**PLACE Response to the Call for Views - Short Term Letting**

Report from Scottish Government on the proposed changes to legislation - <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-consultation-analysis/>

Business and Regulatory Impact Assessment (BRIA) - [https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-business-regulatory-impact-assessment-bria](https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-business-regulatory-impact-assessment-bria/)

Proposed Acts - [The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021](https://www.legislation.gov.uk/sdsi/2021/9780111048092/contents) and [The Town and Country Planning (Short Term Let Control Areas) Regulations 2021](https://www.legislation.gov.uk/sdsi/2021/9780111048085/contents)

**Summary of Amendments**

1. **Cancel the mandatory delay to restore the right to adequate housing and accessible homes in those most affected local authorities** - The mandatory delay to implement the licensing scheme until 2023 must be cancelled. Local authority discretion to implement the scheme earlier should be retained, otherwise cities such as Edinburgh will be powerless to address the unprecedented level of enforcement cases, and meet their obligations to provide their communities with peaceful and adequate housing, particularly accessible housing.
2. **Protect recovery after Covid:** Independent SPICe figures show zero economic benefit from the recent proliferation of short-term lets. The consequence of delay is that legitimate accommodation businesses will fail to thrive at the expense of unfair competition from “the cheat’s advantage”, and the tourism economy will continue to underperform.
3. **Mandate safety of neighbours, not just visitors** - Watering down the checks on planning permission as a mandatory licensing condition is a massive blow to communities. This must be a *mandatory* licensing condition, with *external verification*, *as a minimum*, in shared buildings. This check is fundamental to regain the trust of communities by specifically mandating their right to safety and amenity.
4. **Increase enforceability and transparency: close the loophole on *advertising* unlawful short-term lets** - Clearly define “operating a short-term let” to include the *advertisement* of a property for short-term letting. Require hosts, agencies and platforms to include the license number along with any advertisement. Fines should be extended to agencies and platforms who advertise illegal short-term lets. An on-line register of licensed accommodation must be made available.
5. **Increase enforceability and transparency: collect the data needed for enforcement** - We have suggested several additional enforcement tools which are needed to make sure that local authorities have the data they need to resist fraud, monitor and enforce legislation.
6. **Revoke grandfathering clause on the 10 year rule** - Owners should not be able to use the 10 year rule to get around the requirement for proper planning permission. This is vital if the Scottish Government is to continue to insist on a further delay to legislation.

**Questions 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?**

* We are very pleased to finally see action taken to provide effective regulation of (often unlawful) short-term lets in Edinburgh, and wider Scotland.
* We are pleased that visitor safety is being protected. This will secure the reputation of the many excellent and legitimate self-catering businesses, and Scotland’s reputation as a high quality, safe and ethical tourist destination.
* It is wholly unacceptable that the Scottish Government is applying a mandatory delay to the legislation across Scotland.
* Delaying implementation of the legislation will result in significant levels of ongoing unlawful activity and hoarding of these properties as investments, not homes, until at least 2023, and likely significantly beyond.
* This will significantly extend the time and scale of the negative impacts that short term lets have on people’s rights to access to housing, and adequate standard of living. The number of enforcement cases facing the City of Edinburgh Council cannot be addressed without additional funding and support. The delay is also contrary to two National Performance Framework outcomes: grow up loved, safe and respected so that they realise their full potential and live in communities that are inclusive, empowered, resilient and safe.
* Scotland has an accessible housing crisis[[1]](#footnote-0) which will be worsened by this delay as investors take advantage of this last minute rush to obtain planning authorisation under the weaker rules before the new legislation is implemented. Existing policy largely refuses planning permission for short-term lets in flats or properties with close neighbours due to the impact on amenity for neighbours (two thirds of the Edinburgh housing stock), but may allow permission in main door properties. Edinburgh is already seeing a strong interest in investors who are purchasing the relatively small number of main door accessible homes for this purpose. We cannot continue to incentivise the loss of these accessible homes for the next three years.
* We strongly refute any assertion that the proliferation of short-term lets has brought economic benefits to Scotland. SPICe figures[[2]](#footnote-1) show zero increase in overnight visitor expenditure in Scotland since 2011 despite an increase of over 31,000 short-term lets on one platform alone during this time.
* Independent research finds 96-98% of Airbnb activity is substitutional[[3]](#footnote-2), not additional, i.e. would have occurred anyway using other accommodation types. This means unlawful short-term lets, who benefit from “the cheat’s advantage” have been detracting activity from legitimate businesses, making recovery after Covid even more difficult. This is contrary to the National Performance Framework Outcome - people can have thriving and innovative businesses, with quality jobs and fair work for everyone.
* We remind the Scottish Government that the City of Edinburgh formally notified them of the scale of the problem in 2017[[4]](#footnote-3) and requested the additional powers needed to control it. Further delays will leave Edinburgh powerless to meet their obligations for the foreseeable future.
* Delaying legislation will delay people’s access to adequate housing. Short-term lets are as highlighted as having significant impacts on the housing stock this by Shelter Scotland[[5]](#footnote-4), the Edinburgh Poverty Commission’s report[[6]](#footnote-5) and the Strategic Housing Investment Plan (SHIP) 2020-2025[[7]](#footnote-6) to give just a few examples.
* Delaying legislation will delay residents’ rights to adequate standard of living - free from noise, nuisance and antisocial behaviour. Particularly those living in tenements. The impact on neighbouring amenity is highlighted in the unprecedented numbers of enforcement cases and appeal decisions[[8]](#footnote-7). The special impacts on children are described in the Stage 1 Screening - Child Rights and Wellbeing Impact Assessment (CRWIA). Any delay will compound the already recognised mental health impacts of COVID-19 that the mental health transition and recovery plan[[9]](#footnote-8) intends to address. Disadvantaged people, including children, have less resilience to manage the negative impacts of unlawful short term letting, particularly those that live in tenements, due to COVID-19.[[10]](#footnote-9)
* We have particular concerns about changes to the legislation relating to neighbour safety. We note that checks relating to *visitor* safety remain mandatory, but the mandatory check on planning permission which protects *neighbours’* safety and amenity has been removed? Why are neighbours considered less important than visitors?
* Multiple enforcement case decisions highlight the serious impact of unlawful lets on the safety and security[[11]](#footnote-10),[[12]](#footnote-11),[[13]](#footnote-12),[[14]](#footnote-13) of neighbours. Here is one quote from the adjudicator of one planning enforcement case appeal:

*“The potential frequency of changing guests would introduce various new, non-permanent residents into the secure communal areas of the property with regularity. This would change the level of actual and perceived security for permanent residents in a manner that would not otherwise be the case under typical residential circumstances.”*

* The statement in the Short Term Lets: Consultation No. 2 Report that “*This defeats the purpose or value of control areas*.” is incorrect. The value of control areas is to protect the housing stock. The value of planning permission is to protect residential amenity, safety and character of local areas. These are of different but equal value.
* **Amendments 1 and 2: The mandatory delay to implement the licensing scheme must be cancelled. Local authority discretion should be retained so that the rights to housing, an adequate standard of living, and legitimate businesses have fair competition and can thrive.**
* **Amendment 3: Planning permission should be a mandatory condition, and externally verified, *at a minimum*, in flatted and other properties where neighbours share parts of the property, to protect the safety of communities.**

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

* Yes, we strongly agree with this definition.
* We are also pleased that the Scottish Government will be providing additional guidance on what constitutes a short-term let from a planning perspective. We attach a document which details the decisions of planning appeals in both flatted and main door properties, which find there have been a change of use which can be used to form this advice.8

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

* We are very concerned that the Scottish Government has underestimated the challenge of getting unlawful short-term letting hosts, agencies and platforms to engage with a licensing scheme. They would benefit enormously from talking to other cities such as Paris and Barcelona and use their experience to design legislation which is sufficiently robust to motivate compliance and provide the tools that are needed to enforce compliance.
* The Scottish Government report states “Platforms have a reputational (and therefore financial) interest in offering only lawful listings.” Unfortunately, this wishful thinking is contrary to the experience of every city who has attempted to enforce against them worldwide[[15]](#footnote-14). This needs active and independent enforcement.
* We strongly support the amendment to increase the fines further for operating without a license or in breach of a license condition; and the amendment to introduce custodial sentences for the worst offenders.
* **Amendments 4 and 5: We recommend 5 additional tools to ensure enforcement which are not currently facilitated by the proposed legislation:**
  1. **Close the loophole on advertising unlawful short-term lets**  - The term “operating a short-term let” should be specifically defined to include the *advertisement* of a short-term let, and that all advertisements must include the license number.
  2. **Transparent licensing codes** - Licensing must be transparent as possible. The license numbers code should clearly indicate the type of letting being allowed e.g. HOMELET123, HOMESHARE123, COMMERICAL123. This gives visitors a clear expectation about what kind of accommodation they are booking. It also means that fraudulent activity such as those carrying out commercial activity using a home sharing license will be obvious. Collecting evidence for enforcement, such as review numbers will be made simple. Hosts will not be able to pretend that reviews apply to room sharing when they actually apply to whole-home letting.
  3. **A mandatory on-line public register of licensed accommodation** - So visitors, agencies and communities can check the legitimacy of businesses.
  4. **Evidence genuine home letting and sharing** - For home share and home letting licenses, robust evidence is needed to prove that a property is the individual’s usual home, otherwise many hosts will use a home sharing license to evade the need for more expensive and difficult to obtain commercial licenses.

We need a clear definition of where a level of home sharing and home letting becomes commercial level activity. PLACE strongly recommends home letting licenses provide allowances for a number of whole-home lets, not a number of days. This is consistent with existing planning case law and will motivate less disruptive longer lets, and make illegal activity much easier to monitor.

* 1. **Platform accountability: Extend fines to those who advertising unlawful lets** - Current legislation only requires hosts to comply, however our network worldwide tells us that the most effective way of getting compliance is to hold platforms and agencies liable for the properties they advertise, and to fine them, per breach.
* **Amendment 6: Revoke the grandfathering clause on the 10 year rule** - Owners should not be able to use the 10 year rule to avoid the requirement for proper planning permission. This is vital if the Scottish Government is to continue to insist on a further delay to legislation.

1. https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis [↑](#footnote-ref-0)
2. Graph of overnight visitor expenditure, actual versus TS 2020 targets, 2011 prices - https://spice-spotlight.scot/2019/07/30/a-tourism-target-too-far/ [↑](#footnote-ref-1)
3. https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/ [↑](#footnote-ref-2)
4. https://edinburgh.public-i.tv/core/portal/webcast\_interactive/215421 [↑](#footnote-ref-3)
5. <https://scotland.shelter.org.uk/__data/assets/pdf_file/0003/1883622/Edinburgh_Poverty_Commission_Places_-_Shelter_Scotland_response.pdf/_nocache> [↑](#footnote-ref-4)
6. <https://edinburghpovertycommission.org.uk/2020/09/30/a-just-capital-actions-to-end-poverty-in-edinburgh/> [↑](#footnote-ref-5)
7. https://democracy.edinburgh.gov.uk/mgConvert2PDF.aspx?ID=10135 [↑](#footnote-ref-6)
8. https://placeedinburgh.org/planning-appeal-decisions/ [↑](#footnote-ref-7)
9. https://www.gov.scot/publications/mental-health-scotlands-transition-recovery/ [↑](#footnote-ref-8)
10. <https://www.gov.scot/publications/covid-19-equality-fairer-scotland-impact-assessment-evidence-gathered-scotlands-route-map-through-out-crisis-phase-3-measures/pages/3/> [↑](#footnote-ref-9)
11. https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120636 [↑](#footnote-ref-10)
12. https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120406 [↑](#footnote-ref-11)
13. http://dpea.scotland.gov.uk/CaseDetails.aspx?ID=120265 [↑](#footnote-ref-12)
14. http://dpea.scotland.gov.uk/CaseDetails.aspx?ID=120165 [↑](#footnote-ref-13)
15. https://www.politico.eu/article/european-mayors-want-brussels-help-against-airbnb/ [↑](#footnote-ref-14)