



UK Short Term Accommodation Association - Response to the Scottish Government's consultation on short-term rentals

Covering note

The UK Short Term Accommodation Association (STAA) is the trade association for short-term rental businesses in the UK. Our members represent a diverse range of business models, from accommodation platforms, to property managers, to providers of ancillary services to the industry, such as software solutions and insurance products. Our aim is to promote the sustainable growth of the industry.

We welcome the Scottish Government's consultation on the regulation of the short-term rental sector. We look forward to engaging with policymakers on the future of short-term rental regulation in Scotland to ensure an outcome that short-term rental businesses, hosts, and guests can all support.

We believe that a combination of proportionate, targeted regulation, and industry voluntary initiatives, can help to address any issues that arise from short-term letting. We understand that the Scottish Government wants to ensure housing for long-term rentals, create an appropriate distinction between commercial and non-commercial activity, and guarantee residential amenity for local residents. We agree with these aims. Below we have laid out our suggestions for achieving this, but we have also presented them in brief here.

The STAA believes that existing Scottish tax law should be used where possible to distinguish between amateur and commercial activity. Those renting for 140 nights per year or more ought to be considered commercial actors, whilst those renting for fewer than 140 nights ought not to be. Commercial actors should require a change of use, and a new use class should be created for commercial short-term lets. A registration scheme for short-term rental hosts should be introduced which is managed centrally, but which is only applied in areas of provable housing pressure. This registration scheme should take the form of an instant online declaration.

We look forward to submitting our response to this consultation, and to working with all stakeholders moving forward to ensure that Scotland introduces a regulatory system which allows its already thriving tourism economy to continue to grow, and which sees the Scottish people enjoy all of the benefits that short-term rentals have to offer.

Question 1 Are you aware of any additional data on the impacts of short-term lets (over and above that set out in Annex A - The Short-Term Rental Sector, Housing and Tourism in Scotland) which the Scottish Government should take into account when considering proposals for regulation?

The Association of Scotland's Self-Caterers, in collaboration with Frontline, has published a [report](#) assessing the impact of the short-term rental industry. The report finds that short term rentals are a major component of Scotland's growing tourism offering, making a substantial contribution to the tourist economy, that they cannot be blamed for exacerbating the housing crisis as other longstanding issues are of far greater significance, and that the STR sector is not a driver of anti-social behaviour in Scotland, amongst other things.

STAA member Airbnb has also provided some data as part of its submission to the Scottish Government's Expert Panel investigation into the collaborative economy. In 2017, according to Airbnb's Insights Report, the total economic activity generated by hosts and guests amounted to £499 million, whilst guests spend an estimated £1.4 million per day in Scotland in the same period. More information can be found [here](#). According to the same data, Scottish hosts earned £113.4 million, with hosts in Ullapool, in the Highlands, earning £2.3 million in one year. More data can be found [here](#).

Question 2 Should a regulatory framework distinguish between sharing, swapping and secondary letting?

We do not believe that a regulatory framework should distinguish exclusively between sharing, swapping, and secondary letting.

The term swapping is already used within the industry to denote a form of rental where stays are booked but no money is exchanged. Rather, two property residents essentially "swap" properties for an agreed period of time. Therefore, we believe that the use of the term "swapping" to denote stays in a primary home where the normal resident is not present may create confusion.

Instead, we believe a regulatory framework should distinguish between activity which is commercial in nature, and activity which is not. This distinction already exists for the purposes of domestic rate paying. In Scotland, making a property available to let for 140 nights or more renders that property liable for non-domestic rates. Properties which are let for more than 140 nights per year should be considered commercial in nature. Commercial properties should be subject to change of use, to a new use class for commercial short-term lets.

This framework is more proportionate than one based on sharing, swapping, or secondary letting, because it recognises that not all secondary properties are commercial short-term lets. Rather, many will be holiday homes or pied a terres which are being let out whilst they are not being used for their primary purpose, which is as a second residence. Such properties would never be available on the long-term market, and so are not impacting housing supply in any way whatsoever by being short-let. Therefore, if the Scottish Government is seeking to secure certain homes for long-term lets, it need only impose restrictions on short-term letting on commercial short-term lets, rather than amateur ones.

Moreover it is not sufficiently clear why a different regulatory framework should necessarily be applied to those that sharing, swapping, or secondary letting and if each of these categories is associated with a peculiar set of public policy problems.

If the Scottish Government ultimately decides to proceed with the sharing, swapping, secondary framework, then we believe that the secondary letting category should be divided into two new categories to reflect the fact that not all second homes are commercially-let properties. One category would denote the letting of secondary residences, such as holiday homes, whilst the other would denote the letting of commercial investment properties.

Question 3 Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

We do not believe that a distinction of this kind would be appropriate. The primary reason for this is that it would not be a proportionate policy response to the problem. The type of property in which one lives is not an appropriate means for distinguishing between amateur and commercial activity. People who live in tenement flats who rent out their home should not have to face more stringent rules than those living in semi detached houses who are doing the same.

We understand that residential amenity can be a greater concern in multi unit residential blocks than it is in detached housing. For this reason the STAA has developed a buildings policy, which building managers can use to control short-term rental activity in their buildings. We have spoken to a number of local authorities to roll out this policy across the UK, and would be delighted to speak with any and all Scottish authorities to implement it. We believe that these voluntary initiatives will be more effective at tackling issues around residential amenity than regulatory measures, as they are targeted specifically at the problems being articulated. There are already regulations dealing with issues around noise disturbance and improper waste disposal, what is needed is greater education for hosts and guests, which voluntary initiatives can provide.

It would also be extremely difficult for online platforms to help with the enforcement of this rule. When a host lists their address, platforms do not have an easy way of knowing whether the property that corresponds to that address is a detached house, a semi-detached house, or any other kind of property. This rule would have to rely on hosts reporting what kind of property they live in.

As stated above, we believe that a distinction made on the basis of the number of nights for which a property is let, in line with existing rules in Scotland on non-domestic rates, is the most appropriate distinction to make.

Question 4 Do you have any comments on any other aspect of the definition of short-term lets?

For the purposes of the consultation, the following conditions must be met for a short-let to have taken place:

a) The accommodation is made available for use for letting for a cumulative period of 28 days or more in any rolling period of 365 days. This might mean, for example, that it is advertised as being available to let.

b) At least one of the lets commencing in the same rolling period is not a private residential tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

The STAA has some reservations about the current definition of short-term lets.

Firstly, measuring how much a property has been let in a rolling period of 365 days is difficult. We believe it would be better to stick to a fixed period of days, with a calendar year being the most obvious candidate for such a period.

Secondly, whether a not a property is “available for use” is a concept which is somewhat vague. A property might be marked as available to rent for many more nights than the host is actually willing to rent it for.

We would also recommend an appropriate maximum night limit for a short-term rental. Clearly short-term rentals should not continue indefinitely, and there should be a cut-off point after which a short-term let becomes a medium or long-term let, with an accompanying framework. The Republic of Ireland set an upper limit of 14 nights for a short-term let in its recent new regulations, and this is a definition which we could support in Scotland.

Question 5 Do you have any comments on the positive or negative impacts of short-term lets?

The industry delivers multiple benefits to consumers, hosts, the wider business community and to the UK government.

- More choice for consumers – Consumers are demanding more travel options which include renting a home, or a room within a home, when they travel. This enables them to get an authentic feeling for living in a particular neighbourhood and provides a different option depending on their situation. It also can be more appropriate for families who need additional space or additional facilities.
- More accommodation supply for tourists – The UK tourism industry benefits from the increased availability of accommodation for tourists, bringing an increasing number of visitors to the UK.
- A more optimal use of space – By allowing short-term letting for short-periods when homeowners happen to be out of town, we utilise our existing housing stock in a much more

efficient manner, avoiding the requirement to build additional space for increasing tourism, taking away land that could otherwise be used to build new homes.

- Added income for individuals – Supplementary income derived from short-term letting can help individuals and families to earn additional income from their most important asset when they are not using it.
- Added income for government – Earnings accrued via short-term letting activity have to be declared by hosts, which boosts tax revenues. Platforms also pay VAT on their services.
- Employment opportunities – The industry generates considerable employment opportunities both directly and indirectly.
- Local business growth – Local businesses are benefiting from the resulting added footfall from guests who are spending money in local shops and restaurants and this spend tends to be spread across a wider area than traditional hotel guest spend due to the spread of geographies where guests stay in homes, allowing a broader range of businesses to benefit.
- A more competitive tourism industry – The emergence of new businesses in the short-term letting industry has driven competition and innovation in the wider tourism industry.

The vast majority of short-term rental hosts and guests behave responsibly and respectfully towards their environment. Policy responses should seek to tackle specific issues. We believe that voluntary measures and host education will more directly address residential amenity concerns than any new regulations. Local authorities already have powers to tackle all of the residential amenity concerns which have been raised, from noise, to waste disposal. By educating hosts and guests and driving standards through industry accreditation, we can get to the heart of the problem.

Question 6 Do you have any examples of other positive or negative impacts of short-term lets?

We believe that the short-term accommodation rental sector has many benefits, some of which have not been touched upon in the consultation paper.

Short-term rentals can provide localities with additional capacity during periods of peak demand. Scotland is home to some of the world's finest golf courses, and frequently hosts major golf tournaments such as The Open. For instance, [Airbnb signed a deal](#) in 2018 to officially support the European Championships multi-sport event in Glasgow.

Moreover, short-term rentals can divert tourist spending into local businesses and away from city centres, giving an economic boost to areas which are not traditionally well served by tourism. For instance, as we have stated above, hosts in the small town of Ullapool made £2.3 million in 2017 from short-term rentals.

The STAA has provided a full list of the benefits of the short-term rental industry on its website: <https://www.ukstaa.org/#our-impact>.

Question 7 Do you have any comments about the impact of short-term lets on the housing market?

On the specific issue of housing, the STAA is unaware of any compelling evidence to suggest that the short-term rental sector has had a material impact on increased housing prices or housing shortages in Scotland or anywhere else in the UK. The Scottish Government estimates that there are 37,000 empty homes in Scotland, whilst Scotland's national records estimate the number to be 79,000. Scottish housing statistics have shown that social housing completions fell in 2017 when compared to 2016 by 16%, and whilst there was a small increase in private new build starts (6%) in 2017, local authority new build starts decreased by 29% in 2017 compared to 2016. Scotland's population is expected to increase by 9% between 2019 and 2039, so even the increase in private new build starts is insufficient to account for the growing population. It seems clear therefore that it is a lack of sufficient housebuilding which accounts for housing pressures in Scotland, rather than the short-term rental sector. Further information on this can be found [here](#).

Question 8 Do you have any comments on the restrictions imposed on short-term lets by planning law?

The STAA is happy to work with the Planning (Scotland) Act, which creates a proportionate regulatory solution by allowing local authorities with housing pressures to become short-term let control zones, and to thereby introduce change of use requirements for non-primary residences.

We also support a new planning use class for commercial short-term rentals, which would apply after 140 nights of short-term rental activity. Such a use class would give legal clarity to commercial short-term let providers, who provide much needed additional accommodation supply and bolster the diversity of Scotland's tourism accommodation offer.

We believe short-term lets of under 140 nights in short-term let control zones should not have to acquire a commercial change of use, as these are not commercial properties.

Question 9 Do you have any comments on powers to tackle antisocial behaviour caused by short-term lets?

Local Authorities already have robust powers to tackle antisocial behaviour of all kinds. The industry is also willing to cooperate with local authority enforcement initiatives, where feasible. For instance, any company requested to provide evidence as part of a legal case of breach of law will provide support with required evidence. We are also in favour of local authorities enforcing the law and making examples of those who are in breach to deter future unlawful activity.

The STAA is committed to best practice short-term letting. All of our members sign our [Code of Conduct](#) and we have produced a [best practice policy](#) for managers of shared buildings which they can use to control short-term rental activity in their building. We have also collaborated with a local authority in London to produce a Considerate Nightly Lets charter which reminds hosts of their responsibilities.

Our members also have individual policies around ensuring that hosts behave in a responsible manner.

Question 10 Do you have any comments about complaint systems for short-term lets?

The STAA is in favour of robust and clear complaints processes. As an industry we encourage operators to engage in transparent dialogue with local authorities whenever complaints are made to ensure a quick resolution. Where a company or host is accredited through our Industry Accreditation scheme run by Quality in Tourism, a complaint can be raised to the independent 3rd party and the company or host is at risk of losing accreditation if there are repeated complaints or severe breaches of the industry standards.

We also support guests having a point of contact for any complaints that they might have during their stay, whether that be the host, or an intermediary, such as a property manager. Indeed, the STAA buildings policy stipulates that hosts must have somebody on call 24/7 to deal with guest or neighbour complaints.

Question 11 Do you have any comments on safety issues related to short-term lets?

The STAA does not accept the conclusion of the Expert Advisory Panel's report, that secondary residences should be subject to the same health and safety requirements as all other forms of short-term accommodation. This reflects our position that a primary/secondary residence distinction is an inappropriate method of determining between properties which are being operated professionally and those which are not.

The STAA's position is that short-term rentals in residences should be subject to no more stringent health and safety regulations than are imposed on residential lets, the reason for this being that if a home is safe to live in full-time, it should also be safe for somebody to stay in for a few nights. Imposing hotel-appropriate standards on second homes is clearly not proportionate and would result in those homes being withdrawn from the short-term rental market. Given that a great many secondary residences would not otherwise be listed on the long-term rental market, this policy would restrict the short-term rental supply and hurt the longstanding holiday homes market without tackling any underlying problem.

The STAA has recently launched the world's first short-term accommodation accreditation scheme. Our aim is to accredit as many individual hosts and property managers as possible in order to drive up standards throughout the industry. Accredited hosts will be assessed by third party experts against a range of criteria to ensure that their properties are compliant with robust health and safety standards.

All health and safety information, including fire safety information, can be found on the STAA's host guidance page, and is included as part of the STAA's host membership package.

Question 12 Do you have any comments on eligibility for non-domestic rates?

The STAA believes that the current eligibility criteria for non-domestic rates is proportionate and fair, and as such, we have included it within our definition of what should be seen as commercial activity.

Question 13 Do you have any comments on the additional eligibility requirements recommended by the Barclay Review?

We have no particular comment on the Barclay Review, which recommends that individuals would have to provide evidence of actually letting for 70 nights in a calendar year, on top of making a property available for 140 nights per year, to be eligible for non-domestic rates. Our only specific comment on this issue is that responsibility for demonstrating that a property has been let for 70 nights must always reside with the host in question. It should be hosts, rather than accommodation platforms, who must prove that they are eligible for non-domestic rates, and hosts who are liable for falsely claiming eligibility.

We would not accept an interpretation of the threshold of amateur/commercial activity across Scotland resting at 70 nights of letting, however. This would be more restrictive than in many major European cities, such as London. If the recommendations of the Barclay Review are implemented, the STAA still believes that 140 nights of letting must take place before a property is considered to be a commercial short let.

Question 15 Do you have any other comments on taxation relating to short-term lets?

The STAA is concerned that the advent of a tourism tax might result in a plethora of market interventions which impose significant burdens upon operators. Collection of the tax might require a register of all short-term rental hosts, or similar mechanism, to be enforceable. Although we do not reject the concept of a tourism tax out of hand we would like to be involved in a discussion about what the implementation of such a tax would involve in practice.

It is worth noting that the European Commission has warned authorities against disproportionate regulatory interventions in the past. For instance, the [Commission sent the city of Brussels in Belgium a formal letter of notice](#) following the city's imposition of new short-term rental rules earlier in 2019. After the city had instituted a regulatory system that failed to distinguish between all types of accommodation, whether that be private rooms or large hotels, the Commission stated that it had imposed disproportionate requirements that were not compatible with the EU Services Directive, and that a simple online registration system for short-term rentals would have sufficed. We believe that the Scottish Government should consider what is proportionate for Scotland.

Question 16 Do you have any additions or amendments to the proposed design principles?

The principles for the design of a regulatory framework are:

1. *Proportionate*
2. *Promoting safe practice*
3. *Robust*
4. *Responsive*
5. *Built on existing powers and solutions as much as possible*
6. *Fair across the hospitality sector*
7. *Flexible and future-proofed*
8. *Easy to understand by all*
9. *Cost effective*
10. *Straightforward and effective to enforce*

The principles which the Scottish Government has outlined are sensible and comprehensive, and the STAA does not dispute any of them.

We believe the emphasis on proportionality is extremely important. This is in line with the EU Services Directive, which states that measures taken by authorities must be both necessary and proportionate.

We also support the need to build on existing solutions insofar as possible. Substantial regulatory changes can cause confusion amongst both hosts and guests, and can be an unnecessary disruption for businesses.

The principle of fairness is of course extremely important when regulating an industry. We are keen to ensure that the correct definition of “fair” is implemented in practice. A truly “fair” regulatory system recognises that different types of activity must be regulated differently. Such a system would not seek to impose blanket solutions across all kinds of activity. For instance, we do not believe that a “fair” system would impose the same health and safety requirements on individuals letting out their holiday home for a short period of time as those which are imposed on hotels, or professional self-catering accommodation providers who operate year round and exclusively as tourist accommodation.

Finally we are fully in support of the principle of ease of enforcement and ease of understanding. Any regulatory system must be straightforward for hosts and guests to understand and should not create an artificial barrier to market entry by imposing arduous compliance requirements.

Question 17 Do you have any comments on the proposed scope of a regulatory framework?

The STAA supports a regulatory system that is implemented nationally to prevent market fragmentation resulting from an array of differing local regulatory systems. We recognise that, in some areas, tighter local authority controls might be necessary. Under the Planning (Scotland) Act, local authorities can apply to become short-term let control zones, and can require change of use for secondary residences from zero nights for short-term letting. This gives local authorities adequate control to adjust the rules to reflect their local housing market.

The STAA can support a registration scheme in Scotland. Such a scheme, when properly designed, can give local authorities the required visibility over the short-term rental market, allowing them to effectively target their enforcement resources, without unduly affecting individual hosts. We believe that licensing schemes are unnecessary, as the Planning (Scotland) Act already requires planning permission in short-term let control zones. Moreover, licensing schemes impose onerous requirements on amateur operators, discouraging them and encouraging professional operators. This is precisely the opposite result to what the Scottish Government wishes to achieve.

We believe that voluntary initiatives, such as the STAA's buildings policy and accreditation scheme, can address many of the issues which have been raised.

Question 18 Do you have any comments on the controls or conditions which councils should be able to set through a registration or licensing regime?

The STAA believes that any registration system should be simple, online, free, national, and instant. An ideal system would involve a simple online declaration made to a centrally-managed database, into which the host would insert some basic data about themselves. They would then receive a unique identification number which they would display when marketing their property. Forthcoming regulations in the Netherlands provide a good example of a best practice scheme.

The STAA understands that, in certain circumstances, local authorities may want to exert closer control on short-term rental activity. This is already provided for in the Planning (Scotland) Act.

Examples of a compelling case for an exemption could be demonstrating a clear housing shortage in a certain area, or evidence of sustained house price/rent increases above the national average.

Question 19 Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short-term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?

The STAA does not believe that a licensing scheme is necessary or proportionate in this context. If commercial hosts are subject to a change of use requirement, conditions can be attached to that change of use which will remove any justification for licensing. This is already the case for hotels in Scotland.

Question 20 Do you have any comments on the effectiveness of a days per year limit in meeting the Scottish Government's objectives?

Whilst we do not believe that a days per year limit solves any active policy problem, we do believe that it is a useful method of demarcating amateur activity from commercial activity, and thus hosts who must apply for a change of use vs. those who do not need to do so. We believe that 140 nights is the best such point of demarcation, as it is already used to distinguish amateur from commercial hosts for tax purposes.

Question 21 Do you have any comments on how regulations should deal with commercial hosts?

Those letting for more than 140 nights in the year are considered commercial hosts per tax legislation. We believe that letting for more than 140 nights per year should require change of use into a new commercial short-term rental use class. Such lets should be subject to other commercial regulations and taxes, such as business rates, VAT, and corporation tax. Such properties should also be subject to accessibility requirements and more stringent fire safety regulations than amateur short-term lets.

Question 22 Do you have any comments on who should be subject to enforcement and sanctions?

Responsibility for complying with the law must always rest with individual hosts. Online platforms cannot be responsible for ensuring that hosts comply with all relevant local laws. This position is in compliance with European Law. A recent case in the European Court of Justice (C-390/18) has ruled that Airbnb is an Information Society Service and that therefore it cannot be held liable for illegal content which appears on their platforms, unless they become aware of it and do not act expeditiously to remove it.

Online platforms and other short-term rental businesses can play an important role in educating hosts about their responsibilities. The STAA has published a broad range of compliance information on its website for hosts to read. Companies and hosts that are accredited by the STAA accreditation scheme will have all health and safety measures independently checked by a third party and will only receive the accreditation when it is evidenced they are in compliance with health and safety regulations. Platforms can make entering a registration number a requirement for onboarding, if the registration number can be obtained instantly.

Other voluntary initiatives, such as the STAA accreditation scheme, can also help with host compliance, particularly where legal requirements are in place.

Ultimately it is hosts who are responsible for obeying the laws which apply to them, and they who must be liable for not doing so.