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Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Subordinate Legislation on Short-term Lets considered by the Local Government and Communities Committee on 3 February 2021



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Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Introduction

1. At its meeting on 3 February 2021, the Local Government and Communities Committee considered the following instruments:
 - [Town and Country Planning \(Short-term Let Control Areas\) \(Scotland\) Regulations 2021 \(SSI 2021/draft\)](#); and
 - [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2021 \(SSI 2021/draft\)](#).
2. Both these instruments are designed to manage the recent growth of short-term letting. They will create a national licensing scheme allowing local authorities to regulate properties being used for short term letting. Local authorities will also have the ability to introduce ‘control areas’ in places where short-term let are found in high numbers and deemed to be affecting the fabric of the community. The Committee took evidence on both instruments under one agenda item before moving on to debate each separately.

Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/draft)

3. This instrument sets out the rules that will govern planning authorities (ie, in most cases, local authorities) when making, varying or revoking a short-term let control area (“a control area”) under section 26B of the Town and Country Planning (Scotland) Act 1997. If approved, it will come into force on 1 April 2021.
4. The purpose of control areas is:
 - to help local authorities manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood);
 - to control short-term lets in places or types of building where it is not appropriate; and
 - to help local authorities ensure that homes are used to best effect in their areas.
5. The Scottish Government has said in its [policy note](#) that Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas. They also allow planning authorities to consider applications for consent for change of use in relation to planning matters. The policy note provides further detail on the instrument and sets out detailed provisions for the operation of the short term let control area regime.
6. The Regulations also set out the process that planning authorities must follow if they wish to create a short-term let control area:
 - **Notice:** the planning authority must publicise its intention to create a short-term let control area in a local newspaper, online and to relevant community councils. The authority must allow at least 28 days for comments on the proposals to be submitted.
 - **Modification:** the planning authority can modify the proposal following consultation, although it cannot extend the boundary of the proposed area beyond that previously consulted on.
 - **Ministerial approval:** a short-term let control area can only take effect once approved by Scottish Ministers.

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/draft)

7. This Order sets out a licensing scheme for short-term lets to be established and operated by licensing authorities. The licensing Order includes a definition of short-term let. It also sets out the activity to be licensed and the mandatory conditions which licensing authorities must apply across Scotland. It sets out transitional arrangements and modifications to the standard 1982 Act licensing procedures.
8. The [policy note](#) states that the instrument establishes a licensing scheme to ensure short-term lets are safe and address issues faced by neighbours. It will help local authorities know and understand what is happening in their area and assist with handling complaints effectively. The Order differentiates between three types of short-term let arrangement:
 - **Home sharing:** Guests stay in a part of a host's only or principal home, while the host is resident.
 - **Home letting:** Guests stay in a host's only or principal home, while the host is absent.
 - **Secondary letting:** Guests stay in accommodation that is not the host's only or principal home.
9. All existing hosts must submit a licence application by 1 April 2023 and hold an appropriate licence by 31 March 2024. Any host wishing to start short-term letting after 1 April 2022 must submit a licence application and cannot commence until the licence has been approved.

Pre-laying consultation and written evidence on both instruments

10. There has been a high level of public interest, over several years, in the issues these two instruments seek to address. The policy notes for both instruments provides some information on the Scottish Government's consultation and engagement prior to laying them. [Correspondence to the Committee from the Minister for Local Government, Housing and Planning](#), from last July onwards also provides some background info on the Scottish Government's consultation and policy development prior to laying the instrument.
11. In view of this public interest, and to prepare for the debate on 3 February, the Committee agreed to seek views from interested bodies as soon as the instruments were laid. Around [300 responses](#) were received. (In order to expedite publication in the limited time available, around half of responses received have been collated into two documents, rather than each being posted as a single document.) The Scottish Parliament Information Centre has also published an analysis of key themes raised in the submissions, and this was included in [public committee papers for the 3](#)

[February meeting](#).

Committee Consideration

12. The Delegated Powers and Law Reform (DPLR) Committee considered the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/draft) at its meeting on [22 December 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
13. The DPLR Committee considered the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/draft) at its meeting on [12 January 2021](#) and [determined](#) that it should draw the instrument to the attention of the Parliament on reporting ground (h), on the basis that it could be clearer:
 - in paragraph 1(e) of schedule 1 of the instrument that it is the term “premises licence”, rather than “approved activity”, that is being defined by reference to the Licensing (Scotland) Act 2005; and
 - that paragraph 2(4) to (7) of schedule 1 of the Civic Government (Scotland) Act 1982, as modified by paragraph 4 of schedule 2 of the instrument, does not place obligations on the applicant to display a public notice at or near the premises indicating that an application for a licence has been made.
14. The DPLR Committee also agreed to draw that Order 2021 to the attention of the Parliament on the general reporting ground, on the basis that the reference to “section 123(a) or (b)” of the Town and Country Planning (Scotland) Act 1997 in new paragraph 2A of schedule 1 of the 1982 Act as modified by paragraph 5 of schedule 1 of the instrument should be to “section 123(1)(a) or (b)”.
15. The DPLR Committee said it welcomed the Scottish Government's commitment to lay an amending instrument to rectify the errors identified. It called on the Scottish Government to include in the amending instrument provision to address the errors identified in relation to paragraph 1(e) of schedule 1.
16. At its meeting on 3 February 2021 the Local Government and Communities Committee took evidence on the instruments from Kevin Stewart, Minister for Local Government, Housing and Planning, Norman MacLeod, Senior Principal Legal Officer, Planning and Built Environment and Andrew Mott, Head of Housing Markets, Strategy and North Programmes.
17. In his opening statement, the Minister explained that the Scottish Government had brought forward the instruments as a manifesto commitment, in response to public and cross-party agreement on the need for licensing short term lets. There was growing concerns from constituents about the rise in short-term lets and the effects on communities. The Scottish Government had undertaken extensive stakeholder engagement through two public consultation exercises. The second consultation engaged with over 400 stakeholders and received over 1000 written responses. He said the legislation would bring forward a mandatory safety standard of accommodation to help protect the welfare of guests. It would also allow local authorities to establish 'control areas' where there is a high concentration of

secondary letting. These areas will see restrictions on short term lets in places or buildings where it is not considered appropriate. The Minister said the Government would monitor and evaluate the impact of the legislation and consider adjustments in the next parliamentary session should that be necessary.

18. The following issues were raised during the evidence session:
19. Working Group: The Minister said the Scottish Government would establish a working group of industry members, local authorities and stakeholders. It would develop clear and comprehensive guidance explaining the licensing scheme and control areas. The Minister said he was aware of the concerns raised by 'traditional bed and breakfasts' on the proposed licensing scheme. He said the working group would actively explore solutions to the issues expressed and identify any necessary changes to legislation.
20. Traditional Bed and Breakfasts: The Minister was asked to clarify why bed and breakfasts were included in the definition of short term letting given they do not have a history of being problematic in communities. He said the bed and breakfast industry had asked for a 'level playing field' and queried suggestions from the sector that their inclusion in the definition of short-term let had been a late addition or had come as a surprise. He said he was committed to working with the industry around some aspects of the definition. The Minister said there had been a concern that, if bed and breakfasts were not included this could result in a loophole that might undermine the intent of the legislation. He said short term letting operators might provide breakfast boxes and classify themselves as a bed and breakfast, therefore bypassing the legislation.
21. Licensing Fees and Renewal Period: The Minister said fees would be set by local authorities and be cost-neutral to each council. Costs were estimated to be in the region on £223 to £337 per license, and cover a three year period. He said this was a robust estimate based on consultations with local authorities. The Minister was asked to respond to concerns from bed and breakfast owners that costs could be as high as £2000. He said he did not know where that number had originated from.
22. The Minister said the rules allowed local authorities to set their own renewal period beyond the first three years. They are not constrained to stay within a three year timeline. He said that where an operator posed no issues or concerns, the local authority could set a longer renewal period.
23. Number of Licences: In the case of an individual owning more than one property, the Minister was asked why the licensing scheme requires a license for each property as opposed to one license covering all properties. As example was given where an individual owned four properties. The legislation states they must obtain four separate licences for each property. It was asked why a person could not just obtain one license for all four properties. The Minister explained that when an individual is applying for a licence third parties might want to comment on one property and not the others. Therefore licences are granted for the property alone.
24. Timeline: The Minister said implementation of the legislation would be delayed to 1 April 2023. This would allow local authorities and operators two years to prepare for the new rules and outwith the current COVID-19 pandemic. The minister said he wanted to see " a strong recovery of responsible and sustainable tourism in Scotland' and that delaying the legislation would help plan for that recovery.

25. Local Authorities' Resources and Expertise: The Minister said he had confidence that local authorities would be able to establish a cost-neutral licensing scheme without adding burden on their staff and financial resources. He said local authorities have a history of bringing in new systems due to changes in legislation.
26. Local Authorities Enforcement in Practice: The Minister said the legislation would give local authorities the autonomy and independence to put in place the rules that were right for them. He said one council might use the legislation to tackle anti-social behaviour while another might concentrate on health and safety. Allowing local authorities to make their own decisions would strike a balance between community needs and the needs of the economy in that area.
27. The Minister was asked to comment on the situation in Edinburgh where, it was put to him, there are 8,000 short term let properties but only 100 have so far complied to current planning permission. The Minister said it was for each local authority to enforce the law and that those who don't comply are at risk of being held criminally liable.
28. Control Areas: The Minister said that all proposed control areas would be considered and approved by the Scottish Government on a case-by-case basis looking at the evidence provided and working with the planning authorities. He was pressed on whether it was appropriate for the Scottish Government to have this overall control of the process: should local authorities not have the freedom to manage their own areas? The Minister said this provision was not unusual and that it was similar, for example, to Ministerial consent for conservation areas.
29. After questions to the Minister were concluded, the Committee moved on to formally debate the instrument. The Minister moved motion [S5M-23719](#)—
- That the Local Government and Communities Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] be approved.
30. During the debate, the following points were raised:
31. Andy Wightman said he was disappointed that the Scottish Government had refused the Committee's invitation to provide it with draft instruments before laying them. He said it might have led to better instruments being laid. He said it was unfortunate there was no opportunity to amend the legislation but welcomed the Ministers statement that adjustments could be made in the future. He said it was 'fundamentally wrong' that ministers had to give consent for short-term let control areas.
32. Sarah Boyack welcomed the principle of establishing control areas. She said that in Edinburgh 14,000 homes have been removed from long term residential use. This had resulted in soaring rent prices, a loss of community, and people feeling forced out of the city. She said it was disappointing that the Scottish Government would retain control over how the control areas would be implemented.
33. Alexander Stewart said cities across Europe has brought in their own planning Regulations and that this should also happen in Scotland so that 'the sector and the community are not disadvantaged'.
34. Jeremy Balfour asked the Minister to reflect on the points raised about planning, not

only from the public submissions, but from the Committee, and to continue to consult on any further changes that may be needed.

35. After the debate, the motion was agreed to (by division: For 6, Against 1, Abstentions 0).

36. The Minister then moved motion [S5M-23718](#)—

That the Local Government and Communities Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] be approved.

37. During the debate, the following points were raised:

38. Andy Wightman said the Scottish Government were proposing complex Regulations and that he would have benefited from seeing the legislation at an earlier date. He said that agreeing to revisit the rules after they had been implemented was bad governance and the aim should be to get the legislation correct now. He called on the Minister to withdraw the Regulations so that better ones could be laid in the next parliamentary session.


39. Mr Wightman proposed the creation of grandfather rights for established businesses providing accommodation, so as to give councils the right to waive a requirement for a license. He said that the proposed scheme would not give local authorities the flexibility they needed. He added that he was distressed that bed and breakfasts would be subject to the same regime as other home-sharing platforms and that bed and breakfasts owners had believed they would not be included due to the wording in the Planning (Scotland) Act 2019.

40. Alexander Stewart said he had difficulties with the instrument in its current form because of its likely effect on certain sectors of the industry, especially traditional bed and breakfasts. He agreed with Andy Wightman that earlier dialogue with the Committee could have resolved his concerns. He said the Committee should not agree to flawed legislation.

41. Sarah Boyack said it was clear from the evidence received during the consultation that the proposed legislation was causing widespread concern. She said there was a 'huge gap' between the Scottish Government and the industry over the Business and Regulatory Impact Assessment the Scottish Government had carried out. She said the Scottish Government should show leadership and work with the sector to resolve issues and provide clarity.

42. She added that she supported the legislation in establishing a safety standard. She said homeowners had raised concerns over energy performance certificates and required more detail in order to comply with the legislation. She asked what support the Scottish Government would offer local authorities concerned with the cost of creating the scheme and said it must not be too onerous either for local authorities or the hospitality sector. She said she would support the motion but that the Scottish Government must provide reassurances the system is deliverable.

43. Keith Brown supported the proposals saying they were a response to genuine concerns. He said the Government was acting responsibly in agreeing to change the legislation at a later date should it be required.

44. The Minister responded by saying members across all parties have called for change in the communities they represent. He said the Scottish Government had not rushed the legislation and had conducted two consultations and an independent review to arrive at the measures proposed. He said
45.  ... this is all about striking a balance between the interests of business and the need to ensure that we have a sustainable tourism industry and the interests of communities, many of which have faced grim circumstances because of the actions of irresponsible short-term letting businesses.
46. The Minister said there were polarised opinions to the legislation. He said the working group would look at future guidance explaining the rules, and that officials will continue to work with local authorities and communities to help shape it.
47. After the debate, the motion was agreed to (by division: For 4, Against 3, Abstentions 0).

Conclusions

48. The Local Government and Communities Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 [draft] be approved.

49. The Local Government and Communities Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [draft] be approved.

