

## SHORT TERM LETS

### GUIDANCE AND IMPLEMENTATION STAKEHOLDER WORKING GROUP

#### NOTE OF MEETING ON 17 MARCH 2021

##### Stakeholders present:

Name	Organisation
Marie Lorimer	Airbnb
Tony Cain	ALACHO
Fiona Campbell	Association of Scotland's Self Caterers
Ryan Pearson	Booking.com
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
Alison McNab*	Law Society of Scotland, Planning Law Sub-committee
Hazel Stevenson	Local Authority Environmental Health Officers
Geoffrey Smith	Police Scotland
Russel Griggs	Regulatory Review Group
David Weston	Scottish Bed & Breakfast Association
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)
Matthew Niblett	UK STAA
Patrick O'Shaughnessy	VisitScotland

\* Part of meeting only.

##### Scottish Government officials:

- Andrew Mott (AM) – More Homes (chair)
- David Manderson (DM) – More Homes
- Rachael Gearie (RaG) – More Homes
- David Reekie (DR) – Planning and Architecture
- Linzie Liddell (LL) – Tourism and Major Events

## Summary

### 1. Welcome and introductions

1. Apologies had been received from Willie Macleod, Barry McCulloch, Deborah Heather, James Foice and Alistair McKie. Marc Crothall was only able to attend for the first half of the meeting. Alison McNab (AMc) joined for the second half of the meeting.
2. AM apologised for the inconvenience caused by moving the date of the meeting forward and thanked everyone for making time to attend. AM noted that, following the previous meeting, it became clear that we needed to get the group together sooner in order to progress the work to time.

### *Today's agenda*

3. AM noted that he had received correspondence from STA and Airbnb questioning the approach taken with the agenda. In particular, the focus on preparing guidance for the current draft of the Licensing Order when there was the potential for that Order to be changed.
4. AM noted that, at the last meeting, it was suggested 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. That approach would provide a detailed understanding of the precise issues posed by the current licensing order; a prerequisite for considering any changes.
5. Fiona Campbell (FC), David Weston (DW), Marie Lorimer (ML), Russel Griggs (RG) and Marc Crothall (MC) considered that the group should be working through the issues with the Licensing Order, not the guidance, at this stage.
6. DW reiterated his concern that traditional B&Bs were included in the licensing scheme and the cost implications of this. He wanted any regulation to be proportionate.
7. ML asked SG officials to meet directly with hosts, who had highlighted their concern about the lack of guidance for the Control Area Regulations that would come into force on 1 April. (*See paragraph 22.*)

### *Meetings with residents and community groups*

8. AM noted the meetings with 32 representatives from residents and community groups on 9 and 11 March. Residents had joined from across Scotland, including: Applecross, Ayr, Edinburgh, Glasgow, Isle of Harris, Loch Lomond and Trossachs National Park, North Berwick, St Andrew's and West Linton; and Community Land Scotland.
9. AM advised that notes of both meetings would be published on the Scottish Government website in w/c 22 March. Residents' concerns were numerous and spanned all the issues covered in the consultation and proposed legislation. For example, concerns were raised about noise from wooden

floors, noise and nuisance on stairwells, problems from party mansions, loss of rural housing and detriment to local communities and economies.

## 2. Minutes and actions

10. The note of the first meeting on 18 February 2021 was agreed.

11. With regard to the actions from that meeting:

<p><b>Action 1.01:</b> AM to survey members on the operation of the group (see also later actions).</p>	<p><b>Complete.</b> A survey was issued on 2 March with three responses received by the deadline of 10 March. The results of the survey were circulated as <b>Paper 5</b> on 11 March.</p> <p>AM noted there was no obvious mandate to make major changes to the operation of the working group, given that the overwhelming majority of members did not respond to the survey.</p>
<p><b>Action 1.02:</b> 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.</p>	<p><b>Complete.</b> Gavin Mowat (GMo) emailed with information about engaging NFUS and other rural interests on 15 March. GMo agreed to feed in information to the group from wider rural interests, such as the NFUS, thousand huts campaign and GoRural.</p> <p><b>Action 2.01:</b> GMo to feed in information to the group from wider rural interests.</p>
<p><b>Action 1.03:</b> Laura Caven to offer a suitable form of words to reflect local government's role in signing off the guidance.</p>	<p><b>Complete.</b> Wording provided by Laura Caven was included in <b>Paper 1</b>. To be considered under agenda item 3.</p>
<p><b>Action 1.04:</b> David Weston to provide a definition of a "traditional" B&amp;B.</p>	<p><b>Complete.</b> ASSC had included a definition in their <b>Paper 6</b>, circulated to the group, and DW was content with this definition.</p>
<p><b>Action 1.05:</b> AM to consider the merits of a subgroup and the means for document sharing.</p>	<p><b>Complete,</b> following discussion on taking forward the guidance under agenda item 6.</p> <p>Scottish Government was publishing working group papers and notes on its website but was not proposing to set up a document sharing portal for members.</p>

<b>Action 1.06:</b> AM to confirm the date of the next meeting.	<b>Complete.</b>
<b>Action 1.07:</b> AM to survey members for their preferences on how the meetings were run and structured.	<b>Complete.</b> See note under <b>Action 1.01</b> above.

### 3. Membership, terms of reference and conduct (Paper 1)

12. AM introduced **paper 1** circulated in advance. AM noted that this paper had been agreed on 18 February, subject to the inclusion of new text from COSLA. As this had now been provided and included, he recommended the group agree this paper as final. The group agreed with the paper as final.

### 4. Forward plan (Paper 2)

13. AM introduced **paper 2** circulated in advance. AM highlighted that the forward plan had been informed by the following considerations:
- This government’s intention to lay the Licensing Order, accompanied by guidance in June, subject to the outcome of the election. The recess dates for the Scottish Parliament post-election were not confirmed, hence a mid-June target date had been set.
  - Compliance with Pre-Election Period guidance. For this reason, the Scottish Government would receive information from group members during this period but would not hold working group meetings or attend stakeholder events. Group members and Scottish Government would need to continue to work through the PEP to ensure that the timeline could be achieved.
  - The need to allow sufficient time for legal drafting and checking and Ministerial and COSLA approval processes.
14. AM noted that “amend” was a misnomer: the Parliamentary process would start again from scratch with a fresh draft of the Licensing Order. (It was not like a Bill where the current draft was before the Parliament and would be amended at the Parliament.)
15. Gary Munro (GMu) noted concerns on behalf of SOLAR on the timescales for local authorities to implement the licensing scheme. However, Christopher McKee (CMc) noted that City of Edinburgh Council were keen to progress to the timetable set out, given the Council continued to receive regular complaints from residents.
16. Matthew Niblett (MN) and ML considered that the timetable in **Paper 2** was tight given the upcoming election and appointment of new Ministers.

17. MN was concerned that the Control Area Regulations were coming into force 1 April with no guidance. (*See paragraph 22.*)
18. ML asked whether a new BRIA would be published alongside the Licensing Order in June. ML offered to provide more information on behalf of Airbnb to inform the economic impact assessment. AM confirmed the BRIA and EQIA would be reviewed and published alongside the Licensing Order in June.

**Action 2.02:** ML to provide more information on behalf of Airbnb to inform the economic impact assessment.

19. The timetable set out in the forward plan (**Paper 2**) was noted.

#### 5. Outline structure of guidance (Paper 3)

20. AM introduced **paper 3** circulated in advance. AM noted that this paper was intended to stimulate discussion around the high level structure and contents of the guidance and to make sure no big themes were missing. Obviously, the structure could evolve as drafting and other considerations dictated but it was helpful if the working group could adopt a framework like this for the time being.
21. AM noted that the aim was for the guidance documents to be clear, helpful and easy to understand and for each individual or organisation to be able to find the material relevant to them quickly and easily.
22. ML agreed with the need to make the guidance easy and accessible for hosts and operators. ML noted that Airbnb had connected with 150 hosts in w/c 8 March and noted that their concern about the lack of guidance on the changes due to the Control Area Regulations from 1 April. AM explained that there was no change to existing planning law for hosts and operators from these Regulations on 1 April. Before any change took place, there was work for local authorities to go through the process of designating control areas. Guidance for local authorities was needed first for those who wished to do so to progress work to designate control areas. David Littlejohn (DL) agreed that guidance was not needed on these Regulations on 1 April.
23. JM wanted to see guidance on licensing and planning matters separated out into different documents, as she identified these as different processes under separate legislation and to bring them together would cause confusion. DL, MN, DW and Jean-Philippe Monod (JPM) all agreed that licensing and planning guidance should be distinct. DL suggested a flowchart might be useful to help users navigate the links between licensing and planning.
24. MN suggested that, where possible, the guidance should link to existing guidance to keep the document short. MN noted the title of the guidance was the same as the fire safety guidance in England and suggested changing it.
25. DW agreed that the guidance should be kept separate and suggested the guidance to include a checklist for hosts and operators to help them be sure they had completed every step. DW highlighted that the guidance currently

missed the requirement for B&Bs to register with their local authority for food safety reasons. He noted the intention to use this registration to identify businesses for COVID-19 support but this had flushed out the fact that many had not registered (the requirement to be registered had not been publicised nor ever enforced).

26. JM clarified the food registration was a requirement under the Food Premises (Registration) Regulations 1991<sup>1</sup> to register any business which served any kind of food or alcohol.
27. FC understood that Highland Council only registered a business if they provided dinner and breakfast. Hazel Stevenson (HS) explained that the registration requirement extended to all businesses providing food, even news agents selling chocolate bars. She noted that food safety was a devolved matter and that nobody had been prosecuted for failing to register (where that was their only offence) to date. Environmental health officers used the register to give advice to premises on safe operation and to rate the food safety risks; visits were prioritised by risk.
28. DW noted his FOI request to Food Standards Scotland on any communications undertaken to publicise the need to register under the 1991 Regulations and would share the response with the group.

**Action 2.03:** DW to share the response to his FOI request to Food Standards Scotland with the group.

**Action 2.04:** AM to consider group feedback on the structure of the guidance in terms of sharing a draft for May.

## 6. Drafting the guidance (Paper 4)

29. AM introduced **paper 4** circulated in advance. 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; that was why development of the guidance was being used as a vehicle to flush out any changes to the legislation. **Paper 4** set out the points that need to be covered in guidance, building on the outline structure set out in **Paper 3**. AM proposed that group members took forward work set out in this Paper to contribute to the guidance, and any changes to the Licensing Order, and provided this to Scottish Government by close Friday 16 April 2021.
30. DW offered to look at the potential for excluding businesses that were already licensed or registered under other schemes, in a small group with other members. AM reminded the group that it was important to focus on the specific problems before deciding whether exclusion was the right course of action; otherwise, everyone might just put forward reasons why they should be excluded from regulation.

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<sup>1</sup> Made under the Food Safety Act 1990.

31. DW questioned why the EPC requirements were in the licensing legislation at all as the intention of the legislation was to reduce the harms caused by short-term lets. He noted concerns around the impact of EPC requirements, as they could be onerous and costly for microbusinesses in historic buildings; AM advised that this was something that could be considered.
32. DW suggested that food registration might be used as an alternative to licensing. JM and HS confirmed that food registration requirements were very basic. HS advised that the data collected was merely the name, address, name of business, responsible person and brief description of activity. DW suggested this information be shared with SFRS for fire safety checks but HS advised this was not currently done and was not straightforward.
33. AM reminded the group that the remit was to consider the licensing scheme, not to devise alternative forms of regulation. RG noted uncertainties from the election as a new administration might take a different view.
34. Patrick O'Shaughnessy (PS) offered assistance from Visit Scotland on drafting guidance for hosts and operators on providing a quality experience for their guests and following industry codes of practice.
35. GMu noted the potential conflict between the light touch suggestions made by some members and the considerations for local authorities in determining whether a premises should be licensed. JM noted that local authorities would normally take a risk-based approach in deciding which premises to visit and when to do more intensive checks.
36. DW noted that Airbnb had stated (at a policy event also attended by DW) that they did not share information about the location of their hosts' accommodation with SFRS without a Court Order. ML advised that Airbnb was working to improve transparency around safety.
37. TC and LC offered to pull together a single coordinated response from local authorities. AM welcomed this approach. CM noted that CEC might also provide their own response too.

**Action 2.05:** LC and TC to work with local authorities and their representative bodies to submit a contribution to the guidance and any changes to the Licensing Order.

38. JM offered to go through the Licensing Order and provide contributions to the guidance drawing out the points that hosts and operators would want to know.
39. AMc noted the Law Society would contribute to both the licensing and planning elements of the guidance. She queried whether full text or bullet point contributions would be most helpful. AM advised that members could contribute as they saw fit in terms of the style of contribution and whether they wanted to make their own contribution or collaborate with others. He noted that the contributions would be pulled together by Scottish Government for the next meeting.

40. GMo shared his concerns with the process, noting it was difficult to justify creating guidance for the Licensing Order if it was to change. He offered to provide examples and case studies for the guidance and also to illustrate where he considered the Licensing Order needed to be changed to address issues for rural and agricultural communities.

**Action 2.06:** All group members to submit contributions to the guidance and any proposed changes to the Licensing Order to Scottish Government **by close Friday 16 April 2021.**

#### 7. AOB

41. AM reminded the group of the continued importance of compliance to COVID-19 regulations and guidance. (The reminder is attached at **Annex A.**)
42. A draft note of this meeting would be circulated on 18 March with a view to seeking any amendments by close 23 March for publication on 24 March.

#### 8. DONM

43. AM noted the next meeting was scheduled for Thursday 13 May 2021 (Meeting 3).

### **SCOTTISH GOVERNMENT**

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## NOTE ON COMPLIANCE WITH COVID-19 REGULATIONS AND GUIDANCE

*The Scottish Government's strategic intent is to suppress COVID-19 to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible. One of the six main tools for achieving this is supporting individuals, businesses and organisations to adhere to protective measures.*

*The implementation of recent restrictions and the ongoing rollout of the vaccine appears to be having a sustained effect on transmission and case levels, which is a welcome development. However, it is clear that protective measures will be required for some time to come.*

*Everyone has a role to play in observing the public health restrictions in place to help reduce the spread of the virus, protect the NHS and save lives. Until the point is reached where it is safe for non-essential travel and tourism to resume we need the short-term lets sector to continue to be proactive in its support for public health restrictions.*

*At the moment, no-one should be booking accommodation unless it is for essential business. All holiday accommodation is closed to tourism which means hotels, B&Bs and self-catering can only remain open for essential customers only. In most circumstances, travel to and from Scotland is also currently against the law. Please remember that indicative timescales for lifting of restrictions can vary between the UK's four nations, and what might be permitted in one nation may not be in another.*

*Please work with your stakeholders and clients to continue to raise awareness of the ongoing restrictions and use your platforms to inform customers of the restrictions in place. When restrictions are lifted it will be really important that protective measures for this sector are well understood and should be followed along with those that apply to others and we would also ask that, when this happens, you use the same discussions and platforms to help get these messages across.*

*We fully appreciate the hard work and cooperation of the tourism and hospitality sector in helping to reduce the spread of the virus over what has been an incredibly difficult year for everyone. Continued compliance with the regulations and Covid-19 secure guidelines will help ensure we provide a stable foundation for longer-term recovery.*