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SHORT-TERM LETS AND PLANNING

■ circular

Scottish Planning Series

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Short-term Lets and Planning

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1. Glossary

In this circular, the following terms are used:

“the 1997 Act” means the [Town and Country Planning \(Scotland\) Act 1997](#);

“control area” means a short-term let control area designated under section 26B of the 1997 Act, as introduced by section 17 of the Planning (Scotland) Act 2019;

“the Control Area Regulations” mean the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 ([SSI 2021/154](#));

“GPDO” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223)

“licensing scheme” means the scheme established by the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/32);

“short-term let” what constitutes providing a short term let is set out in regulation 2 of the Control Area Regulations read with section 26B(3) of the 1997 Act, see also [Annex A](#) .

2. Overview

2.1 This guidance is primarily concerned with the change of use of a **dwellinghouse** to use for **short-term lets** and whether this change is a “material” change of use for the purposes of planning. It covers how consideration of whether a change is material is affected by the establishment of a short-term let control area. It also considers the process and procedures to be followed in establishing, altering or removing a control area

2.2 This Circular replaces and revokes the previous Circular 1/2021: Short-Term Let Control Areas.

3. Establishing control areas

(a) Introduction

3.1 Whether a property is inside or outside of a control area, it continues to be the case that any change of use of a dwellinghouse which is a material change of use would require planning permission¹. A change of use of a dwellinghouse to use for short-term lets occurring after a planning authority has designated an area as a control area will, (with some exceptions as set out in annex A) be deemed a material change and therefore always require planning permission. The exceptions set out in annex A are exceptions only to the rule that such a change of use is deemed to be a material change of use. They do not alter the underlying position that a change of use that is a material change of use requires planning permission.

3.2 The purpose of control areas is to ensure that all changes of use of dwellinghouses to use for the purpose of short term letting are brought within the scope of the planning system without the need to consider if a particular change of use is or is not a material change of use. This should help manage levels of short-term letting where these affect the availability of residential housing or the character or amenity of a neighbourhood, and help local authorities ensure that homes are used to best effect in their areas.

(b) Legislative basis

3.3 Section 26B of the 1997 Act allows planning authorities to designate all of their area as a control area or parts of their area as one or more control areas. They are not under a duty to designate control areas and may choose not to do so.

3.4 The Control Area Regulations are made under powers contained in section 26B of the 1997 Act. Section 26B provides that the Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes

¹ changes of use within classes of the Use Classes Order are not development and so do not require planning permission.

a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.

3.5 Section 26B of the 1997 Act and the Control Area Regulations came into force on 1 April 2021. The Control Area Regulations were amended by The Town and Country Planning (Short-Term Let Control Areas) (Scotland) Amendment Regulations 2022. These made amendments to the list of excluded accommodation and added references to excluded tenancies.

(c) Reasons and evidence

3.6 In order to designate a control area, a planning authority will need to prepare a statement of reasons for their proposal. This is an important step in explaining to people affected by the control area, and the Scottish Ministers, why the planning authority considers it necessary.

3.7 A planning authority might want to designate a control area, and so ensure that planning permission will always be required for a change of use of a dwellinghouse to use for short term letting, for one or more of the following policy objectives:

- to allow consideration of impacts on the availability of residential housing
- to allow consideration of impacts on the character or amenity of a neighbourhood; to allow consideration of impacts on different types of building.

3.8 Planning authorities should consider whether there are systemic material planning considerations across one or more areas in the planning authority area as part of deciding whether to designate one or more control areas. Systemic here might mean the same consideration repeated many times or that there is a cumulative impact from the use of dwellinghouses as short-term lets. Example indicators include:

- Lack of affordable and appropriate housing for local residents, perhaps indicated by a high share of sale volumes to, and high prices paid by, non-residents.
- Detrimental impact on local amenity, with some businesses, schools or other services that serve, and are reliant on, permanent residents closing or relocating.
- Changes to the look and feel of a neighbourhood, such as multiple keyboxes on many buildings or structures or noise on streets and in stairwells.
- Signs that local services are struggling, such as many instances of overflowing bins.
- A significantly higher level of complaints relevant to use of dwellinghouses as short-term lets from neighbours spread across a number of tenements or

properties than in a comparable area, within or outside the planning authority area.

3.9 Ultimately, it will be for local authorities to determine whether a control area is required (based on some form of consultation) taking all relevant local circumstances into account. Planning authorities should keep their control area(s), or absence thereof, under review, perhaps aligned with any review of their local development plan.

(d) Designating one or more control areas

3.10 Under the provisions of section 26B of the 1997 Act, a planning authority may designate all of its area, or any part of its area, as a control area.

3.11 The process of designating an area as a control area essentially follows three steps as set out in regulation 3 of the Control Area Regulations.

3.12 The planning authority must undertake:

- **notification and consultation:** publish notice of their proposal to designate a control area and consult on the proposal;
- **submission and approval:** submit their proposal to the Scottish Ministers and obtain their approval; and
- **publicity:** subject to approval of the Scottish Ministers, the planning authority must give notice of the designation, setting out the area to be covered and the date on which the control area will come into effect.

3.13 A similar process is followed for the variation, or cancellation, of an existing control area.

Notification and consultation

3.14 Regulation 4 sets out the process for the notification of the proposed designation of a control area. Regulation 6 sets out the process for varying or cancelling a control area designation. The purpose is to allow members of the public to be aware of, and comment on, the proposed control area.

3.15 The planning authority is required to publish notice of the proposals in a newspaper circulating in the area to be designated as a control area. The planning authority must also publish the notice on their website and send the notice to each community council within the area of the proposed control area (regulation 4(1)).

3.16 The notice must (regulation 4(2)):

- contain a statement that the planning authority proposes to designate the area as a control area and a description, in general terms, of that area;
- state how further information in respect of the proposal, including a map of the area covered by the proposal and a statement of the planning authority's reasons for proposing to designate the area as a control area, can be inspected free of charge; and,

- state how representations can be made to the planning authority and the date by which they must be made.

3.17 The planning authority must allow a minimum period of 28 days from the last date on which notice is given for the submission of representations. The 28 days begins on the date on which the last part of the required notification is completed.

3.18 Regulation 4(3) sets out that the map of the proposed control area and a statement of reasons for proposing the control area must be made available on the planning authority's website and at an office of the planning authority. The latter is important for people who cannot access this information through the internet. Planning authorities should give consideration as to how to support people without internet at home, or with disabilities that prevent them from accessing the internet, to find the information that they need.

3.19 Planning authorities may consider additional notification methods in addition to the statutory requirements (for example by leaflet drops, social media or local signage) where they consider it appropriate to do so.

3.20 Regulation 6 sets out a similar process for the variation or cancellation of a control area designation once it has been created. Where a planning authority proposes to vary or cancel a control area they must make information available and allow for representations to be made in the same way as set out above. They must publish a map showing clearly the area designated as a control area, any proposed changes to the area covered by the control area and a statement of reasons for varying or cancelling the control area, as the case may be.

3.21 Under regulation 7(1), the planning authority can modify the proposal to take account of any representation made in response to the consultation. The planning authority may not, however, make any changes to include an additional area in the control area which was not shown on the map of the control area (or proposed control area) that accompanied the consultation (regulation 7(2)).

Submission and approval

3.22 In accordance with regulation 8, where a planning authority either proposes to designate an area as a control area, or proposes to vary or cancel an existing control area, the authority is required to give notice of the proposal to the Scottish Ministers.

3.23 Where the planning authority proposes to designate an area as a control area the notice must be accompanied by:

- a map of the area which the planning authority propose to designate as a control area; and,
- a statement setting out the planning authority's reasons why the authority propose that the area should be designated as a control area.

3.24 Where the proposal is to vary or cancel a control area the notice must be accompanied by:

- a map of the affected control area;
- if the proposal is to vary a control area designation, a map of the area which it is proposed to exclude from, or include within, the control area; and,
- a statement setting out the planning authority's reasons why the authority propose that the control area should be varied or cancelled.

3.25 The approval of the Scottish Ministers is required before the planning authority can proceed to designate a control area or vary an existing control area. Although the planning authority is required to notify Scottish Ministers of their proposals to cancel an existing control area, Ministerial approval is not required for cancellation of a designation to proceed.

3.26 The Scottish Ministers can either approve or not approve the control area(s). The Scottish Ministers cannot propose amendments to the proposals.

3.27 In considering the proposals, the Scottish Ministers will seek assurance that the planning authority has:

- taken reasonable steps to raise awareness in the proposed control area(s) and consulted appropriately;
- taken account of the views expressed in consultation and considered this with any other relevant evidence; and
- come to a reasoned decision as set out in the accompanying statement.

3.28 Obviously, a range of views may be expressed in consultation and the Scottish Ministers will be looking for a coherent and considered response, recognising that it is unlikely that proposals can be modified to satisfy everyone.

Publicity

3.29 The final stage of the process of designating, varying or cancelling a control area is for the planning authority to publish notice of the designation, variation or cancellation, as the case may be (regulation 9).

3.30 For designation or variation of a control area, the notice cannot be given until after the Scottish Ministers have approved the proposal.

3.31 The planning authority must publish the notice in a newspaper circulating in the area and on the planning authority's website.

3.32 Notice of designation of an area as a control area must state:

- the date on which the area is to be designated as a control area; and
- How a copy of a map of the designated control area can be inspected.

3.33 Notice of variation of a control area must state:

- the date on which the variation is to take effect; and
- how a copy of a map showing the control area as varied can be inspected.

3.36 Notice of cancellation of a control area must:

- state the date on which the cancellation is to take effect; and
- identify the designated control area to be cancelled.

3.37 In all cases, at least 28 days must be allowed between the date of the publication of the notice and the changes taking effect.

3.38 Planning authorities may also wish to establish policies in regard to control areas through the Local Development Plan

4. Planning considerations

(a) Establishing whether a planning application is needed

4.1 Section 26B of the 1997 Act sets out that a change of use of a dwellinghouse to short term letting (as defined) in a control area will be deemed to be a material change of use and so require planning permission. The exceptions are exceptions to the effect of section 26B, i.e. whether or not there is deemed to be a material change of use under section 26B.

4.2 Regardless of whether section 26B applies to any particular change of use, it remains the case that both within and outwith a control area a material change of use of a dwellinghouse², whether to use for the purposes of short term letting or other uses, is development under section 26 of the 1997 Act and requires planning permission, unless it is a change of use between uses in use class 9 of the Use Classes Order.

4.3 Section 26B is not retrospective, meaning that the designation of a control area does not, in itself, retrospectively deem any previous change of use of a dwellinghouse to use for short-term lets within that area to be a material change of use. Section 26B applies where a change of use of a dwellinghouse occurs after designation of a control area. However, it is important to bear in mind that section 26B does not replace the existing requirements of the 1997 Act in respect of the need for planning permission for a material change of use. This means that material changes of use to short-term letting whether before or after the designation of a control area would require planning permission.

4.4 Consideration of whether the change of use is material in any particular case may include, but is not restricted to, matters such as the impact on immediate neighbours, the wider local amenity and local infrastructure of the proposed use in the proposed location.

(b) Certificate of Lawfulness of Use or Development

4.5 A Certificate of Lawfulness of Use or Development (CLUD) is in effect a mechanism whereby a person can apply to a planning authority for confirmation as to whether planning permission for a proposed or an existing use of the property is required or not. In essence, a CLUD is confirmation of the lawfulness of the change of use and so confirmation of that subsequent enforcement action would not be taken in respect of the continued use of the property. Anybody can seek a CLUD if they wish to ascertain whether an existing use is lawful.

4.6 Where a CLUD has been granted, a further planning application is not required provided the use continues to comply with the terms of the CLUD.

² Other than change of use within class 9 of the Use Classes Order

4.7 There are two types of certificate of lawfulness;

- A certificate of lawfulness of proposed use or development (under section 151 of the 1997 Act). This is applied for before the proposed use takes place.
- A certificate of lawfulness of existing use or development (under section 150 of the 1997 Act). This option is available in respect of the existing use of the building and so where a change of use has already taken place. A CLUD can be sought on various grounds including that use did not involve development ie that the change of use was not material or that no enforcement action can now be taken. This would be the case if a material change of use it took place more than 10 years previously in breach of planning control and is therefore, under section 124(3) immune to enforcement action

4.8 If a person is seeking a CLUD on the basis that the use has already been in place for at least 10 years, it is their responsibility to demonstrate this to the planning authority. Key aspects that should be evidenced include:

- the change of use occurred more than 10 years prior to the CLUD application;
- the use has continued without interruption for at least 10 years;
- the use has not materially increased or intensified during those 10 years; and
- no formal enforcement action has been taken in respect of the use.

4.9 With regard to the second bullet point above, “without interruption” does not mean that the property has to have been occupied by guests on every night for the last 10 years. A holiday home is still a holiday home, even when it is empty.

(c) Determining a planning application

4.10 Under Scottish planning legislation (the 1997 Act) , planning applications are determined in accordance with the relevant local development plan, unless there are material considerations that justify a departure from the development plan. Where a change of use from a dwellinghouse to a short-term let is considered material, a planning application will be required. Such a change of use would generally be considered to be a material change of use of a building under class 21 of [The Town and Country Planning Fees for Applications\) \(Scotland\) Regulations 2022](#) for the purpose of calculating the appropriate fee.

4.11 What is and is not a material planning consideration is not set out in legislation. This means that what constitutes a material planning consideration is a question of what is relevant to the consideration of a particular case. Each planning application is considered on a case-by-case basis; decisions made in other cases are not generally relevant to consideration of any particular case. Only those material planning considerations that apply to that particular application can be considered in determining whether it is approved or not.

(d) Development plan policy

4.12 The fourth National Planning Framework (NPF4) forms part of the statutory development plan against which planning applications are determined. Policy 30 on Tourism sets out at paragraph (e) that Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in: (i) an unacceptable impact on local amenity or the character of a neighbourhood or area; or (ii) the loss of residential accommodation where such loss is not outweighed by demonstrable local benefits.

4.13 As with all policies in development plans, this policy should be considered in terms of the wider policy objectives, and should be balanced against other policies that might be material to any particular case.

(e) Duration of planning permission

4.14 Planning authorities can impose a condition when granting planning permission to require the permitted use to be discontinued after a specified period – this is known as “planning permission granted for a limited period”.

4.15 Planning authorities may consider applying a discontinuation condition of 10 years, or such other time period as they consider appropriate, when granting planning permission for short term letting in a control area (or outside, if they see fit). The standard tests of necessity for conditions should be met in all cases.

4.16 The Scottish Ministers have powers to give directions to planning authorities in relation to the imposition of conditions. The Scottish Government has no intention of using these powers in this context at present.

4.17 Where planning permission has already been granted, planning authorities cannot easily rescind it. Issues with short-term lets arising in property which already has planning permission may be addressed through planning law if there has been a breach in planning control i.e. the terms of the planning application or conditions have been violated.

Annex A - Meaning of short-term let in a control area

Section 26B of the 1997 Act, and the Control Area Regulations define a short term let for the purposes of the control areas.

Section 26B(3) excludes:

- private residential tenancies under section 1 of the Private Housing (Tenancies) Scotland Act 2016; and
- tenancies of a dwellinghouse or part of it where all or part of the dwelling house is the only or principal home of the landlord or occupier

Regulation 2 of the Control Area Regulations defines a short-term let as provided where all of the following criteria are met:

- a) sleeping accommodation is provided in the course of business to one or more persons for one or more nights for commercial consideration,
- b) no person to whom sleeping accommodation is provided in the course of business is **an immediate family member** of the person by whom the accommodation is being provided,
- ba) the accommodation is not provided under an **excluded tenancy** (see below)
- c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,
- d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- e) the accommodation is not **excluded accommodation** (see below)

An **immediate family member** includes parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. This definition also treats children with one parent in common as siblings and stepchildren as children.

Excluded tenancy means a tenancy which is –

- a 1991 Act tenancy
- a modern limited duration tenancy
- a short limited duration tenancy
- a student residential tenancy
- a tenancy of a croft
- a tenancy of a holding outwith the crofting counties to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.

Excluded accommodation means a dwellinghouse which is, or is part of—

- residential accommodation where personal care is provided to residents,
- a hospital or nursing home,
- a residential school, college or training centre,
- secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or accommodation used as military barracks),
- a refuge,
- student accommodation,
- premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005(7) has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act.”.



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