

Agenda Item	16
Report No	HC/40/20

THE HIGHLAND COUNCIL

Committee: The Highland Council

Date: 29th October 2020

Report Title: **Consultation on short-term lets - licensing scheme and planning control areas**

Report By: Executive Chief Officer Communities and Place

1. **Purpose/Executive Summary**

- 1.1 Members are asked to homologate the attached response to the Scottish Government's consultation on the detailed proposals for the regulation of short-term lets in Scotland.
- 1.2 The response was submitted by the deadline of 16th October following consultation with the Chair of the Tourism Committee and the Chair of the Licensing Committee.

2. **Recommendations**

- 2.1 Members are asked to:
- a) Note that short-term lets have significant economic benefits to Highland communities but in some circumstances there can be negative impacts;
 - b) Note the proposals will have significant resource implications for the Council and agree that costs of administering the scheme will be recovered in full through fees, as permitted by the licensing scheme;
 - c) Note that any costs incurred through the establishment of Control Areas under Planning legislation cannot be recovered in this way and so will be additional;
 - d) Agree the implementation of Planning Control areas will be the subject of a report to the Economy and Infrastructure Committee after the regulations are finalised;
 - e) Agree the setting of fees for the proposed licensing scheme will be the subject of a report to the Licensing Committee after the regulations are finalised;
 - f) Agree to homologate the consultation response which was submitted to meet the Scottish Government deadline of 16th October.

3. Implications

3.1 Resource – As detailed in the report, the new regulations will have significant resource implications for the Council in terms of Planning, Licensing and Environmental Health. The majority of these costs can be fully mitigated through the fee structure permitted by the regulations and work is underway to understand the resources required to implement the new regime. This in turn will help set the fees required.

Costs incurred through the establishment of Control Areas under Planning legislation cannot be recovered in this way and so will be additional to the Council. Work is underway to understand the amount of additional resource this is likely to require.

3.2 Legal – The consultation allows the Council to influence the proposed regulations and detailed comments have been provided on the legal aspects of the regulations. The regulations are to be laid before Parliament in December 2020 and come into force in April 2021 with a phased approach to implementation proposed.

3.3 Community (Equality, Poverty and Rural) – Short term lets have been recognised to bring substantial economic benefits to communities but also have negative aspects in reducing availability of residential housing and in some circumstances, disturbing residents. The Scottish Government's new regulations are intended to provide local authorities with proportionate powers to manage the negative aspects of short term lets without undue restrictions on the economic benefits.

3.4 Climate Change / Carbon Clever –There are no known risk implications at this time.

3.5 Risk – The regulations will place a statutory duty on the Council to licence short term lets and, if appropriate, consider Control Areas under Planning. There are significant risks of failure to implement the statutory duties if resources are not secured through the fee powers.

3.6 Gaelic – There are no known Gaelic implications.

4. Introduction

4.1 On 14th September 2020 the Scottish Government issued a consultation on the detailed proposals for the regulation of short-term lets in Scotland. The new framework is intended to give Councils new powers to manage pressures created by use of properties as short-term lets.

4.2 Through a previous consultation, the Scottish Government recognised that short-term lets can have benefits but there are also negative impacts on communities. Research in 2019 identified five key impacts of the sector:

- local economic benefits;
- increased household income and STLs business earnings;
- reduced availability of residential housing with the negative impact on affordability, sustaining communities, and the negative impact on the wider local economy and local public services;
- negative impact on quality of life and well-being; and
- negative impact on congestion and changing communities.

4.3 The proposals are aimed to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic

and tourism interests. It is estimated that in 2019 the non-serviced sector (traditional self-catering, pods, holiday caravans etc.) was responsible for spend of £584million in Highland. Of this about a third is spent on the accommodation itself with the remainder spent on other aspects of the holiday – food and drink, shopping, transport etc. (STEAM report).

- 4.4 The proposed new powers could have significant potential impacts beyond tourism and its importance to the regional economy. These include availability and affordability of residential accommodation for the local population, seasonal and key-workers; visitor and community safety; and community cohesion, particularly in ‘fragile’ rural and remote communities.
- 4.5 This report outlines considerations arising from analysis of the Scottish Government consultation document from a corporate perspective, drawing on contributions from a cross-service officer working group with input from Environmental Health, Waste, Tourism, Planning, Building Standards, Housing, Trading Standards, Licensing, Corporate Governance and Policy.
- 4.6 Significant budgetary and operational implications are highlighted, which relate to the challenges associated with regulation of a vast and growing sector across a geographically dispersed area. There are also potential opportunities for the Council’s place-based approach, including the possible involvement of Area Committees in applying local approaches to control areas under Planning powers.

5. Scope and content of the current consultation

- 5.1 This current, second phase of consultation, follows prior consideration at the EDI Committee in August 2019 when the Council’s response to the initial consultation was agreed:
www.highland.gov.uk/download/meetings/id/75590/item_14_scottish_government_short_term_lets_consultation. The Scottish Government has now determined to introduce regulation of short term lets utilising both a licensing scheme under the Civic Government (Scotland) Act 1982 and possible control areas under the Planning (Scotland) Act 2019.
- 5.2 The Government has stated the current consultation exercise is therefore **not** about debating the principle of regulation but is instead focused on the detail of proposals for regulation of Short Term Lets. These proposals will form the basis for regulations to be laid before Parliament in **December 2020**, for new regulations to come into force in **April 2021**.
- 5.3 It should be noted that the Government has stated that it will review the tax treatment of short-term lets to ensure that they make an appropriate contribution to the communities that they operate in. The review of tax treatment is being progressed separately and is outside the scope of this consultation.
- 5.4 The consultation requests comment on the following three practical considerations:
 1. The definition of short term lets;
 2. Use of planning law to create ‘control areas’ (requiring planning permission for a change of use from residential property to secondary letting);
 3. Operation of a licensing scheme for short term lets, by local authorities.

5.5 **Definition**

5.5.1 The consultation proposes a definition of “short-term let” as a let where all of the following criteria are met:

- a) **residential** - the let is made to one or more guests for them to reside at the accommodation;
- b) **accommodation** – the accommodation is all or part of a house or flat or serviced apartment (but it is not on the premises of a hotel or other class 7 premises in the UCO);
- c) **temporary** - the accommodation is not the guests’ only or principal home;
- d) **commercial** - the let is for commercial consideration (i.e. for money or benefit in kind to the host, such as provision of a service or reciprocal use of a property); and
- e) **excludes immediate family** – none of the guests are members of the same immediate family as the host or host’s household (i.e. father, mother, brother, sister, son or daughter).

5.5.2 The definition includes:

- lets for work and leisure purposes; and
- lets where the accommodation provided is a bed in a bedroom shared with other guests or a sofa bed in a living room. (I.e. it does not need to be exclusive use of a whole room.)

But the definition excludes unconventional dwellings such as caravans, pods and mobile dwellings such as canal boats.

All short-term lets meeting the definition will require a licence.

5.6 **Control Areas**

The consultation proposes that all secondary letting properties will be in scope of the Control Area Regulations. Secondary letting is defined as a type of short-term let involving the letting of a room or rooms or the entire property, where the host does not normally live.

- This will allow planning authorities to designate all or part(s) of their area as a control area. Within such a designated area, the use of a dwelling house for secondary letting is always deemed to involve a material change of use and requires planning permission. Outside such areas, the current case-by-case consideration would continue to apply.
- The consultation is proposing to require a similar process to that used to establish conservation areas.
- The consultation also proposes transitional arrangements.

5.7 **Licensing scheme under the Civic Government (Scotland) Act 1982**

The consultation is proposing all short-term lets will require a licence. Related proposals are listed below.

- Councils will be able to implement a licencing scheme from **1 April 2021**, this can be delayed but all local authorities must have a live licencing scheme open to receive licensing applications by 1 April 2022.
- Two stage transition period would be allowed to manage applications. Transitional arrangements include allowing operators to continue operating until a licence has been granted or refused.
- All hosts in Scotland must be licensed by **31 March 2024**.

- A licence can be for granted for a period of up to 3 years, after which it needs to be renewed.
- Mandatory conditions will be set out and Councils will be permitted to include optional conditions (e.g. noise, greet on arrival).
- Councils are able to charge fees to cover the establishment and running costs associated with the licensing scheme.
- Application and administrative procedures are proposed including enforcement powers.
- A temporary licence for home sharing and home letting is proposed through a simplified process where the local authority needs a significant amount of additional capacity over a short period. This might be to ensure sufficient accommodation to support a large scale event, for example.

5.8 The proposed response is provided in **Appendix 1**.

In summary, the proposed response covers:

1. Queries and suggestions on improving the definition of a short term-let. It includes recommending the definition should cover pods and other non-conventional property.
2. Commenting on the proposed control areas under planning legislation:
 - lack of clarity on the definition of secondary letting proposed which will directly impact on the number of properties which would be subject to planning control within proposed Short Term Let Control Areas;
 - lack of clarity/concern over the proposed relationship with the licensing regime;
 - issues of timing/evidence base for identification of areas suitable for Short Term Let Control Areas. The licensing regime would need to be implemented first to allow gathering of specific data which will provide the evidence for the assessment of need for Short Term Let Control Areas;
 - lack of information relating to the establishment of Short Term Let Control Areas – concerns that comparison to Conservation Areas is not appropriate, and concerns that the issue of private housing supply is complex and not easily definable. Concerns that the Control Areas may not deliver the outcomes hoped for; and
 - concerns over proposal to give 10 year deemed consent with ability to revoke permission after 10 years.
3. Responding to the licensing scheme:
 - concern over proposed connection with planning regime;
 - querying connection with Houses in Multiple Occupation (HMO) licensing;
 - technical comments on the proposed mandatory and optional conditions including on waste, noise and safety, and on enforcement; and
 - highlighting resource implications for Highland Council.

6. Implications of the consultation and proposed new regulatory framework

6.1 Place-based approaches and Control Areas

The proposed regulatory powers will allow the Council to pursue differing local approaches to Control Areas. Through the Council's place-based approach there is a potential role for Area Committees in determining whether Control Areas should be introduced locally. This will be included in a report on the Control Areas to the Economy and Infrastructure Committee after the regulations are finalised.

6.2 Transient Visitor Levy

New regulations for Short Term Lets are also likely to intersect with delivery of the forthcoming Transient Visitor Levy on the basis of local decision making. There may be a strong case for streamlining both regulatory duties within a unified system for area-based engagement, decision making and operational delivery. It should be noted however that progress on progressing legislation on Transient Visitor Levy has been paused as a result of Covid.

6.4 Resource impact

6.4.1 Local authorities will be able to charge fees to cover the establishment and running costs associated with the licensing scheme. Establishment costs include setting up the system and preparing staff to run the scheme. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs.

6.4.2 The new regulatory responsibility of both licensing and control areas are anticipated to have significant, additional budgetary and regulatory impacts on the Highland Council; invoking responsibilities in relation to the status and safety of a very large number of properties across a dispersed geographical area, which comprise a substantial proportion of the total short term lets across Scotland. This will impact on the Licensing Team, Environmental Health and Planning.

6.4.3 Recent Scottish Government research in support of the consultation exercise identifies a three-fold growth in Airbnb listings in Scotland between April 2016, when there were just under 10,500 Airbnb listings in Scotland, and approximately 32,000 as at May 2019. The 2019 data shows approximately 19% of all AirBnB listings in Scotland located in Highland (6,088 listings, of which 3,959 are entire properties). Although concentrations of such properties vary across the region, relative numbers can be considerable; e.g. almost 10% of all dwellings in the Fort William and Ardnamurchan area were listed with AirBnB in May 2019, alone (Scottish Government).

6.4.4 Figures provided to the Scottish Government by Air B&B show £7.3m of earnings to 'hosts' in Inverness & Skye alone in 2018/19. These also show a growth of 81% p/a growth in listings across Highland as a whole - almost double the growth for other regions. Highland is also listed as one of the regions with the greatest proportion of second homes and empty properties. When considering potential numbers, it should be noted that existing commercial premises exempt from licensing may also be using Airbnb to advertise e.g. hotels, hostels. VisitScotland data from 2016 showed around 4000 self-catering premises listed in Highland (24% of Scottish total).

6.4.5 As can be seen, it is difficult at this stage to accurately estimate numbers. At the lower end potential applications could be around 4000 based on previous data of self-catering and AirBNB. At higher end, including extending licensing to pods, it may be as much as 10,000 potential applications. These are very much rough estimates and further work will be carried out to estimate local numbers. Staycations may become even more popular if travel restrictions associated with Covid continue and this may mean more properties being used for short-term lets.

6.5 Licensing Fee options:

6.5.1 The licensing scheme permits a phased approach over a 3-year period, but this will still present considerable administrative and operational undertaking for dealing with the initial applications. Ongoing resource will then be needed for renewals and new premises. The costs of the scheme will be recovered through the licensing fees.

Further guidance will be provided from Scottish Government on this but they have outlined that Councils could consider the following when establishing a fee:

- a) Different fees for different types of short-term let, with lower fees for home sharing and home letting than for secondary letting.
- b) A non-refundable application fee in conjunction with a monitoring subscription fee (payable monthly or annually). Any monitoring fee payable with the application fee would be refundable if the application was refused. (Alternatively, local authorities might want to charge a fee on renewal.)
- c) Fees to vary by property size, with fees increasing based on number of rooms or occupants, as can be the case with HMO licencing, for example.
- d) Discounts for low volume home sharing or home letting. For example, applying a 50% discount for someone only letting a spare room during August.

The proposed fees will be the subject of a report to the Licensing Committee after the regulations are finalised.

6.6 Control areas Impact

6.6.1 Establishment of Short Term Let Control Areas will have potentially significant resource implications, primarily directed towards the Council's Development Plans Team. Collection and monitoring of data to assess the need for a Control Area, preparation of reasoning and justification for Control Areas, Policy preparation to support a Control Area, public consultation and assessment of responses etc. None of this would be fee generating and would be unfunded. The extent of the resource impact would depend on the Council's approach to Control Areas, for example setting a single Highland wide area, numerous smaller Control Areas or no Control Areas.

6.6.2 Establishment of Control Areas will necessitate dwelling houses operating as secondary letting properties to apply for planning permission. This will increase the number of planning applications within these areas. On the basis of a predicted 60% fee recovery from the current level of planning fees, there will be a resource gap. The extent of this is difficult to predict as it will be entirely dependent on the number and extent of designated Short Term Let Control Areas within Highland.

Designation: Executive Chief Officer Communities and Place

Date:

Authors:

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Background Papers:

September 2020 Consultation papers:

<https://www.gov.scot/publications/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/pages/1/>

Appendix 1

The Highland Council

Response to the Scottish Government's Short-term lets - licensing scheme and planning control areas: consultation

Note: A reference is included for the team that commented to allow any queries to be appropriately directed. LI – Licensing; PL – Planning; EH – Environmental Health; TO – Tourism; WA - Waste

A. Chapter 4. Definition

Our Ref.	Issues and how to resolve them:	Team
A.1	<p>Paragraph 2.2: Concerns with the proposed definition of 'neighbour' – 'someone whose permanent residence is in close enough proximity to a short term let to have a legitimate interest in its business'</p> <ul style="list-style-type: none">• The definition is not clear enough to ensure consistency in approach across all local authorities. Interpretation of this definition would vary between urban and rural communities.• Checking to see if the neighbour's complaint can be taken into account based on whether they live there 'permanently' will not be straightforward• 'close enough proximity' is too general and open to different interpretations. Is this to be decided by the local authority or is the onus on the neighbour to prove they are 'close enough'? Can this not instead be defined by, for example, up to [4] metres from the boundary of the property?• This definition would appear to exclude any non-domestic property owner or other "host" of a short term let, being able to object to a licence application. For example, in Highland we have experience of both hospitality premises and Churches being located next to short term let properties and raising concerns about the way in which they are managed. Similarly, if the owner of a well-managed short term let had justified concerns about a neighbouring short term let property, because it was not their permanent residence, they could not object. We would consider that definition of neighbour for the purpose of objecting to a licence requires to be expanded.	LI
A.2	<p>Paragraph 4.7e: The definition of immediate family should be clarified further within the legislation/guidance and would suggest that it reflects what is within HMO legislation. See section 128 of the Housing (Scotland) Act 2006.</p>	EH
A.3	<p>Paragraph 4.10: The definition of a Short Term Let is noted to exclude unconventional dwellings such as caravans, pods and mobile dwellings such as canal boats. Throughout the Highlands there is a significant number of these accommodation types (particularly pods) and we would consider by excluding them it would significantly undermine the top priority of the legislation (i.e. to secure the safety of guests, hosts and neighbours – Ref 3.7). The definition should be extended to cover these types of properties. Exemptions could be included if the development was already covered by the likes of a caravan Site licence. Local Authorities could be given discretion within the legislation/guidance to set their own criteria for any type of dwelling that did not fit the strict definition of a house/dwelling</p>	EH

(i.e. not capable of meeting either the Tolerable standard or Repairing Standard.) Such criteria would no doubt be shared between LAs and good practice be developed for assessing such unconventional dwellings over a period of time.

By excluding such dwelling types, we would foresee many people merely circumventing the legislation by opting to provide unconventional dwellings. This would potentially undermine the main priority of this legislation, but also then place additional burdens on LAs in dealing with these types of property under existing legislation which is very problematic.

- A.4 Planning regarding unconventional dwellings such as caravans, pods and mobile dwellings such as canal boats. PL

It is understood they have been excluded as they would not directly affect the wider housing stock and would be subject to planning permission in any event and may, in some cases, be subject to caravan site licences. Due to the increasing popularity of pod type accommodation often within the curtilage of houses, both in towns and in rural areas it is considered that this type of accommodation should be covered under the short-term letting definition for Control Area Regulations. It is not clear if this is provided for within para 5.4 of the consultation document – for example if a dwelling house has a pod in the garden for holiday letting, would this be covered by the Control Area Regulations as a holiday letting use within the curtilage of a house, and hence the dwelling house would meet the definition of a short term let, or would it be excluded by the definition which excludes pods?

- A.5 It is noted that the definition of a “host” clarifies that they may not be the owner or person who lives at the property. For this reason, we would consider it important to include a definition of the property owner within the legislation, in addition to the host so as to clearly differentiate between the two. This should be clarified within both the legislation and the guidance as is important for who is responsible for meeting both the mandatory requirements and in terms of enforcement (i.e. determining who has committed an offence). EH

- A.6 It is noted that definition no longer includes a time period but this is covered in the temporary licence (paragraph 6.135/6.137) and also when setting fees (paragraph 6.62(d). Consideration should be given to the way the period of time a property is available for let is measured – is it the number of individual days available or the period of time over which they extend – a property could for example be let for New Year, Easter and then June to September – is this counted as xx days or the full 9 months from 1 January to 30 September. TO

In defining short term lets there seem to have been different definitions used in different areas / countries but most would appear to be related to cities which generally have less seasonal patterns to tourism than Highland – and in particular more rural parts of Highland. These varying patterns should be taken into account in any licensing scheme – ideally giving local authorities some ability to respond to their local circumstances by defining any time period themselves (if indeed a time period is part of the definition). We recognise that while some shorter time periods may be beneficial in catering for tourism demand at peak times the impact on the wider housing market can still be that the property is taken out of the longer term let market all the time.

- A.7 The planning (rather than licensing) focus of the consultation seems to relate to the issue of ‘secondary letting’ rather than the wider issue of short term letting (i.e. not including home letting and home sharing definitions) and this approach is welcomed. PL

Secondary letting is defined in the consultation as “a type of short-term let involving the letting of a room or rooms or the entire property, where the host does not normally live”. This definition is considered appropriate.

Paragraph 5.1 of the consultation adds some confusion to the what type of letting is to be included in the Control Area Regulations as it refers to secondary letting as short-term lets of whole properties. Clarity is required on this point – is it intended that all secondary letting as per the glossary definition is included? It is considered that this would be appropriate.

B. Chapter 5. Control Area Regulations

Our Ref.	Issues and how to resolve them:	Team
B.1	The comment in paragraph 5.5 relating to planning authorities currently considering on a case by case basis whether use of a dwelling house for secondary letting constitute a material change of use is one of the difficult points and there appears to be a clear difference in approach between authorities. It is considered a very important aspect of the proposed legislation or associated guidance to remove any dubiety on this subject to make the legislation much clearer for all users. As short-term letting and secondary letting is now being defined, there should be less uncertainty. If a dwelling house meets the definition of a short term let and is not within a control area, then it should be made clear that in the regulations or associated guidance there is no change of use.	PL
B.2	Clarification required of fee for any planning application. Suggest this should be within the Change of Use fee category. This needs to be separate from licensing fees.	PL
B.3	Paragraph 5.8 (secondary letting reverting to residential use without permission) is welcomed in principle, however there are a number of practicalities which would benefit from explanation in any associated guidance. In terms of the Act, only the change of dwelling houses to short term lets within control areas would represent material change of use. As there is currently no Use Class for Short-term lets, then it is assumed this would need to be considered a sui-generis use, unless there is a proposal to add a new use to the Use Classes Order. If the property is no longer a dwelling house, then any householder permitted development rights would not apply. This would result in householder permitted development rights for dwelling houses that are not in Control Areas, but no permitted development rights for those in Control Areas. It would be very useful to address this within the Regulations or the associated guidance. To reflect the design principle of fairness, it would be preferable to extend the householder permitted development rights to all short-term lets as they would otherwise apply to houses/flats. This would remove uncertainty if properties were changing to lets without the need for planning permission or reverting back from lets to dwelling houses without the need for planning permission.	PL

B.4 It would be helpful to have a mechanism for informing the Planning Authority when secondary letting is to cease, and the property revert back to a dwelling house. Any legislation or associated guidance should make it clear that although a secondary letting property can revert to a dwelling house, it cannot thereafter revert back to a secondary letting unit without planning permission within a Control Area. PL

B.5 **Revocation of Planning Permission** PL
Paragraph 5.9 relating to revocation of planning permission raises a number of concerns and is not considered to be a workable proposition.

Primarily, the new legislation will introduce the need for planning permission for secondary letting in Control Areas. The purpose of the Control Area is to manage the number and concentration of secondary letting properties within these areas and address any resultant planning issues. Therefore, the determination of any planning applications will control any over-provision of secondary letting properties. Whilst this would not reduce the number of secondary letting properties, it could control the increase in numbers. Taking into account that most dwelling houses used for secondary letting will not currently have planning permission (as planning permission has not generally been required), the majority of dwelling houses used for this purpose will now require the benefit of planning permission as a result of the introduction of the new legislation, but only within a Control Area. If planning permission is being granted for additional secondary letting properties within Control Area, then it is fair to conclude that the issue of number/concentration has been found to be acceptable. If that is the case, then there would be no need to time limit the permission in any way. There are also concerns that the option to revoke after a ten year period would not provide long term certainty for the applicant/host.

As highlighted earlier in the response, a mechanism to notify the Planning Authority as to when a dwelling house is no longer being used for secondary letting would be a very useful tool, particularly when considering numbers/concentration of properties within a Control Area.

If the revocation option is pursued, consideration will need to be given to the amendment of Section 124 of the Planning Act (time limits in relation to enforcement to exclude dwellings used for secondary letting).

Clarification is also sought on whether the power to revoke planning permission after 10 years would be liable for payment of compensation, for example for loss of income.

If pursuing the revocation option, the process for revocation needs to be straightforward to implement.

B.6 **Removal of Permitted Development Rights** PL
Paragraph 5.10 mentions Class 15 as enabling a dwelling house to change use for up to 28 calendar days. This is not the case, as a building, or land within the curtilage of a building, is excluded. There is therefore no need to remove this permitted development right within control areas as it does not apply.

The general principle of a planning authority being able to have a policy of universally granting planning permission for secondary letting in a control area subject to a restriction on the period for which the dwelling house could be let is welcomed and would be best included as part of the mechanisms for establishing a Control Area.

B.7 Process for establishing a Control Area

PL

It is noted a similar process to that of defining a Conservation Area is proposed for establishing a Short-Term Let Control Area. The process set out for Conservation Area designation is quite straightforward in terms of how the Planning Authority notify Scottish Ministers etc and there is no objection in principle to using a similar process.

Many questions have arisen however over the criteria for designation of a Control Area and the level of information required to determine if a Control Area is appropriate. It would be fair to say that it is the process in the lead up to the designation of a Control Area that is of more concern than the specific process of actual designation. It is hoped that the guidance document that will accompany the legislation will provide further information on this topic.

The following paragraphs highlight some of the areas of concern:

- There seems to be an underlying assumption that, like conservation areas, control areas will be finite in extent and will be surrounded by a majority of land that does not fall within its extra controls. For conservation areas this works because the subject matter to which the extra controls apply are fixed, usually historic, buildings and streetscapes and the controls are primarily aimed at their further preservation. Whilst the set boundaries of conservation areas are often debatable, there can be clear reasoning why one street falls within the extra controls and the next does not.
- For the proposed control areas the subject matter is material change of use of properties and the controls are primarily aimed at avoiding a cumulative impact of a reduced stock of private dwellings. This is a much more amorphous and dynamic set of matters than historic bricks and mortar. Change of use to secondary letting is not the only factor at play in housing supply. Authorities will ultimately have to explain, defend and justify situations in which one house falls within control and its 'neighbour' does not. These controls will inevitably lead to appeals against refusal and appeals against enforcement notices in which the justification for the control area will be repeatedly challenged. There is concern that the matter of private housing supply is not clear-cut enough for authorities to be guaranteed a decent chance of success in such circumstances.

The purpose of Control Areas is noted as being "to help manage high concentrations of secondary letting (where it affects the availability of residential housing and the character of a neighbourhood; to restrict or prevent short-term lets in places or types of building where is to not appropriate; and to help local authorities ensure that homes are used to the best effect in their areas"

- B.8 As requirements of the proposed Licensing regime is likely to provide much of the baseline evidence for determining where Control Areas are needed, it is important that there is time allowed to gather the information from the Licensing regime before any decisions are taken on the designation (or not) of Control Areas. If a similar process to that of Conservation Area designation is to be applied, it is understood that the designation of Control Areas will be on a "time to time" basis, rather than having a set deadline to review and designate Control Areas following the legislation coming into force.

PL

B.9 Will there be similar provision for Scottish Ministers to designate a Control Area as there is for Historic Environment Scotland to designate a Conservation Area? This would not be welcomed due to the localised nature of the issues relating to Control Areas. PL

B.10 **Transitional arrangements** PL
The wording of paragraph 5.15 is not particularly helpful. To date there has been no legislation or guidance that indicates secondary letting would require planning permission, therefore there is likely to be many instances of secondary letting being operated across Scotland which have been operating lawfully, as many authorities would not have considered this to be a material change of use. It is however anticipated that cases will come to light as a result of the licensing regime of breaches to the current B&B provisions under Class 9 and unauthorised letting of ancillary buildings which will require planning permission.

Aside from these comments, the principle of allowing a grace period for those properties who are affected by the change in legislation is agreed.

C. Chapter 6. Licensing Order

Our Ref.	Issues and how to resolve them:	Team
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C.1	The proposed interaction between licensing and planning is going to be problematic in terms of timescales for implementation. Given the huge amount of data that will need to be collected by planning before control areas can be brought in, the likelihood is that these will be set up some time after the mandatory licensing regime comes into force. On the basis that planning permission is unlikely to be required unless a control area is in place, when planning are consulted on a licensing application they are going to have to respond with 'planning permission is not required'. If, however, a control area is thereafter put in place, one of the mandatory conditions proposed for licensing is:	LI
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'the host must confirm they have applied for, or obtained planning permission (if required), that it remains current and that they are complying with any planning conditions.'

A licence holder could then potentially be in breach of a mandatory licence condition during the period of their licence. Will any discretion be given to a licence holder in this situation here i.e. will they be protected for the duration of their licence on the basis that the planning status was correct at the time of applying for a licence?

Also concern about duplication of a requirement for compliance with another regulatory regime which is normally not allowed nor conditioned. How does this work in principle i.e. if a control area is subsequently put in place and planning permission is then sought for a licensed property and is refused, will this mean a licence will be subject to a review where it could be suspended or revoked despite the fact that both regulatory regimes have different roles?

C.2	Confirmation on whether being able to 'pause' the licensing application (1) when planning permission is required and hasn't been applied for or (2) is currently being processed stops the clock for the licensing statutory determination time and whether there will be a limit on how long the application can be 'paused' for.	LI
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| C.3 | Concerns around the enforceability of some of the optional licensing conditions such as requiring the host to ensure that the principal guest is met in person on arrival to receive the keys and have the house rules explained to them. | LI |
| C.4 | Given the commentary that an HMO will also need a short term let licence if used for both purposes, is there any update on the consultation which sought views on adding new categories to the definition of an HMO such as contract and transient workers who arrange their own accommodation when working away from home with holiday accommodation providers? Will it be the case that this scenario now just comes under a short-term letting licence which would mean, from the proposals, that an HMO is not required in addition? | LI |
| C.5 | Paragraphs 6.47-6.49 - Waste: These operations will be commercial undertakings generating income for the operators of the business. In line with the producer pays principle, the costs of dealing with waste arising from the business should be fully met by the operator and factored into their pricing structure. Licensing terms should require operators to comply with the Waste (Scotland) Regulations 2012 and evidence the provision of separately identifiable refuse collection arrangements for dealing with all waste and recycling generated from the operation of the business. Operators should further be required to clearly identify the location of the said containers and, with reference to the legislation, confirm to guests what materials can be placed in each container. The responsibility for ensuring that the containers are presented for collection should remain with the operator. | WA |
| C.6 | Status of Guidance
The accompanying guidance that gets issued alongside the legislation needs to be given appropriate status (i.e. statutory guidance) to ensure it is adhered to and adopted consistently. | EH |
| C.7 | Paragraph 6.15: The consultation refers to the requirement to display within the property inspection records relating to gas safety; electrical safety, PAT testing, etc. There is no reference to <u>solid fuel appliances</u> or certification requirements associated with their use to require annual cleaning of flues etc. An increasing number of STL properties within Highlands have wood burning stoves and other solid fuel heating installed (biomass). It would therefore be important from a safety perspective that a requirement be included to have such appliances checked and appropriate certification displayed, if relevant to a property. This would be consistent with the guidance issued for HMOs. | EH |
| C.8 | Paragraph 6.19: Electrical Safety
Clarification should be provided within the guidance as to the required competency of electrician required to conduct electrical safety inspection and issue EICRs (i.e. member of Select etc). This should reflect other relevant licensing regimes such as Landlords Registration and HMOs. | EH |
| C.9 | The consultation document would appear to infer that PAT testing is conducted at as similar frequency to the fixed installation testing (i.e. 5years). PAT testing should be conducted on a much more frequent basis and at least annually. The guidance should clearly differentiate the difference in frequency of inspection for fixed installation and Portable Appliances. | EH |
| C.10 | Paragraph 6.23: Fire Risk Assessment | EH |

It is noted that the requirement to undertake a Fire Risk Assessment is not listed as one of the mandatory requirements in Annex C. The completion of an FRA should be a mandatory requirement. Scottish Fire & Rescue Service would be best placed to comment but we would consider this to be something that could be covered by a self-declaration at time of application.

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| C.11 | Guidance should be developed for owners/hosts on conducting appropriate Fire Risk Assessments to meet this requirement. | EH |
| C.12 | Paragraph 6.25: Furnishings
Consideration requires to be given for historical buildings (for example Castles) that are used for short term lets and that may contain lot of historical/period furniture. Will exemptions be provided for certain categories of building/listed property etc to this requirement? If no exemption exists, then it would be important for the guidance to clarify how furnishings within such historical/listed properties can be considered. | EH |
| C.13 | Paragraph 6.27: Private Water Supplies
The only reference to Private Water Supplies (PWS) within the consultation document is within this section, and it relates to Legionella. Within the Highland Council area, there is a significant number of short-term let properties on a PWS. We would consider it important that a mandatory condition be applied where a property is on a PWS, that the supply be registered with the LA and that it meets the requirements of a potable drinking water supply. This would ensure that any short term let properties on a PWS, where necessary, have an appropriate treatment system installed and are subject to the Local Authority PWS monitoring/sampling programme. | EH |
| C.14 | Paragraph 6.28: Maximum Occupancies
It is noted that Local authorities must determine maximum occupancies but may use their own criteria to set appropriate occupancy limits. It would be essential that the guidance for licensing authorities provides clear guidance and criteria that must be taken into account when setting occupancy limits. | EH |
| C.15 | Paragraph 6.45: Similarly, the guidance should provide clear guidance on what factors must be considered for when imposing a reduced occupancy limit. | EH |
| C.16 | Paragraph 6.46-6.49: Littering and waste management
The term littering is used within the consultation document, however, what is being described is more attributable to the waste management arrangements at the premises. Any guidance that is issued should therefore provide relevant factors to consider for when determining the appropriate waste provision for a STL property and suggested minimum waste capacity for a range of occupancy levels. | EH |
| C.17 | Paragraph 6.50-6.51: Noise Conditions
The guidance should provide details of the relevant factors and assessment criteria that should be considered when applying noise conditions. In addition, it would be useful if example of conditions could be included within the guidance with respect to what would be reasonable and enforceable. | EH |
| C.18 | It would be useful if the guidance could refer to the use of a noise management plan for the property as a possible condition that could be applied, and also provide guidance for Owners/Hosts in what could be | EH |

included in a noise management plan for their property. An example of where such an approach has been used is within the Institute of Acoustics (IOA) Code of Practice on Control of Noise from Pubs & Clubs.

- C.19 **Paragraph 6.52: Meeting Guests on Arrival at Premises** EH
A significant number of STL properties throughout the Highlands are quite successfully operated at the moment without the need for the owner/host to meet the guest at the property. It would therefore be useful if the guidance could clarify what information as a minimum should be getting provided to guests and in what format (i.e. email; written; guests own language) etc.
- C.20 **Paragraph 6.69: Notification requirements** EH
The consultation proposes the applicant needs to notify neighbours within a 20-metre distance of the property, including all residents on a tenement stair and neighbouring tenement stairs. We would consider this confusing and open to interpretation.

For example, from which point do you measure the 20m?
We would suggest that consideration be given to just following established principles in terms of planning, where a notification is provided to all properties with an adjoining boundary and include all residents on a tenement stair and neighbouring tenement stairs.
- C.21 **Paragraph 6.77 & 6.83: Details of the Applicant** EH
It is implied that the applicant should be the host, whereas in the definition it mentions that the host may not be the owner of the property.
As commented on previously, the use of the term host is considered confusing and requires to be clearly differentiated from the owner of the property. We would consider it important for both the owner and host (if separate) to be named on the application form. This would enable a fit and proper person test to be applied to both relevant parties. This would be consistent with the HMO application process and the relationship between the owner and their agent.

We would consider it important to link the owner into the process as they are less transient and can be easily be traced for the purposes of enforcement. Hosts could very easily move on or be replaced regularly by unscrupulous landlords to avoid enforcement.

Clear guidance should be provided on the requirements and responsibilities of both property owners and hosts to ensure provisions are enforceable.
- C.22 **Paragraph 6.8: Interaction with HMO licensing** EH
It is not clear how this is intended to work and so would welcome further clarification within the guidance.
- C.23 **Paragraph 6.111: Enforcement Notices** EH
Clear guidance should be provided on the factors that should be considered prior to taking formal enforcement action. This should ideally include process flow diagrams/decision trees for determining the most appropriate course of action. Additionally, the guidance for Local Authorities should provide enforcement notice templates so that they are consistent between LAs.
- C.24 **Paragraph 6.114: Offences & Fines** EH
The legislation must clearly set out the offences and who they would apply too. We would consider it important to include separate offences that

could be applied to owners of properties being used as STLs, and “hosts” if they are not the owner of the property. If there are no offences that could be linked to the owner, then it is considered likely that hosts could simply be replaced on a regular basis in order to escape punishment.

Guidance for local authorities should outline all the relevant factors that should be considered when investigating potential offences, and when would it be appropriate to report offences to the Procurator Fiscal. This would ensure consistency across LAs.

C.25 **Impact of Licensing Order on Planning System**

PL

As all Short-term lets will require a licence, but (mainly) only secondary letting within a control area will require planning permission, the volume of licences will significantly outnumber the volume of planning applications. However, there are key areas where the Licensing regime with impact on planning resource.

In paragraph 6.34 (and Annex C) there is a mandatory condition proposed for licensing that the host must confirm they have applied for, or obtained, planning permission (if required), that it remains current and that they are complying with any planning conditions. It is noted that there is to be no requirement for verification of this condition. The consultation states that compliance with the licence conditions is the host’s responsibility.

There are two types of licence proposed, one covering home sharing and home letting (i.e. where the host’s home is being used) and one covering secondary letting (a property where the host does not normally live). For a home sharing/home letting licence, the main issue for planning is whether the number of bedrooms being used exceed that permitted by Class 9 of the Use Classes Order. If the applicant is required to provide details of the total number of rooms in the dwelling house and the number to be used for letting, then the check as to whether planning permission is required could be reasonably straightforward. Likewise, as Class 9 excludes flats, then any B&B provision under Class 9 would not apply and planning permission would be required.

For a Secondary letting licence if there is clarity within the legislation that a dwelling house which meets the definition of a short term let and is not in a Control Area does not constitute a material change of use, then this could make the distinction between planning permission required, or not, much more straightforward.

Depending on how the gate-check for a licence application is carried out will determine the significance of the impact on the Planning Authority. The Licensing Authority could simply notify the Planning Authority when a licence is applied for. Given that the regulatory and planning regimes cover quite different considerations, this would enable both authorities to deal with the matters arising as necessary. It would also ensure no delays in the issuing of a licence whilst the host arranges submission of a planning application. It also provides the Planning Authority with the necessary discretion as to how to pursue the matter using existing resources. There may of course also be significant resource implications for both regimes, especially in designated Control Areas where the need for a host to obtain planning permission is likely to be greatest. The negative aspect to this is the Licensing arm of the Local Authority may be licensing premises which are in breach of planning regulations which could introduce confusion into the overall regime. Following this route would negate the need for licence applications to be paused while planning permission is sought (paragraphs 6.71 to 6.73). If a host

operates a short-term without the necessary planning permission they would not only be in breach of planning control, but also in breach of the terms of their licence. It is understood that the legislation would provide for the suspension of a licence if the host was not complying with the mandatory licence condition, for example if the property did not have the appropriate planning permission.

Consideration could also be given to a process similar to Section 50 Certificates under current licensing controls for premises, with the host applying to the Planning Authority for confirmation that the premises have the necessary permission. Although this would have significant resource implications for planning while the majority of existing properties/hosts obtain a licence, this would level out in time to just new premises/hosts. The benefit to the host would be a more streamlined process than a Certificate of Lawful development application.

- C.26 It is noted in **paragraph 6.69** that the intention is that applicants (for a licence) will need to notify neighbours within a 20 metre distance of the property. The use of the 20m distance is helpful in that it aligns with the planning process. It would also be helpful if the final wording of the notification definition is the same as that used in the planning regulations to prevent any differences in requirements. PL
- C.27 **Paragraph 6.70** proposes local authorities are given power to combine notification requirements, so that neighbours are not notified twice about same proposal. This fails to distinguish between the separate material considerations between the Licensing Authority and the Planning Authority, although relevant matters for each authority are listed under paragraph 6.74. Without separate notification procedures, neighbours could object and raise issues not relevant to the respective authority. There are also difficulties in aligning applications when the content requirements for a planning application and a licence application will differ. There does not appear to be a clear benefit in combining notification requirements and it would only work if both applications were submitted and validated concurrently. This is unlikely to be the case in many situations. As the intention is for applicants to do the notification for licence applications and the planning authority would do the notification for planning application it is not clear if the suggestion is that the planning notification would negate the need for the applicant to carry out notification for the licence application. It is suggested power to combine notifications is unnecessary and adds a layer of confusion. PL
- C.28 The examples shown in **paragraph 6.74** highlighting the considerations for which each regime is responsible for is useful and it would be helpful if this was carried forward into the guidance to be produced. PL

D. Further comments

Our Ref.	Comments	Team
D.1	Resourcing is going to be a huge problem with the volume of applications anticipated for the Highlands with at least 25% of the total self-catering properties for Scotland located in the Highlands (3,982 properties in 2016) and 20% of the Airbnb's (6,088 active properties in 2019). If all these properties apply at the outset and there is a 9 month statutory determination timescale, there is inevitably going to be applications not determined within the time period and, therefore, being the subject of an	LI

automatic grant for a 12 month period. This would mean that (1) sub-standard and potentially unsafe properties and (2) persons who are not deemed fit and proper to hold such a licence could end up with a licence for a year automatically regardless. It also means that any licensing application which attracts an adverse representation or objection will have to be the subject of a hearing. The Highlands is disproportionately affected by this licensing regime and the timescales proposed for implementation.

The geographical area that the Highlands cover also leaves huge resourcing implications for physical checks of properties.

- D.2 It is noted and welcomed that the Local authorities will be able to charge fees to cover the establishment and running costs associated with the licensing scheme. Establishment costs including setting up the system and preparing staff to run the scheme. Running costs include such matters as processing applications and renewals, undertaking site visits, handling complaints and other monitoring and enforcement costs.

The new regulatory responsibility of both licensing and control areas are anticipated to have significant, budgetary and regulatory impacts on the Highland Council; invoking responsibilities in relation to the status and safety of a very large number of properties across a dispersed geographical area, which comprise a substantial proportion of the total short term lets across Scotland.

D.3 **Licensing resource impact:**

It is difficult at this stage to accurately estimate numbers. At the lower end potential applications could be around 4000 based on previous data of self-catering and AirBNB. At higher end, including extending licensing to pods, it may be as much as 10,000 potential applications. These are very much rough estimates and further work will be carried out to estimate local numbers.

The licensing scheme permits a phased approach over a 3-year period but this will still present considerable administrative and operational undertaking for dealing with the initial applications. Ongoing resource will then be needed for renewals and new premises.

The workload may necessitate the following additional staff:

- **Licensing team** - an estimated 5-6 additional administrative licensing staff
- **Planning team** – an estimated 3 additional full-time posts (professional support officers) for a two-year period. There would still be resource required after this two-year period to cover new and renewed licence enquiries, however this is anticipated to be at a much lower level.
- **Environmental Health** an estimated 4 additional full-time posts (technical officers) for a two-year period. There would still be resource required after this two-year period to cover new and renewed licence enquiries, however this is anticipated to be at a much lower level.
- **ICT systems** – a review of the on-line tools to enable self-service and on-line payments to streamline the application and payment process

The fee structure must be kept simple as possible and allow recovery of cost associated with teams within the Council who will have administrative or operational impacts. Separate charging schemes for consultation (e.g. as in alcohol licensing) should be avoided.

D.4 **Control areas Impact**

Establishment of Short Term Let Control Areas will have potentially significant resource implications, primarily directed towards the Council's Development Plans Team. Collection and monitoring of data to assess need for Control Area, preparation of reasoning and justification for Control Areas, Policy preparation to support Control Area, public consultation, assessment of responses etc. None of this would be fee generating and would be unfunded. The extent of the resource impact would depend on the Council's approach to Control Areas, single Highland wide area, numerous smaller Control Areas, or no Control Areas.

Establishment of Control Areas will necessitate dwelling houses operating as secondary letting properties to apply for planning permission. This will increase the number of planning applications within these areas. On the basis of a predicted 60% fee recovery from the current level of planning fees, there will be a resource gap. The extent of this is difficult to predict as it will be entirely dependent on the number and extent of designated Short Term Let Control Areas within Highland.

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| D.5 | Tourism levy or tax
The Scottish Government previously consulted on the option of giving Local Authorities the power to collect a tourism levy or tax and the Council has committed in principle to do this once the legislation is in place. In order to do this there will need to be some form of registration system for all businesses that may be obliged to collect the tax on behalf of Local Authorities and most if not all accommodation providers are likely to be included. As this would likely overlap with a registration system for providers of short term lets, it is strongly recommended that a single system be used if at all possible. Not only could this be cost effective it would also make compliance with either scheme easier to monitor as well as reducing the level of administration for businesses. | TO |
| D.6 | It is noted that no mention has been made in the consultation to Building Standards and their role, if any, in the process. It would be useful for the proposed guidance to cover any building standards implications short term letting. | PL |
| D.7 | For the purposes of recording and Scottish Government Returns early identification of new development codes would be useful. | PL |