Short Term Lets in Scotland

Planning Guidance for Hosts and Operators

June 2021

Scottish Government
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Contents

1. Introduction

(a) About this guidance

1.1. This guidance is intended for hosts and operators of short-term lets. A separate planning circular[1] has been prepared for planning authorities.

1.2. Separate guidance has been produced for the short-term lets licensing scheme. Hosts and operators must comply with both planning and licensing law.

1.3. This guidance is non-statutory and should not be interpreted as offering definitive legal advice. If in doubt, you should seek your own legal advice.

(b) Policy objectives

1.4. The Scottish Government's purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests. The regulation of short term lets comprises a licensing scheme, powers for local authorities to designate planning control areas (hereafter referred to as control areas) and possible changes to taxation.

1.5. The licensing scheme[2] aims 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.

1.6. The licensing scheme is complemented by powers[3] for local authorities to designate control areas. The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent 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.

(c) Glossary

1.7. Words with a particular meaning are highlighted in bold and explained where they first appear and the explanation is repeated in the glossary below.

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[1] Planning Circular 1/2021: Establishing a Short-term Let Control Area.
[2] Established by the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/[ ]), see **Consultation No. 3: Paper 2**.
[3] Given by the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154).

1.8. In this guidance, the following terms are used:

"the 1997 Act"	means the Town and Country Planning (Scotland) Act 1997;
"the Control Area Regulations"	mean the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154);
"GPDO"	means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;
"the Use Classes Order"	means the Town and Country Planning (Use Classes) (Scotland) Order 1997 (SI 1997/3061);
"control area"	means a short-term let control area designated under section 26B of the 1997 Act, as amended by the Planning (Scotland) Act 2019;
"dwellinghouse"	means, for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) being accommodation which ordinarily affords the facilities required for day-to-day private domestic existence such as a house, flat, cottage, see also **Annex A**;
"guest"	means a person occupying a property for the purposes of a short-term let;
"host" (or **"operator"**)	means a person or company providing accommodation for short-term lets;
"licensing scheme"	means the scheme established by the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/[ ]);
"neighbour"	means, for our purposes, someone whose permanent residence is in close enough proximity to a short-term let to have a legitimate interest in its business, e.g.

	potentially affected by safety, noise, litter, nuisance;
"property"	means the accommodation (room, rooms or premises) let to the guest(s) as a short-term let;
"secondary let"	means the letting of a property where you do not normally live, for example a second home (and has the same meaning as in the licensing scheme);
"short-term let"	is as defined in the 1997 Act and regulation 2 of the Control Area Regulations, see also **Annex B** (and has the same meaning as in the licensing scheme);

2. Guidance for Hosts and Operators

(a) Basics of planning law

2.1. Planning permission is required for 'development'. The definition of development[4] includes a material change of use of land or buildings, even if there are no physical alterations to the land or building.

2.2. The central question is whether a change of use is a material change of use.

2.3. This guidance is primarily concerned with change of use of a **dwellinghouse** to use for **short-term lets** and whether this change is a material change of use.

2.4. A **dwellinghouse** means a house or a flat or a cottage or any independent dwelling (i.e. with its own front door, kitchen and bathroom). This is elaborated at **Annex A**.

2.5. A **short-term let** is defined in planning legislation (see **Annex B**) and has the same meaning as in the licensing scheme. You may find it helpful to refer to the guidance on the licensing scheme for more explanation.

2.6. Changing the use of a dwellinghouse to provide short-term lets may constitute a **material change of use** requiring planning permission. Whether or not this is the case will depend upon the circumstances and factors which apply to the particular change of use. This guidance will help you work out whether your use of your residential property is likely to require planning permission.

2.7. There are a number of factors which may affect a planning authority's consideration of whether the change of use is a material change of use. Factors include the change on local amenity and the character of a neighbourhood or area, safety and impact on immediate neighbours.

Changes of use

2.8. Many types of use are grouped into classes and you do not need planning permission for a change of use within the same class. These classes are set out in the Use Classes Order. For example, houses (but not flats) are in class 9. You do not normally need planning permission to change the use of a house from owner occupation to letting it out through a private residential tenancy to another household, as this change of use is within class 9. However, hotels are in class 7, so you would need planning permission to convert a house into a hotel.

[4] As set out in the Town and Country Planning (Scotland) Act 1997.

2.9. There are some uses which do not fall into any class. These are known as *sui generis* uses. It would be expected that a change of use between classes and *sui generis* uses and from one *sui generis* use to another would represent a material change of use and so require planning permission. For example, flats are a *sui generis* use so you would generally need planning permission to convert a house (class 9) into flats (*sui generis*). Material use of a premises or property to provide short-term lets is a *sui generis* use.

2.10. This means that planning permission for change of use from any other use to use as a short-term let may be required in most cases. You should seek advice from the planning authority which will either be your council or the Loch Lomond & Trossachs National Park Authority as to whether permission is required.

When to apply

2.11. If you need planning permission, then it should be obtained before you receive **guests** at your property. Remember that guest means a person occupying a property for the purposes of a short-term let. You may require planning permission even if you only have guests for short periods each year.

2.12. A planning authority can take enforcement action where there has been a breach of planning control. This would occur if there is a material change of use of a property without planning permission. Enforcement action can be taken up to 10 years from the date of the breach of planning control. Enforcement action can require you to cease the use of a property for short-term lets if you do not have the appropriate planning permission.

(b) Material change of use

2.13. The Scottish planning system is “plan-led”. Planning authorities have a local development plan and are required by planning legislation to determine planning applications in accordance with their local development plan unless there are material considerations which indicate that they should do otherwise. They must also take account of local and national policies. Planning authorities update their local development plan on a regular basis.

2.14. Material planning considerations are not set out in legislation. This means that what constitutes a material planning consideration is a question of what is relevant to the consideration of a particular case. Each planning application is considered on a case-by-case basis. Only those material planning considerations that apply to that particular application can be considered in determining whether it is approved or not.

2.15. It is often the case that there are a number of material planning considerations that are relevant to a particular planning application. Some of these may

support the application while others may suggest it should not be approved. In these circumstances, it is for the person determining the application to consider each of these considerations and to weigh them up. They can decide how important each consideration is for this particular case and how much importance to give it.

2.16. The planning system should operate in the **public interest**; it does not seek to protect one individual's interests against another's. Consider, for example, a proposal to build a block of flats in a residential area. The view of this development from one individual's window would not necessarily be a material planning consideration. However, the view of the development from public spaces, and therefore the impact on the wider community, would be a material planning consideration.

2.17. The planning process allows members of the public and organisations to object to a planning proposal. Continuing with the example, an objection from an individual on the grounds that they do not like the design of the block of flats would not be a material planning consideration. However, an objection on the grounds that the design is out of character with the surrounding landscape could be a material planning consideration.

2.18. Examples of material planning considerations in relation to short-term lets are set out below. This list is not intended to be either exhaustive or definitive; there may be other material planning considerations that are relevant in any particular case. This list is based on those matters which have been identified as material planning considerations in both:

- determining previous planning applications; and
- appeals against enforcement action taken against unauthorised changes of use.

Guest arrivals and departures

2.19. Relevant considerations here include:

- guest access to communal areas such as stairwells and gardens;
- access to the property by the host (if they do not live there) and other service providers for maintenance and cleaning etc.;
- guest arrival and departure times and whether these are at unsociable hours;

2.20. The impact on amenity for neighbours, for example caused by noise at unsociable hours, is likely to be greater in a tenement, an apartment building or

similar, where stone or equivalent hard surfaces may amplify noises and cause echo. The greater the impact, the more weight might be expected to be given to it.

Particular impacts on other residents in flatted buildings

2.21. Relevant considerations here include:

- any reduction of physical security of a building, for example where key boxes are used; and
- actual and perceived increased risks to permanent residents from guest access to communal areas.

Likely frequency and intensity of noise or otherwise unsociable behaviour

2.22. Where issues arise from the behaviour of a permanent resident, a neighbour could approach the resident (or their landlord) directly or through a residents' group. They are more likely to achieve modification to problematic behaviour, either through establishing a rapport and understanding with the problematic resident over time or seeking sanctions through the landlord, council or the police, in more serious cases. The high turnover of guests in short-term lets requires new people to learn and observe the proper behaviours and increases the chance of some people wilfully or negligently failing to behave appropriately.

2.23. Where the host is letting out one or two rooms in their own home, it would generally be expected to have a lesser impact because:

- the host is more likely to be known by neighbours (because they also live there);
- the host has a stronger direct interest in respecting neighbours' rights and
- the host has more opportunity to monitor guest behaviour.

Impact on public services and residents' amenity

2.24. Relevant considerations here include:

- more household waste than would be expected from residential use, leading to full or overflowing bins (possibly leading to littering and vermin) and more journeys to the bins;
- pressure from guests' cars on availability of on-street parking to neighbours and pressure on residents' private parking spaces; and

- likelihood of increased noise and general disturbance compared to the occupation of the property on a permanent or long term residential basis.

Cumulative impact on the character and amenity of a neighbourhood

2.25. The cumulative impact means the effect of a significant number of homes being used for short-term lets in the neighbourhood. The meaning of a significant number will depend on matters including the size and layout of the neighbourhood.

2.26. Relevant considerations here include:

- the impact on the availability of affordable and appropriate housing for local residents;
- the impact of seasonal variations in numbers of people in the local area, for example whether it is too overcrowded in the summer for everyone to be well-served and too empty in the winter to sustain local amenities; and
- the difference in activities of guests compared to residents.

2.27. This latter point can affect the viability of local businesses and shops which are used by residents and their access to these amenities. For example, guests are more likely to spend time recreationally (e.g. outdoor sports and restaurants) than functionally (e.g. hardware stores). Guests may also have different food shopping habits than permanent residents, possibly bringing provisions with them rather than using local food retailers.

Number of people staying

2.28. More people in a dwellinghouse are likely to have more impact on neighbours. Greater numbers of people staying are likely to be an amplifying factor on the previous considerations.

2.29. The number of people staying in a dwellinghouse can increase for any number of reasons, for example a couple having children, partners and their dependents moving in or a house being sold or let to a different household. The larger or new household may make changes to the dwellinghouse to increase the capacity. Hosts or operators may also want increase the capacity of a dwellinghouse used for short-term lets to accommodate more guests.

2.30. The permanent household or the short-term let host or operator might want to create additional sleeping accommodation by converting, subdividing or partitioning rooms by, for example:

- converting public rooms (such a living room) to bedrooms;
- using bunk beds in place of single beds; and
- partitioning a large living room or bedroom in order to create two bedrooms.

2.31. In terms of use as a short-term let, the relevant considerations include:

- whether the capacity changes the nature of the use, for example accommodation for twelve guests may be more likely to be booked for stag and hen parties than accommodation for four guests; and
- whether the capacity is significantly larger than that which might reasonably be expected for residential use, for example six bunkbeds to provide capacity for twelve people would be unusual for a residential household.

(d) Letting rooms in your own home

2.32. You may need planning permission where the sleeping accommodation is provided in your own home and it is not secondary to the existing use[5].

2.33. You do not normally need planning permission if you live in a house (not a flat) in the following circumstances[6]:

a) where you are only letting one bedroom in your own home and it has fewer than four bedrooms; or

b) where you are only letting one or two bedrooms in your own home and it has four or more bedrooms.

2.34. This is because these uses are usually covered by class 9 in the Use Classes Order.

2.35. Where you are letting out more rooms than this in your house, or you live in a flat, then you will generally need planning permission.

2.36. You can get an idea of whether or not planning permission is required from the examples of what can constitute a material planning consideration above. These can give a good idea as to what may trigger the need for a planning application and what would be taken into account. You should also check the relevant local development plan and policies; it may well be the case that the planning authority have a policy on short-term lets. It may also help to look at

[5] Known as home sharing or home letting in the licensing scheme.
[6] This is because these uses are included in class 9 (houses) in the Use Classes Order.

recent applications and decisions on the planning authority's register of planning applications. You can find this on-line on the planning authority's website or view it at the planning authority's offices.

2.37. While these can give an idea of the issues relevant to planning, you need to bear in mind that each case is considered on its individual and unique characteristics. Under planning legislation, it is the planning authority that decides what weight to give to competing material considerations. If you are unsure whether planning permission is required, you should consider discussing your proposals with the planning authority and/or seeking professional independent planning advice.

2.38. Note that the special provisions which operate in control areas (see below) do not apply to providing sleeping accommodation in your own home[7].

(e) Letting rooms in other situations

2.39. You may need planning permission where the sleeping accommodation is **not** provided in your only or principal home. The first thing to check is whether the property is a dwellinghouse in a control area.

2.40. Some unconventional properties are not dwellinghouses, for example yurts, treehouses or glamping pods comprising just a bedroom and seated area. This is because they are not independent dwellings: the guests need to make use of shared kitchen or bathroom facilities. However, a static caravan with all the facilities for day-to-day living could be a dwellinghouse.

2.41. Planning authorities were given powers to designate one or more **control areas** within their area from 1 April 2021. They have to consult and also get the approval of the Scottish Ministers before the designation of a control area comes into effect. You can find out if your property is within a control area by checking with your local planning authority, either on their website or at their offices.

Dwellinghouses in a control area

2.42. Designation of an area as a control area affects the way that planning legislation applies to change of use of a dwellinghouse which is not the host's only or principal home, i.e. the host does not live there. (This is called secondary letting in the licensing scheme.)

2.43. Where the dwellinghouse is in a control area, a change of use to secondary letting will always require planning permission unless the exceptions set out in

[7] Section 26B(3) precludes a tenancy of a dwellinghouse, or part of it, where all or part of the dwelling house is the only or principal home of the landlord or occupier.

Annex B apply. You must make a planning application if you do not already have planning permission. However, where the dwellinghouse has been used for secondary letting in a consistent manner for more than 10 years and no planning permission has been granted in that time, it may be eligible for a Certificate of Lawfulness of existing Use or Development (see below).

2.44. Note that this requirement to obtain planning permission includes property adjacent to, or on the same land as, the host's principal residence. Examples include a cottage on the grounds of the host's home or a self-contained flat or granny annex, where it is not part of the same dwellinghouse.

Other circumstances

2.45. You may need planning permission where your property is:

a) a dwellinghouse not inside a control area; or

b) not a dwellinghouse, i.e. some types of unconventional properties (whether inside or outside a control area).

2.46. You can get an idea of whether or not planning permission is required by following the steps set out at paragraphs 2.36 and 2.37 above.

(f) Making a planning application

2.47. You may be able to prepare the planning application yourself and may not require significant professional advice or input. Depending on your circumstances, you may need to conduct a search of title deeds and location plan of your property through Registers of Scotland.

2.48. As of June 2021, the fee for making a planning application is £401, wherever you are in Scotland.

2.49. Architects drawings and plans of proposed work are not generally be required for a change of use. However, this may not be the case if you are also making physical alterations to the appearance of the building.

2.50. Your application may be more complicated, and you may need professional help, if your application raises unusual issues.

2.51. On receipt of your application, the planning authority is required to send written notification to all neighbouring properties within 20 metres. The costs of this written notification are included in the application fee.

2.52. Where written notification cannot be done (i.e. there is no postal address for the neighbouring land to which the written notification can be delivered), a press advert will be required. Advert costs are not included in the application

fee. You will be charged for this separately by the planning authority as and when required.

(g) Certificate of Lawfulness of existing Use or Development

2.53. The Certificate of Lawfulness of existing Use or Development CLUD is in effect a mechanism whereby you can apply to a planning authority for confirmation as to whether planning permission for the existing use of the property is required or not. In essence, a CLUD is confirmation of the lawfulness of the development or change of use and so confirmation of that subsequent enforcement action would not be taken in respect of the continued existing use of the property.

2.54. Anybody can seek a CLUD if they wish to ascertain whether an existing use is lawful. You might wish to seek a CLUD where, for at least the last 10 years:

a) you have been using the property in the same way; and

b) either:

(i) you believe there has been no material change of use; or

(ii) no enforcement action has been taken against the change of use.

2.55. Broadly speaking, if you are seeking a CLUD on the grounds that no enforcement cation can be taken it is your responsibility to demonstrate to the planning authority that:

a) the change of use occurred more than 10 years prior to your application;

b) the use has continued without interruption for at least 10 years;

c) the use has not increased or intensified during those 10 years; and

d) no formal enforcement action has been taken in the in respect of the use.

2.56. With regard to (b) above, without interruption does not mean that the property has had to have been occupied by guests on every night for the last 10 years. A holiday home is still a holiday home, even when it is empty. However, the property cannot have been used for another purpose during the 10 years. For example, use as a private residential tenancy or as your only or principal home for any part of the preceding 10 years would be considered an interruption.

2.57. With regard to (c) above, an example of increase or intensification would be where part of your property was used for the first 5 years and then the whole property was used for the subsequent 5 years.

2.58. The information you need to provide in support of a CLUD application is different to that required for a planning application. In applying for a CLUD, you are submitting evidence that the use does not require a planning application. The planning authority will consider whether the evidence you provide is proof enough to justify a CLUD. Examples of evidence that might be used include:

- receipts for guests staying at the property;
- advertisements; and
- extracts from business accounts.

2.59. You may need to spend some time gathering information from your records and corroboration from other sources to prepare the evidence and your application. You will need to show that the use continued uninterrupted and without increase or intensification.

2.60. A CLUD application does not need to be notified to neighbours or advertised.

(h) How your planning application will be determined

2.61. The planning authority will weigh up the material planning consideration set out in **section (b)** above.

2.62. If your planning application or CLUD application is granted you will still need a licence in order to operate lawfully. Your licensing application may be refused pending a successful planning application.

(i) Appeals

2.63. Planning enforcement notices and decisions to refuse planning permission can both be appealed (and are sometimes reported in the press). The processes for determining these are different.

2.64. In an appeal against an enforcement notice:

- The appellant argues that it is not development (no material change of use).
- The Reporter considers whether there is in fact a material change of use.

2.65. In an appeal against a planning refusal or failure to give a decision:

- The argument is over whether the material change of use should be allowed.

- The Reporter looks at the planning application afresh.
- The Reporter might weight considerations differently from the planning authority.

Annex A

Definition of a dwellinghouse

The definition of dwellinghouse is explained in Planning Circular 10/2009: Planning Enforcement:

7. … Although there is no definition of what constitutes a dwellinghouse, it is considered possible for a reasonable person to identify one by sight. If no reasonable person would identify a particular structure as a dwellinghouse, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse, even if it is being used as such. This is an important distinction which means that a building may be used lawfully as a dwellinghouse without acquiring the 'permitted development' rights associated with a building that is a dwellinghouse.

8. The above distinction (between use as and being a dwellinghouse) is important in circumstances where people have adapted or used unlikely or unusual buildings as their houses. However, under the terms of the General Permitted Development Order (GPDO) it may also apply, in certain circumstances, to ordinary flats: a flat may be used as a single dwellinghouse without acquiring 'permitted development' rights, because Article 2 of the GPDO specifically excludes them from the definition of 'dwellinghouse' for GPDO purposes. The criteria for determining whether premises are being used as a single dwellinghouse should include both their physical condition and the manner of the use. For the purposes of the 1997 Act, a single, self-contained set of premises can properly be regarded as being in use as a single dwellinghouse if it meets the following criteria:

- it comprises a unit of occupation, which can be regarded as a 'planning unit' separate from any other part of a building containing it;
- it is designed or adapted for residential purposes, containing the facilities for cooking, eating and sleeping normally associated with use as a dwellinghouse;
- it is used as a permanent or temporary dwelling by a single person, or by persons living together as, or like, a single family.

9. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities (e.g. a bathroom or lavatory) and the 'planning unit' is likely to be the whole building, in use for the purposes of multiple residential occupancy, rather than each individual unit of accommodation.

Annex B

Meaning of short-term let in a control area

Section 26B of the 1997 Act, and the Control Area Regulations define a short term let for the purposes of the control areas. Use of a dwellinghouse for the purpose of providing short-term lets is deemed to be a material change of use in a control area. Planning permission is therefore required for short-term letting of any house or flat within a control area.

Note: the proposed Licensing Order would amend the Control Area Regulations and these amendments are **not** reflected below.

Section 26B(3) excludes:

- private residential tenancies under section 1 of the Private Housing (Tenancies) Scotland Act 2016; and
- tenancies of a dwellinghouse or part of it where all or part of the dwelling house is the only or principal home of the landlord or occupier

Regulation 2 of the Control Area Regulations defines a short-term let as provided where all of the following criteria are met:

a) sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration,

b) no person to whom sleeping accommodation is provided is **an immediate family member** of the person by whom the accommodation is being provided,

c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,

d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and

e) the accommodation is not **excluded accommodation** (see below)

An **immediate family member** includes parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. It also treats children with one parent in common as siblings and stepchildren as children.

Excluded accommodation means a dwellinghouse which is, or is part of—

- a hotel,
- a boarding house,
- a guest house,
- a hostel,
- residential accommodation where care is provided to people in need of care,
- a hospital or nursing home,
- a residential school, college or training centre,
- secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or accommodation used as military barracks),
- a refuge,
- student accommodation,
- an aparthotel.

Annex C

Further information

Circular 1/2021: Establishing a Short-Term Let Control Area

Circular 3/2013: Development Management Procedures. Covers the making and consideration of planning applications:

Planning Circular 3/2013: Development management procedures - gov.scot (www.gov.scot)

Circular 4/2013: Planning Appeals

Planning Circular 4/2013: Planning appeals - gov.scot (www.gov.scot)

Circular 10/2009: Planning Enforcement

Covers enforcement measures, the grounds for appeal against enforcement action and the use and requirements for CLUDS

Planning Circular 10/2009: Planning Enforcement - gov.scot (www.gov.scot)

Circular 1/1998: Use Classes

Explains the Use Class Order and the use classes

https://www.webarchive.org.uk/wayback/archive/20170401152222/http://www.gov.scot/Publications/1998/01/circular-1-1998-root/circular-1-1998

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