

Agenda Item	14
Report No	EDI 49/19

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 15 August 2019

Report Title: Scottish Government Short Term Lets Consultation

Report By: Acting Head of Policy

1. Purpose/Executive Summary

- 1.1 The rise in the use of short term lets and on-line platforms which support them has been an issue highlighted in recent years. The Scottish Government have committed to reviewing the position to ensure that Local Authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests. The Scottish Government are currently consulting on this potential regulatory framework.
- 1.2 The consultation seeks views on a range of areas:
- the types of short-term lets which should be regulated and the controls which should be applied;
 - the principles and scope of any regulatory framework;
 - understanding the benefits, challenges and local variations related to the use and availability of short term lets, particularly on the housing market; and
 - how any approach could align with other regulations covering similar areas e.g. new duties contained in the forthcoming Planning Bill on short-term lets and also other regulatory licensing regimes already in place.
- 1.3 A response to the consultation can be found at **appendix 1**. The scope of the consultation is considerable and therefore views have been sought from across the organisation including Planning, Licensing, Tourism, Housing, Housing Development, Environmental Health and Policy.
- 1.4 The consultation concluded at the end of July and the response submitted to meet this deadline, subject to any further changes coming forward at the August meeting of EDI Committee. The committee is asked to consider the response and suggest any further changes to submit to the Scottish Government.

2. Recommendations

2.1 Members are asked to:

- consider and homologate the response found at **appendix 1**;
- agree any changes to the response to be submitted to the Scottish Government.

3. Implications

3.1 Resources: potential resource implications of any regulatory framework are highlighted in the response to the Scottish Government. The response notes that any additional costs to implement new regulations should be provided by the Scottish Government and that there should be no impact upon current service delivery in order to meet any new regulatory responsibilities.

3.2 Community (Equality, Poverty and Rural): the impact of short-term lets on rural communities in particular is highlighted within the response. The response also recognises the importance of local variation in terms of implementation to enable Local Authorities to respond to local conditions and concerns.

3.3 Legal, Climate Change, Risk: there are no current legal, risk or climate change implications.

Designation: Acting Head of Policy

Date: 5 August 2019

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**Scottish Government Short Term Lets Consultation
Highland Council Response
July 2019**

The full consultation can be found [here](#)

1. Are you aware of any **additional data** on the impacts of short-term lets which the Scottish Government should take into account when considering proposals for regulation? (over and above that set out in Annex A – The Short-Term Rental Sector, Housing and Tourism in Scotland and briefly summarised above)

Other than census data on second/holiday homes, Highland Council is unaware of any relevant additional data. Lack of data on how many homes are deemed empty and how many are used for holiday letting (whether dedicated ‘secondary’ or shared) leads to difficulties in interrogating the scale of any potential registration or licensing of such lets across Highland. The Scottish Government research annex on popular destinations is welcomed as a helpful initial indicator of the significant scale of this prospective duty.

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

Prior to the establishment of any regulatory framework, a clear statutory definition is required of a short-term let. This is vital to enable understanding and implementation.

Highland Council sees potential merit in distinguishing between “sharing” and “secondary letting”, due to possible differential impacts on the availability of property for other purposes; e.g. potential for secondary letting to diminish availability of long-term rented accommodation., secondary letting places additional pressure on housing affordability, particularly in rural and remote rural areas, where housing stock is limited.

Consideration must be given however to the practical implementation. There are concerns as to whether effective regulatory control is plausible if only certain categories of letting were to be regulated, or different measures applied to certain categories. Implementation of such an approach would have to rely upon applicant declarations with regards their property, as inspection of individual properties would not be viable in terms of resource due to the large number of letting properties and geographical area of the Highlands.

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.

Features of the property should be considered when determining necessary distinctions – particularly for secondary letting. Anecdotal evidence suggests that short term letting of properties in shared premises can lead to greater levels of disturbance to neighbours, particularly where the owner of the let property is not in residence – e.g. where those renting have difficulty accessing the property.

Difficulties also arise that are dependent on the nature of the community/neighbourhood as well as the property type itself. A single short-term let in a primarily residential setting raises different issues from a row of short-term lets in a tourist-destination village. Adequate regulation needs to be sensitive to the differing problems and opportunities of both settings.

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

The Short Term Let definition must be made very clear as to its intended scope. Given that there are proposed changes to the houses in multiple occupation legislation in that contract and transient workers are to be included and if 3 or more unrelated workers reside in a holiday property, they would be subject to a separate regulatory regime. This could lead to confusion and difficulties with control/enforcement

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

Traditionally, Highland's visitor demographic has been biased towards older age groups, receiving fewer visits from the 16- 24 age group than do larger cities. Easier access to short term lets and peer to peer platforms that this demographic group use, are likely to support growth in the numbers of younger visitors with consequent benefit to the Highland economy.

Many parts of Highland see tourism holidays that require more availability of single night accommodation options. This has traditionally tended to push such travellers towards serviced accommodation that is typically more expensive than self-catering options, which were often only available for longer stays. The increase in short term let availability now offers more short stay options which can attract a wider market.

Despite the significant increase in the usage of sites such as Air BnB, there is a general lack of robust data on the scale of short term letting, particularly at a local level. Notably, Air BnB's self-reported data, as presented in the Scottish Government

research annex to the consultation, does not appear to differentiate between shared and secondary short term lets. Secondary short-term lets purchased principally for trading on AirBnB and other such platforms may potentially reduce local housing availability and affordability in a similar way to second homes. It is already known that there is a lack of affordable private sector housing in rural areas due to the number of second home ownership.

For some Highland communities, high levels of second home ownership over many years has been considered to detrimentally impact the vibrancy of communities or viability of services, such as local shops. This difficulty is particularly acute outside the tourist season, when many houses can lie empty. Such impacts could increase if a buoyant short term let economy leads to more properties in some of these smaller communities being purchased specifically for short term let purposes.

Tourism industry groups and individual businesses have made reference on many occasions to regulatory mismatches between the short-term lets and other accommodation sectors and this is commonly described as being detrimental to the other sectors. What is unclear is whether this is actually related to regulatory mismatches or whether the issue is more about levels of compliance and the level of policing to ensure compliance. This suggests that any changes would require not only to address issues around regulations but also ensure that those tasked with ensuring compliance have adequate resources to do so.

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

In addition to potential negative impacts on the wider housing market, tourism industry groups and individual businesses have referred to some specific impacts around housing their workforce, most notably in small but popular tourism locations. A comparatively low local population and low levels of unemployment in some popular tourism communities, in the main summer season, has led to many businesses being reliant on migrant workers, who in some cases only work seasonally. What are perceived to be lesser legal requirements along with potentially higher financial returns appear to have led to some accommodation previously deemed necessary to house hospitality workers now being let to visitors on a short term let and broader visitor accommodation basis. This is seen to have made staff recruitment more difficult for some businesses which in turn can have a negative effect on the visitor experience.

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

The housing market across Highland varies considerably therefore the impact of short-term lets will in turn vary across the area. There is a chronic shortage of affordable housing in Highland, particularly in Inverness, Cairngorms National Park and West coast communities including Skye. This is not solely a direct consequence of short term let accommodation but also relates to holiday and second homes, which comprise as much as 50% of housing stock in areas of Wester Ross, resulting

in unaffordable prices for locals. Second / holiday houses used for only part of the year and otherwise vacant do less for the Highland economy and inflates house prices in the “permanent” housing stock sector of the market.

Pressure for key worker and seasonal worker accommodation in Inverness, Cairngorms National Park and West Coast communities is very challenging. These areas also experience severe homelessness pressures. There are almost 8,000 applicants for social housing on the Highland Housing Register - a partnership of Highland Council and the five main housing associations in Highland. Annually, there are around 1,000 homelessness applications in Highland. There is evidence that would suggest some local people may not present as homeless but simply feel that they cannot remain in their local community and move elsewhere – resulting in a “missing generation” in many rural areas. Populations projections support the prediction for this to become two missing generations by the 2021 census.

The consultation refers to a report commissioned by Shelter which perhaps best identifies the impact of short-term lets on the housing market. The increase in short term lets inevitably means there is a reduction in the supply of both rented housing and housing for sale. This is particularly pronounced in areas of high housing demand and effectively limits the housing options available to those seeking to rent or to buy.

The impact in areas of high demand is exacerbated as private landlords increase their rents in accordance with their awareness of increasing local demand. For many local residents, the private rented sector is unaffordable and Highland Council is willing to share a recent report we commissioned with Crisis in regard to the affordability of private lets in the Inner Moray Firth area. This report highlights the extremely challenging position and unaffordability of private rent in the Inner Moray Firth Area

As the consultation alludes, there is little clear evidence on the subject and indeed research is required to clearly separate information on short term lets from other information on the private rented sector. For example, there is evidence that businesspeople based outside Skye are purchasing properties on the island on the open market with the sole purpose of creating short term lets. This therefore takes properties out of the housing market. Further research is needed to identify the on-the-ground community impact of this behaviour.

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

Existing Highland Planning Policy supports new tourist accommodation in Highland, particularly where it diversifies the current offer of accommodation in terms of type and location. The scale of new provision is intended to match the scale of settlement served and proposals must not breach local environmental and servicing capacities.

The Planning Bill, as approved by the Scottish Parliament in June 2019, brings the change of use of a building to a short-term holiday let within planning control. I.e. a change that requires a planning application and planning permission from a planning

authority. However, this change in primary legislation will not commence until the Scottish Government draft, consult upon and finalise secondary legislation in the form of Regulations. This optional power will not be available to local authorities for at least a year and probably 2 to 3 years. It is open to a council whether to designate all or part of its geographic area as an area of control. These applicable areas are to be termed short term let control areas (STLCAs). Scottish Government will decide in the Regulations, the definition of what constitutes a short term let and the procedure to be followed in drawing up, consulting on, and confirming a STLCA.

Current HMO planning policy and licensing offer an instructive example. The Highland Council operates a regime that is complex to monitor and enforce. A blend of planning and licensing policy and practice are aimed at shared concerns (real or perceived) over the direct and indirect impact of excessively concentrated HMOs in Inverness city centre. Anecdotal evidence suggests that the policy, monitoring and licencing resource expended to deal with the issue are disproportionate to the impacts that the HMOs have.

Highland Council's planners view is that regulatory intervention is only required if there is a market failure or adverse social effects accrue. However, this will vary from region to region and internally within large areas such as Highland. Seasonal demand for tourist accommodation has skewed the private rented market in Highland for many years. West Coast crofters have often rented out caravans as seasonal accommodation for tourists in the summer and to both locals and transient workers in the winter. Commercial competition with existing hoteliers is not a planning matter and in any event budget hotels are sharing in the benefits of the current tourism boom as much as Airbnb operators. If the current surge in tourism reduces, it is arguably far easier to find a productive future use for standard housing units than for empty hotel buildings.

What New Powers Would Be Most Effective?

As at 30 June 2019, there were 3,827 Second Homes and 2,021 long term empty properties registered for council tax purposes in Highland. Within the context of long term empty properties, Highland Council has exercised its full discretionary powers by varying the council tax to 200% from 1 April 2017 with second homes attracting a 10% discount from the council tax charge.

These are important income streams for the Council's housing development programmes.

Any new regulatory framework must be appropriately funded and affordable and it will be important to strike the balance between encouraging tourism while at the same time having powers available to address housing needs.

A statutory planning basis for control of short-term holiday lets will be available to the Highland Council within 1-3 years. However, it is uncertain whether the application of this power when available will be effective and efficient. The Highland Council's existing controls of HMOs tries to marry licensing and planning control and has proved difficult to apply in terms of the complexity of data collection and monitoring. The Highland Council would need to carefully consider the benefits of planning

control (which would include additional planning fee income) relative to the type, scale and geographic concentration of the adverse effects of short-term holiday lets and the likely costs and effectiveness of monitoring and enforcing that planning control. It may be that other measures such as taxation and licensing may be more effective.

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

Environmental Health at Highland Council shares the concerns of Edinburgh City Council about anti-social behaviour, as outlined in the consultation.

Many of the impacts may be “nuisance” and fall short of what may properly be termed “anti-social behaviour”. For example, The Council already receives complaints of noise and parking problems in residential areas caused by property owners who have moved from the long-term “buy to let” market into the tourist short-term let market.

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

At present The Council does not distinguish complaints about short-term lets from other complaints. There is a risk that if the short-term let market becomes more regulated, this will result in a raised expectation that minor instances of nuisance will be investigated and dealt with. This will have resource and reputational consequences for The Council.

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

Highland Council is aware of concerns expressed around the lack of appropriate safety standards in short term lets and the concerns expressed by Edinburgh City Council are shared by Environmental Health officers, in particular. However, most businesses’ concerns relate to a desire for consistent regulation and consistent enforcement (as described in response to Q5 above). Evidence from businesses suggest that short term letting platforms take an overly simplistic approach to health and safety guidelines, which is open to abuse. For example, simply requiring providers to declare compliance with health and safety guidelines prior to listing. This is in stark contrast with regulation of other accommodation sectors.

The Scottish Expert Advisory Panel on the Collaborative Economy’s recommendation that there should be parity in health and safety regulation for all short-term rental accommodation that is not the owner’s primary residence is to be welcomed.

It would be useful to have more information as to whether short term lets would be expected to meet the same Repairing Standard currently used for the private rented

sector and whether this would be subject to the new prescribed additional information about to come in for landlord registration. I.e. would the local authority just be checking that the landlord has declared that they have met all the safety guidelines, or would the local authority have to seek evidence of each safety requirement and confirm that the documentation is satisfactory.

There is also a potential issue whereby sharing and swapping would not be subject to the same safety requirements, creating differing levels of regulation depending on the type of letting category. This could lead to confusion for members of the public and more administrative burden for local authorities.

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

For the purposes of this response, Highland Council does not offer an alternative duration to the current “140-days available for let” requirement. However, tighter governance and evidence requirements may better support the Assessor to decide when a property should properly move between non-domestic rates and council tax.

As set out in the consultation at paragraph 4.39, the 2nd provision relating to “intention to let” would be difficult for the rate payer to evidence and difficult to police.

Anecdotal evidence suggests that some self-catering properties make no arrangements for commercial waste collection, instead using the nearest available public litter bin. This results in public bins overflowing on “change-over” day and complaints to the Council.

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

Highland Council supports the Barclay Review recommendation requiring evidence of **actual** letting of 70 days per annum in addition to the 140-days **available** letting period. To provide consistency of application, Highland Council recommends that discretionary powers for this purpose are not extended to local authorities. To ensure a clear division of duties, Highland Council is keen that this decision making role is the responsibility of the local Assessor.

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

The Small Business Bonus Scheme (SBBS) is very generous in so far as it offers 100% relief from non-domestic rates. As a consequence, a cohort of taxpayers is disengaged with the rating system as they don't recognise that they have a rating liability from which they are receiving full relief.

An alternative approach may be to cap the total amount of SBBS relief available. This Council would suggest up to a maximum of 80%. Such an approach would address the existing disengagement described above, provide ratepayers with a

greater understanding of their rating responsibilities and provide important rating income for service provision.

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

To address the concerns outlined above in relation to disposing of waste in public bins, arrangements could be put in place requiring evidence of commercial waste collections in order to be deemed a self-catering unit by the Assessor

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

The final principle of the proposed framework, “straightforward and effective to enforce: making good use of existing enforcement mechanisms...”, is to be welcomed. However, as noted elsewhere in this response, it should also be noted that this is highly likely to lead to significantly increased resource requirements. Consideration should also be given to the geographical challenges for regulation in an area such as Highland. Additional costs should not have to be met through local authorities having to reduce other services in order to properly resource new responsibilities.

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

Of the two approaches, a licensing regime would be the preferred framework which would allow for local variation. This would mirror existing schemes. This has emerged as a view through the Council’s early consultation work on the transient visitor levy. However, given the geographical scale and diversity of the Highland region, there must be due allowance for measures to be implemented to “their area or parts of their area so that they can respond to local conditions and concerns” (consultation document, s.4.64). Legislation would need to be carefully worded. Similar concerns have previously been raised regarding taxi and private hire car legislation; references to ‘area’ may be interpreted as the entire Highland Council area, whilst other sections’ references to ‘locality’ would allow for smaller areas to be considered within the local authority area.

If a regulatory regime is to be developed, a more consistent approach across local authorities will depend upon prior clarity on whether this regime should be registration based, or an additional licensing scheme, rather than allowing for choice.

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

A basic compulsory registration scheme for different types of hosting is accepted as necessary minimum requirement. This should be considered in relation to proposed legislation empowering Local Authorities to collect tourist taxes. Such powers will need a registration system for some, or all, forms of tourism businesses, including

accommodation. It may be sensible to consider introducing a system that caters for both needs (registration of short term lets and collection of tourist taxes), rather than imposing a greater burden on businesses and local authorities by the introduction of multiple registration systems.

It may be useful for a set of standard conditions to be agreed for short term lets, with discretionary powers made available to local authorities to add additional appropriate local conditions.

If a licence were to stipulate the number of days per year which the accommodation may be made available for short-term lets, this should be for a clearly stated purpose based on robust evidence. For example, prevention of nuisance. Restriction on days let may be more appropriately handled by planning legislation, taking into consideration the residential amenity of an area.

Possible sanctions may also include suspension of licences, in addition to revocation and fines.

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?**

Charges should apply to all types of short-term lets. Most short term lets are likely to be less than 4 or 5 bedrooms which are likely to require a relatively consistent amount of officer time, therefore allowing a consistent level of charging. Varying licensing regimes and conditions according to property type would result in a more complex system which is more difficult for all to understand and more difficult to effectively enforce. This is the opposite of what the design principles propose to achieve. Given that The Highland Council's local authority area consists of a mixture of urban, rural and remote rural areas, if location were to be a factor involved in variable charging and conditions, this would lead to a very complex approach across the region. This concern is pertinent to not only the administration of such a system, but also to broader promotion of tourism across the Highlands.

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

To ensure consistency, such a limit would need to be tied in with proposals for short term lets currently being considered in the Planning Bill.

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

From a tourism perspective, there is no evidence to suggest the service provided to visitors will necessarily differ if property is supplied by a small scale or a "commercial host". Of more importance, is the principle of consistent levels of regulation across

accommodation types, both protecting the visitor and ensuring a level playing field for all sectors.

This would need to be carefully balanced to ensure that the measures are compatible with the proposed design principles and do not impose barriers to innovation or tourism. A simple measure may resemble landlord registration: in addition to the application fee, there is a fixed fee per property to be registered.

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

This would depend on whether both hosts and platforms are subject to registration/licensing. If the system were to work in a similar way to the current landlord registration system, the host could be registered in addition to the platform. The platform would be the equivalent of a letting agency. This would ensure they are also deemed fit and proper.

The resourcing of enforcement would have a huge implication for The Highland Council. Commentary suggests it is envisaged that short let accommodation should be visited to establish facts about the particular accommodation / let. Given the sheer volume of short let properties within the Highland area and the geographical area to cover, this would not be feasible.

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

Any new legislation to regulate short-term lets must ensure that it is consistent, support and is not contradictory to existing regulation for other types of accommodation and with the new regulations regarding short-term let change of use contained within the new Planning Bill.

The Highland Council is primarily concerned about how any new licensing/registration scheme can be effectively resourced and managed, given the high proportion of letting properties within the Highlands and the geographical area that it covers. It would not be possible to implement any new framework within existing resourcing and additional licencing / registration responsibilities should not have to be met through local authorities having to reduce other services in order to properly resource new responsibilities.