

Short-Term Lets: Consultation on a Regulatory Framework for Scotland

Response from Andy Wightman MSP

July 2019

Introduction

I welcome the opportunity to respond to this consultation on a regulatory framework for short-term lets in Scotland. Since I was elected as an MSP in May 2016, I have worked with constituents who have been concerned about the rapid proliferation of short-term lets, not just in Edinburgh but throughout Scotland. This form of letting has exacerbated the acute shortage of housing in places, such as Applecross in Wester Ross and Elie in the East Neuk of Fife. These concerns resulted in me launching the Homes First campaign to better regulate the short-term lets sector in November 2017¹.

This campaign has published a series of concise research papers covering topics such as legislation² and taxation³. Of course, short-term lets are not a new phenomenon. However, the increase in domestic properties being converted into short-term let commercial enterprises has become a matter of concern.

My experience from the testimony of constituents and through meetings with representatives from the short-term lets industry leads me to the conclusion that any legislative or regulatory interventions must be clear and simple.

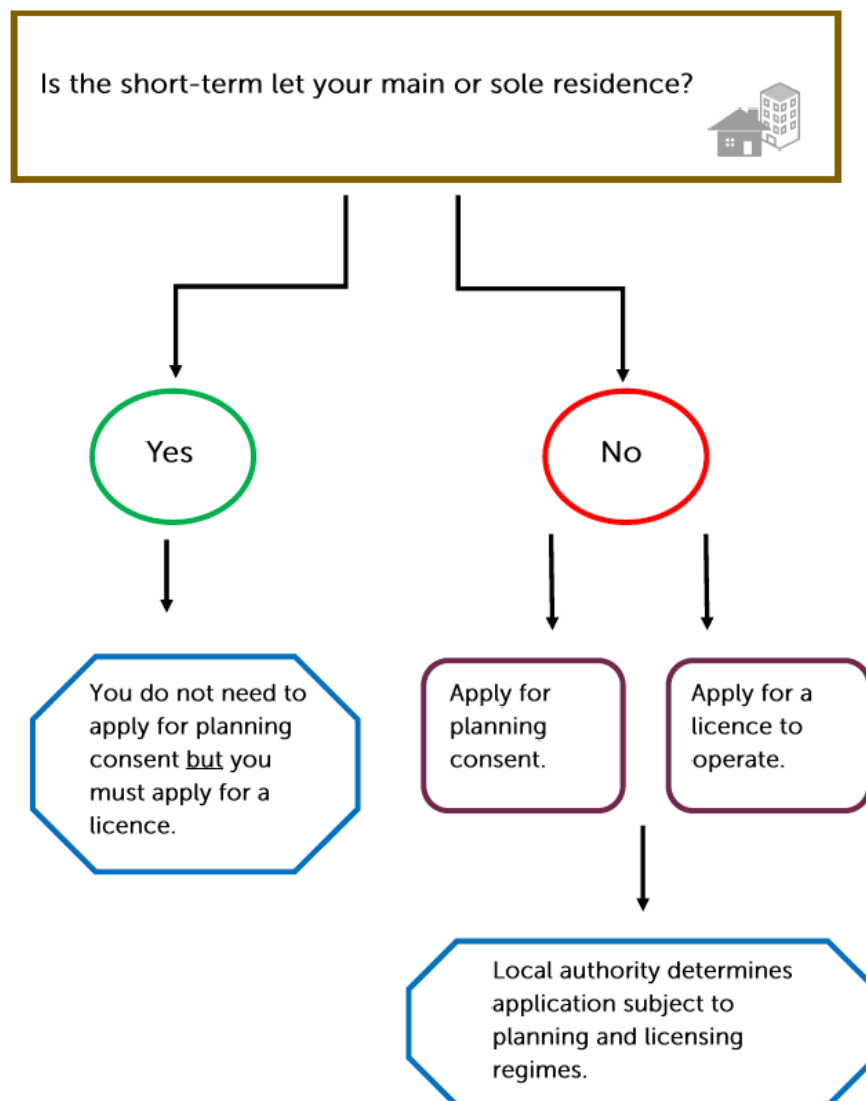
Commercial short-term lets (that is to say domestic properties used for short-term lets that are not the sole or main residence of any person) require planning consent. That will continue to be the case and therefore the planning system is a key regulatory regime for determining where and in what circumstances short-term lets will be permitted.

The other key regulatory regime is licensing, which is responsible for registering and holding to account the operators of short-term lets. The regulation of short-term lets must therefore be a complimentary process of planning (dealing with the premises) and licencing (dealing with the operator).

An excellent illustration of such a regulatory system is the Licensing (Scotland) Act 2005⁴. It provides in Section 20 that any application for a license must be accompanied by, among other documents, a certificate to show that the premises from which the person intends to operate has planning consent (see Annex I).

My proposal for a regulatory regime distinguishes between those who are sharing their own home and those operating a commercial short-term let that is not the sole or main residence of any person. It proposes the continuing requirement for planning consent for the latter and a licensing regime designed to regulate the operators of both types of short-term letting enterprises. The following diagram (Figure 1) illustrates how this would work in practice.

Figure 1: A diagram of proposed regulation for short-term lets



Responses to Questions

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 and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation?

Through the Homes First campaign website I have collected over 100 submissions of qualitative data from residents who have first-hand experience of living next to short-term lets⁷. Some examples of anonymous testimony from constituents include:

"My story is that of many people in Scotland facing precarious housing and living within broken communities. I live here in fear of being replaced by a short-term let, their profits outweighing my ability to live here. I live here with no affordable housing options. I live here without a community, where people feel they have no voice to effect change because we're few and getting fewer. There are business interests but all we're interested in is having a place to live."

"I worry that eventually my tenement building will just become a place for people passing through, with no long stay residents to give the place a sense of community."

"I live in a tenement block in Edinburgh. When I moved into my flat there was a mixture of residents – old and young, single people and families with kids. Many were owner occupiers while others rented for significant periods of time. Now on my floor the other two flats are run as short-term lets. One is a short-term let all year round – it's a residential flat purchased for purely commercial purposes."

"This is also a rural issue. Out of season communities become dark and empty, with fewer people paying council tax, using the local buses and health services, helping to run local projects or sitting on community councils. Historical and personal links feel broken."

"The lady who lives downstairs from my flat has early onset dementia. Where once she would have seen the same people and we would all be aware of her symptoms, you now have new visitors in the tenement every week."

"I look after the communal garden because I enjoy it, but it is becoming less easy to share jobs like cleaning the stairs. Anyone who lives in a tenement will know how 'echoey' the stairwell often is, but visitors oblivious to this fact, hold loud conversations that penetrate my flat at uncivilised hours of the day. Or they bump large cases all the way down the stair on their way to catch early flights."

"I live in a flat below a short-term let and it's making my home life unbearable. It's very noisy and the people who visit don't really care about keeping noise to a minimum between 10 pm and 7am because they are on their holidays. I recently complained to the guests in the flat, asking them (at 2am) to turn off the music

and keep the noise down. They responded by turning the music up and stamping on the floor for over an hour."

"Rural communities are vulnerable to the loss of very small numbers of homes, shops and local facilities. Short-term letting can have an impact far greater than might be expected. Small and rural communities lack the economies of scale in towns and cities. People may lack the opportunity to move locally while keeping the same job so a lack of local housing means moving away."

"It's not just the noise, it's also the smoking and the mess in the stair and the unsettling feeling that people don't care about others in the building."

"It's nightmarish and the owners or agents may well say 'Respect neighbours – No parties!' on their adverts but they are not around in the middle of the night to suffer the noise or deal with their awful guests."

"Living in the Old Town feels like being left out and considered lesser than other residents of Edinburgh. As though this place isn't for me, it's for the tourists. That I have no place being here or no right to expect to be treated better. Living here you are expected to accept the loud noises of the people staggering through the closes and the courtyards, of the parties booming not knowing where the noises are coming from."

"It's like living in a mix between a hotel and a shopping mall, surrounded by unregulated businesses the council doesn't know or care about. New people come in every day, almost all of the flats around me being let short term all year round. Imagine everyone around you being transient. I might meet someone, help them out but then never see them again. Imagine that being the only kind of interaction you can enjoy with the people living around you, knowing that if you have an issue you're on your own, but if they have an issue you're possibly the only person they can turn to for information."

"There is an inherent lack of safety knowing that there's no accountability mechanism set up for the people that come in and out all the time. People try to get into my front door almost every day: pushing their key, pushing the door, fiddling with the lock for minutes sometimes. They're not trying to rob me, at least I don't think so. I often open the door when this happens and politely ask what they're doing."

"We live in a ground floor apartment and there was a short-term let property directly above us. We endured constant noise of people and children moving, running and banging around and scrapping furniture on the wooden floors. Despite trying to resolve the issue by asking the owners to put down carpets or at least rugs, we were told that it is a flat and we should expect some noise!"

"The last straw for us was when a 'guest' commented on a reviews website that they were having to be quiet for neighbours and apparently they were made to feel unwelcome by all the neighbours in the stair. When the owners apologised to the customers on our behalf, we were furious."

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

Yes. However, I see no need to regulate swapping. The two types of premises that require regulation are home-sharing and commercial short-term lets. The latter is a commercial business and should be treated as such.

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.

This is a planning matter and as such it is up to planning authorities to determine the suitability of rules based on local plans and policies.

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

It must be emphasised that a property, which is no longer someone's sole or main residence and is operating as a commercial short-term let should be treated as a business premises.

Currently the definition of short-term lets in law is weak, although it is loosely covered through secondary legislation in Section 2 of The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, which states the following⁸:

Modification of section 12 of the 2006 Act

2.—(1) Section 12(1) (tenancies excepted from the repairing standard duty) of the 2006 Act (2) is modified in accordance with paragraphs (2) and (3).

(2) Omit paragraphs (c) to (e).

(3) At the end insert—

“(f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday.”.

A more robust definition highlighting clarity between letting a spare room and letting a whole property on a commercial basis would be welcome.

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

The key point to address in this is that domestic homes are for residential use. If someone wishes to change how a property is used from a sole or main residence into a commercial short-term let, then they must apply for planning permission. This is a planning matter and it should be at the discretion of planning authorities to determine how properties are used through a material change of use.

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

I agree with paragraphs 4.33 and 4.34 of the consultation document, which highlight how short-term lets can negatively impact on residents' mental health and wellbeing. We should all be able to enjoy peaceful enjoyment of our homes as specified in Article 1 of the First Protocol of the Human Rights Act 1998⁹. However, with the setting up of short-term let businesses within close proximity of people's home this has had an undue negative effect on residents' lives in villages, towns and cities throughout Scotland.

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

I am aware from correspondence with constituents that there are increasing issues with rising house prices and rents, thanks in large part to the growth of the short-term lets sector. Investors are quickly buying up property in Edinburgh to take advantage of the substantial financial returns that can be made from this form of letting. Many landlords in the Private Rented Sector are shifting their properties to short-term letting since they can now make the same amount of money in a week for a property that they used to get in a month's rent. This has a knock-on effect for renters who find that there is limited availability of long-term housing.

These issues of supply and demand are not just unique to Edinburgh as I have received correspondence from residents in rural areas citing that there is a decrease in the availability of long-term homes. The concomitant effects of this means that skilled workers cannot afford to live and work in rural areas forcing the demise of local economies.

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

It is regrettable that the Scottish Government's support for my Planning (Scotland) Bill amendment on short-term lets, as set out in paragraph 4.20 of the consultation document, was not realised at Stage 3 of the Bill. This is a tremendous opportunity lost because planning is one of the two pillars of regulation. It is my opinion that the planning regime could be strengthened by a robust licensing scheme in that the licensing process would alert the planning authority to any breaches of planning law.

As noted in the introduction to this consultation response, Sections 20 and 50 of the Licensing (Scotland) Act 2005¹⁰ already stipulate that planning permission is required for a licensed premises before a licence can be issued. Drawing from that, it is clear that local authorities already regulate through planning and licensing, so this could simply be applied to the short-term lets sector.

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

Although there are antisocial behaviour powers in place, for example through The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011¹¹, it is apparent that these are ineffective essentially because the planning regime is not working. Paragraph 4.24 of the consultation document is correct to acknowledge that applying antisocial behaviour law to short-term lets is complex. As this is an unregulated sector with unknown operators, it is apparent that no-one is accountable for any disruption that neighbours of short-term lets face on a regular basis. The high turnover of guests makes this even more difficult to enforce.

Planning law would allow planning officials to give consent (or not) to short-term lets in close proximity to domestic homes. This would assist in tackling antisocial behaviour. In Edinburgh, there is a presumption against short-term lets in "flatted properties"¹². If this policy was adopted more widely, it would enhance the regulatory framework combining planning and licensing together.

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

The current system is not working. Systems can only work with a proper register of short-term lets properties that are operating and a list of operators that have undergone a "fit and proper" landlord test, as prescribed in Part 8 of the Antisocial

Behaviour etc. (Scotland) Act 2004¹³. This would bring the standards of landlords and agents of short-term lets up to the level set by the Private Rented Sector.

Linking planning with licensing law means that landlords, who have passed a “fit and proper” test can be issued licences to operate properties that are of a high safety standard.

Overall it is important to underline that if there are issues with short-term lets (for example, receiving complaints from neighbours), these can only be dealt with if we know the identity of the landlords and responsible operators.

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

I agree with paragraph 4.31 of the consultation document. As a minimum, short-term lets (both landlords and properties) must be regulated to the same standards of the Private Rented Sector.

Throughout the Homes First campaign, along with Councillor colleagues, I have corresponded with representatives from Police Scotland and the Scottish Fire and Rescue Service. It is extremely worrying that short-term lets are effectively an unregulated sector exposing guests to high levels of risk through, for example, potentially faulty electrical or gas systems in properties.

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

I have no *prima facie* objection to the current definition as set out in paragraph 4.39 of the consultation document. However, this needs to be enforced properly to make it effective.

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

I agree with the Barclay Review’s recommendations and the introduction of a Transient Visitor Levy in Scotland.

14. Do you have any comments on the eligibility of self-catering accommodation for the Small Business Bonus Scheme?

Short-term lets should not be eligible for the Small Business Bonus Scheme (SBBS). As I reported in August 2017, from data obtained from the Lothian Joint

Valuation Board, around 83% of short-term lets are valued under the SBBS threshold of £15,000. This means that £6.6 million is exempted and uncollected¹⁴. It is worth noting that this does not take into account properties valued up to £35,000, which at the time, could have benefitted from tax breaks of up to 25%.

Short-term lets are properties that are removed from the housing market and they generate profits far in excess of what could be gained by the domestic residential market. Incentives like the SBBS are not fit for purpose as they allow private landlords to benefit from public services, such as refuse collections and street lighting without contributing a single penny to local funds.

If we are to sell Scotland as a thriving destination with communities where people can, to paraphrase one short-term let platform, 'live like a local' then landlords must step up and pay their fair share to maintain local amenities.

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

No

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

I agree with paragraph 4.55 of the consultation document, which suggests that the Scottish Government wishes to better understand "the problems that any new regulations would be intended to address". It is essential that communities are consulted and allowed the time and space to enter into a participatory process to help informed the design principles. This methodology should be iterative where the process is refined and improved through a series of prototyping, testing and analysis¹⁵.

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

Short-term lets are already in the planning regime as a *sui generis* class. It is correct to assert in paragraph 4.16 of the consultation document that planning authorities should determine whether or not there is a material change of use from a domestic property to a short-term let. As such all commercial short-term lets should be subject to planning consents together with the licencing of operators.

The licensing aspect could be swiftly enacted through secondary legislation under the Civic Government (Scotland) Act 1982¹⁶. This has been done before, for example, in the licensing of Houses in Multiple Occupation as set out by The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000¹⁷.

The scope of licensing should incorporate a statement similar to Section 50 of the Licensing (Scotland) Act 2005, which requires operators to provide “a provisional planning certificate in respect of the subject premises”¹⁸. It must also include further health and safety measures to safeguard the wellbeing of guests and neighbours, such as confirmation that the title of the property allows its use as commercial premises, confirmation of commercial insurance cover, confirmation that any lending secured on the premises allows commercial use, confirmation of appropriate gas and electrical safety checks, contact details concerning the responsibility of the operator and the Reference Number on the Valuation Roll.

Overall, local authorities should be given the flexibility in this licensing regime to add conditions as they see fit.

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

See response to Question 17.

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 market-based approach should be rejected. The regulation of commercial short-term lets must be done through planning and licensing in the public interest.

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

It should be up to local authorities to decide such a question. Short-term let platforms must not determine the days themselves. If this regulatory framework is to be effective and robust then it must remain public focussed.

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

As I have noted throughout this consultation response paper, if a property is not the sole or main residence of someone and it is being let out on a short-term basis commercially then that should be subject to a full licensing and planning regime.

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

I broadly agree with paragraph 4.87 of the consultation document but must reiterate that flexibility is built into the licensing scheme so that local authorities can add conditions as they see fit.

23. Do you have any other comments on short-term lets not covered in your answers to the above?

The results of this consultation must be drawn from communities and people with first-hand experience of short-term lets. It cannot be driven by the market. Scotland is in the grip of a housing crisis and the upsurge in short-term lets means that there has been an evident reduction in the availability of good quality affordable housing. Healthy and sustainable communities can be achieved and I do welcome these first steps towards introducing a framework for what is essentially an unregulated sector. Nevertheless, the focus must be on regulation through planning and licensing.

Annex I

Sections 20 and 50 of the Licensing (Scotland) Act 2005:

20 Application for premises licence

- (1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for a premises licence in respect of any premises.
- (2) An application under subsection (1) must—
 - (a) contain a description of the subject premises, and
 - (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises,
 - (iii) the certificates required by section 50(1).

50 Certificates as to planning, building standards and food hygiene

- (1) A premises licence application (other than a provisional premises licence application) must be accompanied by—
 - (a) a planning certificate,
 - (b) a building standards certificate, and
 - (c) if food is to be supplied on the premises, a food hygiene certificate,

in respect of the subject premises.

- (2) A provisional premises licences application must be accompanied by a provisional planning certificate in respect of the subject premises.

[...]

- (4) A planning certificate is a certificate signed on behalf of the appropriate authority and stating—
 - (a) that planning permission under the Town and Country Planning (Scotland) Act 1997 (c. 8) (referred to in this section as “the 1997 Act”) in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained, or
 - (b) that no such planning permission is required.

-
- ¹ Homes First, 2017, *Homepage*, <https://greens.scot/homesfirst>
- ² McDonald, C & Wightman, A, 2017, *Short Term Let – Legislation: Briefing Paper No. 3*, https://greens.scot/sites/default/files/BriefingPaper3-Legislation_0.pdf
- ³ McDonald, C & Wightman, A, 2017, *Short Term Let – Taxation: Briefing Paper No. 2*, <https://greens.scot/sites/default/files/BriefingPaper2-Taxation.pdf>
- ⁴ Licensing (Scotland) Act 2005, <https://www.legislation.gov.uk/asp/2005/16>
- ⁷ Homes First, 2017, *Share Your Story*, <https://greens.scot/homesfirst/share-your-story>
- ⁸ The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, <http://www.legislation.gov.uk/ssi/2019/61/contents/made>
- ⁹ Human Rights Act 1998, <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>
- ¹⁰ Licensing (Scotland) Act 2005, <https://www.legislation.gov.uk/asp/2005/16>
- ¹¹ The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011, <https://www.legislation.gov.uk/ssi/2011/201/contents/made>
- ¹² City of Edinburgh Council, 2016, *Guidance for Businesses*, https://greens.scot/sites/default/files/Edinburgh_Business_guidance_February_2016.pdf
- ¹³ Antisocial Behaviour etc. (Scotland) Act 2004, <http://www.legislation.gov.uk/asp/2004/8/contents>
- ¹⁴ McDonald, C & Wightman, A, 2017, *Short Term Let – Taxation: Briefing Paper No. 2*, <https://greens.scot/sites/default/files/BriefingPaper2-Taxation.pdf>
- ¹⁵ UK Government, 2018, *What's the role of design in policy?*, <https://openpolicy.blog.gov.uk/2018/02/07/whats-the-role-of-design-in-policy/>
- ¹⁶ Civic Government (Scotland) Act 1982, <https://www.legislation.gov.uk/ukpga/1982/45/contents>
- ¹⁷ The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, <http://www.legislation.gov.uk/ssi/2000/177/made/data.pdf>
- ¹⁸ Licensing (Scotland) Act 2005, <https://www.legislation.gov.uk/asp/2005/16>