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## **Local Government, Housing and Planning Committee**

# **Subordinate Legislation on Short-term lets considered by the Local Government, Housing and Planning Committee on 21 December 2021**



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# Local Government, Housing and Planning Committee

To consider and report on matters relating to local government, housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy, and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



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# Introduction

1. At its meeting on 21 December 2021, the Local Government, Housing and Planning Committee considered the following affirmative instruments:
  - [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#)
  - [Town and Country Planning \(Short-term Let Control Areas\) \(Scotland\) Amendment Regulations 2022](#)
2. The Delegated Powers and Law Reform Committee considered both instruments at its meeting on 7 December 2021 and determined that it did not need to draw the attention of the Parliament to either of the instruments on any grounds within its remit. However, the Committee welcomed that this re-laid draft Order addresses issues reported by the Session 5 Committee at its meeting on 12 January 2021 in respect of the draft Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.

# **Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022**

3. On 22 November, the Scottish Government laid the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("the Licensing Order") in the Scottish Parliament.
4. The instrument is concerned with giving effect to the Scottish Government's proposals for the licensing of short-term lets.
5. The policy note to the Licensing Order explains that the Order establishes a licensing scheme to "ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with handling complaints effectively."

## **Committee consideration of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022**

6. The Committee took evidence on the Licensing Order at its meetings on 7 December, 14 December and 21 December.
7. The Committee would like to thank those who informed its scrutiny of the Order. The Committee took evidence from the following organisations:
  - Airbnb
  - Association of Scottish Self-Caterers
  - UK Short-term Accommodation Association
  - Scottish Bed and Breakfast Association
  - City of Edinburgh Council
  - Police Scotland
  - UK Hospitality
  - Association of Local Authority Chief Housing Officers
  - Community Land Scotland
8. In addition, the Committee received written evidence from the following organisations:
  - Highland Council
  - PLACE
  - Federation of Small Businesses

- Scottish Agritourism

9. The Committee also undertook a survey prior to the laying of the Licensing Order to better understand views on this issue. The Committee received 2578 responses to the survey. A summary of those responses can be accessed via the link below.

[licensing of short term lets analysis of survey responses | Scottish Parliament Website](#)

10. The Committee also received correspondence throughout the inquiry from a range of interested people, including short-term let owners.

## **Licensing v registration**

11. The purpose of the Licensing Order is to introduce a licensing scheme for short-term lets. All existing hosts (a person operating a short-term let before 1 October 2022) must submit a licence application by 31 March 2023 and hold an appropriate licence by 1 July 2024. Any new host wishing to start short-term letting after 1 October 2022 must submit a licence application and cannot commence until the licence has been approved. The Committee heard conflicting evidence on the appropriateness of having a licensing scheme.
12. Amanda Cupples, giving evidence on behalf of Airbnb, argued that the licensing scheme is overly burdensome. She specifically highlighted that 83% of owners on Airbnb only have one property listed and let that only four nights on average a month. She argued that a licensing scheme was a disproportionate response in this context. Instead she argued that a registration scheme would be a more proportionate response.
13. At its meeting on 7 December, the Committee also heard support for a registration scheme, rather than licensing, from the Association of Scotland's Self-Caterers (ASSC), the Scottish Bed and Breakfast Association (SBBA) and the UK Short Term Accommodation Association (UKTAA). In expressing that support David Weston of SBBA suggested that a registration scheme could give effect to the Scottish Government's ambitions to ensure set health and safety standards in a more proportionate way. He also noted that such an approach had been adopted in Portugal.
14. At its meeting on 14 December, however, the Committee heard strong support for a licensing scheme rather than a registration scheme. Andrew Mitchell, giving evidence on behalf of City Edinburgh Council, contended that a registration scheme would be not be as effective as a licensing scheme. He further contended that having a landlord registration scheme for short-term lets would achieve no more than having a register of where short-term lets are, which would not allow local authorities any meaningful powers to tackle some of the problems that are caused by short-term lets.
15. Chief Inspector Nicola Robison, giving evidence on behalf of Police Scotland, also advocated for a licensing scheme rather than a registration scheme. She argued that having a fit and proper person test in order to be a license holder would give the police the powers that they currently don't have to tackle antisocial behaviour and criminality associated with short-term lets.



16. In its written submission to the Committee, Police Scotland provided more detail on the nature of that criminal behaviour:

The Police Scotland National Interventions Unit have confirmed there is intelligence or anecdotal evidence that:

- there are prostitutes moving about Scotland utilising short term lets, advertising their services and travelling to the areas where there is potential business
  - Drug dealing takes place whereby a drug dealer houses themselves at a short term let, most recently in relation to county lines investigations
  - Anecdotal information from SSPCA that short term lets are being used to facilitate puppy farming (where a `nice` property is being purported as the home of the owners, thus attempting to legitimise the activity).
17. Both Chief Inspector Robison and Andrew Mitchell expressed the view that they do not currently have any powers that would allow them to tackle antisocial behaviour and criminality effectively. Andrew Mitchell noted that the current antisocial behaviour legislation is designed to deal with people in the community, such as those living in tenancies, who are creating longer term problems and this is not suited to dealing with the problems associated with short term lets.
18. Alisa Raeburn of Community Land Scotland also argued for licensing scheme. She suggested that a majority of those who list properties on Airbnb have more than one property listed there. Drawing on research from the Scottish Government and Sunday Times she suggested that more than 55 per cent of listings on Airbnb are held by multilisters. Furthermore she noted from that same research that almost 40 per cent of owners in Scotland have more than three properties, while 8 per cent have more than 100 properties being run as short-term lets. Moreover, in Edinburgh, over 10 per cent of owners have 10 or more properties.
19. The Cabinet Secretary for Social Justice, Housing and Local Government explained to the Committee that the Scottish Government had considered the merits of a registration scheme. She indicated to the Committee, however, that the absence of a fit and proper person test from such an approach meant that it was not one the Scottish Government could consider adopting. In her view the fit and proper person test is the vital difference between the a licensing scheme and a registration scheme in that having this test gives the police and local authorities powers to remove licenses for serious breaches of conditions.
20. The Cabinet Secretary noted to the Committee that there will be a review of the licensing scheme in the summer of 2023.
21. The Committee notes the concerns expressed to it about the licensing scheme. The Committee also notes the preference for a registration scheme as expressed to it by some witnesses. A minority of members found these arguments persuasive and would prefer for there to be a registration scheme, considering it to be a more proportionate response.

22. A majority of members, however, were persuaded of the need for a licensing scheme primarily on the basis that a registration scheme would not give local authorities and Police Scotland the powers they need to tackle antisocial behaviour and criminality associated with some short-term lets. Moreover those members considered that this is a proportionate response and that licensing short-term lets seems to be entirely consistent with approaches to other hospitality and tourism businesses.
23. The Committee was unanimous, however, in recognising the importance of the review in 2023. It is difficult to assess at the moment how the scheme will work in practice and this review will offer an opportunity to reflect on the scheme in light of experience. The Committee would welcome further clarity on the timescales for the review and would appreciate being kept updated on any changes to those timescales.

## **Uncertainty caused by licensing scheme**

24. At its meeting on 7 December, the Committee heard concerns from witnesses about the uncertainty a licensing scheme would create for short-term let owners.
25. Fiona Campbell, giving evidence on behalf of the ASSC, highlighted concerns about the capacity for short-term let owners to take advance bookings when they could not be assured that their license would be renewed. She also suggested that this uncertainty could disadvantage short-term lets owners in being able to obtain mortgages.
26. Andrew Mitchell of City of Edinburgh Council told the committee, however, that his experience of other licensing scheme renewals would suggest that these fears are unfounded:
- ” “What struck me from last week’s evidence was the industry’s fear of what the licensing system will be. The 1982 act provides a good and well understood model, and the reality of licensing decisions on the ground is that the vast majority of licences are granted. The legislation is quite clear: a licensing authority shall grant a licence, unless there is a good reason not to...In Edinburgh, we process more than 20,000 applications a year, and refusals run into the hundreds.”

27. The Committee recognises the concerns that arise from the need to renew a license and the consequent uncertainty that it creates. However, the Committee notes the experience of other licensing schemes as referred to by Andrew Mitchell and does not believe that this scheme will operate so differently from those. On that basis, the Committee considers it unlikely that this licensing scheme will result in large numbers of licenses rejected.

28. The Committee would encourage the Scottish Government in producing any guidance to ensure that it offers some reassurance to the operators of short-term lets that the scheme will not result in large numbers of licences being rejected.

## Fees

29. The cost of a licence is not set in the Licensing Order, as this is a matter for individual local authorities. The Business and Regulatory Impact Assessment published in June 2021 gave illustrative “average, indicative” fees, for a three year licence, of between £222 and £377 for a new application and £148 to £249 for a licence renewal.
30. Fiona Campbell of ASSC, however, suggested to the Committee that the costs could be considerably in excess of that. She suggested that the costs could be more akin to that of a house in multiple occupation (HMO) licence, which ranges from about £1,500 to £2,000. Such costs she indicated would be both untenable and unnecessary for those businesses that are already regulated and covered by health and safety legislation.
31. Leon Thompson of UK Hospitality was not persuaded that costs would be that high, but equally indicated that he thought that guidance would be helpful to keep costs as low as possible.
32. Andrew Mitchell of City Edinburgh Council argued that local government is experienced in setting fees in order to recover costs, and that there are transparent mechanisms for doing that. He noted that for those who are operating what are in effect commercial operations 24/7, local government will set the licence fee at something like the level of HMO fees. At the other end of the spectrum however, under the 1982 act, he noted that there is no reason why someone who is operating only occasionally or perhaps renting out one bedroom while still living in the property could not be subject to a less onerous licensing system beyond the mandatory conditions.
33. The Cabinet Secretary advised the Committee that while it will be for local authorities to set fees, they will do so following Scottish Government guidance. She further indicated that the guidance will say that fees should only recover costs, so local authorities should not go beyond that.
34. The Committee recognises that short-term let owners will have concerns about the level of fee that they might have to pay and the impact that might have on the viability of their business. At the same time, the Committee notes the evidence from the Cabinet Secretary that the guidance will set-out that fees should be for cost recovery alone. The Committee also highlights the evidence from Andrew Mitchell which noted that fees will be set at a rate appropriate to the kind of business the short-term let owner is operating. The Committee hopes that this evidence from the Cabinet Secretary and Andrew Mitchell offers some reassurance to short-term let owners.

## **Impact on business and tourism**

35. The Committee has been presented with serious concerns about the impact that the licensing scheme could have on short-term lets businesses and tourism more generally.
  36. In particular, the Committee has heard that the licensing scheme might cause a significant number of short-term let owners to leave the sector. Surveys the ASSC carried out in 2020 suggested that 49 per cent of short-term lets owners would leave the sector if the licensing scheme was introduced.
  37. This view was echoed by Amanda Cupples of Airbnb. She advised the Committee that Airbnb had consulted its hosts and 51% of them had indicated that they would leave the sector if the licensing scheme were introduced.
  38. A large number of short-term lets owners contributed to the Committee's survey or wrote separately to the committee suggesting that they would have to leave the sector.
  39. Fiona Campbell and Amanda Cupples also suggested to the Committee that the licensing scheme will have a very damaging effect on the tourism industry more generally. Amanda Cupples highlighted independent economic modelling conducted by Airbnb, which estimated that introducing the licensing proposals would cost around 17,000 jobs and take about £1 million out of the economy per day.
  40. Ailsa Raeburn, however, questioned the extent of the economic benefits attributable to short-term lets. She suggested to the Committee that there is little evidence to suggest that the absence of short-term lets would have deterred tourists from visiting Scotland. Tony Cain echoed these sentiments, suggesting that there is nothing to suggest that short-term lets have effected a growth in the tourism industry.
41. The Committee notes the concerns presented to it about the impact this will have on the number of short-term lets owners and in turn on the tourism industry. The Committee also notes the evidence presented to it questioning the economic impact of short-term lets on the tourism industry. It appears to the Committee that there is no clear understanding of the economic impact of short-term lets on the tourism industry. The Committee would encourage the Scottish Government to undertake further research on this issue with a view to informing the review in 2023.

## **Impact on housing**

42. The Committee explored with witnesses the impact of short-term lets on the housing market.
43. Fiona Campbell of ASSC argued that the impact was negligible and that in any event that was not the purpose of the Regulations:

” There is no empirical data whatsoever that demonstrates a link between short-term lets and the housing market. Moreover, we know that there are five times as many empty homes in Scotland as there are self-catering units. We need to remember that these are two different pieces of legislation and, as we have been told by the Scottish Government numerous times now, the licensing legislation is about health and safety and not housing.

44. Both Tony Cain of the Association of Local Authority Chief Housing Officers and Andrew Mitchell of City of Edinburgh Council, however, suggested that short-term lets have had a very significant impact on the Edinburgh housing market. Andrew Mitchell explained to the Committee that the Council had commissioned Rettie to do research, which highlighted that around 5,000 properties were potentially lost to the housing market in Edinburgh because they are being used as short-term lets. He suggested that one of the main impacts of this is that private rented sector rents go up, because there is more competition for the properties that are remaining.
45. Leon Thompson of UK Hospitality noted that from the perspective of his industry, those who operate in rural and urban locations are increasingly find it harder to secure the workers whom they need. He suggested that people are not living there because they cannot afford accommodation and that it is knock-on effect from other parts of tourism.

46. The Committee appreciates that the Licensing Order is not concerned with effecting the housing market. At the same time the Committee notes the concerns presented to it about the impact of short-term lets on housing and it is something the Committee considers further in this report in the context of overprovision.

## Changes from the previous version of the Order

47. The Cabinet Secretary for Social Justice, Housing and Local Government wrote to the Committee on 7 October 2021, setting out changes that would be made to the proposed licensing regime in light of working group recommendations. These included:
  - 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

48. These changes are reflected in the Licensing Order and associated guidance.
49. Fiona Campbell and Shomik Panda welcomed the changes, in particular the removal of the overprovision powers although in of themselves they were not sufficient to enable them to support the Licensing Order.
50. Alisa Raeburn of Community Land Scotland, however, argued that the overprovision powers should have been retained:
- ” The overprovision policy needs to be reintroduced into the legislation and the licensing scheme to give local communities and local authorities the ability to control the number of short-term lets in very specific areas where they are causing a problem. I will give some examples. In cities such as Edinburgh, huge numbers of short-term lets have hollowed out communities. In places such as Mull, Skye and Tiree, huge numbers of short-term lets have impacted massively on the availability of affordable housing stock, particularly for young working families. People are being made homeless and are not able to return or move to those areas—thereby addressing the issue of depopulation—as a result of the huge numbers of houses that are being taken out of permanent residential use and made short-term lets.
51. The Committee has also received a number of submissions and a petition from Living Rent arguing that the overprovision powers are needed.
52. The Cabinet Secretary intimated to the Committee that although the Scottish Government was not minded to include the overprovision powers at this juncture this is something that could be considered again in the context of the review.

53. The Committee recognises that it is not possible to amend the Licensing Order. Accordingly it would not be possible to reinsert the overprovision powers at this juncture. The Committee would, however, welcome further consideration of this issue when the Scottish Government undertakes its review in 2023.

## **Resources to support the licensing scheme**

54. The burden for the operation of the licensing scheme will fall on local authorities. Tony Cain of ALACHO noted that the main challenge will arise in relation to enforcement activity—that is, responding to and addressing concerns and complaints when they arise day to day. He suggested that is where the principal difficulty will be with the scheme, as it is with HMO licensing, for example, and to an extent with landlord registration.
55. Andrew Mitchell of City of Edinburgh Council recognised that there will be challenges around enforcement, particularly given the scale of the issue in Edinburgh. He did, however, note that in Edinburgh the Council is already having to deal with the problems associated with short-term lets, but would at least have the funding provided by the fees to support their efforts.
56. The Cabinet Secretary indicated to the Committee that the Scottish Government had not received any formal requests for additional funding from local authorities for



the purposes of this scheme. She did, however, note that of the 11 local authorities who responded to the Scottish Government's consultation on the regulations in 2021, two did highlight concerns about resourcing.

57. The Committee would welcome some assurance from the Scottish Government that local authorities will receive sufficient funding to enable them to operate licensing schemes effectively.

## Bed and Breakfasts

58. The Committee appreciates that bed and breakfasts have primarily been included within the licensing order, so as to avoid a loophole being created whereby a short-term let operator could evade being included within the licensing scheme by providing a breakfast.
59. Leon Thompson of UK Hospitality noted that it is regrettable that bed and breakfasts have had to be included. David Weston of the Scottish Bed and Breakfast Association noted his surprise at bed and breakfasts being included in the terms of the Licensing Order:

” We were surprised that B and Bs were included in the scheme, and our surprise was shared by many, including in Government circles. Everybody seems to agree that traditional B and Bs are not the source of many of the problems that the legislation seeks to address. We are already compliant with health and safety legislation, and mechanisms are already in place to enforce that for B and Bs.

60. Andrew Mitchell of City of Edinburgh Council suggested to the Committee that it is possible that a licensing scheme would recognise the different status of B and Bs and accordingly subject them to a less onerous regime.
61. The Cabinet Secretary echoed the views expressed by Andrew Mitchell, suggesting too that B and Bs could be subject to a less onerous regime.

62. The Committee would welcome any guidance that could be issued which would make it clearer that B and Bs may be subject to a less onerous regime mindful of their status.

## Conclusions

63. At its meeting on 21 December the Local Government, Housing and Planning Committee considered motion S6M-02265 that the Local Government, Housing and Planning Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 be approved.
64. A majority of the members of the Committee were persuaded that the benefits of

the licensing order outweighed any of the concerns highlighted to the Committee.

65. The Committee agreed by division (5/2/0) to recommend approval of the Licensing Order.



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

66. On 30 November 2021, the Scottish Government laid the Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 in the Scottish Parliament.
  67. This instrument amends the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154) to update the definition of short-term let and excluded accommodation so that they are consistent with the definition in the Licensing Order.
  68. At its meeting on 21 November the Local Government, Housing and Planning Committee considered motion S6M-02264—that the Local Government, Housing and Planning Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 be approved.
69. The Committee agreed by division (5/2/0) to recommend approval of the Regulations.

