

## SHORT TERM LETS

### GUIDANCE AND IMPLEMENTATION STAKEHOLDER WORKING GROUP

#### NOTE OF MEETING ON 18 FEBRUARY 2021

##### Stakeholders present:

<b>Name</b>	<b>Organisation</b>
Marie Lorimer	Airbnb
Tony Cain	ALACHO
Fiona Campbell	Association of Scotland's Self Caterers
James Foice	Association of Serviced Apartment Providers
Chris McKee	City of Edinburgh Council
Laura Caven	COSLA
Wayne Mackay	Electrical Safety First
Jean-Philippe Monod	Expedia
Jo Millar	Gilson Gray
David Littlejohn	Heads of Planning Scotland (Perth & Kinross Council)
Sarah Farnham	Ketchum – representing Booking.com
Alistair McKie	Law Society of Scotland, Planning Law Sub-committee
Helen Stevenson	Local Authority Environmental Health Officers
Deborah Heather	Quality in Tourism
Russel Griggs	Regulatory Review Group
David Weston	Scottish Bed & Breakfast Association
Chris Getty	Scottish Fire and Rescue Service
James Clark	Scottish Fire and Rescue Service
Gavin Mowat	Scottish Land & Estates
Marc Crothall	Scottish Tourism Alliance
Gary Munro	SOLAR Scotland (Scottish Local Authority Lawyers and Administrators) (Fife Council)
Kimberley Langley	SOLAR Scotland (Fife Council)
Willie Macleod	UK Hospitality
Matthew Niblett	UK STAA
Patrick O'Shaughnessy	VisitScotland

##### Scottish Government officials:

- Andrew Mott (AM) – More Homes (chair)
- David Manderson (DM) – More Homes
- Rachael Gearie (RG) – More Homes
- David Reekie (DR) – Planning and Architecture
- Fiona Cook (FC) – Tourism and Major Events

## Summary

### Update from Scottish Government

1. AM provided a brief update, and informed the Working Group that the Minister for Local Government, Housing and Planning had decided to withdraw the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021. AM confirmed that the Scottish Government's intention, subject to the outcome of the election, was to re-lay the Order in June and keep to the timetable for implementation already set out.

2. More information could be found in the Minister's letter to the Local Government and Communities Committee of 18 February 2021:

[Short-term lets: letter from Housing Minister to Committee - gov.scot \(www.gov.scot\)](http://www.gov.scot)

3. AM explained withdrawing the Licensing Order would allow the Scottish Government to address the concerns raised by Members who were not content to pass the Order presently. AM was asked to summarise the concerns of the Committee. AM pointed to the Committee report of 6 February:

[Subordinate Legislation on Short-term Lets considered by the Local Government and Communities Committee on 3 February 2021 \(azureedge.net\)](http://azureedge.net)

4. This new approach would allow the Scottish Government to provide the draft guidance on the licensing scheme alongside the re-laid Order. It would also provide further time to address the points raised by the Delegated Powers and Law Reform Committee and make any other adjustments needed to the Order following further stakeholder engagement through the working group.

### Membership, terms of reference and conduct

5. AM introduced **paper 1** circulated in advance. AM asked the group to agree the membership. There was some discussion as to the size of the group and whether this was viable. Gavin Mowat noted that some rural stakeholders had not been aware of being within scope of the licensing scheme, including those with unconventional accommodation.

**Action 1.01:** AM to survey members on the operation of the group (see also later actions).

**Action 1.02:** Gavin Mowat to advise on the best mechanism to ensure that NFUS and other rural interests were engaged appropriately in the work of the group.

6. AM asked the group to agree the terms of reference. AM explained that the group had been established to:

- a) assist the Scottish Government in the production of guidance for hosts and local authorities on the short-term lets licensing scheme and planning control areas;
  - b) identify and resolve stakeholder issues and concerns; and
  - c) make suggestions to the Scottish Government on any changes to legislation which may be needed.
7. AM also highlighted that it was outside the scope of the group to debate whether to implement a licensing scheme or control areas.
  8. Fiona Campbell asked about the group's role in signing-off the guidance. AM highlighted paragraph 10 of the terms of reference which said that ownership of the guidance documents rested with the Scottish Government and the final decisions on the guidance and any changes to legislation rested with the Scottish Ministers.
  9. Laura Caven asked for reference to be added to reflect local government's role in signing off the guidance.  
**Action 1.03:** Laura Caven to offer a suitable form of words to reflect local government's role in signing off the guidance.
  10. AM asked the group to agree the terms relating to conduct, highlighting the need to be courteous and respectful in discussion and correspondence. AM noted there were likely to be strong and differing views in the group and that we should not always expect to reach a consensus.
  11. The paper was agreed, subject to the outcome of the actions above.

#### Forward plan

12. As set out in the Minister's letter (see paragraph 2 above), AM noted that we were working to a June deadline for re-laying the legislation, accompanied by publication of the guidance. He noted the Pre-Election Period (PEP) began on 25 March and highlighted the Scottish Government's published guidance on how government business would be affected:  
  
[Scottish Parliament Election - 6 May 2021: guidance for the Scottish Government, its agencies and National Devolved Public Bodies - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/05/20210514_Scottish-Parliament-Election-6-May-2021-guidance-for-the-Scottish-Government-its-agencies-and-National-Devolved-Public-Bodies.pdf)
13. This government had made a commitment to re-lay the legislation with guidance in June, subject to the outcome of the election, and so the group would continue its work through the PEP to ensure that this could be achieved.
14. There was some discussion about how the group should operate and what was achievable on the time frame. Jo Millar was optimistic that the group could achieve its objectives by focusing on developing guidance based on the

current licensing order, informed by the explicit policy intentions, and using that process to flush out any issues for resolution.

15. David Littlejohn was concerned about the coming into force of the Control Area Regulations in advance of guidance being ready. He did not consider that local authorities could make progress on implementation without guidance. He looked forward to guidance covering the material change of use to assist with decision-making outside control areas.
16. Marie Lorimer wanted clarity on the relationship between planning and licensing guidance. AM advised that we would focus the framing of guidance to be most helpful and useful to the end user, rather than by process. DR noted that guidance on establishing control areas would be aimed at local authorities, whereas guidance on planning considerations for individual applications would be of much wider interest.
17. In response to concerns about the size of the group, Tony Cain noted that a large group had worked in developing home reports. Alistair McKie expressed confidence that the group could work through its disagreements.
18. It was noted that there was a wealth of material available, including existing guidance e.g. on fire safety, which could be drawn upon, or pointed to, when pulling together new guidance for short-term lets. Some members highlighted previous experience in assisting with development of guidance, particularly around ensuring the language and content was right. AM noted and welcomed the opportunity to draw on that experience to get this guidance right.

#### Stakeholder issues for resolution

19. AM noted that the group would systematically work through stakeholders concerns, seeking to allay unfounded fears and clarify the way the licensing scheme would work through guidance. He advised that this would be done through creating and maintaining an issues log. He reassured the group that the Scottish Government was already well aware of their concerns and thanked ASSC, Fife Council, STAA and Scottish Land & Estates for responding to the call on the agenda for a summary of issues.
20. AM reminded the group that the policy objectives and proposals remained as before. The group needed to get to the root cause of any concerns as part of the process of finding solutions. AM noted that stakeholder concerns appeared to fit into the following categories:
  - a) Definitions and exclusions
  - b) Compliance costs for hosts
  - c) Resourcing for local authorities
  - d) Standards and mandatory conditions

e) Established use rights<sup>1</sup>.

21. AM invited attendees to share their headline issues and concerns. The main points raised by stakeholders in discussion were:

*Definitions and exclusions*

22. David Weston was concerned about the inclusion of traditional B&Bs within the scope of the licensing scheme. Gavin Mowat was concerned about some unconventional accommodation and rural tenancies being included. Willie Macleod wanted a fair and equitable approach across all hospitality businesses and had concerns about awareness of, and compliance with, existing regulations by some operators. Willie Macleod wanted to get a clearer definition of B&B and guest house and a consistent application and enforcement of basic standards across all hospitality. Fiona Campbell's view was that the legislation was fundamentally flawed, as illustrated by the on-going discussion around definitions and exclusions. She wanted to go through the SSI line-by-line. She was willing to engage constructively and proactively in finding solutions.

**Action 1.04:** David Weston to provide a definition of a “traditional” B&B.

23. Deborah Heather noted the presence of bad operators in both the “traditional” and “modern” markets and cautioned against making that distinction. Hazel Stevenson noted the current difficulties with unregulated short-term lets and the challenges faced by environmental health officers. An enforcement gap currently existed, where many operators on collaborative economy platforms were not known to authorities.

*Compliance costs for hosts and operators*

24. Fiona Campbell was not concerned about compliance costs in respect of basic safety as self-caterers should already meet these standards but was concerned about the licence fee costs. She noted that fire regulations and guidance, in particular, was already in place and did not need to be reinvented.
25. Tony Cain and Willie Macleod noted that licensing costs were part of the cost of doing business which other sectors (e.g. taxi drivers and window cleaners) had to bear and pass on to customers, as appropriate.
26. Marie Lorimer wanted a commitment to a revised BRIA and economic impact assessment.

*Resourcing for local authorities*

27. Fiona Campbell was concerned about local authority resourcing. Gary Munro was concerned that the costs to local authorities would be similar to HMO costs, i.e. higher than set out in the BRIA. HMO fees could be up to £2,000

---

<sup>1</sup> The group agreed to use this term in respect of any rights of long-standing businesses, instead of “grandfathering”, because of the historic links of the latter with racial discrimination.

for a three year licence. Matthew Niblett wanted clarity on licensing costs and additional Scottish Government funding for local authorities.

28. Chris McKee and Kimberley Langley were keen to work constructively with the group to make progress.
29. Jo Millar noted the importance of good guidance in facilitating not only hosts and operators but licensing boards too.

#### *Standards and mandatory conditions*

30. Chris Getty noted existing Scottish Government and SFRS guidance on fire safety which could be imported or signposted.
31. David Weston and Gavin Mowat raised concerns about requirements to meet minimum EPC ratings. Some members felt that EPC requirements did not fit with the original policy intention of ensuring the safety of properties, and had the potential to be very expensive for hosts and operators. Tony Cain was supportive of measures to improve energy efficiency of mainstream residential housing.
32. Sarah Farnham wanted a consistent approach across local authorities.
33. Jean-Philippe Monod stressed the importance to consumers and operators of transparency and certainty. Jean-Philippe Monod and Marie Lorimer were concerned about proportionality.
34. Patrick O'Shaughnessy emphasised the importance of standards to protect guests, balanced with the need to give visitors a choice of places to stay. James Foice considered that standards, regulation and enforcement were important.
35. Russel Griggs and Sarah Farnham highlighted concern about variations between local authorities in licensing and planning. Tony Cain highlighted that local variations were a legitimate outcome of local democracy.

#### *Established use rights*

36. Fiona Campbell wanted to see exemptions for long-established self-catering premises.
37. Jean-Philippe Monod sought clarity on what would happen to long standing businesses falling inside a future control area. Matthew Niblett wanted guidance to cover the criteria for establishing control areas and reasons for local authority refusal of planning applications.

#### AOB

38. David Weston suggested a subgroup to look at wording of the guidance and volunteered to be part of it.

39. Gary Munro raised the issue of how the group would review draft documents and whether they could be shared on MS Teams. He also noted the statutory guidance for HMO licensing which might provide a useful model.

**Action 1.05:** AM to consider the merits of a subgroup and the means for document sharing.

#### DONM

40. AM noted the next meeting was tentatively scheduled for 31 March.

**Action 1.06:** AM to confirm the date of the next meeting.

**Action 1.07:** AM to survey members for their preferences on how the meetings were run and structured (see also **Actions 1.01 & 1.05**).

#### **SCOTTISH GOVERNMENT**

**Published: 22 March 2021**