

Short Term Lets

Consultation on a Regulatory Framework – Response by Heads of Planning Scotland

Question 1

Are you aware of any additional data on the impacts of short-term lets (over and above that set out in Annex A – The Short-Term Rental Sector, Housing and Tourism in Scotland) which the Scottish Government should take into account when considering proposals for regulation?

HOPS considers that the data identified is comprehensive and represents a broad base of evidence on which to investigate a Regulatory Framework. In addition, we consider it would be useful to include records of annualised Planning Enforcement Complaints by Local Planning Authority to gauge the scale and trends of issues. Providing this as rich data will allow analysis of what material effect has triggered the initial complaint.

It may also be helpful to measure what the effect upon other forms of tourist accommodation has been to allow effective programming for future accommodation needs by sector.

An important strategic consideration for local housing authorities is the impact of short-term lets on local housing systems in terms of supply, affordability and availability of homes to meet current and future residents' needs and demand. At present there is no systematic collation of data/information in relation to the growth and scope of online collaborative accommodation platforms and how this is influencing supply and market behaviours.

Therefore, it is of the utmost importance that accurate data is made available to ensure an appropriate response to this issue. The Scottish Government could request that online platforms provide the requisite data to allow the extent of the sector to be accurately quantified.

Question 2

Should a regulatory framework distinguish between sharing, swapping and secondary letting?

It is helpful that this distinction is embedded in the creation of a Regulatory Framework from the perspective of managing impact both on housing market and on residential amenity. The three formats presented effectively identify the different circumstances that characterise the range of Short Term Let (STL) activities.

The benefit of using these three formats allows the system to be responsive to the possible circumstances in each case. Managing the effects where a property is not removed from mainstream use will minimise the effect Sharing will have upon the Housing Market.

In terms of amenity, if the host is on site, potential issues created by or impacting guests will presumably be easier to address while it also suggests that the activity is ancillary to the main use of the property as a mainstream residential dwelling. That said, in terms of sharing, owners who stay in

a property where they let out part of the accommodation do not require to register as a landlord so this would require some form of consistency if this format is deemed to have status.

Swapping is perhaps a less clear distinction and will be reliant upon additional definition characteristics; in particular, the number of days it is operating as a Short Term Let. An existing occupier, who may come and go, will provide a greater sense of security where the property is in close proximity to neighbouring mainstream accommodation. However, the proportion of time the property operates as the owner's home compared to Short Term Letting will determine the true impact upon neighbours. Therefore, swapping, as a format, requires greater elaboration and definition.

Both sharing and swapping are distinct to outright secondary letting where the circumstances are different as an owner is probably less likely to be known to neighbours and the potential frequency of operation as an STL is far higher. This is likely to be a more pronounced issue in flatted or attached properties and less of a consideration where the premises is detached or even isolated.

There is a noted concern from the City of Edinburgh Council (CEC) about the scale of short term lets where a property is offered for rent for significant periods of the year such that it is no longer used as a primary place of residence. Similarly, and often connected, is a concern that an owner is not living in the property and therefore not managing it adequately. It is also CECs view that any short term let operating on a commercial basis (secondary letting), or with regularity, is no longer used as a residential home. The loss of significant number of homes as a result is damaging the supply and affordability of housing.

Question 3

Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

HOPS considers that the rules should be capable of distinction as partly referenced above in response to Question 2. Specific examples from Glasgow City Council (GCC) and the City of Edinburgh Council (CEC) are highlighted below.

In GCC, Planning Policy has identified a distinction between flatted properties and detached houses to reflect the relative proximity and potential scale of impact an STL could have upon neighbouring properties. This is on the basis that shared circulation and facilities mean that it is more likely that existing residents are likely to come into contact with unknown guests and the impact the guests can have upon neighbours is more immediate and significant.

Although there is a body of evidence which demonstrates the acute problems that short term lets can cause in tenements, the issue is certainly not restricted to this type of accommodation. Residents have experienced persistent difficulties as a result of anti-social behaviour in properties which have a shared or common space. The transfer of noise into neighbouring properties is another well-known problem, especially in main door flats but can also lead to complaints from residents in detached or semi-detached accommodation.

On this basis, HOPS view is that, if the regulatory system is seeking to manage the effects upon residential amenity, the regulatory system should be informed by the ability to distinguish between different accommodation types.

Question 4

Do you have any comments on any other aspect of the definition of short-term lets?

HOPS considers that it would be helpful to see a consistent and defensible definition emerge. However, basing this on a specific number of days will prove challenging. Less than 90 days, or more, as opposed to over 28 days would be a more realistic timescale. However, regardless of what definition is accepted this will raise a number of questions over how to regulate control between different regimes and how to effectively control and measure the number of days an STL operates.

In terms of what is included in the Consultation, the list of Exclusions from definitions is welcomed. Providing a very clear and precise definition will be challenging given that questions posed above but is vital to avoid ambiguity and a risk of “grey areas”.

HOPS would welcome further discussion on what definition starts to emerge from the consultation process as it will be far easier to test the impact of a definition against the varied circumstances where it will be applied once there is agreed detailed wording. It is vital that time is provided to test a definition to avoid the risk of overlap into the defined Exclusions or other unintended consequences.

Question 5

Do you have any comments on the positive or negative impacts of short-term lets?

In terms of the benefits it is not clear what “relocating corporate tenants” actually relates to. More generally, it is notable that many of the benefits listed are constrained to benefits for private individuals and in some cases including them in a consultation of this scale is overstating the potential benefit.

The benefits that are significant and worthy of elaboration generally have a positive economic benefit. Namely supporting tourism or supporting contract and seasonal working. These are both substantial benefits and deserve appropriate weighting in informing a regulatory framework and provide flexibility to take account of differing area circumstances. However, these significantly outweigh the other benefits that are listed, which suggests a disproportionate representation which could be misleading.

The potential problems that STL presents also represent circumstances that range from either large scale societal impact down to affecting the private users of accommodation. However, the larger scale impacts tend to be more prevalent but the list does reflect the range of potential risks.

From the consideration above it will be helpful if the research being undertaken informs greater understanding of the scale and effect of the positive and negative impacts that can then allow realistic identification of the effects of STL which can then inform the design of a regulatory framework which is informed by the appropriate considerations.

The Highland Council (THC) has drawn HOPS attention to the fact that the impacts being created through STL accommodation are not particularly new or indeed in their case significant. This leads to doubts over whether the level of market failure and erosion of amenity actually warrant a public regulatory intervention.

In addition, research from the CEC has shown damage to the supply of and affordability of housing within Edinburgh. The majority of short term lets are in tenement properties, concentrated in areas of the city which already have a high demand for housing.

- i. The concentration in certain areas is eroding the sense of community in some neighbourhoods
- ii. Regular use of any tenement flat as a short term let is fundamentally inconsistent with tenemental living, and often leads to anti-social behaviour and undue nuisance to other residents

Question 6

Do you have any examples of other positive or negative impacts of short-term lets?

Yes. An important perspective in terms of how STL relates to other types of tourist accommodation is the comparison with second or holiday homes. A distinction can be made whereby STL, with a regular turnover and high level of visitors spending in local businesses, has a net positive impact upon the local economy and overall contributions, whereas a second home will often be empty reducing the benefit to the local economy.

Question 7

Do you have any comments about the impact of short-term lets on the housing market?

We would reiterate the comments in Question 1 that further detailed research is needed to inform an evidence based analysis.

There is evidence in some rural locations that the increase in STL is reducing the total availability and therefore affordability of private rented units. This is impacting on economic growth by reducing the accommodation available to key workers trying to take up jobs in remote rural areas including hospitality sector workers and increasing tender prices for construction contracts in rural areas because companies can't find accommodation for their workers.

Specifically, research from CEC identified that loss of PRS stock has impacted the uptake of the Private Sector Leasing scheme and ability of homeless people to secure PRS tenancies. High rents place people on lower incomes at greater risk of losing PRS tenancy. Demand currently outstrips need, putting increasing pressure on an already limited supply resulting in rents that are not affordable to people on low and moderate incomes.

Question 8

Do you have any comments on the restrictions imposed on short-term lets by planning law?

Currently there are no restrictions in Planning Law specifically relating to short-term lets and this is a matter that has been considered through the Planning Bill third Stage in Parliament. The option to introduce Short Term Let Control Areas will provide useful discretionary powers but these need to be self-financing and controls will need to be effective, therefore the success of these will depend on the drafting work over the coming years.

It is important to emphasise the planning cannot be used to control anti-social behaviour and this should not be the driver for a planning policy, albeit it should be concerned with the prospect of a use generating potential disturbance through typical and authorised use.

In terms of Planning Policy, GCC applies a bespoke policy which defines the characteristics that contribute to whether a material change of use has taken place which would require planning permission. It supports this with a series of guidelines that inform whether or not such an application should be supported.

To date there have only been three appeal decisions in relation to enforcement actions taken by GCC. Appeals serving as a helpful measure of how robust a policy approach is operating. So far Reporters have been consistent in upholding the Enforcement Notices, noting the provisions of supplementary guidance and drawing upon the following issues to identify in those cases that a material change of use had occurred. Reporters in GCC appeals have stated/ referred to the following:

- An inherent incompatibility between the short-stay use of the flat, and the residential use of other flats in close proximity to it.
- The nature of the use, the frequency of arrivals and departures, and the communal access arrangements all lead me to a finding that the potential for increased noise and disturbance cannot be adequately mitigated
- “I also consider the likelihood of noise and disturbance to be significantly greater where a flat is used for short stays inevitability of permanent residents regularly encountering strangers in communal (but still private) areas of the building”
- “I find that the pattern of lettings, the frequency of lettings, the shared access and access to common areas and the complaints from residents all indicate that the breach of planning control has given rise to injury to amenity that requires a remedy”
- The short-stay accommodation use also gives rise to additional requirements for cleaning, laundry, meeting guests and retrieving keys from guests, which further increases the potential for increased noise, activity and disturbance.
- The increased extent of movement from guests using the flat and common areas would be obvious to other residents, who have complained to the council about the use and its impact on their amenity and security.

Whilst it seems to be established that there is a material difference in character between the use of the flat as mainstream residential accommodation and its use as short-stay accommodation,

confirmation through change to the meaning of development would be useful in conjunction with clarification of the definition of a Short Term Let.

To date experience has been that the policy arrangement is robust and is standing up to scrutiny when cases have been appealed. However, the number of enforcement cases relating to STL is increasing. Furthermore, the time and effort required in taking an enforcement complaint through the entire enforcement process leading to the cessation of an unauthorised use is considerable. Consequently, the experience is that planning policy, while robust and defensible, has tended to be a reactive tool rather than an effective regulatory one and an extremely resource intensive approach to managing STL.

Ultimately Planning Enforcement is complaint driven. By design it is intended to respond to material harm being created by unauthorised uses, and typically the resources dedicated to Enforcement in Planning Authorities are intended to support this approach. Taking a more proactive approach towards monitoring etc. would generate a considerable increase in enforcement officers/teams workload and resource demands.

Question 9

Do you have any comments on powers to tackle antisocial behaviour caused by short-term lets?

None other than the points above in question 8 that planning should not be tasked with tackling antisocial behaviour.

Question 10

Do you have any comments about complaint systems for short-term lets?

The methodology of any complaints system would depend on the purpose of any regulation. For example, why is regulation being introduced and how are breaches of these regulations being measured. As can be seen, the issues generated by STL being experienced throughout different authorities in Scotland are varied and depend on local circumstances. Accommodating flexibility to respond to local experiences and challenges will make designing a system difficult and could lead to inconsistency and misunderstanding at national level.

While it is assumed that such a complaints system is being aimed at the regulating authority it is also worth exploring what role the platforms can contribute towards processing and investigating complaints. If a system effectively penalises poor management or frequent cases of an STL generating harmful impacts then the platform will be more likely to take a proactive and proportionate role in responding to and preventing complaints.

Question 11

Do you have any comments on safety issues related to short-term lets?

Fire safety would require to be a consideration regardless of the length of time a property is let. Repairing standard already provides a minimum standard which could be the basis for short term let safety standards. Who can complain about this and who would assess and enforce any standards would need to be accommodated within the regulatory framework.

Building Standards may be involved if structural changes are part of the proposal and compliance with Building Regulations would be a minimum requirement.

Police Scotland may also have a remit if the issue is one of public safety or disorder.

Question 12

Do you have any comments on eligibility for non-domestic rates?

Achieving a level playing field makes clear sense and regulating operators consistently will benefit all stakeholders. However, the scale of task in resourcing regulation would be considerable and would require substantial investment or fees to be “cost neutral”.

Question 13

Do you have any comments on the additional eligibility requirements recommended by the Barclay Review?

Please see Question 12.

Question 14

Do you have any comments on the eligibility of self-catering accommodation for the Small Business Bonus Scheme?

Please see Question 12.

Question 15

Do you have any other comments on taxation relating to short-term lets?

Please see Question 12.

Question 16

Do you have any additions or amendments to the proposed design principles?

HOPS considers that the design principles individually are sound criteria upon which to inform creating a regulatory framework. Our concern is that collectively it may prove extremely difficult to design a framework that satisfies all of the principles listed. There are principles that are potentially going to be incompatible and a basis for informing how priority is applied to the principles will be necessary to guide an effective design.

One example where there could be conflict between achieving design principles is in delivering a **robust** framework with no loopholes (which is eminently sensible). However, embedding **responsiveness** to reflect local circumstances and the **flexibility** to adapt to future demands or technology innovations could make creating a robust framework methodology extremely challenging. The flexibility to accommodate and adapt to future changes in how platforms or new business formats could emerge will inevitably require a degree of openness which will be counter-productive in terms of ensuring a watertight system. Likewise, while the scope to be responsive to local circumstances is likely to be a worthwhile characteristic of any framework, it is likely to create procedures or systems that increase vulnerability to opportunistic misuse, thereby undermining its robustness.

There will be other examples of the principles not always being compatible when explored in detail. However, this does not equate to the principles being wrong, rather it illustrates that there is a need for a more refined systematic presentation of the principles and how they should be applied to creating a new framework. For example, which principles are of greater priority and which are desirable but not necessary?

Question 17

Do you have any comments on the proposed scope of a regulatory framework?

As highlighted earlier, there are likely to be a range of views on whether a regulatory framework is necessary depending on the experiences of different authorities. Therefore, accommodating a system that can be applied based on local circumstances is vital. It may be that this could be aligned corporately with the Short Term Let Control Areas introduced by the Planning Bill.

If a regulatory framework was introduced by the Scottish Government, there would have to be careful consideration as to whether it is appropriate that any new legislation would be primarily based on licensing requirements on the grounds of public safety or whether it should be based on planning matters, relating to the property use and impact on local amenity. Alternatively, it may be more appropriate to explore a bespoke arrangement that does not “piggy back” onto an existing regulatory regime but could adopt certain appropriate elements that would be beneficial in creating a new framework.

If a regulatory framework was introduced, there needs to be clarity on what its purpose is i.e. what impact(s) it is focused on tackling and it is likely that it will need to be through Primary Legislation to allow scope to effectively tackle the issues being addressed.

Consideration would also have to be given to the penalties for a host or platform and service providers not complying with any regulatory framework. Any penalties for not complying with

legislation would have to be great enough to deter hosts, platforms and service providers from operating without complying with legislation. (see question 22).

In addition to these challenges it should also be recognised that the opportunity to apply a system which can be responsive to local circumstances would be helpful in being responsive to the issues being experienced in cities, towns or rural authorities. However, this can lead to greater confusion among stakeholders. Therefore, collaboration and certainty with platforms will be vital should a local approach be accommodated.

Question 18

Do you have any comments on the controls or conditions which councils should be able to set through a registration or licensing regime?

None

Question 19

Do you have any comments on whether a licensing scheme and/or market based approach, and any associated charges, should apply to all types of short term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?

None

Question 20

Do you have any comments on the effectiveness of a days per year limit in meeting the Scottish Government's objectives?

Short term lets could be defined by operating under a limit, for example 90 days, or more (with no minimum providing it is a secondary let) rather than a threshold of over a limit such as 28 days. A threshold set from the lower end for use above that number leads to uncertainty over at which point it would no longer be classified as STL. Alternatively an approach could specify between 28 and 90 days within a 365 day period, however the difficulty would be determining if a property had been let for more or less than 28 days. It would be more realistic to operate a system if there was no minimum threshold albeit this could lead to many more properties being scrutinized. Either way it will be difficult to obtain accurate information and will require a clear and transparent working relationship with all platforms.

Question 21

Do you have any comments on how regulations should deal with commercial hosts?

While there is a clear temptation to make a distinction between commercial hosts and small scale hosts at the moment there would need to be evidence that they pose more significant or even different problems. By definition, commercial hosts will be taxed on earnings and if there is a need

to make changes here then we would not object. HOPS considers that further research needs to be carried out to determine the impact and quantify the number of commercial hosts who are operating in this market and whether or not they should be regulated differently.

Question 22

Do you have any comments on who should be subject to enforcement and sanctions?

It is perhaps premature to answer this question. Until the purpose of a regulatory system is understood and the parameters (legal and technical) of how it operates are established it is not realistic to know what will or will not be appropriate or suitably enforceable. The obvious candidates are either the owner of the premises or the operator who linked the premises and the guest.

However, the balance of responsibility will emerge once further work in designing a framework has been undertaken.

Question 23

Do you have any other comments on short-term lets not covered in your answers to the above?

None.

HOPS is the representative organisation for all planning authorities in Scotland. It is clear that the impact of STLs across Scotland varies widely between city, urban, rural and island councils and in that context it is not possible to provide a single HOPS commentary to cover all the councils HOPS represents.

We have however used examples from specific authorities where appropriate within our answers, to provide the Scottish Government with indicative examples of particular issues and policies and practices being adopted where the impact of STLs is seen as a significant issue.

HOPS would be happy to be involved in any further discussions regarding the role that planning authorities have on this matter and in particular related planning review work areas such as a review of the Use Classes Order and a review of the General Permitted Development Order.