UK Short Term Accommodation Association

Response to the Scottish Government's consultation on new regulations for short-term lets

September 2020

1. Please identify any issues with the proposed definition as set out in chapter 4, and how to resolve them.

General principles

The definition of short-term rentals laid out in this version of the consultation is inferior to the definition laid out in the Scottish Government's previous consultation on the issue. This previous definition stated that activity of under 28 nights per year would not constitute short-term rental activity. This definition would protect very occasional hosts from the stringent regulations which they currently face. Indeed, it is our contention that the regulatory hurdles put in place, especially with respect to the licensing scheme, mean that occasional hosts are unlikely to engage in short-term rental activity within the proposed framework.

We recommend that the Scottish Government returns to its initial thinking on this matter, rather than seeking to include all hosts within the licensing system, no matter how infrequently they are hosting.

Specific comments

4.2: In its previous consultation on short-term rentals, the Scottish Government suggested that a short-term let should be deemed to have taken place if the property in question is let for more than 28 nights in a year and if at least one of the lettings during that period was not a private residential tenancy. Although we suggested some minor modifications in our response to the consultation, we were broadly on board with this definition. The key factor in this is that it excludes hosts who only let their property for a few weeks of the year.

4.7: We believe that the definition articulated here (i.e. the definition that the Scottish Government intends to use) is inferior to the definition used in the previous consultation (articulated in 4.2). Our fear is that hosts who only intend to short-let their property for a few weeks in the year will be pushed out of the market due to the regulatory burden which being included within the scope of the definition entails. Hosts who let their property for fewer than 28 nights in a year are not having any impact on the housing market, and, at worst, a minimal impact on the residential amenity of their neighbourhood. Moreover, the Scottish Government has said that it will consider granting temporary licences under certain circumstances for periods of fewer than 28 days. We believe that this should simply be extended to say that all activity under 28 days falls outside of the licensing regime.

4.10: The consultation paper states that "unconventional dwellings" such as caravans, pods, and mobile dwellings will be excluded from the regulations. It is not clear why this is the case. We believe that having exemptions makes the regulations unnecessarily complicated and would advise that any kind of accommodation should fall within the scope of the definition.

4.13: We do not believe that all secondary letting should fall within the scope of the control areas. This is because not all secondary homes are detracting from the available housing stock. Under the current suggestions, a second home which is occupied for half the year would fall within the remit of the planning control zones, even though this second home would never be let residentially. We would suggest that secondary homes should only fall within the scope of the control areas if they are liable to pay business rates, that is to say, they are marketed for at least 140 nights in a year, and actually let for at least 70 nights in a year. It makes much more sense to align the planning law with existing tax law in Scotland than to arbitrarily put all secondary lets within the remit of the planning control zones.

2. Please identify any issues with the proposed control area regulations as set out in chapter 5, and how to resolve them.

General principles

The most important thing to say regarding the control zones is that it is not clear why they are necessary within the context of an already onerous licensing scheme. It seems to us that the planning control zones will amount to de facto bans of secondary short-term rental activity in specific local authorities.

At the very least, we believe that the control zones must adhere to the following principles. Firstly, that they are rooted in evidence, and namely evidence drawn from the licensing scheme. For this reason, control zones should not be introduced until the licensing scheme has been in operation for at least a year.

Secondly, that the criteria for establishing a control zone are set by the national government and are robust. We have suggested criteria in our response, but more important than the specifics is the notion that these criteria apply equally all across Scotland and are easily demonstrated by evidence.

Thirdly, that a robust planning permission system is established to prevent the system from being abused. We fear that the planning system will be used to simply ban secondary letting. We believe that local authorities must have to present clear reasons why they have not allowed planning permission for secondary lettings within control zones, and that applicants should have access to recourse if their applications are rejected.

Specific comments

5.1: Given that secondary letting will already have to comply with the licensing requirements, and may indeed have to pay more money to get a licence, we question the necessity of introducing planning controls as well at this time.

5.6: Local authorities should not be able to designate “all” of their area as a control area. This would amount to a blanket ban on secondary letting within certain local authorities. The largest single unit which should be allowed to be designated as a control area is a council ward. This will ensure that, even in cases such as Edinburgh, where some wards will have a comparatively high concentration of short-term lets, wards which do not have such a high concentration are not treated in the same way.

5.7: We are concerned that local authorities would simply be able to say that no planning permissions for short-term lets will be considered in control areas in their local development plans. We believe that the Scottish Government should make it illegal for local authorities to do so. At the very least, local authorities should have to publicly justify their decision not to allow planning permission.

5.9: If local authorities are able to revoke planning permissions after ten years, they must be required to give operators with planning permission at least one year’s notice of their intention to revoke the permission. This will give businesses operating in control areas more certainty.

5.11: We oppose the decision to remove permitted development rights from properties which are let for fewer than 28 days in a year within a control area. Secondary letting for 28 days or fewer in a year patently does not have an impact on the housing market. Indeed, this decision will make the market less flexible. For instance, if a landlord has a few weeks between different long-term tenants, he would currently be able to short let the property for additional income in that time. However, under the new proposals, he would require separate planning permission to do so. We would advise retaining permitted development rights, in line with our view that those who short let properties for fewer than 28 days in a year should not be considered within the scope of the definition of short-term lets.

5.14: We believe that it is disingenuous to say that control areas will not prohibit secondary letting. The easiest and cheapest option for local authorities in the context of control areas will be to simply reject or ignore planning applications within control areas. This is essentially the case in both London and Dublin, two cities which have introduced planning controls on short-term rentals. We appreciate that establishing planning control areas requires Ministerial notification, but we believe that the process must be more stringent. Local authorities should be required to provide evidence explaining why a control area in a particular ward is justified. Their case should be subject to challenge in court if necessary. The evidence can be drawn from the licensing scheme. For instance, if the number of licences for secondary letting in a particular ward exceeds 15% of the total housing stock, this would be sufficient justification for a control area to be awarded. The evidence based should be placed under triennial review, so that if, for example, new housing stock is built which dilutes the concentration of secondary short-term lets in a ward, the control area status can be revoked. We fear that the current rules will lead to local authorities naming vast swathes of their area as a control area, with Ministers simply rubber stamping those applications.

5.17: We fear that, under these provisions, many operators will essentially be banned without proper notice. For instance, if an operator submits their application for planning permission during the grace period, and the local authority simply sits on the application, this creates an environment of severe uncertainty for businesses. Existing operators who apply for planning permission in control areas should be granted that permission by default, unless the council has a compelling reason not to (e.g. a high volume of noise complaints related to that address).

Moreover, the consultation merely states that local authorities will have the power to set a grace period, not that they have an obligation to use that power. In our view, the grace period should be mandatory and generous, to allow all operators who would be required to apply for planning permission to do so. We would therefore urge the Scottish Government to make the grace period part of the national regulations, rather than leaving it to local authorities whether to introduce such a period and how long to do so for. We fear that, in some instances, local authorities will not introduce a grace period, and will simply begin enforcement straight away, or introduce a grace period which is too short to consider all applications.

3. Please identify any issues with the proposed licensing order as set out in chapter 6, and how to resolve them.

General principles

We have many specific comments about the licensing scheme, but the overall sentiment within the STAA is that the proposals do not constitute a necessary or proportionate policy response to the issues around short-term rentals. If the UK were still a member of the European Union, we think it likely that the European Commission would complain about these regulations to the Scottish Government.

The proposed licensing scheme would be, if introduced unamended, one of the most regressive schemes in the world. It is extremely complex, with a long list of requirements, some of which would impose substantial costs on hosts. It would impose an extremely stringent set of requirements on those who only let a single room in their home for a few weeks of the year in a manner that is totally disproportionate. By allowing things such as in-person visits, it also raises the possibility of being an incredibly slow and labour-intensive scheme, at a time when more and more work can be done online.

Moreover, by allowing individual local authorities to introduce additional rules on top of the existing ones, the scheme runs the risk of creating an extremely fragmented regulatory environment, making it very difficult for hosts to comply with.

The STAA's position on these issues has long been clear. We are in favour of licensing and registration schemes which are simple, online, and declaratory. This improves compliance due to the ease with which a licence can be obtained, allows local authorities to target their enforcement resources, and provides them with accurate information about the scale of activity, upon which further decisions about restrictions can be based if absolutely necessary.

Moreover, with respect to health and safety, we have always favoured a proportionate approach routed in existing tax law. Operators who are not running their short-term rentals as businesses, i.e. those letting for fewer than 140 nights a year, should not face the same restrictions as those who are operating full time, and this should apply irrespective of whether the let is a primary or secondary residence. The current rules require people to obtain planning permission to let their holiday home out for two weeks a year, an approach which is once again totally disproportionate.

We would suggest that the Scottish Government reverts to a simple, online, national register of short-term rentals, which can be used to aid enforcement of the myriad rules that short-term rental hosts already have to comply with, many of which are spelled out in the detailed response below.

Specific comments

6.1: We do not believe that licensing operators who only short let for a few weeks in the year is a proportionate policy response. We would recommend that the Scottish Government reverts to its previous definition of short-term lets as outlined in 4.2. This would exclude those who operate for fewer than 28 days in a year from obtaining a licence.

6.4: Given the impact of COVID-19 on the tourism industry in Scotland and elsewhere, we would recommend delaying the implementation of the licensing scheme until the end of 2022 at the earliest.

6.6: We believe that as much of the licensing process as possible should be online. This means, in practice, that all aspects which can be self-declared, ought to be, and that verification should take place online insofar as possible. This is especially important in the context of COVID-19, which renders in-person inspections an unnecessary risk.

6.7: We believe that the Scottish Government, and not local authorities, should decide which criteria require in person verification and which do not. It is not clear why, if it is safe to carry out an inspection online in Glasgow, it would require an in-person visit in Highland. If this does not happen, local authorities may simply require in-person visits for all aspects of the licensing regime which require verification, as a means of slowing down the licensing process and in effect banning the activity. Moreover, we would not recommend in-person visits at all. Firstly, because it will be impractical in the context of COVID-19 and secondly because offline licensing systems and in-person visits create additional friction points which increase the costs of doing business and raise barriers to entry. All inspections should be online where possible.

6.25: The requirement that all furnishings should have labels attached which show that they meet fire safety standards will be extremely time-consuming and costly for hosts. This should not be an obligation if the host is not short letting the premises on a professional basis, and should certainly not be a requirement for an individual sharing a room in their home. Enforcing this requirement across all kinds of short-term letting will simply price many non-commercial operators out of the market.

6.28: It is not clear why local authorities should have the discretion to determine their own view on what maximum occupancy should be. This rule will lead to inconsistency and confusion, and hosts will wonder why a property in one location is deemed to be overcrowded, whilst another property of the same size in a separate location is not considered to be so. The Scottish Government should set a national standard which sets out maximum occupancy limits which vary according to both the activity in question (e.g. home sharing vs. secondary letting) and the number of available bedrooms.

6.33: It is not clear why local authorities should be able to cite potential noise and nuisance as a reason for setting maximum occupancy limits. Local authorities already have powers to deal with antisocial behaviour and moreover setting limits on occupancy in certain properties is not guaranteed to reduce antisocial behaviour.

6.36: This is a major area of concern for us. By giving local authorities the power to impose additional conditions onto what are already quite onerous regulations, the Scottish Government will create a highly-fragmented regulatory environment, which will make it difficult for businesses to comply. More specifically, we do not believe that local authorities should have the right to simply apply whichever additional licensing conditions they wish, as this may lead to disproportionate outcomes. Rather, local authorities should have to justify why any additional requirements are necessary (i.e. what problem are the additional requirements trying to solve) and also that they are proportionate to the scale of the problem.

6.40: This provision is very imprecise. It is not clear who the ultimate arbiter of what “reasonably practicable” prevention measures are. If it is the local authority, this could simply become a mechanism to revoke licences every time a complaint is made. At the very least, if local authorities do introduce this provision, they should be required to issue clear guidance on steps that hosts can take to reduce the chances of antisocial behaviour, and hosts should have the right to appeal against any accusations that they have not taken such steps.

6.50: Requiring hosts to make physical alterations to properties, or to purchase noise monitoring systems, is a disproportionate licensing condition. It is very possible that local authorities will use a power such as this to create incredibly high barriers to entry for hosts and to enforce de-facto bans in parts of all of their local authority. Realistically, hosts who are not short letting their property full time are not going to invest in major alterations to their property. At the very least, as we have suggested earlier, hosts who let their property for fewer than 28 nights per year should be exempt from this requirement.

6.52: In an era where hotels are moving towards remote check in and people are avoiding unnecessary social contact, we find it strange that the Scottish Government is advocating in-person check-ins. This policy will be especially difficult in some of Scotland's larger rural authorities, such as Highland, and may lead to operators having to reduce the number of bookings they take because they are unable to be physically present at all check-ins. We do not believe that local authorities should have the power to mandate this.

6.54: Local authorities should not have the power to prescribe when guests can and cannot arrive to a property. This rule is especially impractical in the context of travel times. If guests come to a destination late in the evening due to their flight being scheduled late, or even delayed, the Scottish Government cannot seriously expect them to not be allowed to check in to their accommodation due to local restrictions.

6.56: How many nights a property is "available" is an inexact concept and should not be used. Online platforms will often, by default, advertise a property as being available for 365 nights in a year. However the host may have no intention of hosting that many nights. They might be indifferent to what nights they host on, but only intend to host 100 nights in a year. The platforms will still present the property as having been made available for 365 nights per year, however.

6.57: It is not clear why local authorities should need to collect data on the number of nights hosted per year if they will not be permitted by the Scottish Government to impose nightly caps on short-term rentals. We would suggest that the prohibition on nightly caps remains, but also that local authorities are not authorised to request the information on nights sold etc.

6.62: We believe that the Scottish Government should set very strict and clear guidelines on what can be charged by local authorities for a licence. Licences should be as low cost as possible to avoid unnecessary barriers to entry.

6.62: We suggest adding a further provision under 6.62, as follows:

Local authorities may wish to provide a discount on licensing fees for operators who are applying for licences for multiple properties in a single building, such as serviced accommodation or aparthotel providers. The discount would reflect the fact that the administrative costs associated with the licensing process would be reduced when multiple properties are located in the same building.

6.67: We cannot see why it would be necessary for local authorities to vary the length of time that a licence will last. Hosts should have certainty about how long they will be allowed to operate for legally, as they will make planning assumptions based on what that period of time is projected to be. Therefore, we believe that local authorities should not be able to vary the length of a licence, and that all licences should be granted for three years. Moreover, licences should be automatically renewed if the owner of the licence does not wish to alter the terms of the licence (e.g. the maximum occupancy limit) and there have been no complaints about the property.

6.68: We agree that the application process for a licence should be as straightforward as possible. To us, this means that all processes must be online. Moreover, operators should be granted temporary licences once they have made their application, so that they can start immediately. This will prevent perverse incentives on behalf of local authorities to artificially delay processing licences to prevent hosts from short letting their homes.

6.69: 20 metres seems like a relatively arbitrary distance and may not be very well understood by some hosts. We would suggest that, if notification is truly necessary, that hosts should be required to notify all properties with whom they share a wall, a floor/ceiling, or a garden fence.

6.73: Filing separate planning and licensing applications is overly bureaucratic, and at the very least each local authority should be required to ensure that the application forms for both can be found in the same place on its website. More broadly, it should not be the case the planning permission is required before a licence from the commencement of these regulations. The control areas should be evidence-based, and there will not be a satisfactory evidence base as to the scale of short-term letting in Scotland until the licensing scheme is up and running. Once control areas are established, it may be necessary for hosts to apply for both planning permission and a licence. As we have said, this process should proceed in parallel and ideally on the basis of a single application.

6.74: There must be very high evidence thresholds to justify the rejection of both licence and planning applications. For instance, noise and nuisance are highly subjective, and it cannot be the case that all is required for an application to be rejected is for there to have been some noise complaints from a neighbour in the past, because these complaints may have been vexatious. Where there is doubt, the host should receive the benefit of that doubt, and where an application is rejected the applicant should always have access to a legal challenge.

6.82: As stated earlier, we believe that it is for the Scottish Government to decide when a local authority can and cannot visit a property for the purposes of a licensing application. This will help to prevent unnecessary regulatory fragmentation and to prevent local authorities from using physical visits as a means to artificially slow down the licensing process.

6.125: As above, in the absence of changes to the terms of the licence or of complaints pertaining to the licence holder, licences should be automatically renewed.

6.139: We are concerned that the suggested register of short-term lets may contravene data protection law. We cannot see why there should be public registers of short-term rental licence holders, complete with addresses and the name of the host. This could lead to hosts being intimidated by neighbours who disagree with the existence of short-term lets in their local area, whilst also advertising to potential criminals that the property might not be lived in full time, endangering the safety of the residents and guests. A register could be a useful tool for the Scottish Government to have internally, as it would help with evidence bases for the planning control areas, but under no circumstances whatsoever should it be made public. Such a register should be administered nationally, rather than by each individual local authority.