

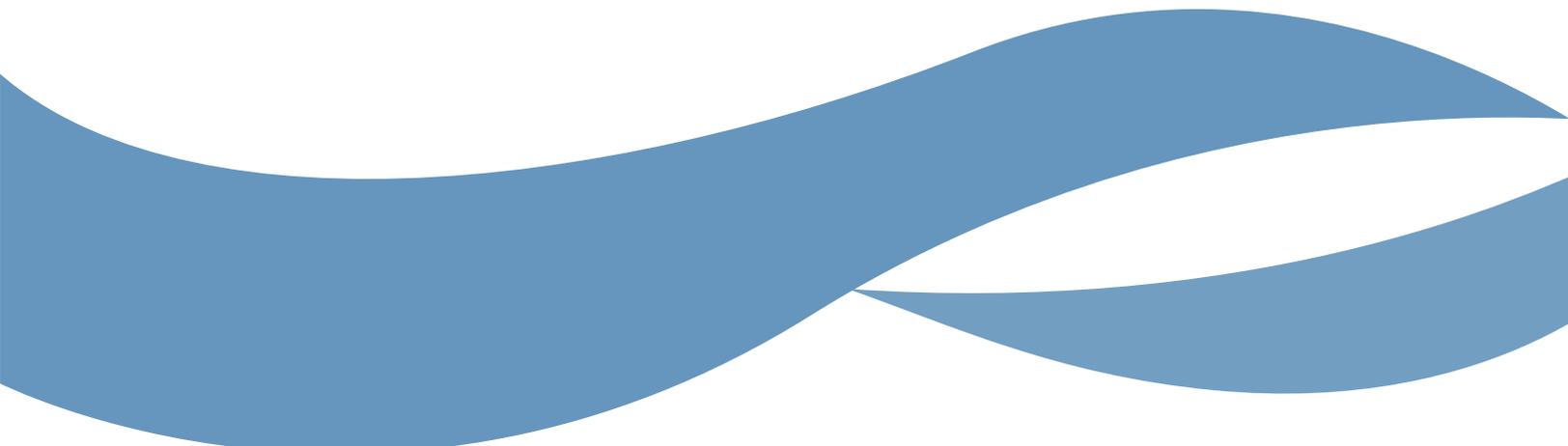


# Consultation on a licensing scheme and planning control areas in Scotland

16/10/2020

## **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



## Introduction

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As an organization representing many rural businesses with interests in a variety of short-term lets we would like to note our regret that this consultation is being progressed at a time when the industry is reeling from the devastating impacts of Covid-19. At a time when those contributing to the vital tourism sector in Scotland should be getting support from Scottish Government, instead the sector finds itself toiling to unravel the possible implications of these far-reaching proposals.

SLE agrees that the safety of people using short-term lets is paramount and we also understand there is a need to ensure homes to live remain available in so-called 'hot-spot' areas. In our view all that is needed to achieve this at this time is a simple registration scheme to allow proper enforcement of existing health and safety standards and appropriate planning policy which prioritises housing development for residential use.

We are concerned that the proposals have been shaped with mainly urban (but also rural) 'hot-spots' in mind, without considering the majority of establishments that operate outwith these areas – in the so-called 'not-spots'. We note the five areas selected for study were either city center or popular rural locations. We expect this will have given a distorted picture in terms of impact and problems that need to be addressed. For a balanced approach we are of the view that research looking at the positive impact short-term lets have in areas needing investment and diversification should have been considered or carried out in drawing up this proposal.

In our view, it is clear these proposals will leave a direct negative impact of cost and bureaucracy on the short-term lets sector at a time when it is already struggling to cope with the impact of Covid-19. And this will have indirect affects on businesses such as pubs, restaurants, shops and their supply chains as well as tourist attractions at a time when they cannot afford to lose out.

It is noted, with concern, that these proposals will be laid before Parliament as an SSI which we do not think offers an appropriate level of scrutiny for such a fundamental change and at a time of crisis for the sector. We also note that there does not appear to be a Business Regulatory Impact Assessment (BRIA) despite our view that these proposals will have a significant impact on the short-term lets sector throughout Scotland.

## Chapter 4. Definition

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We do not agree with the definitions as set out in these proposals. In our response to the previous consultation we impressed the importance of ensuring that short-term lets in remote rural areas should not be treated in the same way as short-term lets in city centres. To apply this definition country-wide does not recognize that the issues these proposals are intended to address do not exist in much of the country where short-term lets are a valued part of local communities and economies.

By including 'accommodation that comprises part of a house or flat' we are concerned this may interfere with the "personal enjoyment" of one's property, infringing on the individual's Property Rights under European Human Rights Law. People have a right under UN law – Protocol 1, Article 1 which protects a

person's right to enjoy their property peacefully. This includes a defense against unreasonable restrictions being placed on use of property. While government can interfere in this way with property rights it must be proportionate and clearly justified in the public interest and there is a legal test to be met. For this reason, we are of the view that accommodation which forms part of someone's permanent (or main residence) home should not be included in this definition.

In addition, 'lets for work' is not holiday accommodation and not the type of accommodation associated with the problems the regulations intend to address, therefore it should not be included within this definition. We have members who have advised that they let out accommodation to their night labourer 3-4 weeks a year which would likely be covered by this definition. We are advised the property is in good condition and meets the required health and safety standards, but licensing and potential planning fees could be prohibitively expensive making renting for such a short period unviable. We do not consider there has been sufficient evidence brought forward to justify the inclusion of 'let for work' in this definition.

The document makes reference to 'hosts', a term typically used by one accommodation platform – Airbnb – and this does not accurately reflect what professional operators do.

In our view the list of exclusions as appeared in the 2019 consultation paper should be included, with the addition of guest houses under section '*a) licensed hotels and B&Bs and self-catering properties on their premises.*' Guest houses are an entirely different entity to B&B's in that they pay non-domestic rates, but they do provide a similar service to Hotels and B&Bs.

A simple registration scheme would be appropriate at this time to help local authorities understand the scale of short-term lets in their area, allowing them to ensure existing health and safety standards are met.

## **Chapter 5. Control Area Regulations**

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We do not support the necessity for retrospective planning permission, this should be limited to a discretionary power for local authorities. In areas where there is currently no acute need for planning controls to be implemented but where the planning authority anticipates growing demand, they should be able to choose to apply a planning control area which applies only to future short-term lets. The licensing scheme will ensure planning authorities have a record of existing lets while not imposing retrospective planning permission on these businesses which will stretch planning authority resources without adding any real value. Where the local authority already has serious concerns about the number of short-term lets in an area it should then be able to apply retrospective planning permission throughout.

'Secondary letting' is not a Use Class Order and it does not therefore require planning permission for change of use.

A 10-year revocation threat is a disproportionate approach. Short-term lets are not advertising hoardings and should not be afforded similar status in planning. If a business has received planning permission and is established, it is unfair and disproportionate for it to live under threat of revocation and uncertainty of planning renewal after 10 years. SLE members have already advised that such an approach would have added unnecessary risk and prevented them from investing tens of thousands of pounds bringing their properties into the short-term lets sector. This uncertainty in perpetuity will effectively disincentivize investment in the sector to the detriment of remote rural communities throughout Scotland. Once planning permission is granted, it should remain in place.

More detail is required on how consultations will be undertaken in relation to the establishment of short-term let control areas. They must be timely, transparent and meaningful.

## **Chapter 6. Licensing Order**

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These proposals are not simple and will require a disproportionate amount of work and cost for people who already comply with most of the requirements. SLE members who operate short-term lets will already have invested significant amounts ensuring their properties meet the required standards, having them compile this information at further costs to time and money will serve no real purpose except put an extra strain on an already overwhelmed sector.

Across multiple properties the cost of a license fee could potentially reach thousands, if not tens of thousands of pounds (based on current HMO license fees). This is not appropriate or proportionate, especially given that for SLE members with existing property this will be a cost associated with unnecessary duplication of work – and despite this financial impact no BRIA has been undertaken.

We are supportive of amateurs having to reach the same standards for the safety of guests to ensure a level playing field. However, a licensing scheme is a disproportionate and heavy-handed approach. It is a blunt tool to fix a perceived and localised problem of amateur operators in Edinburgh, rather than being a solution appropriate for all Scotland.

Licensing will significantly burden operators who are under severe financial pressure due to the impact of Covid-19. This impact exposes potential shortcomings of licensing: (a) the impact on resource stretched local authorities having to deal with an influx of tens of thousands of licensing application: and (b) the impact any disproportionate licensing scheme could have on the recovery of Scottish tourism.

The plans have been criticised by one of the country's leading licensing law experts, [Stephen McGowan](#), who claimed that it would lead to a flood of applications that could overwhelm local authorities. The [Law Society of Scotland](#) have also warned that increased regulation would place additional burdens on local authority teams to manage the requirements of a new scheme.

Finally, SLE shares much membership with the Association of Scotland's Self-Caterers and they recently conducted a survey on the consultation elicited nearly 1,200 responses. Some the main findings were as follows:

- **95% believe that the regulations should be delayed** whilst the sector recovers from Covid-19 and the same number believe the **regulations require greater parliamentary scrutiny**.
- **83% oppose the proposed licensing scheme** for short-term lets, while **68% are not supportive of short-term let control zones**.
- **Around a third (31%) of businesses would be rendered unviable** if the current proposals for a licensing were introduced, while **two-thirds (64%) felt it would have a negative impact**.
- **Nearly half (49%) would leave the self-catering sector** if the proposed licensing scheme was introduced and of those 33% would leave the property empty or use it for family & friends.
- **Respondents maintained that the impact of the regulations would not be limited to self-catering**. Respondents were of the view that the impact of the proposed licensing scheme would also entail negative knock-on effects for supply chains, such as hospitality (89%), local activity providers (83%) and local attractions (85%). 66% feel that it would have a detrimental impact on guests.
- **The short-term let consultation takes place at a precarious time for self-caterers in Scotland**. 94% of respondents have stated an estimated negative financial impact of Covid-19 to their business, while 63% are feeling pessimistic about their business right now.

There is a clear view within the sector that the current proposals are not fit for purpose, do not provide a proportionate and balanced regulatory framework, and are a real threat to their livelihoods. Those who responded to the survey are professional operators who are a longstanding presence in their communities – but particularly in rural and remote areas – providing an economic benefit for the local area and businesses. Given the devastating impact that Covid-19 has had on tourism, they are perplexed as to why this consultation and the regulations are proceeding at such a rapid pace given all that has occurred over the past 6-7 months, especially when similar legislation (for example, the tourist tax) has been postponed due to the pandemic.

**For more detailed information**

**Gavin Mowat**

Policy Adviser (Rural Communities)

✉: [gavin.mowat@scottishlandandestates.co.uk](mailto:gavin.mowat@scottishlandandestates.co.uk)

☎: 0131 653 5400