

Response ID ANON-FUKT-928D-1

Submitted to **Short-Term Lets: Consultation**

Submitted on **2019-07-22 12:23:42**

Questions

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 and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation?

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 and briefly summarised above) which the Scottish Government will take into account when considering proposals for regulation?:

There are no further data points we can add over and above Annex A.

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

Yes

Please explain your answer.:

Our members are of the view that these options offer different renting experiences and will likely require thought into appropriate regulation for each scenario. In addition, paragraph 4.73 of the consultation, refers to imposing a fee on owners of 'secondary' short-term accommodation only – excluding owners offering short-term accommodation under 'swapping' or 'sharing.' It would therefore provide clarity for the regulatory framework to distinguish between 'sharing,' 'swapping,' and 'secondary' letting.

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.

No

Please explain your answer.:

A single set of common rules should be applicable across all dwelling types in order to create the most workable framework. This would avoid increasing complexity and the potential for confusion. However, for accommodation with communal areas, e.g. tenement buildings, regulation should set out clear requirements for owners to highlight that communal areas are present with the accommodation and that guests should be made aware of this when booking through collaborative platforms. Collaborative platforms could be responsible for providing expectations and guidance to guests in relation to anti-social behaviour and communal areas as part of a T&C's document when making a booking. This would allow for streamlined and consistent guidance.

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

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

Our members broadly agree with the definition at paragraph 3.12 of the consultation. However, some of our members are of the view that it should be clear that this definition also includes a property which is let once in a 365-day period, for a single let greater than 28 days, which is not a Private Residential Tenancy (PRT). For example, a property which is let for the full duration of the Edinburgh Festivals period which may run for 30-40 days, but out with this period remains the principle home of the host. This property should be subject to the same regulations as any other short-term let, with specific thought towards the health and safety of visiting guests and neighbouring occupiers.

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

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

The overall positive or negative impacts of short-term lets are highly localised and as such need to be considered at local authority level.

Paragraph 4.3 lists examples of how short-term lets can benefit short-term accommodation needs. Our members often find these examples sign a PRT, which highlights that short-term lets would be better suited to these types of accommodation requirements, rather than a PRT.

Although not part of this consultation, our members have suggested that there could be a general consensus for the reconsideration of the no minimum lease term for a PRT. If the PRT had an initial 6-month lease term this could prohibit tenants renting a property for less than 6 months and help reduce landlord & letting agent remarketing costs. The introduction of regulation to short-term lets could also allow both short-term and long-term letting markets to complement one another and improve the overall housing market.

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

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

Where correctly managed, short-term lets can have a significant positive benefit. While there can be a negative perception of short-term lets as a result of some of the issues that can arise from their mismanagement, the short-term let market provides options for a vast array of guest types who only require temporary accommodation, due to the situations listed at paragraph 4.3, and for whom a PRT is both impractical and inappropriate.

For Edinburgh specifically, the availability of short-term lets over the festivals period is crucial to enable industry professionals to relocate to the city for this period; therefore, the entire economic benefit of the Edinburgh Festival is directly linked to the availability of sufficient residential properties in the short-term lets market. While there is significant scope for regulation in terms of property standards and management practice, any regulation that creates a reduction in the number of

available short-term let properties would have a significant negative impact on the Edinburgh Festival and the city as a whole.

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

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

Our members are firmly of the view that the current pressure on the housing market is driven by a lack of supply across all tenures. While this leads to perceived conflict between tenures/uses, it masks the underlying issue to which the only solution is a step change in the supply of new dwellings.

The current taxation framework can create an unfair advantage for those operating short-term lets on a small scale, as opposed to commercial operators and Private Rental Sector (PRS) landlords. The result of this is to create artificial market forces, which keep properties operating as short-term lets that would otherwise be available to long-term tenants in the PRS. Solving this by bringing parity between long-term lets and short-term lets, in terms of taxation and the regulatory framework, would allow market forces to operate effectively and balance these tenures in the face of the overall housing shortage.

Paragraph 4.10 of the consultation explains that short-term lets are taking away housing in the PRS, thus reducing number of properties available for long-term lets. Our members are of the view that the consultation does not consider the entire Scottish housing market and the differing markets from one area to another. For example, Aberdeen would benefit from property owners tapping into the short-term lets market as there is an oversupply of long-term rental accommodation. While the opposite picture is evident in Edinburgh, which has a far more buoyant market with its successful tourist industry. As previously stated at our response to question 5 the overall positive or negative impacts of short-term lets are highly localised and as such need to be considered at local authority level.

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

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

While our members support further regulation in this area and notwithstanding the section 11B of the Planning Bill, they remain of the view that the planning system is not the correct mechanism for restricting short-term lets. They believe that the issue should be addressed from a housing legislation perspective such as houses in multiple occupation (HMOs) or some other form of licensing regime. This would provide a much more workable solution and give local authorities the flexibility required to manage short-term lets at a local level dealing with the highly localised variations in this market. Having to seek planning permission could deter owners from considering short-term renting as this is not a requirement for long-term renting and would be to the detriment of those listed at paragraph 4.3 of the consultation. Requirements on owners must be made very clear to allow them to understand how to comply fully with planning permissions.

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

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

The proposal to create a registration/license process will mean local authorities will store owner details for short-term let accommodation, likewise with the current PRT framework, which should assist local authorities in tackling anti-social behaviour. Our members have suggested that as guests tend to be more transient, the regulations should provide for the owner to make guest details available to local authorities in line with GDPR.

Members have also suggested that a licencing system, following a similar framework to that already in place for HMO properties could be an effective solution. This could impose rules around the required management standards in order to prevent antisocial behaviour and the required response to issues where they do arise.

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

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

As already stated, following a similar licencing framework to that already in place for HMO properties would provide for a mechanism to ensure that neighbours/stakeholders are aware who to contact where they have a complaint. An enforcement team could deal with issues arising / lack of compliance to licence terms etc.

Collaborative platforms could also be required to become members of trade associations, such as the Association of Scotland Self-Caterers and the UK Short-term Accommodation Association. A code of practice for owners of short-term accommodation to adhere to could then be agreed. The collaborative platforms could also set out a complaint process for guests as part of their T&C's, instructing that they contact the trade organisations, of which they are members. Members have suggested that handling complaints that have escalated, where owners, who have breached the regulation, could be dealt with in the same way as the First Tier Tribunal service for a PRT.

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

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

The current health and safety compliance across the short-term lets industry is relatively poor when compared to PRTs. Both the level of applicable standards and the compliance with those which are in place are currently poor. Safety standards in PRTs have improved significantly as a result of the regulatory framework, unfortunately some view the lack of regulation in the short-term lets sector as a route to evade the requirements imposed on the PRTs, which can put guests and neighbouring occupiers at significant risk.

Regulation should aim to ensure parity in terms of the health and safety standards (fire detection systems, gas and electrical safety certification etc.) between the private rental sector and the short-term lets sector. This should apply across all short-term let types (sharing, swapping and secondary letting), in order to ensure that all guests, irrespective of the type of short-term let, can expect the same safety standards.

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

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

The eligibility for non-domestic rates does not necessarily create issues, but rather the eligibility of small-scale hosts, with 1 or 2 properties, for the Small Business Bonus Scheme, which can result in a property being operated commercially, with no non-domestic rates or council tax liability. This creates an unfair

advantage for small-scale, short-term let hosts when compared either to larger more commercial operators, who will be liable for non-domestic rates or private rental sector landlords and their tenants who remain liable for council tax. There are also implications for revenue collection.

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

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

The loopholes in taxation for non-domestic rates as identified by the Barclay Review should be carefully considered. Our members agree that evidence must be required in order to prove short-term letting where non-domestic rates should fairly apply.

Additional eligibility requirements will help prevent the avoidance of council tax by second homeowners. However, this could also be solved by addressing the removal of the eligibility for the Small Business Bonus Scheme, where its practical impact is to take a let property out of both council tax and non-domestic rates as noted in our response to question 12.

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

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

The practical impact of the current eligibility for self-catering accommodation for the Small Business Bonus Scheme is to create a system which incentivises the small-scale hosts letting 1-2 units on a short-term lets basis, who have no liability for either council tax or non-domestic rates. This comes at the expense of larger commercial operators and the private rental sector landlords. Larger commercial operators with multiple units under the same ownership will be subject to both non-domestic rates and VAT on their revenue while private rental sector landlords and their tenants remain liable for council tax. This creates a system which drives some less suitable properties into the short-term lets market, which would otherwise be maintained as a PRT providing long-term homes.

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

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

As stated in our response to question 14, small-scale hosts are not subject to the restriction in mortgage interest relief, which applies to private rental sector landlords. This creates a system, which unfairly advantages the small-scale, short-term let hosts and drives the growth in short-term lets as a tenure at the expense of the private rental sector. The taxation framework provides the most effective way to bring greater parity between short-term lets hosts and long-term landlords, which would allow market forces to effectively balance these tenures.

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

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

In addition to being fair across the hospitality sector, the design principles should also include a requirement to be fair across all tenures. Bringing greater parity in the regulations, irrespective of tenure, would create a much fairer and more robust system. This would allow the framework to be built upon existing powers, in particular those already in place to regulate the PRS and licencing frameworks, similar to that already in place for HMO properties.

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

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

Our members are of the view that the regulatory framework should not determine whether a property may be used for short-term lets as a tenure or otherwise. They think that this should be determined by a licencing regime. All residential property owners should have the ability to let their property on a short-term lets basis should they choose to do so. However, they should be subject to a licencing regime, which imposes robust rules on the way this activity is managed, in order to ensure the safety of all stakeholders. The wider taxation framework should not inappropriately advantage the short-term lets tenure at the expense of other tenures, particularly the private rental sector.

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

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

The current HMO legislation can provide a useful blueprint for a licencing regime in terms of the controls and enforcement actions available to local authorities. However, this should not extend to the setting of quotas for postcode areas or denying owners a license without any evidence of past mismanagement, or failure to pass a fit and proper person test etc. The ultimate sanction should allow for the removal of a licence where significant or persistent non-compliance has occurred.

19 Do you have any comments on whether a licencing 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?

Do you have any comments on whether a licencing 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?':

At paragraph 4.73, it is agreed there is a need to control the number of short-term lets in high performing markets in order to balance the short-term lets and long-term lets market. Our members have suggested that incentives could be considered for owners to place their property onto the long-term rental market.

A licencing scheme should apply to the broadest spectrum of short-term let properties irrespective of the type of let (sharing, swapping & secondary letting) or the property type, its location or its size. There will however be a requirement to consider specific requirements for larger properties with multiple bedrooms, which as result of being let on a short-term lets basis, are not subject to the HMO regulations that would otherwise be applicable. This potential loophole should be addressed in the imposition of a new licencing system for short-term lets and in how this interacts with the HMO legislation currently in place.

It should also be noted that the fee being consulted on for 'secondary' short-term owners, where a whole property is let, will be the case for all BTR owners

offering short-term accommodation, as they will never be in the scenario of 'swapping' or 'sharing.' Our members have suggested that there should be separate provisions made for BTR owners to cover this situation.

In general, the introduction of fees imposed on owners offering 'secondary' lets could see nightly rates increase to cover these costs.

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

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

A days per year limit will not effectively address the issues created as a result of short-term lets. Implementing a robust licensing framework, which applies to all short-term let properties and creates parity in the taxation framework for short-term let hosts, compared to PRT landlords, would effectively address the safety, security and antisocial behaviour issues. This would also allow market forces to control the growth in the number of short-term let properties at the expense of other tenures.

There is a risk to applying a day per year limit. This suggests that if a property is only let for a relatively short proportion of a given year it should not be subject to the same regulations, which will create a two-tier system and continue the situation where guests and neighbouring occupiers are put at risk by amateur operators. A robust licencing regime should ensure the safety and compliance of all short-term let properties, irrespective of how many days in a year they are let for. Market forces should control whether an owner chooses to let a property on a short-term let basis, or a more commercial basis year-round.

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

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

Please also see our response to question 19 relating to the fee being consulted on for 'secondary' short-term owners, where a whole property is let. As already stated, BTR owners offering short-term accommodation will never be in the scenario of 'swapping' or 'sharing.' Our members have suggested that there should be separate provisions made for BTR owners to cover this situation.

In general, however, regulations should provide parity across all host types and should be agnostic as to how many units a host may own / operate in order to ensure there is good practice imposed across the board. An owner occupier who may move out of their property and let it for a relatively short duration (30-40 days) such as for the Edinburgh Festival should have to comply fully with the same regulations as a commercial host letting multiple units on a year-round basis. If this is not the case, then the system will effectively provide an unfair advantage to those letting properties without the same level of health and safety compliance etc. putting guests and neighbouring residents at greater risk.

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

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

Our members are of the view that all hosts should ultimately be subject to enforcement and sanctions where there has been a clear breach of the regulations, and insufficient changes in practice have been undertaken to resolve genuine issues. A model similar to that currently operational for HMO properties could be adopted. This should apply across all short-term letting types and provide relative parity between short-term let hosts and those operating as landlords within the PRT framework.

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

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

No comment.

About you (optional)

1 Which of the following best describes you. Please choose all that apply:

Other

If other, please specify.:

Trade Association

2 How did you hear about the consultation? Please choose all that apply.

Online at gov.scot or Citizen Space

If other, please specify.:

If you are a host, please answer the following questions.

3 Which of the following describes your short-term letting listing(s)? Please choose all that apply.

4 Do you list your room/property/properties on more than one platform?

Not Answered

5 How many properties did you have available for short-term letting in 2018?

How many properties did you have available for short-term letting in 2018? :

6 Approximately how many nights was/were your listing(s) occupied in 2018?

proximately how many nights was/were your listing(s) occupied in 2018? :

7 For hosts with more than one property, do you have properties in more than one local authority area in Scotland?

Not Answered

About you

What is your name?

Name:

Mandy Catterall

What is your email address?

Email:

mcatterall@bpf.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Property Federation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly dissatisfied

Please enter comments here.:

The Scottish Property Federation (SPF) is a voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

The format of the consultation makes it very challenging to gather the views of our members and offer an industry view. An editable template would make it easier to collect the views of our members

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly dissatisfied

Please enter comments here.:

Please see comments above