

## Written Evidence to Expert Advisory Panel on the Collaborative Economy.

A written submission has already been provided by the Department, and the evidence I offer very much builds on that submission. In general terms the Council acknowledges and supports the contribution made to the City and the economy by peer-to-peer accommodation. Where possible the Council would want to encourage use of this market to support tourism and the housing market in the City. Any regulation should be proportionate and well thought out.

Taking your questions in turn:

### **1. What data or evidence can you provide on the social, environmental and economic impacts of the peer to peer accommodation market in Scotland?**

The collaborative economy is emerging and traditional evidence gathering is struggling to adapt. Hard data is therefore difficult to put forward. The Council is aware of this emerging and important market. It's best estimation of the extent of the market is detailed in the attached report.

The Council's Corporate Policy and Strategy Committee has considered a report which sets out a broad perspective on the Short Term Let market in the City.<sup>1</sup>

Economic impacts may well be finely balanced. For example, adding additional short term accommodation, especially at peak times, assists with tourism. A concern often expressed is to what extent that reduces the supply of affordable housing in the city. Data on this is not readily available.

The most obvious social impact is the concern being expressed at community level. Issues emerging and driving requests for further regulation centre around a sense of loss of community, fear that landlords might be less responsive to shared responsibilities, and concerns about noise and anti-social behaviour.

Recorded complaints are low, but this is undoubtedly under-reported. There is a clear pattern of these issues being raised with elected members in their constituency role.

Some research by the Council estimates the scale of Airbnb lets alone:

6000 properties listed between January 2012 and July 2016.

42% of hosts have multi listings (either more than one room in a property or more than one property)

55% of listings are for an entire property

64% of listings are available for more than 60 days. Average availability for an entire property is 167 days per year.

There has apparently been a significant rise in lets in the City Centre and main tourist areas of the city, see appendix. Anecdotally this is raising concern locally about the impact of house prices in this area as more and more property is bought for this use.

### **2. How can we ensure that both hosts and guests are suitably protected, such as knowing where to turn if something goes wrong and that health and safety standards are adhered to? Where do we see best practice globally?**

The current regulatory regimes were not designed to cover peer-to-peer or short term let accommodation, and therefore regulators are struggling to respond to the concerns being raised.

It seems clear that those operating in this sector are subject to less scrutiny and regulation than more traditional operators of short term accommodation.

For example, a hotel has clear duties under Health and Safety at Work etc Act 1974. If, however, a consumer stays in domestic premises which operate infrequently via bookings from a web platform, it is highly unlikely that the same duties will apply - and therefore lower costs will be incurred.

Other examples include a consumer being protected by consumer protection laws when staying with a business. It is at best uncertain whether such protections apply in this market if the accommodation is provided on an occasional basis.

Other areas have demonstrated a clear risk that either a) unscrupulous businesses pass themselves off as non-businesses; or b) hosts and consumers find themselves exposed if e.g. an accident were to occur.

Whilst the vast majority of this sector appears to operate with minimal issues being raised, there remains a concern that a small number of operators may exploit the lack of regulation, or will be unresponsive when communities raise concerns.

These concerns are not new. The Council has previously had to set up a working group to deal with the problem of antisocial behaviour from so-called 'party flats'.<sup>ii</sup>

These concerns were raised with Scottish Government at the time and were examined by the Petitions Committee of the Scottish Parliament.

A key challenge is understanding the role of web-based platforms which introduce consumers to suppliers. These have limited liability, particularly to consumers. Their role is not well understood by those consumers entering into contracts, and consumers often express surprise and concern when the operators do not deal with their issues.

### 3. What are your suggestions for mitigating any unintended consequences of the short term accommodation rental market and how they might be balanced with existing priorities and policies such as Tourism Scotland 2020?

Given the Council's experience with short term lets to date, there are a number of competing factors to consider.

The Council recognises that the market operates well in the majority of cases, and problems are restricted to a small percentage of properties

When last considered, a licensing system was ruled out by the Scottish Government for the following reasons: a) introduction would place a significant burden on local authorities; b) introduction would place a significant burden on and disincentive to small scale providers of accommodation, especially in rural areas; c) disproportionate response given the level of complaints.

Whilst not seeking to dismiss current concerns, it would appear that these factors remain as valid as they did back in 2011 when this Scottish Government introduced new powers<sup>iii</sup>.

4. What solutions are there to ensuring that the relevant taxes are identified and collected and that regulations are adhered to?

This is often one of the concerns raised with the council - that an operator is not paying non-domestic rates, and is using council services designed for residents without paying for these, such as waste collection.

Colleagues who deal with collection of non-domestic rates advise that the Council's role is limited in this area. Council tax or non-domestic rates are levied based on whether the property is included within the Valuation Roll maintained by the Joint Valuation Board.

Any concern that a property should be paying non-domestic rates is passed to the Valuation Board to determine.

At present, if a property is the sole or main residence of someone living there, they can provide accommodation for up to six people and the property will not be classed as a commercial property.

If the property is not a person's sole residence, or more than six people are accommodated, the property would be entered onto the valuation roll and non-domestic rates would be payable.

In practice the income difference between Council Tax and non-domestic rates on this type of property is not significant. The premises may be exempt if their rateable value is below £15k.

For further details it may be advisable to seek evidence from Valuation Boards.

Regarding waste collection, any concerns will continue to be addressed on a case-by-case basis.

5. How can we ensure that any regulations are proportionate, taking account of the range of hosts on platforms - occasional use individuals, professional landlords, estate agents and hotels, whilst ensuring that there is no competitive advantage between platforms and traditional business models?

Current regulations do not deal with problems. Amended powers introduced in 2011<sup>iv</sup> have helped, but are far from ideal.

Generally hosts operating on a commercial or full-time basis should be required to: a) offer the same level of consumer protection as traditional business models; and b) ensure a proportionate and reasonable standard of safety for guests.

Some improvements could be achieved by non-statutory measures - for example guidance or a Code of Practice for operators of short-term lets or peer-to-peer accommodation. Another example of control could be a requirement to sign up to a mandatory dispute resolution system which would allow parties to address issues.

There is concern, particularly where regulations set a threshold above which the business is subject to additional regulations that this will encourage businesses to operate just below that threshold. For example if planning controls were based on using the property for a maximum number of days then the business could operate just below this number.

## 6. What are your suggestions for any amendments to existing regulations or new regulations?

The Council has put forward two broad proposals for the Scottish Government to consider:

- Tighten the Planning system to require a change of use application if used for over 90 days
- Consider a licensing or registration system.

The exact nature of these would require careful consideration.

In licensing terms, options include amending the Housing (Scotland) Act 2006 to bring short-term lets within the scope of the Act. This would, however, impose a significant compliance burden on occasional providers.

An alternative might be to look at the provisions of Part 8 of the Antisocial Behaviour (Scotland) Act 2004. There operates the private landlord registration scheme, which allows a register to be maintained and a 'light touch' regulation model. Landlords are admitted to the register and only removed if not fit and proper. Short term lets are currently excluded, but this could be amended.

A final option would be to consider a negative licensing system, whereby all providers are free to operate but there is a mechanism to 'ban' problem operators. An example of this type of legislation is the Estate Agents Act 1979.

For issues of Consumer Protection there is a complication that these matters are generally reserved to the UK parliament and may be difficult to influence at a devolved level.

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<sup>i</sup> [http://www.edinburgh.gov.uk/download/meetings/id/53729/item\\_713 -  
\\_short\\_stay\\_commercial\\_visitor\\_accommodation\\_-\\_referral\\_from\\_the\\_planning\\_committee](http://www.edinburgh.gov.uk/download/meetings/id/53729/item_713_-_short_stay_commercial_visitor_accommodation_-_referral_from_the_planning_committee)

<sup>ii</sup> [http://www.edinburgh.gov.uk/download/meetings/id/43662/item\\_714 - short term let party flat update](http://www.edinburgh.gov.uk/download/meetings/id/43662/item_714_-_short_term_let_party_flat_update)  
[http://www.edinburgh.gov.uk/download/meetings/id/42029/item\\_711 - short term let party flat update](http://www.edinburgh.gov.uk/download/meetings/id/42029/item_711_-_short_term_let_party_flat_update)  
[http://www.edinburgh.gov.uk/download/meetings/id/43662/item\\_714 - short term let party flat update](http://www.edinburgh.gov.uk/download/meetings/id/43662/item_714_-_short_term_let_party_flat_update)

<sup>iii</sup> The Antisocial Behaviour Notices (Houses used for Holiday Purposes)(Scotland) Order 2011,

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## Appendix

### Air B&B reviews: 2013 and 2016 comparison

