

DRAFT PLACE Response to the Consultation on licensing plans for the regulation of short-term lets

Consultation closes **Friday 16th October 2020**

PLACE requests feedback on our draft response by **Friday 2nd October**

We will finalise our response based on this feedback and share by **Monday 5th October**

PLACE is a grassroots network of residents personally affected by the rapid expansion of largely unlawful whole property short-term lets in our communities. The network was set up in April 2019 to share information on how to report short-term lets operating without planning permission or in breach of title conditions; and to lobby the City of Edinburgh Council and the Scottish Government to take action to protect residents' rights to peaceful, safe and affordable homes.

We agree with much of the proposed legislation. Our concerns and amendments relate to the ability to monitor, evidence and enforce against unlawful activity. We point to the experiences of cities across Europe who recently wrote to the European Union for help in fighting Airbnb expansion, and ask that we learn from their experience in designing a transparent system, with tough, fraud-resistant laws.

We suggest one final amendment to the design principles: The design must be lawful. It should draw from the extensive case evidence relating to unlawful short-term letting in Scotland¹, and design legislation to protect the right to housing, to enjoy your home, and to private and family life.

PLACE feels a huge relief that action is finally being taken on this issue which will protect communities, visitors and our lawful accommodation providers. We are in agreement with the proposed plans subject to the amendments below. These are described in detail in the full consultation response.

1. **More homes (5.4, 6.6, 6.143)** - Effective regulation of short-term lets means more homes and more cohesive communities.
2. **Protect the private rented tenancy (4.8)**
3. **No “ghost hotels” and imitation “home” letting (5.4)** - a lets-based home letting allowance would make illegal activity almost impossible to carry out undetected.
4. **Fair and lawful home letting allowances (5.4, 6.60)** - a lets-based home letting allowance is consistent with the extensive case evidence on unlawful short-term lets, and meets the needs of genuine home letting residents.
5. **Recovery after Covid (5.4)** - support the responsible tourism industry by stopping unlawful and unsafe short-term lets, once and for all.
6. **A sustainable Festival (5.4)** - Effective regulation means: more homes, more home sharing and incentivises longer short-term lets which is ideal for Festival workers, including performers.

¹ <https://placeedinburgh.org/planning-appeal-decisions/>

7. **Make planning permission a mandatory licence condition with *external* verification** (6.6) - we simply cannot trust all hosts to self declare this truthfully.
8. **Clearly define “short-term letting activity” to include *advertising* a property for short-term letting** (6.116)
9. **Give residents the same entitlement to safety as visitors** (6.34) - recognise the case law which finds planning permission is essential to protect residential security, particularly in tenements.
10. **Increase the fines for those who make false statements in order to get a license, and create the toughest consequences for repeat offenders.** (6.121)
11. **No temporary licenses for large events** - this has the potential to create periods of intensive short-term letting which will seriously undermine residential amenity. (6.135)
12. **Make public the register of hosts and licensed accommodation** (6.139) - promote lawful and responsible letting to protect visitors and legal accommodation providers.
13. **Separate license numbers for commercial, home letting and home sharing** - e.g. COM1234, HOMESHAR1235, and HOMELET1236 allows visitors to clearly see what kind of accommodation they are booking, check the lawfulness of their accommodation against the register and report accommodation they think is being let fraudulently. It also allows authorities to collect the evidence needed to enforce against illegal ghost hotels and imitation “home” lets. (6.143)
14. **Minimum grace periods in Edinburgh.** (5.17)

Full Consultation Response

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

Agreement

4.7. We agree with the definition of short-term lets as set out in section 4.7.

4.8 We agree with the principle that a short-term let can exist for a period of more than 28 days (for example where people are working away from home for work), and that regulation should dovetail with regulation of the private rented sector under the 2016 Act. However, it must be clear that a Private Residential Tenancy (PRT) will always exist, regardless of documentation imposed by landlords and letting agents, where that property becomes their only or principal home. The guidance should not provide any loopholes which can be exploited by those wishing to use “sham holiday lets” to avoid the PRT as exposed by Living Rent². The lets-based home letting allowances proposed by PLACE in 5.4 dovetails neatly with this definition.

4.11. We strongly agree that all short-term lets: home sharing, home letting and commercial letting should require a license.

Proposed amendments

4.13 We note that all secondary letting will fall within the scope of control areas, where such areas have been established. We assume this means that commercial short-term lets will not require a

² www.livingrent.org/shamholidaylets

secondary letting type license outside of control areas but may still need planning permission. It would be useful to issue guidance for all councils on this matter so that short-term letting hosts are still aware of their other responsibilities.

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

Agreement

5.9. We agree that planning permission should be granted for 10 years only to prevent the ever increasing number of properties used for short-term lets.

5.11. We agree with removing the permitted development right of 28 days and the reasoning described in 5.12.

5.15. We appreciate the acknowledgement of “We suspect that there are a number of instances of secondary letting across Scotland operating without planning permission having been sought (i.e. operating illegally, either wilfully or in ignorance).”

Proposed amendments

5.4. Similar to the Scottish Government, secondary letting is the major concern of PLACE, however, we are regularly presented with cases where unscrupulous hosts are carrying out secondary letting under the facade of home letting or home sharing. Examples include, an owner pretending they usually live in the property while they are actually using it as a full time entire-home holiday let (imitation home letting). Another example is “ghost hotels”³ where every room in a flat or house are let individually (imitation home sharing). Ghost hotels and imitation home letting will continue to be a significant risk under the proposed regulations.

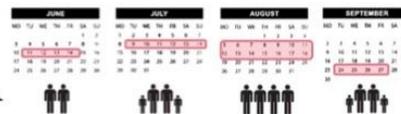
We propose the home letting allowance is restricted to a fixed number (four) of short-term lets per year, with no more than one per month.

This approach, which dovetails with the proposed definition of a short-term let, is also congruous with the extensive existing planning and case law which protects amenity for neighbours. The allowances can be easily monitored, meets the needs of home letting, disallows high-turnover high-disruption letting, and incentivises longer short-term stays for Festival workers, and others needing a temporary home.

Meeting the needs of home letting - A licensed allowance of four entire home lets allows people to supplement their income very generously, while still protecting residential amenity. Four lets would enable, for example, a three week let over major festival times, a two week let over the

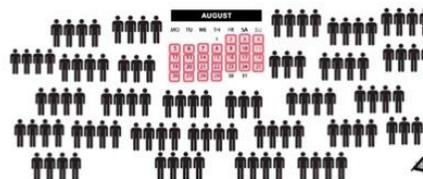
A lets per year limit

4 lets per year limit



We promote a **lets based allowance** which give home sharers a fixed number of short-term lets per year.

A days per year limit is near impossible to monitor and motivates high-turnover, high-disruption letting.



28 days per year limit would legalise 28 one day lets with same day changeovers. (30 days of weekend lets has already been found unlawful)

³ www.edinburghnews.scotsman.com/news/people/edinburgh-ghost-hotel-told-stop-operating-airbnb-crackdown-continues-1373117

summer, a five day let over Easter and a five day let over New Year. The income is the same, but the disruption is far less.

Supporting students and residential amenity - Such an approach would also allow students to carry out home letting of their university home during the summer break, but in a controlled way which does not reduce the amenity of the area during this period of time.⁴ Amenity is protected even when multiple properties in the same stair are being used in this way.

Consistent with planning and civil law - Residential amenity is protected by law. The existing case law informs how the home letting allowance should be set without impacting neighbouring amenity. There are two cases which are helpful here: Ratcliffe Terrace in Edinburgh found 30 days of lets over 14 lets unlawful⁵; Nemcova v Fairfield in London found seven lets over one year unlawful⁶. Succoth Terrace found letting for the duration of the summer period unlawful⁷. A smart allowance of four licensed lets is a lawful compromise.

Easy to monitor unlawful activity - A lets-based home letting allowance can be clearly monitored even without host or platform cooperation. More than four reviews in one year without a commercial license would clearly indicate illegal activity. Only a few cities have attempted to use a limit based on a number of days. The experience has been challenging. London limits have been described as “ineffective”. The deputy mayor for housing in Paris states “Airbnb does not respect the law”. Amsterdam has reduced their sharing allowance to 30 days after 60 days was found to be ineffective. Recently ten European cities wrote to the European Union for help to fight the AirBnB expansion. Edinburgh could be a world leader in using smart legislation to enable home letting whilst making unlawful activity almost impossible to carry out undetected.

Support a sustainable Festival - Another benefit is for the Edinburgh Festival. A lets-based home letting allowance incentivises those who wish to maximise their home letting income to seek individuals and groups who are looking to stay longer. During the Festival this will hugely incentivise artists, performers and Festival support staff. Student flats available over the summer will also be incentivised to seek longer short-term stays which will provide more fairly priced accommodation for Festival workers. Those who wish to stay in Edinburgh only a few days will be supported by the many excellent lawful short-term accommodation providers who have the resources and setting to address the impacts and needs of a high turnover of very short staying visitors.

Support recovery after Covid - Unless regulation is effective, business will continue to be lost by responsible accommodation providers to unlawful short-term lets. Visitors will lose confidence in the Scottish tourism industry as they experience unsafe, unprofessional and unlawful businesses. These businesses often operate in unsuitable properties bringing them into conflict with neighbouring families and communities, further damaging the tourism industry.

5.17. The power to set grace periods is appropriate but we would strongly oppose anything but the minimum grace period in Edinburgh where the requirement for planning permission has been known and ignored for some time to the significant detriment to communities. The strength of feeling in the Edinburgh City Plan for an Edinburgh-wide short-term lets control area demonstrates the large proportion of people who want to see urgent action on this issue

⁴ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120665>

⁵ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=118600>

⁶ <https://nearlylegal.co.uk/2016/09/short-term-lets-private-residences/>

⁷ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120665>

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

Agreement

6.9 - 6.57. The standards, safety checks, limits on occupancy, waste, noise, curfews and data provision all appear appropriate, except for the exceptions detailed below.

6.58. We agree the prohibition of local authorities from setting a nights per year limit on secondary letting as a routine licence condition is appropriate. We agree that such a limit for home sharing or home letting may be appropriate.

6.61. We agree that local authorities should be able to charge fees to cover the establishment, and running costs including such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs. This will ensure that the system is sufficiently funded.

6.103. We agree that local authorities should be able to charge a fee for a visit required in response to one or more complaints, where it is found that there are compliance issues.

Proposed amendments

6.6. We note the proposed mandatory conditions for licensing. We note that while items like gas safety, electrical safety and EPC ratings would require external verification, planning permission would only be self-declaratory. We believe this single proposal has the potential to undermine the whole system. Our recommendation, in the strongest terms, that an amendment is made that states that in short-term let control areas: and in properties with shared spaces, the application form must make planning permission a mandatory licence condition which requires external verification. To not include this will undermine the entire system. The extensive case evidence from DPEA planning appeals shows the unacceptability of short-term lets operating in properties with shared stairs.⁸

6.8. Unclear why compliance with licence conditions is the host's responsibility (even where they are not the owner of the accommodation). We are aware of cases where unlawful short-term letting activity has been carried out by tenants. A mandatory licence condition should include permission from the property owner.

6.34. It is incorrect to say that condition f) on Planning Permission does not relate directly to safety. The DPEA appeal decisions regularly quote the reduction on security to neighbours when introducing a regular turnover of non-permanent residents into the secure communal areas of the property.^{9,10,11,12} Residents deserve the same protections to their safety as visitors. It is their home and their safety and security is a fundamental part of that.

6.60. We largely agree with the statement that local authorities should be permitted to issue licences with specified shorter periods of letting for home sharing and home letting. However, PLACE recommends that legislation should be permitted to issue licences with a specified number of entire home lets for the reasons described in 5.4.

⁸ <https://placededinburgh.org/planning-appeal-decisions/>

⁹ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120636>

¹⁰ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120406>

¹¹ <http://dpea.scotland.gov.uk/CaseDetails.aspx?ID=120265>

¹² <http://dpea.scotland.gov.uk/CaseDetails.aspx?ID=120165>

6.116. Needs clarification as to what constitutes “carrying on an activity”. This should be amended so that it includes the advertisement of a property for short-term letting. Glasgow City Council already include this in their enforcement notices but it would be useful to make this explicit in law.¹³ Legislation must also hold agencies and platforms to account and require them to only advertise properties with valid licences and to remove those which are unlawful. This is called “platform accountability” and it has been found to be the vital component of any effective licensing scheme.

6.121. The fine for making a false statement in an application should be increased beyond £2,500. It is the experience of many in the PLACE network that unscrupulous hosts often present the details of their business in a misleading way to try to evade enforcement action or obtain a facade of lawfulness. A higher fine is needed to deter this, given the significant income that unlawful letting can bring.

6.135. Temporary licences. We do not see the benefit of temporary licenses. Any additional temporary license, particularly a regular one for an event such as the Edinburgh Festival has the potential to create a period of intensive, poorly monitored short-term letting that has the potential to seriously deteriorate residential amenity and motivate property investment activity.

6.139. The register of hosts and licensed accommodation should also be made available to visitors so that they can check the lawfulness of their accommodation before booking. This would match the landlord registry for private rentals.

6.143. We recommend that properties wishing to home share / home let are given two licence numbers: one for entire home letting, and one for home sharing (room only). These would be displayed with their advertisements and will allow authorities to monitor properties who are suspected of carrying out commercial activity without the appropriate license. In these cases, it will be vital to distinguish between whole property and home sharing activity e.g. COM1234, HOMESHAR1235, and HOMELET1236 allows visitors to clearly see what kind of accommodation they are booking, check the lawfulness of their accommodation against the public register and report accommodation they think is being let fraudulently.

Short Term Lets Consultation on a licensing scheme and planning control areas in Scotland -

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2020/09/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/documents/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/govscot%3Adocument/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland.pdf>

Response to the Scottish Government Short-term Lets Consultation (July 2019) -

<https://placeedinburgh.org/response-to-the-scottish-government-short-term-lets-consultation>

¹³ <https://twitter.com/PLACEEdinburgh/status/1204671568359628801?s=20>