

From: [REDACTED]  
More Homes Division

27 May 2021

Cabinet Secretary for Social Justice, Housing and Local Government

## **SHORT-TERM LETS: REVISED LICENSING ORDER AND GUIDANCE**

### **Purpose**

1. To seek your approval for arrangements to finalise the Licensing Order, laying it before the Scottish Parliament and publishing guidance.

### **Priority**

2. **Urgent.** We are meeting you on Wednesday 2 June and we will need a decision shortly thereafter. This is because the Licensing Order is currently scheduled to be laid on 17 June 2021.

### **Background**

3. There is a long history to the development of proposals to regulate short term lets in Scotland. In brief, there have been two public consultations and extensive stakeholder engagement. In January 2020, the Scottish Government announced proposals for a licensing scheme and committed to taking forward plans for control areas, as provided for by the Planning (Scotland) Act 2019. For more information, see **Annex A**.
4. This submission does not get into the detail of the policy but focuses on the procedural options for taking the work forward. However, a brief summary of the policy and objectives is set out at **Annex B** for information.
5. The Licensing Order laid in December 2020 is an affirmative instrument and secured the approval of the Local Government and Communities Committee. It was withdrawn in February 2021 ahead of a Parliamentary vote because of concerns raised by Members. At that time, the Minister for Local Government, Housing and Planning committed the government, if re-elected, to re-lay the Licensing Order in June 2021, accompanied by draft guidance.

### Licensing Order withdrawal

6. 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 Association of Scotland's Self-Caterers (ASSC), the Scottish Bed and Breakfast Association and the Scottish Tourism Alliance, raised a number of concerns with the Order which gathered media attention, and generated a significant volume of correspondence.

7. The principal concerns raised by tourism stakeholders were: the timing of the legislation in the context of COVID-19 restrictions and a very challenging year for tourism; 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. The Licensing Order was being considered at the Parliament during the second lockdown.
8. These concerns were reiterated in large numbers of communications to the Local Government and Communities Committee in response to their call for evidence. The Committee received over 300 responses, largely from owners of self-catering properties and B&Bs.
9. Since then, we have explored stakeholder concerns further through the working group (see below). Concerns appear to fit into the following categories:
  - who is covered (definitions and exclusions)
  - compliance costs for hosts
  - resourcing for local authorities
  - standards and mandatory conditions, and
  - established use rights (i.e. any rights of long-standing businesses).

#### Working group

10. In February, we established a stakeholder working group to develop guidance on the licensing scheme and control areas that is clear, comprehensive and easy to understand. The membership of the working group covers all relevant interests and is set out at **Annex C**.
11. The working group has also explored solutions to issues raised by operators, with a view to identifying any changes to the Licensing Order that are needed. The working group first met on 18 February and has since met on 17 March and 13 May. It would be useful to talk you through the views of the working group; I have promised to relay their views to you.
12. We have also offered dedicated sessions for resident and community groups on 9 and 11 March and 20 May to provide updates, and to listen to their concerns and issues.
13. The terms of reference for the working group made clear that it was outside the scope of the working group to debate whether to implement a licensing scheme or control areas. However, tourism organisations on the group have been persistent in lobbying for alternatives. (First this was a registration scheme to replace the licensing scheme and now this is an exemption for licensing for hosts who are registered on a yet-to-be-established register.) The ASSC, in particular, has been pushing for registration and many tourism organisations have aligned themselves with their proposals.
14. However, other organisations are supportive of the licensing proposals, including UK Hospitality (in order to deliver a level playing field across the tourist accommodation sector), residents' groups and local authorities.

15. Notwithstanding this range of views on licensing itself, we have circulated draft guidance to the working group and they have, by and large, engaged constructively in commenting on the guidance. Airbnb and ASSC want it made clear that they are not signing off or endorsing the guidance. Unsurprisingly, the measures to manage overprovision have not been well received by them either.

#### Licensing Order Parliamentary timetable

16. We have been working to a provisional laying date of 17 June in order to meet the commitment made before the election to re-lay the Licensing Order in June. However, being an affirmative instrument (requiring to be laid for 54 sitting days for parliament scrutiny), it would not complete its Parliamentary passage until October 2021. Subject to the approval of the Parliament, the Licensing Order was to be made on 1 November 2021, with local authorities given until 1 April 2022 to have a licensing scheme open to receive applications.

#### The scope of revisions to the Licensing Order

17. Prior to the election, Ministers agreed that we could make modest changes to the accommodation requiring to be licensed and make other necessary or expedient changes consistent with delivering the original policy objectives of the licensing scheme (see **Annex B**). Working group members have made a range of suggestions for the Licensing Order, many of which have merit. Consequently, we have made a number of revisions to the Licensing Order at their suggestion, and of our own initiative, to improve its focus and effectiveness. These have been very challenging to get right because we are dealing with the most difficult nuanced issues.
18. For example, we have found that there are no obvious definitions of bed-and-breakfasts, guest houses and hotels. Nor is it easy to determine how, if at all, these establishments are regulated. The intended focus of the regulation of short-term lets is on properties that look like houses, and on unusual accommodation, used to provide sleeping accommodation to guests. No meaningful distinction can be made between a “traditional bed-and-breakfast” and an Airbnb home share, for example, even if it was desirable to do so.

#### Next steps

19. In order to make the 17 June laying date and honour existing commitments, we would need:
- a) Your approval of the revised Licensing Order for laying. The Order has completed the drafting process and is now at the checking stage. **There is no possibility now of considering any policy changes and meeting the 17 June laying date.**
  - b) To submit a draft of the guidance to COSLA on 4 June in time for consideration by their Community Wellbeing Board on 18 June.
  - c) Your approval of draft guidance for publication on 17 June.

d) Your approval for a revised Business and Regulatory Impact Assessment (BRIA) and Equalities Impact Assessment (EQIA), taking account of the changes to the Licensing Order.

20. Whilst there is limited scope for you to comment on the draft guidance, BRIA and EQIA, we would need to proceed largely on the basis that you were content that officials had made sensible revisions following stakeholder engagement.

[REDACTED]

a) [REDACTED – provision of advice / exchange of views]

[REDACTED]

21. [REDACTED]

**Recommendation**

a) [REDACTED]

22. We look forward to discussing this with you on Wednesday 2 June.

[REDACTED]

More Homes Division  
27 May 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Social Security and Local Government			X		
Minister for Business, Trade, Tourism and Enterprise			X		
Minister for Public Finance, Planning and Community Wealth			X		
Minister for Parliamentary Business			X		

- DG Communities
- DG Economy
- Director for Housing and Social Justice & DDs
- More Homes Senior Management Team
- [REDACTED], More Homes
- [REDACTED], More Homes
- [REDACTED], Tourism
- [REDACTED], Tourism
- [REDACTED], Tourism
- [REDACTED], Planning
- [REDACTED], Planning
- [REDACTED], Planning
- [REDACTED], SGLD
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Jeanette Campbell, Special Adviser

## THE DEVELOPMENT OF THE REGULATORY PROPOSALS

**April 2017** - The Scottish Government set up the Expert Panel on the Collaborative Economy to provide advice, expertise and experience for policy development and identify how Scotland could maximise the benefits of the collaborative economy, ensure that regulation is fit for purpose and that the wider economic, social and community impacts, including taxation, social inclusion and employment conditions are taken into account.

**January 2018** - The panel [reported](#) that peer-to-peer accommodation expanded the range, choice and flexibility of accommodation for tourists in Scotland and welcomed the positive contribution which it made to Scotland's economy. However, the panel also highlighted a number of issues and challenges in relation to peer-to-peer accommodation, and short-term lets more broadly.

**July 2018** - The Scottish Government published its [response](#) to the Expert Panel's report, and this included the establishment of a Short-Term Lets Delivery Group. The Short-Term Lets Delivery Group was established to assess the evidence base and the impact, positive and negative, of short-term lets; identify the existing powers local authorities have and explore whether further measures are required. The Group comprised officials from across relevant areas of government including: better regulation, community empowerment, economy, housing, licensing, planning, tax and tourism.

**September 2018** - [Programme for Government 2018-19](#) 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.

### 2019 consultation and independent research

**April 2019** - The Scottish Government launched a [consultation on a regulatory framework for short-term lets in Scotland](#) which sought views on what those powers should be. This 2019 consultation paper was supplemented by a research annex, '[The Short-Term Rental Sector, Housing and Tourism in Scotland](#)', providing an overview of the available evidence on short-term lets in Scotland and regulations introduced elsewhere in the world.

**May 2019** – The Scottish Government commissioned research to explore the positive and negative impacts of short-term lets on communities, with a focus on neighbourhoods and housing.

**July 2019** - The 2019 consultation closed, having received over 1,000 responses and found wide-ranging support for some form of regulation, appropriate to local circumstances.

**October 2019** – The Scottish Government published a [report on the 2019 consultation](#) and independent research on [the impact of short-term lets on communities](#).

## 2020 proposals for regulation

**January 2020** - Following careful consideration of the 2019 consultation responses and the evidence provided by independent research, the Scottish Government announced proposals:

- to establish a licencing for short-term lets, using powers under the Civic Government (Scotland) Act 1982, with a mandatory safety component which will apply to all short-term lets across Scotland;
- to prioritise work to give local authorities the power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019; and
- to undertake a review of the tax treatment of short-term lets, to ensure they make an appropriate contribution to the communities they operate in.

Further details can be found in the [news release](#) and in the [official record of the Minister for Local Government, Housing and Planning's statement](#) to the Scottish Parliament.

**April to July 2020** – work paused to prioritise COVID-19 response.

**September 2020** - we launched our [2020 consultation](#) which set out a definition of short-term lets and detailed proposals on the licensing scheme and control areas. The purpose of this consultation was to help the Scottish Government ensure that the legislation is as efficient and effective as possible. We received over 1,000 responses to this consultation by the time it closed on 16 October 2020.

(The review of the tax treatment of short-term lets is being taken forward separately and was outside the scope of the 2020 consultation.)

**December 2020** - We published the [2020 consultation report](#). The report sets out how we listened to the many and various views expressed and refined and improved our proposals as a result.

The 2020 consultation report also includes six impact assessments:

- Children's Rights and Wellbeing Impact Assessment (CRWIA)
- Equalities Impact Assessment (EQIA)
- Data Protection Impact Assessment (DPIA)
- Fairer Scotland Duty (FSD)
- Island Communities Impact Assessment (ICIA)
- Strategic Environmental Assessment (SEA).

**December 2020** - the [Licensing Order](#), [Control Area Regulations](#) and the [Business and Regulatory Impact Assessment](#) (BRIA) were laid at the Scottish Parliament.

**February 2021** - the Minister for Local Government, Housing and Planning [wrote to the Local Government and Communities Committee](#) confirming that legislation for a short-term lets licensing scheme had been withdrawn from the Scottish Parliament to allow for draft guidance to be developed. Further detail can be found in the [news release](#) and Minister's [video](#).

**April 2021** - the [Control Area Regulations](#) came into force.

## REGULATION OF SHORT-TERM LETS: POLICY OBJECTIVES

### Pre-pandemic activity, May 2019

1. Approximately 32,000 Airbnb listings across Scotland, numbers having grown dramatically in the preceding five years or so.
2. They are not evenly spread:
  - >50% of listings in just two local authority areas (City of Edinburgh and Highland).
  - >50% of listings in 24 out of 354 council wards in Scotland.
  - But five local authority areas had fewer than 100 listings.
3. The majority (c. 70%) of short-term lets are whole property lets.
4. In four areas in Scotland (one in Edinburgh and three in Highland), the estimated proportion of dwellings in those areas listed on Airbnb was over 10%, reaching almost 20% on Skye.

### Concerns about short-term lets

5. Our proposals to licence short-term lets were developed in response to concerns raised by residents in communities across Scotland and Members in all parties. Issues raised include:
  - safety issues (e.g. fire) for themselves and guests staying in the accommodation);
  - personal security;
  - noise, nuisance and antisocial behaviour;
  - littering and waste;
  - loss of affordable housing for local residents;
  - loss of character and amenities in neighbourhoods; and
  - no effective complaint or enforcement mechanisms.
6. But short-term lets also have advantages, including: providing flexible accommodation to respond to surges in demand (e.g. for festivals); allowing a more personal and tailored experience for guests; helping people earn extra money; and contributing to the tourism and visitor economy.

### Overarching objective

7. The Scottish Government has committed to ensuring that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.

### Objectives of the interventions

8. The high-level policy purpose behind the licensing and planning control area interventions is intended to be as follows:



- **Licensing scheme** – to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively.
- **Control areas** – to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.

### **Licensing key features**

9. The licensing scheme is mandatory across Scotland and delivered locally by licensing authorities. There are some basic mandatory conditions, primarily focused on safety, which apply across Scotland. Licensing authorities can tailor their schemes (by adding further conditions) to manage local issues. Licensing authorities are responsible for setting fees.

### **Control area key features**

10. Planning authorities can choose whether to implement one or more control areas in their areas. In control areas, planning permission is always required for use of a house for whole property lets. Now, and outside of control areas, planning permission may be required, depending on the circumstances. Note that control areas are not a prohibition on short-term lets.

## STAKEHOLDER WORKING GROUP MEMBERS

- Andrew Mott, Scottish Government (Chair)
- Marie Lorimer, Airbnb
- Tony Cain, Association of Local Authority Housing Officers (ALACHO)
- Fiona Campbell, Association of Scotland's Self-Caterers
- James Foice, Association of Serviced Apartment Providers
- Sarah Farnham, for Booking.com (Ketchum)
- Ryan Pearson, Booking.com
- Chris McKee, City of Edinburgh Council
- Ailsa Raeburn, Community Land Scotland
- Laura Caven, COSLA
- Wayne Mackay, Electrical Safety First
- Jean-Philippe Monod, Expedia
- Barry McCulloch, Federation of Small Businesses
- Jo Millar, Gilson Gray
- David Littlejohn (Perth and Kinross Council), Heads of Planning Scotland
- Alastair McKie, Law Society of Scotland
- Hazel Stevenson (Aberdeen City Council), Local Authority Environmental Health Officers
- Kirsten Henderson, PLACE
- Geoffrey Smith, Police Scotland
- Gavin Percy, Quality in Tourism
- Professor Russel Griggs, Independent Chair of the Scottish Government Regulatory Review Group
- David Weston, Scottish Bed & Breakfast Association
- Chris Getty, Scottish Fire and Rescue Service
- James Clark, Scottish Fire and Rescue Service
- Gavin Mowat, Scottish Land & Estates
- Marc Crothall, Scottish Tourism Alliance
- Gary Munro (Fife Council), Scottish Local Authority Lawyers and Administrators (SOLAR)
- Kimberley Langley (Fife Council), Scottish Local Authority Lawyers and Administrators (SOLAR)
- Leon Thompson, UK Hospitality
- Shomik Panda, UK Short-Term Accommodation Association
- Patrick O'Shaughnessy, Visit Scotland

More information on the stakeholder working group, including papers and notes of meetings, can be found here: [Short-Term Lets Stakeholder Working Group](#).