with other internal departments within the authority and community councils as they see fit. Local authorities will also be able to share relevant information with each other about hosts licensed in more than one local authority area.

#### Property checks

6.82. Local authorities will have the power to visit a property as part of the application process but will not be required to do so.

#### Host checks

6.83. An applicant must be a fit and proper person to be licenced as a host of specified accommodation. We propose that relevant information includes (but is not limited to):

- a) relevant criminal convictions (and police intelligence);
- b) being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past;
- c) having had a short-term lets or HMO licence revoked by any local authority;

- d) having had an application for a short-term lets licence turned down by any local authority; and
- e) providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.

#### Transitional arrangements

- 6.84. We propose to make appropriate transitional arrangements to allow operators to continue operating until a licence has been granted or refused.
- 6.85. We anticipate that some authorities may receive large volumes of applications for licences and planning permission and sufficient time needs to be allowed for these to be processed.
- 6.86. As stated previously, we suspect that a number of properties across Scotland are operating without planning permission having been sought (i.e. operating illegally, either wilfully or in ignorance). These cases will come to light as the licensing scheme is rolled out across Scotland, whether or not in a control area. It is an important policy objective that hosts come forward to be licensed.
- 6.87. We are proposing to create two grace periods which follow each other. Hosts already operating at the time that the licensing scheme comes into force have until the end of the first period to submit a licensing application. Local authorities have until the end of the second to determine all such applications. In the first period, it is lawful to operate a short-term let without a licence. In the second period, it continues to be lawful to operate a short-term let without a licence, provided that an application has been made in the first period. At the end of the second period, operating without a licence is unlawful. It will also be unlawful to continue to operate at any time where a licence application has been determined and rejected.
- 6.88. This is summarised in the following table:

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 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 licence 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>

6.89. Local authorities can determine the length of each grace period but the total may not exceed two years. Taken together with provision at paragraph 6.4, this means that all hosts in Scotland must be licensed by 31 March 2024 at the very latest.

#### Repeat applications

6.90. The 1982 Act makes provision to prohibit repeated licence applications from the same person. Where an application is refused, the applicant cannot make another application in respect of the same property for one year. This helps provide certainty to neighbours.

#### Management and exit

6.91. Local authorities should be able to recover the costs of any monitoring and enforcement work that they undertake; the overall revenue from **all** fees should cover **all** establishment and running costs of the scheme.

#### Monitoring arrangements

6.92. The level of monitoring will be a matter for local authorities to determine and is likely to vary from area to area and, within areas, from property to property.

#### Monitoring fees

6.93. In terms of monitoring fees, we would like local authorities to be able to collect these either on renewal or as a subscription, collected no less often than annually.

6.94. On a subscription model, we suggest that the first subscription payment is payable at the time of application with the application fee. If the application fee is £*a* and the annual monitoring subscription is £*b*, the first payment would be £(*a*+*b*) followed by annual payments of £*b*. Local authorities will be able to

increase (or reduce) the monitoring subscription in accordance with the increase (or reduction) in costs, including as a result of inflation, and any changes to revenue (from changes to levels of short-term let activity).

- 6.95. Local authorities may want to reward compliance and good practice with a reduction on the monitoring fees, in a manner similar to a no claims discount on insurance products.
- 6.96. If an application for a licence is unsuccessful, any monitoring subscription element of the fee charged with the application should be refunded to the applicant (but not the application fee).

#### Site visits

- 6.97. Once a licence is granted by a local authority, the licence must be operated in accordance with the conditions that are attached to it. To ensure this is the case, local authorities will have powers to inspect both the property and any records associated with the conditions attached to the licence.
- 6.98. Local authorities will have powers to visit properties to monitor compliance with the licence but will not be obliged to undertake any particular pattern of inspection. Visits may be part of a routine pattern of inspection, triggered by a complaint or other issue or follow-up visits to confirm that an issue has been resolved. The local authority must give a reasonable period of notice to the host (or their agent) of a routine visit.
- 6.99. An unusual feature of accommodation for short-term lets (compared to other licensed premises) is that most of the time there will be no licensee, employee or representative of the licensee present on the premises. This creates particular difficulties with unannounced site visits which can be a very effective way of ensuring licence terms and conditions are adhered to at all times. Furthermore, it is highly likely that guests will be out and about for much of the time of their stay. An unannounced visit may be the only way of proving a violation of some licensing conditions (e.g. overcrowding). We are proposing that local authorities should have the power to visit unannounced, and enter the premises forcibly if necessary, but only in very limited circumstances.
- 6.100. We are proposing to give local authorities the power to accept evidence provided by or through an accrediting organisation that a host is compliant with the (relevant) terms of their licence.

#### Fees for site visits

- 6.101. 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.

6.102. We do not propose to allow local authorities to charge fees for routine site visits. However, we propose that local authorities should be able to charge a fee for any follow-up visit, i.e. where accommodation does not reach the required standard on the first visit and enforcement action is required including a follow-up visit.

6.103. We also propose that local authorities should be able to charge a fee for a visit required in response to one or more complaints, where it is found that there are compliance issues (whether or not those are the issues that were the subject of the complaint(s)). However, no fee should be charged if the complaint was frivolous or vexatious.

6.104. We are proposing that any fees should be charged from a standard pre-set tariff (by each local authority).

6.105. Where a fee is charged to a host for a visit, the local authority must produce a brief report of its findings to the host within 28 days of the visit.

#### Hosts' responsibility to ensure compliance

6.106. The host (licencee) will be responsible for ensuring compliance with the license conditions, including by the guests. Hosts must make sure that the guests are aware of relevant terms and conditions.

#### Potential issues

6.107. Some of the main concerns which residents and communities have raised in relation to short-term lets, through the 2019 consultation and research and elsewhere, include:

- overcrowding;
- noise and nuisance, including drunkenness, smoking and drug-taking;
- litter or other mess in communal areas;
- failure to maintain the accommodation property in a good state of repair;
- failure to maintain, or contribute to the cost of, communal area repairs and increased wear and tear;
- damage to property (e.g. from key boxes affixed to walls); and
- unlawful activity (e.g. using the property as a brothel).

6.108. In future, there will also be potential breaches of (other) licence conditions.

## Controls and sanctions

6.109. The principal controls and sanctions for local authorities will be: licence conditions imposed on application; enforcement notices; variation of licence conditions imposed as a result of a problem, or suspension or revocation of the licence; and fines. Fines will follow summary conviction in respect of offences around: operating without a licence; failing to comply with the licence condition; failing to notify change; and provision of false information. These are explained in more detail in the following paragraphs.

6.110. The monitoring of licence conditions through site visits, including the investigation of complaints, should be the primary route for ensuring compliance with licences and, ultimately, the vehicle for addressing issues, including the variation, suspension and revocation of licences. In other words, issues should not wait for any licence renewal process for resolution. The credibility of the licensing regime will rest to a large extent on reassuring neighbours that their concerns can and will be addressed quickly.

## Enforcement notices

6.111. Where monitoring visits reveal non-compliance with a licence, local authorities will be able to require a licensee to take action to put it right. This will usually be done by serving an enforcement notice (“non-compliance” or “improvement” notice). Such notices are likely to specify a date or date(s) by which issues should be remedied. If satisfactory action is not taken by the required date(s) to address the issues set out in a notice, licensing authorities have powers to vary, revoke or suspend a licence.

## Variation, suspension and revocation

6.112. A licensing authority can vary, suspend or revoke a licence in certain circumstances. Local authorities may do this without serving an enforcement notice if the seriousness of the breach justifies urgent action.

6.113. Licensees may appeal against being served with a variation, revocation or suspension notice.

## Offences and fines

6.114. The 1982 Act<sup>17</sup> sets out offences, including operating a short-term let without a licence. They also include non-compliance with the conditions of a licence and unauthorised changes to a property. It is also an offence to make a false statement in an application and this would also apply to renewal applications.

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<sup>17</sup> Section 7.

6.115. These attract fines on the standard scale<sup>18</sup>:

Level on the scale	Maximum fine
1	£ 200
2	£ 500
3	£1,000
4	£2,500
5	£5,000

#### Operating without a licence

6.116. It is an offence, without reasonable excuse, to carry on an activity for which a licence is required without having such a licence. Depending on the activity, different punishments apply. The default is a fine not exceeding level 4 on the standard scale.

6.117. We are proposing to amend the maximum level of fine to £50,000. We know that secondary letting of a normal home can yield much more revenue than letting under the 2016 Act. With “party mansions”, the revenue may be significantly higher.

#### Failing to comply with a licence condition

6.118. It is an offence to fail to comply with a licence condition, though it is a defence to have used all due diligence to prevent the offence. The default is a fine not exceeding level 3 on the standard scale.

6.119. We are proposing to amend the maximum level of fine to £10,000. One licence condition may be to limit the number of guests in the accommodation. Breaching this condition might lead to significantly more revenue. The fine for failing to comply with the licence condition must outweigh the profit made from such a breach.

#### Failing to notify a change etc.

6.120. It is an offence for a licence holder, without reasonable excuse, to:

- a) fail to notify the licensing authority of a material change of circumstances (level 3 on the standard scale),

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<sup>18</sup> As set out at section 225 of the Criminal Procedure (Scotland) Act 1995.

- b) make or cause or permit to be made any material change in the premises (level 3 on the standard scale),
- c) fail to deliver the licence to the licensing authority (level 1 on the standard scale).

#### Making a false statement

6.121. It is an offence to make a false statement in an application (level 4 on the standard scale).

#### Antisocial behaviour legislation

6.122. Most of the issues with antisocial behaviour raised during the consultation related to residents who could not find any way of identifying the host of a short-term let and did not know whom to contact. The licensing scheme will make these details available. It is to be hoped that most issues can be resolved amicably between neighbours and hosts without escalation. Failing that, neighbours can complain to the local authority who would be able to investigate further.

6.123. In more immediate and severe cases, there are powers available to the police to serve fixed penalty notices under the Antisocial Behaviour etc. (Scotland) Act 2004.

#### Notification of changes

6.124. Licencees will be required to notify local authorities of any significant changes relevant to their licence. Some changes will require prior approval and possibly an additional fee. This might apply, for example, in respect of the number of rooms in their home which the host intends to let out.

#### Renewal

6.125. The 1982 Act allows for licences to be granted for up to 3 years. We are proposing to streamline the renewal process as much as possible. We consider that the monitoring and compliance process is more important than the renewal process in terms of maintaining standards. In cases where there have been no valid complaints, and any inspections have been passed and there are no proposed changes to the licence, it seems unnecessary to burden hosts with a complex renewal process. Where there are complaints, these will be investigated and appropriate action taken at the time.

6.126. Only where the renewal application proposes significant changes to the licence should it be necessary to notify neighbours. Local authorities will be

required to publish a list of short-term lets operating in their area (see paragraph 6.140 below) which will include addresses and renewal dates.

6.127. It is proposed that an application for the renewal of a licence comprises:

- a) confirmation that the matters set out in the application form or previous renewal are still correct and notification of any changes (e.g. around contact details etc.);
- b) confirmation that the applicant remains a fit and proper person;
- c) confirmation that the property remains in compliance with the licence conditions, including up-to date safety certification;
- d) any request to make any changes to the terms of the licence; and
- e) confirmation that neighbours have been consulted and notified (where significant changes to the terms of the licence are requested).

6.128. Local authorities will be expected to approve licence renewal applications where there has been no change in circumstance since the previous application.

6.129. If the renewal application requests changes to the terms of the licence, then the local authority should consider these changes in a similar way as to a first application. If the local authority does not renew the licence, then the licensee will have a right of appeal.

6.130. In the case that a monitoring subscription is collected, there should be no additional fee for a renewal application. The costs to the local authority for processing renewals should be covered by the monitoring subscription.

#### Change of licensee

6.131. There will be circumstances which may result in the change of a licensee of a short-term let. Reasons for this might include personal or commercial considerations, such as death, health, divorce (of joint licensees) or a licensee who wants to sell their interests in a profitable or unprofitable entity. We propose that accommodation used for short-term lets can continue operating whilst there is a change in licensee. Anybody wishing to take over a licence of a short-term let will have to submit a new application.

#### Exit

6.132. The 1982 Act makes provision for the surrender of licences either voluntarily or following a decision by the local authority to suspend, vary or revoke a licence.

## Resumption of activity

6.133. Local authorities may waive some or all of the application requirements where a host wishes to resume short-term let activity after a period without a licence having previously voluntarily surrendered their licence. This period may not exceed one year.

6.134. Where the local authority revoked the licence, no further application can be made by that host in respect of that property within one year of the date of revocation.

## Temporary licences with a simplified procedure

6.135. We are proposing to give local authorities the power to waive some of the licensing requirements in certain circumstances, in a manner similar to that for late hours catering licences<sup>19</sup>. A local authority will be able to grant a temporary licence for home sharing and home letting through a simplified process where the local authority needs a significant amount of additional capacity over a short period. This might be to ensure sufficient accommodation to support a large scale event, for example.

6.136. We are proposing that the procedure for granting a temporary licence would be as follows:

- a) a reduced application form;
- b) a reduced (or nil) fee;
- c) no requirement to submit paperwork with the application form (i.e. 100% self-certified); and
- d) no site visit prior to granting a temporary licence.

6.137. A temporary licence must not last longer than 28 days in any calendar year and the dates on which it is valid must be specified on the licence. A temporary licence would be subject to the same mandatory licence conditions, monitoring and enforcement powers. (I.e. the local authority would have the right to visit and enforce licence terms.) A temporary licence must have a licence number which is subject to the same requirements as a full licence.

6.138. We will set out in guidance more information as to how and when the Scottish Government considers this power might be used appropriately.

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<sup>19</sup> See section 42 of the 1982 Act.

## Data sharing

### Register of short-term lets

6.139. Local authorities must maintain a register of hosts and licensed accommodation. The Scottish Government will specify the data to be included in the register, which will include the following as a minimum:

- Applicant (host) name;
- Hosting intermediary name (if applicable);
- Property address (and property URN);
- Council ward;
- Date of application;
- Licence status (refused, pending, live, revoked, lapsed etc.);
- Short-term let type (home sharing and/or home letting; or secondary letting);
- Maximum occupancy.

6.140. Local authorities must publish an update to their register at least quarterly. This published record will include the addresses where short-term lets are operating in a local authority area and will make it easy for residents to track activity. Scottish Government will amalgamate local authority data to produce a national report; but local authorities are responsible for maintaining an accurate register. This will ensure that we have a national picture of short-term let activity in Scotland, closing a significant gap in knowledge that currently exists.

6.141. Local authorities will get their data from licence applications. However, this may be supplemented by local authorities imposing a requirement on hosts to provide them with data on nights available to let, and nights booked, each year. This usage data would be useful to understand better the level of short-term let activity and build an evidence base to support further targeted policy interventions, where necessary.

### Local authority information sharing

6.142. Local authorities will have the power to share information about the reasons for suspending, varying or revoking a licence with each other in the case that a host is licensed in more than one local authority area.

## Nationally consistent format for licence numbering

- 6.143. Each licence will have a unique reference number (URN). We are aware that there are a number of URNs for property already in operation across Scotland, including those used by the Post Office, National Records of Scotland, the Land Registry and the valuation roll.
- 6.144. We are proposing to require a consistent licence numbering system for short-term lets across all Scottish local authorities. We will not use any of the existing URNs for the licence number but we will specify the format of a new URN. This is to prevent people using an existing URN to purport to have a licence. It will also allow local authorities to build in fraud prevention measures (i.e. not issuing sequential or predictable numbers). Finally, it will allow local authorities to issue a different URN on receipt of an application to that for a confirmed licence, if they wish to do so.
- 6.145. To avoid duplication, the licence number will include a local authority identifier (e.g. two digits or two letters) so that local authorities can issue licence numbers independently.

## 7. Responding to the Consultation

We are inviting responses to this consultation by **Friday 16 October 2020**.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/housing-services-policy-unit/short-term-lets-licensing-scheme/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 16 October 2020.

Unfortunately, **we are not able to consider responses by e-mail or by post. We will not be able to consider late responses.**

### Handling your response

Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

### Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [shorttermlets@gov.scot](mailto:shorttermlets@gov.scot)

## Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## Consultation Response Form

This consultation paper sets out the Scottish Government's proposals for the definition of short-term lets, the establishment of control areas under the Planning (Scotland) Act 2019 and the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982. The review of tax treatment is being progressed separately and is outside the scope of this consultation.

The purpose of this consultation is to help the Scottish Government ensure that the legislation laid at the Scottish Parliament in December is as efficient and effective as possible. We are only seeking comments which will help us in getting the details right. We are **not** consulting on whether to implement a licensing scheme or control areas **nor** the broad framework of the approach.

We are not asking specific questions. We are interested in any issues you have identified with our proposals and how they might be resolved. Please be as brief as you can and refer back to the relevant paragraph number(s) in the consultation paper.

<b>CHAPTER 4. DEFINITION</b>
<b>Issues and how to resolve them:</b>
<b>CHAPTER 5. CONTROL AREA REGULATIONS</b>
<b>Issues and how to resolve them:</b>
<b>CHAPTER 6. LICENSING ORDER</b>
<b>Issues and how to resolve them:</b>

## More about you (optional)

**Q1:** Which of the following best describes you. Please choose all that apply:

- Accrediting organisation
- Guest
- Host
- Hosting intermediary
- Letting agency or destination management organisation
- Local authority or other public sector organisation
- Other hospitality (e.g. hotel or B&B owner)
- Neighbour (affected resident) or community group
- Platform
- Regulatory body
- Trade association
- Other, please state

**Q2:** How did you hear about the consultation? Please choose all that apply:

- Online at gov.scot or Citizen Space
- Press coverage (local or national TV, radio, social or print media)
- Referred by local authority / government / MSP / councillor
- Referred by host
- Referred by platform
- Other, please state

# Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

## DESIGN PRINCIPLES (UPDATED)

The regulatory framework should be:

1. **Proportionate:** minimising bureaucracy and barriers to innovation or tourism and encouraging high-tech entrepreneurship, to benefit the Scottish economy
2. **Promoting safe practice:** for hosts, guests and local residents - includes health, fire safety and prevention of nuisance or crime
3. **Robust:** with no loopholes in regulation and taxation
4. **Responsive:** councils are empowered to implement the regime that responds to local needs, of both residents and businesses (e.g. new festivals starting up)
5. **Built on existing powers and solutions as much as possible,** e.g. existing noise and nuisance powers
6. **Fair across the hospitality sector,** maintaining a level playing field both between new entrants and established operators and between short-term letting and other parts of the hospitality sector
7. **Flexible and future-proofed:** not assuming that today's approaches or platforms will be the approach taken in future
8. **Easy to understand by all:** visitors, hosts and platforms, this will aid enforcement as different participants will be able to identify compliance failures
9. **Cost effective:** the approach should seek to minimise administrative costs to all participants
10. **Straightforward and effective to enforce:** making good use of existing enforcement mechanisms and data that is easy to obtain.

## **PLANNING LEGISLATION**

### **Planning (Scotland) Act 2019**

#### **17 Meaning of “development”: use of dwellinghouse for short-term holiday lets**

(1) The **Town and Country Planning (Scotland) Act 1997** is amended as follows.

(2) After section 26A insert—

#### **“26B Material change of use: short-term lets**

(1) A planning authority may designate all or part of its area as a short-term let control area for the purposes of this section.

(2) In a short-term let control area, the use of a dwellinghouse for the purpose of providing short-term lets is deemed to involve a material change of use of the dwellinghouse.

(3) For the purposes of this section, the following tenancies do not constitute a short-term let—

(a) a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016,

(b) a tenancy of a dwellinghouse (or part of it) where all or part of the dwellinghouse is the only or principal home of the landlord or occupier.

(4) The power under subsection (1) includes the power to vary or cancel a designation.

(5) The Scottish Ministers may by regulations make further provision for the purposes of this section including, in particular, provision about—

(a) the procedure a planning authority must follow in order to make, vary or cancel a designation under subsection (1) (which may include requiring the approval of the Scottish Ministers),

(b) the form of a designation under subsection (1),

(c) what constitutes providing a short-term let for the purposes of this section, and

(d) any circumstances in which, or descriptions of dwellinghouse to which, this section does not apply.

(6) Before making regulations under subsection (5), the Scottish Ministers must consult planning authorities and such other persons as they consider appropriate.”.

## MANDATORY LICENCE 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	



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