

STAA-ASSC joint position paper on Scottish Government regulatory proposals

Introduction

In January 2020 the Scottish Government laid out its position on regulating the short-term rental sector. This was the culmination of a long process, from the inauguration of the Expert Advisory Panel on the Collaborative Economy in 2017, through to the publication of the consultation on the future of short-term rental regulation in 2019.

In this paper, the UK Short Term Accommodation Association (STAA) and the Association of Scotland's Self-Caterers (ASSC) would like to lay out their joint position on the Scottish Government's proposals. The STAA is the UK-wide trade association for the short-term rental industry. Its members include large online platforms such as Airbnb and HomeAway, as well as a number of property management agencies with operations in Scotland, such as Houst (formerly Airsorted) and Spothost. The Association of Scotland's Self-Caterers represents the interests of the traditional self-catering sector in Scotland. It has more than 650 Members, operating in excess of 8,000 self-catering properties throughout Scotland, from city centre apartments, to rural cottages, to lodges and chalets, to castles.

In his statement to the Scottish Parliament on 8 January, Scottish Housing Minister Kevin Stewart said that the Scottish Government remains open to feedback on its regulatory plans for short-term rentals, ahead of their likely implementation in Spring 2021. We are grateful for the Scottish Government's ongoing commitment to collaboration, and we have designed this paper with collaboration in mind.

The Scottish Government's proposals consist of three key components: a nationwide licensing scheme which can be supplemented locally; the use of short-term let control zones to restrict the rental of properties in specific areas; and a review on the tax treatment of short-term lets. This paper proceeds along the same basis. In the following pages, we have outlined our position on each of these three key components. These positions have been formulated via ongoing discussions within our organisations, and informed by our experience of regulatory solutions in other parts of the world. We believe also that our suggestions reflect reasonable, common sense positions, which would allow the Scottish Government to achieve its aims without undue harm coming to the short-term rental industry.

We would like to use the principles embedded within this paper to frame our ongoing discussions with Scottish government officials and elected representatives in Scotland. Our aim is simple: to ensure the best outcome for all parties, one which protects the integrity of Scotland's housing market and the amenity of its communities, whilst also allowing the short-term rental industry, a vital component in Scotland's economy, to thrive and grow.

Section one: Licensing

We suggest a licensing system which:

- Has clear frameworks and national guidance from the Scottish Government;
- Is instant, low cost, and online;
- Automatically renews licences at the end of each year;
- Distinguishes between professional and non-professional activity

The licensing criteria should be set at the national level. This will prevent certain local authorities from introducing provisions which are disproportionate to the level of issues caused by short-term rentals. For instance, the licensing system proposed by the City of Edinburgh Council in its response to the Scottish Government's consultation is clearly disproportionate, for a number of reasons:

- It states that a licence must be obtained from 28 days of activity, which would require a large number of non-commercial operators to apply for a licence;
- The local authority has complete discretion to cap the number of licences it gives out, without having to refer to any kind of evidence base to justify its decision;
- The licensing system applies to both owners and properties, effectively at least doubling the workload for an individual who wishes to apply.

Moreover, **the licensing application process should be entirely online.** 75% of applications to the Scottish Landlord's Register are made online, meaning that each local authority should have the necessary infrastructure and expertise to handle online licensing applications for short-term rentals.

The licensing process should also be as fast as possible. This is key to ensuring that as many users as possible engage with the licensing process.

Obtaining a licence should be low cost. This is especially important, given the incoming transient visitor levy in Scotland. A high-cost licensing scheme will both act as a deterrent to non-commercial operators, and add a significant expense to responsible commercial operators, who already make a substantial contribution to local authorities via business rates.

We believe that our recommended system has the following advantages:

- It will give local authorities visibility over the extent of short-term rentals in their jurisdiction;
- It will disincentivise bad actors from registering, and allow local authorities to target enforcement resources against bad actors;
- It will not disincentivise operators from signing up, as it is so straightforward.

Ultimately, **our system will allow local authorities to fully understand the extent of short-term letting in their jurisdiction.** This will allow them to target their enforcement resources, and to make evidence-based policy decisions regarding short-term rentals. In particular, local authorities will be able to target information campaigns at those in the licensing database regarding any potential controls on short-term rentals and the national minimum safety standards.

Actors who do not wish to register, but wish to continue operating, will be taking a risk, as if they are found to be operating but not to be in the licensing database, **they will face prosecution.** In the same way, if a private landlord doesn't register, the council can send them a rent penalty notice (RPN). Renting out property without being registered with the council is a criminal offence and landlords can be fined up to £50,000 if found guilty. Further enforcement penalties can be attributed to not complying with fire and safety regulations and anti-social behaviour legislation.

Crucially, a straightforward system will likely have much higher uptake than an expensive or time consuming system. The disadvantages inherent in introducing a complicated system can be seen by looking at HMO licensing elsewhere in the UK:

- In London, Licence applications have been submitted for only 25% of the 138,500 private rented properties that require licensing under mandatory HMO or additional licensing schemes.
- In Oxford, the National Landlords Association branded the city council's HMO licensing scheme a "complete failure" due to the fact that less than half of those eligible to register actually did so. Indeed, the only impact of the scheme, according to the NLA, was to drive up rents and force people out of the city.
- Across the UK, Freedom of Information Requests sent by Simple Landlords Insurance to over 90 local authorities showed that two thirds (65/90) of local authorities have no idea how many landlords are breaking HMO licensing rules, nearly one third (29/90) have no idea how many properties should come in under the new regulatory scheme and over a third (31/90) did not prosecute any landlords for infractions of existing rules in the last two years.

An HMO licence can take up to a year to process. Given this, it is clear that many landlords have decided that it is not worth their while to sign up. This has created a lose-lose situation, wherein consumers do not receive the necessary protection, and local authorities do not have the necessary information to enforce the law. A simpler system, with a higher uptake, would solve this issue.

Moreover, a simple system will be much kinder to already-stretched local authority budgets. Stephen McGowan, partner and head of licensing in Scotland at UK law firm TLT, has outlined the potential issues with the introduction of a licensing scheme in terms of processing applications:

*"Provision will need to be made to deal with the impact of such a magnitude of applications on local authority resources. A massive rush of applications of this order could bring licensing administration to a halt, and have a knock-on effect on reporting obligations with Police Scotland and other authorities such as Fire and Building Standards, who will likely have to comment on each application. This could impact on processing times for other types of civic licence."*¹

Under our suggestions, short-term rental operators would simply sign up to a national licensing database, against which local authorities would be able to check. As per the Landlord Registration scheme, each council has a formal register listing the STL operators in its area. These are held on a central database that is provided by the Scottish Government, dedicated to the new licensing system.

Local authorities would not therefore have to use scarce manpower resources to process thousands of applications, and all of the associated paperwork and correspondence.

¹ <https://www.scottishlegal.com/article/licensing-expert-warns-of-flood-of-short-term-let-licences-1>

Below are some examples of existing licensing schemes from around Europe which we consider to be examples of best practice:

- In Hamburg, residents must register with the city and display a housing protection number on their listing. The scheme is free of charge and hosts can complete the process in **less than ten minutes** online.
- The Netherlands will introduce a new registration system in 2020. The system will be administered by the central government and will be **online, declarative, and instant**.
- In Andalusia, the processing period for a licensing application takes **up to a month**, but hosts are issued with a **temporary permit for a month** to ensure that they can operate straight away.

Section two: Short-term let control zones

We believe that short-term let control zones should:

- Be clearly defined at the national level by the Scottish Government;
- Be proportionate and non-discriminatory, in line with the EU Services Directive;
- Be evidence based;
- Be reviewed on an annual basis;
- Only apply to whole homes let for more than 140 nights per year, in line with existing tax rules in Scotland.

We would urge the Scottish Government to adopt a legal definition of a short-term let. The Private Housing Tenancies (Scotland) Act 2016 introduced a new type of tenancy called the Private Residential Tenancy (PRT), which took effect from December 2017. Any landlord accepting tenants for over 31 days needs to register as a landlord and sign a tenancy agreement with their tenant.

Holiday lets are excluded from the terms of the Private Housing (Tenancies) (Scotland) Act 2016. A tenancy created for the purpose of conferring on the tenant the right to occupy the property for a holiday will not constitute a PRT. We believe therefore that any let which does not exceed 31 consecutive nights be considered a short-term let.

An appropriate definition of a short-term let is necessary before any discussion of how short-lets can be restricted.

Following this, **we believe that it is the role of the Scottish Government to define what a short-term let control zone is**, and how one can be designated. In line with our belief that short-term let control zones must be evidence-based, a nationally-recognised designation of a geographical area, such as a postcode, would be the most appropriate way of demarcating a short-term let control zone.

Short-term let control zones must be **proportionate** and **non-discriminatory**. Under the EU Services Directive, the European Commission reserves the right to take to court any jurisdiction found to be introducing laws which are not proportionate or in the public interest. In January 2019 the Commission sued the city of Brussels for introducing rules which were deemed to be disproportionate.² According to the European Commission³, an authorisation scheme can only constitute an appropriate policy response in instances of high urban pressure.

² <https://www.euractiv.com/section/digital/news/brussels-city-warned-about-disproportionate-rules-for-airbnb/>

³ <https://ec.europa.eu/docsroom/documents/32062>

This leads us to our next point, which is **that short-term let control zones must have a firm basis in evidence**. The evidence base can be derived from **the short-term lets licensing scheme**. Local authorities will be able to see how many short-term lets there are in certain areas. If this number exceeds a certain percentage of the total housing stock, a short-term let control zone can be introduced. **This should be mandated at the national level**, and the same rules should apply for all of Scotland's 32 local authorities.

Given the dynamic nature of the housing market, **it is only right that the evidence basis for short-term let control zones should be reviewed on an annual basis**. At the start of each year, local authorities should review whether areas which are currently designated as short-term let control zones still meet the criteria for designation, as well as whether some areas have begun to meet those criteria, and hand out designations on that basis. Given that hosts will have to submit the postcode of their property when applying for a short-term letting licence, we believe that the postal address system is the simplest way of designating areas to become short-term let control zones.

Finally, given that the core aim of short-term let control zones is to protect residential housing stock, **its controls should not cover homes which are genuinely being lived in for some portion of the year**. As such, those letting spare rooms in their homes, and those who are intending to let for fewer than 140 nights per year, should not have to apply for planning permission to continue letting in a short-term let control zone. This latter point is in line with the existing tax distinction between domestic and commercial use. Homes which fall into the two categories articulated above would never be available on the long-term rental market, as they are being lived in for some proportion of the year. As such, it is not proportionate to limit short-term rental activity within them, and would not constitute a legitimate means of achieving the Scottish Government's aim in this regard, which is to protect housing supply.

Section three: Tax

We believe that the existing tax system in Scotland is fit for purpose. We are supportive of the Barclay Review of Business Rates, and in particular of Recommendation 22, which suggests that properties should be intended to let for at least 140 nights and actually let for 70 nights per year to qualify for the Small Business Bonus Scheme Rates relief. We believe that 140 nights of rental activity constitutes a sensible distinction between amateur and commercial activity.

Given that Scotland already has a clear and structured tax system, we believe that the key challenges for the taxation of the short-term rental industry revolve around **education** and **enforcement**. Schemes such as STAA member Airbnb's [tax hub, and advice from the ASSC as the sector's trade association](#), can help individuals and businesses to understand their tax responsibilities, and to pay the correct amount of tax, according to the existing framework. Moreover, the Scottish Government's licensing scheme should assist with enforcement, as tax authorities will be able to see which individuals and businesses are short-term letting, and make sure that they are paying the required forms of tax on the money that they make from doing so.

We also believe that any taxes which are specific to tourism should be hypothecated for purposes relating to the short-term rental industry. The transient visitor levy could, for instance, be used by local authorities to promote their areas as a tourism destination, or used to help fund local enforcement of existing rules and regulations.

As a final note of caution, policymakers should be mindful that introducing onerous regulations such as licensing schemes or planning controls on the industry will raise the cost of doing business, leading to potentially lower profits for short-term rental businesses and hosts, and therefore lower tax receipts in the long-term. This is also true for increased taxes. Policymakers cannot assume that the tourism sector will continue to perform as it is today if the government's proposed regulations come into play.

Conclusion

This paper is intended only as the beginning of a broader discussion around the future of short-term rental regulation in Scotland. We look forward to talking stakeholders through our positions and exploring how regulation can be used to the benefit of all parties in Scotland.

We believe that our proposals are sensible and balanced. They will help to preserve the viability of the short-term rental industry in Scotland, whilst addressing concerns around residential amenity, safety, and housing supply.

Our intention is to take these proposals forward with Scottish policymakers, as suggestions for the implementation of the principles which have already been articulated. We remain committed to engaging with the Scottish Government as they bring their proposals into effect over the next 12 months and more.