

## Short-term let licensing and planning control regulation – call for evidence

22/01/2021

### Introduction

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SLE would like to thank the Local Government and Communities Committee for the opportunity to provide written evidence to aid your scrutiny of The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 and The Town and Country Planning (Short Term Let Control Areas) Regulations 2021 respectively.

As we noted in our response to the Scottish Government's consultation we are not opposed to ensuring that the short-term lets sector is safe for visitors and that it does not negatively impact the provision of permanent housing, however we have a number of concerns around what we consider has been unnecessarily rushed drafting of regulations and potential unintended consequences.

These regulations will impact upon the whole short-term lets sector at a time when they are trying to survive COVID-19 and gear up for the predicted revival in staycations. Imposing such a licensing scheme at this time will hamstring small businesses right across rural Scotland precisely when they need time to recover. We strongly recommend the regulations are not passed at this stage.

Our key concerns can be summarized as follows:

**Unintended consequences for the 'unconventional accommodation' sector in rural communities.** Many rural communities have used tourism as a means of diversifying local economies, building resilience and stimulating wellbeing through access to the countryside. We are concerned that many facilities which provide these benefits will be unnecessarily impacted by the regulations. For example, huts, glamping pods, wooden lodges, and yurts etc. would be considered static for the purposes of the regulations (paragraph 37 of the [policy note](#)) and therefore not exempt from the mandatory requirements under the proposed scheme. It is also our understanding that where there are no shared facilities there is nothing to prevent a licensing authority requiring a licence for each accommodation unit. We consider this approach to be both unpractical and disproportionate. Moreover, we do not consider the licensing of huts and glamping pods in rural Scotland, at cost to the owner and licensing authority, will address the perceived problem with anti-social behavior or provision of residential housing in Edinburgh.

**Unintended consequences for short-term lets associated with grazing.** Where a farmer is looking to rent land and an associated property (e.g. a bothy) for grazing etc. and where it is being rented for the farmer's own purposes rather than to provide work or services to the owner (as prescribed in the Order under Interpretation 2(d)), this may be captured by the regulations. We are concerned that meeting repairing standards in such properties which are only rented for a few weeks in a year could be prohibitively expensive and this could remove an element of flexibility in the context of the rural economy.

**Unintended consequences for the B&B sector.** Home sharing is defined in the Licensing Order (sch. 2, para 13) and includes bed and breakfast activity. B&Bs are not listed as excluded accommodation in schedule 1. That means B&B operators will be captured by the new regulations. Mandatory conditions for the licensing scheme include meeting Repairing Standards legislation and EPCs, despite B&Bs being previously exempt from both pieces of recent legislation. This will likely result in significant unforeseen costs for rural businesses that was not identified in the BRIA (which was only published after the consultation).

**Potential complications over sub-letting in agricultural and crofting tenancies.** It is our view there has been a lack of consideration given to the case of agricultural or croft tenancies where the owner is not in day-to-day control of what happens to houses within such tenancies. For example, if short-term let activity is being carried out as a side-line by the agricultural tenant in the main farmhouse or if the agricultural tenant is using any of the spare cottages for holiday lets, there may be complications in terms insurance. Where a property is being sub-let there needs to be a declaration of consent from the owner, however, there is no requirement to provide evidence of insurance as part of that consent. This raises the potential for double insurance issues if the license operator then decides to buy their own insurance to meet requirements under paragraph 10 of schedule 3.

**Truncated consultation process.** The Scottish Government's consultation did not follow the usual three-month practice but was instead condensed into little more than four weeks in the middle of a pandemic with the sector reeling from COVID-19 restrictions. The Scottish Government's own [best practice guidance](#) states: *"Consultations should be open for a minimum of 12 weeks, in order to meet existing SG commitments on consultation. In many instances, consultees will need time to consult with their members / user groups before submitting a response. Only in very exceptional circumstances should less than 12 weeks be given, and the reasons for this should be fully explained where this happens"*.

**Timing: impact of COVID-19.** A [report by frontline](#) for ASSC found that the self-catering sector lost £265m due to COVID-19 restrictions since September 2020 alone. 38 organisations including SLE wrote an open letter to the Scottish Government in October 2020, calling for a delay in the Scottish Government's regulations to allow the tourism industry to recover from the pandemic. The Minister for Local Government, Housing and Planning Kevin Stewart MSP acknowledged in his Government's consultation response: *"Perhaps the greatest number of comments centred on whether to proceed with*

*regulation at this time or to delay it.”* The government has postponed plans for the Transient Visitor Levy due to COVID-19 and the taxation element of short-term lets regulations will not be taken forward until later in 2021 demonstrating a willingness to postpone. Despite this, the government continues to progress with this regulation.

**Lack of Business Regulatory Impact Assessment (BRIA) with consultation.** No BRIA or partial BRIA was published to accompany the Scottish Government’s consultation. This despite the Government’s own [better regulation agenda](#) which states: *“Partial BRIAs should be carried out at consultation stage. The final BRIA builds on the partial BRIA and the consultation analysis.”* Without a partial BIRA at the consultation stage this makes it challenging for fully informed representations to be made, particularly at a time when many of the respondents were struggling to cope with onslaught of COVID-19 and its impact on their businesses.

**Human Rights.** It is not clear to us whether appropriate attention has been paid to the effect of such substantive powers on the letting market nor whether such a provision is compatible with the duties on public authorities under human rights legislation. We are aware of concerns that the proposals on control areas could well result in the closure of businesses by reason of change in public policy, without offering fair compensation to the affected business. It would be useful to understand what assessment has been carried out in terms of Article 1 of Protocol 1 of the European Convention on Human Rights.

The Scottish Government has a well-established better regulation agenda that aims to eliminate obsolete and inefficient regulation, tackle inconsistencies in regulatory systems and enhance Scotland’s competitiveness by championing the five principles of better regulations. These are that regulation should be:

- Proportionate
- Consistent
- Accountable
- Transparent
- Targeted

It is our strong view that the regulations as drafted do not meet these standards and we therefore ask that the Committee does not support these regulations.

### **1. Do the proposed changes strike the correct balance between protecting the long-term sustainability of local communities and promoting tourism and strong local economies?**

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No. It is our view that the long-term sustainability of local communities, including tourism in rural Scotland could be undermined by these regulations. A licensing system is a blunt tool to fix a perceived and localised problem of amateur online platform operators in Edinburgh, rather than a solution that is

appropriate for the whole of the Scotland, nor is it one that makes a necessary distinction between different types of visitor accommodation providers.

As intimated above, it is unreasonable to expect owners of unconventional accommodation to be required to pay licensing fees, monitoring fees and potentially planning fees (where not already applicable) particularly when the industry has been hit very hard by COVID-19. If rural B&Bs are captured by these regulations they stand to be liable for EPC and repairing standard regulations which could have a devastating financial impact on businesses trying to consolidate after losses incurred due to COVID-19. Forcing B&B owners to comply with this regulation goes against Scottish Government [guidance](#) which states: *“Holiday lets are subject to other rules on non-domestic residential accommodation and it is not appropriate for them to be subject to the repairing standard as well.”*

SLE has already received a significant number of queries from members asking about the financial implications of these regulations and how, if implemented, it might impact their decision to bring properties back into use. We are concerned that with an annual licence fee of anything between £500 and £1000 (based on HMO licenses) per property, plus a ‘monitoring fee’ and the potential for planning permission fees, many will not invest in developing rural properties to the detriment of the local economy. In addition, small businesses struggling with serious cash flow issues brought on by the pandemic (with no end in sight) are unlikely to be in a position to cope with this extra financial burden. Businesses in fragile rural communities could close, livelihoods and jobs lost, just at the time when the tourism sector is meant to be gearing up to cater for a resurgence in staycations. Forcing rural businesses to comply with the scheme will not solve anti-social behavior issues or impact residential housing shortages in Edinburgh which the regulations intend to address.

## **2. Has the Scottish Government’s defined short-term lets in a clear and correct way in the legislation?**

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No. It is clear that there has not been adequate consideration in drafting the regulations as to the different types of accommodation providers. We do welcome the exclusion of Private Residential Tenancies (PRTs) given their odd status as having no end date, with the potential to be as short as 28 days or as long as the lifetime of a tenant, as per their express exclusion from the prohibition against residential leases being more than 20 years as they have the potential of lasting for more than 20 years. We fully agree that it would be inappropriate for a landlord to be penalised and be expected to have a “Short-term Letting Licence” if they have a run, through no fault of their own, of very short PRTs.

However, in respect of other accommodation there has not been the same thought given in terms of the application of the regulations. For example, we do not consider it appropriate to include huts, glamping pods, lodges, yurts and other static alternative accommodation under the remit of these regulations. Businesses operating this type of accommodation already meet high standards in order to receive the appropriate permissions and licensing them will only add to operating costs without any real benefit. Crucially, licensing alternative accommodation will not solve perceived problems with anti-social behavior or lack of residential housing provision in Edinburgh or other areas. It is our view the

glamping/camping/hutting sector has not been properly consulted over the potential impact of these regulations. B&Bs should also not be captured by the regulations and this could have been addressed by proper consultation with industry. This unintended consequence is as a result of the truncated nature of the consultation process, the rushed timeline from the Scottish Government to fulfil a political objective, and the failure to properly assess the consequences of the regulations.

There appears to be little in the way of explanation as to why agricultural and crofting tenancies have not been excluded from the regulations. And while we have identified one area of complexity in the potential for double insurance, there may be other unintended consequences for this sector not fully explored. Similarly, as identified above there will be unintended consequences for short-term lets associated with grazing, the impact of which has not been properly considered.

We do not agree that where a property is someone's main residence but where they occasionally let out rooms, they should be required to apply for a licence and potentially planning permission. This is not a proportionate response to perceived problems with Airbnb in Edinburgh and will have unintended consequences in rural communities which may not have an adequate supply of stand-alone visitor accommodation to meet growing staycation demand. There may also be human rights implications under Article 1 of Protocol 1 of the European Convention on Human Rights which protects the right to enjoy your property peacefully. We do not consider the consultation process to date has been sufficient to check that a fair balance has been struck between the public interest in regulating this type of short-term let against the individual's private property rights.

### **3. Will local authorities have adequate resources, powers and expertise to make a success of their new powers and duties?**

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No. As detailed by the [local authority responses](#) to the consultation, many local councils are concerned about the resource implications of the regulations at a time when their budgets are already stretched, as well as the administrative burden and the lack of specific Scottish Government funding for set-up costs.

Additional burdens will be placed on local authority planning and licensing teams to manage the requirements of a new scheme at a time when they can least afford it – despite claims that councils will be able to recoup this later down the line through fees. A proper impact assessment of the costs is required and it underlines the case that a postponement of the regulations is desirable.

#### **Next steps**

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In our view the Committee should reject these regulations with a view to postpone and revisit at a later stage. They have been rushed, both in terms of consultation and drafting and as a result there are too many unintended consequences which will have a negative impact on the tourism sector – particularly in a rural context.

If the Committee are minded to support the regulations, we strongly suggest adopting the Grandfather Rights proposals developed by ASSC.

In our view this approach would allow those operators who already comply with safety regulations and industry standards to continue trading without the need for another licence. The proposals also allow for

local authority discretion to revoke a Grandfather Right and require a property to comply with the licensing scheme if a breach is discovered. Such an approach would better allow for local authorities to balance the needs and concerns of their communities with wider economic and tourism interests (as the regulation intends) without putting visitors at risk.

**For more detailed information**

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