

# **Short-Term Lets**

## **Consultation on a regulatory framework for Scotland**

**April 2019**



**Scottish Government**  
Riaghaltas na h-Alba  
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# Short-Term Lets: A Consultation

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# 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. This consultation asks for your views on what those powers should be.
- 1.2. A 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. This consultation paper draws together this wide range of policy interests in short-term lets.
- 1.3. The introduction to the consultation paper provides a summary of the available evidence, with much fuller details about the current position in Scotland and elsewhere in the world set out in a separate supporting document. There has clearly been a significant growth in short-term lets in a small timescale, and while there are significant amounts of data available about the position in Edinburgh, there is much more limited information on the position elsewhere in Scotland.
- 1.4. The Scottish Government welcomes the economic benefits which the development of new models of short-term letting brings to Scotland. However, we also recognise the problems caused by short-term lets which are summarised in this paper. Your views are invited on how they might be addressed.
- 1.5. This consultation paper outlines a regulatory approach which might involve registration and/or licensing of short-term lets, with the possible addition of a market-based mechanism to control numbers. A range of approaches have been adopted in cities and countries around the world but we need to find the right approach for Scotland and enable different areas to tailor the approach to their local needs and priorities. The consultation asks for your opinions on that as well as on the types of short-term lets which should be regulated and the controls which should be applied.
- 1.6. The paper also signposts other action being taken by the Scottish Government which may impact on short-term lets, including the developments in the Planning Bill which is currently before Parliament. The fiscal levers available to the Scottish Government also potentially have a key role to play in delivering an optimal solution. The paper therefore highlights that the Scottish

Government has committed to an independent evaluation of the Small Business Bonus Scheme for non-domestic rates and will consult this year on the principles of a locally determined tourist tax, including its application to short-term lets prior to introducing legislation to permit local authorities to introduce such a tax, if they consider it appropriate for local circumstances. The Small Business Bonus Scheme evaluation, planned to commence in June 2019, will explicitly explore the impact of the Small Business Bonus Scheme on the short-term letting market and the Scottish Government are committed to the findings being addressed in time for the 2022 non-domestic rates revaluation.

- 1.7. Your views will help the Scottish Government shape the regulatory approach to short-term lets. Questions are asked at relevant points in chapters 3 and 4 and restated in the response form in chapter 5, which is also available online at <https://consult.gov.scot/housing-services-policy-unit/short-term-lets>

## 2. Introduction

- 2.1. This consultation paper invites views on the regulation of short-term lets in Scotland. Scotland's economy benefits hugely from tourism, but it should not be at the expense of local communities. The Scottish Government wants to keep welcoming visitors to Scotland while ensuring that local residents can continue to live, work and flourish, right across Scotland – whether in our cities, towns or rural communities.

### Consultation Questions

This paper invites responses to Questions on a range of issues which the Scottish Government will take into account when considering proposals for regulation. A full set of questions can be found in Chapter 5, together with a copy of the response form, which is also available online at:

<https://consult.gov.scot/housing-services-policy-unit/short-term-lets>

- 2.2. This paper takes forward the commitment in the Scottish Government's 2018-19 Programme for Government<sup>1</sup> to:

*“work with local government, communities and business interests to ensure that local authorities have the appropriate regulatory powers [in relation to short-term lets] to allow them to take the decisions to balance the needs and concerns of their communities with wider economic and tourism interests.*

*These powers will allow local authorities to ensure a safe, quality experience for visitors, whilst protecting the interests of local communities.”*

- 2.3. The Scottish Government is committed to taking this issue forward in a way that is informed by the available evidence, including the views of those affected.
- 2.4. This consultation paper therefore also sets out the factual background on the short-term rental sector in Scotland, including the substantial growth in collaborative accommodation platforms, particularly Airbnb, below and in much greater detail in Annex A - *The Short-Term Rental Sector, Housing and Tourism in Scotland*, together with an overview of the regulatory approaches taken elsewhere in the world in Annex B - *Regulation Outwith Scotland*.

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<sup>1</sup> 'Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019', September 2018 (page 97) <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

## The Scottish Expert Advisory Panel on the Collaborative Economy

- 2.5. The Scottish Expert Advisory Panel on the Collaborative Economy<sup>2</sup> reported that peer-to-peer accommodation expands the range, choice and flexibility of accommodation for tourists in Scotland and the Scottish Government welcomes the positive contribution which it can make to Scotland's economy.
- 2.6. However, the Panel also highlighted a number of issues and challenges which exist in relation to peer-to-peer accommodation, and short-term lets more broadly. The Panel recommended that:
- Platforms should be required to make a greater commitment to providing upfront information.
  - There should be clear, communicated routes to escalating complaints.
  - Anyone renting out their property via a digital platform should be shown – and indicate their acceptance of – specific local rules and regulations regarding any thresholds of usage stipulated by the local authority prior to being accepted onto the platform.
  - Platforms serve up – or link to – clear guidance to providers as to their income, business and council tax liabilities that result from providing goods and services through collaborative platforms.
  - Minimum health and safety thresholds already exist at a Scotland level. Regulations should reflect the development of the collaborative economy by specifically referring to peer-to-peer accommodation, to give greater clarity to providers and users.
- 2.7. The Panel also made a number of recommendations specific to peer-to-peer accommodation, particularly in relation to safety, which are set out in Chapter 3.
- 2.8. The Scottish Government's Response<sup>3</sup> to the Panel's report aspired to the collaborative economy successfully contributing to the overarching purpose of creating a fairer, more equal Scotland and acknowledged the need to balance the potential benefits to the Scottish economy with a recognition of the needs of communities:

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<sup>2</sup> 'Scottish expert advisory panel on the collaborative economy: report', January 2018

<https://www.gov.scot/publications/scottish-expert-advisory-panel-collaborative-economy-report/>

<sup>3</sup> 'Collaborative economy report response: June 2018' <https://www.gov.scot/publications/scottish-government-response-scottish-expert-advisory-panel-collaborative-economy-report/>

*“A socially responsible collaborative economy that builds upon and embeds our Fair Work values is central to achieving [a fairer, more equal Scotland] and will deliver the greatest benefits to all in Scotland. ...*

*We understand the calls for new controls over the short-term letting of residential properties in some areas of the country and welcome the Panel’s consideration of this issue. We must strike the right balance for our local economies and communities. We have to ensure that residents can find the right homes and that they can afford to live, and enjoy living, in their neighbourhoods. We also need to help tourists find places to stay. This is a complex issue but it is one that a number of cities globally have been tackling and we will make sure Scotland comes up with solutions to fit its distinct needs, whilst learning from other places”.*

### **The Short-Term Lets Delivery Group**

- 2.9. Work on this issue has been taken forward by the Short-Term Lets Delivery Group (STLDG), whose establishment was announced on 10 July 2018, in the Scottish Government’s Response to The Scottish Expert Advisory Panel on the Collaborative Economy. The STLDG comprises officials from across the Scottish Government, including housing, planning, local government, licensing law, tourism, community empowerment and consumer policy.
- 2.10. The work of the STLDG is guided by the National Performance Framework<sup>4</sup>: in particular by the National Outcomes for Economy (*We have a globally competitive, entrepreneurial, inclusive and sustainable economy*) and Communities (*We live in communities that are inclusive, empowered, resilient and safe*).

### **Collaborative economy online accommodation platforms in Scotland**

- 2.11. As noted by the Scottish Expert Advisory Panel on the Collaborative Economy, there are now a range of collaborative platforms offering tourist accommodation in Scotland, in addition to the traditional self-catering sector see Annex A - *The Short-Term Rental Sector, Housing and Tourism in Scotland*). The [Expert Panel’s report](#) recorded that these platforms providing short-term lets represent the largest sector of the collaborative economy in Europe.

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<sup>4</sup> <https://nationalperformance.gov.scot/>

- 2.12. The following paragraphs provide some key facts in relation to those collaborative economy online accommodation platforms operations in Scotland. For more detailed information see Annex A - *The Short-Term Rental Sector, Housing and Tourism in Scotland*. For information on the terminology used, see Chapter 3 - *Definition of Short-Term Lets*.
- 2.13. A number of collaborative economy online accommodation platforms operate in Scotland, including Airbnb, HomeAway and HouseTrip, alongside other online accommodation platforms which have a greater focus on traditional tourist accommodation sectors, such as Hotels.com and Trivago. The following paragraphs focus on Airbnb for two reasons; firstly because of its dominant position among the peer-to-peer accommodation sector, and secondly because there are more publicly available data and reports on Airbnb activity compared to other similar platforms<sup>5</sup>.

### **Airbnb in Scotland**

- 2.14. Airbnb has operated in Scotland since 2009 and is the largest peer-to-peer accommodation platform across the world. According to Airbnb, in 2017 the economic activity of Airbnb hosts and guests in Scotland was equal to £482.9 million<sup>6</sup>. VisitScotland estimated that Airbnb accounted for 5% of all tourism accommodation in 2016 ([Scottish Expert Advisory Panel Report](#)).
- 2.15. According to a [2017 Airbnb report](#), between July 2016 and July 2017, there were 21,900 active Airbnb listings<sup>7</sup> in Scotland. **Figure 1** shows the growth in available (not necessarily new) Airbnb listings in Scotland between 2015 and 2017, using AirDNA<sup>8</sup> data.

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<sup>5</sup> Airbnb also provided the Scottish Government with significant amounts of information and data on its operations in Scotland prior to the Scottish Expert Advisory Panel on the Collaborative Economy publishing its report.

<sup>6</sup> <https://www.airbnb.com/citizen/airbnb-debuts-top-15-locations-across-scotland/> and <https://press.airbnb.com/airbnb-unveils-data-on-top-15-destinations-across-scotland-for-the-first-time-expands-experiences-on-airbnb-across-the-country/>

<sup>7</sup> Based on an [Airbnb report](#), an active Airbnb listing is defined as “a listing that appears on the website during a search. Active listings do not necessarily have availability on a particular date or at all.”

<sup>8</sup> AirDNA is a market-based platform that tracks information on Airbnb listings by using publicly available data from the Airbnb website.



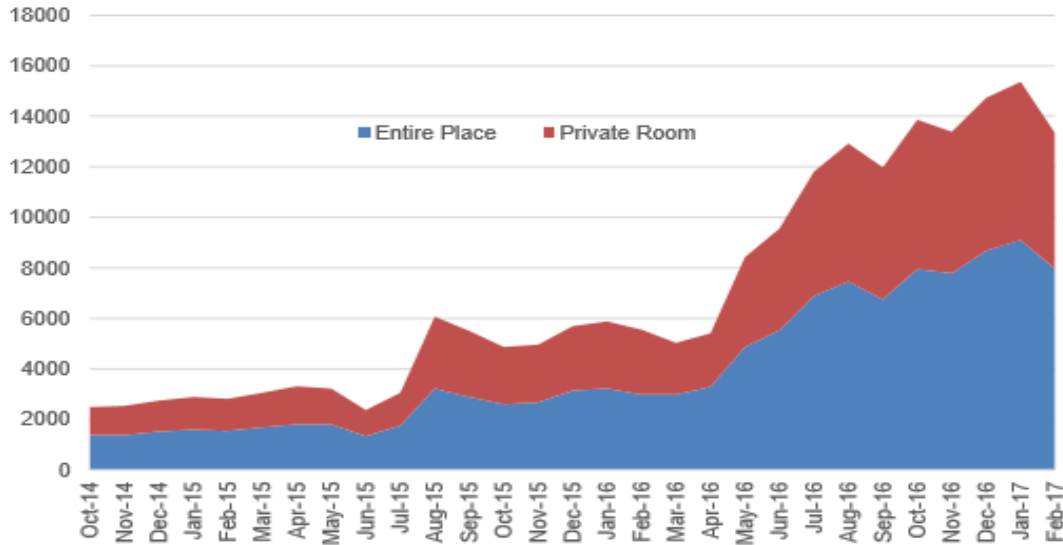


Figure 1 – The growth of Airbnb in Scotland – Total available listings 2015-2017  
 Source: Retrieved from an [Indigo House 2017 report](#) (p. 26). Data sourced from AirDNA.

2.16. Based on Inside Airbnb<sup>9</sup> data (retrieved from their website), there has also been an increase in the number of listings in Edinburgh (Table 1).

Year	Listings	Change on year
July 2016	6,272	
July 2017	9,189	+46.5%
July 2018	12,578	+37%

Table 1 – Number of Airbnb listings in Edinburgh 2016-2018  
 Source: Inside Airbnb data

2.17. Overall, the number of Edinburgh Airbnb listings doubled between July 2016 and July 2018. Figure 1 shows a similar pattern for Scotland as a whole.

### Characteristics of Airbnb Listings

2.18. Not all Airbnb listings are the same. The key differences are:

- The type of accommodation offered (entire home or private room);
- The availability or occupancy of the listings (number of nights a listing is available or is booked);
- The number of listings operated by each host – single listings or multi-listings (listings that belong to hosts who advertise more than one property).

2.19. Renting out for short periods or renting out a spare room while the owners/occupiers remain in the property typically represents amateur activity

<sup>9</sup> Inside Airbnb is an independent, non-commercial (open source) provider of data to explore how Airbnb is really used around the world.

and can be distinguished from running a business, more typically renting out an entire home/apartment for long periods and/or operating multiple listings.

## Type of Accommodation

2.20. In Scotland in 2017, 59% of Airbnb listings were entire homes and 40% were spare rooms (**Table 2**). Similarly, in Edinburgh, the majority of Airbnb listings are for entire homes.

Listing type	Share of listings (As of 1st July 2017)	Year on year growth (01/07/2014 - 30/06/2015)	Year on year growth (01/07/2015 - 30/06/2016)	Year on year growth (01/07/2016 - 30/06/2017)
Entire Home	59%	78%	94%	55%
Shared Room	1%	294%	64%	6%
Spare Room	40%	85%	80%	43%

Table 2 – Types of listing on Airbnb in Scotland  
Source: Retrieved from an [Airbnb 2017 report](#) (p. 4).

2.21. In July 2018, 61% (7,665) of the Airbnb listings in Edinburgh were entire homes/apartments; 39% (4,873) were private rooms; and 0.3% (40) shared rooms (Inside Airbnb data 28 July 2018).

## Availability or Occupancy

2.22. According to Airbnb, a typical listing in Scotland operated for 40 nights annually in 2016/17, which increased to 44 nights in 2017/18<sup>10</sup>. Slightly more than half of Airbnb listings in Scotland (54%) in 2016/17 were booked for under 30 nights/year<sup>11</sup>. However, 28% of the listings in Scotland were booked for more than 60 days and 19% for more than 90 days. Similar patterns are displayed for Edinburgh and Glasgow.

2.23. According to a 2018 Edinburgh City Council report<sup>12</sup>, just over 1 out of 5 Airbnb listings in 2017 were operating in excess of 90 days/year (data from

<sup>10</sup> Information retrieved from the following Airbnb reports: [https://2sqy5r1jf93u30kwzc1smfqt-wpengine.netdna-ssl.com/wp-content/uploads/2017/03/ScotlandOverview\\_v4.pdf](https://2sqy5r1jf93u30kwzc1smfqt-wpengine.netdna-ssl.com/wp-content/uploads/2017/03/ScotlandOverview_v4.pdf) and

<https://press.airbnb.com/airbnb-unveils-data-on-top-15-destinations-across-scotland-for-the-first-time-expands-experiences-on-airbnb-across-the-country/>

<sup>11</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2018/01/expert-advisory-panel-on-the-collaborative-economy-november-2017/documents/e9919995-7338-401b-8af9-b96f20beab3c/e9919995-7338-401b-8af9-b96f20beab3c/govscot%3Adocument>

<sup>12</sup>

[https://www.edinburgh.gov.uk/news/article/2525/recommendations\\_to\\_improve\\_regulation\\_of\\_short\\_term\\_let\\_industry%C2%A0](https://www.edinburgh.gov.uk/news/article/2525/recommendations_to_improve_regulation_of_short_term_let_industry%C2%A0) p. 3

July 2017). According to the report, properties let for more than 90 days per year were highly likely to be operated on a commercial basis rather than as a main place of residence.

## Number of Listings

- 2.24. There are different types of participants in the collaborative economy. In the peer-to-peer accommodation platforms, such as Airbnb, there are both amateur and professional hosts. Professional hosts are more likely to be operating multiple listings compared to amateur hosts who are usually renting out a room or their main residence while they are away for short periods.
- 2.25. According to a [2017 Airbnb report](#) in Edinburgh, Glasgow, the Highlands, Fife and Argyll and Bute, the majority of hosts had one listing (78%) on the platform and a further 14% had two listings. Just 2% of all hosts had 5 or more listings.

## Impact of Growth in Short-Term Lets

- 2.26. The statistics reported above reflect a significant increase in the number of short-term lets provided via the new collaborative economy online platforms. In addition to renting rooms in people's homes, a substantial part of the growth in activity has been in renting whole properties. Chapter 3 - *Definition of Short-Term Lets* sets the context for this paper's discussion of this issue, while Chapter 4 - *Regulation of Short-Term Lets in Scotland* describes the main issues arising, outlines local authorities current powers to regulate them and considers proposals to improve the current position in Scotland

### Question 1

Are you aware of any additional data on the impacts of short-term lets (over and above that set out in Annex A – *The Short-Term Rental Sector, Housing and Tourism in Scotland* and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation?

### 3. Definition of Short-Term Lets

#### Definition of a short-term let

- 3.1. There is currently no statutory definition of what constitutes a short-term let in Scotland. The term is widely used but has different meanings depending on the speaker and the context.
- 3.2. Where a dwelling is available for let for 140 days or more in the financial year, it is classified as self-catering holiday accommodation, exempt from Council Tax<sup>13</sup> and becomes instead liable for non-domestic rates. This requires that it be entered by the local Assessor on the Valuation Roll and given a “rateable value” which is the basis for calculating the non-domestic rates liability.
- 3.3. Further, the rental income of “Furnished holiday lettings”<sup>14</sup> (i.e. available for letting for at least 210 days, and commercially let for at least 105 days in the year) qualifies for special tax rules e.g. Capital Gains Tax reliefs for traders.
- 3.4. For a short-term let to take place, a **host** offers short-term accommodation to one or more **guests**, i.e. it does not become the main residence of the guest. Short-term lets are not private residential tenancies<sup>15</sup>, which require that the tenant occupies the property (or part of it) as their only or principal home. Therefore, guests do not have the same rights in law as tenants.
- 3.5. In this consultation paper, we will use:  
  
“**host**” to mean the person or company providing accommodation for short-term letting, including commercial landlords; and  
  
“**guest**” to mean a person taking the accommodation as a short-term let.
- 3.6. There are three ways in which a host might make accommodation available to a guest<sup>16</sup>:
  - a) the letting of a room or rooms to the guest with the host in residence – “**sharing**”;

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<sup>13</sup> The Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992.

<sup>14</sup> <https://www.gov.uk/government/publications/furnished-holiday-lettings-hs253-self-assessment-helpsheet/hs253-furnished-holiday-lettings-2015>

<sup>15</sup> The definition of “private residential tenancy” is set out in Private Housing (Tenancies) (Scotland) Act 2016.

<sup>16</sup> We have used colloquial descriptors for ease of reference but these ways might more accurately be described as: resident host let; displaced host let; and absentee host let, respectively.

- b) the letting of a room or rooms or the entire property where the host normally lives, when the host is absent (frequently this is when the host is on holiday in another person’s home) – “**swapping**”; or
  - c) the letting of a room or rooms or the entire property, where the host does not normally live and the host is absent – “**secondary letting**”.
- 3.7. Each of these three ways of hosting has its own advantages and challenges. All could potentially be regulated, although regulations may require to be tailored to each way of hosting.
- 3.8. Similarly, a regulatory framework could encompass all types of housing which might be offered as accommodation, from tenement flats to detached houses, whilst making differing provision for different types.
- 3.9. There is already a well-established and comprehensive regulatory framework for the Private Rented Sector which includes landlord registration, repairing standard requirements, licensing of Houses in Multiple Occupation and regulation of letting agents. A regulatory framework for short-term lets should complement, not duplicate, this framework.
- 3.10. The Scottish Government is separately consulting on draft regulations to address a specific issue brought to our attention by local authority licensing teams regarding Houses in Multiple Occupation – the use of accommodation by contract and transient workers. The aim of the draft regulations is to afford the same health and safety rights as those who live in a shared rented property as their only or main residence, to contract and transient workers who often have no choice where they stay when working away from home. Such accommodation could include holiday properties, both self-catering and bed and breakfast, where 3 or more unrelated workers are residing in a property in a particular way. This consultation can be viewed on the Scottish Government website.<sup>17</sup>
- 3.11. Equally, the Scottish Government would not wish to regulate occasional stays of friends and family. Therefore, for the purpose of considering the various options for regulation, we would propose that both of the following conditions must be met in order for the 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.

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<sup>17</sup> <https://consult.gov.scot/private-rented-sector-policy/new-categories-to-the-definition-of-a-house/>

- 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.
- 3.12. Condition (b) would normally mean the accommodation had been let at least once for a period of less than 28 days. It is not necessary to make reference to assured tenancies and short assured tenancies (which do continue to operate in respect of tenancies that started before 1 December 2017) because this condition is concerned only with new lets.
- 3.13. This definition, and any system of regulation, could encompass any use to which the guests put the property (i.e. including letting for holiday or for work purposes).

### *Exclusions*

- 3.14. There are many circumstances where people stay for a short or unpredictable period outwith their primary residence. The following are not considered to be within scope of short-term letting for the purposes of this 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.
- 3.15. With regard to (a) above, we are not proposing any new regulatory framework for the hotel and B&B industry as part of this consultation.
- 3.16. Throughout the rest of this paper, **short-term let** is defined as in paragraph 3.11, unless the context demands otherwise, for example in reference to regulatory environments in other countries.

### **Question 2**

Should a regulatory framework distinguish between sharing, swapping and secondary letting?

### **Question 3**

Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

### **Question 4**

Do you have any comments on any other aspect of the definition of short-term lets?

## **Platforms and hosting service providers**

- 3.17. Short-term lets are not a new phenomenon. They have always been available but they have become much more prominent and popular through the advent of Airbnb and other platforms which have facilitated hosts in reaching their potential markets.
- 3.18. In addition, a range of service industries have grown up around these platforms allowing hosts to outsource functions such as: meeting and greeting guests; cleaning; laundry; and security. Examples include AirSorted, BnBbuddy and Guestready, amongst others. This means a short-term let can range from an intimate experience of renting a room in a family house and eating with the host through to a very business-like arrangement with a commercial host with no personal contact at all.
- 3.19. In this paper, we will use:
- “**platform**” to mean an online marketplace, advertising or brokering service, such as Airbnb, booking.com and others, allowing hosts to offer properties for short-term lets; and
- “**hosting intermediary**” to mean a person or company allowing hosts to outsource some or all of their functions.

## Other perspectives

- 3.20. From the literature reviewed, it is clear that there is not one unique and universally-accepted definition of short-term lets and peer-to-peer accommodation in Scotland or across the world. Different definitions are used in each city/country, often based on the number of nights that short-term lets are allowed to be rented out, see Annex B – *Regulation Outwith Scotland on regulations on short-term lets implemented elsewhere*).
- 3.21. A report on **short-term lets** by Edinburgh City Council<sup>18</sup> argued that “*Short term letting has no statutory definition and can vary widely, from periodic lets such as those during the Festival period in August, to properties purchased and operated on a commercial basis all year round. In addition, some operators of short term lets continue to reside in the property (for example, an occupier renting out a room whilst they remain in residence) whereas other short term lets are solely occupied by visitors and not used as a place of residence*”.
- 3.22. According to a report<sup>19</sup> by Frontline for the Association of Scotland’s Self-Caterers, there are four different ways in which short-term lets are made available in Scotland:
- Collaborative economy short-term lets via online platforms, such as Airbnb, booking.com, HomeAway and HouseTrip (largely non-serviced accommodation);
  - Traditional self-catering (non-serviced accommodation);
  - Serviced apartments (serviced accommodation);
  - Aparthotels, i.e. furnished apartments with hotel services (serviced accommodation).
- 3.23. Short-term lets are considered for the purposes of this paper to include ‘**peer-to-peer accommodation**’. ‘Peer-to-peer’ relates to connecting “*individuals or communities via online platforms*”<sup>20</sup>. A number of other definitions of ‘peer-to-peer accommodation’ have been offered:

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<sup>18</sup> Edinburgh City Council 2018, “Short Term Letting in Edinburgh” p. 3.

<sup>19</sup> <https://www.assc.co.uk/wp-content/uploads/2018/06/MoreThanJustHouses.pdf>

<sup>20</sup> Retrieved from an Indigo House 2017 report:

<https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2017/07/expert-advisory-panel-on-the-collaborative-economy-june-2017/documents/185f5a19-c9da-450e-963d-f56150b0d953/185f5a19-c9da-450e-963d-f56150b0d953/govscot%3Adocument>



- PwC<sup>21</sup> - “households sharing access to unused space in their home or renting out a holiday home to travellers”.
- The [Scottish Expert Advisory Panel Report](#) on the Collaborative Economy - peer-to-peer accommodation includes three types of short-term lets: privately owned houses or individual rooms; privately owned holiday homes; and commercial lettings.

3.24. Both the Expert Advisory Panel and PwC reported that peer-to-peer accommodation is the largest sector of the collaborative economy in Europe by total transaction value (€15.1 billion).

3.25. Research commissioned by the Association of Scotland’s Self-Caterers (ASSC)<sup>22</sup> used the same definition of **self-catering** as in the International Passenger Survey and the Great Britain Tourism Survey.

*“A self-catering property needs to meet the following two criteria:*

- *a property that is available to rent by visitors on a short-term basis for the purposes of a holiday or a short break*
- *a self-contained unit with its own cooking facilities, which may form part of a larger property, or be grouped with other units on the same site”.*

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<sup>21</sup> PwC 2016, “Assessing the size and presence of the collaborative economy in Europe”, pp. 12-13

<sup>22</sup> Frontline 2017, Self-Catering in Scotland: The Economic Impact of Short-term Letting on the Scottish Economy, p 3 [https://www.assc.co.uk/wp-content/uploads/2017/09/ASSC\\_Economic\\_Impact\\_Assessment\\_of\\_Short\\_Term\\_Lettings\\_on\\_the\\_Scottish\\_Economy\\_-\\_Final\\_Report\\_v1.2.pdf](https://www.assc.co.uk/wp-content/uploads/2017/09/ASSC_Economic_Impact_Assessment_of_Short_Term_Lettings_on_the_Scottish_Economy_-_Final_Report_v1.2.pdf)

## 4. Regulation of Short-Term Lets in Scotland

### The Collaborative Economy & ‘Disruptive Technologies’

4.1. This chapter starts with an acknowledgement of the benefits of the new collaborative accommodation platforms such as Airbnb, discussed in detail during the work of the Expert Advisory Panel on the Collaborative Economy, before going on to look at some of the issues arising from their operation in Scotland. It then sets out the principles the Scottish Government propose to follow in regulating short-term lets and outlines potential approaches to regulation. It also describes local authorities’ current regulatory powers in Scotland, while Annex B – *Regulation Outwith Scotland* provides an overview of how these issues are regulated elsewhere, describing the different approaches taken in various localities.

### Benefits of short-term lets

- 4.2. It is undoubtedly the case that tourism and the associated economic activity is of great benefit to the Scottish economy and the wide range of businesses which support and depend on it. And, as acknowledged by the Expert Advisory Panel on the Collaborative Economy, and the Scottish Government’s response to their report, the new collaborative accommodation platforms such as Airbnb can play a significant role in supporting additional visitors to Scotland, with consequent economic benefits.
- 4.3. Short-term lets can provide a range of benefits to landlords, guests and the visitor economy in general. As well as providing flexibility in the amount and variety of accommodation for tourist at peak points in the season, they also provide opportunities for:
- relocating corporate tenants,
  - people who are researching an area before committing to buying,
  - owners who want to make income from their property while on holiday themselves,
  - contract workers looking for short-term accommodation, and
  - existing homeowners who are looking for alternative accommodation while carrying out work on their own property.

- 4.4. The additional flexibility provided by the new collaborative online short-term rental platforms is particularly welcome in responding to the extraordinary circumstances of the Edinburgh Festivals, helping the city respond to the massive increase in demand for those visiting the largest arts festival in the world, as well as the many performers and supporting personnel who also need accommodation.
- 4.5. Research by the ASSC<sup>23</sup> suggests that the short-term rental sector in Scotland supports 15,000 full-time equivalent jobs and generates £723m of economic activity.

### Potential problems from short-term lets

- 4.6. These new collaborative accommodation platforms are part of a wave of 'disruptive technologies', alongside Uber and others, which often operate in a significantly different way from previous businesses. This means that current management and regulatory systems may not be appropriate or applicable. In addition, these disruptive technologies may generate new issues which require to be addressed, including where the way in which they operate impacts in new ways on existing issues.
- 4.7. A particular concern for public policy is that these issues may not have a direct consequence for the businesses themselves, but rather impact disproportionately on others, including the communities where these businesses operate and on the wider area.
- 4.8. As the use of short-term lets has increased, a range of potential problems have come to light. These include:
- **Loss of residential housing**, leading to lack of availability and choice, higher rents and higher house prices; reduced community cohesion through high proportions of transitory visitors.
  - **Loss of amenity to neighbourhood** through: antisocial behaviour of guests; rubbish and littering and lack of focus on maintenance and repair issues e.g. in shared tenement blocks.
  - **Personal safety risks** to hosts, guests and other residents from unverified or unknown others.

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<sup>23</sup> <https://www.assc.co.uk/about-us/the-benefits-of-short-term-rental-in-scotland/>

- **Damage to property**, e.g. from key boxes affixed to external walls, as well as fire safety risks.
- **Regulatory mismatches** between the short-term lets, hotel and B&B sectors, e.g. in terms of health and safety and taxation.
- **Enforcement of guest and host compliance** with existing statutory and voluntary requirements, e.g. platform' codes of practice.
- **Poor visitor experience** for guests and other visitors hoping for an immersive experience in local culture if the ratio of guests to local residents is too high.
- **Loss of revenue to public authorities**, for instance, the Barclay Review reported ineligible properties benefitting from the Small Business Bonus Scheme.
- **Poor public perception** of the short-term letting sector, fuelled by the more extreme scenarios.

4.9. Whilst it is clear that these issues are causing concern, there is not always objective evidence of the incidence or severity of the reported problems. This paper therefore asks for views on these issues to help further inform the Scottish Government's approach. Further information is set out in the rest of this chapter, and elsewhere in this paper, but we need as complete a picture as possible to enable us to ensure that local authorities have the power to balance the needs and concerns of their communities with wider economic and tourism interests.

#### **Question 5**

Do you have any comments on the positive or negative impacts of short-term lets?

#### **Question 6**

Do you have any examples of other positive or negative impacts of short-term lets?

## Housing

- 4.10. General background on the housing market relevant to short-term lets is included in Annex A - *The Short-Term Rental Sector, Housing and Tourism in Scotland*. Typically, properties used for short-term lets have previously been used for residential purposes. There is concern that increased numbers of short-term lets reduces the supply of available homes for longer term lets, which would tend to increase the cost of renting. The significant rise in numbers of short-term lets, for instance via Airbnb, adds to those concerns. There is evidence of this happening in Edinburgh and concern that other areas are also affected, though data is not so readily available for areas other than Edinburgh.
- 4.11. There is also concern that higher returns from short-term lets incentivises purchase of residential properties for that purpose. This would tend to reduce the supply of such properties for those wanting to live in the areas affected and increase prices beyond the norms of the traditional housing market.
- 4.12. These concerns are reflected in comments from Rob Trotter of DJ Alexander, an established letting agency, quoted in Scottish Housing News<sup>24</sup> as saying: *“We’re certainly seeing rental values increasing, I would say, at an unsustainable level and property values in the city centre are increasing.”* He added: *“If you’re trying to move to Edinburgh to start a job and you can’t afford to live in the city centre or you can’t find a flat, that’s difficult for businesses.”*
- 4.13. Those concerns are also expressed by Shelter Scotland, whose report on short-term lets<sup>25</sup> noted that *“It is very difficult to track how much residential housing (either owner occupied or for private rent) has been transferred to short-term letting. However, evidence suggests that this may be having a negative impact on the housing market in some areas with a displacement of residential accommodation to short-term let accommodation. There is agreement across the sector that the growing trend has an adverse effect on the supply of housing, particularly in places like Edinburgh where demand already exceeds supply”*.
- 4.14. Shelter’s report notes that *“Evidence also suggests that the growth of short-term lets is having an adverse effect on the housing stock available to those looking for a permanent home, this chronic lack of choice is pushing rents up.”* and records that *“The average house price in Scotland went up by 75%*

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<sup>24</sup> Scottish Housing News, 8 May 2017 <https://www.scottishhousingnews.com/article/greens-call-for-regulation-to-halt-rise-of-holiday-lets-in-edinburgh-city-centre>

<sup>25</sup> ‘Short-term lets in Scotland: Topic briefing’, December 2018 [https://scotland.shelter.org.uk/\\_data/assets/pdf\\_file/0005/1627646/Short\\_term\\_lets\\_in\\_Scotland\\_2018.pdf/\\_nocache](https://scotland.shelter.org.uk/_data/assets/pdf_file/0005/1627646/Short_term_lets_in_Scotland_2018.pdf/_nocache)

*between 2003 and 2013, and ... 5 out of 18 areas of Scotland saw increases in average 2-bedroom private rent levels between 2016 and 2017”.*

- 4.15. More broadly, there are also concerns about a loss of the sense of community due to the displacement of the residential population, particularly in Edinburgh city centre. The Scottish Expert Advisory Panel on the Collaborative Economy noted that *“there were strong responses from our call for evidence which showed that certain cities, specifically Edinburgh, were suffering from increasingly heavy footfall of tourists that some local groups feel have a negative impact on the community. The rise of peer to peer accommodation at peak times was seen to be adding to this negative impact. There is clearly a delicate balance to strike in preserving the fabric of communities and accommodating tourists who are attracted to major city centres in Scotland. We do not wish to see the hollowing out of communities in cities, or a growing rise in aggression towards tourists – as has been seen in some other popular European cities like Barcelona”*. These concerns are amplified by complaints that some of the increase in the number of short-term lets may not be in line with planning law.

#### **Question 7**

Do you have any comments about the impact of short-term lets on the housing market?

#### **Breach of Planning Law**

- 4.16. Under current planning legislation, planning permission may be required for a change of use where a dwelling house is used for short-term lets. The key issue is whether the planning authority considers that the change of use is, in planning terms, material - taking account of issues such as increased occupancy of the property, frequency of changes of occupants, impact on local amenity and on direct neighbours, etc. There is no definition of what constitutes a material change of use from residential to short-term letting. Whether a material change of use has occurred, and planning permission is therefore required, is a matter of fact and degree for the relevant planning authority to consider on a case-by-case basis.

- 4.17. There are concerns that the increase in properties used for short-term lets reflected in the growth of Airbnb numbers is not always in accordance with planning requirements. Certainly there is evidence of a number of instances where premises have, or are, being used as short-term lets without the owners seeking the required planning permission.
- 4.18. There are therefore concerns that the negative impacts on the housing market, described in the previous section, are being exacerbated in a number of instances by premises which are in breach of planning legislation.
- 4.19. Enforcement action is a matter for the relevant planning authority, again on a case-by-case basis. Local authorities, particularly Edinburgh and Glasgow, have taken effective enforcement action against unauthorised changes of use to short-term lets in a number of cases. While a number of these cases have been appealed, those appeals have been unsuccessful in overturning local authorities' decisions; there have, to date, been no successful appeals against enforcement action on unauthorised short-term lets.
- 4.20. At Stage 2 of the Planning (Scotland) Bill<sup>26</sup>, Parliament agreed an amendment from Andy Wightman MSP, which would mean that all short-term holiday lets would require planning permission for change of use, other than where the premises being let are the owner's sole or main residence. The Scottish Government are supportive of the intention of the amendment, though believe that it will require amendment at Stage 3 to integrate effectively with other aspects of planning law. Other amendments may be lodged at Stage 3.

### **Question 8**

Do you have any comments on the restrictions imposed on short-term lets by planning law?

*NB: Chapter 3 discusses the definition of short-term lets and asks for views on how they should be defined.*

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<sup>26</sup> <https://www.parliament.scot/parliamentarybusiness/Bills/106768.aspx>

## Antisocial Behaviour

- 4.21. The City of Edinburgh Council and a number of Edinburgh MSPs report that antisocial behaviour is a common complaint from residents in relation to short-term lets. The most common issue appears to be about noise and disruption, particularly late night noise, from the increased number of visitors when a neighbouring or nearby property changes from a residential property to one providing short-term lets. This varies from the noise and disruption associated with late night arrivals and early morning departures to noisy late night parties.
- 4.22. These complaints appear to be more common, and of greater severity, where the short-term lets are located in flats or tenements with a common stairwell, where the disturbances can occur in communal areas as well as in the properties themselves. In addition, the acoustic properties of a common stairwell can amplify even what would otherwise be relatively low level noise.
- 4.23. Other reported antisocial behaviour includes littering of common areas, gardens and the surrounding area, including dumping of rubbish. There have also been reports of fighting and other more serious issues that result in police action. Finally, a number of reports have said that there are repeated problems at particular properties.
- 4.24. Local authorities have a range of powers to tackle antisocial behaviour, including noise and littering, as well as more problematic or extreme behaviour. However, these powers can be difficult to apply where there are difficulties in establishing the identity of visitors or of the owners of a property where antisocial behaviour is reported.
- 4.25. The Scottish Expert Advisory Panel on the Collaborative Economy recommended that, when guests book a property in a specific location the platform should highlight the key elements of local legislation to create greater awareness of rules and regulations.

### Question 9

Do you have any comments on powers to tackle antisocial behaviour caused by short-term lets?



## Complaints

- 4.26. The Scottish Expert Advisory Panel on the Collaborative Economy recorded that, while the number of recorded short-term let premises with anti-social behaviour investigations in 2016 and 2017 appeared to be small relative to the tourist footfall, information provided from the City of Edinburgh Council indicated that this issue is significantly under-reported. Efficient and effective complaints systems can play a valuable role in addressing issues of concern, and can help in ensuring more accurate recording of incidents.
- 4.27. The Advisory Panel recommended that communities and residents need to be aware that they are able to make complaints and how to do so. This could build a richer evidence base for enforcement and enable a far more targeted and specific responses to issues arising in specific communities.

### Question 10

Do you have any comments about complaint systems for short-term lets?

## Safety

- 4.28. Concerns have been expressed about the lack of appropriate safety standards relating to short-term lets. The [Scottish Expert Advisory Panel Report on the Collaborative Economy](#) made a number of recommendations specific to peer-to-peer accommodation (in addition to its more general recommendations listed in chapter 2). The Advisory Panel recommended that there should be parity in health and safety regulation for all short-term let accommodation that is not the owner's primary residence, regardless of whether the accommodation is let occasionally or regularly and regardless of whether the accommodation is booked over the internet.
- 4.29. The Panel also recommended that:
- *On all collaborative accommodation booking platforms, hosts should have to declare that they are compliant with the health and safety guidelines appropriate to their type of accommodation prior to their property being listed. They should be presented with these guidelines at time of registering, rather than having to seek them out and should signify their*

*adherence to those regulations. Platforms should experiment with ways in which guests can provide evidence of adherence.*

- *All platforms operating in Scotland should ask participating guests if they have any concerns or questions about health and safety in homes or properties in which they stayed. Platforms should experiment with different messaging and times at which they solicit guests' responses to health and safety questions and should demonstrate to regulators that they have a process for following up any concerns identified in a timely manner.*

4.30. Premises that are offered as holiday accommodation are subject to fire safety legislation. The person operating the premises is required to assess the fire risk and provide fire safety measures and the Scottish Government has issued 'Fire safety guidance for existing premises with sleeping accommodation.'<sup>27</sup>

4.31. More comprehensive safety requirements are in place for properties in the Private Rented Sector. Landlords must ensure that their property complies with the Repairing Standard, the minimum physical standard, at the start of and throughout a tenancy. To comply with the health and safety elements of the standard, the landlord must ensure that the property has:

- smoke and fire detectors,
- an annual gas safety check,
- an electrical installation safety inspection every five years,
- a record of testing of appliances provided by the landlord,
- a carbon monoxide detector where there is a carbon emitting device,
- fittings and furniture must be fire retardant, and
- a legionella risk assessment.

4.32. Local authorities have powers to license Houses in Multiple Occupancy and, in addition to the Repairing Standard elements, landlords are required to ensure there are higher levels of fire safety standards, as set by Scottish Fire and Rescue, than those required in domestic properties. The license specifies the number of occupants permitted and local authorities will carry out inspections to ensure that the license conditions are being met. An HMO license requires the landlord to ensure that there are systems in place to record regular safety, that advice to occupiers on action to be taken in the

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<sup>27</sup> <https://www.gov.scot/publications/practical-fire-safety-guidance-existing-premises-sleeping-accommodation/>

event of an emergency is prominently displayed within the living accommodation, and must manage the property to prevent and deal effectively with any anti-social behaviour by tenants.

- 4.33. There have also been concerns expressed about potentially compromised security of premises, as keys are distributed to potentially hundreds of people every year, allowing access to residential areas. In some instances, there have been concerns expressed about mental ill health, including anxiety and stress, associated with not knowing who is coming and going.
- 4.34. To some extent, these concerns about personal safety are linked to the issue of key boxes. The widespread use of key boxes is a relatively recent phenomenon and concerns have also been raised about potential damage to property and the legality of placement of certain key boxes. A recent listed building appeal decision<sup>28</sup> has upheld an enforcement notice from City of Edinburgh Council requiring the removal of key boxes affixed to a property without planning permission.
- 4.35. The City of Edinburgh Council has also taken enforcement action in relation to key boxes affixed to council property. The Edinburgh Evening News<sup>29</sup> published an article publicising this, which featured a photograph of a publically posted enforcement notice.
- 4.36. Currently, local authorities have limited regulatory controls over safety in short-term lets. However, the Scottish Government has accepted the Scottish Expert Advisory Panel on the Collaborative Economy's recommendation that there should be parity in health and safety regulation for all short-term rental accommodation that is not the owner's primary residence.

### **Question 11**

Do you have any comments on safety issues related to short-term lets?

<sup>28</sup> <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120234>

<sup>29</sup> <https://www.edinburghnews.scotsman.com/news/edinburgh-airbnb-hosts-using-key-storing-padlocks-in-city-parks-to-avoid-legal-issues-1-4871603>

## Taxation

### *Non-domestic rates*

- 4.37. Self-catering properties, which make up just under 6% of non-domestic properties in Scotland (as at June 2018), are liable for non-domestic rates. While 45% of non-domestic properties receive Small Business Bonus Scheme (SBBS) relief, over 86% of self-catering properties benefit from SBBS, and this relief provided an average saving for these properties of £1,398 in 2018-19. A number of these receive 100% relief, and thus pay no local tax.
- 4.38. To be eligible for SBBS relief, the cumulated rateable value of all non-domestic properties held by the ratepayer (this can be the owner, occupier or proprietor) must be no more than £35,000. Properties with individual rateable values of no more than £15,000 are eligible for 100% relief; and 25% relief if the rateable value is between £15,001 and £18,000.
- 4.39. Self-catering holiday accommodation is exempt from Council Tax, and liable for non-domestic rates instead, if it is not the sole or main residence of any person, and if it is either:
- made available by a relevant person for letting, on a commercial basis and with a view to the realisation of profits, as self-catering accommodation for short periods amounting in the aggregate to 140 days or more in the financial year; or
  - if it has not been made so available for letting in that year, are intended by a relevant person to be made so available for letting in that year and the interest of the relevant person in the lands and heritages is such as to enable him to let them for such periods.
- 4.40. The independent Barclay Review on Non-Domestic Rates noted that some property owners, to avoid payment of Council Tax on second homes, and because there is currently no requirement to provide evidence of actual letting, may claim that the property has moved from domestic use (liable for Council Tax) to non-domestic use as self-catering holiday accommodation (and liable for non-domestic rates). If the rateable value is low enough, they may then apply for SBBS relief and receive up to 100% non-domestic rates relief. Non-domestic properties are liable for business water and sewerage charges (property and roads drainage charges are calculated based on the property's rateable value), and waste disposal charges. Anecdotal evidence from councils however indicates that self-catering properties, though they may be liable for non-domestic rates, do not always face non-domestic charges in other areas. In these cases, the property's contribution to local services would be zero.

- 4.41. The Barclay Review recommended, to address this issue, that self-catering properties should be required to prove an intention to let for 140 days in the year as well as evidence of actual letting for 70 days in order to be considered exempt from Council Tax.
- 4.42. The Scottish Government accepted this recommendation and consulted on whether local authorities should have discretion over the number of days that a property needs to be let in order to be exempt from Council Tax as self-catering holiday accommodation.<sup>30</sup> Respondents suggested that such discretion could be appropriate in exceptional circumstances, such as natural hazards or environmental circumstances (e.g. interruption of ferry services to islands). As a result, the Non-Domestic Rates (Scotland) Bill<sup>31</sup> makes provision for local authority to have discretion, in prescribed circumstances, over the criteria defining a class of property that is exempt from Council Tax.
- 4.43. The criteria for self-catering accommodation to be considered exempt from Council Tax, and the prescribed circumstances in which local authorities will have discretion over this will be set out in secondary legislation subject to the Non-Domestic Rates (Scotland) Bill

#### *Income Tax and other taxes*

- 4.44. Rental income is included in earnings, and is therefore, for Scottish residents, subject to Scottish Income Tax, the rates and bands of which are set by the Scottish Government. Rental providers are responsible for declaring their earnings to HMRC.
- 4.45. However, income tax reliefs and exemptions remain a reserved matter set by the UK Government. Under the Rent a Room Scheme<sup>32</sup>, anyone letting a room or rooms in their home (i.e. it is their only or main residence) on a short-term basis, or running a bed and breakfast or guest house, can receive up to £7,500 per year in rents without paying income tax. This tax exemption is automatic where earnings are less than the threshold, which was increased to £7,500 in 2016. The UK Government has announced its intention to consult on this. In March 2016, George Osborne also launched two new annual tax allowances for individuals of £1,000 each, one for trading and one for property income. These allowances took effect from tax year 2017/18.
- 4.46. The Scottish Expert Advisory Panel on the Collaborative Economy noted that “According to the European Commission, an estimated 85% of gross revenue from collaborative economy platforms (of which peer to peer accommodation

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<sup>30</sup> [https://consult.gov.scot/local-government-and-communities/non-domestic-rates/user\\_uploads/00537324.pdf](https://consult.gov.scot/local-government-and-communities/non-domestic-rates/user_uploads/00537324.pdf)

<sup>31</sup> <https://www.parliament.scot/parliamentarybusiness/Bills/111337.aspx>

<sup>32</sup> <https://www.gov.uk/rent-room-in-your-home/the-rent-a-room-scheme>

*is the largest sector) goes to providers/hosts. Individuals use multiple platforms to promote and book their accommodation and may earn income from multiple online and offline sources. As with any other income generating activity, on or offline, short-term accommodation rental providers must be responsible for declaring their earnings to HMRC.”*

## Tourist Tax

4.47. The Scottish Government will, this year, consult on the principles of a locally determined tourist tax prior to introducing legislation that would allow individual local authorities to apply such a tax if they consider it appropriate for local circumstances. In the light of evidence emerging from the roundtable events convened as part of our recent National Discussion on Tourist Taxes in Scotland, the consultation will extend to all forms of commercially let accommodation, including short-term lets and peer-to-peer accommodation.

### **Question 12**

Do you have any comments on eligibility for non-domestic rates? (see para 4.39)

### **Question 13**

Do you have any comments on the additional eligibility requirements recommended by the Barclay Review? (see paras 4.40-4.42)

### **Question 14**

Do you have any comments on the eligibility of self-catering accommodation for the Small Business Bonus Scheme? (see paras 4.37 & 4.38)

### **Question 15**

Do you have any other comments on taxation relating to short-term lets?

## Licensing

- 4.48. Elsewhere, see Annex B – *Regulation Outwith Scotland*, some issues relating to e.g. antisocial behaviour or safety issues relating to short-term lets are addressed through licensing or registration schemes.
- 4.49. Typically, licences set limits or conditions on the operation of the activity and require licence holders to be a ‘fit and proper person’. A key element of all licensing schemes is registration, of premises and/or people, which provides additional transparency for public authorities and the public in relation to complaints. Where conditions are not complied with, a penalty may be enforced or the licence revoked.
- 4.50. Licensing often sits alongside self-regulation by industry. The Scottish Expert Advisory Panel on the Collaborative Economy recommended that there should be “*One code of conduct on which different industry associations can agree for all providers of short-term accommodation in Scotland where the owner is also a resident (though not necessarily present when the property is let)*”.
- 4.51. In Scotland, local authorities have licensing powers for a wide range of activities<sup>33</sup>, from alcohol and taxi licensing to sexual entertainment venues and Houses in Multiple Occupation. While some licensing schemes are mandatory, others are optional and local authorities have discretion as to whether a licence is required in their area.
- 4.52. Currently, however, there is no licensing or registration scheme in place in relation to short-term lets, although the City of Edinburgh Council has proposed the introduction of a new licensing system<sup>34</sup>. That proposal has been supported by [Shelter Scotland](#).
- 4.53. The possibility of introducing a licensing regime is explored below, and in the questions that follow, in considering the potential shape of a regulatory regime for short-term lets.

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<sup>33</sup> Including a number of schemes made under the Civic Government (Scotland) Act 1982

<sup>34</sup> ‘Recommendations to improve regulation of short term let industry’, Edinburgh City Council, August 2018

[https://www.edinburgh.gov.uk/news/article/2525/recommendations\\_to\\_improve\\_regulation\\_of\\_short\\_term\\_let\\_in%20dustry](https://www.edinburgh.gov.uk/news/article/2525/recommendations_to_improve_regulation_of_short_term_let_in%20dustry)

## Design principles for a regulatory framework

- 4.54. Faced with these reported concerns and a growing sense of urgency with regard to putting in place an appropriate regulatory regime, it may be tempting to suggest implementing one of the many regimes already in place in different parts of the world, as described in see Annex B – *Regulation Outwith Scotland*. However, this would risk unintended consequences both in terms of deterring beneficial hosting activity and potentially creating loopholes that would undermine effective enforcement.
- 4.55. Before the Scottish Government makes specific proposals for a detailed regulatory regime, we want to make sure that we have understood the problems that any new regulations would be intended to address (as set out above). At this stage however, we believe it is important to outline the principles which should inform any proposed solution. Our suggested design principles are set out on the next page, building on the principles in the Scottish Regulators' Strategic Code of Practice<sup>35</sup>.

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<sup>35</sup> This sets out five key principles of good regulation: proportionate, transparent, accountable, consistent and targeted: <https://www.gov.scot/publications/scottish-regulators-strategic-code-of-practice/>



## DESIGN PRINCIPLES

The regulatory framework should be:

1. **Proportionate:** minimizing 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 be cheap to run and self-financing
10. **Straightforward and effective to enforce:** making good use of existing enforcement mechanisms and data that is easy to obtain.

## Question 16

Do you have any additions or amendments to the proposed design principles?

### Scope of a regulatory framework

- 4.56. Building on these principles, we would propose a national framework which empowers councils to establish regimes appropriate to their local needs. Action to establish a regulatory framework could include a combination of any of the following:
- Primary legislation (a new Act of the Scottish Parliament) – the Scottish Government is prepared to introduce a Bill to implement a regulatory framework, if this is necessary.
  - New, or changes to, secondary legislation (regulations).
  - New statutory or voluntary guidance or codes of conduct (government-led or industry-led).
  - New (or amended) taxes, fees or charges.
- 4.57. It should be noted that some aspects of potential regulation are reserved to the UK Government (e.g. health and safety and some types of taxes and allowances). However, these measures are within the scope of this consultation. If it appears to be necessary to make changes to these areas of regulation, the Scottish Government is still interested to hear your views. We will consider your views along with other evidence before deciding whether to engage with the UK Government on how any potential changes might be explored.
- 4.58. In terms of a regulatory framework, there are two strands to consider:
- a) the participants - what guests, hosts, platforms and service providers are or are not permitted to do; and
  - b) the accommodation - what is or is not required (e.g. smoke alarms) or permitted (e.g. late entry) at the accommodation or whether the accommodation is permitted to be used for this purpose at all.

- 4.59. A host may have several properties and different permissions or requirements may apply at each.
- 4.60. Platforms and trade associations (such as the Association of Scotland's Self-Caterers and the UK Short-Term Accommodation Association) are already doing good work to establish codes of practice and offer advice and assistance to guests and hosts. These can be voluntary, or compliance can be a condition of continued membership of the trade body or continued access to the platform. But this work in progress is unlikely to be sufficient to address all the issues set out above.
- 4.61. In terms of a (locally) compulsory regime in respect of a property at which short-term letting is permitted, there are at least two distinct approaches:
- **registration** - where the presumption is that the host is required to provide certain information and fee in relation to themselves and/or their accommodation; and
  - **licensing** - where the host has to provide the requisite information and fee (as with registration) but is subject to oversight by the licensing authority to ensure that additional licence conditions are met.
- 4.62. Either approach may be supplemented by restrictions on whether the property may be used for short-term lets at all. Provisions in the Planning (Scotland) Bill 2018 (as amended at Stage 2), discussed above, would have that effect. It is likely that the Bill will be further amended at Stage 3 during this consultation. Subsequent primary legislation could, in principle, further amend or revoke existing provisions<sup>36</sup> in the context of establishing a final regulatory approach, if it was considered appropriate by the Scottish Government and agreed by the Scottish Parliament.

### Question 17

Do you have any comments on the proposed scope of a regulatory framework?

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<sup>36</sup> Subject to the amending Bill having sufficiently broad scope.

## **Policy considerations and outline proposals**

- 4.63. This consultation paper does not purport to set out a full new regulatory framework. The Scottish Government want to hear your views and complete our evidence gathering before we can do that. However, we set out some outline proposals below and we are looking for views on them, particularly in relation to how well they might address the perceived problems and give effect to the ten principles.
- 4.64. We propose a national framework that provides a menu of discretionary powers for councils to implement measures appropriate to their area or parts of their area, so that they can respond to local conditions and concerns.
- 4.65. A host with accommodation in more than one council area would need to ensure that short-term lets in each council area complied with the rules appropriate for each local area.
- 4.66. However, a national framework will help enable consistency across Scotland, so that two councils implementing a similar measure are more likely to do so in similar ways. This will facilitate platforms and guests in understanding what is required of them and make it easier for hosts operating across more than one council area.

### *Level 1 - Registration scheme*

- 4.67. Where a council opted to implement regulation, a minimum requirement might be a basic registration scheme which would establish e.g. that appropriate health and safety measures were in place. A fee may be charged for registration to cover the council's costs in administering the scheme. Registration could be required for all types of hosting: sharing, swapping and secondary letting. The requirement to register would be determined by the location of the accommodation, not the council area in which the host was based.
- 4.68. Registration would have the ancillary benefit of providing data on the levels of activity across participating council areas. We would expect councils to report on this on a regular basis.
- 4.69. A basic registration scheme would be unlikely to curtail any short-term letting activity. Councils seeking to manage or control the volume of short-term lets in their area or parts of their area would need to apply additional measures.

### *Level 2 - Licensing scheme*

- 4.70. A council seeking to apply additional measures could opt for a licensing scheme, which could include and expand on the registration scheme. In

describing a potential new scheme, we use the term “licensing” in its broadest sense. Although there are powers in current legislation<sup>37</sup> to allow for the creation of new licensing regimes, it may be necessary to introduce primary legislation to implement a new regulatory regime in full.

- 4.71. A licensing scheme could allow councils to charge hosts an amount sufficient to cover the cost of administering and enforcing the scheme.

### *Level 3 - Market-based mechanisms to control short-term lets*

- 4.72. We are also keen to explore market-based mechanisms, and we would welcome views on how these might best be achieved. A regulatory framework might include additional financial (dis)incentives to control some types of short-term let. References to a charge<sup>38</sup> below are to be interpreted in this broader sense.
- 4.73. We would be interested in views as to whether the charge should only be applied to secondary letting (in which the whole property is let), rather than to sharing or swapping. A reason for taking this approach would be that secondary letting puts additional pressure on housing affordability for other residents and would-be residents. The level of charge could be a means to rebalance the attractiveness for landlords of offering whole properties for short-term lets, compared to offering them for Private Rented Tenancies.
- 4.74. An advantage of using a charge to manage the volume of short-term lets is that it treats new and existing hosts fairly. i.e. the same charge would apply in the same circumstances whether the host had been letting the accommodation for some time or was just starting out. It would avoid established hosts being advantaged over new entrants to the market, potentially conferring a valuable permission on one person but not another.
- 4.75. We would be interested in views as to whether the charge might vary by area within a council area and be varied according to features of the accommodation or night rate. e.g. the charge might relate to the number of bedrooms, floor area or be set as a percentage of the advertised rate for letting. This would allow a council to focus charging on the specific letting activity whose volume they wished to manage.
- 4.76. The charge might also have the ancillary advantage of raising additional revenue for the council. The charge might be collected through platforms and remitted to the relevant council, perhaps on a quarterly basis.

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<sup>37</sup> Civic Government (Scotland) Act 1982 and Housing (Scotland) Act 2001.

<sup>38</sup> Whether the actual arrangement constituted a fee, charge or tax or some hybrid would be something to be considered once the proposals are more developed.

- 4.77. In order to make a regulatory framework fully effective, it may be necessary to take account of, and/or consider changes to, relevant taxes and reliefs:
- Council tax
  - Non-domestic rates
  - Small Business Bonus Scheme
  - VAT (Reserved)
  - Rent a room relief on income tax (Reserved).
- 4.78. Nationally, Scottish Government wants to see Scotland's homes productively occupied for as much of the time as possible. We have taken action on empty homes through loan funds<sup>39</sup>, the Scottish Empty Homes Partnership<sup>40</sup> and by empowering councils to disincentivise second homes by enabling them to increase rates of council tax for empty homes. It would not be a satisfactory outcome from a regulatory framework for short-term lets to leave more homes empty for a greater part of a year, or permanently.
- 4.79. In areas of very high housing demand, and where affordability is an issue, councils must be able to prioritise the use of homes as primary residences, for the sake of local communities and businesses. Where a home is not a primary residence, it makes sense to have it let out for as much of the year as possible, as this will bring in the most economic activity and revenue to the local area through temporary workers or visitors.
- 4.80. The regulatory framework establishing a licensing regime could allow councils to set other controls and conditions. For example, a license might stipulate a number of days per year for which the accommodation may be made available for short-term lets. Such conditions may be useful for managing sharing and swapping arrangements for licensed premises, especially where other residents have concerns about noise or nuisance etc.
- 4.81. The Scottish Expert Advisory Panel on the Collaborative Economy made a number of recommendations specific to day limits for peer to peer accommodation (in addition to its more general recommendations listed at para 2.6) as follows:

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<sup>39</sup> The Empty Homes Loan Fund and the Town Centre Empty Homes Fund.

<sup>40</sup> The Scottish Empty Homes Partnership is a project funded by Scottish Government, and run by Shelter Scotland, that exists to bring empty private sector homes back into use. The partnership provides support and advice to home owners, local authority empty homes officers, and others to help bring empty homes back into use.

- If the evidence base demonstrates a need, the City of Edinburgh Council specifically – and other large Scottish cities generally – should experiment with the implementation of a 90 day restriction on any person wanting to rent their property over the course of a 12 month period and refining accordingly. Exceeding the specified limit would require a change of use.
- Platforms should notify hosts at the point at which the 90 day limit has been reached.
- Explore the viability of a seasonal system in central Edinburgh, where the rules are more permissive during periods of large tourist demand (e.g. Festival and New Year) where existing capacity cannot meet demand – but more restrictive in other parts of the year, where demand is lower and needs to be managed more carefully.

4.82. We would be interested in views on the circumstances in which a days per year limit would be an effective way of managing the number of properties made available for secondary letting, taking into account the Scottish Government's objectives.

**Question 18**

Do you have any comments on the controls or conditions which councils should be able to set through a registration or licensing regime?

**Question 19**

Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short-term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?

**Question 20**

Do you have any comments on the effectiveness of a days per year limit in meeting the Scottish Government's objectives?

### *Commercial hosts*

- 4.83. We would be interested in views as to whether a regulatory regime should make a distinction between the small scale hosts and those with property portfolios. We would also be interested in views as to how “commercial hosts” should be defined. A definition might take account of a number of factors such as:
- a) whether the host required to register and account for Value Added Tax<sup>41</sup>;
  - b) the number of addresses across Scotland at which the host was offering accommodation for short-term lets; and/or
  - c) the concentration of accommodation offered for short-term lets by the host, e.g. at more than one apartment sharing the same main door access to the street (e.g. flats in a tenement).

#### **Question 21**

Do you have any comments on how regulations should deal with commercial hosts?

### *Enforcement, violations and sanctions*

- 4.84. Enforcement of short-term lets regulations could be done through councils operating a registration or licensing scheme having new powers; and data sharing across local government and national government and relevant agencies.
- 4.85. Enforcement of short-term lets regulations and/or licensing scheme would be likely to require that relevant council officials have the powers to:
- visit any accommodation registered or licenced for short-term lets for the purposes of establishing the facts about the accommodation or the facts about any particular let or to investigate any complaint; and

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<sup>41</sup> The UK VAT registration threshold is currently set at a taxable turnover of £85,000 per year.



- require a host, platform or hosting intermediary to furnish local authorities with relevant information or documentation within a prescribed period.
- 4.86. Relevant agencies might include: local authorities, Revenue Scotland and HMRC for tax purposes; and land registers for ownership of residential property.
- 4.87. A licensing scheme would typically include penalties for issues such as:
- Hosts operating without registration or without a licence,
  - Hosts operating in contravention of the terms of their registration or licence,
  - Platforms deliberately or negligently advertising unregistered or unlicensed hosts,
  - Falsification of registration or licence documentation,
  - Failure to pay the relevant fee or charge within the specified period,
  - Failure to grant access to accommodation on request,
  - Failure to provide relevant documentation or information on request.
- 4.88. Sanctions might include one or both of:
- Fines, which could vary according to the severity and duration of a violation,
  - Revocation of licence, for a period of time or permanently.
- 4.89. The nature of licensing or other regulatory regime focused on premises means that enforcement and sanctions would be applied primarily to hosts, platforms and hosting intermediaries, not to guests; they are, by definition, transient and therefore hard to enforce any sanction against.

### **Question 22**

Do you have any comments on who should be subject to enforcement and sanctions?

## 5. Responding to the Consultation

We are inviting responses to this consultation by **Friday 19 July 2019**.

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>. 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 19 July 2019.

If you are unable to respond using our online consultation hub, please complete the Respondent Information Form and send it:

by email to: [shorttermlets@gov.scot](mailto:shorttermlets@gov.scot)

or by post to:

Short-Term Lets Team

Scottish Government

2J North

Victoria Quay

Edinburgh, EH6 6QQ

Questions are raised throughout this consultation but they can all be found and answered in the questionnaire below.

### 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 Questions

This paper invites responses to questions on a range of issues which the Scottish Government will take into account when considering proposals for regulation. Respondents should take into consideration the information provided in this consultation paper and its accompanying Annexes alongside any other knowledge or personal experiences that could be relevant. All opinions are welcome.

We ask that you try to answer all the questions in each section. However, if you are unable to answer any question then please feel free to move on to the next question.

There is a comments box below each question to allow you to set out your reasoning and to provide general comments.

### Question 1

Are you aware of any additional data on the impacts of short-term lets (over and above that set out in Annex A – *The Short-Term Rental Sector, Housing and Tourism in Scotland*) which the Scottish Government should take into account when considering proposals for regulation?

### Question 2

Should a regulatory framework distinguish between sharing, swapping and secondary letting?

### Question 3

Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

### Question 4

Do you have any comments on any other aspect of the definition of short-term lets?

### Question 5

Do you have any comments on the positive or negative impacts of short-term lets?

**Question 6**

Do you have any examples of other positive or negative impacts of short-term lets?

**Question 7**

Do you have any comments about the impact of short-term lets on the housing market?

**Question 8**

Do you have any comments on the restrictions imposed on short-term lets by planning law?

**Question 9**

Do you have any comments on powers to tackle antisocial behaviour caused by short-term lets?

**Question 10**

Do you have any comments about complaint systems for short-term lets?

**Question 11**

Do you have any comments on safety issues related to short-term lets?

**Question 12**

Do you have any comments on eligibility for non-domestic rates?

**Question 13**

Do you have any comments on the additional eligibility requirements recommended by the Barclay Review?

**Question 14**

Do you have any comments on the eligibility of self-catering accommodation for the Small Business Bonus Scheme?

**Question 15**

Do you have any other comments on taxation relating to short-term lets?

**Question 16**

Do you have any additions or amendments to the proposed design principles?

**Question 17**

Do you have any comments on the proposed scope of a regulatory framework?

**Question 18**

Do you have any comments on the controls or conditions which councils should be able to set through a registration or licensing regime?

**Question 19**

Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short-term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?

**Question 20**

Do you have any comments on the effectiveness of a days per year limit in meeting the Scottish Government's objectives?

**Question 21**

Do you have any comments on how regulations should deal with commercial hosts?

**Question 22**

Do you have any comments on who should be subject to enforcement and sanctions?

**Question 23**

Do you have any other comments on short-term lets not covered in your answers to the above?

## More about you (optional)

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

- Affected resident
- Community organisation
- Guest
- Host with one property
- Host with more than one property
- Platform
- Hosting intermediary
- Hotel or B&B owner
- Other business, please state
- 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)
- Referred by Local Authority/Government/MSP/Councillor
- Referred by short-term letting host
- Referred by short-term letting platform
- Other, please state

If you are a host, please answer the following questions.

**Q3:** Which of the following describes your short-term letting listing(s)? Please choose all that apply.

- Couch or spare bed in shared room
- Spare room
- Entire property, when on holiday only
- Entire property
- Multiple properties

**Q4:** Do you list your room/property/properties on more than one platform?

- Yes
- No

**Q5:** How many properties did you have available for short-term letting in 2018?

**Q6:** Approximately how many nights was/were your listing(s) occupied in 2018?

**Q7:** For hosts with more than one property, do you have properties in more than one local authority area in Scotland?

- Yes
- No





# Short-Term Lets: Consultation on a regulatory framework for Scotland

## 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



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