

Consultation report on the draft Licensing Order and Business and Regulatory Impact Assessment (BRIA) for short-term lets in Scotland

November 2021

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Foreword by Shona Robison MSP, Cabinet Secretary for Social Justice, Housing and Local Government



I am pleased to present the Scottish Government's report into the third public consultation on the regulation of short-term lets in Scotland.

We are legislating to establish a short-term lets licensing scheme across Scotland. The purpose of the licensing scheme is: to ensure short-term lets are safe and address issues faced by neighbours; to facilitate licensing authorities in knowing and understanding what is happening in their area; and to assist with handling complaints effectively.

We have always been committed to getting this legislation absolutely right.

We received 1,026 responses to this consultation. I am very grateful to all who took the time to respond. As I hope this report shows, we have listened and improved the legislation as a result.

Whilst many of the points raised were familiar from previous consultations, there were some points that required careful consideration. Some were questioning the competency of the legislation. We have taken the time needed to review all the consultation responses carefully to address genuine stakeholder concerns.

As part of this process, I wrote to the Local Government, Housing and Planning Committee on 7 October 2021 [outlining pragmatic and significant changes to the licensing scheme](#). These changes respond to concerns and issues raised with me during the consultation process and through engagement with stakeholders. This report recaps those changes but also sets out the other changes emerging from the consultation process.

This government has always stressed striking the balance between the needs of local communities and wider economic and tourism interests. The licensing scheme sets out mandatory safety standards which many hosts will already be following to comply with existing law or as a matter of best practice. I am keen to see every short-term let in Scotland meet these basic standards, for the sake of guests, hosts, neighbours and communities.

Where there are other problems, such as noise, nuisance, littering, antisocial behaviour, the loss of residential housing stock and adverse impact on local communities, the licensing scheme and control area legislation together give local authorities the powers to address these. The specific issues vary across Scotland,

across both rural and urban areas, and we expect local authorities to use the powers they have been given to do no more or less than necessary to tackle them.

Subject to the approval of the Scottish Parliament, the licensing legislation will come into force on 1 March 2022. However, local authorities will have until 1 October 2022 to establish a licensing scheme in their area and open it to receive applications. Existing hosts and operators will have until 1 April 2023 to apply for a licence and be able to continue operating whilst their licence application is processed. All short-term lets will require to be licensed by 1 July 2024.

We have committed to monitoring and evaluating the impact of our proposals to ensure that they are effective and targeted.

The first indications of future activity will emerge in April 2023, as all existing operators will need to have submitted an application for a licence by 1 April 2023 in order to continue operating. We will work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023. This review will identify whether any further measures are required to control numbers but also seek to confirm that the wider sector is still healthy, making sure we have avoided unintended consequences.

Over the winter, we will reconvene the stakeholder working group to finalise the guidance on the licensing scheme. I look forward to continuing constructive engagement with the stakeholder working group to do this and prepare for implementation in 2022.

Shona Robison MSP
Cabinet Secretary for Social Justice, Housing and Local Government

1. Executive Summary

- 1.1. This is a report on the Scottish Government's [Short term lets - Consultation on draft Licensing Order and Business and Regulatory Impact Assessment \(BRIA\)](#)¹ which ran from 25 June to 13 August 2021.
- 1.2. The Scottish Government received 1,026 consultation responses and engaged through meetings with the stakeholder working group², Law Society and with residents and community groups. The consultation process is explained in more detail in **chapter 2**.
- 1.3. The next two chapters deal with the points made in consultation in respect of the two questions relating to the draft licensing legislation and Business and Regulatory Impact Assessment (BRIA), respectively.
- 1.4. **Chapter 3** sets out the changes made to the draft Licensing Order, including those highlighted in the Cabinet Secretary for Housing and Social Justice's letter to the Local Government, Housing and Planning Committee of 7 October 2021:
 - Removing overprovision powers
 - Simplifying publicity and notifications
 - Adding an appeal for temporary exemptions
 - Reducing public liability insurance requirements
 - Focused use of inspections
 - Stronger guidance on fees
 - Facilitating home sharing and bed and breakfast
 - Removing natural names from the public register.
- 1.5. **Chapter 4** briefly summarises out the main points made in respect of the draft BRIA. An updated BRIA has been published separately.
- 1.6. The Scottish Government is very grateful to all those who took the time and trouble to engage with this consultation.

¹ All Scottish Government consultation and research documents on short-term lets from 2019 to 2021 and the BRIA referred to in this report can be accessed from www.gov.scot/publications/short-term-lets/.

² [Short-Term Lets Stakeholder Working Group - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/short-term-lets-stakeholder-working-group/)

2. Introduction

Background

- 2.1. In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The 2019 consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The [reports on the 2019 consultation and research](#) were published in October 2019.
- 2.2. In January 2020, Kevin Stewart MSP, Minister for Local Government, Housing and Planning, [announced plans to regulate the short-term let sector](#) in the Scottish Parliament. In September 2020, the Scottish Government launched a second public consultation (“the 2020 consultation”) on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a licensing scheme and planning control areas for short-term lets in Scotland* in December 2020.
- 2.3. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the licensing scheme in chapter 7.
- 2.4. The Scottish Government laid the 2020 Licensing Order and Control Area Regulations in December 2020. The Control Area Regulations were approved by the Scottish Parliament, and came into force on 1 April 2021. The 2020 Licensing Order was withdrawn in February 2021 in response to concerns raised by stakeholders and members.

The 2021 Consultation

- 2.5. A stakeholder working group was established in February 2021 to develop guidance on the licensing scheme and planning control areas, and to consider whether any changes to the 2020 Licensing Order were needed. The stakeholder working group met in February, March and May 2021³, prior to the publication of a revised Licensing Order and draft Business and Regulatory Impact Assessment (BRIA) for consultation from 25 June 2021 to

³ The minutes of the stakeholder working group meetings, more information about the working group and a list of members can be found here: [Short-Term Lets Stakeholder Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/Short-Term-Lets-Stakeholder-Working-Group).

13 August 2021. A number of changes to the Licensing Order had been made following engagement with the stakeholder working group. This third public consultation (“the 2021 consultation”) was accompanied by draft guidance on the licensing scheme and control areas for hosts and operators, platforms and local authorities.

- 2.6. The purpose of the 2021 consultation was to help the Scottish Government ensure that the licensing legislation is as efficient and effective as possible. We were not consulting on whether to implement a licensing scheme nor the broad framework of the approach, but seeking consultees views to get this important legislation absolutely right.
- 2.7. This 2021 consultation report, and other documents referred to above, can be found on the Scottish Government website⁴.

Respondent profile

- 2.8. The Scottish Government received 1026 consultation responses. Of these, some 1014 responses answered the question about themselves. They could select one or more of the following options:

Option: respondent type	Total	Percent ⁵
Accrediting organisation	10	1.0%
Guest (user of short-term lets)	117	11.4%
Host or operator (provider of short-term lets as defined in the Licensing Order)	811	79.0%
Letting agency, platform or similar	37	3.6%
Local authority or other public sector organisation	20	2.0%
Other hospitality (not providing short-term lets)	26	2.5%
Neighbour (affected resident) or community group	85	8.3%
Regulatory body	3	0.3%
Trade association	24	2.3%
Other, please state ⁶	86	8.4%

⁴ All Scottish Government consultation and research documents on short-term lets from 2019, 2020 and 2021 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

⁵ Respondents could select more than one option, therefore total exceeds 100%.

⁶ Although 86 classified themselves as “other”, there were 343 explanations provided to this part of the question.

2.9. Of the 1026 consultation responses, 835 (81.4%) identified themselves as being from individuals and 191 (18.6%) were from organisations. A full list of organisations who responded to the organisation is at **Annex A**.

2.10. There were 1017 responses which answered the question on how people had heard about the consultation:

Option: awareness	Total	Percent
Online at gov.scot or Citizen Space	130	12.7%
Press coverage (local or national TV, radio, social or print media)	349	34.0%
Referred by local authority / government / MSP / councilor	89	8.7%
Referred by host	32	3.1%
Referred by platform	170	16.6%
Other, please state ⁷	395	38.5%
Not Answered	69	6.7%

2.11. We have published 866 responses (84.4%) in line with consultee expressed preferences and withheld 160 responses (15.6%).

2.12. We also asked about satisfaction with the consultation and received 983 responses:

Option: satisfaction	Total	Percent
Very dissatisfied	396	38.6%
Slightly dissatisfied	119	11.6%
Neither satisfied nor dissatisfied	341	33.2%
Slightly satisfied	74	7.2%
Very satisfied	53	5.2%
Not Answered	43	4.2%

2.13. About one in eight respondents were satisfied; over half of respondents were dissatisfied. Most of the dissatisfied respondents were individuals (87%), broadly in proportion with the overall breakdown between individuals and

⁷ Although only 395 selected "other", there were 486 responses to this part of the question.

organisations, see paragraph 2.9 above. Guests and hosts were the most dissatisfied respondent types. We received 393 comments about this and the dissatisfaction arose for a range of reasons, including: not being able to find the consultation documents; the view that Scottish Government was not listening or it was box-ticking exercise; lack of publicity; an abbreviated consultation period; consultation over summer months when hosts and operators were busy with short-term lets; and a desire for more questions over a wider scope (a more open consultation).

2.14. Generally, respondents who were satisfied or very satisfied were pleased that action was being taken to address issues with short-term lets and were content with the proposals.

2.15. Respondents were generally content with the platform (Citizen Space) as a means to respond to the consultation. Of the 976 responses, only 12% were dissatisfied:

Option	Total	Percent
Very dissatisfied	64	6.2%
Slightly dissatisfied	59	5.8%
Neither satisfied nor dissatisfied	484	47.2%
Slightly satisfied	221	21.5%
Very satisfied	148	14.4%
Not Answered	50	4.9%

2.16. There were 175 comments, many of which were content with the web portal and accessibility. Some respondents took the opportunity to recap their wider views on the policy proposals or expressed frustration with difficulties in finding the consultation documents.

Methodology

2.17. Responses to the consultation were submitted using the Scottish Government consultation platform Citizen Space. The Scottish Government also took account of views expressed in correspondence received in and around the consultation period, even though these were not submitted as formal consultation responses.

2.18. Some organisations expressed strong views about the proposals and encouraged their members or the wider public to respond along similar lines. Around 10% of the questions had answers that were not unique or left blank;

there were small numbers of answers where it appears that at least some of the wording had been co-ordinated. Some tourism organisations campaigned against aspects of the proposals and encouraged hosts and operators to respond.

- 2.19. It should be borne in mind that not every respondent answered both of the questions. This report indicates the number of respondents who commented at each question at the start of each chapter. We have considered all comments made by respondents, including the range of issues mentioned in responses, reasons for opinions, specific examples or explanations, alternative suggestions or other comments. The purpose of this consultation was to get the legislation absolutely right, rather than test the popularity of different propositions. For this reason, we have focused on analysis of the substance of the comments, rather than on numerical or sectoral analysis.

Structure of this report

- 2.20. Revisions to the Licensing Order are set out in **chapter 3**; and changes to the BRIA are briefly outlined at **chapter 4**.
- 2.21. This report covers principal issues raised through consultation responses and sets out the Scottish Government's policy response. It does not cover every single issue raised, some of which derived from a misunderstanding of the proposals or are straightforwardly dealt with through guidance or practice.

Next steps

- 2.22. The Licensing Order will come into force on 1 March 2022. Local authorities will be required to have licensing schemes open to receive applications by 1 October 2022, and existing operators will have until 1 April 2023 to submit an application. All short-term lets will be licensed by 1 July 2024; this is a change from 1 April 2024. The reason for this change is explained at paragraph 3.13.
- 2.23. The Scottish Government intends to engage with the stakeholder working group to update the draft guidance documents⁸ with a view to publishing revised guidance early in 2022.

Implementation timetable

- 2.24. The following three deadlines are set by the Licensing Order:
- 1 October 2022 – for local authorities to open a licensing scheme;

⁸ Originally published in June 2021

- 1 April 2023 – for all existing hosts to have made an application for a licence; and
 - 1 July 2024 – for all hosts providing short-term let accommodation in Scotland to be licensed.
- 2.25. Existing hosts and operators will be allowed to continue operating whilst their licence application is determined.
- 2.26. New hosts and operators, who wish to commence short-term letting on or after 1 October 2022 will be required to submit an application, and cannot accept bookings until their licence has been granted.

Monitoring and evaluation

- 2.27. The Scottish Government remains committed to monitoring and evaluation proposals to ensure they are effective and targeted. As part of that work, we will work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023 (after the 1 April 2023 deadline for existing hosts to have made an application). This will allow us to identify whether any further measures are required, as well as providing an opportunity to check on the overall health of the short-term let sector in Scotland and make sure we have avoided unintended consequences.

3. Licensing Order

- 3.1. There were 1,002 responses to the question about any issues with the draft Licensing Order, as set out in [paper 2](#) of the 2021 consultation, and how to resolve them.
- 3.2. On 7 October 2021, the Cabinet Secretary for Social Justice, Housing and Local Government wrote a [letter](#)⁹ to the Convener of the Local Government, Housing and Planning Committee setting out a number of significant and pragmatic changes to the Licensing Order. These changes were made following careful consideration of consultation responses and set out in advance of this report. An important reason for making this statement early was to allow for more informed stakeholder discussion as the legislation was being finalised and comment to the survey conducted by the local government, Housing and Planning Committee¹⁰. In this chapter, the changes in the letter and other changes made or considered for the Licensing Order are set out in the order they appeared in the consultation draft Licensing Order.

Article 2: Interpretation

- 3.3. Article 2 of the consultation draft Licensing Order **defined “host”**.

Consultation proposal:	“host” means a person who is the owner, tenant, or person who otherwise exercises control, of accommodation which is the subject of a short-term let.
Issue:	The Law Society noted that the definition of “host” referred to “otherwise exercises control”. The Law Society suggested that this be expanded to read “otherwise exercises control over occupation and use”.
Resolution:	Amendment. We have made this amendment as this is the relevant dimension of control.

⁹ <https://www.gov.scot/publications/short-term-lets-licensing-order-update-letter-from-cabinet-secretary-LGHP-committee>

¹⁰ The survey closed on 29 October 2021.

3.4. Article 2 of the consultation draft Licensing Order **defined “accommodation”**.

Consultation proposal:	“accommodation” includes the whole or any part of an accommodation unit.
Issue:	The Law Society commented that the definition of “accommodation” refers to “an accommodation unit” but “unit” is not defined.
Resolution:	Amendment. We have revised the definition of accommodation to make a clearer link with premises. Accommodation is defined as all or part of a premises; this ties in with the framing of the 1982 Act which is concerned with the licensing of premises.

Article 3: Definition of short-term let

3.5. Article 3 of the consultation draft Licensing Order **defined “short-term let”**.

3.6. With regard to the **course of business** and **commercial consideration**:

Consultation proposal:	“a short-term let” means the use of residential accommodation provided by a host in the course of business to a guest where all of the following criteria are met— ...
Issue:	North Ayrshire Council suggested substituting "course of business" with the words "course of a business providing accommodation". This was with the aim of excluding farm or factory workers temporarily housed in a caravan at or near their place of work. Those workers might not be paying rent, but their wages might include a deduction in lieu of rent ("commercial consideration").
Resolution:	No change. Paragraph 1(o) of Schedule 1 of the Licensing Order makes provision to exclude accommodation provided by companies and other bodies to employees as part of a contract or to help them perform their duties. This is likely to occur where an employee is required around the

	clock, or is otherwise provided with residential quarters, for example caretakers or workers on an oil rig (insofar as the property is within Scottish territorial waters), where shifts extend into multiple days.
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Article 4: Designation of activity

- 3.7. Article 4 of the consultation draft Licensing Order **defined the activity for which a licence is required.**

Consultation proposal:	A licence is required for a short-term let. This means the taking of bookings (the making of the agreement to let the accommodation) as well as the hosting of the guests.
Issue:	Concerns were raised that, after the transition period, all short-term lets will be required to wait until a licence has been granted before accepting bookings and operating.
Resolution:	<p>Clarification in guidance.</p> <p>We want to facilitate responsible home sharing (which includes bed and breakfast in someone's principal home).</p> <p>We would like licensing authorities to use their powers to grant temporary exemptions in order to facilitate hosts who want to try out home sharing for the first time.</p> <p>Licensing authorities also have the power to grant temporary licences for a period of up to six weeks or, where an application for a full licence is made within that period of six weeks, the temporary licence lasts until the application is finally determined. Again, we would like licensing authorities to take a positive approach to applications in respect of home sharing, in particular.</p> <p>We are considering whether guidance should ask licensing authorities to issue temporary licences as a matter of routine on receipt of an application for home sharing. This would mean that new hosts would be able to take guests before their full licence application was determined. (Existing hosts and operators applying</p>

	<p>before 1 April 2023 can continue to operate prior to determination of their licence application anyway.)</p> <p>Licensing authorities have wide discretion in granting temporary exemptions or temporary licences within the powers of the 1982 Act and the Licensing Order. We will develop the guidance on granting temporary exemptions and temporary licences with licensing authorities.</p>
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3.8. With regard to **advertising accommodation for short-term lets**:

Consultation proposal:	Hosts and operators are not prohibited from advertising accommodation for short-term lets when they do not have a licence. Advertising short-term lets is not an activity requiring a licence.
Issue:	PLACE and Community Land Scotland suggested defining activity to include advertising a property for short-term lets. They considered that this would simplify enforcement and deter potential bad actors.
Resolution:	<p>No change.</p> <p>We have not included advertising within the scope of activity requiring a licence. It is common practice in business to advertise a prospective service even before the business is taking bookings or providing the service.</p> <p>However, licence holders are required to ensure that advertisements or listings are consistent with the terms of their licence. Furthermore, licensing authorities have the power to notify persons involved with advertising or listing accommodation when a licence holder has their licence suspended or revoked so that the advertisement or listing can be removed.</p> <p>In some circumstances, advertising after a licence has been revoked may indicate that the person advertising the accommodation may go on to commit the offence under the 1982 Act of operating without a licence.</p>

Article 7: Transitional provision

3.9. Article 7 of the consultation draft Licensing Order made **transitional provision for existing hosts and operators**.

3.10. With regard to **time limits to object or make representation**:

Consultation proposal:	<p>Article 7 extended the time for a licensing authority to reach a decision on a licence application in respect of applications made by existing hosts before 1 April 2023.</p> <p>However, any objection or representation relating to an application for the grant or renewal of a licence should normally be made within 28 days of the application being made.</p>
Issue:	<p>Police Scotland asked for similar changes to allow for more time for police (and others) to make any objection or representation. In anticipation of high volumes of applications, they want to ensure that they are able to make thorough enquiries and prevent unsuitable persons from obtaining licences. In some cases, there will be intelligence-related material and Police Scotland must go through due process to disclose the right information to licensing authorities.</p>
Resolution:	<p>Guidance.</p> <p>Paragraph 3(2) of Schedule 1 of the 1982 Act allows a licensing authority to entertain a late objection or representation if they are satisfied that there is sufficient reason why it was not made in the time required under that sub-paragraph. Licensing authorities have wide discretion in the application of this power.</p> <p>We consider that police and licensing authorities should work together in terms of a pragmatic approach to the anticipation of the receipt of large volumes of applications. The Scottish Government will work with them to provide appropriate guidance.</p>

3.11. With regard to **time limits to determine an application**:

Consultation proposal:	Article 7 extended the time for a licensing authority to reach a decision on a licence application in respect of applications made by existing hosts before 1 April 2024. Article 7(2)(a) gave licensing authorities 12 months to reach a final decision on an application.
Issue:	North Ayrshire Council considered that article 7(2)(a) was unnecessary, given similar provision at section 3(4) of the 1982 Act.
Resolution:	<p>No change.</p> <p>Sections 3(1) and (3) of the 1982 Act provide that a licensing authority has three months to consider the application and a further nine months to reach a decision.</p> <p>The nine month time period was introduced temporarily by the Coronavirus (Scotland) Act 2020 (Schedule 6 paragraph 1(2)(a)); it was previously six months.</p> <p>The Licensing Order does not delineate the consideration and determination period, in order to give licensing authorities more flexibility in considering applications by existing hosts during the transitional period.</p>

3.12. With regard to **time limits to determine an application after the transitional period**:

Consultation proposal:	Article 7 gave licensing authorities 12 months to reach a final decision on an application made by existing hosts. Section 3 of the 1982 Act provided nine months to do so (outside of the temporary COVID-19 modification) and this applied to applications other than those made by existing hosts before 1 April 2023.
Issue:	Renfrewshire Council requested that the time limit for determining applications for short term lets should be 12 months, for all applications (not just during a transitional period), rather than 9 months. They note that other licensing regimes where the suitability of premises require to be assessed allow a 12 month processing period: for example, House in Multiple Occupation (HMO)

	licensing (under Housing (Scotland) Act 2006) and Skin Piercing and Tattooing licensing (by virtue of an Order made under the Civic Government (Scotland) Act 1982). They were concerned that the proposed 9 month time limit will place considerable strain on local licensing authorities.
Resolution:	No change. We want licensing authorities to take a risk-based approach to inspecting premises. We are concerned that extending the nine month maximum time limit for a new host to have their application finally determined could mean some new hosts waiting a long time to start their business.

3.13. With regard to **when an application is finally determined**:

Consultation proposal:	Article 7 allowed existing hosts who make an application before 1 April 2023 to continue to operate until their licensing application was finally determined. Paragraphs (3) and (4) set out the circumstances in which an application was considered to be finally determined, including when the decision of the licensing authority was appealed.
Issue:	North Ayrshire Council queried the circumstances in relation to article 7(4) in which the applicant has exhausted the appeal process and whether this is catered for, suggesting adding: "... or no such subsequent appeal is possible". Further consideration of this flagged a gap in the interaction with new paragraph 2A (preliminary refusal in respect of breach of planning control) inserted into Schedule 1 of the 1982 Act. Where an existing host makes an application prior to 1 April 2023 and the licensing authority refuses to consider it, the application is never finally determined and the existing host or operator could potentially continue operating indefinitely.
Resolution:	Amendment.

	<p>We have made amendments to address both the point about appeals and to ensure there is no gap in provision.</p> <p>Existing hosts or operators who have made a licence application by 1 April 2023 can continue to operate in the time it takes for their licence application to be finally determined.</p> <p>A licence application is finally determined, for example, when it is granted or refused. Additionally, in the case of existing hosts or operators, it is finally determined if the licensing authority refuses to consider the application because it considers that use of the premises for a short-term let would constitute a breach of planning control.</p> <p>However, we are restricting the power of licensing authorities to refuse to consider licence applications by existing hosts made before 1 April 2023. They may only refuse to consider such an application if they first give the applicant a chance to submit an application for planning permission or for a certificate of lawful existing or proposed use or development (“CLUD”); or where planning permission or a CLUD has been refused.</p> <p>The applicant has three months to submit an application for planning permission or for a CLUD. If they do not do so within three months, the application is finally determined for these purposes and the applicant must cease providing short-term lets.</p> <p>Where the licensing authority refuses to consider the application, the application is finally determined for these purposes and the applicant must cease providing short-term lets.</p> <p>As we have allowed up to three months for applicants to make a planning or CLUD application, the deadline for all short-term lets to be licensed has been extended from 1 April 2024 to 1 July 2024.</p> <p>This means that existing hosts and operators, who may be concerned that they might be in breach of planning control, or are unaware that they might be, will have the</p>
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	chance to take appropriate action and have their licence application considered.
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Schedule 1: Excluded accommodation and tenancies

3.14. Paragraph 1(a) of Schedule 1 of the consultation draft Licensing Order excluded **aparthotels**.

Consultation proposal:	Aparthotels were excluded from the licensing scheme. “Aparthotel” was defined in paragraph 3 of Schedule 1, as was “serviced apartment”, upon which the definition relies.
Issue:	PLACE and Community Land Scotland were concerned that the definition of aparthotel might allow tenements in single ownership to identify as an aparthotel to evade the licensing scheme.
Resolution:	<p>No change.</p> <p>Firstly, this would require a single owner to own every apartment in the block (as the serviced apartments cannot share an entrance with any other flat or residential unit). Secondly, the block would need to comprise at least five apartments. Thirdly, there would need to be a management system in place for the block; simply letting out a collection of flats would not be sufficient.</p> <p>Finally, transforming a residential accommodation block into an aparthotel would normally require planning permission.</p> <p>On this basis, we have not amended the definition of aparthotel.</p>

3.15. Paragraph 1(j) of Schedule 1 of the consultation draft Licensing Order excluded **student accommodation**.

Consultation proposal:	No definition was provided at paragraph 3 of Schedule 1 (in error). However, student accommodation was defined at Schedule 4, paragraph 4(3) for the purposes of
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	consequential amendments to the Control Area Regulations.
Issue:	<p>The Law Society pointed out this omission. They also suggested that the definition for both licensing and control areas be amended to refer to residential accommodation which has been built or converted predominantly for the purpose of being provided to students. This reflects the language used when excluding student tenancies from the short term let licensing and private residential tenancies regimes.</p> <p>Fife Council and Renfrewshire Council suggested student accommodation be further defined to limit the exclusion to when the accommodation was being used for students. That would have the effect that, in the summer months, use for short-term lets would require a licence. Edinburgh Council wanted clarity on whether a licence would be required over such summer months.</p>
Resolution:	<p>Amendment.</p> <p>We have added a definition of student accommodation to the Licensing Order and made the change suggested by the Law Society. Some student accommodation will be built with use during the summer vacation in mind. For example, the accommodation may be built predominantly for students but also for use by conference delegates over the summer.</p> <p>However, we have not narrowed the definition to when the accommodation is being used for students. This is because use of the accommodation for students is likely to raise much of the same issues as for short-term lets and the accommodation has been deemed suitable for this purpose.</p>

3.16. Paragraph 1(n) of Schedule 1 of the consultation draft Licensing Order excluded **bothies**.

Consultation proposal:	Bothy was defined at paragraph 3 of Schedule 1:
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	<p>“bothy” means a building of no more than two storeys which—</p> <p>(a) does not have any form of— (i) mains electricity, (ii) piped fuel supply, and (iii) piped water supply,</p> <p>(b) is 100 metres or more from the nearest public road, and</p> <p>(c) is 100 metres or more from the nearest inhabited house.</p>
<p>Issue:</p>	<p>Scottish Land & Estates suggested replacing “piped water supply” with “piped mains water supply” because bothies can, in some circumstances, have water drawn by pipe from an open burn or nearby spring. Grey water can also be collected from roofs of buildings and piped to basic toilets for flushing or for cleaning purposes.</p> <p>Shetland Council raised a concern about bothies (“bods”) that would not be excluded as they were within 100 metres of a public road. Shetland Council asked for local authorities to be able to define accommodation that could be excluded, such as these “bods”.</p> <p>There are developments of clusters of bothy-like basic accommodation aimed at the holiday let market. A nearby bothy would not be considered to be an “inhabited house”. It was not the intention to exclude these arrangements from the licensing scheme. The definition of bothy was to meant to capture very basic, remote accommodation used by agricultural workers and walkers in remote areas.</p>
<p>Resolution:</p>	<p>Amendment</p> <p>We have made the amendment suggested by Scottish Land & Estates. In effect, this exempts bothies with a private water supply; note that licensed premises need to comply with the mandatory condition around private water supplies. Anyone using a bothy should expect to have to take more responsibility for their health and safety than in a dwellinghouse and should be equipped to do so. With regard to drinking water, for example, by</p>

	<p>bringing their own water, boiling the water or using water purification tablets.</p> <p>We cannot sub-delegate modifications to schedule 1 to licensing authorities; it is not desirable to create inconsistencies across Scotland and it is not lawful under the 1982 Act.</p> <p>We have replaced the term “inhabited house” with “habitable building” (which would include other bothies) as this has the effect of narrowing the exclusion to isolated bothies.</p>
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3.17. Paragraph 2(f) and (g) of Schedule 1 of the consultation draft Licensing Order excluded **tenancies of crofts and small landholdings**.

Consultation proposal:	Tenancies of crofts and small landholdings were excluded by reference to “a tenancy of a house on a croft ...” and similarly, for small landholdings.
Issue:	The Law Society suggested that the draft Order should simply exclude “the tenancy of a croft ...” itself, and similar for small landholdings. This is because a croft is let as a whole unit, including any permanent improvement on it such as a dwelling-house.
Resolution:	<p>Amendment.</p> <p>We agree and have made this change. A “croft” includes the house and land.</p> <p>Section 27(2) of the Crofters (Scotland) Act 1993 reads:</p> <p style="padding-left: 40px;">“(2) A crofter shall not sublet his croft otherwise than with the consent in writing of the Commission and in accordance with such conditions (which shall not include conditions relating to rent) as the Commission in giving their consent may impose; and any sublease of his croft granted by a crofter otherwise than as aforesaid shall be null and void:</p> <p style="padding-left: 40px;">Provided that nothing in this subsection shall be construed as debarring a crofter from subletting</p>

	<p>any dwelling-house or other building forming part of his croft to holiday visitors.”</p> <p>It was not the policy intention to capture the sublet of a whole croft (i.e. a sublet which would require the consent in writing of the Commission). However, it was the intention to capture a sublet of the house only or any other accommodation. This is achieved by removing the phrase “house on a” from schedule 1, paragraphs 2(f) and (g).</p> <p>Crofting example 1: Megan and her family run a croft on Skye. They normally live in a cottage located on the croft. Megan and her family move to Glasgow for two months to attend to family business. Cameron moves into the cottage located on Megan’s croft in order to manage the croft whilst Megan is away. Megan would not require a short-term let licence.</p> <p>Crofting example 2: Megan and her family run a croft on Skye. They stay in the cottage located on the croft. Megan and her family decide to add two glamping pods to their croft to offer holiday accommodation, in order to diversify. Megan would require a short-term let licence. A single short-term let licence would be required for the glamping pods, as they are located on a single premises.</p>
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Schedule 2: Modifications of the 1982 Act

- 3.18. Paragraph 2 of schedule 2 to the consultation draft Licensing Order made new provision for **warrants authorising entry** at section 5A of the 1982 Act.

Consultation proposal:	Section 5 of the 1982 Act provides powers to enter and inspect premises (which have not yet been applied to residential premises). Section 5A allows licensing officers to force entry to premises for inspection, where they have been refused or unable to gain entry. A warrant is required to gain entry if not given voluntarily, in the same manner as for HMOs.
Issue:	<p>The wording of section 5A was hard to follow.</p> <p>An important consideration in respect of short-term lets licensing, unlike most other forms of licensing, is that the</p>

	<p>occupier of the premises may not be a licence holder or their representative; i.e. it could be a guest (who may or may not be an innocent third party).</p> <p>Urgent access is required where evidence of wrongdoing is transient (for example, 20 guests being accommodated in the property suitable for eight). Once the guests have left, it could be hard to prove that this had happened.</p> <p>Non-urgent access is required where the issue is more persistent (e.g. the property is in a bad state of repair) but the owner is refusing access to licensing officers.</p>
Resolution:	<p>Amendment.</p> <p>We have revised section 5A to make the provision clearer.</p>

3.19. Paragraph 3 of schedule 2 to the consultation draft Licensing Order made changes to the **information required on an application**.

3.20. With regard to the **people making the application**:

Consultation proposal:	<p>Where a letting agency manages the host or operator's property, then the application form should name the directors, partners or others responsible for the letting agency. However, the employees of the agency do not need to be named.</p>
Issue:	<p>Airbnb requested that the requirement for property managers and co-hosts to apply for the licence in their personal name be removed. They considered that this requirement was likely to discourage best practice in property management. They suggested that property managers should be able to apply with their company name and considered it would give the Scottish Government more clarity on how short-term lets organisations were operating nationwide.</p> <p>SLE raised the issue of the complex nature of many estate businesses. Ownership may be split between a number of trustees, for example, but responsibility for lettings may fall on one particular manager. They</p>

	suggested that one particular manager, director or trustee to be the only person named on the licence.
Resolution:	<p>No change.</p> <p>Natural names are needed to conduct a fit and proper person test on the people involved in the day-to-day management of the short-term let.</p> <p>The fit and proper person test will normally be applied to the applicant and anyone named on the application form as involved in the day-to-day management of the short-term let.</p>

3.21. With regard to the **address history of the applicant and day-to-day managers:**

Consultation proposal:	Where the applicant is a natural person (not a company), the applicant, and any day-to-day managers named on the application, were to provide a five-year address history.
Issue:	The UK Short Term Accommodation Association (STAA) suggested that the address history requirement was potentially onerous for younger hosts, in particular, who may have moved around a lot and who would therefore have a long address history.
Resolution:	<p>No change.</p> <p>A five year address history aids the police in identifying the person and any relevant information. It is also potentially helpful to the licensing authority to know whether this person is associated with any complaints or other issues at other addresses (in their area).</p> <p>An address history is a requirement for tenancies and credit checks and even basic disclosure applications. Arguably, it is more important to have the address history for an individual who moves home a lot.</p> <p>Note that a five year address history is not required for the people involved with a company where it is the</p>

	company named on the application; we have not changed this provision.
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3.22. Paragraph 4 of schedule 2 to the consultation draft Licensing Order made new provision for **temporary exemptions**.

3.23. With regard to **appeals**:

Consultation proposal:	Licensing authorities have the power to grant temporary exemptions on application. However, there was no right of appeal in relation to a temporary exemption being granted or refused.
Issue:	The Law Society noted that, in the absence of an appeal provision, an applicant who wanted to challenge a decision would have to go to a judicial review.
Resolution:	Amendment. We have included an appeal provision in the Licensing Order to address this concern.

3.24. With regard to **particular occasions**:

Consultation proposal:	Paragraph 1A(1) allowed a licensing authority to make an exemption: (a) in respect of any particular occasion; or (b) during a specified period not exceeding 6 weeks in any period of 12 months.
Issue:	The term “in respect of any particular occasion” introduces unnecessary ambiguity in the context of short-term lets. It is also potentially more difficult for neighbours to determine whether the activity is compliant with the terms of the exemption. This wording reflected provision made for late hours catering licences at section 42 of the 1982 Act. In terms of late hours catering, “in respect of any particular

	occasion” may be intended to cover regular events that fall outside a six week period.
Resolution:	Amendment. We consider that provision allowing for a specified period not exceeding 6 weeks is sufficient to cover any particular occasion relevant to short-term lets and we have removed provision for particular occasions.

3.25. With regard to the **general policy around temporary exemptions:**

Consultation proposal:	Licensing authorities have the power to grant temporary exemptions on application and to charge fees for such applications. Temporary exemptions can be granted for home sharing, home letting and secondary letting. Licensing authorities must prepare and consult on a policy statement in respect of their policy on temporary exemptions.
Issue:	Fife Council and SOLAR commented that, in terms of fees for temporary exemptions, licensing authorities would still have to be satisfied that the premises was suitable for use as a short-term let. They suggested setting out in legislation what was required (certificates, no inspections) or using a registration system to log properties which had been granted a temporary exemption. SOLAR also expressed concern about liability of the licensing authority where they granted an exemption and there was subsequently an issue. South Ayrshire Council and ALACHO suggested that temporary exemptions should only apply to home sharing and home letting, and not secondary letting. For temporary exemptions, they favoured an approach such as registration with self-declaration, so licensing authorities could target applications with missing or incomplete information. PLACE and Community Land Scotland expressed the view that allowing temporary exemptions for up to 6

	<p>weeks was too long. In respect of secondary letting, they commented that this would be unlawful in planning terms, and would result in properties being retained for short-term letting purposes, rather than as homes.</p>
Resolution:	<p>Clarification in guidance.</p> <p>We have given licensing authorities wide discretion on the criteria for granting temporary exemptions, the duration of them and the conditions they might wish to attach. The six week limit is a maximum and not a default; licensing authorities should consider relevant planning limits when granting temporary exemptions for secondary letting. Licensing authorities have the power to adopt a policy of granting temporary exemptions for home sharing and home letting only, if they wish. We are reluctant to restrict the flexibility for licensing authorities in legislation, as one purpose of this power is to allow them to respond to unusual events, similar to COP26.</p> <p>Licensing authorities do not need to inspect every premises and are not liable for the failures of the host or operator.</p> <p>We will clarify the use of temporary exemptions in guidance.</p>

3.26. With regard to **consulting the police**:

Consultation proposal:	<p>No provision had been made for consulting Police Scotland and the Scottish Fire and Rescue Service in respect of applications for temporary exemptions.</p>
Issue:	<p>Police Scotland asked whether the police would be consulted on exemption applications. They are concerned that six weeks is a long enough period for a short-term let to be useful for criminal purposes such as human trafficking.</p>
Resolution:	<p>Amendment.</p> <p>We have given licensing authorities the power to consult the chief constable and Scottish Fire and Rescue Service in respect of applications for temporary exemptions.</p>

	<p>(Note that this is different from temporary licences at paragraph 7 of Schedule 1 to the 1982 Act, where the licensing authorities are under a duty to consult these bodies.) We have given licensing authorities a power, rather than a duty, to allow for flexibility in the range of circumstances and durations for which temporary exemptions may be granted.</p>
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- 3.27. Paragraph 5 of schedule 2 to the consultation draft Licensing Order made substantial changes to the arrangements for **publicising and notifying licence applications** in the 1982 Act.

Consultation proposal:	<p>The consultation draft Licensing Order put the duty on licensing authorities, rather than the applicant, to publicise a licensing application. It gave licensing authorities the choice of doing this by sending notice to neighbours or displaying a notice.</p>
Issue:	<p>Concerns were raised about this by the Law Society, a number of local authorities and tourism bodies.</p> <p>The proposal that notification should be undertaken for all premises within 20 metres was considered disproportionate (compared to other regimes such as alcohol licensing where the equivalent distance is 4 metres). There were also concerns that local authorities did not have the resources to cope with site notifications rather than placing the obligation on the applicant to do this. Finally, the existing 1982 Act process, in which applicants put up a site notice, was considered to be well understood and to work well for existing licensing regimes.</p> <p>It was suggested that template site notices could be made available to hosts and operators as part of the application pack.</p> <p>Some respondents also suggested that application information should be published on-line.</p> <p>North Ayrshire Council raised an issue about the renewal applications to which the publicity requirements would apply. The effect of the provision was that only renewal</p>

	<p>of a licence where there had been a material change since the grant would require to be notified. North Ayrshire Council was concerned about who decided whether there was a material change since the grant; only the applicant was likely to know whether this was the case.</p>
Resolution:	<p>Amendment.</p> <p>We have reverted to the existing 1982 Act procedures and we will develop a template site notice to accompany the guidance. This will help applicants and licensing authorities and it will also facilitate residents and neighbours in knowing what to look out for. It will also make a modest, positive impact in reducing fee costs, as local authorities will no longer face the cost of posting or placing notices.</p> <p>Under a temporary amendment made by the Coronavirus (Scotland) Act 2020, public notice of licence applications may be given by publication of a notice on the licensing authority's website. We have given licensing authorities an ongoing power to publish information about live applications on their websites, so that residents and community groups can find out about applications more easily.</p>

3.28. With regard to the issuing of **unique licence numbers**:

Consultation proposal:	<p>Article 2(1) defined unique licence number and requires that the number identified the issuing licensing authority. The Licensing Order also required the unique licence number to be issued to the applicant as soon reasonably practicable after receiving an application. The unique licence number was also included on the public register.</p>
Issue:	<p>PLACE and Community Land Scotland suggested that licence numbers should be transparent and indicate the type of short-term let to which the application or licence relates. They considered that using separate licence numbers for home letting and home sharing would aid the collection of data for enforcement. They were</p>

	concerned that secondary letting might masquerade as home sharing.
Resolution:	<p>Amendment.</p> <p>We have amended the Licensing Order to clarify that there are four types of short-term let licence (secondary letting; home letting, home sharing; and home letting and home sharing). The type of short-term let must be specified on the public register. We have also made it mandatory only to provide the type of short-term let specified on the licence, to put beyond doubt that a licence for home sharing cannot be used for secondary letting.</p> <p>We intend, in guidance, to suggest that licensing authorities issue two types of licence only: secondary letting; and home sharing and home letting, but the legislation is flexible. We intend to set out in guidance that the unique licence number should distinguish between the type of short-term lets.</p>

- 3.29. Paragraph 6 of schedule 2 to the consultation draft Licensing Order made provision for **preliminary refusal in respect of breach of planning control** by inserting new paragraph 2A into Schedule 1 of the 1982 Act.

Consultation proposal:	Paragraph 2A gave a licensing authority the power to refuse to consider an application for a licence if it considers that the use of the premises for short-term let would breach planning control.
Issue:	North Ayrshire Council observed that an applicant without planning permission, for whom the 21 days has expired for the licensing authority, can continue to operate under transitional provisions until such time that the licensing authority determines the application. North Ayrshire Council would like the time limit of 21 days to be removed because, due to COVID-19, council staff are mainly working from home and are likely to do so for the foreseeable future, so they might struggle to meet the 21 day limit.

	PLACE and Community Land Scotland suggested removing the discretion of the licensing authority to refuse to consider such an application, so that the licensing authority must refuse to consider it.
Resolution:	<p>No change.</p> <p>But note that changes have been made to the transitional arrangements for existing hosts or operators who make a licence application by 1 April 2023, see paragraph 3.13 above.</p> <p>We are not extending or removing the 21 day time limit, as this would mean that an applicant could wait a longer time before being advised that their application was not being considered and could delay the final decision.</p> <p>This power is primarily designed to assist licensing authorities in processing licensing applications for secondary letting within control areas. We will set out in guidance more information about the circumstances in which the licensing authorities might want to use the power at paragraph 2A.</p>

3.30. Paragraph 7 of schedule 2 to the consultation draft Licensing Order made provision for **overprovision** at paragraph 7(c).

Consultation proposal:	Overprovision was included within the draft Licensing Order published in December 2020 and additional safeguards were added to the revised Licensing Order and extensive draft guidance to local authorities published on 25 June 2021. Those changes gave hosts and operators more clarity, rights and protections than they had in the 2020 Licensing Order.
Issue:	During the 2021 consultation, concerns were raised that overprovision powers in the Licensing Order created additional complexity and uncertainty and that it would take time to consult on and introduce overprovision policies. Some stakeholders questioned the competency of the provision in the draft Licensing Order.
Resolution:	Amendment.

Having considered these representations, we are of the view that the powers given to local authorities to establish control areas are sufficient to implement overprovision policies, where local authorities wish to do so. One of the main purposes of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood), achieving largely the same effect as the overprovision powers.

Licensing authorities have the power to refuse to consider a licence application if they consider that the use of the premises would breach planning control (but see also paragraph 3.29 above). Compliance with planning control is a mandatory licence condition in control areas.

We have already issued [Planning circular 01/2021: short-term let control areas](#) (25 June 2021) to guide planning authorities in establishing control areas. The City of Edinburgh Council is consulting on designating the city as a control area. Highland Council is considering whether to designate Badenoch and Strathspey as a control area. We also published [draft guidance on planning for hosts and operators](#) on 25 June, which we will finalise with the stakeholder working group once the Licensing Order is finalised. We will consider how to make sure that residents and community groups are aware of the new planning powers that are available to their local authorities.

All short-term lets will require to be licensed by 1 July 2024. The first indications of future activity will emerge in April 2023, as all existing operators will need to have submitted an application for a licence by 1 April 2023 in order to continue operating. We will work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023 to see whether any further measures are required. This review will also seek to confirm that the wider sector is still healthy, making sure we have avoided unintended consequences.

- 3.31. Paragraph 9 of schedule 2 to the consultation draft Licensing Order made provision for **enforcement notices** by inserting new paragraph 10A into schedule 1 of the 1982 Act.

<p>Consultation proposal:</p>	<p>Paragraph 10A gave licensing authorities the power to serve enforcement notices. Where monitoring visits, or other information, suggested that any licence condition had been, or was likely to be, breached, licensing authorities could require a licensee to take action to put it right. This will usually be done by serving an enforcement notice.</p>
<p>Issue:</p>	<p>Renfrewshire Council considered that the procedure appeared to be circular. It allows for an enforcement notice to be served where a condition of licence has been breached or is likely to be breached and for a condition of an enforcement notice to then be treated as a condition of licence. Renfrewshire Council was not clear what use would be made of enforcement notices.</p> <p>Argyll and Bute Council asked for powers to issue fixed penalty notices. They were concerned that offences would not be effective. They note that fixed penalty notices exist in other legislation as an alternative enforcement option and suggest that this leads to higher levels of compliance.</p>
<p>Resolution:</p>	<p>No change.</p> <p>With regard to enforcement notices, they give licensing authorities a means of addressing a likely future breach. For example, a host advertising a property as capable of taking ten guests in breach of a licence condition specifying no more than eight. This could be evidenced in a listing or advertisement (which will now also be a breach of the listing condition see paragraph 3.47 below). It also gives them a more low key way of addressing unintentional errors by well-meaning hosts. Finally, it is a power so it need not be used if not seen to be helpful.</p> <p>With regard to the suggestion of fixed penalty notices, we will keep this under review during the implementation phase of the legislation.</p>

- 3.32. Paragraph 11 of schedule 2 to the consultation draft Licensing Order made provision for a **public register of short-term lets**.
- 3.33. With regard to **names of hosts and operators appearing on the public register**:

Consultation proposal:	The consultation draft Licensing Order made provision for names of hosts and operators (as licencees) to appear on the public register.
Issue:	Concerns were raised about this. The STAA were concerned that the publication of hosts' names, especially in the context of home sharing, could be off-putting to potential hosts.
Resolution:	<p>Amendment.</p> <p>We agreed that the publication of hosts' names, especially in the context of home sharing, could be off-putting to potential hosts. We have removed the applicant's natural name from the public register; but company names continue to be included where (one of) the licence holders is a body corporate.</p> <p>Since this was announced on 7 October 2021, community groups and residents have raised concerns about removal of natural names, as they believe it promotes transparency, noting that natural names are included in the Scottish Landlord Register. An important difference, however, is that with the Landlord Register the landlord does not live at the property whereas, in the case of home sharing or home letting, it is the host or operator's home address. Where an application is made for a short-term let licence, the applicant must display a site notice and this notice will include their name. This means that neighbours will still know the natural name of the person operating a short-term let next to their home.</p> <p>We have also made an amendment so that, where a licensing authority has asked for contact details of the manager of the premises as part of the application process, this will always be included in the register for secondary letting. This is the case even if the manager of the premises is the applicant and is a natural person.</p>

3.34. With regard to **public access**:

<p>Consultation proposal:</p>	<p>A range of provision coexisted in respect of public access to the register:</p> <p>(3) The register shall be open to the inspection of any member of the public at such reasonable times and places as may be determined by the licensing authority and any member of the public may make a copy thereof or an extract therefrom.</p> <p>(5)(b) ... the licensing authority must on a quarterly basis ... publish the content of the register in respect of short-term let licences only in an electronic format.</p> <p>(6) The licensing authority must provide access to the register free of charge at an office of the licensing authority.</p>
<p>Issue:</p>	<p>The provision is unnecessarily complicated with various duplication and overlap.</p> <p>PLACE and Community Land Scotland suggested that the register should be a live document on the same basis as the Scottish Landlord Register. They considered that a quarterly update was insufficient for it to be useful.</p>
<p>Resolution:</p>	<p>Amendment.</p> <p>We intend, as far as possible, to align all provisions for access to information for consistency. Our policy objectives are:</p> <p><u>Digital first</u> – licensing authorities should be encouraged to make information available on-line.</p> <p><u>Accessibility</u> – some people will not have internet access or have disabilities which prevent them from accessing information on-line. Licensing authorities must ensure the information is accessible to everyone.</p> <p><u>Free</u> – there should be no charge for access to this information.</p> <p><u>Practical</u> – the register will have many entries so the licensing authority should not be obliged to maintain or</p>

	<p>provide a paper copy. We would prefer that people requiring access, who are unable to access the information on-line from home, should be facilitated in viewing the information, for example at an office of the licensing authority or a local library.</p> <p>We have amended the provision in line with these objectives. Licensing authorities are required to publish the content of their register on their website or other website established and maintained for that purpose. Licensing authorities would be expected to update this information at least quarterly but the legislation allows for a move to more frequent or live updates. We have also given licensing authorities the power to publish live application data, not least to help neighbours and others to search for licence applications.</p>
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3.35. With regard to **a national register**:

Consultation proposal:	Licensing authorities were to maintain their own public register. The Scottish Government would publish anonymised national data using information provided by licensing authorities.
Issue:	Aberdeen City Council (and others) suggested that the Scottish Government should develop a national short-term lets register into which licensing authorities could feed up-to-date information. This would offer potential benefits in terms of consistency and, potentially, real time data.
Resolution:	<p>Amendment.</p> <p>See paragraph 3.34 above. The wording of the legislation in respect of where the register is hosted provides flexibility as to how this is done and would allow for the Scottish Government to host a national register. In the first instance, it will be for licensing authorities to ensure that they comply with the requirements in the Licensing Order and the 1982 Act with regard to maintaining a public register. However, this is something</p>

	we will explore further with licensing authorities as we prepare for implementation.
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- 3.36. Paragraph 13 of schedule 2 of the consultation draft Licensing Order made provision for **the charging of fees** by substituting a new paragraph 15 into schedule 1 of the 1982 Act.
- 3.37. The 1982 Act requires licensing authorities to operate licensing schemes on a cost-recovery basis. Licensing authorities cover their costs in running and administering their licence schemes through licence fees.
- 3.38. With regard to the **costs from inspections**:

Consultation proposal:	Under powers in the 1982 Act, licensing authorities have the power to inspect premises.
Issue:	<p>A significant factor in the cost to a licensing authority in implementing a licensing scheme is the inspection of premises.</p> <p>Renfrewshire Council noted the proposed requirement that local authorities must be satisfied that the mandatory conditions would be able to be met by the licence holder prior to granting a licence. They were not persuaded that this requirement was necessary, noting it was not a specific requirement in other similar licensing regimes. They noted that their HMO licensing process involved inspection of the properties to be licensed, but thereafter, as with all other local authority licensing regimes, compliance with mandatory and other licensing conditions is a matter for monitoring and enforcement.</p> <p>They anticipate that, based on the proposed checks involved, fees for short term lets may be comparable to HMO licence fees.</p>
Resolution:	<p>Clarification in guidance.</p> <p>We want licensing authorities only to use inspections as part of a risk-based, intelligence-led approach. We want licensing authorities to allow applicants to self-certify adherence with mandatory conditions on application.</p>

	<p>The applicant would be breaching their licence conditions if it transpires later that they are not in compliance.</p> <p>Therefore, we propose to set out in guidance the relevant factors to consider in whether to carry out an inspection of a particular premises. These could include, for example:</p> <ul style="list-style-type: none">• other accreditation obtained by the host or operator;• feedback from Police Scotland and the Scottish Fire and Rescue Service;• peculiarities of the operation (e.g. very unconventional accommodation);• complaints history associated with the host, operator or premises;• intelligence from other inspections (which may indicate a higher incidence of issue or non-compliance with hosts or operators or premises of that type or in that area); and• reputational evidence (where available) from guest reviews and internet profile. <p>Importantly, there is no specific liability on licensing authorities in terms of a “failure to inspect”; the licensing authority’s duties to consider an application and grant a licence, and thereafter to ensure adherence with a licence’s conditions, remain in line with the 1982 Act provisions and the current licensing framework.</p> <p>The legislation does not require licensing authorities to be satisfied that the mandatory conditions will be able to be met by the licence holder. We will work with licensing authorities to ensure the guidance is framed appropriately.</p>
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3.39. With regard to the **overall revenue from fees**:

<p>Consultation proposal:</p>	<p>The 1982 Act requires licensing authorities to operate licensing schemes on a cost-recovery basis. Licensing authorities cover their costs in running and administering schemes through licence fees.</p>
<p>Issue:</p>	<p>A number of stakeholders have raised concerns about the potential impact licence fees would have on their businesses, particularly during the midst of recovering from the COVID-19 pandemic.</p> <p>A fee cap was suggested at the stakeholder working group as a means of keeping fees affordable for applicants.</p>
<p>Resolution:</p>	<p>Clarification in guidance.</p> <p>We expect licensing authorities to set fees on a sliding scale as set out in draft guidance for licensing authorities, letting agencies and platforms and to recover their costs through fees, so an absolute fee cap would not work.</p> <p>However, we do want licensing authorities to keep costs, and therefore the revenue that needs to be raised from licence fees for full cost recovery, as low as possible.</p> <p>We are considering specifying an average fee in guidance which licensing authorities should not exceed. The average fee could be calculated in some way from the total fee revenue per year in relation to the total guest capacity in licensed accommodation. It is important to emphasise that the average fee is not a cap: some licence fees would exceed the average fee set out in guidance, but others would be lower.</p> <p>This will now be explored further with licensing authorities, as there are a range of factors to consider which may vary across Scotland, including: differences in the size and type of accommodation; the quality of applications; the number of objections and, in particular, the licensing committee consideration. The overall cost of operating the scheme for a licensing authority is likely to be sensitively dependent on the numbers of more complex applications.</p>

3.40. With regard to the **reports following inspections where a fee has been charged**:

Consultation proposal:	Where a local authority charges a fee in respect of an inspection, the licensing authority must produce a report of its finding to the licence holder within 28 days of the inspection.
Issue:	There is a gap in provision in terms of what would happen where a licensing authority failed to produce a report following an inspection within 28 days. The Licensing Order does not provide for any penalty or other outcome.
Resolution:	Amendment. We have required the licensing authority to refund the fee if they fail to produce a report within 28 days.

Schedule 3: Mandatory licence conditions

3.41. Paragraph 1 of schedule 3 to the consultation draft Licensing Order made provision in respect of **agents**:

Consultation proposal:	Paragraph 1 of schedule 3 ensured that the persons responsible for the day-to-day management of the short-term lets are known to the licensing authority and have been suitably checked through the fit and proper person requirements. There may be several people who are licence holders on any given licence.
Issue:	North Ayrshire Council has raised a concern about the ability of people other than the owner (who may live remotely) to carry on the day to day management of the short-term let of the premises.
Resolution:	Amendment. We have reworded this paragraph to make it clearer that this includes day-to-day managers, not just the applicant. These would all be holders of the licence (having been named on the application form).

3.42. Paragraphs 2 and 3 of schedule 3 to the consultation draft Licensing Order made provision in respect of **fire safety**.

3.43. With regard to **fire risk assessments**:

<p>Consultation proposal:</p>	<p>Paragraph 2 of schedule 3 made provision for fire safety equipment and paragraph 3 for furnishings and mattresses. No provision was made for fire risk assessments.</p>
<p>Issue:</p>	<p>The Scottish Fire and Rescue Service and ALACHO suggested that a fire risk assessment should be a mandatory condition. Paragraph 50 of fire safety guidance for existing premises with sleeping accommodation states:</p> <p style="padding-left: 40px;">“Where fire safety law applies, it is a legal requirement to assess the premises to identify risk to persons from fire and to take fire safety measures. The assessment of risk should be specific to fire safety and to the specific premises concerned. A generic risk assessment will not be sufficient.”</p> <p>This is required for premises with sleeping accommodation by the Fire (Scotland) Act 2005.</p> <p>ALACHO also noted that there is no requirement for a fire escape plan to be made available to guests and wanted this to be mandatory.</p>
<p>Resolution:</p>	<p>No change.</p> <p>We have not included fire risk assessments under the 2005 Act as a mandatory condition. Firstly, they are a statutory obligation on a potentially different person, such as the building owner, not necessarily the host or operator. This is significant in blocks of flats, for example. Secondly, section 54 of the 2005 Act does not apply to domestic premises. Therefore, fire risk assessments under the 2005 Act will not be a requirement currently for many short-term lets.</p> <p>The Licensing Order mandates practical steps that will help to ensure the safety of guests. Whether further obligations to conduct fire risk assessments are</p>

	<p>necessary is something which the Scottish Government will consider as part of ongoing monitoring and review of the licensing scheme.</p> <p>With regard to provision of a fire escape plan to be made available to guests, what is now paragraph 12 of schedule 3 requires information on fire, gas and electrical safety to be made available to guests. We will specify in guidance that a fire escape plan should be part of this information.</p>
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3.44. With regard to **distinguishing between accommodation that takes up part of or the entire premises:**

Consultation proposal:	Requirements around fire safety equipment and furnishings and mattresses were applied to the premises.
Issue:	Airbnb and the Scottish Bed and Breakfast Association (SBBA) expressed concern about the impact of some of the mandatory conditions in home sharing, where only some of the rooms are available to guests.
Resolution:	<p>Amendment.</p> <p>We want to facilitate home sharing and bed and breakfast. We agree that fire safety of furnishings and electrical safety requirements should only apply to rooms that guests use or are permitted to access and we have made this clear in respect of fire safety of furnishings in schedule 3. Fire safety equipment (e.g. smoke detectors) should apply to the whole premises.</p> <p>We will review the guidance on how to evidence compliance with the stakeholder working group.</p>

3.45. Paragraph 5 of schedule 3 to the consultation draft Licensing Order made provision in respect of **electrical safety**. With regard to **distinguishing between accommodation that takes up part of or the entire premises**

Consultation proposal:	Requirements around electrical safety were applied to the whole premises.
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Issue:	Airbnb and the SBBA expressed concern about the impact of some of the mandatory conditions in home sharing, where only some of the rooms are available to guests.
Resolution:	<p>Amendment.</p> <p>We want to facilitate home sharing and bed and breakfast. We agree that fire safety of furnishings and electrical safety requirements should only apply to rooms that guests use or are permitted to access and we have made this clear in respect of electrical safety in schedule 3.</p> <p>We will review the guidance on how to evidence compliance with the stakeholder working group.</p>

3.46. Paragraph 12 of schedule 3 to the consultation draft Licensing Order made provision in respect of **planning permission**:

Consultation proposal:	Where the premises is in a short-term let control area, the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either: an application has been made for planning permission; or planning permission is in force.
Issue:	<p>The Law Society questioned the need for this provision, given the planning status is likely to be considered at the time of the licence application within a control area.</p> <p>North Ayrshire Council asked about use covered by section 150 or 151 of the 1997 Act. These are certificates of lawful existing or proposed use or development (“CLUDs”).</p> <p>North Ayrshire Council suggested that provision also be made for letters of comfort, along the lines that, even if the planning authority have not issued a CLUD, they would do so if asked. North Ayrshire Council suggested this further provision because it would save hosts and operators having to apply for a CLUD.</p>

	<p>PLACE and Community Land Scotland suggested that planning permission should be mandatory for tenements and other shared access properties when used for secondary letting because of the adverse impact on neighbours' living conditions and security.</p>
Resolution:	<p>Amendment.</p> <p>We consider this mandatory condition to be necessary to allow for the possibility of a control area being designated after a licence has been granted. In this case, some licence holders would need to submit planning applications in order to continue to comply with this mandatory condition.</p> <p>We have expanded the terms of the condition to cover CLUDs under sections 150 and 151 of the 1997 Act to allow for the circumstances where the applicant or licence holder has applied for, or been granted, a CLUD in respect of their short-term let activity.</p> <p>We have not made provision for letters of comfort. We consider that this potentially opens up a loophole; we do not think it unreasonable that, within a control area, relevant premises should apply for, or have, planning permission or a CLUD.</p> <p>With regard to whether planning permission should be mandatory for tenements and shared access properties, this is a matter for planning authorities in setting planning policies and in choosing whether to designate control areas.</p>

3.47. Paragraph 13 of schedule 3 to the consultation draft Licensing Order made provision in respect of **listings**:

Consultation proposal:	<p>The holder of the licence must ensure that any listing or advert for the short-term let of the premises included the maximum number of guests permitted to reside in the premises, in accordance with the number specified in the licence (under paragraph 10 of schedule 3: maximum occupancy).</p>
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Issue:	<p>There is an issue for home sharing where more than one room is available for booking. (There is no issue where an entire premises forms the accommodation, such as is normally the case with secondary letting.)</p> <p>Consider, for example, a B&B with four bedrooms, each of which can take up to two guests per bedroom, would have a maximum occupancy of eight specified on the licence.</p> <p>This maximum occupancy (of eight persons) would have to be specified on any listing or advert. But, normally, such a B&B would advertise each room with its own occupancy (two persons) rather than the total capacity of the premises (eight persons). Any guest would most likely want to know about the capacity of the available rooms, not the premises.</p>
Resolution:	<p>Amendment.</p> <p>We have amended the provision to ensure that listings and adverts are consistent with the terms of the licence. This means that the total capacity of the accommodation advertised must be consistent with the maximum occupancy of the premises. For example, in a B&B with a maximum occupancy of eight, advertising each of four rooms with an occupancy of two per room is consistent with the maximum occupancy, whereas advertising each of the four rooms with an occupancy of three per room would not be.</p>

3.48. Paragraph 14(b) of schedule 3 to the consultation draft Licensing Order made provision for **public liability insurance**.

Consultation proposal:	<p>The consultation draft Licensing Order required public liability insurance providing cover of not less than £5 million.</p>
Issue:	<p>We included an estimate of £100 per annum for a £5 million public liability insurance policy in the BRIA. Airbnb and the Scottish Bed and Breakfast Association raised concerns about the true cost of this requirement and the effect it would have on hosts using their own</p>

	homes. They suggested that the Licensing Order should not be prescriptive about how much public liability insurance cover is required but should seek to ensure that adequate cover is in place.
Resolution:	<p>Amendment.</p> <p>We have removed the specified figure from the Licensing Order and instead require adequate insurance. We have clarified that public liability insurance need only be in place for the time that guests are staying at the premises. This will make it easier for hosts to use public liability insurance provided by platforms as part of their booking service.</p> <p>In guidance, we propose to include advice that public liability insurance should be at least £2 million for whole property lets and that home sharers should seek advice. However, we will be seeking the views of the stakeholder working group on this as we finalise the guidance.</p>

3.49. Paragraph 16 of schedule 3 to the consultation draft Licensing Order made provision preventing the provision of **false or misleading information**.

Consultation proposal:	Hosts and operators must not provide false or misleading information to the licensing authority. This could be in the context of an application for a licence or at any later point.
Issue:	PLACE and Community Land Scotland suggested that providing false or misleading information should also be subject to sanction. PLACE noted that that their network routinely reports misleading and false information being supplied by operators in enforcement investigations.
Resolution:	<p>No change.</p> <p>The licensing authority can suspend or revoke a licence should they discover that false or misleading information has been negligently, knowingly or deliberately provided to them. This would cover the circumstances, for example, where the applicant submits evidence</p>

	<p>purporting to show that they live at the premises but they actually live elsewhere.</p> <p>Furthermore, section 7(4) of the 1982 Act makes it an offence to provide a false statement in an application or renewal application. In response to concerns expressed through the 2020 consultation, we had already committed to legislate to increase the maximum level of fine to £10,000 for this offence. That commitment will be taken forward in a Bill in this Parliament.</p>
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Schedule 4: Consequential amendments

- 3.50. Paragraph 4 of schedule 4 to the consultation draft Licensing Order made provision to **amend the Control Area Regulations**. These are now being taken forward as a separate statutory instrument, the Control Area Amendment Regulations¹¹. These changes are to ensure consistency between the definition of short-term let in the Licensing Order, which has evolved since the Control Area Regulations were laid in December 2020.
- 3.51. There are some minor variations between the Licensing Order and Control Area Regulations, as amended, reflecting the underlying differences between planning and licensing law and the purpose of the instruments.
- 3.52. For example, “bothy” is not excluded accommodation in the Control Area Regulations. Section 26B of the 1997 Act has the effect that, in a short-term let control area, the use of a dwellinghouse for the purpose of providing short terms lets is deemed to involve a material change of use. It would not apply to a purpose-built bothy or to another building used as a bothy which was not previously a dwellinghouse.
- 3.53. Similarly, “hotel” is not excluded accommodation in the Control Area Regulations. We do not wish to exclude houses calling themselves hotels from the scope of the Regulations; note that a class 7 hotel is not a class 9 house and would not be within scope anyway. With regard to a dwellinghouse which is part of a hotel, e.g. on the grounds of the hotel and used for short-term lets, it should be within scope of the Control Area Regulations. We would expect that many such dwellinghouses would already have planning permission.

¹¹ The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022.

3.54. With regard to the application of the **Rehabilitation of Offenders Act**:

<p>Consultation proposal:</p>	<p>Applicants for a short-term let licence will be subject to a fit and proper person test. The licensing authority will consider relevant information as part of determining whether the applicant is fit and proper to be a licence holder. We had suggested in the Policy Note and draft guidance that relevant information might include relevant criminal convictions.</p>
<p>Issue:</p>	<p>SOLAR asked whether there would be an exception to Rehabilitation of Offenders Act 1974 made to allow spent convictions to be disclosed to, and considered by, licensing authorities, as is the case for licensing taxi drivers and registering private landlords.</p>
<p>Resolution:</p>	<p>Under consideration.</p> <p>The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (SSI 2013/50) sets out exempt proceedings (schedule 1) and occupations (schedule 4, part 3). In these cases, the proceedings and occupations are exempt from the prohibition against considering or disclosing spent convictions in the context of occupation or employment.</p> <p>We are considering whether it would be appropriate to make provision to allow spent convictions to be considered in respect of the fit and proper person test in respect of short-term lets. If this was appropriate, it could be taken forward as an amending order under 1974 Act powers and could be in force for 1 October 2022.</p> <p>At present, spent convictions can be considered for landlord registration but not for the purposes of an HMO licence application nor for licensing applications under the Licensing (Scotland) Act 2005. Spent convictions can be considered for the purposes of taxi licensing under the 1982 Act.</p>

Responsibilities of platforms

3.55. Booking.com, Airbnb and SBBA made a number of points about the responsibilities of platforms.

3.56. Booking.com raised the following concerns:

- a) Information required for listings. Paragraph 152 of the [Policy Note] stated “*Letting agencies and platforms will be expected to request this information as part of the information required to advertise or list a property*”. Booking.com felt this appeared to fall short of a legal obligation, leaving the door open for a fragmented approach. To ensure that there is a clear and consistent approach when on-boarding properties and advertising them on platforms, greater clarity was needed on the legal obligation.
- b) The validation process for registering properties was vague and greater clarity was needed on what this process would entail. This detail would help make it easier to understand what role platforms will play in (if any) in checking properties at the sign up stage and would help avoid a fragmented approach.
- c) The Licencing Order placed no legal obligation on platforms or letting agents to verify the licence number provided by the host. This opened the door to fragmented enforcement.
- d) Where a public database of licences existed, booking.com believed there was a role for platforms to play, within reason, in verifying the validity of the information provided by short-term lets hosts. They also consider that API solutions could offer a practical solution for a more automated process, providing platforms in real time with the most up to date information. Using technical tools such as APIs were potentially the most efficient way to ensure platforms supported enforcement.
- e) The Licencing Order did not provide a process for authorities to require platforms to remove unlicensed short-term lets. Booking.com wanted clarification on the powers authorities had to request the take down of unlicensed short-term lets.
- f) The wording in the [Policy Note] (paragraph 116) stated that where platforms are informed by authorities of, e.g., a revoked licence, “*this would allow letting agencies and platforms to remove adverts ...*”. Booking.com wanted clarity in terms of what was required where a platform or letting agent was informed by an authority of a short-term let without a valid licence number or a revoked licence number.
- g) They considered there was ambiguity in language used in the guidance, e.g. “*platforms should ...*”. There was a risk that platforms might take a differing approach and interpretation of what this meant for them.

- 3.57. With regard to point (f) above, as an example, Booking.com advised that they removed invalid properties as soon as they were made aware. But they were concerned about a divergent approach to this across platforms and letting agencies. Booking.com were concerned that this could lead to an inconsistent approach towards invalid short-term lets, contributing to a fragmented approach of enforcement, but it also risked creating competitive disadvantages for platforms who acted more quickly and diligently in their approach to enforcing the licencing scheme.
- 3.58. Booking.com supported the proposal for a consistent licence number format for the whole of Scotland. This was central to facilitating platforms' role in supporting enforcement of the rules.
- 3.59. Airbnb also considered there was a lack of clarity when it came to what platforms were expected to do in response to the regulations. Their view was that the draft guidance produced by the Scottish Government was significantly overreaching. Airbnb understood that the purpose of the guidance was to outline obligations underpinned by the legislation. However, they were concerned that suggestions about what hosts, local authorities and platforms "should" do did not provide the legal basis for doing so.
- 3.60. The SBBA was also concerned at a lack of clarity and enforceability of what was required by Government of platforms and letting agents. They noted that the draft Licencing Order placed no legal obligation on platforms or letting agents to verify the licence (or registration) number provided by the accommodation owner. They asked that the Licensing Order is changed to be more specific about the legal obligations on platforms. They would like platforms to be required by law to:
- a) Require all accommodation owners ("hosts"), as part of their "onboarding" processes, and (for existing hosts) in order to remain listed, to confirm that: they understand their legal obligations, especially as regards health and safety, and they are complying with those obligations. The Licensing Order should be explicit that platforms should NOT list hosts who do not explicitly give platforms both undertakings.
 - b) Check and verify (via an "API" interrogating a central online database) the registration or licence number of all hosts in Scotland, and display their current number within their listing and on customer booking documentation.
 - c) Delist (within a determined time frame) any accommodation which cannot provide a valid number or has had its registration or licence revoked.

- 3.61. The SBBA was also concerned that the licensing scheme was not digital, noting that diverse or off-line systems by different licensing authorities would make the legislation hard to enforce.
- 3.62. The Scottish Government is sympathetic to these points and keen to assist platforms in enforcing the provisions of the licensing scheme. However, this is a complex area as powers in the 1982 Act are limited and some aspects of this would be reserved to the UK Government. We will work with platforms as we revise the guidance to make the wording as clear and helpful as possible. We will consider what more is needed in law, and how that might be delivered, as part of review of the operation of the scheme in summer 2023.

Errata

- 3.63. A number of stakeholders, including the Law Society, SOLAR and City of Edinburgh Council, North Ayrshire Council, Renfrewshire Council pointed out various typographical and cross-referencing errors. These have been corrected.

Policy Note and revocation of a licence

- 3.64. A number of respondents commented on the consultation draft Policy Note accompanying the Licensing Order (in paper 2).
- 3.65. With regard to the **revocation of a licence** (paragraph 100 of the Policy Note), Renfrewshire Council commented:

“... it is not clear that the position where a licence is suspended or revoked has been properly understood in the development of the new legislation. Where a person no longer has a licence, or their licence is suspended (and hence is no longer in effect), the person is unable to operate under their licence by the automatic operation of law. Either the decision comes into effect immediately (if imposed by the local authority under paragraph 11(10) of Schedule 1 to the 1982 Act), or it comes into effect at the end of the period for appeal. While decisions require to be confirmed by a Council in writing, there is no legal basis for some other date being specified for the decision taking effect. Where a licence is no longer in force (or effect), the matter of whether to charge an unlicensed host with an offence would be for the police.”

- 3.66. Paragraph 100 of the Policy Note said:

“We expect the licensing authority to engage with the host to allow time for existing guests to depart before the offence of operating without a licence applied. This might be done through setting an appropriate effective date for the notice.”

- 3.67. Renfrewshire Council’s view is that either the licence is immediately suspended or revoked in line with paragraph 11(10) of Schedule 1 or the suspension or revocation comes into force at the end of the appeal procedures.
- 3.68. We have removed reference to setting an appropriate effective date from this paragraph in the Policy Note. We would not expect licensing authorities to take immediately against a host who still had guests in the property in order to establish that an offence was taking place. If there was an immediate safety concern, paragraph 11(10) could be relied upon to help ensure guests were removed from the property. Otherwise, Scottish Government would expect the licensing authority to engage with the host should guests be present in the property at the time a licence was suspended or revoked.

Guidance and the fit and proper person test

- 3.69. Renfrewshire Council commented:

“We note it is intended to introduce guidance as to what constitutes a fit and proper person to hold a short term lets licence. We are not convinced that this would be of assistance. There is developed case law in relation to this test, which is regularly used by local authorities. There is a risk that any guidance, to which local authorities would be expected to have regard, could be inconsistent with the developed case law, which could in turn result in licensing decisions being challenged.”

- 3.70. The Scottish Government notes that guidance has been provided for fit and proper person tests in respect of other types of administrative roles and licences, for example for the licensing system for mobile home sites with permanent residents and the holding of an authorisation (for SEPA). There has also been demand for further clarity¹². The Scottish Government intends to produce non-statutory guidance, which will be developed with due regard to relevant case law.

¹² See, for example, [Clarity is needed on fit and proper \(sltn.co.uk\)](http://sltn.co.uk) in the Scottish Licensed Trade News (May 2017) about the lack of legal definition of the “fit and proper person test”.

4. Business and Regulatory Impact Assessment

- 4.1. There were 844 responses to the question about any issues with the consultation draft Business and Regulatory Impact Assessment (BRIA) as set out in consultation [paper 3](#), and how to resolve them. A revised BRIA has been published separately and includes a consideration of relevant evidence presented by stakeholders.
- 4.2. There were five general categories of concern and comment around the consultation draft BRIA:
- a) the alternative options that had been considered (specifically registration);
 - b) the economic benefits from short-term lets and lack of baseline data;
 - c) the impact of the regulatory proposals on the sector and the wider economy, including in the context of COVID-19 recovery;
 - d) the licence fees; and
 - e) the cost of compliance.
- 4.3. As part of the process for updating the draft BRIA, the Scottish Government engaged directly with Airbnb, the Association of Scotland's Self-Caterers and the Scottish Bed and Breakfast Association to follow up on particular concerns around:
- The impact of COVID-19 on the short-term let sector.
 - Baseline data on the size of the sector.
 - The economic benefits of short-term lets, including host income and wider economic benefits.
 - Forecasted impact of the regulatory proposals on the size of the sector and the costs of compliance from surveys and research conducted by the Association of Scotland's Self-Caterers and Airbnb.
- 4.4. The following specific concerns were raised by respondents.

Alternative options

- 4.5. Lack of detailed consideration of registration.
- 4.6. Lack of consideration of expanding the landlord register (which introduced safety standards for PRS landlords) to include short-term lets.

Economic benefit and baseline data

- 4.7. Lack of data on rural areas.
- 4.8. Lack of empirical baseline data.
- 4.9. Interpretation of data (e.g. five individually let rooms could equal five separate listings).
- 4.10. Disputing whether there was a demonstrable link between short-term lets and rising house prices and the impact on housing supply.
- 4.11. Negative externalities, such as increased housing costs, reduced amenity and noise and nuisance did not apply to home sharing (which includes traditional B&B).

Impact of regulation

- 4.12. Competition from English, Welsh and Northern Irish hosts and operators could undercut Scottish operators if they were less regulated. This was raised as a particular concern by some hosts and operators in the Scottish Borders, given their proximity to competition in England.
- 4.13. The licensing scheme favoured big business, as they would be able to absorb costs more readily than smaller hosts and operators, such as small B&Bs.

Licence fees

- 4.14. The licensing scheme operating on a cost recovery basis meant that local authorities could establish costly and inefficient systems and pass costs on through high licence fees. Cost recovery provided no incentives to keep costs down or drive efficiency.
- 4.15. Local authorities would receive no support to establish licensing schemes.
- 4.16. Incorrect assumptions about licence duration. Some local authorities may grant short term let licences for one year initially and only for three years on renewal.
- 4.17. Incorrect assumptions around the work involved in processing a renewal application as opposed to a new application and, therefore, the relative fees.

Compliance costs

- 4.18. The assumption that licence applications would be made on paper as default, rather than submitted electronically.
- 4.19. The steps involved in the application process.
- 4.20. Compliance with the mandatory conditions.

Annex: Respondent organisations

- 8th Line Property Ltd
- Abbotshaw House B&B and Borders Glamping
- Aberdeen City Council
- Accommodations Mull
- Achnacoin Farm
- Airbnb
- Albero Properties Ltd
- Alltshellach Cottages
- Amazing Apartments Limited
- An Camas Mor Development LLP
- Ardgay Glamping Pods
- Ardmaddy Estate
- Ardnish Estate
- Argyll and Bute Council
- Arran Holiday Retreats
- Association of Scotland's Self-Caterers (ASSC)
- Association of Serviced Apartment Providers
- Audierne Holdings
- Awaze
- Badenoch & Strathspey Conservation Group
- Balbeg Country Holidays
- Ballindalloch Trust
- Ballogie Estate Enterprises
- Balnagown Estate
- Bells' View Trust
- Bellshiel Farm
- Belmont Trust
- booking.com
- Bookster
- British Holiday & Home Parks Association
- Budge-Reid Partnership
- Burnhead Bothies
- Caberfeidh Log Cabin
- Cairngorms Business Partnership
- Cardross Estate
- Catchpenny Safari Lodges
- CCNA Properties Limited (TA Yellow Door Apartments)
- Citizens Advice Scotland
- City of Edinburgh Council
- Clan Carmichae ICharitable Trust

- Click and Rent Ltd.
- Comrie Croft
- Cottages on Arran
- Crieff Hydro Ltd
- Crispie Limited
- Croft Inn Holiday Homes
- Crofting Commission
- Cruickshanks Boutique B&B
- Dalavich Cabin Owners Committee
- Dalmunzie Limited
- Destination Edinburgh Limited
- Deveronside Fishings & Lodges
- Discover Scotland (Self Caterign Cottages)Ltd
- Dod Mill
- Dornoch Area Community Interest Company (on behalf of VisitDornoch business group)
- Douglas & Angus Estates
- Drummuir Estate
- DTB/Netherwood House
- Duffus Estate Holiday Cottages
- Duirinish Holiday Lodges
- Duncan Family Farms
- Dupplin Trust 2000
- East Renfrewshire Council
- Eastside Cottages
- Eco nature holidays
- Edinburgh Address Ltd.
- Edinburgh Apartment
- Edinburgh Flats Company
- Edinburgh Hotels Association
- Edlets.com
- Electrical Safety First
- Ellister Lodge
- Elmwood Self-Catering
- Ethie Mains Farm Partnership
- Evergreen Property
- Eviedale Cottages & Camping, Bakehouse & Bistro
- Federation of Small Businesses
- Fife Council
- Fife Historic Buildings Trust
- G Gibson & Sons
- Glen Dye Cabins & Cottages

- Glen Valley Apartment
- Glenshee and Strathardle Tourist Association
- Grassmarket Residents' Association
- Harper's Concierge Services Limited
- Heart of Sutherland Tourism
- Highland Council
- Highland Hideouts
- Highland Perthshire Holiday Homes
- Hillhouse Farm Escapes
- Historic Houses
- Homelands Trust Fife
- Hostelling Scotland
- Hothouse Owners Association
- House in the Wood
- Independent Cottages
- Institute of Acoustics
- Inverness & District B&B Association
- Isle of Mull Cottages Ltd
- J Scott & Partners
- Junper House
- Kildermorie Partnership
- Kilfinichen Farms Limited
- Kiltaraglen House
- Kintyre Cottages
- Kylesku Lodges
- Landmark Trust
- Law Society of Scotland
- Lazy Duck
- Leslie Castle Ltd
- Lets Do Scotland
- Living Rent
- Loch Awe Management Company
- Loch Ken Bothies
- Luxury Apartments Shetland
- Madeira in Fife
- McKinlay Kidd Ltd
- Meum Estate Ltd
- MK & GM Brown
- Moat House Annan
- Mull and Iona Community Trust
- Mull Community Council

- National Trust for Scotland
- New Town And Broughton Community Council
- Newhill Farm Cottages and Newhill Country Cottages
- Newton farm holidays
- NFU Scotland (NFUS)
- Nithbank Country Estate
- Not For Sale Scotland
- NXD Properties
- Orkney Escapes Ltd
- Outer Hebrides Tourism
- Perkhill Estates
- Pillar Properties Scotland Ltd
- Pine Chalets
- PLACE
- Police Scotland
- Principal Apartments Ltd
- Professional Association of Self-Caterers UK
- Propertymark
- Queensberry House B&B
- R & M Osborne, Kinclune Estate and Organic Farm
- Ravenstone Cottages
- RCDAI Arisaig Mission
- Renfrewshire Council
- Reserve Apartments
- Rivoulich Lodge B&B
- Roulotte Retreat Ltd
- RTPi Scotland
- Rustic Cabins
- Ryton Aberfeldy Limited
- Sandcastle Holidays Scotland Ltd
- Scots Cottages Ltd
- Scottish Agritourism
- Scottish Bed & Breakfast Association (SBBA)
- Scottish Conservative and Unionist Group (Administration), Perth and Kinross Council
- Scottish Crofting Federation
- Scottish Independent Hostels
- Scottish Land and Estates
- Scottish Tourism Alliance
- Secret Enterprises Ltd
- Shetland Islands Council
- Shetland Tourism Association

- Signature Serviced Apartments Ltd
- Smoo Lodge
- Society of Local Authority Lawyers & Administrators in Scotland
- Sonder Hospitality UK Ltd
- South Ayrshire Council Housing Policy and Strategy plus stakeholders only.
- South Lanarkshire Council
- South of Scotland Destination Alliance
- Susan Reid Collection
- Traigh House Holidays (FHL)
- Travel Chapter Limited
- TwentyDC
- UK Hospitality Scotland
- UK Short Term Accommodation Association (STAA)
- Ullapool Holiday Homes
- Viewbank Guest House
- Visit Moray Speyside
- VisitArran
- Watchmaker Property Ltd
- West Harris Trust
- Where Stags Roar
- Wyvis One Estate Limited
- Yair Estates 2009 Ltd



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