



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

5th Meeting, 2021 (Session 5)

Wednesday 3 February 2021

The Committee will meet at 9.00 am in a virtual meeting which will be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Committee will decide whether to take item 7 in private.

The Committee will also decide whether to take in private consideration of any future draft Stage 1 reports on the Travelling Funfairs (Licensing) (Scotland) Bill.

2. **Subordinate legislation:** The Committee will take evidence on the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] and the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] from—

Kevin Stewart, Minister for Local Government, Housing and Planning, James Hamilton, Lawyer, SGLD Housing Branch, Norman MacLeod, Senior Principal Legal Officer, Planning and Built Environment, Andrew Mott, Head of Housing Markets, Strategy and North Programmes, More Homes Division, and David Reekie, Planning Regulation Manager, Planning and Architecture Division, Scottish Government.

3. **Subordinate legislation:** Minister for Local Government, Housing and Planning to move—S5M-23719—That the Local Government and Communities Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] be approved.
4. **Subordinate legislation:** Minister for Local Government, Housing and Planning to move—S5M-23718—That the Local Government and Communities Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] be approved.

5. **Travelling Funfairs (Licensing) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Richard Lyle, Member in charge of the Bill;

Nick Hawthorne, Senior Assistant Clerk, Non-Government Bills Unit, and
Claudia Bennett, Solicitor, Office of the Solicitor to the Scottish Parliament,
Scottish Parliament.

6. **Subordinate legislation:** The Committee will consider the following negative instrument- Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2021 (2021/18)
7. **Travelling Funfairs (Licensing) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk	LGC/S5/21/5/1
Short term lets-key issues-Public	LGC/S5/21/5/2
PRIVATE PAPER	LGC/S5/21/5/3 (P)

Agenda item 5

Travelling Fairgrounds clerk note	LGC/S5/21/5/4
PRIVATE PAPER	LGC/S5/21/5/5 (P)

Agenda item 6

Note by the Clerk	LGC/S5/21/5/6
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Local Government and Communities Committee

5th Meeting, 2020 (Session 5), Wednesday 3 February 2021

Subordinate Legislation

Overview of instruments

1. These two instruments are being considered at today's meeting. They are both subject to the affirmative procedure:
 - [Town and Country Planning \(Short-term Let Control Areas\) \(Scotland\) Regulations 2021](#); and
 - [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2021](#)
2. Both are designed to manage the recent growth of short-term letting. They will create a national licensing scheme allowing local authorities to regulate properties being used for short term letting. Local authorities will also have the ability to introduce 'control areas' in places where short-term let are found in high numbers and deemed to be effecting the fabric of the community.

Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI/draft)

3. This instrument sets out the rules that will govern planning authorities when making, varying or revoking a short-term let control area ("a control area") under section 26B of the Town and Country Planning (Scotland) Act 1997. If approved, it will come into force on 1 April 2021.
4. The purpose of control areas is:
 - to help local authorities manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood);
 - to control 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.
5. The Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas. They also allow planning authorities to consider applications for consent for change of use in relation to planning matters.
6. The Policy Note (**Annexe A**) provides further detail on the instrument and set out detailed provisions for the operation of the short term let control area regime. The regulations also set out the process that planning authorities must follow if they wish to create a short-term let control area:

- **Notice:** the planning authority must publicise its intention to create a short-term let control area in a local newspaper, online and to relevant community councils. The authority must allow at least 28 days for comments on the proposals to be submitted.
- **Modification:** the planning authority can modify the proposal following consultation, although it cannot extend the boundary of the proposed area beyond that previously consulted on.
- **Ministerial approval:** a short-term let control area can only take effect once approved by Scottish Ministers

7. The Committee needs to report on this instrument by 7 February 2021.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [22 December 2020](#) and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI/draft)

9. This Order sets out a licensing scheme for short-term lets to be established and operated by licensing authorities. The Licensing Order includes a definition of short-term let, sets out the activity to be licensed and the mandatory conditions which licensing authorities must apply across Scotland. It sets out transitional arrangements and modifications to the standard 1982 Act licensing procedures.
10. The Policy Note (**Annexe B**) states that the instrument establishes a licensing scheme to ensure short-term lets are safe and address issues faced by neighbours. It will help local authorities know and understand what is happening in their area and assist with handling complaints effectively. The Order differentiates between three types of short-term let arrangement:
- **Home sharing:** Guests stay in a part of a host's only or principal home, while the host is resident.
 - **Home letting:** Guests stay in a host's only or principal home, while the host is absent.
 - **Secondary letting:** Guests stay in accommodation that is not the host's only or principal home.
11. All existing hosts must submit a licence application by 1 April 2023 and hold an appropriate licence by 31 March 2024. Any host wishing to start short-term letting after 1 April 2022 must submit a licence application and cannot commence until the licence has been approved.
12. The Committee needs to report on this instrument by 7 February 2021.

Delegated Powers and Law Reform Committee consideration

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [12 January 2021](#) and [determined](#) that it needs to draw the instrument to the attention of the Parliament on reporting ground (h), on the basis that it could be clearer:
 - in paragraph 1(e) of schedule 1 of the instrument that it is the term “premises licence”, rather than “approved activity”, that is being defined by reference to the Licensing (Scotland) Act 2005; and
 - that paragraph 2(4) to (7) of schedule 1 of the Civic Government (Scotland) Act 1982, as modified by paragraph 4 of schedule 2 of the instrument, does not place obligations on the applicant to display a public notice at or near the premises indicating that an application for a licence has been made.
14. The Committee also agreed to draw the instrument to the attention of the Parliament on the general reporting ground, on the basis that the reference to “section 123(a) or (b)” of the Town and Country Planning (Scotland) Act 1997 in new paragraph 2A of schedule 1 of the 1982 Act as modified by paragraph 5 of schedule 1 of the instrument should be to “section 123(1)(a) or (b)”.
15. The Committee said it welcomed the Scottish Government's commitment to lay an amending instrument to rectify the errors identified. It called on the Scottish Government to include in the amending instrument provision to address the errors identified in relation to paragraph 1(e) of schedule 1.

Pre-laying consultation and written evidence on both instruments

16. There has been a high level of public interest, over several years, in the issues these two instruments seek to address. The Policy Notes for both instruments, at Annexes A and B, provides some information on the Scottish Government's consultation and engagement prior to laying the instruments. Correspondence to the Committee from the Minister for Local Government, Housing and Planning, from last July onwards also provides some background info on the Scottish Government's consultation and policy development prior to laying the instrument. These letters are set out in Annexes C, D, E, F and G for background information.
17. In view of the public interest in these instruments, and to prepare for the debate on 3 February, the Committee agreed to seek views from interested bodies as soon as the instruments were laid. Around 300 responses were received. All can be found [via this link](#) on the [Short-term Letting webpage](#). (In order to expedite publication in the limited time available, around half of responses received have been collated into two documents, rather than each being posted as a single document.) The Scottish Parliament Information Centre has also published an analysis of key themes raised in submissions, and this is included in public committee papers for this meeting.

Procedure on 3 February

18. Under Rule 10.6.1 (a), these instrument are subject to affirmative resolution. This means the Parliament must approve them otherwise they will not become law. It is for this Committee to recommend to the Parliament whether the draft instruments should be approved.
19. The Minister for Local Government, Housing and Planning has lodged motions **S5M-23719** and **S5M-23718** (items 3 and 4 on the agenda). These ask the Committee to recommend the approval of the instruments. Ahead of this, at item 2, there will be an evidence session on the instruments. This is an opportunity for members to ask the Minister and officials questions about the background to and purpose of the Order and the Regulations, and any concerns raised in the written evidence.
20. A separate formal debate will then take place on each instrument. At the end of the debate, the Committee must decide whether or not to agree the motion. The instruments cannot be amended. The Committee can only recommend that either that each of them be agreed to or not be agreed to.
21. The Committee will then make a short report to Parliament on the instruments, summarising the evidence-taking and setting out the result of the debates.

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (SHORT-TERM LET CONTROL AREAS)
(SCOTLAND) REGULATIONS 2021

SSI 2021/draft

1. The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (“the Control Area Regulations”) are made in exercise of the powers conferred by sections 26B(5) and 275 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of the instrument.

2. Section 26B is inserted into the 1997 Act by the Planning (Scotland) Act 2019. The effect of section 26B is to allow planning authorities to designate all or part of their area as a short-term let control area (“a control area”).
3. Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.

Policy Objectives

4. The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.
5. The Licensing Order¹ 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 as well as to assist with handling complaints effectively.
6. 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

¹ Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.

building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.

7. 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.

The Control Area Regulations

8. Planning permission is required for any material change of use of a building or land. Outside of a control area, it continues to be the case that it is for the planning authority to consider whether any change of use of a dwellinghouse is material and therefore requires planning permission on a case-by-case basis. Within a control area designated by a planning authority, such a change of use will always require planning permission.
9. The Control Area Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas and allow planning authorities to consider applications for consent for change of use in relation to planning matters.
10. Regulation 2 sets out the definition of a short-term let for the purposes of section 26B. It also sets out exclusions around the provision of accommodation to family members, persons living in the property to provide work or services to the provider of the accommodation or a family member, and types of accommodation set out in the Schedule to the Regulations. The definition mirrors that in the Licensing Order insofar as it is relevant to dwellinghouses. For more information on the definition, see the Policy Note for the Licensing Order.
11. Regulation 3 sets out that, before designating an area as a control area, the planning authority must give notice of the proposed designation and that the Scottish Ministers must approve the designation. This is intended to allow members of the public to be aware of, and comment on, the proposed control area.
12. Regulation 4 then establishes that the notification is to be done through local newspaper advertisement, on the planning authority website and through a notice to relevant community councils. The notice is to contain certain details of the proposed control area and include information on how further information can be obtained, as well as how representations can be made to the planning authority. Regulation 4(2) provides that a minimum of 28 days from the date of the notice being given is to be allowed for representations to be made. The 28 days begins on the date on which the last part of the required notification (i.e. the newspaper advertisement, the website notice and/or the notice to relevant community councils is sent).
13. Regulation 4(3) sets out that a map of the area and a statement of the reasons why the area is proposed to be designated as an control area must be made

available both on a website and at an office of the planning authority. The latter is important for people who cannot access this information through the internet.

14. Regulations 5 and 6 make the same requirements for notification and approval in respect of variation or cancellation of an control area once it is in place.
15. Regulation 7 allows the planning authority to modify any proposal to create, vary or modify a control area, having regard to any comments received during consultation on the proposed creation, variation or modification. Regulation 7(2) sets out that any changes cannot include changes to include an additional area in the control area which was not shown on the map of the control area (or proposed control area) that accompanied the consultation.
16. Regulation 8 lists the information to be included and accompanying materials to be submitted to Scottish Ministers by the planning authority when submitting the control area notice for approval by the Scottish Ministers. The planning authority cannot proceed with the designation or variation until the Scottish Ministers have approved the designation or variation as the case may be. Approval of the Scottish Ministers is not required for cancellation of a designation.
17. Before designating, varying or cancelling a control area, regulation 9 requires the planning authority to publish notice of any designation, variation or cancellation and to set out the date on which the designation, variation or cancellation comes into effect. This date must be at least 28 days from the date on which the notice is published.
18. Regulation 9(5) sets out that a map of the designated control area, or varied control area, must be made available both on a website and at an office of the planning authority.

Consultation

19. 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. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The [reports on the 2019 consultation and research](#) were published in October 2019.
20. In 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. In September 2020, the Scottish Government launched a second public consultation ("the 2020 consultation") on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a licensing scheme and planning control*

areas for short-term lets in Scotland in December 2020. This report can be found on the Scottish Government website².

Issues specific to the Control Area Regulations

21. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the Control Area Regulations in chapter 6.

Impact Assessments

22. The Scottish Government has conducted pre-screening or full impact assessments, for: Children's Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection (DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA). These can be found in the 2020 consultation report.

Financial Effects

23. The *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published on 14 December 2020 to accompany the laying of the Licensing Order and Control Area Regulations. The BRIA is attached as a separate document and can be found on the Scottish Government website.
24. The cost of a planning application (currently £401)³ is not affected by the Control Area Regulations.

Scottish Government
Directorate for Local Government and Communities
December 2020

² All Scottish Government consultation and research documents on short-term lets from 2019 and 2020 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

³ Set in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120).

POLICY NOTE

THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2021

SSI 2020/draft

25. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (“the Licensing Order”) is made by Scottish Ministers in exercise of the powers conferred by sections 3A(1), 44(1)(b) and (2)(a) and (b), and 136(2) of the Civic Government (Scotland) Act 1982 (“the 1982 Act”), and all other powers enabling them to do so. This instrument is subject to affirmative procedure at the Scottish Parliament.

Purpose of the instrument.

26. The 1982 Act gives the Scottish Ministers powers to create licensing schemes.
27. The Licensing Order sets out a licensing scheme for short-term lets to be established and operated by licensing authorities. The Licensing Order includes a definition of short-term let, sets out the activity to be licensed and the mandatory conditions which licensing authorities must apply across Scotland. It sets out transitional arrangements and modifications to the standard 1982 Act licensing procedures.

Policy Objectives

28. The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.
29. 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 as well as to assist with handling complaints effectively.
30. The Licensing Order is complemented by the Control Area Regulations⁴ 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.

⁴ The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021.

31. 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.

The Licensing Order

General overview

32. Article 2 of the Licensing Order defines what constitutes a short-term let; the types of accommodation which are excluded from the definition are outlined separately in schedule 1. Aspects of the definition which are relevant in the context of secondary letting of dwellinghouses are repeated in the Control Area Regulations.
33. Article 3 sets out the activity to be licensed. Article 4 introduces schedule 2 which makes modifications to the 1982 Act which apply specifically to this licensing scheme.
34. Article 5 introduces schedule 3 which sets out the mandatory licensing conditions which apply across Scotland. The 1982 Act allows licensing authorities to set additional licensing conditions and national consistency in approach will be delivered through guidance.
35. Article 6 sets out how the licensing scheme will come into force and the transitional arrangements that will apply to existing operators.
36. Article 7 introduces schedule 4 which makes consequential amendments to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and the Housing (Scotland) Act 2006 ("the 2006 Act").

Definitions

37. In this note, the term "host" is used to mean a person carrying out short-term let activity, encompassing an applicant, a licensee and someone who has not yet applied for a licence. Article 2 and, for the purposes of schedule 1 to the 1982 Act, paragraph 13 of schedule 2, define a number of terms, including home sharing, home letting and secondary letting, which are used throughout this note.

Definition of a short-term let

38. Article 2 sets out the definition of short-term let for the purposes of the licensing scheme. (Note that the definition for the Control Area Regulations is the same insofar as it applies to secondary letting.)
39. Paragraph 2(2) has the effect of including all agreements made in the course of business for the whole or part use of residential accommodation within the definition but then sets out a broad range of exclusions. Before any exclusions are applied, the purpose of the stay is immaterial: both work and leisure stays

are within scope. This includes agreements made by owners or tenants of the accommodation and agreements made by agents acting on their behalf. However, the consent of the owner (or each owner) must be provided in the licensing application and an application must be refused if that is not provided (see schedule 2, paragraph 2).

40. Paragraph 2(2)(a) excludes accommodation taken as the guest's only or principal home. This, taken with paragraph 2(3), precludes private rented tenancies under the 2016 Act, making short-term lets and private rented tenancies mutually exclusive. It further precludes Houses in Multiple Occupation ("HMOs"), as these only apply to "principal or main residences" which has the same meaning as "only or principal home". Note that there is no time limit on a short-term let. This is to avoid a loophole whereby lets longer than 28 days (for example in respect of a worker on a 3 month contract to work away from their principal home) might not be regulated under the Licensing Order or 2016 Act.
41. Paragraph 2(2)(b) excludes accommodation provided free of charge or obligation. Commercial consideration is defined in article 2(1) and includes payment of money and benefits in kind. It is explicit that arrangements where one household swaps their home with another household, one form of home letting, would be within the scope of commercial consideration. Note that goods arranged to be exchanged in lieu of money, such as a case of wine, would count as commercial consideration. However, a modest gift provided by a friend as a "thank you for having me" would not. The difference is in whether "an arrangement in the course of business" is made.
42. Provision of a service might include, for example, helping out with odd jobs or repairs or maintenance whilst staying in the accommodation (but see paragraph 20 below). But it also extends to services provided unrelated to the stay.
43. Paragraph 2(2)(c)(i) excludes lets to immediate family (whether or not for commercial consideration). Immediate family is defined in paragraphs 2(4) and 2(5), using a definition similar to that used for private rented tenancies (schedule 3, paragraph 5 of the 2016 Act). It covers parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. It also treats children with one parent in common as siblings and stepchildren as children.
44. Paragraph 2(2)(c)(ii) excludes home sharing (i.e. sharing the accommodation) with the host(s) for the principal purpose of providing work or services to that person or other members of the household. This, for example, exempts live-in care arrangements. The reference to provision of work is deliberately broad so that it does not matter whether the person providing the work or services it is a direct employee or not of the host(s). Turning back to the example, the carer might be directly employed or employed by a care agency. Note that the accommodation is ancillary to the work; where the work is ancillary to the

accommodation (such as mowing the lawn whilst staying for a week), this is within scope of commercial consideration. See also paragraph 22 below.

45. Paragraph 2(2)(c)(iii) excludes home sharing with the host(s) for the principal purpose of advancement of the guest's education. This exempts students living with a family for the express purpose of improving their English, for example. The reason for excluding these arrangements is that the student is more like a family member than a guest.
46. Paragraph 2(2)(d) makes equivalent provision to paragraph 2(2)(c)(ii) but for secondary letting. This has the effect of excluding tied accommodation, i.e. where the guest is staying there for the purpose of his work and the accommodation is owned or tenanted by the host. This would exempt, for example, a night lammer being provided with the use of a cottage on a farm for a few weeks during lambing. Note that accommodation provided by a different host is not exempt: for example, a secondee to a bank being put up by the bank in serviced accommodation. The secondee is working for the bank, not the host of the accommodation. See also paragraph 38 below, concerning provision for employer-owned accommodation at paragraph 1(p) of schedule 1.
47. Paragraph 2(2)(e) excludes certain type of accommodation from being a short-term let. Excluded accommodation is defined in paragraph 2(1) by reference to schedule 1 (introduced by article 2(6)).

Excluded accommodation

48. The types of accommodation which are excluded are listed at schedule 1. These would otherwise fall within the normal meaning of residential accommodation.
49. The Town and Country Planning (Use Classes) (Scotland) Order 1997⁵ ("the UCO") sets out the defined uses of buildings for planning purposes. Classes 7, 8 and 9 in the UCO are the classes primarily concerned with the provision of overnight accommodation. In broad terms, schedule 1 makes provision to exclude everything other than houses (class 9), flats (*sui generis*) and unconventional accommodation within the definition of short-term let.
50. Paragraphs 1(a), (c), (d) and (f) exclude hotels, boarding houses, guest houses and hostels (class 7 premises under the UCO). Hostel is defined at paragraph 2(1).
51. Paragraph 1(b) excludes aparthotels. They are defined at paragraph 2(1). An aparthotel comprises five or more serviced apartments. Serviced apartment is also defined at paragraph 2(1) and is flat or residential unit with some form of on-going service provision to the guests and management of them. Whilst a single serviced apartment might be "embedded" in flats or tenements (and is therefore within the scope of the licensing scheme), an aparthotel resembles

⁵ SI 1997/3061

much more a hotel in both planning terms and health and safety regulation and, for this reason, is excluded.

52. The definition of aparthotel does not require the whole building to be dedicated to apartments forming part of the aparthotel. The definition allows for the ground floor of the building to include shops, for example, or for parts of the building to be given over to flats, provided these have a separate entrance. The definition precludes apartments with different owners being considered collectively as an aparthotel. The “same person” applies singular or plural so the building can be owned by a couple, for example, or several joint owners or a corporate body.
53. Paragraph 1(e) excludes restaurants with rooms and inns, for example, where they are already licensed specifically to offer accommodation under the Licensing (Scotland) Act 2005.
54. Paragraphs 1(g) to (i) exclude residential institutions providing care or education (class 8 premises under the UCO).
55. Paragraph 1(j) excludes all types of secure residential accommodation (class 8A premises under the UCO).
56. Paragraph 1(k) excludes refuges, which includes accommodation for women escaping domestic violence, for example.
57. Paragraph 1(l) excludes student accommodation, which is defined in paragraph 2(1). The type of student accommodation which is excluded is purpose-built or specifically converted. Student halls of residence, for example, are excluded but houses and flats which are normally let to students are not excluded. So use of student halls of residence for other purposes in the summer holidays would not fall within the scope of the licensing scheme. However, use of a flat over the summer holidays, which was occupied by students from September to June, would be treated in the same way as the use of any other flat.
58. Paragraph 1(m) excludes accommodation which otherwise requires a licence for use for hire for overnight stays, for example licenced caravans under the Caravan Sites and Control of Development Act 1960⁶. However, paragraph 2(2) makes clear that HMO accommodation is not exempt from requiring a short-term lets licence if it is also to be used for that purpose.
59. HMO licensing (under the 2006 Act) and short-term lets licensing are independent and separately required for each purpose, i.e. a short-term let licence is required, even if the host and property has an HMO licence already. This is because there is a difference between a property being occupied by longer-term residents and short-term guests.

⁶ The Housing (Scotland) Act 2014 inserted a new Part 1A into the 1960 Act creating a new licensing system for relevant permanent sites.

60. Paragraph 1(n) excludes accommodation provided by the guest, for example where the guest brings their own tent (as opposed to glamping where the tent is normally fixed and provided by the host).
61. Paragraph 1(o) excludes any form of accommodation which is capable of transporting the guest; note that static is defined by paragraph 2(1). This would exclude, for example hire of canal boats and yachts. The licensing of mobile accommodation presents very different challenges around who are the relevant licensing authorities and neighbours. However, a previously mobile unit that had been immobilised, such as an old tractor or a caravan in a tree would not be excluded as they would require modification to be capable of transporting guests.
62. Paragraph 1(p) excludes accommodation provided by an employer. Article 2(2)(d) is also relevant, see paragraph 22 above. Whilst provision at article 2(2)(d) is primarily aimed at a natural person or household receiving work or services from someone staying in a second dwelling, this provision covers companies and other bodies providing accommodation to employees as part of a contract or to help them perform their duties. This is likely to occur where an employee is required around the clock, or is otherwise provided with residential quarters, for example caretakers or workers on an oil rig (insofar as the accommodation is within Scottish territorial waters), where shifts extend into multiple days.

Activities requiring to be licenced

63. Article 3, paragraphs (1) and (2) have the effect that the licensing scheme is operational across Scotland from 1 April 2022 and licensing authorities will need to have a scheme open to receive applications from that date. Together with article 6, which makes transitional provision for existing hosts, the effect of article 3 is that any person wishing to commence short-term letting activity on or after 1 April 2022 must make an application for a licence and may not commence that activity until they have a licence.
64. Paragraph 3(3) makes provision for a single licence to be issued in respect of unconventional accommodation (not a house or flat) where there is more than one separately bookable accommodation unit on the site. This means, for example, that a person intending to operate 30 yurts within the same field would only require a single licence. However, a person operating 15 yurts in one field at one end of the village and 15 yurts in another field at the other end of the village would require two licences. The reason for making this provision is that the same considerations apply in respect of each accommodation unit on the same site: they have the same neighbours; and the units are likely to be interchangeable with regards to bookings, so all need to meet the mandatory safety conditions for the site to be licensed.
65. Obviously, there will be circumstances where one or more of the units is not usable because of accidental damage (e.g. by a guest or by fire) or because it has been taken out of service for refurbishment. In the circumstances, it may not be safe for those units to be let to guests. Similar considerations apply in

respect of, say, a six bedroom cottage where one bedroom has been taken out of commission. In both cases, the host may continue to let the (parts of) the accommodation which meets the licence conditions but it would be an offence (failing to comply with licence conditions) to use accommodation which had become (temporarily) unsafe.

66. Licensing authorities may take account of the number of accommodation units on a site in determining the appropriate fee (see paragraph 15 of schedule 1 to the 1982 Act).

Modification of 1982 Act procedures

67. Article 4 introduces schedule 2 of the Licensing Order which makes modifications to the 1982 Act for the purposes of the short-term lets licensing scheme. Schedule 2 of the Licensing Order, read with relevant parts of the 1982 Act, governs how the scheme will operate. To avoid confusion between descriptions of paragraphs in schedule 2 of the Licensing Order and schedule 1 of the 1982 Act, the latter references are in **bold**.

Warrants authorising entry

68. Paragraph 1 inserts a new section 5A making provision for warrants authorising entry.
69. An unusual feature of accommodation for short-term lets (compared to other licensed premises) is that most of the time there will be no licensee, employee or representative of the licensee present on the premises. This creates particular difficulties with unannounced inspections which can be a very effective way of ensuring licence terms and conditions are adhered to at all times. Furthermore, it is highly likely that guests will be out and about for much of the time of their stay. An unannounced inspection may be the only way of proving a violation of some licensing conditions (e.g. occupancy). Licensing authorities need to have the power to visit unannounced, and enter the premises forcibly if necessary, but only in very limited circumstances.
70. Section 5 of the 1982 Act provides powers to enter and inspect premises (which have not yet been applied to residential premises). Section 5A allows licensing officers to force entry to premises for inspection, where they have been refused or unable to gain entry. A warrant is required to gain entry if not given voluntarily, in the same manner as for HMOs.

Applications

71. Typically, an application for a licence will normally be for either:
 (a) a licence which can cover both home sharing and home letting (i.e. where the host's home is being used); or
 (b) a licence for secondary letting.
72. A licence can be granted for a period of up to 3 years, after which it needs to be renewed. Licensing authorities have flexibility as to the duration of

licences they grant and may grant licences for different time periods to different applicants provided they have clear and transparent criteria for doing so.

73. A licence application will need to include information about the host and the premises, including the mandatory and standard licence conditions.
74. Paragraph 2 modifies **paragraph 1 (applications)**. **Paragraph 1(2)(b)** is amended to extend the required information to include addresses for the 5 previous years, email address and telephone number. **Paragraph 1(2)(da)** requires details of any other owners and a declaration from them consenting to the application. **Paragraph 1(2)(da)(ii)** is designed to facilitate declarations from partnerships, where there may be many owners.
75. The persons named on the application form will be subject to the fit and proper person test. **Paragraph 5(3)(a)(i)** requires a licensing authority to refuse an application if, in their opinion, the applicant is not a fit and proper person to be the licence holder. The grounds for what constitutes a fit and proper person in this context will be set out in guidance, as with, for example, checks on letting agents prior to registration. Relevant information might include (but is not limited to):
 - a) relevant criminal convictions (and police intelligence);
 - b) being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past;
 - c) having had a short-term lets or HMO licence revoked by any local authority;
 - d) having had an application for a short-term lets licence turned down by any local authority; and
 - e) providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.
76. With regard to who is to be subject to the fit and proper person test, usually this will be applied to the applicant and anyone named on the application form as involved in the day-to-day management of the short-term let. One concern is where those named on the form does not appear to be a complete or accurate list. This might be for example, where a wife only is named on the application form because the husband has a criminal record.
77. The 1982 Act allows for applications to include “such other information as the authority may reasonably require” (**paragraph 1(2)(e)**) and allows the licensing authority to “make such reasonable enquiries as they think fit” (**paragraph 4(1)**). Guidance will set out for local authorities how they might use these powers to require relevant persons involved in a short-term let to be named on the application form and or to support further background investigation.
78. **Paragraph 1(2)(db)** requires the application to include the number of bedrooms in the premises. This is an important factor for determining whether the number of guests the host wishes to accommodate is within the safe maximum occupancy for the premises. Further information may be required in some instances, e.g. where a premises has three bedrooms but the application is to accommodate 16 guests, where 3-6 guests might be more typical for that number of bedrooms.

79. **Paragraph 1(2)(dc)** requires details of other short-term let licences granted to the applicant, remembering that these may be licences granted by other licensing authorities. Where other licences have been granted, this might expedite the fit and proper person test.

Temporary exemptions

80. Paragraph 3 inserts **paragraph 1A** allowing licensing authorities to grant temporary exemptions to have a licence. The power is similar to that for late hours catering licences at section 42 of the 1982 Act.
81. **Paragraph 1A** gives licensing authorities have the power to exempt, on application, the use of premises for short-term lets from the requirement to have such a licence: in respect of any particular occasion; or for a specified single continuous period not exceeding 6 weeks in any period of 12 months. An exemption can have conditions attached to it which are subject to the same monitoring and enforcement powers as for licences. (I.e. the local authority would have the right to inspect the premises and enforce licence terms.) Licensing authorities might be expected to issue a licence exemption number, subject to the same requirements as a licence.
82. This power might be used where the licensing authority needs a significant amount of additional capacity over a short period. Examples include sports championship competitions and arts festivals, where a large number of performers and spectators need to be accommodated for a short period of time. But it is important to avoid loopholes whereby hosts (or even licensing authorities) could circumvent the mandatory safety conditions which are to apply across Scotland. For this reason, the period of any exemption is limited to no more than 6 weeks in any period of 12 months.
83. The procedure for granting a temporary exemption might be simplified to involve: a reduced application form; a reduced (or nil) fee; no requirement to submit paperwork with the application form (i.e. 100% self-certified); and no inspection prior to granting a temporary exemption.
84. Planning policies would still apply, although these will not commonly affect home sharing and home letting⁷. However, they are relevant for secondary letting, especially within control areas. For very large, one-off events (such as the Commonwealth Games, Olympics or COP26), the Scottish Ministers might make a special development order to grant planning permission for change of use for an area and to require discontinuance of use after a certain period.
85. Scottish Government guidance will set out more information as to how and when licensing authorities might use temporary exemptions.
86. Note that licensing authorities can also issue temporary licences under **paragraph 7(6)**. These also have a maximum duration of 6 weeks or, if an

⁷ Whether planning policies apply to home letting and home sharing depends not least on the number of rooms being let compared with the number of rooms on the premises.

application has also been made for a licence, until the application is determined. Note that the six week maximum duration is the same for both temporary exemptions and temporary licences.

Publicity

87. Paragraph 4 modifies **paragraph 2** with regard to publicity for relevant applications.
88. **Paragraph 2(10)** defines a relevant application. Applications for a licence are covered by **(10)(a)** and applications for material changes to the circumstances or premises for an existing licence are covered by **(10)(c)**. Renewal applications are covered by **(10)(b)** but note that these are only relevant where there has been a material change since the grant. This means that licensing authorities are not obliged to notify neighbours where a routine renewal application is made. The policy intention is to streamline the renewal process as much as possible (see also paragraph 84 concerning duration of licence on renewal).
89. Note that licensing authorities must publish the register of short-term lets operating in their area (see paragraph 95 below) which will include addresses of premises, the dates of application and the status of the licence. Any neighbour who is interested can, therefore, confirm the status of a short-term let.
90. This paragraph gives licensing authorities, rather than the applicant, responsibility for notifying premises on neighbouring land. **Paragraph 2(2A)** gives licensing authorities the choice of sending notice to neighbours or displaying a notice. Neighbouring land is defined at **paragraph 19A** (inserted by paragraph 13) and aligns with the planning definition. Broadly speaking the licensing authority must notify neighbours within 20 metres of the boundary of the premises. In urban areas, this is more than sufficient to include all residents on a tenement stair and neighbouring tenement stairs. In rural areas, this will at least extend to nearest neighbours.
91. **Paragraph 2(3)** sets out what must be included in a notice. Some personal data from the application is excluded by **(b)** and **(c)** ensures that the notice includes information about how to make representation or object.
92. Local authorities are responsible for notifying neighbours about planning applications. In some cases, planning permission will be required for secondary letting, either by virtue of the property being in a control area or by virtue of the local authority's planning policy. **Paragraph 2(2C)** allows licensing authorities to combine licensing notification with a planning notice or to issue a planning notice only; the latter being useful where a planning application precedes a licence application. Planning notices are defined at **paragraph 2(10)** and are planning applications in respect of short-term lets.

93. The policy intention behind this change from the usual 1982 Act procedure to put the duty on the licensing authority to publicise the application, and the power to combine with planning notices, is:
- (a) to reduce the burden on applicants, as licensing authorities are better placed to identify relevant premises;
 - (b) to avoid mischief between applicants and neighbours around claims over whether notice was given;
 - (c) to reduce confusion for neighbours where they might otherwise receive both a licensing notification and a planning notice in respect of an application for a licence for secondary letting; and
 - (d) to give licensing authorities the possibility of streamlining the handling of objections, should they wish to do so.
94. With regard to (d), licensing authorities might prepare a standard form for objections which guides neighbours to relevant grounds for licensing and, separately, planning purposes. The grounds for objection to an application must relate to the purposes of the licensing scheme or planning rules. For example, concerns relating to: safety, noise or nuisance or previous complaints are likely to relate to licensing; and the availability of residential housing, the impact on the character of the neighbourhood or the suitability of the building relate to planning.
95. **Paragraph 2(2A)(a)(ii)** gives licensing authorities the power to notify such other persons as they consider appropriate about a licensing application (and related planning notice). Scottish Government will set out details about how this power might be used in guidance, for example possibly to include community councils and development trusts.

Preliminary refusal: breach of planning control

96. Paragraph 5 inserts **paragraph 2A (preliminary refusal: breach of planning control)** which gives the licensing authority the power to refuse to consider an application if it considers that the use of the premises would breach planning control. Note that this is a power, not a duty, on the licensing authority. This power is primarily designed to assist licensing authorities in processing licensing applications for secondary letting within control areas. Note that compliance with planning control is a mandatory licence condition in control areas, see paragraph 122.
97. When an application for a licence is made in respect of secondary letting in a control area, either:
- (a) planning permission is not required, for example this may be the case in respect of some unconventional dwellings (i.e. not a dwellinghouse);
 - (b) planning permission is required and has already been obtained;
 - (c) planning permission is required and a concurrent planning application has been made; or
 - (d) planning permission is required and no application has been made.
98. Cases (a) and (b) present no difficulty (other than the licensing authority confirming the case) and the licensing application may proceed.

99. In cases (c) and (d), the licensing authority has the power to refuse to consider the licensing application. **Paragraph 2A(2)** requires that, where the licensing authority exercises this power, they must give notice within 7 days to the applicant, the planning authority and the chief constable. **Paragraph 2A(3)(a)** requires the licensing authority to give their reasons for refusing to consider the application.
100. Once the applicant has obtained planning permission (or a certificate of lawfulness of use or development), **paragraph 2A(4)** allows them to resubmit their licensing application without any additional charge if this is done within 28 days of obtaining the planning permission (or certificate). **Paragraph 2A(3)(b)** requires the licensing authority to make this clear to the applicant when giving notice of refusing to consider the application.
101. **Paragraph 2A(5)** ensures that an existing host (see paragraph 134 below) can continue operating and that a further application can be made within one year; this would not be the case if the licensing authority refused to grant a licence.

Determining an application or renewal application

102. Paragraph 6 modifies **paragraph 5 (the grant and renewal of licences)**. **Paragraph 5(2B)** prevents a licensing authority from setting any limit on the number of nights per year for which premises may be used for secondary letting as a standard licence condition. This is because such a condition is likely to have adverse consequences. In many cases, sufficient revenue can be made from secondary letting in a small part of the year and the premises would likely lie empty for the rest of the year. (In Edinburgh, such a premises could make sufficient revenue from Hogmanay and the Edinburgh Festival and a few hen party weekends in the event that, for example a 90 night annual limit was set.) This then leads to an inefficient use of housing stock.
103. **Paragraph 5(3)(ca)** prevents the licensing authority from granting an application or renewal of a licence where the mandatory licence conditions, standard conditions or any further conditions cannot be secured by the applicant. **Paragraph 5(3)(cb)** prevents the licensing authority from granting an application or renewal of a licence where there is not sufficient information to show that the owners have consented to the use of the premises as a short-term let.
104. **Paragraphs 5(3A) to (3C)** give the licensing authority the power to refuse an application for secondary letting. In order to do this, they must consider that there would be an overprovision of short-term letting of the same type to which the application relates in that locality.
105. The prospective test included in **(3A)** allows for circumstances in where there are few homes in the locality. For example, in a rural community comprising 12 houses, in which two are already used as short-term lets, it may be that granting a licence to a third house would be regarded as an overprovision. In larger, urban communities it is likely that the test that there was already an overprovision would also be met. The type of short-term let here could refer to,

for example, lets in a tenement. A licensing authority may take the view that there is an overprovision of lets in a tenements in a locality, but grant an application for a licence for a detached home, for example.

106. The wording in **(3B)** makes it clear that it is for the licensing authority to determine the localities. In some cases, these will be informed by, or aligned to, control areas but they might also be informed by other natural or artificial features, such as a group of homes within easy access to a significant amenity. **Paragraph 5(3C)** sets out the matters to which the licensing authority must have regard in considering whether there is an overprovision. For example, the licensing authority might consider that, given the number of short-term lets operating in an area, it is more important that a particular type of property is directed towards meeting the housing need of permanent residents.
107. Where a licence application is refused (or a licence is suspended or revoked), we expect the licensing authority to engage with the host to allow time for existing guests to depart before the offence of operating without a licence applied. This might be done through setting an appropriate effective date for the notice. Scottish Government guidance will advise hosts that they should refund guests for any days paid for that could not be provided following refusal, suspension or revocation. This would allow guests to fund alternative accommodation. (We would expect the position in respect of refunds etc. for future bookings affected by refusal, suspension or revocation to be covered by booking terms and conditions in the same way as any other scenario in which the accommodation becomes unexpectedly unavailable, such as through fire damage or flood.)

Duration of licences

108. Paragraph 7 modifies **paragraph 8 (duration of licences)** to allow licensing authorities to renew short-term lets licences for periods exceeding three years. Note that the grant of a licence may not, in the first instance, exceed three years. **Paragraph 8(2A)** gives licensing authorities wide-ranging discretion in how they apply this power but **paragraph 8(2B)** requires licensing authorities to set out the circumstances under which they will use this power. They are under no obligation to use the power. The policy purpose behind this power is to reduce the administrative burden around renewal for those short-term lets which comply with their licence conditions and do not cause issues to neighbours.

Enforcement

109. Paragraph 8 inserts **paragraph 10A (power to require rectification of breach of licence)** and gives licensing authorities the power to serve enforcement notices. Where monitoring visits, or other information, suggest that any licence condition has been, or is likely to be, breached, licensing authorities can require a licensee to take action to put it right. This will usually be done by serving an enforcement notice under **paragraph 10A(2)**. Such notices must set out the matters constituting a breach or a likely breach, the action required to rectify or prevent the breach and the date by which the action must be taken.

110. The reference to future breaches might seem unusual but it would be based on evidence. This is to cover, for example, a host advertising accommodation as capable of taking ten guests in breach of a licence condition specifying no more than eight. This would be evidenced in a listing or advertisement.
111. **Paragraph 10A(4)** gives a condition in an enforcement notice the same status as a licence condition. This means that, if satisfactory action is not taken by the specified date to address the issues set out in the enforcement notice, the licensing authority can take action as if a licence condition has been breached, for example issuing a fine or suspending or revoking the licence.

Surrender of licence

112. The 1982 Act makes provision for the surrender of licences either voluntarily or following a decision by the local authority to suspend, vary or revoke a licence. Sometimes a host might surrender a licence, perhaps because a renewal or other fee would otherwise be due, but find that their circumstances change and they wish to resume short-term letting.
113. Paragraph 9 modifies **paragraph 13 (surrender of licence)** to allow a person who surrendered a licence voluntarily (i.e. not because of any requirement to do so by the licensing authority) to reapply for a licence following a simplified process within 12 months of surrendering it. **Paragraph 13(6)** disapplies the requirements for the formal application process and the consultation with the police and the giving of notice. This provision facilitates both hosts and licensing authorities in responding to an unforeseen uptick in demand, for example. The giving of notice to neighbours is unnecessary because the situation is no different for them than as if the premises had continued to be licensed but not taken bookings for a period of time.

Register

114. Paragraph 10 modifies **paragraph 14 (register of applications)** to make provision for the register of short-term lets. Licensing authorities must maintain a register of applications for short-term lets licences. **Paragraph 14(2)(a)** requires the register to include a note of the kind and terms of each licence granted by the licensing authority and **paragraph 14(2)(b)** a note of any suspension, variation of the terms, or surrender, of a licence. Paragraph 10 supplements this with a range of other information which is generally self-explanatory. Note that the three types of short term let (**paragraph 14(2)(i)**) are defined in **paragraph 19A**. The purpose of **(k)** is to assist the two national parks in Scotland in identifying short-term let activity within their boundaries (which are not necessarily contiguous with local authority boundaries).
115. **Paragraph 14(2)(l)** requires the inclusion of the unique licence number allocated to the application. Each short-term let licence will have a unique licence number. The Scottish Government intend to work with licensing authorities to develop a nationally consistent licence numbering system for short-term lets across Scotland. The licence number will be designed to identify the licensing authority area within which the short term let is situated and to

allow licensing authorities to issue licence numbers independently. Guidance will help licensing authorities to build in fraud prevention measures (i.e. not issuing sequential or predictable numbers). Licensing authorities may wish to issue a different licence number on receipt of an application, for a temporary licence, for a licence and on renewal.

116. **Paragraph 14(2)(m)** requires the inclusion of additional information, where the licensing authority has required it on licensing applications. The data on availability and occupancy could be useful to understand better the level of short-term let activity and build an evidence base to support further targeted policy interventions, where necessary.
117. **Paragraph 14(2A)** allows licensing authorities to cleanse the register of data in relation to licences that have been revoked for greater than 12 months or has been surrendered. Note that, where the licensing authority revokes the licence, no further application can be made by that host in respect of that property within one year of the date of revocation. This necessitates retaining at least the fact of revocation for at least 12 months. Depending on the reasons for the revocation, it may be appropriate to retain the information for longer, if it is likely to be relevant in determining any new application for a licence by the host.
118. **Paragraph 14(5)(a)** requires licensing authorities to share the register with the Scottish Government in a suitable format. The Scottish Government will amalgamate licensing authority data to produce a national report. This national report on short-term let activity in Scotland will close a significant gap in knowledge that currently exists. No personal data would feature in the Scottish Government report.
119. **Paragraph 14(5)(b)** requires licensing authorities to publish the content of their register on quarterly basis and **(6)** allows them to do this on their website, for example. This published record will include the addresses where short-term lets are operating in a local authority area and will make it easy for local communities to track activity in their area. Licensing authorities might want to consider a unified process for publishing the content of their register and submitting it to the Scottish Ministers.
120. **Paragraph 14(7)** allows licensing authorities to share information about the reasons for suspending, varying or revoking a licence with each other. This is important in the case that a host is licensed by more than one licensing authority and there are reasons why another licensing authority might also wish to take action, for example where one licensing authority takes the view that the host is no longer a fit and proper person.

Fees

121. Paragraph 11 replaces **paragraph 15 (fees)** with a new paragraph 15 making provision for the charging of fees by the licensing authority.
122. **Paragraph 15(1)** allows licensing authorities to charge fees for applications and renewals and for duplicates and certified copies of licences. **Paragraph**

15(1)(c) allows fees to be charged where the licensing authority need to consider a material change of circumstances or in premises notified to them by the licensee under **paragraph 9**. An example may be where a host wishes to let out the accommodation to a greater number of guests than specified on their licence.

123. **Paragraph 15(1)(e)** allows licensing authorities to charge for inspection of premises in certain circumstances. Hosts will not be charged a fee for routine inspections of premises for application or ongoing monitoring purposes, where they occur, but may be charged if an inspection results from a failure to comply with licence conditions or a complaint relating to the premises which is not frivolous or vexatious. This has the double benefit of both providing an incentive to hosts to operate their short-term let compliantly, and with consideration for neighbours, and also helping to avoid the application fees for compliant hosts subsidising the compliance cost of dealing with bad hosts.
124. Note that a fee may be charged for an inspection following a complaint, where it is found that there are compliance issues, whether or not those are the issues that were the subject of the complaint. However, no fee should be charged if the complaint was frivolous or vexatious. This is to prevent malicious complaints incurring costs for hosts.
125. **Paragraph 15(4)** requires that, where a fee is charged to a host for an inspection, the licensing authority must produce a report of its findings to the host within 28 days of the inspection. Best practice would be for this report to be generated and produced at the time of the inspection.
126. **Paragraph 15(2)(a)** requires licensing authorities to seek to ensure that the fees charged cover the costs associated with the licensing scheme. Licensing authorities can recover both their establishment and running costs for the licensing scheme through fees; though the total revenue must not exceed the total of these costs. Establishment costs including setting up the system and preparing staff to run the scheme. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs.
127. As the fees are not set out in the Licensing Order, licensing authorities are able to increase (or reduce) fees administratively, in line with any increase (or reduction) in their costs, including as a result of inflation, or any changes to revenue (e.g. from changes to levels of short-term let activity).
128. **Paragraph 15(2)(b)** sets out the criteria which a licensing authority may take into account in setting fees. This is a broad empowering framework. Some licensing authorities may choose to have a simple set of fees and others may choose a more elaborate structure; the choice will depend on local circumstances.
129. Under **(i), (ii) and (iii)**, they can vary fees by size of premises, number of rooms or number of guests who can reside at the premises. Many licensing authorities may set increasing fees for larger premises, as is often the case with HMO

licencing. Under (iv), they can set different fees for different types of short-term let and they may wish to set lower fees for home sharing and home letting than for secondary letting. Under (v), they can distinguish between licences which permit letting in July and August only and those that permit year-round letting, for example. These powers allow licensing authorities considerable discretion in aligning fees with proxies for host revenue, should they wish to do so, and encouraging or discouraging certain types of short-term let activity.

130. **Paragraph 15(3)** gives licensing authorities the power to charge an annual or recurring fee (monitoring fee). Some licensing authorities might choose to do this instead of a renewal fee, especially in conjunction with the power to renew a licence for a period longer than three years (see paragraph 84).
131. **Paragraph 15(2)(b)(vi)** allows licensing authorities to reward compliance. For example, a monitoring or renewal fee may be reduced for a host with a strong compliance record. As well, or instead, a licensing authority might grant longer licences on renewal (which has the effect of reducing the per annum fee cost to the host) if no issues have arisen.
132. Local authorities will need to ensure their fees are robust and fair, especially in respect of any changes requested or proposed by the host after a licence has been granted. There will be circumstances in which the change will mean that the host should be paying a different fee, for example because they want to accommodate more guests or operate for more of the year than qualifies for any discount. Similarly considerations apply where a host wishes to resume operation after a period without a licence; local authorities must avoid any perverse incentive for hosts to switch on and off a licence to minimise fees.
133. Licensing authorities must ensure, prior to an application being granted, the applicant is only charged the costs relating to the processing of their application. The fee charged for the processing of the application itself need not be refunded. But it should not include enforcement costs. This was determined at the Supreme Court in case [*R v. Westminster City Council \(2017\)*](#)⁸. However, the licensing authority can charge fees to cover enforcement costs once the application is granted (normally through monitoring and/or renewal fees).
134. Scottish Government guidance to local authorities will set out how they might use the powers to set fees to best effect.

Giving of reasons

135. Paragraph 12 modifies **paragraph 17 (giving of reasons)** to include reference to an enforcement notice under **paragraph 10A**, see paragraph 85 above.

Interpretation

136. Paragraph 13 inserts **paragraph 19A** concerning the interpretation of new provision inserted by schedule 2.

⁸ <https://www.supremecourt.uk/cases/docs/uksc-2013-0146a-judgment.pdf>

Mandatory licensing conditions (set out in schedule 3)

137. Section 3A of the 1982 Act give the Scottish Ministers the power to prescribe conditions to which licences granted must be subject (either on grant or renewal or on deemed grant or renewal). These are referred to in the 1982 Act as mandatory conditions. Mandatory conditions also include other conditions which licences must be subject or which licensing authorities must impose, either in terms of the Act or other legislation.
138. The host (as licensee) is responsible for ensuring compliance with the licence conditions, including by the guests. Hosts must make sure that the guests are aware of relevant terms and conditions. Licensing authorities may determine the evidence they require of compliance with mandatory conditions, which could be documentary or photographic evidence, through an inspection or through certification provided by or through an accrediting organisation.
139. Article 5 has the effect of requiring all short-term let licences in Scotland to include the mandatory conditions set out at schedule 3. Schedule 3 makes provision which includes both conventional residential accommodation (e.g. houses and flats) and unconventional static accommodation (e.g. yurts and pods).
140. Paragraph 1 of schedule 3 makes provision so that guests can easily find important information relating to safety and what to do in an emergency. It is not necessary for this information to be displayed on walls; the information could be provided in a folder in a drawer, for example, provided this is drawn to the attention of the guests.
141. Paragraph 2 makes provision for annual gas safety inspections and for any works identified to be carried out. Paragraph 7 applies the repairing standard to the premises (see below). Gas safety requirements are not specified in the repairing standard, but private sector landlords are required to comply with the Gas Safety (Installation and Use) Regulations 1998. Paragraph 2 has the effect of applying relevant provisions from the 1998 Regulations to short-term lets.
142. Paragraph 3 makes provision for fire safety. Hosts must ensure that upholstered furnishings and mattresses comply with the Furniture and Furnishings (Fire Safety) Regulations 1988. Furthermore, they must keep records to demonstrate that this is the case. The provision does not require that the furnishings and mattresses retain fire safety labels, not least as these might be lost, damaged or defaced by guests. A host would be able to comply with this mandatory condition by keeping photographic evidence or removing and retaining the labels themselves.
143. Note that section 71 of the Fire (Scotland) Act 2005 gives the 2005 Act precedence over any licence conditions imposed in the Licensing Order; they are of no effect in so far as they relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of the 2005 Act.

144. Paragraph 4 requires the holder of the licence to assess the risk from exposure to Legionella within the premises. This risk assessment does not need to be carried out by a professional.
145. Paragraph 5 requires that hosts with premises served by private water supplies must comply with the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. Note that it is the requirements on the owners of private dwellings in the 2017 Regulations that apply here; the 2017 Regulations cover a range of scenarios.
146. Paragraph 6 requires that hosts whose premises are within a control area designated under the 1997 Act and Control Area Regulations must have planning permission, or have made an application for planning permission. This condition only applies to the use of dwellinghouses (i.e. houses and flats) for secondary letting (i.e. whole property lets). It does not apply to other types of accommodation or to home sharing or home letting. It does not apply outside control areas. See paragraphs 72 and following explains the powers given to licensing authorities to refuse to consider licensing applications in breach of planning control.
147. Paragraph 7 makes provision for general safety and the repairing standard. Paragraph 7(1) makes provision to require all forms of accommodation to be safe. Paragraph 7(2) requires the licence holder to ensure that premises within scope of the repairing standard (i.e. houses and flats) do comply with the repairing standard. The repairing standard is defined at paragraph 14. Schedule 4, paragraph 2, makes consequential amendments to section 12 of the 2006 Act, applying Chapter 4 of Part 1 of the 2006 Act (the repairing standard) to short-term lets.
148. The Energy Act 2011 (section 54) defines “Scottish domestic private rented property” as “a tenancy to which Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 (asp 1) applies”. The Energy Efficiency (Domestic Private Rented Property) (Scotland) Regulations 2020 apply to domestic private rented properties (regulation 3) so, when the 2020 Regulations come into force, they will also apply to short-term lets.
149. Paragraphs 7(3) to (6) make provision for unconventional accommodation outside the scope of the repairing standard: the licence holder must comply with the safety requirements around fire prevention, smoke and carbon monoxide alarms and electrical safety. Note that, at paragraph 7(5) a competent person must produce both the Electrical Installation Condition Report and the Portable Appliance Testing Report but it need not be the same person. Hosts are to have regard to guidance under the 2006 Act in terms of who is competent to undertake this work. Electrical Installation Condition Report is defined at paragraph 14 but Portable Appliance Testing Report takes its commonly understood meaning.
150. Every licence will specify a maximum permitted number of guests to reside in the accommodation. This maximum number will be determined by the licensing authority and will be the lesser of:

- a) the maximum number that can be accommodated safely;
 - b) the maximum number that can be accommodated within tolerable noise and nuisance standards for neighbours; and
 - c) the number requested on the licensing application.
151. Paragraph 8 makes it a mandatory condition not to breach this maximum occupancy.
152. Paragraph 9 makes it a requirement for both the licence number and Energy Performance Certificate (EPC) rating to be included on any listing or advert. The licence number will allow guests to know that the accommodation is licensed and the EPC rating will indicate how costly the accommodation is to heat (where this is billed separately) or the environmental credentials of the accommodation. Platforms will be expected to request licence numbers and the EPC rating as part of the information required to list a property. The licence number will help assure the platform that the accommodation is licensed. Display of the licence number will also help local authorities with enforcement.
153. Paragraph 10 makes it a mandatory condition for the host to have both valid buildings insurance and public liability insurance providing coverage not less than £5 million. This is important to protect the interests of the owner of the premises (and adjoining residents and owners) and the guest, should any accident, damage or injury occur.
154. Paragraph 11 ensures that the persons responsible for the day-to-day management of the short-term lets are known to the licensing authority and have been suitably checked through the fit and proper person requirements.
155. Paragraph 12 makes payment of fees a mandatory condition. Whereas this is not a significant concern at the application stage (as the application will not be granted without payment of fee), this provision makes it easier for a licensing authority to suspend or revoke a licence where a renewal fee or monitoring fee is not paid in a timely fashion.
156. Paragraph 13 prohibits the provision of false or misleading information to the licensing authority. This could be in the context of an application for a licence or at any later point. Again, the licensing authority could suspend or revoke a licence should they discover that false or misleading information has been negligently, knowingly or deliberately provided to them. This would cover the circumstances, for example, where the applicant submits evidence purporting to show that they live at the premises but they actually live elsewhere.

Standard licence conditions

157. Section 3B of the 1982 Act gives licensing authorities the power to determine conditions to which licences are to be subject (“standard conditions”). (In the 2020 consultation paper, these were called “discretionary conditions” because they are at the discretion of the licensing authority.) Different conditions may be determined for different licences, or different types of licence, or otherwise for different purposes, circumstances or cases. A licensing authority must

publish their standard conditions, and failure to do so means the conditions have no effect. Standard conditions have no effect so far as they are inconsistent with any mandatory conditions. The Scottish Government will be setting out a framework for standard conditions in guidance to licensing authorities to ensure consistency across Scotland and to avoid arbitrary variation.

Transitional provision

158. In the following paragraphs, an “existing host” refers to a person operating a short-term let before 1 April 2022 and a “new host” refers to a person seeking to operate a short-term let on or after 1 April 2022.
159. Article 6 gives existing hosts one year from 1 April 2022 to submit a licensing application. Licensing authorities have 12 months to determine such applications. Until 1 April 2023, existing hosts can operate a short-term let without a licence. Until 1 April 2024, existing hosts can operate a short-term let without a licence, provided they made an application by 1 April 2023. On or after 1 April 2024 operating without a licence is unlawful in all cases. On or after 1 April 2022, it is an offence for any person to continue to operate after their licence application has been determined and refused. All hosts in Scotland must be licensed by 31 March 2024 at the very latest.
160. Article 6(1) makes transitional provisions for existing hosts to continue to operate whilst their application is considered. Section 7(1) of the 1982 Act makes it an offence to carry out short-term let activity without a licence but this article makes provision to disapply this offence for a transitional period in certain circumstances.
161. In order for the offence not to apply, the person must be operating before 1 April 2022, the date on which local authorities must open their licensing schemes to receive applications. Furthermore, they must make an application for a licence before 1 April 2023. They must not continue operating if their licence application is determined and refused. Once they have made a licence application, they will be given a temporary licence number. From 1 April 2023, every short-term let host in Scotland will either have had an application determined and, in the case the application was granted, been issued with a licence number or have an application pending and have been issued with a temporary licence number.
162. Article 6(2) makes it easier for licensing authorities to process a large number of applications from existing hosts. Although they will be encouraged to make the applications earlier, it is likely that many applications from existing hosts will be made close to the deadline of 1 April 2023. The policy requirement is that all hosts are licensed by 1 April 2024. Therefore, most applications will need to be processed in a 12 month period. Article 6(2) amends section 3 of the 1982 Act to provide for a single 12 month determination period, replacing the usual 3 months to consider and up to 6 months thereafter to determine. This

will allow licensing authorities to spread the work over the 12 months, including taking applications to licensing committees.

163. For new hosts (those wishing to commence short-term letting on or after 1 April 2022), the nine months in the 1982 Act continues to apply. As new hosts will not be able to operate without a licence during the transitional phase, a longer determination would have greater immediate impact on them. That is why only the determination period for existing hosts has been amended. The downside for existing hosts is a potentially longer period of uncertainty with regard to the final determination of their application. Guidance to local authorities will draw attention to the need to take account of this prolonged uncertainty for existing hosts in how they prioritise their work.

Consequential amendments

164. Article 7 gives effect to schedule 4, which makes consequential amendments to the Private Housing (Tenancies) (Scotland) Act 2016 and the Housing (Scotland) Act 2006.
165. Paragraph 1 amends the 2016 Act so that the current exclusion of holiday lets from private residential tenancies is expanded to include short-term lets under the Licensing Order. Whilst most holiday lets will be short-term lets, this will not always be the case. For example, a let to family members may constitute a holiday let but is excluded from the definition of short-term let.
166. Paragraph 2 amends the 2006 Act so that the exemption of holiday lets from the repairing standard is narrowed to exclude short-term lets, having the effect that short-term lets are subject to the repairing standard.

Consultation

167. 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. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The [reports on the 2019 consultation and research](#) were published in October 2019.
168. In 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. In September 2020, the Scottish Government launched a second public consultation (“the 2020 consultation”) on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a licensing scheme and planning control*

areas for short-term lets in Scotland in December 2020. This report can be found on the Scottish Government website⁹.

Issues specific to the Licensing Order

169. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the licensing scheme in chapter 7.

Impact Assessments

170. The Scottish Government has conducted pre-screening or full impact assessments, for: Children's Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection (DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA). These can be found in the 2020 consultation report.

Financial Effects

171. The *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published on 14 December 2020 to accompany the laying of the Licensing Order and Control Area Regulations. The BRIA is attached as a separate document and can be found on the Scottish Government website.

Scottish Government
Housing and Social Justice Directorate
December 2020

⁹ All Scottish Government consultation and research documents on short-term lets from 2019 and 2020 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

ANNEXE C

Minister for Local Government, Housing and Planning Kevin Stewart MSP

James Dornan MSP
Convener Local Government and Communities Committee

10 July 2020

Dear James

SHORT TERM LETS: COVID-19 AND FUTURE REGULATION

I am writing to explain the Scottish Government's approach to short-term lets in the context of the resumption of Scottish tourism as we emerge from the COVID-19 pandemic; and also to set out the next steps in progressing the measures which I announced to the Scottish Parliament on 8 January.

COVID-19

I am aware of concerns expressed by members and others around the re-opening of selfcatering holiday accommodation with a shared entrance or communal stair on 15 July.

From 3 July, self-catering holiday accommodation has been able to reopen, providing there are no shared facilities between households. Shared facilities means any internal space which is used by more than one household, including kitchens, bathrooms, other living areas and shared hallways. Self-catering holiday accommodation opening before 15 July must be accessible without entering or moving across communal areas. For the avoidance of doubt, flats and tenements only accessible through communal stairs and passages should not be let as holiday accommodation until 15 July. From 15 July, self-catering holiday accommodation with shared facilities can reopen, in line with the resumption of Scottish tourism more widely.

Our approach to coming out of lockdown is guided by the medical and scientific advice. At present, there are no grounds for delaying the reopening of self-catering accommodation with shared facilities beyond 15 July. I understand the concerns of Edinburgh residents in tenements, and others with shared facilities, but we have to be guided by the medical and scientific advice.

Proposals for regulation

Having paused work on the regulation of short-term lets to deal with the pandemic, we have now resumed our work on the measures that I announced on 8 January. You will recall that I announced proposals:

- to establish a licencing scheme for short-term lets using powers under the Civil Government (Scotland) Act 1982;
- to prioritise work to give local authorities the

power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019; and • to carefully and urgently review the tax treatment of short-term lets, to ensure they make an appropriate contribution to local communities and support local services.

We aim to lay the regulations giving local authorities powers to license short-term lets and introduce control areas in December so that they can be in force by spring 2021. As part of preparation to do this, we will be engaging stakeholders on our detailed proposals in autumn. The delay caused by COVID-19 necessitates that this will be a shorter period of engagement than originally planned but we will make sure that the process is effective in refining our proposals and finalising the statutory instruments.

I hope the Committee will find this information helpful.

Kind regards
Kevin Stewart

ANNEXE D

Minister for Local Government, Housing and Planning Kevin Stewart MSP

James Dornan MSP
Convener Local Government and Communities Committee

14 September 2020

Dear James

SHORT TERM LETS: CONSULTATION NO. 2

You will recall my letter of 10 July in which I set out the next steps in progressing the measures which I announced to the Scottish Parliament on 8 January 2020. I am pleased to inform you that the Scottish Government has today published a consultation paper setting out detailed proposals for the licensing scheme and short-term let control areas.

You can find the consultation paper here: <https://consult.gov.scot/housing-services-policy-unit/short-term-lets-licensing-scheme/>

We have worked quickly to develop detailed proposals and now we are using the powers that we have in the Civic Government (Scotland) Act 1982 and the Planning (Scotland) Act 2019 to put in place a regulatory framework during this Parliament. The consultation will help inform the final shape of the statutory instruments giving local authorities powers to license short-term lets and introduce control areas. We are aiming to lay these instruments in December so that they can be in force by spring 2021.

The consultation closes on Friday 16 October 2020.

Our proposals will allow local authorities and communities facing the most severe pressures to take action to manage those more effectively from next year. I would be willing to bring a Bill before Parliament in the next session if we continue to see issues; but to do so now would result in unnecessary delay.

My officials would be happy to provide the Committee with an informal briefing on the proposals in the consultation paper, if the Committee would find this helpful.

Kind regards
Kevin Stewart

ANNEXE E

Minister for Local Government, Housing and Planning Kevin Stewart MSP

James Dornan MSP
Convener Local Government and Communities Committee

10 December 2020

Dear James

SHORT TERM LETS: CONSULTATION NO. 2 REPORT

You will recall my letter of 14 September in which I informed you that the Scottish Government had published a consultation paper setting out detailed proposals for the regulation of short-term lets in Scotland. Our consultation closed on 16 October, and we received more than 1,000 responses by the final deadline.

I am pleased to inform you that the Scottish Government has today published a report on the consultation. You can find the consultation report at www.gov.scot/publications/short-termlets/

The report deals with the points made in consultation in respect of the three questions relating to: the definition of a short-term let; the control area regulations; and the licensing scheme, respectively. We have listened to the many and various views expressed and refined and improved our proposals as a result.

The report also contains the following six impact assessments:

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

A Business and Regulatory Impact Assessment (BRIA) will be published alongside licensing order and control area regulations, which will be laid at the Scottish Parliament next week.

I will also be writing to you next week to provide further information in respect of the points raised by members during the informal briefing session held with my officials on 7 October.

Kind regards
Kevin Stewart

ANNEXE F

Minister for Local Government, Housing and Planning Kevin Stewart MSP

James Dornan MSP
Convener Local Government and Communities Committee

17 December 2020

Dear James

SHORT TERM LETS: SSIs & BRIA

I am pleased to inform you that on Monday 14 December the Scottish Government laid the two draft affirmative statutory instruments at the Scottish Parliament which, if approved by the Parliament, will give local authorities powers to license short-term lets and introduce control areas. As set out in my letter dated 10 December, a Business and Regulatory Impact Assessment (BRIA) was published alongside the Licensing Order and Control Area Regulations. You can find the SSIs and BRIA at www.gov.scot/publications/short-term-lets/

I also indicated in my letter dated 10 December that I would shortly be writing to you to provide further information in respect of the points raised by members during the informal briefing session held with my officials on 7 October. Please find a response to those questions below.

Licensing Order

To clarify the licensee: is this the host or the owner or the operator?

See paragraph 7.12 of the consultation report. We have clarified the provision in the Licensing Order so that fit and proper person checks are carried out on all those with an interest in the property, including:

- joint owners; and
- all those involved in the day-to-day management of the property.

In some instances, serviced accommodation is offered to workers staying for six months and the landlord offers a PRS tenancy. Will they not be able to do this (not the tenant's only or principal home) because it will be classed as a short-term let?

See paragraph 5.7 of the consultation report. Where tenants could properly be offered a PRS tenancy before, then they can continue to be offered one. If not, then the workers should be afforded new protection, in terms of minimum safety standards, by the short-term let regulations.

If both parties want to go further than the regulations, for example, in agreeing a period of let and notice conditions in some form of contract they can, of course, do this.

Some title deeds prohibit commercial use. Has this been considered as a mandatory condition for licensing?

See paragraph 7.5 of the consultation report. We have not made reference to title deeds in the mandatory conditions in the Licensing Order. However, it would potentially be a relevant ground for objection by a neighbour.

Would platforms have a role in ensuring that short-term lets they were advertising had the relevant planning permission?

See paragraph 7.6 of the consultation report. Responsibility for complying with any planning or licensing requirements will rest with the host. More generally, we will be producing guidance for hosts and platforms to help them interact effectively with the licensing scheme.

Will local authorities be able to specify dates for which home letting is or is not permitted to operate? For example, allowing home letting only in respect of Hogmanay or the Edinburgh Festival.

Local authorities could specify as a licence condition the dates on which home letting is or is not permitted. We are prohibiting the setting of any limit on the number of nights per year for secondary letting but not for home sharing or home letting. Home letting under an exemption or temporary licence would be limited to a single continuous period not exceeding six weeks in any period of 12 months, see paragraph 7.20 of the consultation report. We will be working with local authorities to develop guidance for them on the use of these powers.

Scottish Government does not have powers to regulate industry so will not be able to require platforms to display licence numbers?

Scottish Government is working with platforms on the expectation that they will be keen to make the scheme work. Visitors should be attracted by a licence number indicating that the accommodation is properly regulated and compliant.

As set out at paragraph 7.21 of the consultation report, platforms have a reputational (and therefore financial) interest in offering only lawful listings. A licence number provides some assurance that a licence had (at least at one point) been obtained. We will continue discussing with platforms how they can display licence numbers. Market forces should attract guests to licensed properties (indicating that the accommodation is properly regulated and compliant), so it benefits legitimate hosts and platforms to display licence numbers.

Is it proportionate to require a licence for home letting when this involves a house swap between friends for two weeks in the summer? Similar considerations apply to letting out a second home to wider family.

The primary objective of the licensing scheme is to help to ensure that short-term let accommodation across Scotland meets mandatory safety standards. However, local authorities can, on application to them, grant exemptions for single continuous period of up to six weeks in a period of 12 months. They can also grant temporary licences

for up to 6 weeks. This is explained in more detail at paragraph 7.20 of the consultation report. We will work with local authorities to set out in guidance the circumstances in which the use of exemptions and temporary licences may be appropriate.

We have widened the definition of family, for the purposes of excluding lets to family from the definition of short-term lets, as discussed at paragraph 5.9 of the consultation report.

Do local authorities have discretion over grace periods and fees?

Local authorities must have a scheme open to receive applications by 1 April 2022.

Our position on grace periods is set out in paragraph 4.3 of the consultation report. We have made amendments following feedback received during the consultation to remove local authority discretion. This is to make the scheme easier to understand and enforce for all those working across local authority areas. It also gives existing hosts in Scotland until 1 April 2023 to apply for a licence.

Local authorities will be able to set fees as they see fit within the framework set out by Scottish Government on the expectation that they would recover their costs.

Control Area Regulations

Will local authorities need to set out their policy in respect of short-term lets in a local development plan?

Scottish Government guidance for local authorities will help local authorities to develop their policies on short-term lets and set them out appropriately. This includes guidance on material change of use, see paragraph 6.4 of the consultation report. This will help local authorities in establishing control areas and in determining planning and licensing applications.

Guidance will be developed in partnership with local authorities, and be published in spring 2021.

Would a local authority be able to specify a control area comprising the entire local authority area? Otherwise, issues may arise at the boundary of a smaller control area.

Yes. This is permitted under the Control Area Regulations. Local authorities would need to consult and have reasons for taking such an approach.

Will local authorities have discretion around setting grace periods for planning applications (5.17 of the consultation paper)?

Local authorities are being given flexibility in respect of handling planning applications from existing hosts in order to allow these hosts to continue to operate whilst their licensing applications are being considered. We want to encourage existing hosts to come forward for licensing and recognise that different local

authorities will have different volumes of applications to process and different systems for doing this.

I trust that members will find this reply helpful.

Kind regards
Kevin Stewart

ANNEXE G

Minister for Local Government, Housing and Planning Kevin Stewart MSP

James Dornan MSP
Convener Local Government and Communities Committee

8 January 2021

Dear James

Regulation of short-term lets

I am writing to you as Convener of the Local Government and Communities Committee to inform you that the Scottish Government has today announced proposals for the regulation of short-term lets.

Our 2018-19 Programme for Government made a commitment to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests and ensure a safe, quality, experience for visitors. We consulted widely last year in order to take forward that commitment, receiving over 1,000 responses to our consultation which was announced by the First Minister in April 2019. In addition to the consultation, we commissioned independent research, looking at the impact of short-term lets on communities in five locations across Scotland in order to strengthen our evidence base.

The proposals announced today deliver on our Programme for Government commitment, following careful consideration of all the available evidence. I recognise the need to act now in order to allow local authorities and communities facing the most severe pressures to manage these more effectively.

That is why, in my statement to Parliament today, I announced three measures:

- Firstly, I intend to establish a licencing scheme for short-term lets under the Civil Government (Scotland) Act 1982. The basic safety component of this scheme will apply to all short-term lets and be mandatory across Scotland. Local authorities will have the discretion to put in place further conditions to help tackle littering or overcrowding of properties, for example.
- Secondly, I am prioritising work to give local authorities the power to introduce shortterm let control areas under powers in the Planning (Scotland) Act 2019.
- Finally, we will review the tax treatment of short-term lets, to ensure they make an appropriate contribution to the communities they operate in.

I believe these measures will address the most pressing concerns raised by communities. They are a robust response to the issues presented by the rapid proliferation of short-term lets in hot-spot areas, particularly safety concerns, whilst recognising the many benefits of short-term lets to hosts, visitors and the Scottish economy. We will monitor the impact of these changes to ensure they are fully effective in meeting our aims and we will take further action if required.

Kind regards
Kevin Stewart



Local Government and Communities Committee

Regulation of short-term lets

Key themes raised in response to the call for views

Introduction

On 20 December 2020, the Local Government and Communities Committee issued a call for views on two Scottish Statutory Instruments that will update the legislation governing short-term lets. The closing date for submissions was Friday 22 January 2021.

Background

The Scottish Government laid the following two Orders in the Scottish Parliament on 20 December 2020:

- **The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021** ([a draft version](#) is available online): this would introduce a Scotland-wide licensing regime for certain short term lets.
- **The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021** ([a draft version](#) is available online): this allows planning authorities to designate short term let control areas, subject to the approval of Scottish Ministers, which would require anyone wishing to use a dwelling .

If approved by the Scottish Parliament, these Orders are due to come into force in April 2021.

Understanding this Analysis

There are several issues that should be considered when reading this analysis:

- **Respondents were self-selecting:** Generally, only people and organisations with an existing interest in the provision of short-term lets, or their impact on neighbours and the wider community, will have responded to the call for views. This means that the views expressed may not match those of the population as a whole and should not be read as such.
- **Complexity:** The Orders propose amendments to the planning system and the introduction of a new licensing regime, both of which build on already

complex systems of legislation. This complexity may have acted as a barrier to responses from individuals and civil society groups that do not have access to appropriate policy/legal expertise.

- **Stakeholders:** The planning and licensing systems involve a wide range of stakeholders, with often competing priorities and views. Unanimity of views on any issue is unlikely, which will be reflected in the analysis.
- **Timescales:** The timescales available for the call for views and for the subsequent analysis has limited the detail and complexity of responses and this analysis.

What are “key themes”?

This analysis aims to highlight key issues and concerns about the proposals in the two Orders raised by multiple respondents to the call for views. It is not intended to be a comprehensive summary of every issue raised.

It is worth noting that Committee members have access to every individual response, in addition to this summary.

How have responses been grouped in this analysis?

Responses to the call for views fall into two broad groups – those largely in favour of the proposals and those largely opposed. Responses have been grouped as follows:

- Those who are largely opposed to the proposals, starting with the key issues raised in many responses that are based on the evidence of the Association of Scotland’s Self Caterers
- Those who are largely in favour of the proposals
- Areas of common concern shared by both groups
- Possible amendments to the proposed licensing regime and short-term let control area system. It is worth noting that Scottish Statutory Instruments (SSIs) cannot be amended by the Scottish Parliament during the scrutiny process.

The majority of responses received were largely opposed to the proposed licensing regime and the introduction of short-term let control areas.

Key issues raised by those largely opposed to the proposals

Many members of the Association of Scotland’s Self Caterers (ASSC) have submitted largely similar responses to the Committee’s call for views. These generally echo the points raised in the ASSC’s evidence to the Committee, which is briefly summarised below.

The ASSC argues that the Orders would have “negative consequences” for visitors, the Scottish tourism industry and its wider supply chain, for the following reasons:

- The regulations apply across Scotland when the negative effects of short-term lets are largely concentrated in a small number of areas, primarily in Edinburgh
- The proposals will disproportionately affect small businesses, which are less able to cope with additional costs and bureaucracy,
- There will be significant business closures across the sector, driven by factors including:
 - Time and expense involved in the initial licence application and subsequent renewals
 - Uncertainty over a licence being granted or renewed and how long this process may take, with a significant impact on business confidence and the ability to plan for the future
 - Bookings could only be taken on a provisional basis for dates outside of the licence period, and only confirmed once the licence is granted or renewed – which would undermine visitor confidence
- Small Bed and Breakfast’s would fall within the scope of regulation, which was not the policy intention of the Scottish Government
- Tourism businesses have been particularly hard hit by the coronavirus pandemic – any eventual recovery will only be hampered by additional regulation
- Local authorities do not have the staff or other resources to effectively manage the new regulatory regime
- Scottish Government consultation on the proposals was inadequate and a [Business Regulatory Impact Assessment](#) was not published until 14 December 2020 – the day the Orders were laid in the Scottish Parliament
- Hosts may need to pay a licence fee of approximately £1000 per annum plus a ‘monitoring fee’ of a further estimated £1000 per annum, while a planning application fee of £401 would be payable per property in a short-term let control area.
- The ASSC has provided “...robust alternative proposals to the Scottish Government that deliver their objectives without the very damaging unintended consequences to Scottish Tourism – but these have been ignored.”

Other respondents who were largely opposed to the proposals, but did not reference the ASSC, raised broadly similar concerns to those outlined above. The most common concern, led by the Scottish Bed and Breakfast Association, was the inclusion of small Bed and Breakfast accommodation in the definition of a short-term let. They argued that Bed and Breakfast accommodation was not reducing the availability of private rented homes in tourist hotspots, impacting on the viability of communities or the source of neighbour nuisance. In addition, concerns were raised that the Bed and Breakfast industry was not directly consulted during the development of the proposals. Ultimately, inclusion of such businesses in the

licensing scheme could make many financially unviable, causing them to cease trading.

Another concern raised by several respondents was the inclusion of custom visitor accommodation, such as camping pods, yurts or tee pees, within the licensing scheme. Most of these properties are located in economically fragile remote rural and island areas and do not create any issues for neighbours or surrounding communities.

Key issues raised by those largely in favour of the proposals

Those who largely supported the proposals, mainly as they apply to commercial whole-property short-term lets, argued that they would protect the long-term viability of communities within tourist hot-spots and offer relief to long-term residents in such areas, particularly in tenements where access is through shared stairs. Issues raised include:

- Regulation will protect neighbours and communities from the impacts of over-provision of short-term lets, such as decreasing the availability of private rented housing, anti-social behaviour from visitors and associated impact on neighbourhood amenity and the sustainability of communities
- Arguments about the importance of short-term lets to the tourism economy are not supported by data. [VisitScotland data](#) shows that there has been no increase in the annual number of overnight visitor trips to Scotland since at least 2006. Similarly, there has been no real-terms increase in overnight visitor spending since at least 2011.
- Research, such as from the US [Economic Policy Institute](#), indicates that the availability of short-term lets produces a marginal increase in visitors, in the region of 2% to 4%.
- Regulated and licensed accommodation providers, including hostels, hotels and guest houses are being subject to unfair competition from the largely unregulated short-term letting sector. The lack of regulation reducing the operating costs of such businesses.
- Regulation of the short-term letting sector will protect both visitors and operators who provide a high-quality service from rogue operators
- Special consideration should be given to the regulation of short-term lets in traditional tenements, possibly a presumption against their use for short-term letting purposes, given the need to use common amenities to access such properties and the joint ownership arrangements for these common areas

Concerns raised by both groups about the proposals

- Local authority licensing departments need the staff, financial and other resources to efficiently manage the new regime. There was a broad consensus that they do not have such resources and that the new licensing

system will not provide the income needed to ensure the scheme runs smoothly.

- Similarly, establishing short-term let control areas will have significant upfront and ongoing costs for local authority planning departments. It is unlikely that fee income will cover all these costs, further stretching the limited resources available to planning departments.

Suggested amendments to the licensing regime and short-term let control area system

Suggestions by those largely in favour of the proposals include:

- The introduction of the licensing scheme should not be delayed until 2023, local authorities should have discretion to introduce it sooner if considered necessary
- A requirement to obtain planning permission for short-term lets should be a mandatory licence condition
- Robust enforcement arrangements will be required, to ensure that operators do not use home sharing or letting licences for wholly commercial operations
- Platforms should be held accountable for advertising unlawful properties
- Home sharing arrangements, where the owner lets rooms within their primary or only residence, should only require light-touch licensing and no requirement to obtain planning permission

Suggestions by those largely opposed to the proposals

- The Scottish Government should undertake a new Business and Regulatory Impact Assessment, as the last version was published late and the scope was inadequate
- There should be a tiered approach to licensing, with only light touch regulation for occasional, non-professional whole-property short-term lets
- Planning permission should not be required for dwellings that are only let by the owner on an occasional basis, under 28 days per year, as that should not constitute a change of use
- Home sharing arrangements, where the owner let rooms within their primary or only residence should not be subject to licensing or a requirement to obtain planning permission

Suggestions shared by both groups

- The licensing system should be available via a simple online portal, including a public facing database accessible to visitors and other members of the public

Alan Rehfishch

Local Government and Communities Committee

5th Meeting, 2021 (Session 5), Wednesday 3 February 2021

Stage 1 scrutiny of the Travelling Funfairs (Licensing) (Scotland) Bill

Note by the Clerk

Introduction

1. This paper provides background information on the second and closing Stage 1 evidence session on the [Travelling Funfairs \(Licensing\) \(Scotland\) Bill](#). This is a Members Bill introduced by Richard Lyle MSP.
2. The Bill's aim is to remove the requirement for travelling funfairs to have a public entertainment licence under the Civic Government (Scotland) Act 1982. It would replace this with a bespoke licensing regime for travelling funfairs, featuring a simplified process and a unified approach across Scotland, including the same flat fee for a license. The Member in Charge thinks this change would create a fairer regulatory approach. He also thinks it would help protect the threatened way of life of Scotland's showpeople, who are closely connected with the travelling funfair trade.
3. The main features of the new licensing regime would be:
 - The local authority for the area where the funfair takes place would be the licensing authority.
 - There would be a fixed fee of £50 for applications.
 - The deadline for applications would be 28 days before the funfair is due to start.
 - There would be limited grounds for councils to refuse applications.
 - Councils' discretion to attach conditions to licences would also be limited.The [SPICe briefing on the Bill](#) contains more information.
4. The [Committee issued a call for views](#) last autumn, posing seven questions about all the main aspects of the Bill. There are well over one hundred published responses. Most are from people with connections to the travelling funfair business. They overwhelmingly supported the Bill's proposals. Their general view was that the current system was complicated, difficult to navigate and sometimes unfairly expensive. They said the rules made it hard for them to run a business.
5. However, local authority respondents had concerns the proposals would be unworkable. Many of them also considered that the proposed system would not make sufficient provision for public safety and community involvement.

6. The Committee heard both points of view at its [first evidence session on the Bill](#) on 20 January. It took evidence from six expert witnesses from different parts of Scotland, representing both the local government sector and the travelling fairground trade and way of life.

Evidence session and next steps

7. The evidence session on 3 February is an opportunity for the Member in Charge to respond to points raised in evidence so far and underline why he considers the Parliament should support the Bill. Richard Lyle will be supported at the meeting by Parliamentary officials from the Non-Government Bills Unit, who helped him prepare his Bill.
8. The Committee will discuss and agree a draft report to the Parliament at future meetings. The Parliamentary Bureau is likely to propose a Chamber debate on whether to agree to the general principles shortly after the report's publication. If the general principles are agreed to, then –assuming enough time remains before the Parliament goes into recess for the election scheduled in early May– the Bill will then proceed to Stage 2, where it may be amended.

Local Government and Communities Committee

5th Meeting, 2020 (Session 5), Wednesday 3 February 2021

Subordinate Legislation

Overview of instrument

1. The following instrument, subject to negative procedure, is being considered at today's meeting:

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2021 (SSI 2021/18)

Purpose

2. These Regulations amend the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 (S.S.I. 2007/183). They substitute increased annual amounts for different categories of local authority remuneration to their members. These changes are effective from 1 April 2021. Further detail of the Order are set out in the policy note attached at **Annexe A**.
3. The instrument was laid before the parliament on 18 January 2021 and comes into force on 1 April 2021. It is subject to the negative procedure.
4. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2021/18/contents/made>
5. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [26 January 2021](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

7. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 22 February 2021.

Procedure

8. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform

Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

9. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
10. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
11. Each negative instrument appears on the Local Government and Communities Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
12. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

POLICY NOTE**THE LOCAL GOVERNANCE (SCOTLAND) ACT 2004 (REMUNERATION)
AMENDMENT REGULATIONS 2021****SSI 2021/18**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 11 and 16(2) of the Local Governance (Scotland) Act 2004 and all other powers enabling them to do so. It is subject to the negative procedure.

Policy Objectives

This instrument makes provision in relation to the remuneration of local authority councillors. It amends the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 to increase the level of remuneration payable to local authority councillors by 4.2%, which increase will take effect from 1 April 2021.

Consultation

There is no requirement for the Scottish Ministers to undertake a consultation before making a recommendation on councillors' salaries. Ministers are following the same procedure as in 2020, to increase councillors' pay annually in line with the percentage increase in the median annual earnings of public sector workers in Scotland. This information is published by the Office of National Statistics in the *Annual Survey of Hours and Earnings*.

Impact Assessments

An equality impact assessment has not been undertaken as the increase in councillors' remuneration applies to all local authority members. The Scottish Ministers have decided that a Business Regulatory Impact Assessment is not required as there is no impact on business or the third sector and the impact on the public sector (council budgets) is not expected to cause a significant financial pressure. The salary increase would be met from existing council budgets: it is estimated that for 2021-22 the total cost would be around £1.2 million across all 32 councils.

Financial Effects

The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Local Government and Analytical Services Division
The Scottish Government
January 2021