

# **Short-term lets: licensing scheme and planning control area legislation**

**Draft Business and Regulatory Impact Assessment (BRIA) for consultation**

**June 2021**



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

## **Licensing Scheme and Planning Control Area Legislation**

### **Draft Business and Regulatory Impact Assessment (BRIA)**

#### **A: Title of Proposal**

1. This BRIA relates to the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (“the Licensing Order”) and the Town And Country Planning (Short-Term Let Control Areas) (Scotland) Regulations 2021 (“the Control Area Regulations”).
2. This BRIA was originally published in December 2020, alongside the Licensing Order and Control Area Regulations. We shall refer to that as the **2020 BRIA**. 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 The Licensing Order was withdrawn in February 2021, in order to develop guidance and address concerns raised by members and stakeholders; we shall refer to the withdrawn Licensing Order as the **2020 Licensing Order**.
3. The Scottish Government published a revised draft Licensing Order in June 2021 for consultation, with the intention of laying the Order at the Scottish Parliament in September 2021.
4. This updated BRIA has been amended to take into account changes made to the Licensing Order (**Paper 2**), and published for consultation with stakeholders, alongside the draft licensing guidance (**Papers 4 and 5**).

#### **B: Purpose and intended effect**

##### **B1. Background**

5. Short-term lets have become the subject of much controversy in some parts of Scotland and evoke strong opinions. The 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.
6. 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 comprised officials from across relevant areas of government, including: better regulation, community empowerment, economy, housing, licensing, planning, tax and tourism.

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7. 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 2019 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. The reports on the 2019 consultation and research<sup>1</sup> were published on 28 October 2019.
8. On 8 January 2020, Kevin Stewart MSP, 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.”*
9. 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 on detailed proposals was undertaken from 14 September to 16 October 2020. We had originally planned for a longer period of engagement on our proposals in autumn 2020 but the timetable had to be compressed in order to ensure that the secondary legislation could still be laid at the Scottish Parliament in session 5. The report on the 2020 consultation was published in December 2020.
10. The Control Area Regulations were approved by the Scottish Parliament in February 2021, and came into force on 1 April 2021. The 2020 Licensing Order was approved by the Local Government and Communities Committee, and subsequently withdrawn ahead of a vote in the Scottish Parliament due to concerns raised by members and stakeholders.
11. In order to address those concerns, and develop guidance on the licensing scheme and planning control areas, the Scottish Government established a stakeholder working group in February 2021. Further information on the working group can be found in **section C4**.

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<sup>1</sup> All Scottish Government consultation and research documents on short-term lets from 2019 and 2020 referred to in this document can be accessed from [www.gov.scot/publications/short-term-lets](http://www.gov.scot/publications/short-term-lets).

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12. The Scottish Government remains committed to delivering a licensing scheme which introduces measures to protect the safety of guests and neighbours, and rolling these out without unnecessary delay. The date by which licensing authorities must have licensing schemes open to receive applications is now 1 October 2022, which gives them more time to get ready. However, the deadline by which all short-term lets must be licensed remains 31 March 2024.
13. In this BRIA, references to consultation are to the current (2021) consultation exercise, unless the context demands otherwise; we refer to previous consultations as the “2019 consultation” and the “2020 consultation” where necessary to avoid any risk of confusion.

## **B2. Objective**

14. The Scottish Government’s purpose in regulation of short-term lets is to ensure that local authorities can balance the needs and concerns of their communities with wider economic and tourism interests.
15. The Licensing Order establishes a 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.
16. The Licensing Order is complemented by the Control Area Regulations which makes provision for local authorities to designate control areas. The purpose of control areas is 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.
17. Both these instruments will be complemented by possible changes to taxation to make sure short-term lets make an appropriate contribution to local communities and support local services. The review of the tax treatment of short-term lets is being progressed by the Scottish Government separately.

## **B3. Rationale for Government intervention**

18. The [Programme for Government 2018-19<sup>2</sup>](#), published on 4 September 2018 (page 97), made a commitment to:

*“work with local government, communities and business interests to ensure that local authorities have the appropriate regulatory powers to allow them to*

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<sup>2</sup> <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

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*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.”*

19. The regulation of short-term lets supports the following National Performance Framework objectives:
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
  - We have thriving and innovative businesses, with quality jobs and fair work for everyone.
  - We tackle poverty by sharing opportunities, wealth and power more equally.
  - We live in communities that are inclusive, empowered, resilient and safe.
  - We value, enjoy, protect and enhance our environment.
  - We are creative and our vibrant and diverse cultures are enjoyed widely.
20. The rationale for government intervention<sup>3</sup> is based around:
- a) **asymmetric information** affecting guest safety; and
  - b) **negative externalities**, such as:
    - (i) increased housing costs;
    - (ii) reduced amenity;
    - (iii) quality of place;
    - (iv) noise and nuisance; and
    - (v) criminal use.
21. We consider these in turn.
22. **Asymmetric information** can occur when one party involved in a transaction has different information about the good or service than the other party.
23. A primary motivation for introducing this legislation is to **enhance guest and neighbour safety**. (Neighbour safety is affected, for example, through risk of

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<sup>3</sup> The Green Book notes, “The rationale for intervention can be based on strategic objectives, improvements to existing policy, market failure or distributional objectives that the government wishes to meet.”

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fire.) In the private rented sector, a landlord must register with the local authority that their rented property is located in before they can let a property. As part of the registration process, the local authority will check whether the landlord is a fit and proper person. A prospective tenant is able to search the Scottish landlord register to check whether a landlord is a fit and proper person before living at the property. A similar process exists for Houses in Multiple Occupation (HMO), which require a licence. In both cases, the property must at least meet the repairing standard and the landlord must be a fit and proper person.

24. At present, short-term lets are unregulated; the only mechanism the average guest has to find out about the accommodation is peer review on platforms. Even assuming the reviews are authentic, peer review tends to be focused on quality of experience rather than safety. Whilst there is some overlap between quality and safety, most guests will not have the time, inclination or skills to examine or comment upon safety features.
25. The primary concern stemming from this is that people may unwittingly stay in accommodation that is unsafe. The mandatory safety conditions for the licensing scheme will apply across Scotland for all types of short-term let and set licensing requirements around water, electrical, gas and fire safety. Broadly speaking, this asymmetry of information is addressed through the **mandatory licence conditions**.
26. This asymmetry of information can also lead to market failure in the sense that prices determined by the market do not provide proper signals to consumers (guests) and producers (hosts). If it is difficult for guests to distinguish the safety and quality of short-term lets, this could mean that some hosts may offer lower prices because they do not incur costs required to meet safety standards, and thus undercut hosts who do ensure that their accommodation is safe. If there was much better information (through licensing), then unsafe accommodation should be removed from the market and hosts will be competing on a level playing field of compliance with mandatory safety conditions. It may even be possible that a licensing scheme could boost overall demand for short-term lets by providing consumers with increased confidence in the functioning of the short-term lets market.
27. A **negative externality** occurs when the action of one party adversely affects another party, but this is not accounted for in the market price of a good or service. This can result in an outcome where the efficient amount of a good or service supplied is exceeded and unnecessary social costs are imposed. One example is the impact of poor quality short-term lets on the safety of neighbours, discussed above. Other examples, discussed below, are more variable across Scotland and will be **addressed through the discretionary**

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**powers** given to local authorities through the Licensing Order and Control Area Regulations.

28. An example of a negative externality arising from short-term lets, the impact of which can vary substantially across Scotland, is the effect on local housing markets and communities. Research for the Scottish Government on the impact of short-term lets<sup>4</sup> on local communities identified that there were just under 32,000 active Airbnb listings in May 2019 across Scotland, with nearly 70% of these being secondary letting (whole properties). In Edinburgh City Centre and Skye, it was estimated that secondary lets actively listed on Airbnb accounted for just over one in ten of all dwellings in these areas.
29. In areas like Edinburgh City Centre and Skye, where there is high demand for short-term accommodation, it may be more profitable for a landlord to let their property as a short-term let, rather than a long-term let, reducing the supply of private rented sector accommodation. It may also attract investors looking to buy property to let as a short-term let, competing with residents looking for permanent accommodation in the area. This reduction in the supply of housing available to residents can impose social costs that are not borne by short-term let hosts:
  - a) increased costs of housing (renting or purchase) for local people;
  - b) the supply of local amenities for residents may decrease if there are not enough residents to make these amenities financially viable;
  - c) the quality of the neighbourhood and sense of community can be adversely affected if residents feel less safe because of the high concentration of short-term lets or if residents have fewer permanent neighbours;
  - d) specific nuisance such as through noise, littering and other forms of antisocial behaviour; and
  - e) use of short-term let accommodation for criminal enterprises (such drug dealing, sex trafficking etc.), with or without the collusion of the host.
30. The potential negative impacts of short-term lets on local communities are evidenced in the research the Scottish Government carried out in 2019. This research showed that there is a large degree of concern about the prevalence of short-term lets across Scotland, and in turn there are social costs caused by short-term lets that are borne by residents. The research included a survey of 197 residents in five areas of Scotland:

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<sup>4</sup> [www.gov.scot/publications/research-impact-short-term-lets-communities-scotland/](http://www.gov.scot/publications/research-impact-short-term-lets-communities-scotland/)

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- Edinburgh (Central ward comprising the Old Town, New Town and Tollcross) – established world heritage site, city-centre tourism;
  - The East Neuk of Fife (East Neuk and Landward ward coastal towns excluding St Andrews) – established coastal second home location;
  - Fort William – rural expanding tourism;
  - Glasgow (City Centre ward including Merchant City, Anderston and Yorkhill) – inner-city centre event tourism; and
  - Eilean a' Chèò (Skye) – remote rural established tourism.
31. Resident respondents were asked whether they agreed or disagreed with the following statements about the effect of short-term lets; the share that agreed with these points is as follows (the remaining disagreed or were neutral):
- Reduction in homes for general residential use – 62%
  - Reduced housing affordability for local people – 57%
  - Negative impact on parking – 53%
  - Increased littering / waste – 52%
  - More traffic problems – 47%
  - Inconsiderate use of common spaces – 42%
  - Noise and disturbance – 38%
  - Negative impact on overall character (of neighbourhood) – 35%
  - Increased cost of living in neighbourhood – 35%
  - Damage to homes or common areas – 27%
  - Higher insurance premiums – 26%
  - Threats or abuse – 21%.
32. Exploring these concerns in more detail, in Edinburgh, most resident, community and business participants in the research highlighted the reduced supply of housing caused by short-term lets in the city centre, and the impact they felt this was having on housing costs. This was usually expressed as cost of rents in the private rented sector, although some community participants also highlighted local house sales being out of reach for residents, with properties



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sold to short-term let investors. It was claimed by many community participants that this has resulted in a “spiralling decline” for the sustainability of the local community as there was no way of attracting residents due to increasing prices combined with “over-tourism” in the area.

33. In Fort William and Skye, the suggestion from many business and community participants was that there was a considerable problem in sourcing workers due to lack of available residential housing. This was related to workers for the tourism industry, property construction and maintenance, other local industry, public services including health and education, and the university in Fort William. Some participants in each area explained that the lack of residential housing was exacerbated by the fact that there are very few viable housing alternatives in these rural areas due to the travel distances involved.
34. Concerns were also raised by many participants in all case study locations over the lack of health and safety regulations in short-term lets when compared to the residential letting market or other tourist accommodation providers. This was also linked to concerns about: building insurance, property repairs, and residents being unable to find hosts to resolve issues.
35. In Edinburgh, one of the most prevalent concerns and negative impacts of short-term lets raised by many resident and community participants was around the daily disruption caused by them. This included noise caused by the constant stream and volume of visitors and cleaners in common stairs; the noise of suitcases being wheeled about and bumping up and down two or three times every week; continual buzzing at the common entry doors at antisocial hours; visitors not understanding how to use the local refuse system; visitors not recycling; taxis arriving and departing often using their horns to indicate their arrival; and smoking in the common areas. The same participants discussed the fact that this could be ignored occasionally, but it was the incessant nature of the disruption which caused unhappiness. There was a sense of powerlessness to do anything about the problem due to the transient nature of tourists, the anonymity of hosts and no-one to go to “centrally in the council”. This often related to visitors not understanding the etiquette of living in tenements.
36. Many resident, community and a few business participants, raised concerns about the impact that short-term lets have on the character of areas, and sustainability of communities. The most common issues related to the availability of local services, shops for local people, and the impact on falling primary school rolls due to falling residential population. These issues were raised in all areas apart from Glasgow.
37. The reduction of local services and shops for local people was raised by many community participants across all areas, except Glasgow. These participants

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often made a direct link between the growth of short-term lets and tourism to the closure of local amenities such as the post office, bank and library. They also noted that many retailers in these areas now concentrate on the tourists for trade, with examples of local shops such as the local butcher, green grocer and newsagent closing over recent years. Some participants in rural areas were concerned about the continued 'liveability' of the community for local people, with useful local shops closing for tourist shops. They highlighted that people now have to travel long distances for shopping due to local shop closures.

38. These social costs to residents are not borne by short-term let hosts. If they were, it might be expected to result in a reduction in the problems associated with short-term let accommodation.
39. The legislation seeks to remedy this by giving local authorities discretionary powers through: the Licensing Order to manage the adverse impacts of short-term letting on neighbours and communities; and through the Control Area Regulations to designate parts of their local authority as control areas. This approach recognises that these negative externalities may not be prevalent across all areas of Scotland, or in all areas of a local authority, by giving local authorities discretionary powers to flex to local circumstances.
40. The Licensing Order will give local authorities discretionary powers to add licence conditions to address local needs and concerns. These conditions can be applied generally (to all licences), in certain circumstances (e.g. tenement buildings) and individually to a specific licensee (though this is only likely if problems have arisen). This will allow local authorities to target specific measures on the specific licensees or areas with specific problems.
41. In a control area designated by a planning authority under powers in the Control Area Regulations, a host or operator seeking to use a dwellinghouse for secondary letting would need to apply for planning permission to be able to do so, which could be refused. This power to designate control areas (subject to the approval of the Scottish Ministers) enables local authorities to manage the prevalence of short-term lets in their area, and reduce social costs arising from short-term lets.

## **C: Consultation**

### **C1. Within Government**

42. 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 comprised officials from across relevant areas of

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government including: better regulation, community empowerment, economy, housing, licensing, planning, tax and tourism.

43. We have also engaged with local government through local authority heads of planning, environmental health, licensing and housing officers and COSLA.
44. We have engaged with Police Scotland and the Scottish Fire and Rescue Service, both of whom have an important role to play in the licensing scheme. VisitScotland also provided input through the virtual workshops held as part of the 2020 consultation.

## **C2. Public Consultation**

45. 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 2019 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.
46. 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 results of this research are reported above in **Section B3**.
47. Broadly speaking, the same themes, benefits and concerns were highlighted by people at 2019 consultation events, those responding to the 2019 consultation and the independent research. The reports on the 2019 consultation and research were published on 28 October 2019.
48. A further (2020) consultation was carried out from 14 September to 16 October 2020 covering: the definition of short-term lets; the establishment of control areas under the powers created by the Planning (Scotland) Act 2019; and the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982. The purpose of the 2020 consultation was to help the Scottish Government ensure that the legislation laid at the Scottish Parliament in December 2020 was as efficient and effective as possible. The report on this consultation was published in December 2020.

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**C3. Business**

49. From the outset, the Scottish Government has had constructive engagement with Airbnb, the Association of Scottish Self Caterers (ASSC) and the UK Short Term Accommodation Association (STAA), bodies with a strong interest in short-term lets in Scotland; all of whom are keen to promote best practice and high quality and standards. They have engaged with Scottish Government through and beyond both the 2019 consultation and the 2020 consultation.
50. The 2020 consultation report (at **Annex B**) details the virtual workshops held over the 2020 consultation period and business was well-represented at these events. We heard from:
- **Accommodation providers** – ranging from Airbnb hosts, to self-catering businesses, serviced apartments and aparthotels;
  - **Accrediting organisations** – Electrical Safety First, Firescape, Quality in Tourism and Superhog (Guardhog) Technologies;
  - **Channel managers and hosting intermediaries** – Altido, Passthekeys, SpotHost, Houst, Booksterhq, GuestReady;
  - **Letting agents, platforms and aparthotels** – EdLets, Airbnb, booking.com, HomeAway (Expedia), Sykes Cottages, Sonder, Palm Holdings (Edinburgh) and StayCity;
  - **Tourism and business** – ETAG, Scottish Tourism Alliance, Skye Connect, UK Hospitality, Visit Arran; and
  - **Trade associations** – STAA and ASSC.
51. We also held a workshop with the [Regulatory Review Group](#)<sup>5</sup>.

**C4. Stakeholder Working Group**

52. In February 2021, the Scottish Government established a [stakeholder working group](#) to help develop draft guidance on the licensing scheme and planning control areas, with the aim that it is comprehensive, helpful and easy to understand. The working group was also tasked with considering any changes that may be required to the 2020 Licensing Order.
53. Representation on the group reflected the diverse nature of the short-term letting market, and included members from: local authorities, trade associations, short-term let platforms, Visit Scotland, representatives of urban and rural residents, Police Scotland, Scottish Fire and Rescue Service, and the

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<sup>5</sup> [www.gov.scot/groups/regulatory-review-group](http://www.gov.scot/groups/regulatory-review-group)

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Scottish Government's independent Regulatory Review Group. A full list of members can be found at: [Short-Term Lets Stakeholder Working Group - gov.scot \(www.gov.scot\)](http://www.gov.scot).

## **D: Options**

54. The 2019 consultation sought views on a wide range of possible approaches to the regulation of short-term lets. The 2020 consultation set out detailed proposals for a licensing scheme and control area regulations. In the 2020 consultation, we were not seeking views on a range of options but rather issues and solutions that would help refine the proposals set out in the 2020 consultation paper. The then Minister for Local Government, Housing and Planning, Kevin Stewart MSP, outlined the Scottish Government's approach in response to the 2019 consultation in the Scottish Parliament in January 2020.
55. We did not publish a partial BRIA with the 2020 consultation paper, as we were not seeking stakeholders views on a range of options (which was covered by the 2019 consultation) but were seeking feedback on the specific elements of our proposed regulatory scheme. However, the views expressed in the 2020 consultation, and further engagement with local authorities afterwards<sup>6</sup>, provided useful information for the 2020 BRIA, published in December 2020.
56. This BRIA focuses substantively on two options:
  - a) do nothing; and
  - b) the licensing scheme as set out in the Licensing Order (and control areas as provided for in the Control Area Regulations).
57. The 2020 consultation paper did not set out other options.
58. In 2020 BRIA, we set out that we had not separately assessed proceeding with the 2020 Licensing Order only (i.e. not proceeding with the Control Area Regulations) as an option. This was because the Control Area Regulations provide entirely discretionary powers to local authorities. It will be for local authorities to consider whether and how to make use of these powers and assure themselves that the use of these powers has the intended impact.
59. The Control Area Regulations were approved by the Scottish Parliament in February 2021, and came into force on 1 April 2021. The Scottish Government also remains committed to delivering a licensing scheme for all short-term lets.

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<sup>6</sup> The Scottish Government had follow-up conversations with officials from City of Edinburgh Council, Glasgow City Council, West Lothian, Argyll & Bute Council and Highland Council.

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Therefore, this BRIA focuses on the same two options as set out in the 2020 BRIA.

60. We did carefully consider industry suggestions for a registration scheme. We also considered proposals for an exemption from the requirement to obtain a licence for hosts and operators who were registered, which were put forward by industry to the stakeholder working group. Below we set out why we did not regard these as viable alternatives.

#### **D1. Registration scheme**

61. The sector has developed codes of conduct and guidance for hosts, with Airbnb, ASSC and STAA all publishing advice for hosts<sup>7</sup>. The sector is not against regulation and sees benefit in helping hosts achieve basic safety (and quality) standards in their accommodation. The discussion has centred on the structure of that regulation.
62. There was significant industry lobbying for a registration scheme as an alternative for the licensing scheme. The Scottish Government's view was that a registration scheme to deliver equivalent protections to the licensing scheme would require a Bill (primary legislation) and would not have been possible to deliver in the previous session of Parliament. (More recently, industry stakeholders have suggested using powers in the Development of Tourism Act 1969, see **section D2**.) Development and Parliamentary consideration of a Bill, followed by secondary legislation and an implementation period, would push back regulation by several years. The Scottish Government's view was that such a timetable was too slow when the 1982 Act provided a suitable mechanism for regulation.
63. A key argument made by industry for registration, as opposed to licensing, was that, under a registration scheme, a host could register and continue operating whereas, under a licensing scheme, the host must wait to be granted a licence before operating. The Licensing Order makes provision for existing hosts (i.e. those operating before 1 October 2022) to continue to operate whilst their application is processed. Such existing hosts have until 31 March 2023 to make an application for a licence.
64. The other principal argument advanced was that a registration scheme would be much less costly and bureaucratic. However, this entirely depends on the requirements of the registration scheme. A "light touch" registration scheme is likely to be less costly to administer than the licensing scheme but, by the very nature of being "light touch", would not deliver the same assurances and protections around safety and would not provide the tools to manage noise and

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<sup>7</sup> See [www.airbnb.co.uk/help/article/1379/responsible-hosting-in-the-united-kingdom](https://www.airbnb.co.uk/help/article/1379/responsible-hosting-in-the-united-kingdom), [www.assc.co.uk/policy/code-of-conduct](https://www.assc.co.uk/policy/code-of-conduct) and [www.ukstaa.org/policy](https://www.ukstaa.org/policy).



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nuisance. Local authorities are also well-practiced at administering licensing schemes under the 1982 Act and are likely to be able to adapt systems and practices in order to extend to the licensing scheme. A registration scheme would require new, unfamiliar infrastructure which local or national government would need to establish and fund.

65. In summary, the Scottish Governments' view was that a registration scheme would not be ready in sufficient time and risked being either cheap and ineffective or a more expensive way of delivering the benefits of the licensing scheme.

## **D2. Exemption proposal**

66. Since the 2020 Licensing Order was withdrawn earlier this year, the ASSC put forward a proposal to the working group to introduce a registration scheme which would operate in parallel with the licensing scheme, but exempt registered hosts and operators from having to obtain a licence. Their proposed approach would require the same basic safety standards for registration as for licensing and they suggested that this could be delivered under powers in the Development of Tourism Act 1969 (i.e. not requiring primary legislation).
67. Unlike previous calls to introduce a registration scheme instead of licensing, this proposed approach would introduce a registration system that complemented licensing. The ASSC suggested that the scheme could be administered by a tourism body, such as Visit Scotland.
68. The Scottish Government's view is that this proposal either does or does not provide the same protections as licensing. If the same protections as licensing are afforded, then the proposal could not be less onerous, unless there was an assumption that the scheme administrator would be more efficient than licensing authorities. Licensing authorities are experienced in delivering various licensing schemes, and able to provide a good value way of providing the required level of assurance.
69. If the same protections as licensing are not afforded, then the proposal does not deliver Ministers' policy intentions.

## **E. Summary costs and benefits by sectors and groups affected**

70. The following table lists all the sectors and groups likely to be affected and how they will be affected by option (b). The sectors and groups were identified in advance of the 2020 consultation so that each group was engaged through representation at virtual workshops held over the 2020 consultation period. Paragraph 2.3 of the 2020 consultation paper set out the following actors in the system (which we have since rationalised for the purposes of the guidance):

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- **accrediting organisation** means an organisation promoting higher industry standards and best practice for the short-term lets sector, by offering advice or certification to hosts;
  - **channel manager** means a person or organisation providing a service to a host which enables them to advertise and accept bookings through multiple platforms;
  - **Destination Management Organisation (DMO)** means an organisation providing commission-free marketing of accommodation by pointing to the host's website or booking system (i.e. they do not take bookings directly);
  - **guest** means a person occupying accommodation for the purposes of a short-term let;
  - **holiday letting agency** means an organisation which takes responsibility for all aspects of making accommodation available for short-term lets (marketing, bookings, queries, cleaning etc.), i.e. offering all the functions of a hosting intermediary combined with those of a platform;
  - **host or operator** means a person or company providing accommodation for short-term letting, including commercial landlords;
  - **hosting intermediary** means a person or company allowing hosts to outsource some or all of their functions in respect of services provided to guests during their stay;
  - **neighbour** means, for our purposes, someone whose permanent residence is in close enough proximity to a short-term let to have a legitimate interest in its business, e.g. potentially affected by safety, noise, litter, nuisance;
  - **platform** (sometimes known as Online Travel Agencies or OTAs) means an online marketplace, advertising or brokering service, such as Airbnb, booking.com and others, allowing hosts to offer properties for short-term lets; and
  - **trade association** means a body representing the interests of some or all hosts, and possibly other actors as well.
71. The costs and benefits are presented relative to option (a) (business as usual). Costs and benefits may be augmented where local authorities exercise discretionary powers to impose additional licence conditions and designate control areas.



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Sector or group	Option (b) – legislation: costs (-), benefits (+)
Accrediting organisation	<ul style="list-style-type: none"> <li>+ More hosts are likely to seek accreditation from accrediting organisations and help from them with applying standards</li> </ul>
Guest	<ul style="list-style-type: none"> <li>+ Assurance around safety and standards, if the licensing scheme operates successfully</li> <li>+ Greater confidence in sector may lead to higher demand for short-term lets, especially for less familiar types of accommodation</li> <li>– Higher cost of short-term accommodation and less choice if there is a reduction in the size of the sector</li> </ul>
Host	<ul style="list-style-type: none"> <li>+ Confident all other hosts operating to same basic standards, i.e. not being undercut</li> <li>+ Confident about their own compliance and legal position, aided by new Scottish Government guidance</li> <li>– Time taken by application (and renewal) process and bearing some costs not passed on to guests</li> <li>– Costs of work on the accommodation to meet the mandatory licensing conditions</li> <li>– Additional costs for a planning application for some hosts in control areas</li> <li>– May deter some potential new entrants and lead some existing hosts to exit the sector, although could be mitigated by increased demand from guests due to improved confidence in the sector</li> </ul>
Hosting intermediaries and channel managers	<ul style="list-style-type: none"> <li>+ Safer workplace for people working in the accommodation (e.g. cleaners etc.)</li> <li>– May be some reduction in volume if hosts exit the sector because of costs or local authorities act to manage overprovision. However, this may be mitigated by increased demand from guests due to improved confidence in sector</li> </ul>

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<p>Letting agencies and destination management organisations</p>	<ul style="list-style-type: none"> <li>+ Increased guest confidence about basic safety standards means less reassurance required from letting agencies on this and a reduction in costs, e.g. from correspondence</li> <li>+ Agency and DMOs can be more confident about the accommodation in their listings</li> </ul>
<p>Local authorities and other public sector</p>	<ul style="list-style-type: none"> <li>+ Reduced workload for local authorities and other public sector bodies from antisocial or criminal behaviour, as bad hosts either leave the sector or improve their operations and it becomes harder to use short-term lets for criminal purposes</li> <li>+ Reduced workload for local authorities and other public sector bodies from properties that are unsafe (e.g. calls to the fire service)</li> <li>+ Greater understanding of prevalence of short-term lets in a local authority area could improve their housing market policies</li> <li>– Challenges for local authorities in recruiting and training staff, depending on the local employment market</li> <li>– Challenges for some licensing authorities in handling high application volumes from existing hosts</li> </ul> <p><i>Note that the costs involved in establishing and running their licensing scheme and all the supporting functions should be covered by the fees from the scheme, so this is neither a cost nor a benefit.</i></p>
<p>Neighbour (resident) and community groups</p>	<ul style="list-style-type: none"> <li>+ Improved safety (e.g. reduced risk of fire)</li> <li>+ Reduced potential for noise and nuisance from frequent changes of occupation or anti-social activities</li> <li>+ Better quality of life in their own homes and the surrounding spaces</li> <li>+ Easier to find host and engage constructively</li> <li>+ Local authority take action to address residents' legitimate concerns</li> <li>+ Improved housing affordability in some areas</li> </ul>

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Other hospitality (e.g. hotels and premises licensed under the Licensing (Scotland) Act 2005 to provide accommodation)	<ul style="list-style-type: none"> <li>+ Fairer competition now that the short-term let sector is regulated too</li> <li>+ Increased business in some areas if availability of short-term let accommodation reduces</li> </ul>
Platform	<ul style="list-style-type: none"> <li>– Some additional work in displaying licence number, maximum occupancy and EPC rating</li> <li>– May discourage market participation by hosts, in turn affecting amount of business for platforms, although this could be offset by stronger brand reputation for Scottish accommodation</li> </ul>
Trade association	<ul style="list-style-type: none"> <li>+ Assurance about basic standards and suitability of members</li> <li>– May be some reduction in volume, depending on balance between increased costs versus improved confidence in sector</li> </ul>
Wider economy	<ul style="list-style-type: none"> <li>+ Employment for trades in bringing accommodation up to the basic safety standards</li> <li>+ Sales opportunities for firms selling relevant kit, e.g. smoke alarms etc.</li> <li>– May discourage market participation by hosts due to costs, although this may be mitigated by increased confidence in sector or activity displaced into other forms of tourist accommodation</li> </ul>

## **F. Costs to local authorities and recovery through fees**

72. To inform this BRIA, the Scottish Government has sought to determine the costs of the licensing scheme to local authorities and, therefore, the possible fees that might be charged to short-term let hosts. **The actual fees to be charged are properly a matter for local authorities and the information provided in this BRIA is not to be seen as a requirement on local authorities or a commitment by them to charge fees in any particular way or at any particular level.**
73. The Licensing Order requires all short-term lets in Scotland to have a licence to operate. To obtain a licence, hosts will need to demonstrate compliance with a

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set of mandatory licence conditions that will apply Scotland-wide. These conditions primarily concern the safety of the accommodation, including the following direct safety measures:

- (1.) Fire safety of the premises and furniture and fittings
- (2.) Gas safety
- (3.) Electrical safety
- (4.) Water safety: Private water supplies
- (5.) Water safety: Legionella
- (6.) Safety and repair standards
- (7.) Maximum occupancy.

74. There are also mandatory conditions which assist with compliance and enforcement and also help to protect guests and neighbours:

- (1.) Agents: to make sure the day-to-day managers are named on the licence
- (2.) Information to be displayed for guests
- (3.) Planning permission: ensuring compliance in control areas
- (4.) Listings: ensuring that the licence number, maximum occupancy and EPC rating (where an EPC is required) are displayed on any advert or listing
- (5.) Insurance: ensuring adequate buildings and public liability insurance are in place
- (6.) Fees: payment of any fees due to the licensing authority
- (7.) A prohibition on providing false or misleading information.

75. Local authorities must also check that the host is a fit and proper person to hold a licence.

76. Local authorities will be responsible for establishing and running the licensing scheme. This will be a significant undertaking for licensing teams across Scotland and will impose new costs. Local authorities can recover the costs of establishing and running the scheme through fees. Licensing fees must not be set at a level greater than the amount necessary to recover establishment and running costs. Establishment costs include setting up the scheme and

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preparing staff to run it. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs. Local authorities have the power to charge a fee for an inspection, where the inspection results from the host's failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious. (Fines are also payable for short-term lets that operate without a licence or breach licensing conditions, for example, but do not go to the local authority<sup>8</sup>.)

77. Local authorities will each determine their own fees and fee structures to recover establishment and running costs specific to their area. This means that the fees charged by local authority will vary. Relevant factors include whether they can achieve economies of scale, rurality and how they integrate their short-term lets licensing scheme with other housing and licensing functions.
78. Local authorities can differentiate their fees dependent on the characteristics of the short-term let. For example, a local authority could charge a different fee based on: the maximum number of guests specified on the licence and whether a property is licensed for (a) secondary letting or (b) home sharing and home letting; this is not an exhaustive list.
79. To inform our estimate of the cost of introducing the scheme, Scottish Government officials spoke to officials from several local authorities to discuss the tasks and costs involved in establishing and running this scheme: City of Edinburgh Council, Glasgow City Council, West Lothian Council, Argyll & Bute Council and Highland Council. These local authorities were chosen to reflect a mix of urban, rural and island communities and the full variation in intensity of activity; these conversations supplemented useful material provided through the virtual workshops and local authority responses to the 2020 consultation.
80. Informed by these conversations and other material, six stages were identified in the consideration of a short-term let licence application:

**Step 1.** A short-term let host would either:

- submit their application and supporting evidence electronically, or
- post their application and supporting evidence to the relevant local authority licensing team.

In the latter case, this information would be processed by administrative staff and sent to a licensing officer.

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<sup>8</sup> The revenue from these fines would go to the Scottish Consolidated Fund.

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**Step 2.** Administrative staff and licensing officers would review the application and supporting evidence provided by the applicant. If the application or supporting evidence was not complete or contained errors, officials would contact the applicant and request they resubmit or correct their application.

**Step 3.** A licensing officer would review the complete application and supporting evidence, checking that the applicant has correctly self-declared they meet the mandatory licence conditions and relevant conditions that require verification. A licensing officer would also consult with relevant authorities to check the applicant(s) was a fit and proper person.

**Step 4.** Environmental health officers would verify that the property was safe to be operated as a short-term let, as well as the maximum number of occupants the property could safely accommodate. This may, or may not, be through an inspection.

**Step 5.** In a control area (or where it was the local authority's policy to do so), planning officers would check whether the property needed planning permission and, if it did, whether it has planning permission.

**Step 6.** Providing the application met the relevant conditions, the applicant would be supplied with a short-term let licence and relevant documentation. They would be added to the short-term let register for that local authority.

81. Separately, local authorities will carry out monitoring and enforcement action. This will ensure that all short-term lets are licensed and comply with licensing conditions.
82. Most local authorities indicated that a licence was likely to be issued for three years and the host or operator would then be able to renew their licence for further three year periods. The costing is based on this assumption.
83. There may be relatively less work involved in renewing a short-term let licence than an application as some of the checks carried out at the time of application may not need to be carried out again. In addition, the short-term let host may be more aware of the licensing process and be more likely to submit the correct information upon renewal, taking up less staff time. This is reflected in the costing.
84. In addition to the application (and renewal) processing workflow, local authority staff would:
  - respond to queries about the scheme;
  - manage complaints;

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- service licence committee hearings; and
  - update the public register.
85. We have made allowances for these activities in the costing.
86. There a number of factors that could lead to a significant degree of variation in the cost to local authorities, principally:
- **Rurality** – rural local authorities would find it relatively more time consuming and costly to visit accommodation to check compliance with licence conditions than urban local authorities. Where local authorities determined that visits were necessary as part of the application process, this would increase the cost of processing licence applications.
  - **IT systems** – a system which allowed on-line submission of applications and put them into the workflow would reduce staff time and costs significantly, not least through reducing applicant errors and manual data entry. Whether this was the intention of the licensing teams with whom Scottish Government officials spoke depended on a number of factors including: the capacity and flexibility of the current IT systems; whether new requirements could be brigaded with any scheduled upgrade; and the level of investment merited by the anticipated volume of applications. Any additional investment in IT systems could affect both the establishment cost (higher) and the running costs (lower).
  - **Accuracy of applications** – a significant number of licence applications and renewals for current licensing schemes need to be resubmitted due to errors (an on-line application portal can help reduce this with built in verification). This varied by licence type and across local authorities making it difficult to quantify how this would affect a short-term lets licensing system. Errors have a significant bearing on processing times and, consequently, the cost of licence applications and renewals.
  - **Objections and complaints** – concerns were expressed by a number of licensing officials as to the number of objections and complaints, genuine or vexatious, that might be made about applications or operations, and in turn the workload implications for licensing committees. Complaints and objections have the potential to increase costs significantly. Volumes might vary by type of short-term let and concentration of activity and accommodation so the intensity might vary across local authorities.
  - **Turnover rate** – the rate at which short-term let accommodation exits the sector and is replaced by new short-term lets will have a significant bearing on the number of applications and renewals that local authorities receive



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and, in turn, staffing implications. It is difficult to estimate this accurately due to a lack of historic data on the turnover rate and the fact that the market had not reached an equilibrium point (prior to COVID-19). The higher the turnover rate, the more staff would be required to process licence applications; but more fees would be collected.

- **Feedback loop** – the fees charged by local authorities may reduce the size of the sector or change the mix of accommodation offered. This could be mitigated by a fee structure that broadly aligned with the revenue from letting activity. Any changes to the sector will feedback through costs and revenues and local authorities may need to adjust fees from time to time to ensure that they remain appropriate.
- **Compliance** – the level of compliance with licence conditions, and in turn implications for monitoring and enforcement staffing requirements, is hard to estimate before the licensing scheme is established.

87. For these reasons, we are unable to be precise about the cost of the scheme, and how this will vary by local authority. To progress, we have devised and costed two indicative scenarios for the time and cost involved in processing an average licence application and renewal.

88. The costs set out in this BRIA reflect the Scottish Government’s best estimate of **costs and fees in two plausible indicative scenarios** but the actual costs could be higher (or lower) than this in some local authorities. Furthermore, as local authorities can differentiate their fees depending on the characteristics of the short-term let, the actual fee charged to any particular host could be very significantly different to any numbers set out in this BRIA. **Hosts should not interpret the average fee presented in this BRIA as being the specific fee they will be charged.** The purpose of the BRIA is to provide an indication of likely average costs across Scotland; costs in a particular area will depend on local conditions, which the local authority will take into account when setting their fees.

**F1. Scenario 1: lower operating cost**

89. Under this scenario, it is assumed that:

- a) **Accurate information** - Applications and renewals are submitted with the correct information and do not need to be resubmitted.
- b) **Staff are predominantly desk-based** – officers are able to check that accommodation meets the mandatory licence conditions through documents, photographs or by digital means. Although inspections are not required, for 25% of applications (either random or intelligence based), an



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inspection of the property is carried out to ensure compliance and that standards are upheld.

- c) **Low level of objections, queries and complaints** - a small proportion of short-term let applications or renewals (10%) attract objections or complaints, genuine or vexatious, or require a licensing committee to determine whether a licence should be granted.
- d) **Low monitoring and enforcement costs** - staffing resource for monitoring and enforcement is 20% of that to process and approve licence applications, and this is at officer level.

90. There is more information about the assumptions underpinning scenario 1 at **Annex A**

## **F2. Scenario 2: higher operating cost**

91. Under this scenario, it is assumed that:

- a) **Inaccurate information** - A significant proportion (50%) of applications and renewals are submitted with errors, or require further information, and need to be resubmitted. This will take up more staff time as administrative staff and licensing officers will need to liaise with short-term let hosts to collect correct information.
- b) **All applications result in an inspection** – environmental health officers inspect each short-term let premises on application.
- c) **Significant level of objections, queries and complaints** - a larger proportion of short-term let applications or renewals (25%) attract objections or complaints, genuine or vexatious, or require a licensing committee to determine whether a licence should be granted.
- d) **Higher monitoring and enforcement costs** - staffing resource for monitoring and enforcement is 40% of that to process and approve licence applications, and this is at officer level.

92. There is more information about the assumptions underpinning scenario 2 at **Annex A**.

## **F3. Assumptions common to both scenarios**

93. We have assumed the following in both scenarios:

- a) applications and renewals are submitted by post and not submitted digitally;

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- b) administrative staff will process incoming paper licence applications and renewals (in the longer term, this is a pessimistic assumption and might be expected to overestimate the costs slightly) and notify neighbours;
- c) the average gross annual salary of an administrative member of staff is £20,000 and this is inflated by 25% to account for other staff-related costs such as staff IT, facilities and national insurance contributions;
- d) the average gross annual salary of a licensing officer is assumed to be £35,000 and this is inflated by 25% to account for other staff-related costs such as staff IT, facilities and national insurance contributions;
- e) licences will be granted for three years on application and renewal;
- f) no change in the size of the sector, i.e. the number of short-term lets in Scotland would return to 32,000<sup>9</sup> (see the discussion on trends in **section G** below), and all apply for a licence;
- g) that is to say we have made no provision for temporary exemptions, or consequences of any overprovision policies, in the model.

**F4. Licence fees**

94. Table 1, below, outlines the application and renewal fee that would need to be charged to recover establishment and running costs, as set out under our hypothetical scenarios. This assumes 32,000 short-term let applications or renewals are submitted and processed in one year, and thereafter on a three yearly renewal cycle. These are **average, indicative amounts**, expressed both as an upfront cost as well as (in brackets) on an equivalent annual basis when spread over the three year duration of the licence.

<b>Scenario</b>	<b>Application Fee</b>	<b>Renewal Fee</b>
Scenario 1	£223 (£74)	£148 (£49)
Scenario 2	£377 (£126)	£249 (£83)

**Table 1.** The **average indicative fee** for processing an application or a renewal across all local authority areas and all types of short-term lets given the assumptions underlying each scenario. Figures in brackets show the fees on an annualised basis, i.e. spread over the three year duration of the licence.

95. Local authorities are unlikely to charge a single, average fee. Table 2 below illustrates how the application and renewal fee (from scenario 2) could, in theory, be varied to offer a discounted fee to low volume hosts. Of course, this fee differentiation could be done in any number of ways and **this table is purely illustrative.**

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<sup>9</sup> As it was in May 2019.

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Length let:	Low volume		Regular	
Discount	Application	Renewal	Application	Renewal
0%	£377 (£126)	£249 (£83)	£377 (£126)	£249 (£83)
25%	£314 (£105)	£208 (£69)	£419 (£140)	£277 (£92)
50%	£236 (£79)	£156 (£52)	£471 (£157)	£312 (£104)

**Table 2.** This shows how the fees could be tailored to offer a specified percentage discounted fee to low volume short-term lets, using four illustrative levels of discount. This is based on the scenario 2 average costs and we assumed that a discount is offered on 40% of short-term lets, being those that are let for less than one month per annum (from evidence published by Airbnb<sup>10</sup>). This assumes that any discount would need to be revenue neutral, as such the new fee for the group receiving a discount would be lower than the average fee, and the new fee for everyone else would be higher than the average fee. The difference between these two new fees would be equal to the level of the discount. Figures in brackets show the fees on an annualised basis, i.e. spread over the three year duration of the licence.

96. By way of comparison, according to Airbnb, between 1 July 2016 and 30 June 2017, the average earnings of a typical host in Scotland was £3,600<sup>11</sup>. A large proportion of listings were let for less than 30 nights (40%) and so the earnings will be significantly higher for listings with year-round availability. Earnings will also be higher for secondary letting (i.e. of whole properties).
97. Spreading the cost of the fee over its 3-year life, the application fee will be equivalent to around 2% of average earnings under Scenario 1 and 3% under Scenario 2. It will be even smaller (1% and 2% in scenarios 1 and 2, respectively) during renewal phases due to the likely lower fee for renewals compared to applications. It would constitute a smaller percentage to the extent that hosts are able to pass on the fee to guests.
98. The percentage of earnings that the fee will comprise for an individual host may differ from this average depending on the particular fee set by a local authority, which can be affected by any discounts, as well as the rates charged to guests by the host.
99. Furthermore, local authorities have been given a power in the Licensing Order<sup>12</sup> to grant exemptions to short-term let hosts for a specified occasion or for a specified period of up to six weeks in any period of 12 months. This might be used to manage peak demand for accommodation in their area because of a large event, for example. We have not factored exemptions into the cost and revenue model: it would have both cost and revenue implications and local authorities would need to ensure that these balanced out if they remove significant numbers of short-term lets from their scheme.

<sup>10</sup> <https://press.airbnb.com/wp-content/uploads/sites/4/2019/09/Airbnb-Submission-Scottish-Government-Short-Term-Lets-Consultation.pdf>

<sup>11</sup> <https://news.airbnb.com/wp-content/uploads/sites/4/2019/06/Airbnb%E2%80%99s-Impact-in-Scotland.pdf>

<sup>12</sup> Paragraph 1A of schedule 1 to the 1982 Act, inserted by paragraph 4 of schedule 2 of the Licensing Order.

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100. Note that conditions can be attached to an exemption, as needed, so there may be some compliance costs.

**F5. Comparison with landlord registration and HMO fees**

101. Licensing for short-term lets has some similarities with landlord registration and HMO licensing. Some local authorities have indicated that they might expect the fees to lie somewhere between landlord registration and HMO licensing.
102. Landlord registration fees are set nationally at £67 plus £15 for each property<sup>13</sup>, making the lowest fee £82 for one property. This cost is incurred once every three years.
103. Local authorities are responsible for the fee structure and approach in respect of HMO licensing. The Scottish Government's statutory guidance for local authorities on licensing of HMOs includes guidance on the charging of fees to cover the costs of licensing in their area. Fees vary across local authorities because of the numbers, sizes and nature of their HMO properties and as they try to implement their strategic priorities to address their specific housing challenges. For example, the lowest fee in Edinburgh only covers three occupants, whereas some local authorities charge a flat fee regardless of number of occupants. The lowest fees for an HMO licence in each local authority area are set out at **Annex B**. The lowest fee charged for an HMO licence varies from £229 to £1,906 across Scotland. HMO licences are granted for up to three years, so the annual equivalent cost will depend on the licence duration.
104. City of Edinburgh Council has published information about its costs and revenues across all of its licensing functions<sup>14</sup>. The Local Government Association has published guidance on locally set licence fees including on what factors a local authority may wish to consider including in a licence fee<sup>15</sup>. From the factors that could lead to a significant degree of variation in the cost to local authorities, from their legitimately different policy aims and from experience of HMO licensing, it is to be expected that there will be significant variation in the fees for licenses for short-term lets across Scotland.

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<sup>13</sup> From 1 April 2021, see [www.mygov.scot/renting-your-property-out/registration/](http://www.mygov.scot/renting-your-property-out/registration/).

<sup>14</sup> *Licence Income from Fees 2018/19*, City of Edinburgh Council (9 January 2020) available at: <https://democracy.edinburgh.gov.uk/documents/s12361/Item%207.1%20-%20Licence%20Income%20from%20Fees%202018-19.pdf>

<sup>15</sup> *Open for Business: LGA Guidance on locally set licence fees*, Local Government Association, available at: [www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness\\_02\\_web.pdf](http://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf)

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**F6. Costs of mandatory licensing conditions**

105. The mandatory licensing conditions and associated costs for a typical two bedroom property are set out at **Annex C**. Some of the conditions are required by existing legislation, and hosts should therefore be in compliance. The remaining conditions are in line with best practice, and responsible hosts should therefore already be incurring and managing these costs. Therefore, in general, these conditions should not result in additional costs, or at most very modest costs. Hosts will also need to complete a licensing application form; the Scottish Government's guidance for hosts will facilitate this.

**F7. Costs of planning application**

106. Costs related to planning are set out at **Annex C1**. Planning consent for a change of use might be expected to cost the applicant in the region of **£520 to £1000**. It should be noted that this one-off cost only applies if a local authority requires planning approval for use of the property as a short-term let. Where this condition arises from existing planning law, these costs are already part of the business as usual. Where the requirement arises because of the designation of control areas, then these costs only apply where there are concerns that short-term lets are imposing significant negative impacts on local communities.

**G. Wider economic context**

**G1. Trends prior to COVID-19**

107. Prior to COVID-19, the short-term lets market had not reached equilibrium. A number of factors were at play:

- a) the continued growth of the short-term let sector, driven by the success of on-line platforms in connecting hosts to guests, although there were some signs of market saturation;
- b) growth in concern by residents and local communities on the impact of short-term lets; and
- c) growing concerns about the contribution of tourism (especially air travel) to climate change and moves to make tourism more sustainable (which might include holidaying nearer to home).

108. With regard to the growth at (a), it is hard to be sure what would have happened in terms of tourism had these platforms not appeared on the scene; at least some of these guests would have been expected to have been accommodated through hotels and elsewhere. Some of the growth is due to

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previously off-line accommodation (e.g. advertised in magazines etc.) moving on-line.

## **G2. Contribution of tourism to the Scottish economy**

109. The Scottish tourism sector makes a significant contribution to the Scottish economy. A report by the Scottish Tourism Recovery Task Force<sup>16</sup> notes that in 2019, Scotland received 13.8 million overnight domestic visitors from Scotland and elsewhere in Great Britain, around 3.5 million international overnight visitors, and 133 million day visitors, spending a combined £11.5 billion. Visitor expenditure provides an important contribution to Scotland's economy: the Scottish Government estimates that expenditure in 2018 by overnight and day visitors supported around 5% of Scotland's GDP. Prior to COVID-19, the sector employed 218,000 people, or around 1 in 12 jobs across Scotland, and was a major employer in many rural areas.
110. Short-term lets play an important role within the visitor economy. They can:
- Offer visitors a unique tourist experience through a host's local knowledge, increasing the attractiveness of Scotland as a place to visit.
  - Offer accommodation in places not served by hotels and hostels, for example, and therefore help with dispersal of visitors from "hotspot" areas.
  - Offer more affordable accommodation, helping to attract tourists that may have a lower budget.
  - Provide additional capacity to accommodate tourist or other visitor demand in areas with a high amount of demand over a short period of time (for example, to accommodate tourists during the Edinburgh Festival or the Open golf tournament).
111. Over the period 2013 to 2019, during which accommodation hosted on online platforms grew dramatically, visits to Scotland increased by an annual average of 2.9%, while real-terms visitor spend increased by an annual average of 2.2%<sup>17</sup>. Within this, local authorities with higher concentrations of short-term lets generally recorded higher growth in visits and spend than Scotland as a whole over this period<sup>18</sup>. While a variety of factors other than the presence of short-term lets could affect these trends, the figures could be consistent with

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<sup>16</sup> <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/10/Tourism-Task-Force-recovery-plan.pdf>

<sup>17</sup> Data on visits taken from [VisitScotland national and regional profiles](#). Real-terms spend calculated using the UK GDP deflator.

<sup>18</sup> From 2013 to 2019, average annual growth in visits and real-terms visitor spend was 5.7% and 6.2% respectively in Edinburgh and the Lothians, 3.2% and 5.4% in Greater Glasgow and the Clyde Valley, and 3.9% and 0.7% in the Highlands. These are areas with particular high concentrations of short-term lets (see Table 1 in [Research into the impact of short-term lets on Communities](#)).



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short-term lets creating additional supply in these regional markets, even if there is also a degree of displacement of existing providers<sup>19</sup>. However, data limitations relating to the historic trends in the size of different components of the tourism accommodation sector make it difficult to estimate robustly the relative share of additionality versus displacement.

112. According to Airbnb, nearly 2.5 million visitors to Scotland used accommodation booked through their platform in 2019<sup>20</sup>. Airbnb is the dominant, but not exclusive, provider of short-term let accommodation in Scotland, so the total number of visitors booking through online platforms will be higher. A study commissioned by Airbnb from BiGGAR Economics in October 2020<sup>21</sup> suggested that economic activity in Scotland connected to visitors that book through their site was in the region of £0.7 billion, and that this supported around 33,500 jobs in the tourism sector and wider Scottish economy. However, the study did not appear to consider explicitly the extent to which activity associated with Airbnb was additional or the extent to which short-term lets or other stays in Scotland would take place in the absence of the specific platform.
113. Airbnb's evidence to the Local Government and Communities Committee advised that the proposed regulation of short-term lets would put almost 17,000 jobs at risk<sup>22</sup>. This was based on one scenario from BiGGAR's scenario analysis, where a 50% reduction in Airbnb lettings was considered. However, BiGGAR's study did not appear to articulate explicitly the causal linkages between measures being considered, and the probability of the scale of reduction articulated in the chosen scenario.

### **G3. Impact of COVID-19**

114. The trends at paragraph 107 have been interrupted from March 2020 by restrictions imposed following the COVID-19 pandemic and behaviour change curtailing even permitted activities. In 2021, the adverse health impact of COVID-19 has been dramatically reduced by the successful ongoing mass rollout of effective vaccinations, testing and treatment, and ongoing compliance with public health interventions. However, the economic and behavioural impacts are likely to persist for longer and some changes will not be reversed. For example, the demand for accommodation by business travellers may be permanently reduced now that remote working and videoconferencing have become familiar and, to varying degrees, more popular, and necessary as part

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<sup>19</sup> In markets experiencing growth, displacement of existing providers could take the form of lower growth than they would otherwise have experienced.

<sup>20</sup> <https://news.airbnb.com/wp-content/uploads/sites/4/2020/09/Airbnb-responds-to-the-Scottish-Governments-licensing-and-planning-proposals-Sept-2020.pdf>

<sup>21</sup> [Scottish and Local Tourism Economic Impact Assessment \(Airbnb, BiGGAR Economics\), October 2020.](#)

<sup>22</sup> See P3 of [Airbnb's submission to the Local Government and Communities Committee.](#)

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of the response to the global climate emergency. So there are now new trends to consider:

- a) an increased concern about safety by guests and neighbours, especially around the transmission of COVID-19;
- b) a likely permanent shift to travelling less for work purposes;
- c) lower economic growth which is likely to reduce spend available for leisure travel;
- d) some scarring in the tourism sector with some short-term let and other accommodation not returning to the market as part of wider recovery; and
- e) behavioural change, and changes in preferences, from guests as experience of COVID-19 affects their risk appetite and priorities, but this may attenuate over time.

115. The tourism economy has been badly affected by COVID-19. It is currently challenging to estimate the full reduction in visitor numbers and spend within Scotland by market, owing to the pause in data collection for both the International Passenger Survey and GB Tourism Survey during 2020, as a result of restrictions on data collection arising from COVID-19. During 2020, Visit Britain forecast that international visits to Scotland in 2020 may be down 78% compared to 2019, to 775,000, with spend down by 85% to £388 million. They also forecast that spending from domestic overnight and day visitors in Scotland may both reduce by over 50% from 2019 levels, to £1.6 billion and £2.8 billion respectively<sup>23</sup>. The Scottish Government's analysis of ONS's BICS statistics for Scotland also show that there has been, and currently is, significant pressure on the Accommodation and Food Sector<sup>24</sup>:

- The overall share of businesses 'currently trading' in the Accommodation & Food Services sector was estimated as 83.0% in the period 17 May to 30 May 2021, compared with 94.6% for the economy overall.
- 18.2% of businesses not permanently stopped trading in the Accommodation & Food Services sector reported being at severe or moderate risk of insolvency in the period 17 to 30 May 2021, compared with 9.9% for the economy overall.
- Over one third (34.2%) of businesses in the Accommodation & Food Services sector that had not permanently stopped trading reported having no or less than 3 months cash reserves in the period 17 to 30 May 2021, compared with 24.0% for the economy overall.

<sup>23</sup> [scottishtourismalliance.co.uk/wp-content/uploads/2020/10/Tourism-Task-Force-recovery-plan.pdf](https://scottishtourismalliance.co.uk/wp-content/uploads/2020/10/Tourism-Task-Force-recovery-plan.pdf)

<sup>24</sup> [BICS weighted Scotland estimates: data to wave 31 - gov.scot \(www.gov.scot\)](https://www.gov.scot/BICS_weighted_Scotland_estimates_data_to_wave_31)

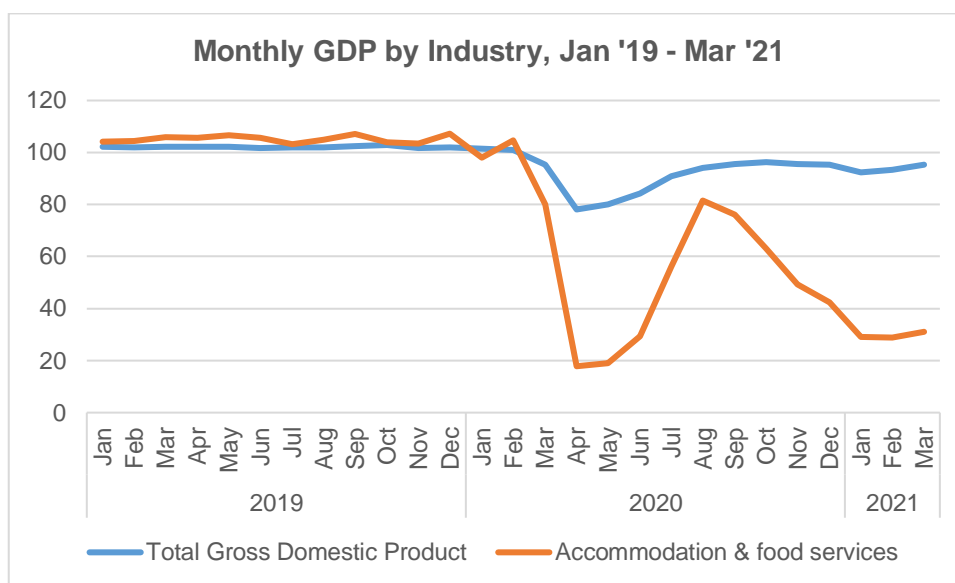


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- In the period 3 May to 30 May 2021, 69.7% of businesses in the Accommodation & Food Services sector reported experiencing a decrease in turnover compared with what is normally expected for this time of year. The comparable proportion for the economy overall is 35.3%.

116. More broadly, the contraction in GDP has been greater in activities related to tourism than in the economy overall. This is illustrated in Figure 1.

Figure 1: Monthly GDP, January 2019-March 2021



**Figure 1.** Output in the accommodation and food services sector was 70% lower in March 2021 compared with February 2020. This contrasts with GDP overall being down by 5.4%<sup>25</sup>.

117. With regard to the regional effect of COVID-19 on the tourism sector, the Scottish Tourism Alliance note that demand for self-catering accommodation was in most demand in rural and coastal areas of Scotland around summer 2020. However, hotel occupancy in Edinburgh, Glasgow and Aberdeen was badly affected by COVID-19.
118. These figures suggest that short-term let hosts' earnings will likely have fallen markedly following the COVID-19 pandemic. Longer-term, the shock to unemployment and household incomes across the UK and internationally could depress tourist numbers.
119. All of the above makes it almost impossible either to establish a counterfactual ("do nothing") scenario or to describe in detail what the market will look like in April 2023 by which time existing hosts and operators should have applied for a

<sup>25</sup> [Monthly GDP Estimate: March 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/03/20210301-monthly-gdp-estimate-march-2021/)

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licence. For this reason, we using the 2019 data established in the Scottish Government's 2019 research as a baseline for this BRIA.

**G4. Potential impact of this legislation on the tourist economy**

120. It is possible that the time and cost involved in applying for a short-term let licence (or the application of overprovision policies by licensing authorities) will lead to a reduction in the amount of short-term let accommodation capacity. It could also increase the cost of short-term let accommodation if these costs are passed on in whole or partly to tourists. However, it is difficult to quantify the total net effect on short-term let capacity for the following reasons:

- The fee will depend on the fee structure determined by local authorities and the relationship of this to the revenue earned by a short-term let host from their accommodation.
- The total cost of these proposals, in terms of the licence cost and cost of achieving the mandatory conditions to obtain a licence, will vary based on the current condition of the accommodation.
- That a short-term let has passed a set of mandatory safety conditions should give visitors more confidence in using short-term let accommodation, which could act to increase the number of visitors looking to use short-term let accommodation.
- Some visitors displaced by a reduction in short-term let capacity may use other forms of accommodation, such as hotels and hostels. This may also encourage the further provision of these types of accommodation.
- The price elasticity of demand<sup>26</sup> for tourist accommodation. The more inelastic this is, the more short-term let hosts can pass on the costs incurred from the licensing scheme to guests and/or the smaller the reduction in demand for short-term let accommodation from guests.

121. Short-term let control areas would reduce short-term let capacity if significant numbers of planning applications were refused in the control area. It is not possible to quantify the total effect of this as it will depend on whether local authorities implement control areas and the size of these areas and how many short-term lets within a control area already have planning permission.

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<sup>26</sup> This relates to the change in the quantity demanded of a good in relation to a percentage change in its price. The more inelastic this is, the smaller the reduction in the quantity demanded of a good for a given change in price. The Scottish Government published a review of elasticities relevant to tourism in Scotland in March 2021, which is available at: [Elasticities relevant to tourism in Scotland: evidence review - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/elasticities-relevant-to-tourism-in-scotland/evidence-review/pages/1-to-40.aspx)

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122. Airbnb has commented<sup>27</sup> (in the context of the Scottish Government proposals for regulation):

*Guests who stay in short-term lets such as those advertised on Airbnb stay longer, spend more and are more likely to return to Scotland than other visitors. Last year travel via Airbnb boosted the Scottish economy by almost £2 million a day, supporting 34,000 jobs.*

*Under the proposals, hosts wanting to welcome guests into their home would have to overcome one of the most bureaucratic and financially damaging regimes in the world. The costs of meeting licensing requirements could be more than £700 while securing planning permission could cost up to £4,000. Hosts could also face costly home alterations, such as replacing wooden floors with lino.*

*Economists say that the proposals could take £1 million a day out of the Scottish economy and put 17,000 jobs at risk. For families, nearly half of whom say that the additional income is an economic lifeline, the effects would be devastating.*

123. Airbnb's comments suggest that the size of the sector could be halved by the impact of the legislation. In the context of £86 million earned by local households over the period 1 July 2016 to 30 June 2017 cited by Airbnb<sup>28</sup>, even under conservative assumptions (i.e. using the higher licence fee from scenario 2 and assuming none of the licence fee can be passed on to guests), the fees for the Scottish Government's licensing scheme (at a total of c. £12 million for all hosts in Scotland to get a three year licence, equivalent to an annualised cost of c. £4 million) would be equivalent to only 5% of host income. Thereafter, total revenue from renewal fees is expect to be lower at an annualised total cost of £3 million per annum. Even if the scheme delivered no benefits at all, this would be unlikely to have the dramatic effect on the sector projected by Airbnb. However, the scheme does deliver significant benefits; see the costs and benefits and summary table at **section E**.
124. The Scottish Government's view is that, in areas where there is a reduction in short-term let activity, this will be the result of deliberate and legitimate policy decisions by local authorities using the licensing scheme and control area regulations to achieve that aim. The Scottish Government's view is that it is likely that any deliberate reduction in short-term let activity in an area will have compensating economic benefits for that area. For example, a secondary let might be repurposed as a private residential tenancy with a permanent member

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<sup>27</sup> Patrick Robinson, Director of Public Policy for Airbnb writing in The Times (online edition) [www.thetimes.co.uk](http://www.thetimes.co.uk), *Airbnb regulations will still the beating heart of tourism*, 23 November 2020.

<sup>28</sup> <https://news.airbnb.com/wp-content/uploads/sites/4/2019/06/Airbnb%E2%80%99s-Impact-in-Scotland.pdf>

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of the community earning and spending in that community; and the visitors who might have used that accommodation are likely to be able to find other accommodation that meets their needs. It therefore seems unreasonable to assert that the visitor spend would not occur at all.

125. When considering the effect of this legislation on the wider economy, the effect on areas other than tourism must be considered, such as:

**a) Reduced costs on public services:**

- (i) Less need to contact local authorities or Police Scotland to deal with issues arising from a short-term let, if residents can contact the host directly because they know who to contact.
- (ii) Reduced incidents (e.g. fire) where accommodation meets mandatory safety standards and unsuitable hosts are not granted a licence. This could reduce costs incurred by local authorities, Police Scotland and the Scottish Fire and Rescue Service.

**b) Reduced costs from compliance failures.** A public register of short-term lets should bring greater transparency and compliance with insurance, tax, mortgage and planning permission conditions.

**c) Better functioning housing market:**

- (i) Local authorities should have greater knowledge about the prevalence and location of short-term lets in their local authority area. This will help them better understand the extent to which short-term lets are, or are not, contributing to local housing pressures.
- (ii) Numbers of short-term lets can be managed in areas where there is an insufficient supply of accommodation for local residents. This could reduce housing costs and/or costs to local authorities of temporary accommodation.
- (iii) Increased availability of housing from managing numbers of short-term lets could also help local employers recruit workers if they have more choice of accommodation within an appropriate commuting distance. These workers could contribute to the local economy by spending locally, working for local businesses and paying relevant taxes.

**d) Improved quality of life for residents:** The strength of resident responses expressed in the Scottish Government's research into short-term lets suggests that there are significant concerns about the effect of short-term lets on local areas in terms of: sense of community, housing supply, safety and local amenities. The licensing scheme and Control Area Regulations

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will go some way to mitigating these concerns and improving quality of life for residents.

- e) Displacement to other tourism accommodation providers:** Previous sections of this BRIA have shown that the cost of a licensing scheme should be relatively small in comparison with earnings of a typical host. At the margin, there could be a small number of hosts that exit the sector. But this provides opportunities for other providers of tourist accommodation to meet this demand, helping to maintaining the overall level of employment opportunities in the tourist accommodation sector, as well as wider local economy.

## **H: Scottish Firms Impact Test**

126. The firms most affected by this legislation are hosts and operators providing accommodation, where they are set up as businesses. These are most likely to be set up as businesses where they are self-caterers letting out a number of properties. In June 2021, there were around 17,850 premises registered on the Non-Domestic Rates roll as self-catering properties. However, there are also a number of premises operating as commercial accommodation providers that are registered for council tax, rather than Non-Domestic Rates. At present, there is limited data on the scale of this section of the accommodation sector: over 1,400 small accommodation providers on the council tax roll received grant support through the Small Accommodation Providers Paying Council Tax Fund late-April 2021; this included bed and breakfasts, guest houses, and self-catering premises<sup>29</sup>.
127. It is challenging to gauge the full size of the short-term lets market, as providers are able to offer accommodation ranging from single rooms, whole homes and other unconventional accommodation; these include domestic and commercial properties. We have therefore assumed that there are 32,000 short-term lets in Scotland based on research in 2019 which also showed that around 70% of these are for secondary letting; of these, some of these will part of businesses and some will not. The majority of the properties used for secondary letting will belong to hosts with more than one property. It is hard to be definitive about the number of businesses affected because of a lack of robust data about the sector (which the licensing scheme will resolve) and because the classification of a property as non-domestic does not necessarily mean it is part of a business<sup>30</sup>.

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<sup>29</sup> Source: Non-Domestic Rates Roll, June 2021; [Covid-19 Business Support Experimental Statistics: Strategic Framework Business Fund \(Tranche 6\) and Other Local Authority Support Schemes](#)

<sup>30</sup> A host currently pays non-domestic rates if their property is not their main residence and intended to be let commercially for at least 140 days per year.

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128. However, there is a whole ecosystem around the provision of short-term let accommodation ranging from platforms such as Airbnb, booking.com and Expedia through to hosting intermediaries and holiday letting agencies. In **section C3** above, and in the 2020 consultation report, we have set out how we have engaged with all the different types of actor in the system.
129. The STAA, Airbnb and ASSC have made strong representation on behalf of hosts. Airbnb has stated that they considered the proposed regulatory system to be complex, costly and unfair for hosts<sup>31</sup>. During the 2020 consultation, [Airbnb published a table setting out the steps that hosts would need to take to comply](#)<sup>32</sup>. They said:
- The Scottish Government is consulting on a new licensing and planning framework for short-term lets, coming into force in April 2021. We think it's complex, costly and unfair for hosts. Find out more about what the Scottish Government has set out below, and speak to your local politician with your thoughts on how this will affect you.*
130. These steps are set out at **Annex D**, together with the Scottish Government's comments.
131. The ASSC has also engaged its membership and with the Scottish Government and the principal points made of relevance to this BRIA at events and follow-up questions are set out at **Annex E**.

## **I: Competition Assessment**

132. Where short-term lets continue to operate, the legislation will improve competition by ensuring basic safety standards are applied in all accommodation. (This removes the “cheat’s advantage”.) It will increase hosts’ incentives to compete vigorously on discretionary quality considerations such as guest comfort and unique selling points.
133. In some areas, local authorities may choose to implement the legislation specifically to reduce the number of short-term lets and this could be expected to increase demand for hotel accommodation in these areas. However, local authorities will not want to overregulate the sector. Every local authority welcomes the contribution to the local economy from visitors and local authorities compete to attract visitors to Scotland to their area. Local authorities will use their new powers to find the right balance between the interests of local residents and communities and their wider tourism economy.

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<sup>31</sup> In meetings and correspondence.

<sup>32</sup> <https://news.airbnb.com/wp-content/uploads/sites/4/2020/10/ScotlandShortTermLetsProposal1310.pdf>

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It will be for local authorities to consider this impact in detail as and when they use the powers.

134. The legislation should not adversely impact Scotland's competitiveness. The legislation will provide greater assurance to foreign visitors about their stay. It should improve Scotland's reputation as a place to stay.

Will the proposal directly limit the number or range of suppliers? **No**

Will the proposal indirectly limit the number or range of suppliers? **Yes** – see paragraph 133 above.

Will the proposal limit the ability of suppliers to compete? **No**

Will the proposal reduce suppliers' incentives to compete vigorously? **No**

## **J: Consumer Assessment**

135. The Scottish Government definition of a consumer is "*anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future*".

136. In the context of short-term lets, the consumer is primarily the **guest**. However, **hosts** may also be consumers of services provided by platforms, letting agents and hosting intermediaries.

137. In terms of the consumer assessment questions:

Does the policy affect the quality, availability or price of any goods or services in a market? **Yes**.

Does the policy affect the essential services market, such as energy or water? **No**.

Does the policy involve storage or increased use of consumer data? **No**, in respect of the primary consumer; there is not change to the way guests' data is stored. However, **yes**, in respect of hosts' data as local authorities will be using and storing more information about them.

Does the policy increase opportunities for unscrupulous suppliers to target consumers? **No**.



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Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these? **Yes.**

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues? **Yes.**

138. The legislation primarily regulates the provision of short-term lets by the host to guests. The legislation has the effect of strengthening the position of the guest in terms of assuring them that their accommodation meets basic safety standards. The legislation makes it easier for guests or neighbours to raise concerns about a short-term let with the host, or the relevant local authority, should that be necessary. This is of particular benefit to more vulnerable guests or neighbours who may have been reluctant to raise concerns in the past.
139. These short-term lets are more commonly provided for leisure purposes but can include stays for work. As we are not regulating access to an only or principal home, this is not an essential services market.
140. The legislation provides increased protection for guests (as well as neighbours and communities). Hosts seeking to ensure compliance with the mandatory conditions will need to be wary of unscrupulous suppliers selling assessments (e.g. fire risk or legionella) that are not valid or overpriced. We will be setting out in guidance for hosts and platforms how they can avoid this. For example, some assessments are relatively straightforward for hosts to complete themselves.
141. The Licensing Order will result in local authorities retaining more data on short-term let hosts and making more of this publicly available. The handling of data is covered in more detail in the Data Protection Impact Assessment. But it will be possible for short-term let accommodation to be identified from the register and for that address to be targeted for marketing purposes.
142. Local authorities will recoup the cost of operating the licensing scheme through fees charged to hosts. Some of this cost may get passed on to guests through higher costs for booking the accommodation. The overall effect is that guests should pay for and receive, and be assured of, a higher quality (safer) service, although hosts may absorb some of the cost.
143. The availability of short-term let accommodation may be reduced in some areas either where margins were already very tight or where the local authority makes this a deliberate policy but see paragraph 133 above.
144. The licensing scheme will affect terms and conditions for bookings. Clearly, a host will not be able to provide booked accommodation if the booking is for a



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period after which the licence application is refused or the licence suspended or revoked.

### **K: Test run of business forms**

145. Hosts will be asked to complete a licensing application form as part of the licensing process. This will provide information to support the determination of the application and some of it will be published in the register. These application forms will be designed by local authorities to support their own local processes. Scottish Government will provide guidance to local authorities on this and work with them to assist in sharing best practice between local authorities. Scottish Government will be encouraging a digital first approach, but acknowledging this won't be possible for every local authority from 1 April 2022.
146. The planning application process is well established in each local authority area and the relevant forms have evolved over time.

### **L: Digital Impact Test**

147. The Licensing Order and Control Area Regulations are a response to a rapid growth in short-term lets, largely driven by the success of online platforms. The technology might be expected to evolve further but the basic business model of facilitating the matching of guest to host, where either are based anywhere in the world, is unlikely to change.
148. This legislation is relevant and important however the accommodation is marketed and made available. At the end of the day, it will always involve the physical presence of guests in a physical structure. Making sure that this can take place safely, and without undue adverse impact on neighbours and communities, will continue to be important.
149. The licensing scheme is capable of operating efficiently through on-line means with:
- applications submitted on-line by hosts to local authorities;
  - licence URNs displayed by platforms on websites;
  - public access to the register through local authority websites;
  - use of photos or videos submitted to local authorities to demonstrate compliance;

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- other electronic certification or scanned images of paper certification; and
- participation in licensing committee hearings through videoconferencing.

150. The degree to which this is possible will depend on the policies, practices and technology available in each local authority area.

### **M: Legal Aid Impact Test**

151. We do not anticipate any impact on the Legal Aid Fund from the Licensing Order or Control Area Regulations. It is possible for an individual to make an application for Legal Aid if they wish to appeal the decision of a licensing board (to the sheriff court). Prior to the Scottish Legal Aid Board considering whether to grant such an application, the client must set out why they would be adversely affected by the licensing board's decision and their solicitor must set out a statement of the grounds for appeal. We anticipate that only a very few cases would both be appealed before a sheriff and be successful in obtaining legal aid.

### **N: Enforcement, sanctions and monitoring**

152. Local authorities will be responsible for considering applications, variations, monitoring compliance and for enforcement. The monitoring and enforcement costs to local authorities can be included within the application and renewal, or monitoring, fee costs or covered, at least in part, through some fees for site visits.

153. The 1982 Act sets out offences, including operating a short-term let without a licence. They also include non-compliance with the conditions of a licence and unauthorised changes to a property. It is also an offence to make a false statement in an application and this would also apply to renewal applications. These attract fines on the standard scale<sup>33</sup>:

154. It is an offence, without reasonable excuse, to carry on an activity for which a licence is required without having such a licence. Depending on the activity, different punishments apply. The default is a fine not exceeding level 4 (£2,500) on the standard scale. We will amend the maximum level of fine to £50,000 through primary legislation in this Parliament. This is because secondary letting of a normal home can yield much more revenue than letting under the 2016 Act. With "party mansions", the revenue may be significantly higher.

155. It is an offence to fail to comply with a licence condition, though it is a defence to have used all due diligence to prevent the offence. The default is a fine not

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<sup>33</sup> As set out at section 225 of the Criminal Procedure (Scotland) Act 1995.

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exceeding level 3 (£1,000) on the standard scale. We will amend the maximum level of fine to £10,000 through primary legislation in this Parliament. One licence condition may be to limit the number of guests in the accommodation. Breaching this condition might lead to significantly more revenue. The fine for failing to comply with the licence condition must outweigh the profit made from such a breach.

156. It is an offence for a licence holder, without reasonable excuse, to: fail to notify the licensing authority of a material change of circumstances, with a fine not exceeding level 3 (£1,000) on the standard scale); make or cause or permit to be made any material change in the premises, with a fine not exceeding level 3 (£1,000) on the standard scale; or fail to deliver the licence to the licensing authority, with a fine not exceeding level 1 (£200) on the standard scale.
157. It is an offence to make a false statement in an application. The default is a fine not exceeding level 4 (£2,500) on the standard scale. We will amend the maximum level of fine to £10,000 through primary legislation in this Parliament. Some property owners may make a false declaration about where they live, in order to apply for a home sharing or home letting licence, rather than a secondary letting licence. The incentive for the owner could be that the licence process may be more straightforward, cheaper and avoid the need to obtain planning permission.

**O: Implementation and delivery plan**

158. The 2020 Licensing Order and Control Area Regulations were laid in the Scottish Parliament on 14 December 2020.
159. The Control Area Regulations came into force on 1 April 2021.
160. The 2020 Licensing Order was withdrawn in February 2021, in order to address concerns raised by members and stakeholders, and to develop draft guidance. A revised Licensing Order has been published in draft, for consultation, and will be laid in the Scottish Parliament in September 2021. However, local authorities will have until 1 October 2022 to establish a licensing scheme in their area and open it to receive applications. Local authorities may choose to establish control areas if these are right for local circumstances.
161. The Licensing Order gives existing hosts until 1 April 2023 to make an application for a licence. Existing hosts will be able to continue operating whilst their licence application was processed. On 1 April 2024, all hosts operating short-term lets in Scotland will require a licence to do so.

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162. The Scottish Government has published draft guidance on the licensing scheme (see Papers 4 and 5) for hosts and operators, licensing authorities, letting agencies and platforms.

**O1. Post-implementation review**

163. We will monitor and evaluate the impact of our proposals to ensure that they are effective and targeted. We have committed to make further provision in this Parliament around fines and sanctions which we are not able to progress through secondary legislation. At this time, we will also consider what other changes are necessary or expedient to ensure that the policy intentions are delivered.

**P: Summary and recommendation**

164. Based on evidence gathered during the 2019 consultation and research, the 2020 consultation and through wider stakeholder engagement, the Scottish Government is confident that the preferred option (b), implementing a licensing scheme and empowering local authorities to go further with discretionary conditions and control areas, as needed, is the right approach. A summary of costs and benefits can be found in **section E** of this BRIA.

165. The likely levels of application and renewal fees will be relatively small in comparison to the earnings that can be derived from short-term lets, particularly when spread over a likely three duration of the licence. The costs of mandatory conditions are either already legally required, are part of best practice in the sector, and would generally be required if the property were to be used for other purposes, such as a long-term let. Planning fees will only be incurred if already required by existing legislation or where short-term let control areas are introduced because there is evidence that short-term lets are causing significant negative impacts on local communities.

166. On the other hand, there are potentially very significant benefits to residents, the wider local community and public-sector bodies from improving the functioning of the short-term let sector, through improved safety, reduced noise and nuisance, better local housing market outcomes etc. While it is difficult to monetise these benefits precisely, evidence from Scottish Government research, responses to the 2019 and 2020 consultations, and feedback to local authorities from residents indicates that the negative impacts that arise when the short-term let market does not function well can be considerable.

167. Setting these potentially very significant benefits from a well-regulated short-term let sector against the modest costs of operating the regulatory regime implies that there will be a clear net social benefit from regulation. This conclusion is strengthened by the fact that the regulatory regime will offer

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significant flexibilities, so that local authorities are able to tailor the regime to local conditions, maximising the economic benefits from short-term lets while minimising any harmful impacts on wider society.

**Declaration and publication**

*I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.*

**Signed:**

[Final will be signed]

**SHONA ROBISON**

**Date:** [ ]

**Minister's name:** Shona Robison

**Minister's title:** Cabinet Secretary for Social Justice, Housing and Local Government

**Scottish Government Contact point:**

Short Term Lets Delivery Group

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## ASSUMPTIONS UNDERPINNING SCENARIOS 1 AND 2 FOR LOCAL AUTHORITY COSTS AND FEES

1. This annex provides further detail on the assumptions and methodology used to calculate the indicative, average application and renewal fees that would need to be charged to recover establishment and running costs in scenarios 1 and 2 from **section F**. It is worth reiterating that the actual fees to be charged are properly a matter for local authorities and the information provided in this BRIA is not to be seen as a requirement on local authorities or a commitment by them to charge fees in any particular way or at any particular level. These assumptions have been informed by discussions with local authority licensing officials or other sources of information.
2. Our approach to this costing has been to devise two indicative, hypothetical scenarios for the time and cost involved in processing an **average** licence application or renewal. Scenarios 1 and 2 are designed to reflect a situation where there are low or high operating costs, respectively. **Section F** presents the main assumptions. Other assumptions not outlined there are set out below.

### Further assumptions

3. We have factored in the cost of staff training. It is assumed that it takes one month to train a member of staff and during this time they are not productive. As a proxy for this cost, we used staff costs for the appropriate level of staff for one month and assumed this cost is spread over five years (assuming that a member of staff may rotate to another area or otherwise leave post, or further training might be required after five years).
4. We have assumed that environmental health officers carry out inspections of:
  - a) 25% of applications under scenario 1; and
  - b) all applications under scenario 2.
5. We have assumed that local authorities will need to lease vehicles so that environmental health officers can visit short-term let properties. Public transport (or, in some areas with a high density of short-term lets, walking) may be a cheaper and viable alternative in some instances and this could reduce cost. However, in local authorities where there is a lower level of population density, this would be impractical (i.e. cost more than running a vehicle(s)). We have assumed in scenario 1 that it takes an environmental health officer 1 hour to drive to a short-term let property and a further 1.5 hours to carry out their inspection and write-up; before taking 1 hour to drive on to the next one. In scenario 2, we have assumed that it takes 2.25 hours to drive to a short-term

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let property and a further 1.5 hours to carry out their inspection and write-up; before taking 2.25 hours to drive on to the next one. The latter reflects a rural local authority where it may take a considerable amount of time to visit each short-term let (given they are likely to be located in more remote areas). We have assumed that it costs £300 per month per vehicle.

6. We have assumed that postage costs for local authorities (making up all of the 'Other' column) total £18 per application or renewal. This also includes costs of envelopes, stamps and printing. Administrative staff time of half an hour has been allocated to the task of printing and sending letters to nearby residents to notify them of the short-term let licence application or renewal.
7. We have assumed in both scenarios that it takes, on average, 2.5 hours of licensing officer time to deal with objections about an application or renewal, or licensing committee, and this affects 10% of applications and renewals in scenario 1. In scenario 2 this affects 25% of applications and renewals. In some instances, the time taken might be much shorter, but in others could be considerably longer; this is an **average** and we would expect the variance to be high.
8. We have allocated half an hour of licensing officer time in both cases to responding to general queries.
9. We have assumed that the time spent by administrative staff and licensing officers (excluding time spent dealing with complaints, queries or committees, or responding to the applicant with licensing information and updating the short-term let register, or notifying residents of application/renewal by administrative staff) increases by 50% in scenario 2 to reflect the extra time taken to liaise with applicants to correct information.
10. It is assumed that monitoring and enforcement activity (including handling complaints) is undertaken at officer level and requires an additional 20% and 40% of the staff resource allocated for processing applications in scenario 1 and 2, respectively.
11. We have assumed in both scenarios that applications and renewals are submitted by post and not submitted digitally. Local authorities might adapt existing IT systems, introduce new IT systems or use administrative staff to process incoming paper license applications and renewals. The cost implications of these options would vary significantly. We have assumed that administrative staff process incoming paper license applications and renewals; however, it is likely that larger local authorities, or those with a large number of short-term lets in their area, may be able to substitute this for IT systems that perform the same role as administrative staff more cheaply (so utilise less administrative staff).



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**Summary of cost and time elements**

12. Table A1 below summarises the time and cost elements under scenarios 1 and 2.

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**Table A1. Indicative Cost of Licensing System (Application/Renewal, Average Fee)**

Average, per application or renewal	Scenario 1		Scenario 2	
	Application	Renewal	Application	Renewal
<b>Staff Time (Hours)</b>				
<b>A. Processing Applications &amp; Renewals</b>				
<b>Administrative Staff</b>				
<i>Tasks (summary): Receives and processes postal applications and renewals; checks required information is supplied; notifies nearby neighbours of application/renewal by post; liaises with applicants to correct information, and posts back documents supplied as evidence.</i>	2	2	2.8	2.8
<b>Officers</b>				
<i>Tasks (summary): Licensing Officer: checks that required information is supplied; liaises with applicants to correct information; reviews compliance with mandatory license conditions, including consultation with relevant authorities; provides successful applicant with licensing information and documentation; updates short-term let register; deals with objections about applications/renewals and licensing committees, and responds to general queries.</i>	6.5	3.3	9.9	4.6
<i>Environmental Health Officer: checks property is safe to be let as an short-term let and maximum occupancy.</i>				
<i>Planning Officer: checks compliance with relevant planning permission conditions.</i>				

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**B. Monitoring & enforcement activities**

**Officers**

**Tasks (summary):**

*Monitoring and enforcement activities to ensure that all short-term lets are licensed and these properties continue to meet license conditions, as well as handling complaints.*

	1.3	1.3	4	4
<b>Total Staff Time (Hours)</b>	9.8	6.6	16.6	11.3
<b>Costs (£)</b>				
Staff Costs	201	128	345	228
Staff Training	3	2	6	4
Transport	1	-	8	-
Other	18	18	18	18
<b>Total Cost (£) (3 Year Licence)</b>	<b>223</b>	<b>148</b>	<b>377</b>	<b>249</b>
<b>Annual Equivalent</b>	<b>74</b>	<b>49</b>	<b>126</b>	<b>83</b>

Time is rounded to the nearest one decimal place and may not necessarily sum.

## Calculation of discounts

13. Table 2 in **section F** outlined how a discount could be applied to lower the cost of a license application/renewal for low occupancy short-term lets.
14. To calculate this, the first step was to calculate total short-term let fee income from 32,000 short-term lets. Under scenario 2's application fee, this is equal to £12.1 million. The next step was to establish the share and number of short-term let's that would fall into the 'low volume' category (where the property is let for less than one month per annum) and regular category (let for at least one month per annum). We assume 40% (or 12,800) of short-term lets fall into the low volume category and the remaining 60% (19,200) the regular category. Using this information, and the size of the discount, we can solve for the appropriate fee amount to ensure that the discount is revenue neutral.
15. Mathematically, let the fee be denoted by  $X$  and assume a discount of 25%. We can find the fee amount by solving for  $X$ :

$$£12,059,183 = ((0.4) * (32,000) * (100\% - 25\%) * X) + ((0.6) * (32,000) * X)$$

$$£12,059,183 = 9,600X + 19,200X$$

$$£12,059,183 = 28,800X$$

$$X = £419$$

16. This results in the standard application fee under scenario 2 now being £419 (for regular short-term lets) and the fee for low volume short-term lets, after applying a discount of 25%, being £314. This does not affect total fee revenue as the discount is revenue neutral.

## LOCAL AUTHORITY HMO LICENCE FEES

The following table shows the lowest HMO fee charged by local authorities in Scotland:

Local Authority	Licence Period	Number of residents	Application Fee <sup>34</sup>	Renewal Fee
Aberdeen	Up to 3 years	3-5 residents	£595 <sup>35</sup>	£480
Aberdeenshire	Up to 3 years	3-4 residents	£769	£759
Angus	Up to 3 years	3-5 residents	£326	-
Argyll and Bute	Up to 3 years	Up to 10	£848	-
Clackmannanshire	Up to 3 years	Less than 10	£543	-
Dumfries and Galloway	Up to 3 years	3-5 residents	£1,045	£709
Dundee <sup>36</sup>	Up to 3 years	3-5 residents	£1,140	£960
East Ayrshire	Up to 3 years	Flat fee, all HMO licences	£520	£326
East Dunbartonshire	Up to 3 years	Up to 10	£540	-
East Lothian	Up to 3 years	3-5 residents	£462	-
East Renfrewshire	Up to 3 years	Up to 6	£830	£523
Edinburgh	1 or 3 years	3 residents	£594	-
Falkirk	Up to 3 years	Flat fee, all HMO licences	£565	£565
Fife <sup>37</sup>	Up to 3 years	3-5 residents	£1,480	-
Glasgow	Up to 3 years	Up to 10	£1,906	£953
Highland	Up to 3 years	Up to 10	£801	-
Inverclyde	Up to 3 years	Flat fee, all HMO licences	£1,191	-
Midlothian	Up to 3 years	3-5 residents	£266	£167
Moray	Up to 3 years	3-5 residents	£1,765	
Na h-Eileanan Siar	Up to 3 years	Flat fee, all HMO licences	£290	£202
North Ayrshire	Up to 3 years	Flat fee, all HMO licences	£959	£716
North Lanarkshire	Up to 3 years	Flat fee, all HMO licences	£1000	£1000
Orkney	Up to 3 years	Up to 9	£440	-
Perth and Kinross	Up to 3 years	3-5 residents	£714	-

<sup>34</sup> Rounded to the nearest pound. Information correct as of December 2020.

<sup>35</sup> Comprising £445 for determining the application and £150 for inspecting the premises over the three years of the licence.

<sup>36</sup> Dundee charges £58 for additional inspections.

<sup>37</sup> Fife charges: £190 for a pre-application inspection; £100 for a missed appointment; and £24 for reissuing a licence.

<b>Local Authority</b>	<b>Licence Period</b>	<b>Number of residents</b>	<b>Application Fee<sup>34</sup></b>	<b>Renewal Fee</b>
Renfrewshire	Up to 3 years	Flat fee, all HMO licences	£1,039	-
Scottish Borders	Up to 3 years	Flat fee, all HMO licences	£590	-
Shetland	Up to 3 years	Up to 6 persons	£229	-
South Ayrshire	Up to 3 years	Flat fee, all HMO licences	£1,080	-
South Lanarkshire	Up to 3 years	3-5 residents	£326	-
Stirling	Up to 3 years	3-5 residents	£680	£680
West Dunbartonshire	Up to 3 years	Flat fee, all HMO licences	£1,842	-
West Lothian	Up to 3 years	3-50 residents	£671	-

## MANDATORY CONDITIONS: COMPLIANCE COST ESTIMATES

Schedule 3 of the Licensing Order sets out the mandatory conditions with which a short-term let host must comply. These are set out below with a commentary on the time, effort and cost involved. For illustrative purposes, we have based the costs, time and effort on a typical two bedroom property.

Mandatory condition	Commentary
<p><b>1. Agents</b></p> <p>The holder of the licence must not authorise any other person to carry on the day to day management of the short-term let of the premises.</p>	<p>We do not consider that compliance with this condition will impose a cost.</p>
<p><b>2. Fire safety: detection</b></p> <p>The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of:</p>	
<ul style="list-style-type: none"> <li>• fire or suspected fire, and</li> </ul>	<p>Previously: <b>best practice</b></p> <p><b>Estimate £220</b> for a sealed long-life battery system which would last for ten years . A hard-wired alarm would cost more and should be installed by an electrician.</p>
<ul style="list-style-type: none"> <li>• carbon monoxide present in a concentration that is hazardous to health.</li> </ul>	<p>Previously: <b>best practice</b></p> <p>The cost of CO alarms is included in the estimate of a fire alarm system (above).</p>
<p><b>3. Fire safety: furniture and fittings</b></p> <p>The holder of the licence must ensure that all upholstered furnishings and mattresses within the premises comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 and keep records showing this.</p>	<p>Previously: <b>legal requirement</b></p> <p>We do not consider compliance with fire safety and record keeping to be a new cost.</p>



<p><b>4. Gas safety</b></p> <p>Where the premises has a gas supply the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises and arrange for any repairs in order that the required safety standard is met.</p>	<p>Previously: <b>best practice</b></p> <p>Estimate <b>£80 annually</b><sup>38</sup>.</p> <p>We do not consider any repairs to be a new cost.</p>
<p><b>5. (&amp; 6.) Electrical Safety</b></p> <p>The holder of the licence must have any electrical fittings in a reasonable state of repair, and proper and safe working order as demonstrated through an electrical safety inspection written up in an Electrical Installation Condition Report (EICR).</p>	<p>Previously: <b>best practice</b></p> <p><b>Estimate £180</b> every five years , depending on age and condition of wiring.</p> <p>We do not consider any repair and maintenance of electrical fittings identified through testing to be a new cost.</p>
<p>The holder of the licence have any electrical items in a reasonable state of repair, and proper and safe working order as demonstrated through a Portable Appliance Testing Report on moveable appliances to which a guest has access.</p>	<p>Previously: <b>best practice</b></p> <p><b>Estimate £100</b> annually (but this may be included in a quote for an EICR).</p> <p>We do not consider any repair and maintenance of electrical items identified through testing to be a new cost.</p>
<p><b>7. Water safety: private water supplies</b></p> <p>Where a premises is served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.</p>	<p>Previously: <b>legal requirement</b> for home sharing and home letting but best practice for secondary letting</p>

<sup>38</sup> See [www.checkatrade.com/blog/cost-guides/gas-safety-certificate-cost/](http://www.checkatrade.com/blog/cost-guides/gas-safety-certificate-cost/) where they recommend budgeting £80.

	Estimate <b>£200 one-off</b> <sup>39</sup> cost for carrying out a risk assessment.
<p><b>8. Water safety: Legionella</b></p> <p>The holder of the licence must assess the risk from exposure to Legionella within the premises, whether or not the short-term let has a private water supply.</p>	<p>Previously: <b>best practice</b></p> <p>This is an assessment which the host can do themselves by inspecting tanks and pipework within the premises.</p> <p>Estimate <b>£17 one-off</b><sup>40</sup> for time reading up and carrying out the inspection.</p>
<p><b>9. Safety and repair standards</b></p> <p>The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use. This means meeting the repairing standard where it applies.</p>	<p>Previously: <b>legal requirement</b> for houses (under the repairing standard) and <b>best practice</b> for unconventional accommodation.</p> <p>Certain elements of the repairing standard are required by other licence conditions, for example, fire and carbon monoxide detectors.</p> <p>We do not consider there to be additional costs from making sure that the premises are safe.</p>
<p><b>10. Maximum Occupancy</b></p> <p>The licence holder must ensure that the number of guests residing in the accommodation does not exceed the number specified on the licence.</p>	<p>Previously: <b>normal practice</b> to specify the maximum number of guests for the accommodation.</p> <p>There may be additional costs in providing the local</p>

<sup>39</sup> In 2017, this was estimated at £200 per property, see table following paragraph 198 in [www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-scotlands-energy-efficiency/pages/5/](http://www.gov.scot/publications/energy-efficiency-condition-standards-private-rented-housing-scotlands-energy-efficiency/pages/5/)

<sup>40</sup> Assuming one hour's work (see footnote **Error! Bookmark not defined.**).

	<p>authority with information to justify a maximum occupancy that appears high (e.g. 10 people in a two bedroom property).</p> <p>Estimate: <b>£22 one-off</b><sup>41</sup> cost to provide a dimensioned layout of the property, where this is needed.</p>
<p><b>11. Information to be displayed</b></p> <p>The holder of the licence must make certain information available within the premises in a place where it is accessible to all guests, including licence conditions; fire, gas and electrical safety information; and details of how to summon the assistance of emergency services.</p>	<p>Previously: <b>best practice</b></p> <p>These are documents and information the host should have to hand. There is a one off-cost in making copies of the documents and putting them in a folder or otherwise making them available to view at the property.</p> <p>Estimate <b>£22 one-off</b><sup>42</sup> for time, copying and a folder.</p>
<p><b>12. Planning permission</b></p> <p>Where the premises is in a control area, the holder of the licence must have made a planning application or have planning permission already.</p>	<p>Previously: <b>variable by area</b></p> <p>The only additional cost is in making a planning application where one was not previously required. Even within control areas, planning permission may have been required before designation (depending on</p>

<sup>41</sup> Assuming the host took two hours to do this themselves (see footnote **Error! Bookmark not defined.**).

<sup>42</sup> Estimating one hour's work and £5 for materials. Cost of time for applicants in industry is £17 per hour (for reading regulations and filling out forms, etc.). This comprises average (median) gross hourly pay in the Scottish Real Estate sector of £14 in 2020 ([ONS, Annual Survey of Hours and Earnings, Table 5.5a, all earnings](#)), uplifted by 22% to reflect non-wage labour costs (as per [UK Government Regulatory Policy Committee guidance note on implementation costs](#)).

	<p>the local authority's planning policies).</p> <p>Estimate <b>£520-1,000 one-off</b> where planning permission is now required but was not before. Planning costs are discussed further in <b>Annex C1</b>.</p>
<p><b>13. Listings</b></p> <p>The holder of the licence must ensure that any listing or advert includes the licence number, the maximum occupancy and a valid Energy Performance Certificate (EPC) rating (where this is required by building standards legislation).</p>	<p>Previously: <b>no requirement</b></p> <p>There is no additional cost beyond the fee already paid to obtaining the licence number (which will be on the certificate). The licence number, maximum occupancy and the EPC rating will take up additional characters in any advert charged by character count (e.g. printed media).</p> <p>Estimate <b>£20 annually</b><sup>43</sup> for longer print media adverts, where these are used.</p>
<p><b>14. Insurance</b></p> <p>The holder of the licence must, for the duration of the licence, have valid buildings insurance and valid public liability insurance providing cover of not less than £5 million.</p>	<p>Previously: buildings insurance is a <b>contractual requirement</b> from lenders for those with mortgages and normally taken out by owners. Public liability insurance was not a legal requirement but advisable to protect hosts from claims for injury or damage from guests.</p>

<sup>43</sup> Ballpark estimate, depends on detailed circumstances.

	<p>We do not consider buildings insurance as a new cost.</p> <p>Estimate: <b>£100 annually</b><sup>44</sup> for public liability insurance cover of £5 million.</p>
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Mandatory conditions at paragraphs 15 and 16 of schedule 3 set requirements around the payment of fees (paragraph 15) and an obligation not to provide false or misleading information (paragraph 16). These do not impose any additional costs or effort on the host.

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<sup>44</sup> Ballpark estimate, depends on detailed circumstances.

**MANDATORY CONDITIONS: PLANNING****Planning permission for change of use**

A planning consent for a change of use might be expected to cost the applicant in the region of **£630 to £1000**. This assumes:

- the application relates solely to change of use (without any physical alteration to the appearance of the building); and
- the application does not raise unusual issues.

The Scottish Government's estimate of costs breaks down as follows:

The planning application fee (set nationally)	£401
Search of title deeds and location plan of the property through Registers of Scotland (including VAT)	£36
Completing the change of use application through the Planning Portal by the applicant (2.5 hours) <sup>45</sup>	£42
<b>OR</b>	<b>OR</b>
Completing the change of use application through the Planning Portal by a professional (based on 2-3 hours work)	£300 - £350
Advertisement costs	£150 - £200

A straightforward change of use application would generally be capable of being prepared by the applicant and should not require significant professional advice or input.

There may be some costs if the application has to be advertised in the local press. Not all advertisements require a press advertisement. On receipt of an application, the planning authority is required to send written notification to all neighbouring properties within 20 metres and it is only if this cannot be done (i.e. there is no postal address for the neighbouring land to which the written notification can be delivered) that a press advert would be required. The costs of written notification are included in the application fee, the costs of press advertising are the actual cost of inserting

<sup>45</sup> Assuming 2.5 hours work at £17 per hour (see footnote **Error! Bookmark not defined.**).

the advertisement in the newspaper. Advert costs are not part of the application fee and would be invoiced for separately by the planning authority as and when required.

The actual costs for an individual advertisement would vary considerably. Where the advertisement was for a single planning application they could be higher. However, if the advertisement covers applications for several properties (not necessarily just short-term let applications), the cost of the advertisement would be split between the various applicants accordingly. An advert may be more likely to be required in a rural area where the surrounding land is less likely to have a postal address.

Architects drawings and plans of proposed work would not generally be required for a change of use, so the costs of such work are not listed.

In many cases, under current planning legislation, a change of use from a dwellinghouse to a short-term let would be a material change of use requiring a planning application. It is for the relevant planning authority to consider on a case-by-case basis whether or not a planning application is required. This will remain the position outside control areas. Within control areas, only a minority of properties would require a planning application that did not do so before. For many properties within a control area, the planning costs are not therefore be a direct consequence of the designation of the area as a short-term let control area.

### **Application for a certificate of lawfulness of use or development (CLUD)**

Application for a CLUD might be expected to cost the applicant in the region of **£520 to £900**. This assumes:

- the application relies on demonstrating more than 10 years of prior continuous use as a short-term let; and
- the application does not raise unusual issues.

The cost breaks down as follows:

The application fee (set nationally) <sup>46</sup>	£401
Search of title deeds and location plan of the property through Registers of Scotland (including VAT)	£36
Completing the change of use application through the Planning Portal by the applicant (2.5 hours)	£42
<b>OR</b>	<b>OR</b>

<sup>46</sup> Note that it is possible to apply for a CLUD for a proposed change of use with a lower application fee. An application for a CLUD for a proposed use would be on the basis that there would be no material change of use so is not relevant in a control area.



Completing the change of use application through the Planning Portal by a professional	£300 - £350
Gathering evidence to support the application (2.5 hours)	£42

The information that would be required to be submitted in support of a CLUD application is different to that required for a planning application. In applying for a CLUD, the applicant is submitting evidence that the use does not require a planning application. The question to be considered is whether that proof is sufficient to justify a CLUD. Such evidence would generally take the form of receipts for guests staying at the accommodation, advertising etc.

A CLUD application does not have the same notification requirements as a planning application so there is no potential for advertising costs.

In terms of preparing the evidence and the application itself, there is potentially more requirement for the applicant to spend time gathering information from their records and corroborating from other sources.

## AIRBNB: THE STEPS TO COMPLY

During the 2020 consultation, [Airbnb published a table setting out the steps that hosts would need to take to comply](#)<sup>47</sup>. This table sets out the steps outlined by Airbnb and the Scottish Government's comments:

REF	AIRBNB STEPS	SG COMMENTS
1.	Find out if your property falls within a control area	The requirement to determine whether you need planning permission is not new. The only new element is that planning permission is always required for secondary letting in a control area. If anything, being in a control area makes the position clearer.
2.	If it is, and you're not renting out a room in your primary home, you must apply for 'change of use' planning permission. If it's not, you may still require planning permission if the planning authority thinks your short term let amounts to "a material change of use"	Local authorities wishing to establish a control area will be required to consult on proposals for establishing a control area (or areas) and thereafter will publicise it.
3.	Create an account with ePlanning Scotland	Steps 3 to 7 are not new. The only new requirement would be that a planning application would always require to be made in a control area.  The process for applying for planning permission is costed at <b>Annex C1</b> .
4.	Create a planning proposal including: <ul style="list-style-type: none"> <li>• a description of the change</li> <li>• your name and address</li> <li>• a postal address</li> <li>• a certificate of ownership</li> <li>• a plan which clearly identifies the location of the application site</li> <li>• any other plans or drawings</li> </ul>	ePlanning is a straightforward process which allows an individual to complete and submit planning applications from home.

<sup>47</sup> <https://news.airbnb.com/wp-content/uploads/sites/4/2020/10/ScotlandShortTermLetsProposal1310.pdf>

5.	Pay the application fee (approx. £400)	The £401 fee can typically be paid online using a debit / credit card or by telephone.
6.	Wait while the planning authority publishes details of your application and notifies with anyone within 20 metres of your property. Consider how to respond to any objections. Wait for the planning authority to take a decision on the application (usually around 2 months)	Action is only required if the local authority requests further information in order to verify the application, or if objections are received and the applicant wishes to make representations concerning the objections.
7.	If it is approved, proceed; if not, you can appeal	
8.	Now prepare to apply for a licence	
9.	Check whether your application falls under a 'grace period' or whether you must cease operating until you have a licence	<p>This is straightforward; we have simplified it after the 2020 consultation. There is one set of dates for the whole of Scotland.</p> <p>All existing hosts, including those who get started on or before 1 October 2022, will have until 1 April 2023 to apply for a licence.</p> <p>New hosts starting after 1 October 2022 will not be able to take guests until they have a licence.</p>
10.	Select whether you need to apply for a licence which can cover both home sharing and home letting (i.e. your home is being used) or whether you need a licence for a secondary letting	This is straightforward. Does the host live in the place where the guests are staying?
11.	Check you can comply with mandatory licence conditions ...	The list of mandatory conditions primarily relate to a set of standards which will help to protect the safety of guests and neighbours in short-term lets across Scotland. Many

		hosts will already be following these standards as a matter of compliance with existing law or best practice. These are reviewed at <b>Annex C</b> of this BRIA.
<b>12.</b>	<p>Research your local authority's 'menu' of additional licence conditions and check you comply:</p> <ul style="list-style-type: none"> <li>• hosts required to meet all guests at the property on check-in</li> <li>• limits to alternations to the layout of the property without approval – adding beds etc</li> <li>• limits to occupancy and number of beds</li> <li>• install adequate facilities for the storage and disposal of refuse and recycling</li> <li>• replace wood floors with vinyl or carpet</li> <li>• install door closers to prevent doors being slammed</li> <li>• install a noise monitoring kit to log noise, and notify the host or hosting intermediary of any noise above a certain specified limit</li> <li>• communicate “house rules” on arrival</li> <li>• check in and departure curfews – 11pm and 7am</li> <li>• supply data on the number of nights your accommodation was let last year, the number of lettings you had last year and the total number of nights available to let last year</li> </ul>	<p>Local authorities have the power to introduce additional licence conditions to respond to local challenges and concerns, or to address issues specific to individual properties. Discretionary conditions will only be introduced where there is a reason. Local authorities will not want to unduly curtail the economic benefits of short-term lets.</p> <p>We expect that, in many cases, local authorities will only require the mandatory conditions.</p> <p>Where local authorities apply further standard conditions to every licence, in addition to the mandatory conditions, they must publish these on their website.</p> <p>Most of the examples cited opposite would be applied on a case-by-case basis where there were known concerns or they could reasonably be anticipated.</p>
<b>13.</b>	Adjust your property to meet these requirements	Most hosts already complying with existing legislation and good practice

		will not need to do very much at all to get their property ready.
<b>14.</b>	Check whether your application falls under a 'grace period' or whether you must cease operating until you have a licence	<i>This is a duplicate of step 9.</i>
<b>15.</b>	<p>Supply information:</p> <ul style="list-style-type: none"> <li>• address</li> <li>• property owner</li> <li>• number of bedrooms (and floorplan) HMO licence number (if applicable) host contact details</li> <li>• relevant criminal convictions – disqualification from being a private landlord, having had short-term lets or HMO licence revoked</li> <li>• have you had an application for a short-term lets licence turned down by any local authority?</li> <li>• have you provided false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord?</li> <li>• other short-term let licences you own</li> <li>• proposed maximum occupancy</li> <li>• what type of short-term let licence you are applying for</li> <li>• information about any intermediary (Airbnb, Booking.com etc)</li> <li>• out of hours contact details</li> <li>• access arrangements for any local authority visit</li> </ul>	Most of this information is very straightforward and many hosts will already have this information to hand.

	<ul style="list-style-type: none"> <li>• have you met mandatory licence conditions?</li> <li>• have you met additional conditions?</li> <li>• and which neighbours have you notified</li> </ul>	
<b>16.</b>	Pay your non-refundable application fee (TBD, but will depend on property size, number of rooms and occupants)	Application fees will be set by local authorities. This is discussed in detail in the main body of the BRIA. The process of determining and paying the appropriate fee will not be complicated.
<b>17.</b>	Notify all neighbours within a 20-metre distance of the property, including all residents on a tenement stair and neighbouring tenement stairs	Following the 2020 consultation, we have amended the requirement so that the licensing authority does this on behalf of the applicant.
<b>18.</b>	Await potential objection based on safety, noise, previous complaints, the availability of residential housing, the impact of your letting on the character of the neighbourhood, and the suitability of the building	<p>The opportunity for neighbours to comment has been welcomed by local communities. There is plenty of time before the licensing scheme opens for hosts to build relationships with residents and neighbours as we heard in consultation that the best of them already do.</p> <p><i>Remember: existing hosts can continue operating whilst their application is processed.</i></p>
<b>19.</b>	Await potential visit from local authorities to assess	<p>Not all properties will be visited. However, visits are an important part of the process to ensure safety and to drive up standards.</p> <p><i>Remember: existing hosts can continue operating whilst their application is processed.</i></p>
<b>20.</b>	Appear before Council licensing committee to justify your application	Perhaps 10% of applications in respect of secondary letting might go before a licencing committee. We would expect a much smaller

	or instruct lawyer to appear on your behalf	proportion of home sharing and home letting to go to committee.
<b>21.</b>	Set up direct debit to pay monthly or yearly 'monitoring' subscription fee to the council (TBD)	Some hosts have welcomed the opportunity to pay monthly if that is available. Most local authorities are likely to go with the application and renewal model.
<b>22.</b>	Get added to the register of hosts and licence accommodation	No action for the applicant. Local authorities will do this.
<b>23.</b>	Always be prepared for an inspection of your property – routine (with warning) or unannounced (where your premises will be entered forcibly if necessary)	Not all properties will be inspected. The power to carry out inspections is an important part of the process to ensure safety and to drive up standards. Notice would normally be given. Generally, the approach to inspections post-application are likely to focus on higher risk accommodation or places attracting complaints.
<b>24.</b>	If you don't comply, or the inspection is in response to a complaint, you will be charged for the cost of inspection (TBD)	Local authorities will have a reason for wanting to carry out an inspection which would be stated in any notice. (A valid reason would be as part of a schedule of visiting every property in the area or because a long time had elapsed since the last visit.)  The host would only be charged if the inspection found the complaint was valid or licence conditions had not been complied with.
<b>25.</b>	Renew your licence after three years	This is in keeping with existing licensing functions local authorities exercise. The 1982 Act allows for licences to be issued for up to 3 years and the Licensing Order allows longer licences to be issued.  For competent hosts (who have been complying with conditions of their



		licence) we expect the renewal process will be relatively straightforward.
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**PRINCIPAL CONCERNS EXPRESSED BY ASSC MEMBERS**

Members of the ASSC expressed the following concerns at the Autumn Talk on 29 September 2020 and in written questions relevant to the BRIA:

- The timing of the regulations, in the context of COVID-19 and the impact of the pandemic on the sector, and the postponement of the Transient Visitor Levy.
- Concerns about the workload for councils and their capacity to manage licence and planning applications without delay or impact on this or other schemes or applications.
- Questions about the cost of compliance for hosts, including planning costs.
- Questions around how long the application process would take.
- Concerns about rising overheads (such as cleaners, day-to-day runners, general upkeep).
- Concerns about the effect of loss of income to local economies if there was to be a reduction in tourism.
- Questions about whether Scottish Government had considered running a pilot or an alternative form of regulation, such as a registration scheme.
- Questions about how the licensing scheme would relate to existing quality indicators and accreditation, including the ASSC's code of practice.
- Questions about the cost and impact of some of the proposed discretionary conditions.

These questions are addressed in this BRIA and the report on the 2020 consultation.



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