

Short Term Lets

Consultation on draft Licensing Order and Business and Regulatory Impact Assessment (BRIA)

June 2021



Scottish Government
Riaghaltas na h-Alba
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Short-Term Lets: Consultation No. 3

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Foreword by Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government



I am pleased to present this consultation paper, seeking final views on the revised draft Licensing Order and draft Business and Regulatory Impact Assessment (BRIA).

Back in February, Kevin Stewart MSP, the then Minister for Local Government, Housing and Planning withdrew the original Licensing Order from the Scottish Parliament in order to address concerns that had been raised by members and stakeholders. At the same time, he announced the establishment of a stakeholder working group to help develop guidance for hosts and operators, local authorities and platforms.

The stakeholder working group was also tasked with considering any necessary changes to the legislation, ahead of laying the revised Licensing Order, alongside draft guidance, in June.

The stakeholder working group met in February, March and May and has provided significant input into shaping the guidance, and suggesting changes to the legislation. I am grateful to all working group members for sharing their time, knowledge and expertise with my officials, in order to help us get the legislation and guidance right.

We have made a number of changes to the legislation based on suggestions made by members of the stakeholder working group. However, we now intend to lay the Licensing Order in September so that we can consult on it over the summer. This will help us to get this important legislation absolutely right.

We have proposed, in the draft legislation, to push back the date on which licensing authorities must have a licensing scheme open to receive applications to 1 October 2022. This is to give them sufficient time to prepare, given that the Licensing Order and guidance will not be in final form until the autumn of this year.

However, we are not proposing to change the 1 April 2023 date by which existing hosts and operators must have applied for a licence in order to keep operating, nor the 1 April 2024 date by which all short-term lets in Scotland must be licensed. These deadlines are the more significant ones for residents and communities. Any issues from short-term lets they currently face will be caused by existing hosts and operators, to which these deadlines apply.

We have also, today, published a draft Business and Regulatory Impact Assessment (BRIA) for consultation. I appreciate that stakeholders did not get an opportunity to

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comment on the BRIA as part of the 2020 consultation and I would like to give people the opportunity to do so now.

In addition to the consultation, we have also published draft guidance on the licensing scheme and planning control areas for hosts and operators, local authorities and platforms. This guidance is intended to be clear, comprehensive and helpful, and has been shaped by valuable input from the range of stakeholders represented on the working group.

This government has always stressed striking the balance between the needs of local communities and wider economic and tourism interests. I believe our proposals, having been refined and improved following feedback from the working group, do this.

Shona Robison MSP
Cabinet Secretary for Social Justice, Housing and Local Government

1. Introduction

A brief history

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

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- 1.6. On 8 January 2020, Kevin Stewart MSP, the then Minister for Local Government, Housing and Planning, announced plans to regulate the short-term let sector in the Scottish Parliament: “First, I intend to establish a licensing scheme for short-term lets using powers under the Civic Government (Scotland) Act 1982. Secondly, I am prioritising work to give local authorities the power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019. Finally, we will review the tax treatment of short-term lets to ensure that they make an appropriate contribution to the communities that they operate in.”
- 1.7. Work to implement the regulations was paused in March 2020 because of the coronavirus (COVID-19) pandemic but resumed in July 2020. A second consultation was launched in autumn 2020, and covered the definition of short-term lets, the establishment of control areas under the Planning (Scotland) Act 2019 and the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982.
- 1.8. The Scottish Government laid regulations at the Scottish Parliament giving local authorities powers to license short-term lets and introduce control areas in December 2020. The Control Area Regulations were approved by the Scottish Parliament, and came into force on 1 April 2021. The Licensing Order was withdrawn in February 2021 in response to concerns raised by stakeholders and members.
- 1.9. A stakeholder working group was established in February to develop guidance on the licensing scheme and planning control areas, and to consider any changes to the legislation that may be needed. The stakeholder working group met in February, March and May 2021. We have published minutes of all working group meetings. Those minutes, background on the working group, and a list of members can be found here: [Short-Term Lets Stakeholder Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/civic-government-act-1982-short-term-lets-stakeholder-working-group/)

This consultation

- 1.10. The purpose of this consultation is to help the Scottish Government ensure that the licensing legislation laid at the Scottish Parliament in September is as efficient and effective as possible. We want your help in getting the details right. We are not consulting on whether to implement a licensing scheme nor the broad framework of the approach. For this reason, the response form is narrowly focused on identifying issues and solutions only in relation to the draft Licensing Order and draft Business and Regulatory Impact Assessment (BRIA).
- 1.11. This consultation is the third consultation on short-term lets, and provides stakeholders with a final opportunity to comment on the draft legislation to

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help the Scottish Government get it absolutely right. The consultation is open for seven weeks and closes on **Friday 13 August 2021**.

- 1.12. In addition to this consultation, we have also published draft guidance on the licensing scheme and control areas for hosts and operators, platforms and local authorities.

Consultation pack

- 1.13. The consultation pack comprises the following six papers:

Paper 1	This consultation paper
Paper 2	Licensing Order and Policy Note
Paper 3	Draft Business and Regulatory Impact Assessment
Paper 4	Licensing guidance: Part 1 - for hosts and operators
Paper 5	Licensing guidance: Part 2 - for licensing authorities, letting agencies and platforms
Paper 6	Planning guidance: for hosts and operators

- 1.14. We are seeking very specific comments on **Paper 2** (Licensing Order and Policy Note) and **Paper 3** (Draft Business and Regulatory Impact Assessment).
- 1.15. The guidance documents (**Papers 4, 5 and 6**) are provided to assist you in understanding how the Licensing Order would work in practice. They are still in draft form and it is our intention to work with the stakeholder working group to finalise them over the summer; this is in terms of the content, layout and design. We are not seeking comments on these documents as part of this consultation.
- 1.16. We have also published *Planning Circular 1/2021: Establishing a Short-Term Let Control Area* to guide planning authorities on the process of establishing a control area, should they wish to do so. You may wish to refer to this but please note that it is published in final form and is not part of the consultation.

Next steps

- 1.17. The Scottish Government intends to lay the Licensing Order at the Scottish Parliament in September 2021. We will also publish finalised guidance in the autumn to assist hosts and operators, platforms, and local authorities in preparing for the scheme to go live.

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- 1.18. Subject to the approval of the Scottish Parliament, the Order is expected to come into force on 1 January 2022. Local authorities now have until 1 October 2022 to open a licensing scheme to receive applications. This is to give them sufficient time to prepare, allowing them one year from sight of the revised Licensing Order as laid.
- 1.19. Existing hosts and operators will have until 1 April 2023 to submit an application for a licence. This date remains unchanged. However, new hosts and operators will require a licence to operate after 1 October 2022.
- 1.20. All short-term lets must have a licence by 1 April 2024 in order to continue operating.

2. Revisions to the Licensing Order

The stakeholder working group

- 2.1. The short-term lets stakeholder working group was established in February 2021 to:
- assist the Scottish Government in the production of guidance for hosts and local authorities on the short-term lets licensing scheme and planning control areas;
 - identify and resolve stakeholder issues and concerns; and
 - make suggestions to the Scottish Government on any changes to legislation which may be needed.
- 2.2. Membership of the working group spans various sectors, including: local authorities, platforms, tourism bodies, trade associations, Police Scotland, Scottish Fire and Rescue Service, and representatives of residents.
- 2.3. The Scottish Government has carefully considered all suggestions made by working group members. A number of changes have been made to the legislation as a result of those suggestions where they do not detract from the policy objectives of the licensing scheme, which are:
- to ensure short-term lets are safe and address issues faced by neighbours;
 - to facilitate licensing authorities in knowing and understanding what is happening in their area; and
 - to assist with handling complaints effectively.
- 2.4. Given the diverse range of interests represented on the working group, there were some strong differences of view on how the legislation should evolve. Members of the working group were asked to engage constructively but their presence on the group is not to be construed as endorsement of the legislation, guidance or any of the revisions.
- 2.5. A number of suggestions do not require any revisions to the Licensing Order and have been clarified in guidance or elsewhere.
- 2.6. Below, we set out:
1. Changes that **have** been made to the legislation as a result of suggestions from the working group.

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2. Changes that **have not** been made to the legislation as a result of suggestions from the working group, and points that have been clarified in guidance.

Table 1. Revisions made to the Licensing Order

- 2.7. Changes suggested by members of the stakeholder working group, which **have** resulted in changes being made to the Licensing Order:

	Suggested change	What we did
Bothies		
1.	Consider exclusions for properties such as bothies which may be used as accommodation by somebody working the land, for a fee.	We have revised the Licensing Order to exclude bothies. The definition of a bothy is set out at paragraph 3 of Schedule 1.
Excluded tenancies		
2.	Consider excluding agricultural and crofting tenancies, in addition to private residential tenancies.	We have revised the Licensing Order to exclude a number of tenancies, which include agricultural and crofting tenancies. These are set out at paragraph 2 of Schedule 1.
Temporary exemptions		
3.	Provide more detail on the process licensing authorities must apply when granting temporary licence exemptions.	Licensing authorities can exempt premises from the requirement to have a licence for a particular occasion or for up to 6 weeks each year. We have revised the Licensing Order at paragraph 4 of schedule 2 to require licensing authorities to publish and review a short-term lets temporary exemptions policy statement. This is explained in Paper 5 .
Overprovision		
4.	Require licensing authorities to assess overprovision and	We have revised the Licensing Order at paragraph 7 of schedule 2 to require licensing

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	Suggested change	What we did
	produce a policy following consultation.	authorities to publish and review, a short-term lets overprovision policy statement. This is explained in Paper 5 .
Public register		
5.	Amend the power for licensing authorities to make the public register available in an electronic format to a duty.	We have revised the Licensing Order at paragraph 11 of schedule 2 to require licensing authorities to publish the public register in an electronic format.
Energy efficiency and Energy Performance Certificates		
6.	Remove requirements to comply with minimum energy efficiency standards.	We have removed requirements to meet specific energy efficiency standards from the Licensing Order. Hosts and operators are still required to comply with the standards set out in current building standards legislation ¹ . Broadly speaking, this requirement applies to secondary letting of dwellinghouses. Hosts and operators must include the Energy Performance Certificate rating in any advert or listing, where they are required to have an EPC by building standards legislation.
Insurance		
7.	Insurance cover for premises may not be held by the host or operator. Requirement should be that appropriate cover is in place, regardless of whether the host or operator is the policy holder.	We have revised the Licensing Order at paragraph 14 of schedule 3 requiring the host or operator to ensure that insurance cover is in place for the premises; thus removing the requirement that the insurance cover is necessarily held by the host or operator.
Activity		

¹ The Energy Performance of Buildings (Scotland) Regulations 2008.

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	Suggested change	What we did
8.	Define “short-term letting activity” to include advertising a property for short-term letting	<p>We have not changed the Licensing Order to include advertising as an activity requiring a licence. However, we have revised articles 3 and 4 so that the activity requiring a licence includes the making of an agreement to let the property. This means that taking bookings is a designated activity.</p> <p>This is explained further in Papers 4 and 5.</p>

Table 2. Suggestions which did not lead to revisions

2.8. The table below sets out a number of changes suggested by members of the stakeholder working group, which **have not** resulted in any revisions to the Licensing Order but have either been clarified below or in guidance.

	Suggested change	What we did
Traditional B&Bs		
1.	Issues with inclusion and definition of “traditional” bed and breakfasts.	<p>We have not excluded “traditional” bed and breakfasts but made changes to the Licensing Order to address specific concerns, for example around EPCs (see above).</p> <p>In the 2020 Licensing Order, we explicitly excluded guest houses, boarding houses and hotels. Stakeholders raised concerns about the inclusion of so-called “traditional” bed and breakfast accommodation.</p> <p>The Scottish Government’s policy position has always been that traditional bed and breakfasts are in scope. Our 2019 consultation proposed excluding “<u>licensed</u> hotels and B&Bs and self-catering properties on their premises”.</p> <p>We have revised schedule 1 to address the previous anomaly around excluding guest houses, boarding houses and hotels, but including bed and breakfasts. Guest houses and boarding houses and some hotels can be</p>

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	Suggested change	What we did
		<p>variants of home sharing and should not be automatically excluded. The exclusions have been simplified to hotels with planning permission and premises licensed under the Licensing (Scotland) Act 2005.</p> <p>In broad terms, schedule 1 makes provision to exclude everything other than the use of houses, flats and unconventional accommodation. However, a property is not excluded simply because of how it is labelled. For example, a house used as a hotel, guest house or bed breakfast is not excluded by being labelled as such, unless excluded specifically by provision within schedule 1.</p> <p>The exclusions are explained in more detail in the Policy Note, see Paper 2.</p>
Overprovision		
2.	<p>Require licensing authorities to use licensing data as evidence for any overprovision policy, and require Ministerial approval of the locality to which the overprovision policy applies.</p>	<p>We have not revised the Licensing Order to limit licensing authorities to using licensing data as evidence for any overprovision policy; this would make it hard to apply overprovision policies in the period before 1 April 2024.</p> <p>However, we have required licensing authorities to produce an overprovision policy statement (see Table 1) and set out detailed guidance on overprovision within licensing Guidance Part 2 – see Paper 5.</p>
Tiered approach		
3.	<p>Tiered approach to licensing, with home sharing and home letting exempt from planning and licensing requirements.</p>	<p>Our policy position remains that all short-term lets require a licence, as meeting basic safety standards is important in all short-term lets. Licensing authorities have powers to grant temporary exemptions for periods of up to six weeks. We have set out guidance on this and the parameters for licensing authorities to</p>

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	Suggested change	What we did
		consider when setting fees, such as lower fees for home sharing and home letting, see Paper 5 .
Deemed grant of licences		
4.	Require licences to be automatically granted if a licensing authority has not determined an application within a 12 month timescale.	This is already the case. Where an application has not been determined within statutory timescales it will be deemed granted for a period of one year with no conditions.
Unconventional accommodation		
5.	Add unconventional accommodation to the list of excluded accommodation.	Unconventional accommodation was included following feedback received during our 2020 consultation. The reasons for doing so are set out in paragraph 5.4 of the 2020 consultation report ² .
Likely breach		
6.	“Likely breach” provision in relation to enforcement notices (schedule 2) is unusual.	We have previously considered this. The reasons are set out in the Policy Note, see Paper 2 .
Recurring fees		
7.	Require licensing authorities to provide for annual or other recurring fees, such as monthly fees.	We understand that this could provide valuable flexibility for applicants, and have asked licensing authorities to consider this approach in Guidance Part 2, see Paper 5 . However, we have left the decision as to whether to offer this with licensing authorities. Offering a monthly payment option could increase the costs incurred by the licensing authority in running the scheme in some cases, which would then be passed on in licence costs.
Insurance		

² [Short-term lets – licensing scheme and planning control areas: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/cpa-2020-0001/short-term-lets-licensing-scheme-and-planning-control-areas-consultation-analysis-gov.scot/)

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	Suggested change	What we did
8.	Remove requirement that all hosts obtain £5 million public liability insurance cover.	The requirement to have public liability insurance in place is to protect both hosts and guests. We understand that some platforms offer public liability insurance cover as part of their service.
Registration		
9.	Introduce a registration system, with mandatory conditions (broadly based on the licensing scheme conditions). Those who are complying with registration conditions would be exempt from requirement to obtain a licence.	<p>We believe a hybrid approach would make the arrangements more complicated.</p> <p>One perceived advantage of registration by hosts and operators is that it allows them to continue operating uninterrupted by any application processing. With regard to the licensing scheme and the ability of hosts and operators to be able to continue operating pending determination of their licence application:</p> <ul style="list-style-type: none"> • this is already provided for existing hosts who apply for a licence by 1 April 2023 under transitional arrangements; and • in any other case, licensing authorities have the power to issue a temporary licence to allow this. <p>The other perceived advantage of registration is an assumption that fees would be lower. It is not obvious why this would be the case, if the registration scheme offered similar protections for guests and neighbours as the licensing scheme. Proposals for registration are explored further in section D of the BRIA, see Paper 3.</p>
Timescales		
10.	Give local authorities powers to require existing hosts to apply for licence before April 2023.	In response to comments made in the 2020 consultation, we aligned the deadlines across Scotland. The reasons for taking this approach are set out in chapter 4 of the 2020 consultation report.

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	Suggested change	What we did
		The date by which existing hosts and operators must apply for a licence remains 1 April 2023. The final date by which all short-term lets must be licensed remains 1 April 2024.
Licence numbers		
11.	Using separate licence numbers for secondary letting, home letting and home sharing will greatly aid the collection of data for enforcement.	We have set out requirements on the licence number format in Guidance Part 2, see Paper 5 . The licence number will distinguish between the two types of licence: home sharing and home letting; and secondary letting.
Planning permission		
12.	Planning permission checks are fundamental to securing the safety of residents in tenements, and should also be required outwith control areas.	We have explained our reasoning for focusing limiting this requirement to secondary letting of dwellinghouses in control areas at paragraph 7.6 of the 2020 consultation report.
Notification		
13.	Applications for licences should be advertised locally to give communities the opportunity to object.	Licensing authorities have the power to notify such other persons as they consider appropriate about a licensing application. Guidance Part 2 says that licensing authorities should consider whether to give notice to any community council or development trust in whose area the premises is located, see Paper 5 .

Other revisions

- 2.9. The Scottish Government has made some other revisions to the Licensing Order to address concerns raised by the Delegated Powers and Law Reform Committee on the 2020 Licensing Order and also to make other modest improvements and address other issues following further internal review. The updated Policy Note (see **Paper 2**) explains the provision in the Licensing Order.

3. Responding to the consultation

We are inviting responses to this consultation by **Friday 13 August 2021**.

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 13 August 2021.

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

Handling your response

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

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

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

Next steps in the process

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

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

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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

Scottish Government consultation process

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

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

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

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

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

Consultation Response Form

The purpose of this consultation is to help the Scottish Government ensure that the Licensing Order laid at the Scottish Parliament in September is as efficient and effective as possible. We are only seeking comments which will help us in getting the details right. We are **not** consulting on whether to implement a licensing scheme.

We are not asking specific questions. We are interested in any issues you have identified with the draft Licensing Order and BRIA. Please be as brief as you can and refer back to the relevant paragraph number(s) or sections in each paper.

PAPER 2: DRAFT LICENSING ORDER
Issues and how to resolve them:
PAPER 3: DRAFT BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)
Issues and how to resolve them:

More about you (optional)

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

- Accrediting organisation
- Guest (user of short-term lets)
- Host or operator (provider of short-term lets as defined in the Licensing Order)
- Letting agency, platform or similar
- Local authority or other public sector organisation
- Other hospitality (**not** providing short-term lets)
- Neighbour (affected resident) or community group
- Regulatory body
- Trade association
- Other, please state

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

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

Respondent Information Form

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

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

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

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

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

Information for organisations:

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

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

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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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