

From: [REDACTED]  
More Homes Division

15 March 2021

Minister for Local Government, Housing and Planning

## **SHORT-TERM LETS: SCOPE OF AMENDMENTS TO LICENSING ORDER**

### **Purpose**

1. To seek your approval for the scope of amendments to the Licensing Order which can be considered by policy officials, in consultation with the working group, ahead of re-laying the Order in June.

### **Priority**

2. **Routine.** We are seeking your views by noon Friday 19 March. We need a clear steer before 25 March and the Pre- Election Period (“PEP”). You are due to meet with Mr Ewing before the PEP and it would be helpful to agree the scope of amendments with him.

### **Background**

3. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 was withdrawn on 18 February ahead of a Parliamentary vote, so that concerns raised by Members who were not content to pass the Licensing Order as laid could be addressed. We now need to work quickly to consider changes to the Order, which you have indicated this government intends to re-lay in June, subject to the outcome of the election. We also need to develop draft guidance, with input from the working group, to be published alongside the SSI. The timetable for this work is attached at **Annex A**.

### Licensing Order withdrawal

4. The draft Licensing Order was laid alongside the Control Area Regulations at the Scottish Parliament on 14 December 2020. Following publication of the Licensing Order key tourism stakeholders, including the ASSC, SBBA and STA, raised a number of concerns with the Order which gathered media attention, and generated a significant volume of correspondence.
5. The principal concerns raised by tourism stakeholders were: surprise at the inclusion of traditional B&Bs within the definition of short-term lets; and worries about the cost for operators in bringing properties up to minimum EPC standards.
6. These concerns were reiterated in large numbers to the Local Government and Communities Committee call for evidence. The Committee received over 300 responses to their call for evidence, largely from owners of self-catering properties and B&Bs.

7. During the evidence session with the LGC Committee on 3 February, Members raised a number of concerns with the Licensing Order including the inclusion of traditional B&Bs, EPC requirements, and local authority funding and resourcing. Despite those concerns, the Committee approved the Licensing Order by 4 votes to 3.
8. You wrote to the LGC Committee on 18 February confirming that you had decided to withdraw the Licensing Order, to allow the Scottish Government to address concerns raised by Members who were not content to pass the Order. You also set out that this Government's intention, subject to the outcome of the election, was to re-lay the Order in June and keep to the timetable set out.
9. The Control Area Regulations were approved in the Scottish Parliament on 24 February by 107 votes to 8.

#### Working group

10. In your letter to the LGC Committee on 18 February, you confirmed that a working group had been established to develop guidance on the licensing scheme and control areas that is clear, comprehensive and easy to understand. You also confirmed that the working group would actively explore solutions to issues raised by operators, with a view to identifying any changes to the legislation that may be needed. The working group first met on 18 February.
11. In that letter, you also set out that you remain of the view that legislation is needed and offered reassurance for affected residents and communities across Scotland of this government's commitment to deliver this, subject to the outcome of the election. Officials met with resident and community groups on 9 and 11 March to provide an update, and to listen to their concerns and issues.
12. The working group is due to meet for the second time, ahead of the pre-election period, on 17 March. No meetings of the working group are planned during the pre-election period.
13. We intend to use the second meeting of the working group as an opportunity to task members with providing input to the draft guidance, drawing on their individual areas of expertise. We also intend to seek comments on specific issues and solutions. We will invite written submissions via correspondence by 16 April to allow us to carefully consider any proposed solutions, and finalise instructions to SGLD.
14. In your letter to the LGC Committee on 18 February you committed to the working group *'exploring solutions to issues raised, with a view to identifying changes to legislation that may be needed'*. [REDACTED – exchange of views]
15. We have set out in the working group terms of reference that it is outside the scope of the working group to debate whether to implement a licensing scheme or control areas. You have also been very clear that this Government wants every local authority to ensure that every type of short-term let in their area,

whether it involves a whole property or sharing a room in a home, complies with safety rules. Therefore, we do not intend to consider any changes which would weaken our proposals around safety, or suggest alternative proposals to a licensing scheme.

16. The third meeting of the working group is scheduled for 13 May, following the election. At the third meeting we intend to table a copy of the draft guidance, and we will seek final written comments from members in order to meet our planned publication date in June.
17. We have met with around 30 residents and their representatives at meetings on 9 March and 11 March to complement the work of the working group. Almost every person in attendance expressed concern that residents are not represented on the working group. We have committed to a further meeting with residents in May, after the election. We have also said we will consider their points about representation on the working group. We would like to consider further whether to invite one urban and one rural resident representative to the third meeting of the working group on 13 May. We are seeking your agreement to flexibility on this point.

#### Licensing Order Parliamentary timetable

18. We have confirmed a provisional laying date of 17 June with Parliament and Legislation Unit for re-laying the Licensing Order. Subject to confirmation of recess dates, we expect the evidence session with the LGC Committee will take place in late September 2021, with a Parliamentary vote on the Order in early October 2021. This will allow the Order to be made by 1 November 2021, with local authorities given until 1 April 2022 to have a licensing scheme open to receive applications. The timetable is set out in more detail at **Annex A**.

#### The scope of amendments

19. As you are aware, a minor issue with the drafting of the Licensing Order, which was laid on 14 December, was picked up by the Delegated Powers and Law Reform Committee (DPLRC). We will make changes to the Licensing Order to address this point.
20. A number of issues with the draft order have been raised by stakeholders, including members of the working group. Within **Annex B** we have set out the main issues raised so far, and provided some commentary on both the potential solutions and complexities that we will need to explore further.
21. With regard to other potential changes, it is too early to identify any definite solutions. We need to understand what the problems are and then find the right solutions. There is work to be done with stakeholders before we understand the root problems sufficiently.
- [ REDACTED – exchange of views / provision of advice]
22. You should be aware that some amendments to excluded accommodation may result in the need to amend the Control Area Regulations. But any such

changes would not prevent a local authority from proceeding to designate control areas and our preliminary view is that any such amendments could wait until November, when the Licensing Order has completed its Parliamentary passage.

**Recommendation**

[REDACTED – exchange of views / provision of advice]

**Next Steps**

23. The principal tasks to 17 June are:
- a) Consider solutions put forward by working group members on changes to the legislation, and prepare instructions to SGLD outlining any required changes.
  - b) Advise new Ministers, following the election, outlining any proposed changes to the Licensing Order to allow SGLD to finalise drafting.
  - c) Prepare draft guidance in consultation with the working group, and seek COSLA Environment and Economy Board approval.
  - d) Review and amend the Business and Regulatory Impact Assessment (BRIA) and Equalities Impact Assessment (EQIA) to take into account any changes to the Licensing Order.

[REDACTED]

More Homes Division  
15 March 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Communities and Local Government			X		

- DG Communities
- DG Economy
- Director for Housing and Social Justice & DDs
- [REDACTED], STLDG
- [REDACTED], STLDG
- [REDACTED], More Homes
- [REDACTED], Planning
- [REDACTED], Planning
- [REDACTED], Planning

[REDACTED], SGLD  
[REDACTED], SGLD [REDACTED], SGLD  
[REDACTED], SGLD  
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Jeanette Campbell, Special Adviser

## TIMETABLE

TASK	DURATION	START	COMPLETED BY	NOTE
Working group meeting 2	1 day	Wednesday 17 March		
Working group to provide feedback on SSI and input to draft guidance in correspondence by 16 April	4 weeks	Wednesday 17 March	Friday 16 April	Consultation in parallel with SGLD drafting
Control area regulations come into force	1 day	Thursday 1 April		
Instruct SGLD on amendments to the SSIs following consultation and SGLD redraft the SSIs	6 weeks	Monday 22 March	Friday 29 April	
SGLD redraft the Licensing Order	4 weeks	Friday 29 April	Thursday 27 May	
Working group meeting 3	1 day	Thursday 13 May		
Final comments on guidance	1 day	Wednesday 19 May		Deadline for written comments on guidance from working group
SGLD internal checks	3 weeks	Thursday 27 May	Thursday 17 June	Reduced from normal 5 weeks due to re-laying.
Ministerial approval for any amendments to SSI	Tbc	Late May	Late May	
COSLA and Ministerial sign-off for guidance	Tbc	Friday 4 June	Thursday 17 June	
Re-lay the Licensing SSI at the Scottish Parliament and publish draft guidance		Thursday 17 June	Thursday 17 June	Date allocated by SSI programme managers
SSI Made by		Monday 1 November	Monday 1 November	Takes into account sitting days at Parliament and summer recess.

## PRINCIPAL ISSUES RAISED AND POTENTIAL SOLUTIONS

### Introduction

1. This note covers principal issues raised following the laying of the draft Licensing Order in December 2020 which could require changes to the Order itself.
2. Stakeholder concerns appear to fit into the following categories: definitions and exclusions, compliance costs for hosts, resourcing for local authorities, standards and mandatory conditions, and established use rights<sup>1</sup>.
3. With regard to local authority resourcing, this has been raised as an issue by a number of stakeholders, both in relation to the up-front costs of establishing the licensing scheme in their areas and in terms of ongoing monitoring and enforcement work. We have made full use of the powers in the 1982 Act to provide for local authorities to recover their costs through licensing fees so there is nothing further to be done in the Licensing Order in this regard.
4. [REDACTED – advice / exchange of views]
5. There may be further issues that arise as we get into the detail of developing guidance, under the four headings below which we intend to consider as they arise and include any solution within a post-election submission to new Ministers.

**[REDACTED – exchange of views / provision of advice]**

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<sup>1</sup> The group agreed to use this term in respect of any rights of long-standing businesses, instead of “grandfathering”, because of the historic links of the latter with racial discrimination.