

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY
21 JUNE 2017
DISCUSSION PAPER
SHORT TERM RENTALS AND PEER TO PEER ACCOMMODATION

Purpose of this paper

This paper has been drafted to **aid discussion** at the “short term rental and peer to peer accommodation” evidence session for the Scottish Expert Advisory Panel on the Collaborative Economy. *Recommendations cited in this paper that were made by respondents do not constitute endorsement.*

Based on information and evidence solicited through the call for evidence and the Indigo Research Report, this paper highlights the key issues surrounding the growth and impact of the short term rental and peer to peer accommodation market. The job for the expert panel is to interrogate the evidence and opinions and to reflect on the key issues of debate.

Chair’s Comments

The responses to the calls for evidence highlight a number of things are worth noting. The first is that there are, unsurprisingly, **strong differences** in points of view, particularly with regard to the extent to which the government and regulation should intervene in the collaborative economy. You are asked to consider **the best balance that must be struck** between supporting an emerging economy that can aid the growth of tourism and local economies in Scotland, with proportionate responses to concerns over the impact on communities, housing, safety and tax.

You are asked to favour *evidence and data over perception and anecdote*; and I recognise there are gaps in the former that this panel may recommend need addressing.

The second is to note that there is **no one city in any one country** that has found a magic bullet to solve these challenges – or indeed, fully exploit the opportunities. However, Annex C of this paper highlights a range of different responses in other countries and these are a helpful guide to our thinking. Given the stark differences between different regions in Scotland, we will have to consider the appropriateness of blanket recommendations across all geographies.

The third is this term ‘a level playing field’ and the frequency with which it is cited in the responses to the call for evidence, as there are already **regulatory differences** between different kinds of short stay accommodations. The panel are also asked to consider what ‘a level playing field’ means in the context of the wide range of different platform providers operating at very different scales.

In all considerations regarding any regulatory recommendations of the panel, we will need to consider **the practicalities of enforcement**, to which there will be some innovative solutions but also very real constraints.

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Background

1. The paper has been informed by:

- Scoping research

Due to a lack of available data the Scottish Government commissioned Indigo House, an independent consultancy agency, to undertake scoping research to understand the impact of short term rentals on the housing market in Scotland, and the extent to which collaborative platforms are affecting Scotland's housing market in comparison to traditional models. **This research includes drawing on data and assumptions from data-scraping sites such as InsideAirBnB.com, some of which is open to dispute.**

- Call for evidence

The Scottish Government issued a call for evidence which was open between 24th April and 29th of May 2017. It asked seven questions to gather views, experiences and input from Scotland's citizens and businesses on the collaborative economy. Fifty-two responses were received in total with **ten** specifically related to short term rentals and peer to peer accommodation. An interim analysis has been carried out (by Craigforth, social research consultants) of the points raised specifically in relation to peer to peer accommodation and this paper draws substantially on the material provided in that. **It contains a mix of evidence and data and opinion.** A full analysis of the call for evidence responses will be available in August 2017.

Background - Short term rentals and peer to peer accommodation

2. Short term rentals and holiday homes are not new. They have been available for many years. However, the move into renting out residential accommodation through the use of digital platforms is relatively new. PwC¹ describe peer-to-peer accommodation as households sharing access to unused space in their home or renting out a holiday home to travellers. They estimate that platforms in five key sectors of the collaborative economy generated revenues of nearly €4bn in Europe in 2015 and facilitated around €28bn of transactions. The largest sector by total transaction value is the peer-to-peer accommodation sector, which includes peer-to-peer rental platforms and vacation rental platforms, as well as home swapping platforms at €15,100 million. There are a number of global platforms that enable this service with Airbnb having most prominence in Scotland to date.

¹ Assessing the size and presence of the collaborative economy in Europe – PwC April 2016

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3. Peer to peer accommodation has seen unprecedented growth over the past decade transforming the accommodation sector and quickly becoming one of the largest, if not the most debated, sectors within the collaborative economy. Generally the types of accommodation that are let include:
- privately owned houses or individual rooms;
 - privately owned holiday homes and
 - commercial lettings

Key drivers for growth

4. A number of drivers have been identified which can be attributed to the exponential growth of this sector over the last decade, these include:
- exploitation of digital technology;
 - consumer behaviours; and
 - tourism
5. **Exploitation of digital technology** has disrupted traditional businesses across a number of sectors and will continue to do so, with emerging innovative technologies likely to further evolve business models in coming years. As mass participation in the internet grows and mobile becomes the default route to access, there has been an explosion of marketplaces that connect people to the things they want and need in different ways. Traditional business models have been disrupted, with traditional ‘middle men’ being replaced with new kinds of digital intermediaries. These disintermediated models, more efficiently connecting people together has often reduced transaction costs and in many cases, lowered costs to consumers.
6. **Consumer behaviours** have been changing in tandem with the advances in use of technology and collaborative economy platforms are very popular with consumers. Value for money and a desire for different, more ‘authentic’ tourist experiences and are probable drivers of consumer trends within the short term accommodation rental platform market.
7. The national tourism strategy, [Tourism Scotland 2020](#), was launched in June 2012, aiming to grow visitor spend by £1bn to 2020 from £4.5 to £5.5bn. The mid-term review in 2016 showed growth in total overnight visitor spend between 2010 and 2015, with thriving destinations including Edinburgh with a growth of 7 per cent, Arran 17 per cent and Glasgow 19 per cent between 2011 and 2014. Tourism hotspots such as Edinburgh and the Highlands have seen increases in visitor spend of over 30 per cent between 2010-2015. Case studies on Edinburgh and Glasgow are available in section six of the Indigo House report “*Scoping research on supply and demand for short term lets in Scotland.*”

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Opportunities

8. In relation to peer to peer accommodation and the wider accommodation sector, the call for evidence responses noted some key opportunities for the growth of the collaborative economy within the short term rental accommodation market.
9. Several respondents highlighted **the significance of short-term rentals (including peer to peer accommodation) for Scottish tourism**. This included reference to the importance of tourism for the Scottish economy more widely. Respondents highlighted the current scale of the short-term rentals and peer to peer accommodation sectors (nationally and within specific Scottish cities), and anticipated future growth in these sectors. These responses referred to a broad range of specific evidence including research reports such as the 2016 PwC report for the European Commission, market research reports, reports commissioned by business representative bodies, InsideAirbnb (as a source of data on peer to peer accommodation), and VisitScotland data. (A full set of references will be included in the full analysis report which will be available to panel members on w/c 17 July 2017)
10. A range of respondents including business representative bodies, public sector and individual respondents highlighted the role of the collaborative economy in **supporting an increase in supply of accommodation**. This included suggestions that collaborative platforms have enabled the expansion of accommodation options in areas which have previously had limited provision, and/or where there is unmet demand due to existing provision being at capacity. The extent to which the collaborative economy has enabled these gaps or shortages to be filled was also **cited as a positive factor in terms of increasing tourism activity**. In this context, several respondents referred to the potential for **additional competition and innovation** provided by new collaborative platforms.
11. Some also referred to the **flexibility of supply** supported by collaborative platforms, and the extent to which accommodation capacity can be increased quickly during peak periods. This included suggestions that this may also improve sustainability of accommodation supply, for example by enabling markets to be “tested” for an initial period where full-time visitor accommodation options may be limited. Respondents also referred to the extent to which data held by collaborative platforms can enable accommodation providers to offer more targeted options which may better fit with customer preferences.
12. Respondents suggested that the collaborative economy had **helped to diversify the accommodation sector in Scotland** and provide access to a broader range of accommodation types and price points, potentially attracting new visitor groups. In addition to a broader range of accommodation types, respondents also pointed to opportunities to diversify the range of accommodation providers. Some noted that increasing acceptance and awareness of the collaborative economy provides new (and cost efficient) opportunities to current or potential accommodation providers – including, for example, potential for social enterprises. Several business representative bodies (including for traditional accommodation providers) also noted

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that the collaborative economy is being used as a new route to market for “traditional” operators.

Benefits

13. Respondents noted a range of benefits for:

- **individuals and businesses** deriving revenue from their assets – and making better use of what would otherwise be under-used assets;
- **For the local economy**, including generation of additional employment (cleaners, laundry etc.), with some respondents referring to contractors for whom collaborative platforms are a primary or sole source of income
- **Potential Taxation revenue**², directly from collaborative platforms and accommodation providers

Challenges

14. In relation to peer to peer accommodation and the wider accommodation sector, the call for evidence responses outlined a number of key challenges.

Social impacts

15. Potential for the growth of peer to peer accommodation to have a negative impact local communities was mentioned by a range of respondents including business representative bodies, education respondents and individuals, with a particular focus on Edinburgh. This included references to increasing pressure on housing markets due to the speed of growth in peer to peer accommodation, and associated rising house prices and rents limiting access to housing for local communities. A specific issue in rural areas was also mentioned, where seasonal staff are potentially experiencing difficulty accessing accommodation due to homes and properties being turned over to tourists rather than workers. Other potential negative impacts included;

- antisocial behaviour and noise nuisance associated with peer to peer accommodation³;
- concerns around the security of premises;
- a loss of the sense of community as a smaller proportion of properties are occupied by permanent residents – this was particularly focused on central Edinburgh; and
- a loss of amenity for permanent residents if local services focus on the needs of temporary visitors (mentioned specifically in relation to Edinburgh).

² was mentioned by a business and a business representative body (both accommodation related).

³ Respondents did not provide evidence on the scale of any antisocial behaviour or noise nuisance, but reference was made to a briefing paper produced by Andy Wightman MSP (*Short Term Lets – Briefing Paper No. 1*, (2017) Ciaran McDonald & Andy Wightman MSP),

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16. Several respondents referred to what were seen as “**misconceptions**” around **peer to peer accommodation**, and the accommodation sector as a whole. These respondents expressed concerns that strategy and regulation should be based on an accurate understanding of the role of the Collaborative Economy and its potential benefits. This included reference to “misconceptions” around growth in peer to peer accommodation having led to shortages in and/or increased the cost of residential housing, that peer to peer accommodation has a negative impact on hotel occupancy, concerns around the safety of peer to peer accommodation, and suggestions that peer to peer accommodation is associated with antisocial behaviour or loss of residential amenity.

- Reference to studies which have not found a link between growth in short-term lets and increasing house prices and/or housing shortages, and suggestions that multi-home ownership and inadequate affordable housing development are key drivers of housing market imbalances.⁴
- Reference to research in Edinburgh which suggests that antisocial behaviour and loss of residential amenity associated with short-term may have been overestimated, and that any issues arising have been dealt with effectively.⁵
- Reference to research which suggests that there is little evidence of short-term lets having a negative impact on the hotel sector. Respondents also suggested that the real issue here is a failure of the hotel sector to respond to changing customer behaviour, and pointed to hotel chains having diversified their accommodation offer in response to the growth in short-term lets.⁶

Tax

17. Some representative bodies for traditional accommodation providers raised concerns that the growth in peer to peer accommodation, and the collaborative economy more widely, has not resulted in a commensurate increase in tax revenue. This included;

- reference to collaborative platforms being domiciled out with the UK such that little corporation tax is paid;
- platforms generating relatively limited direct employment; and
- difficulties for tax authorities to enforce taxation legislation for peer to peer accommodation providers.

⁴ Respondents referred specifically to the European Holiday Home Association having drawn on multiple studies to make this argument. The only direct reference to an EHHA publication was to *Market Access Requirements for Accommodation Sector II*, (March 2017) European Holiday Home Association.

⁵ Specific reference to research undertaken by Edinburgh City Council in 2012, and to statistics showing a decrease in the number of complaints against short-term let properties between 2014/15 and 2015/16.

⁶ This included reference to specific hotel chains, and to *Impact of the short-term rental industry in Europe*, (September 2016) Niki Nutsch, nutschassociates.com.

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18. These respondents contrasted their concerns with more traditional accommodation providers, and referred to a “huge difference” in tax revenue for example through payment of business rates and VAT. This included concerns about the potentially significant loss of tax revenue as economic activity across the collaborative economy increases.
19. The Indigo House report cites the tax disincentives from April 2017 in the residential sector as a factor driving supply; this includes changes to tax relief on mortgage interest and tighter restrictions on the wear and tear allowance. It also highlights that in the Spring Budget 2017 the UK Government indicated that it would consult on the rent-a-room relief of £7,500 and its intended support for longer term. The UK Government’s annual £1,000 tax break proposed for property income and for micro-trading were left out of the Finance Bill which was enacted shortly before the purdah period for the June 2017 General election. Background information on tax on short rentals and residential property is attached at Annex A.

Small businesses

20. The potential for the collaborative economy accommodation providers to restrict the development of small businesses providing short term accommodation was also noted in the responses. This included reference to some platforms ‘down-grading’ accommodation providers who wish to retain control over aspects of the letting process. This is a problem for some providers using multiple platforms, or wishing to use their own cleaners, rather than those affiliated with a particular platform.

Equality

21. The Equality Act 2010 requires providers to accept purchasers without discriminating against them. There are cited examples of discrimination by hosts who are selective of the guests being accepted in This included reference to research evidence of racial discrimination in the peer to peer sector in the United States.

Regulation and enforcement

22. Several respondents perceived a **lack of regulation** of accommodation providers using collaborative platforms, and contrasted this with “traditional” providers’ compliance with a range of regulations and legislation (and the cost associated with compliance). These respondents felt that change is required to ensure a “level playing field” across accommodation sectors. This included reference to a need to develop regulation that is appropriate to the changing accommodations sector. Respondents referred to specific aspects of regulation where they had concerns around the extent to which the quality of peer to peer provision can be ensured, including consumer safety (fire, gas and food), environmental regulations, licensing, and insurance. Some suggested that the protection of consumers, workers and the wider public should be a key principle for the regulatory approach.
23. However, several respondents explicitly noted that existing regulations apply equally to “traditional” accommodation providers *and* peer to peer accommodation through collaborative platforms. These respondents, including several accommodation-

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related and other business representative bodies, made some reference to a need to “simplify” existing regulation but suggested that a **lack of proactive enforcement** in relation to peer to peer accommodation providers is a more significant issue. This included reference to collaborative platforms failing to take responsibility for the accommodation offered, and a perceived unwillingness to share information on peer to peer accommodation providers that could be used by enforcement agencies. One respondent noted that local government must rely on third party websites for information on the peer to peer accommodation sector. In addition to a lack of information to support enforcement of regulations, including, for example the number of individuals or businesses providing peer to peer accommodation, wider issues were also identified such as quantifying any impact on demand across sectors.

Protecting contributors/Balancing regulation with competition

24. The call for evidence asked about the protection of contributors to the collaborative economy and any gaps in legislation. It also asked about the balance between regulation and allowing competition and innovation to flourish.
25. Some traditional accommodation providers suggested that **existing regulations should be adequate for peer to peer accommodation**, and felt that traditional short-term rentals are already subject to strong regulation. However, a local authority respondent noted that existing regulations and legislation are yet to be tested in relation to peer to peer accommodation, and an individual respondent suggested that change to legislation may be required to ensure regulations are effectively implemented.
26. Some respondents felt that the regulatory approach in relation to peer to peer accommodation has been primarily “reactive”, and suggested a need for a more “proactive” approach. This included reference to the potential value of vetting of new businesses and business models as they continue to develop - for example, in terms of improving trust and acceptance of the sector.
27. Several respondents suggested that, while regulations are in place, **enforcement of regulations for peer to peer accommodation is insufficient**. These respondents suggested that a lack of enforcement means that consumers, local communities and traditional accommodation providers are not sufficiently protected. This included reference to evidence indicating “extreme inconsistency” of enforcement activity between traditional providers and peer to peer accommodation providers.
28. Some respondents also felt that insufficient requirements are placed on collaborative platforms to ensure that consumers are protected, and expressed concern that platforms do not perform any checks that accommodation meets safety regulations. This included a suggestion that collaborative platforms should ensure that accommodation providers are fully informed of the regulations to which they are required to comply.
29. Concerns were expressed around enforcement of regulations included reference to specific areas where some respondents felt that protections are lacking. This

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included some respondents who felt that consumers could be exposed to potentially significant risks. In this context, a business representative body associated with traditional accommodation providers suggested that consumer rights and protections should be identified as a specific theme for the panel.

30. A number of respondents made **specific suggestions for regulations and/or changes to support enforcement action such as:**

- the creation of a “register” to support enforcement, where peer to peer accommodation providers are required to notify authorities of their properties and letting dates. It was noted that this approach has been implemented by a number of cities outside the UK. Reference was made to the potential for this information to be linked to the forthcoming Scottish Private Residential Tenancy regime;
- Planning Use Class Orders could be used to allow for conversion of residential property to short-term rentals, potentially setting out potential short-let periods, and providing the basis for local authorities to monitor and regulate peer to peer accommodation providers;
- ensuring that regulation and associated information is managed independently of the peer to peer accommodation sector, rather than relying on an industry voluntary code of practice;
- a flexible regulatory unit, with the detailed understanding of the peer to peer sector required to assist authorities
- any regulatory changes should be developed in cooperation with concerned businesses, to ensure that regulations are practicable;
- recognition that many peer to peer providers are new entrants and as such are unlikely to be familiar with regulations; and
- requirements placed on collaborative platforms to provide information to HMRC to ensure tax regulations are enforced for providers.

31. Concerns around regulation and enforcement included reference **to a lack of defined guidelines or codes of practice for peer to peer accommodation providers**. This was highlighted by some traditional accommodation providers, who noted that many traditional providers subscribe to voluntary guidance or codes, and that professional bodies exist to provide advice to these providers. It was suggested that there is a need for similar guidelines and sources of advice for peer to peer accommodation providers. This was cited as having potential to improve protections for contributors, and to help to address potential negative impacts on local communities associated with growth of peer to peer accommodation.

32. The potential for different regulatory responses for the sector dependent on location and type is identified in the Indigo House report. The existing regulatory and

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legislative framework for short term, holiday, private rented and the HMO sector is provided at Annex B.

Examples of global responses and policy responses are attached at Annex C.

Barriers to growth

33.A summary of responses in relation to barriers constraining growth of the collaborative economy in Scotland is outlined below.

- Some respondents referred to **negative perceptions** of short-term rentals as a whole and peer to peer accommodation specifically, and a lack of understanding of the collaborative economy. This included in relation to the potential benefits of the collaborative economy, and how peer to peer accommodation fits with more traditional accommodation forms and the housing market.
- **A lack of awareness of peer to peer accommodation** options available across Scotland was also cited as a potential barrier. This included some suggestions that awareness is often limited to AirBnB, and as such, may act as a barrier to growth of other providers. This was raised in relation to restricting demand but also limiting innovation if there is a lack of awareness of potential new models.
- It was noted that some traditional accommodation providers are using collaborative platforms as a new route to market, and are supportive of the collaborative economy and peer to peer accommodation. This group was contrasted with potential opposition to the collaborative economy from other traditional accommodation providers, including hotel operators.
- Potentially **limited access to finance** to support development of new opportunities in the sector was flagged as a potential barrier. Reference was also made to accessibility of peer to peer accommodation options may be a barrier in rural areas, where **geographic constraints and more limited access to digital connectivity** could have a negative impact. The lack of **appropriate insurance options** for peer to peer accommodation was also cited.

The role of government

34.The call for evidence asked about the role that government should play. Several respondents, including a mix of traditional and peer to peer accommodation providers, indicated a **preference for limited intervention** by the government. This included reference to regulation out with the UK having led to increased hotel rates with a potentially negative impact on the tourism sector. Respondents also referred to recent European Commission publications which sought the removal of “barriers and unjustified obstacles” to development of the collaborative economy, and suggestions that the government focuses on reducing unnecessary burdens for peer to peer accommodation.

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35. Other respondents, including traditional accommodation providers and an individual respondent, **saw a need for greater intervention from the government**. This was suggested in the context of ensuring protections for consumers and others; ensuring fair competition between traditional and peer to peer accommodation sectors; ensuring that the reputation of Scotland's tourism sector is maintained, and that taxation revenue is not undermined. This included respondents referring to examples of regulatory and legislative interventions across the United States and Europe which seek to manage the impact of growth in peer to peer accommodation⁷.

36. In terms of **specific government interventions**, respondents suggested the following:

- the introduction of legislation required to ensure sustainable growth of peer to peer accommodation, and short-term rentals more widely. This included a suggestion for use of Planning Use Class Orders in the regulation of peer to peer accommodation;
- a 'simplification and easing' of regulation for the smallest peer to peer accommodation providers was suggested. This included proposals for criteria to identify the providers who would be subject to regulation, and to ensure the regulatory approach is proportionate to the size of the provider;
- ensuring enforcement bodies have the powers to identify and regulate peer to peer accommodation providers, and that bodies exercise their enforcement powers;
- a duty on collaborative platforms to undertake some level of "due diligence" in relation to peer to peer accommodation providers;
- a duty on collaborative platforms to ensure peer to peer accommodation providers are informed of the regulations with which they are expected to comply;
- promoting standards and codes of practice across traditional and peer to peer accommodation sectors, and works with the sectors to ensure a suitable regulatory approach;
- recognising the need for more information on the developing peer to peer accommodation sector, including the establishment of a register or similar mechanism to monitor the size and growth of the sector.

^{7 7} Specific examples mentioned by respondents were the European Commission's 2016 communication "A European Agenda for the Collaborative Economy"; the "Unlocking the sharing economy" review by Debbie Wosskow to the UK Government in 2014; New York legislation in 2010 and 2016 limiting short-term lets (although one respondent questioned whether this legislation had achieved the desired outcomes); San Francisco legislation requiring providers of short-term lets to register with local authorities; legislation across a number of European cities (Amsterdam, Barcelona, Berlin, Brussels and Paris) limiting short-term lets and/or requiring accommodation providers to register with authorities; and an alliance of mayors from 22 cities currently considering approaches to regulation of the Collaborative Economy.

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Key considerations for discussion during evidence session

A number of stakeholders have been invited to provide additional evidence at the second meeting of the Expert Advisory Panel on the Collaborative Economy. Invited stakeholders have been asked to consider the following questions and will be given ten minutes to outline their views on them.

1. What data or evidence can you provide on the social, environmental and economic impacts of the peer to peer accommodation market in Scotland?
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?
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?
4. What solutions are there to ensuring that the relevant taxes are identified and collected and that regulations are adhered to?
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?
6. What are your suggestions for any amendments to existing regulations or new regulations?

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ANNEX A

Background on tax relevant to short term rentals and residential letting

Local taxes to fund local authority expenditure” are devolved under the Scotland Act 1998. There are two such local taxes: both pre-date devolution, and are property taxes; dwellings are subject to Council Tax and non-domestic properties subject to non-domestic rates (sometimes referred to as business rates).

Legislation stipulates that “dwellings” are liable for Council Tax rather than non-domestic rates, and also provides for what is and isn’t a dwelling. The determination is made by the Scottish Assessors, who are appointed by local government. In certain cases a building can be split into both a dwelling(s) liable for Council Tax and a rateable property. No property or part thereof can be liable for both non-domestic rates and Council Tax at the same time.

Self-catering holiday accommodation is liable for non-domestic rates if, broadly, it is not someone’s sole or main residence and it is made available for let for at least 140 days per year (on a commercial, ‘for-profit’ basis); otherwise it is liable for Council Tax. This means a property need not actually be let out to be liable for non-domestic rates. The 140-day threshold is different to the UK-wide 210-day cut-off point which self-catering units are considered as Furnished Holiday Lets by HMRC. The 140-day provision is similar in England and Wales, but in Wales a self-catering property must also actually have been let for 70 days per year to be liable for non-domestic rates rather than Council Tax.

It is reported that the provision is exploited in Scotland by some owners of ‘second homes’, who indicate that the property is available for let but then do not actually let it. Thereby the property is liable for non-domestic rates, but can also be eligible for 100% rates relief under the Small Business Bonus Scheme – the outcome being that no Council Tax or non-domestic rates is actually paid in respect of the property.

The Barclay review group was set up to make recommendations that seek to enhance and reform the business rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces. The group is due to report to SG this summer, and SG has committed to respond swiftly.

In the Summer 2016 Budget, the UK Government announced that landlords would no longer be able to deduct all their mortgage interest when they work out their profits. Instead, mortgage interest tax relief will gradually be cut back to 20% between 2017 and 2020. Limited companies are not affected by the changes to mortgage interest tax relief. Many landlords are therefore setting up a company to minimise the impact of the new tax regime. Since April 2016, landlords are also no longer able to automatically deduct 10% of their rental profits as notional wear and tear. They will be able to claim tax relief only on costs they have actually incurred, such as if they have bought a new sofa or bed for the property.

The Rent a Room Scheme lets home owners (or tenants with permission) to earn up to a threshold of £7,500 per year tax free from letting out furnished accommodation. The UK Government has announced its intention to consult on this.

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ANNEX B

Existing regulation in the short term holiday, private rented and HMO sectors

Traditional B&B, hotels and commercial self-catering - Regulation is clear in certain aspects in the traditional short term holiday accommodation sector where there is published regulations in terms of fire (Scottish Government, 2008 and 2010), other health and safety (HSE.gov.uk), and food standards (Food Standards, Scotland 2015).

Private rented sector - Regulation is also clear in the private rented sector where landlords who are letting property to tenants as their only or principal home, must meet a fit and proper person test and register with the local authority. They must also meet requirements in relation to fire, gas and electrical energy performance, and the repairing standard and tolerable standard (Renting Scotland, 2017). It is an offence to let property if you are not registered subject to a maximum fine of £50,000. None of these apply to private residential accommodation which is being used for short let accommodation, other than planning and building legislation that apply to private residential dwellings.

Planning law specifies that material changes in the use of buildings requires planning permission (physical changes may also require planning permission). What is a material change will depend on the circumstances of the case. Legislation groups some uses into classes on the basis of similar planning implications, specifying that changes between uses in the same use class do not require planning permission. Changes between uses not in the same class (e.g. between classes or where one or both uses is not in any use class) would require planning permission only if the change of use is material in the circumstance of the case. Use Class 7 relates to Hotels and hostels and Class 9 to Houses. In Class 9 includes limited use for bed and breakfast activity. These use classes do not apply to a residential flat. Planning enforcement relating to change of use is a discretionary power. Each local authority must consider whether it is the public interest to take enforcement action, and again, it must consider each case on its merits with the overall purpose of enforcement being to 'resolve problems, rather than to punish mistakes'. (Scottish Government, 2009).

Houses in Multiple Occupation (HMO) - the Housing (Scotland) Act 2006 sets out **license requirements** in relation to properties let out by at least three (unrelated) people who share the bathroom or toilet and kitchen. This stipulates requirements in relation to fire, health and safety, and comes with significant fines of up to £50,000 for operating without such a licence (Scottish Government, 2012). There are no provisions which require licensing of short term holiday lets.

Noise nuisance and environmental protection - (including waste) are governed by the Anti-Social Behaviour etc. Scotland Act 2014, and the Environmental Protection Act 1990. Local authorities can take action on antisocial behaviour in or around a short term let. The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011, enables local authorities to serve a notice on the landlord of a property where there has been antisocial behaviour by a person using a property for holiday purposes. This can be served on the landlord and any known person who acts for the landlord. Source: Scoping research on supply and demand for short term lets in Scotland, Indigo House, April 2017

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ANNEX C

Examples of global responses

Amsterdam. Has been far more receptive to Airbnb than other European destinations. In February 2015, Amsterdam announced a co-operative effort with Airbnb in which the city will levy the municipality's tourist tax on all such rentals, while Airbnb agreed to work to ensure potential hosts are aware of all pertinent rules and regulations.

Amsterdam city council in 2014 approved new private rental laws which allow residents to occasionally rent out their homes, for up to 60 days per year, under certain conditions, such as the payment of related taxes (including tourism taxes), as long as there were no complaints from neighbours (Coldwell, 2014). Residents can let out rooms in their own properties, but the city authority and housing associations ban such letting in their rented stock.

Barcelona. Barcelona's regulatory framework has existed since 2002, and was subsequently revisited in 2012 and 2014 as political pressures surrounding short-lets increased. This legislation allows for the 'touristic use of houses' (TUH), or short-term rentals of entire flats, but not separate rooms for less than 30 days, but then only after obtaining a license. In May 2014, there were 9,606 TUH all over the city (Sans and Dominguez, 2014).

The legal framework defines three relevant characteristics of the TUH. First, the granting of the license removes the properties residential status, so the apartment can no longer function as an inhabited household, but solely as a legal business property. Secondly, the regulatory framework has a direct link to local planning regulations. Barcelona regulates what are termed as 'public business sites', which include hospitality activities, within their 'Plan of Uses'. Operating at both a district and municipal level, these plans determine the number of licenses for a specific urban area, as well as the physical distance between similar businesses, with the explicit aim of limiting externalities and monopolistic situations (Sans and Dominguez, 2014). In 2010, after a very turbulent and heated participatory process, the 'Plan of Uses' was approved for the Ciutat Vella District in order to mitigate significant of tourist development and activities pressure within all these central neighbourhoods.

Third point to be considered in the regulatory framework concerns the obligation to make public the official register number in any advertisement, otherwise, the offer could automatically be considered illegal. Although there were many TUH offered on Airbnb's site, many failed to show any kind of legal license, and hence the fine.

In reviewing this situation, Sans and Dominguez (2014) concluded that Airbnb, by their actions, openly flouted the current hospitality and urban regulatory framework in three ways: first, by allowing the announcement of separate rooms for short-term renting; secondly, by publishing adverts without the required registration number; and, thirdly, by publishing listings in areas where planning laws explicitly ban short-term rentals, because they are seen to contribute to overcrowding in the central urban area.

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Berlin. Even when it was partitioned into East and West, the city attracted an alternative crowd. When Berlin's population shrank between 2000 and 2012 the resulting surplus of cheap accommodation drew in young artists, creatives, musicians and hipsters from London, Amsterdam or Paris, due to prohibitive house price inflation and ever-increasing rental costs.

Berlin's housing costs had long remained affordable because of a law known as Zweckentfremdungsverbotsverordnung, which explicitly prevents property owners from changing the use of properties. This makes it difficult to convert residential buildings into commercial property, and has protected much of the city's housing stock from development since the Second World War. Similar by-laws also exist in other large German cities, such as Hamburg and Munich. The city has also long had strong tenancy rights for those renting in either from private or housing company landlords, as well as tight rent restriction legislation.

In May 2016 Berlin announced that it was banning city residents from renting out their flats to tourists through Airbnb. This move was justified on the basis of the city's acute housing shortages, recent unprecedented population growth and marked changes in Europe's housing system following the financial crisis of 2008.

German officials passed a law banning short-term rentals that have not received explicit permission from the Berlin Senate. Furthermore, in February 2015 Berlin's State Court reinforced earlier rulings against sub-letting, granting landlords the power to evict tenants they catch sub-letting their apartments to Airbnb users.

Edinburgh. Edinburgh has always had a significant supply of short-stay accommodation, given its popularity both as a tourist destination and the site of various festivals. There is a tradition of people letting out their homes during the Edinburgh International Festival in August, given the high rentals that can be charged to artists and visitors alike. Such properties were traditionally advertised through specialist letting agencies, private adverts, websites and word-of-mouth. Recently, the emergence of Airbnb has dramatically changed how people access such short-stay accommodation. One unexpected consequence of this change is that it is now easier to gain an insight of its actual scale and usage.

A recent planning report to the city council on the subject of short-lets noted that there were 6,273 listings on Airbnb, of which 3,432 (55 per cent) were entire properties, and of these 2,043 (60 per cent) were available for over 90 days a year (CEC, 2017). This new data would indicate the city's Valuation Roll is under recording that the Council defines as so-called Commercial Visitor Accommodation. Clearly a good number of the Airbnb listed properties are still registered, for local property tax purposes, as residential not commercial premises.

The City takes the view that a property, primarily operating for short-lets, is no longer part of the city's residential stock and therefore should be registered as a commercial business. Further, to officially do this requires planning permission for a 'change of use', a process that would then allow neighbours to object. A commercial registration also means the property would require to contract commercial, not council refuse collection.

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Then there is the issue of not being able to access to 'residential' parking permit, which is a major consideration given strictly enforced parking restrictions apply in most central city locations.

These properties are concentrated within the historic city centre, running out towards Leith in the north and down towards the Southside, areas that traditionally have been popular with the city's substantial student population. Properties available for over 90 days are mainly concentrated within the city centre, while entire properties available for shorter periods are dispersed right across the city.

With the Edinburgh tourism strategy planning for an increase in the number of overnight trips by 680,000 per year, by 2020, in order to reach this additional capacity there will need to be further major hotel development and, crucially, a continued growth in the use of short-let properties. That said, the Council considers it necessary to ensure the latter growth is explicitly on a commercial footing, operating as quasi-hotels paying appropriate property and business taxes thus introducing a level playing field between them and traditional hotels and B&Bs.

Paris. The 'City of Light' is currently Airbnb's most popular vacation destination, with an estimated 40,000 listings (Caldwell, 2015). Both Paris and Barcelona are considered to be the cities most pressured by the short-stay revolution.

In response to this unprecedented growth Parisian city regulators opted to crack down on apartments set up specifically as short-term rental units, with officials then fining violators up to €25,000. There is a maximum 120 days' rental allowed for those property owners who register with the City authorities, and to let short-lets you require to be registered. If you let for more than 120 days then you are deemed to be operating a commercial entity and thus must apply for a change of use permit and register it as a 'commercial property'. All properties leased through Airbnb are expected to collect the same nightly tourist tax as paid by hotels. The 20-person enforcement team responsible for this operation are also considering levying a charge of €1.50 per night on what are termed 'person-to-person housing transactions' (Schechner, 2015). The motivation here is quite explicit, with the Mayor's housing advisor stating: "*We can't have entire neighbourhoods or buildings turned into tourist homes...that's why we're fighting to keep Parisians inside Paris and we won't let tourist rentals eat up their space.*" (Bloomberg, 2014).

London. Londoners, interested in renting out their properties on Airbnb, legally can for up to three-months a year (Coldwell, 2015). Since May 2015, hosts in London have been required to obtain change-of-use planning permission if they want to rent their properties for more than 90 nights a year, changes that brought London's rules broadly into line with the rest of England.

Within Westminster, for instance, a short-term lease of less than 90 days per year does not require planning permission, as the property is still considered to be essentially a residential/domestic property which pays Council Tax. However, if the property is used to provide short-lets for more than 90 nights per annum, cumulatively, then it requires planning permission for a 'Change of Use' as the property is defined to be a commercial and not residential/domestic entity. How well such planning rules are enforced is not

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clear, given that in other jurisdictions the monitoring of such letting activity is hard to gauge unless there is a direct municipal agreement with Airbnb.

A recent report by IPPR noted that certain landlords were motivating to move their properties out of the private rented sector and into short-lets, a change focused largely in high-pressure, inner-London boroughs such as Kensington and Chelsea, Hackney, Camden, Westminster, Tower Hamlets, and Islington. This is where letting entire homes for more than 90 nights of the year dominate and thus these boroughs could find it increasingly difficult to meet the housing needs of their growing populations if this trend continues (Snelling *et al*, 2016)

New York. As the largest tourist destination in the U.S. Airbnb has over 16,000 individual listings within the wider NYC conurbation. In 2015, Airbnb achieved over \$1 billion of payments between guests and hosts in the city securing between \$90 million and \$150 million in revenue from its premier U.S. destination. However, city officials have attempted to take a bite out of Airbnb's presence in the Big Apple (Peck, 2015). One notable case was that of Nigel Warren who was fined \$7,000 by an Administrative Court for violating city regulations on short-term rentals. Although the verdict was later overturned on appeal, it was just one of several legal battles between Airbnb users and city regulators.

Moreover, Airbnb took a hard blow last year, when a report by the State Attorney General found that 75% of the city's rentals, over a four-year period, were illegal rentals, with property owners evading millions of dollars in annual hotel taxes. Legislation changed in October 2016 with fines up to \$7,500 for those who advertise vacant apartments in a multi-unit building for 30 days or less, as well as threatening the company's operations within the state (Brustien and Berthelesen, 2016). This measure was described as a means to help prevent the proliferation of illegal, unregulated hotels. As it stands, current NYC law only allows a permanent resident to sublet their property for less than 30 days, and then only if they are still residing at the property. This appears to be becoming a core regulation criteria, namely that Airbnb hosts should be resident within the property during the rental period, and that property should not be part of an Airbnb offering.

San Francisco. Airbnb faces mounting criticism from local housing activists that it is responsible for further reducing an already-scant supply of rented housing.

In response to this San Francisco has adopted a policy that closely mirrored that pursued in New York, namely that Airbnb rentals are allowed only if hosts are full-time residents, with total rentals capped at 90 days and all hosts require to register with the city. However, despite these stipulations, the *San Francisco Chronicle* reported that only a fraction of Airbnb hosts have actually done so.

Santa Monica. The city effectively wiped out 80 per cent of its Airbnb listings by instigating the toughest regulation on short-term rentals anywhere in the U.S. (Bender, 2015). It was spurred into such action by an overall increase in housing prices and a dwindling housing supply. The new regulations, which have been effective since June 2015, require anyone putting a listing on Airbnb in Santa Monica to live on the property

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during the renter's stay, register for a business license and collect a 14% occupancy tax from users, payable to the city. Again, actual hard information on enforcement is limited.

Source: Scoping research on supply and demand for short term lets in Scotland, Indigo House, April 2017