

Short Term Lets: Consultation on draft Licensing Order and Business and Regulatory Impact Assessment (BRIA)

<https://consult.gov.scot/housing-and-social-justice/short-term-lets-draft-licensing-order-and-bria/>

Summary

We strongly support the licensing scheme proposed by the Scottish Government.

Licensing is a straight-forward and proportionate tool, necessary to control the proliferation of short-term lets which compromises the right to housing, hollows out communities and harms the living conditions and safety of neighbours. Licenses for short-term letting are now commonplace and there are few places worldwide which do not employ or plan to introduce a similar approach.

The license lasts three years, and even under the most expensive projection (£377 for an average three year commercial license), is entirely affordable. The license checks will protect legitimate businesses, visitors, neighbours and communities. Responsible businesses operators are likely to be entirely compliant with most if not all of these already.

Outstanding concerns where amendments are needed

- 1) **Implementation date has been delayed again.**
- 2) **Platforms are not being held accountable for advertising unlawful lets** - cities with experience of regulation agree this is fundamental to an effective licensing scheme.
- 3) **Loopholes will help bad actors evade regulation** - No platform accountability will allow advertising without a license number. Bad actors will carry out commercial activity under a home-sharing license.
- 4) **Lets which are unlawful in planning terms will still be licensed** - Planning checks are not mandatory, even in tenements where there is a very high risk of deterioration to neighbour living conditions and safety. This means unlawful lets will be licensed.
- 5) **Temporary licenses incentive the ongoing use of homes as short-term lets and in many cases will be detrimental to the living conditions of neighbours**
- 6) **There are insufficient tools for enforcement** - The short-term letting register is not live, there are no fines for providing false information on a license application,
- 7) **There is no guidance for lawful home-sharing and home-letting (particularly in flats) so residents will not understand how to share their home lawfully.**
- 8) **The supply of accessible and affordable housing is not properly protected.**
- 9) **The alternative “registration scheme” proposed by the ASSC and backed by Airbnb and other platforms is ineffective.**
- 10) **The registration scheme proposed by the ASSC and backed by Airbnb and other platforms will potentially create a loophole under the Internal Market Act where companies based in other parts of the UK could bypass Scottish regulations.**

Proposed Answers:

1. For Paper 2: Draft Licensing order - please state your issues and how to resolve them (original document [here](#)):

- 1) **Transitional provision** (7 page 3) - We are deeply concerned to see this timeline slipping further. This further delay means another six months, including a whole summer, where investors will be able to establish new short-term lets. These lets will then become existing hosts, and so will not need to apply for a license until 1 April 2023.

It is worth reminding the Scottish Government again that the City of Edinburgh Council first reported the scale of the problem regarding short-term lets to the Scottish Government in 2017. If the Scottish Government further delays licensing, the 'ten year rule' will be used to make a significant proportion of short-term lets which have unacceptable impacts on neighbouring amenity, actually lawful, simply through inaction. More homes will be lost, and the disruption to communities will continue.

- 2) **Designation of activity** (4, page 2) - Clearly define "short-term letting activity" to include *advertising* a property for short-term letting. This will greatly simplify enforcement and deter potential bad actors.
- 3) **License numbers** (5, page 10) - License numbers should be transparent and clearly indicate to the user the type of license being used e.g. HOMESHARE1234 or COMMERCIAL1234. Using separate license numbers for, home letting and home sharing will greatly aid the collection of data for enforcement. Bad actors may attempt to evade enforcement by pretending that reviews that relate to whole-property letting are actually home-sharing reviews.
- 4) **Temporary exemptions** (4, page 9) - Granting license exemptions for periods of up to 6 weeks is too long, unlawful in planning terms, and will result in properties being retained for short-term letting purposes, rather than as homes.

It is well known that intensive letting over the Edinburgh Festival period can yield substantial profit.

The unlawfulness of such an exemption in planning terms is illustrated by the DPEA case at Ratcliffe Terrace found that annual letting of 30 days (over 14 lets) an unlawful change of use with detrimental impacts on the living conditions of neighbours.

- 5) **Modification relating to preliminary refusal** (6. 2A, page 11) - The statement which states that the licensing authority *may* refuse a license if they think it would constitute a breach of planning control, should be change so that it reads *will* refuse a license.
- 6) **The register of short-term lets** (11c, page 14) - This should be a live document on the same basis as the Scottish Landlord Register. A quarterly update is insufficient for it to be useful.
- 7) **Mandatory licence conditions** (Schedule 3, Article 6) - Planning permission must be *mandatory* for tenements and other shared properties for secondary letting because of the very high risk of detriment to neighbouring living conditions and security. To illustrate

this point, 95% of the 44 DPEA cases relating to short-term lets in properties which share a common stair or other shared area have rejected authorisation for short-term lets. The reasons cited are the detrimental impact on residential amenity and security. If the purpose of the mandatory conditions are to protect safety, we cannot justify excluding this check.

- 8) **Definition of aparthotel** (Schedule 4, Article 8) - Is there a risk that tenements in single ownership will identify as an aparthotel to evade licensing?
- 9) **False or misleading information** - Should also be subject to sanction. The PLACE network routinely reports misleading and false information being supplied by operators in enforcement investigations.

2. For Paper 3: Draft Business and Regulatory Impact Assessment (BRIA) - please state your issues and how to resolve them (original document [here](#)):

- 10) **Rationale for Government Intervention (B3.20)** - Legitimate accommodation providers are being significantly disadvantaged by the proliferation of unlawful short-term letting businesses. Lawful accommodation providers struggle to compete with unlawful lets who can often offer lower prices by avoiding the costs of compliance.
- 11) **Neighbour safety (B3.23 and 29)** - Allowing frequently changing guests unfettered access to otherwise secure communal facilities changes the actual and perceived level of security for permanent residents. This is the conclusion of numerous DPEA cases.

Recently, [two studies](#) have linked violent crime in neighbourhoods where more homes were converted to short-term rentals - "You're essentially eroding a neighborhood's natural capacity to manage crime...What's behind the increase in violence is not the presence of tourists or visitors, it's the absence of long term residents who are integrated in the community."
- 12) **ASSC Proposed and Airbnb backed registration scheme and exemption proposal (D1 and D2)** - PLACE have already shared our comments on this scheme with you.
- 13) **Costs and Benefits to Hosts (E)** - It should be noted that legitimate businesses will benefit for the reasons described in (10) above.
- 14) **Costs and Benefits to Neighbours (E)** - Should reference increased safety and security for neighbours. This has been a material consideration in numerous planning decisions and appeals.
- 15) **Costs of short-term lets (G2)** - The Economic Policy Institute finds that the economic costs imposed by short-term letting likely outweigh the benefits. Property owners may benefit but the beneficiaries are disproportionately high-wealth individuals who can own more than one property. Claimed increases in economic activity are often vastly overstated because the spending would have occurred anyway by travellers staying in other accommodations. The Economic Policy Institute finds that there is little evidence that cities with an increasing supply of short-term Airbnb rental accommodations are seeing a large increase in travellers. Instead, accommodations supplied via Airbnb seem

to be a nearly pure substitution for other forms of accommodation. Furthermore, the shift from traditional hotels to Airbnb lodging leads to less-reliable tax payments to cities.

- 16) **Annex A** - Regarding the assumptions for local authority costs and fees it is worth also factoring in mind the costs that local authorities already carry in terms of enforcement against unlawful lets. Effective licensing will provide significant savings in this area. Enforcement investigations are much more expensive and resource intensive than planning applications and the cost of these investigations are entirely borne by the taxpayer. The cost (financial and social) of doing nothing is significantly higher.

3. For Paper 4: Short Term Lets in Scotland - Licensing Scheme Part 1: Guidance for Hosts and Operators (original document [here](#)):

This document is easy to read and the examples offer useful clarification for more complex matters. Annex A - Application Checklist is very useful for applicants..

The concerns raised in the sections above will also relate to this section.

5.25 This appears to contradict the requirement for hosts to include a license number on every advert. We believe every advert should have a valid license number.

3. For Paper 5: Short Term Lets in Scotland - Licensing Scheme Part 2. Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms (original document [here](#)):

The concerns raised above will also relate to this section.

7.5 It should be added that neighbours might also complain about a property which is licensed but where they believe is a breach of planning permission. This is a very likely situation if planning permission is not a mandatory condition.

3. For Paper 6: Short Term Lets in Scotland - Planning Guidance for Hosts and Operators (original document [here](#)):

2.10 This statement is a very important statement and should be in bold and highlighted.

Other matters

- 17) **Platform accountability** - In correspondence between PLACE and Leilani Farha, Global Director of Make The Shift and Former UN Special Rapporteur for Adequate Housing (2014-2020) she states “Governments have an obligation to

understand the implications of short term rental platforms on the right to housing. There is growing evidence that if left unregulated, these platforms seriously erode long-term housing options for local residents. The Scottish Government's licensing legislation is an important aspect in reigning in short-term rentals. Studies show, however, that licensing alone is insufficient, and that legislation that holds short term rental platforms accountable is required, alongside measures to protect existing and new long-term units from being converted into holiday rentals.”

Paris has recently fined Airbnb 8 million Euros for maintaining adverts for short-term lets without a registration number. Edinburgh must insist on holding platforms accountable in this way.

- 18) **Standard Scale of Fines** - Increased fines are necessary to be a meaningful deterrent and must be implemented as soon as possible.
- 19) **Definition of home sharing** - There is a concern that bad actors will simply register their short-term let in the name of a friend or family member and continue commercial letting of rooms or a whole property under a home-sharing license. The experiences of our network would predict this is highly likely.

A clear definition of home-sharing is needed. This should empower genuine home-sharing but prevent unlawful levels of activity. It must define the line between home-sharing and where the level of activity effectively becomes a B&B, commercial short-term let, or would have unlawful impacts on neighbours. This would need to consider whole-home sharing and the letting of rooms, in a house, and in a tenement.

We suggest that existing case precedent, and perhaps the expertise of DPEA reporters, is used to set this home-sharing allowance at a lawful level.

We point out that [case precedent](#) tells us that a lawful home-sharing allowance must consider the turnover of lets rather than just the number of days. For example, at Ratcliffe Terrace, 30 days across 14 weekend lets was found unlawful, however a single let of 30 days would be unlikely to be found unlawful. Other useful cases which have found lower levels of letting unlawful include Drumdryan Street (summer letting only), Succoth Court (summer only), Baxter's Place (minimum 1 week stay), Newhalls Road (30% Mon-Wed only), Nemcova v Fairfield in London (7 lets over 90 days) and 52 Morningside Road (room letting only). Case evidence tells us the type of property, turnover of lets and the number of days must be considered when setting a home sharing allowance.

- 20) **Example indicators must include availability of accessible and affordable housing** - Special consideration must be given by local authorities to the availability of accessible housing. This is particularly important in areas where there is a high proportion of tenement properties which are unsuitable for short-term letting by nature. This greatly incentivizes main door accessible properties for short-term letting use, which could make the shortage of accessible housing even worse. In this scenario additional policy should be put in to protect accessible housing, not water-down legislation protecting the security and amenity of tenements.
- 21) **Resourcing and enforcement** - The effectiveness of the new licensing scheme is dependent on sufficient resourcing and enforcement. We strongly support investment in this area.