

## SHORT-TERM LETS WORKING GROUP: MEETING 2

### PAPER 4 – DRAFTING THE GUIDANCE

#### Purpose

1. This paper sets out the points that need to be covered in guidance, building on the outline structure set out in **Paper 3**. Subject to the outcome of discussion of the group on 17 March, group members are asked to take forward work set out in this Paper to contribute to the guidance and any amendments to the Licensing Order and provide this to Scottish Government **by close Friday 16 April 2021**.

#### Scope

2. The outline structure of the guidance with further points to consider is set out at **Annex A**. This includes issues that were raised during consultation events or through responses or correspondence which we noted would be helpful to cover in guidance; much of this was reflected in the 2020 consultation report.
3. We propose that we proceed to **draft the guidance on the basis of the Licensing Order as laid on 14 December**. The process of drafting the guidance will help to flush out any specific issues.

#### Timetable

4. We are seeking **contributions to the guidance** from working group members **by close Friday 16 April**. Scottish Government will then compile these contributions, together with additional material from Scottish Government, into a first draft for the group to review on 13 May.

#### Discussion

5. You are asked to:
  - a) identify the parts of the guidance to which you would like to contribute – we will confirm this at the meeting;
  - b) use the outline guidance framework to spell out **precisely** any issues you have identified linked to the particular requirement that raises the issue.
6. Members of the working group may choose to meet in subgroups to discuss their contributions but these meetings will not be organised or attended by Scottish Government officials.

**Scottish Government  
March 2021**

## OUTLINE STRUCTURE OF THE GUIDANCE WITH FURTHER POINTS TO CONSIDER

**Note:** the commentary is **not** a complete list of topics to be covered in the corresponding section but a starter.

Section	Commentary	Lead
<b>Title: Do you have paying guests?</b>	Approval of the title or suggestion of an alternative. There is already a publication of this name, see <a href="https://www.gov.uk/guidance/fire-safety-guidance-for-the-hospitality-industry">Fire safety: guidance for the hospitality industry - GOV.UK (www.gov.uk)</a> .	All
<b>Part 1. Guidance for Hosts and Operators</b>		
<b>1. Introduction</b>		
a. Overview of licensing and planning requirements	Purpose of the legislation. High level summary of requirements.	
b. Timetable	What you need to do by when.  Transitional arrangements will allow existing hosts to continue operating until their planning and licence applications have been determined. New applicants will not be able to operate until their applications have been determined.  The standard timeframe for processing applications after transition.	
<b>2. Does this apply to you?</b>		
a. Definition	Explaining the definition (article 2 of the Licensing Order)	
b. Exclusions	Explaining the exclusions (schedule 1 of the Licensing Order).	

Section	Commentary	Lead
<b>(2. continued)</b>	<p><b>Definitional issues to explain and/or resolve:</b></p> <ul style="list-style-type: none"> <li>• “Traditional” B&amp;Bs and guest houses</li> <li>• Hybrid use of premises – e.g. part-time guest house and part-time self-catering</li> <li>• Mountain huts and bothies</li> <li>• Rural and agricultural tenancies</li> <li>• Principal home and longer short-term lets, e.g. for half a year</li> <li>• Timeshares</li> </ul> <p><i>Guidance needs to be clear on what is included and excluded for local authorities, hosts and local residents.</i></p>	
<b>3. Following best practice</b>		
a. Engaging with your neighbours	<p>Trying to prevent objections and complaints through good communications in advance and reassurance on good practice.</p> <p>Your local authority will notify neighbours of your application.</p>	
b. Providing a quality experience for your guests		
c. Following industry codes of practice	Short summary of, and links to, relevant industry codes for the different types of accommodation.	
<b>4. Do you need planning permission?</b>		
a. Letting rooms in your own home	Requirements of the Use Class Order around number of rooms let to guests in the premises.	

Section	Commentary	Lead
b. Secondary letting in a control area	Finding out whether you are in a control area.	
c. Secondary letting and material change of use	Potentially relevant factors in material change of use outside a control area (and therefore when planning permission might be required). Role of local planning policies.	
d. Making a planning application	Basic facts about planning applications and fees and how to find out more in your local authority area.	
e. How your planning application will be determined	The principles used by local authorities for assessing planning applications in respect of short-term lets. Relationship between planning and licensing applications.	
<b>5. Getting ready to apply for a licence</b>		
a. Who is responsible for the accommodation?	The holder of the licence can be one person or a number of persons. An agent who carries out management of the property on behalf of an owner must also be a 'holder of the licence'. Cases of multiple owners. Delegating functions to hosting intermediaries. Mandatory condition 11 sets requirements around who manages the premises. Fit and proper person test – overview of criteria.	

Section	Commentary	Lead
<p>b. Making sure the accommodation is safe</p>	<p>The mandatory safety conditions set out in the Licensing Order are as follows. Only those relevant apply (e.g. gas safety only relevant if you have a gas supply). Checks you can do yourself. Using accrediting organisations. How to detect and avoid checks by underqualified or expensive "experts" offering to undertake assessments.</p>	
<p><i>Fire safety</i></p>	<p>Explanation of fire safety principles and requirements. Conducting a fire risk assessment competently yourself. How to ensure that an external accreditor is suitably qualified.</p> <p><u>Building</u><sup>1</sup> - Smoke and fire alarms and carbon monoxide alarms</p> <p><u>Furniture and furnishings</u><sup>2</sup> - The holder of the licence must ensure that all upholstered furnishings and mattresses within the premises comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 and keep records showing this.</p> <p>Fire extinguishers and advice for guests in case of fire.</p>	

<sup>1</sup> Part of mandatory condition 7.

<sup>2</sup> Mandatory condition 3.

Section	Commentary	Lead
<i>Gas safety</i> <sup>3</sup>	Where the premises has a gas supply, the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises and arrange for any repairs in order that the required safety standard is met.	
<i>Electrical safety</i> <sup>4</sup>	<p><u>Fittings</u>: Electrical Installation Condition Report (EICR)</p> <p><u>Fixtures</u>: Portable Appliance Testing Report</p> <p>Keeping safe – sensible time intervals between tests. Intervals in line with the electrical safety at work and IEEE regulations.</p>	
<i>Water safety</i>	<p><u>Private water supplies</u><sup>5</sup> - Where a premises is served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.</p> <p><u>Legionella</u><sup>6</sup> - The holder of the licence must assess the risk from exposure to Legionella within the premises, whether or not the short-term let has a private water supply.</p>	

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<sup>3</sup> Mandatory condition 2.

<sup>4</sup> Part of mandatory condition 7.

<sup>5</sup> Mandatory condition 5.

<sup>6</sup> Mandatory condition 4.

Section	Commentary	Lead
<i>General safety and repair standards</i>	<p><u>State of repair</u><sup>7</sup> - The holder of the licence must take all reasonable steps to ensure the accommodation is safe for residential use. This means meeting the repairing standard where it applies.</p> <p><u>Maximum occupancy</u><sup>8</sup> - The licence holder must ensure that the number of guests residing in the accommodation does not exceed the number specified on the licence.</p> <p>How maximum occupancy is calculated.</p>	
c. Other steps you must take	The mandatory conditions set out in the Licensing Order:	
<i>(1.) Displaying information</i>	The holder of the licence must make certain information available within the premises in a place where it is accessible to all guests, including licence conditions; fire, gas and electrical safety information; and details of how to summon the assistance of emergency services.	
<i>(6.) Planning permission</i>	Where the premises is in a control area, the holder of the licence must have made a planning application or have planning permission already. See chapter 4 above.	

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<sup>7</sup> Part of mandatory condition 7.

<sup>8</sup> Mandatory condition 8.

Section	Commentary	Lead
<i>(9.) Listings – licence number and EPC</i>	The holder of the licence must ensure that any listing or advert includes the licence number and a valid Energy Performance Certificate (EPC) rating.	
<i>(10.) Insurance – buildings and public liability</i>	The holder of the licence must, for the duration of the licence, have valid buildings insurance and valid public liability insurance providing cover of not less than £5 million.	
d. Other things your local authority might ask you to do	The possible additional conditions discussed further at Part 2, chapter 5.	
<b>6. Making an application for a licence</b>		
a. Overview	Also cover temporary licences and exemptions.	
b. Pre-application checklist	Checklist of the previous chapters.	
c. Fees	The payment of relevant fees is mandatory condition 12.  Factors which might influence the level of fee payable, see also Part 2, Chapter 4. How to find out what fee is payable in your case.	
d. Making a licensing application	Where to find the application form. You must not provide false or misleading information (mandatory condition 13)	
<b>7. How your licensing application will be determined</b>		



Section	Commentary	Lead
a. Responding to any objections	How neighbours will be notified of your application. How objections might be raised. Grounds for objecting. How to respond.	
b. Inspection of your accommodation	What to expect and when.	
c. The licensing board	How to handle appearing in person. How to give evidence.	
d. Your rights of appeal	How to appeal a decision.	
e. How your data will be managed	What records will be kept and for how long. (See also Part 2, Chapter 8.)	
<b>8. Staying compliant</b>		
a. Complying with licence conditions	Steps you can take to reduce the risk of antisocial behaviour.	
b. Complying with planning conditions		
c. Requesting changes to your licence		
d. Maintaining your accommodation to standard		
e. Inspections and putting things right		
f. Applying to renew or end your licence	Telling your local authority that your premises have reverted to residential use (especially where planning permission was sought).	

Section	Commentary	Lead
g. Refused applications, suspensions and revocations	Refunding guests for any days paid for that could not be provided following refusal, suspension or revocation.  Serving of enforcement notices.	
<b>9. Glossary of terms</b>	Terminology: "Host" and "operator".	

<b>Part 2. Supplementary Guidance for Local Authorities</b>	This is aimed at local authorities only but will be available to all for interest.	
<b>1. Establishing a control area</b>		
a. Statement of reasons	<p>The purpose of control areas:</p> <ul style="list-style-type: none"> <li>• to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood);</li> <li>• to restrict or prevent short-term lets in places or types of building where it is not appropriate; and</li> <li>• to help local authorities ensure that homes are used to best effect in their areas.</li> </ul> <p>Factors to consider in deciding whether to designate one or more control areas.</p> <p>Guidance will not set an absolute number or percentage. Ultimately, it will be for local authorities to determine whether a control area is required (based on some form of consultation) taking into account local circumstances.</p> <p>Handling requests from community councils.</p>	
b. Consultation and publicity	Factors to consider in ensuring effective consultation and publicity.	
c. Ministerial approval	How Ministers will make decisions in respect of control areas.	
<b>2. Determination of planning applications</b>		

a. Further information on material change of use	<p>Some more technical information, expanding on Part 1, chapter 4.</p> <p>Information on planning considerations for short-term lets reverting to residential use. For example, where associated works are carried out (for example to subdivide the property), reverting to residential use may result in a residential property that does not conform to local plan policies.</p>	
b. Duration of planning permission	<p>The powers available to local authorities in respect of secondary letting with planning permission already granted.</p> <p>Local authorities should consider applying a discontinuation condition of 10 years, or such other time period as they consider appropriate, when granting planning permission for secondary letting in a control area (or outside, if they see fit).</p>	
c. Links with licensing applications	How to join up the licensing and planning applications, using the flexibility in the Licensing Order.	
<b>3. Publicising your licensing scheme</b>		
a. Application form and information for applicants	Principle of digital first. Transactions and applications on-line applications where possible. Hosts or operators with disabilities must be provided with a means of engaging.	
b. Information for residents and neighbours	Providing a pro forma for objections to make it easier for residents and neighbours to assess whether they have valid grounds and easier for local authorities to handle.	

<b>4. Setting licence periods and fees</b>		
a. Factors to consider	Maximum licence period is 3 years on application but not limited on renewal. Minimum licence periods. Default licence periods.	
b. Parameters for setting fees	Different types of short-term let. Renewal or monitoring fees. Size of premises. Discounts for low volume home sharing or home letting. Incentives for compliance and disincentives for non-compliance <sup>9</sup> .	
<b>5. Setting additional licence conditions</b>		
a. Possible additional conditions		
<i>Managing guest behaviour</i>	Setting lower occupancy limits. Additional requirements on advice for guests. Guest management and communication.	
<i>Changes to layout</i>	Limitations on alterations to the layout of the property without the prior written approval of the licensing authority.	
<i>Littering and waste management</i>	Facilities for the storage and disposal of refuse, and recycling.	
<i>Noise</i>	Physical moderations to the property in order to minimise noise impact on neighbours. Noise monitoring kits.	
<i>Additional data</i>	Data that would help with monitoring or compliance.	

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<sup>9</sup> Paragraph 6.62 of the 2020 consultation paper.

<i>Responding to health emergencies</i>	Additional conditions which might be required in a pandemic or other health emergency.	
<i>[Other]</i>		
b. Keeping focused and proportionate	Applying additional conditions only to the specific premises, types of building or areas where it is relevant. Defining these categories.	
c. Avoiding unintended consequences	For example, conditions which favour main-door flats over tenement flats (to reduce noise and nuisance on stairwells) might have the unintended consequence of reducing the availability of wheelchair accessible stock for residents.	
<b>6. Handling licensing applications</b>		
a. Notifying residents and neighbours		

b. Checks on applicants, application data and premises	<p>Ensuring the application relates to the correct type of licence (home sharing / home letting / secondary letting).</p> <p>Factors to consider in the fit and proper person test: relevant criminal convictions (and police intelligence); being disqualified from being a private landlord or having had letting agent or property factor registration revoked now or in the past; having had a short-term lets or HMO licence revoked by any local authority; having had an application for a short-term lets licence turned down by any local authority; and providing false or misleading information in an application for a short-term lets licence, HMO licence or application to be a private landlord.</p> <p>Accepting evidence from accrediting organisations that a host or operator is compliant with the (relevant) terms of their licence. Recognised accrediting organisations.</p> <p>Visits to premises.</p>	
c. Licensing boards and determining applications	Factors to consider in determining licence applications	
d. Temporary licences and exemptions	Reasons for granting exemptions. Reasons for granting temporary licences.	
<b>7. Complaints and enforcement</b>		
a. Handling complaints		
b. Taking a risk-based approach to ensuring compliance		

c. Identifying unlicensed short-term lets		
d. Options for enforcement action		
<b>8. Licensing data</b>		
a. Managing the data	Data protection. Local authorities as data controllers. The purposes for holding data and retention periods.	
b. Public Register		
c. Sharing data with Scottish Government		
<b>9. Further information</b>		
a. Links to relevant legislation		