

Agenda Item	13
Report No	CP/09/21

THE HIGHLAND COUNCIL

Committee: Communities and Place

Date: 24th February 2021

Report Title: Response to the Scottish Parliament's Local Government and Communities Committee call for views on the statutory instruments for short-term letting

Report By: Executive Chief Officer Communities and Place

1. Purpose/Executive Summary

- 1.1 The Council has previously submitted feedback to the Government on its proposals on short-term letting in two separate consultation responses in 2019 and 2020. The Government has now lodged the proposed statutory instruments with the Scottish Parliament and the Local Government and Communities Committee has called for views on these.
- 1.2 A response was drafted following concerns raised by several Members on definitions of property in scope. A draft response was circulated by email seeking views from Members on this Committee, the Chair of the Tourism Committee, Chair of the Licensing Committee and the Council Leader. The final response was submitted to the Parliamentary Committee on 27.1.21. It is appended and Members are asked to homologate this response.

2. Recommendations

- 2.1 Members are asked to:
 - a) note that the response requested clarification on the definition of the term guest house for licensing purposes;
 - b) note that the response requested clarification on the application of control areas to B&B accommodation;
 - c) note the request for a later implementation date if required by local authorities;
 - d) homologate the consultation response which was submitted to meet the Scottish Parliament deadline of 27th January 2021 as attached at Appendix 1.
 - e) note that Members previously agreed that after the regulations are finalised, the implementation of Planning Control areas should be the subject of a report to the Economy & Infrastructure Committee and following consultation with the Housing & Property Committee and relevant Local Committees and that the setting of fees for the proposed licensing scheme should be the subject of a report to the Licensing Committee.

3. Implications

- 3.1 Resource –The new regulations will have significant resource implications for the Council in terms of Planning, Licensing and Environmental Health. Most 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.
- 3.2 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.
- 3.3 Legal – The call for views enables the Council to support the Committee with evidence on the impact of the instruments for the region and for the Council and to seek to influence the proposed regulations.
- 3.4 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.
- 3.5 Climate Change / Carbon Clever –There are no known risk implications at this time.
- 3.6 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. There is a risk that without an extension to implement the new licensing regime in the context of Covid work pressures and the inclusion of B&B properties, that the scheme will not be operational in time.
- 3.7 Gaelic – There are no known Gaelic implications.

4. Introduction

- 4.1 As members are aware the issues around Short Term Lets have been considered by the Scottish Government over the last few years as provided in the following timeline:
- **April 2017** - The Scottish Government set up the Expert Panel on the Collaborative Economy
 - **January 2018** - The panel reported on peer-to-peer accommodation, and short-term lets more broadly
 - **July 2018** - The Scottish Government published its response to the Expert Panel's report, and this included the establishment of a Short-Term Lets Delivery Group
 - **2019** consultation and independent research (Highland Council response [here](#))
 - **January 2020** - Scottish Government announced proposals:
 - licencing for short-term lets, which will apply to all short-term lets
 - to introduce short-term let control areas
 - to undertake a review of the tax treatment of short-term lets
 - **September 2020** – consultation (Highland Council response [here](#))
 - **December 2020** – Scottish Government publish consultation response, draft legislation & Business and regulatory impact assessment (BRIA) available [here](#)

- 4.2 The Business and regulatory impact assessment (BRIA) sets out the purpose of the legislation:
- **Licensing scheme** to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively.
 - **Control Area Regulations** - purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.

4.3 It should be noted that the Scottish Government has clarified in January 2021 that the licensing requirements will apply to B&B businesses unless they meet the definition of a guesthouse. Reference on this issue is made to existing planning guidance:

- The use of houses (class 9 in the Use Classes Order) as B&Bs is a form of home sharing and these will require a licence.
- Guest houses (class 7) are excluded from the definition of a short-term let and will not require a licence.

Note:

- A house (class 9) can be used to offer bed and breakfast without planning permission where no more than two bedrooms are used for this purpose or, in the case of premises having less than four bedrooms, only one bedroom is used for that purpose.
- Change of use from a house (class 9) to a guest house (class 7) generally requires planning permission.
- A flat cannot generally be used to offer bed and breakfast without planning permission.

5. Scottish Parliament Local Government and Community Committee

5.1 On 16th December the Scottish Parliament Local Government and Communities Committee issued a call for views on the statutory instruments. Both instruments can be found using the links below:

[The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2021](#) and [The Town and Country Planning \(Short Term Let Control Areas\) Regulations 2021](#)

5.2 The Committee set out that:

The Local Government and Communities Committee's role is to consider these instruments, decide whether to approve them, and report to Parliament. The Committee has agreed to take evidence from the Scottish Government at a meeting early in the New Year. To help the Committee come to an informed view, and to prepare for the evidence session with the Scottish Government, we would very much welcome your views on the following:

1. *Do the proposed changes strike the correct balance between protecting the long-term sustainability of local communities and promoting tourism and strong local economies?*
2. *Has the Scottish Government's defined short term lets in a clear and correct way in the legislation?*

3. *Will local authorities have adequate resources, powers and expertise to make a success of their new powers and duties?*

5.3 The response prepared, included views gathered from officers across services, and following concerns raised by several Members and an email request was made for comments from C&P Committee Members and Chairs of the Licensing and Tourism Committees as well as the Leader. The response is attached at Appendix 1.

5.4 In summary the response:

- a) requested clarification on the definition of the term guest house for licensing purposes;
- b) requested clarification on the application of control areas to B&B accommodation;
- c) requested the timescale for implementation to be amended to allow a later implementation date if required by local authorities.

6. Future reports

6.1 Members agreed at the Council meeting in September 2020:

- a) the implementation of Planning Control areas should be the subject of a report to the Economy & Infrastructure Committee after the regulations were finalised and following consultation with the Housing & Property Committee and relevant Local Committees;
- b) the setting of fees for the proposed licensing scheme should be the subject of a report to the Licensing Committee after the regulations were finalised.

Designation: Executive Chief Officer Communities and Place

Date: 27.1.21

Author:

Alan Yates, Environmental Health Manager

Background Papers:

Scottish Parliament Local Government and Community Committee Call for Views

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/116756.aspx>

The Highland Council

Response to the Scottish Parliament Local Government and Community Committee call for views on proposed changes to the rules on short term letting

1. Do the proposed changes strike the correct balance between protecting the long-term sustainability of local communities and promoting tourism and strong local economies?

Through consideration and response to the previous Scottish Government Consultations, the Council have recognised and noted the substantial economic benefits to communities of short term lets but also the negative aspects in reducing availability of residential housing and in some circumstances, disturbing residents. The Council welcome the intention of the new legislation to provide local authorities with proportionate powers to manage the negative aspects of short term lets without undue restrictions on the economic benefits.

2. Has the Scottish Government's defined short terms lets in a clear and correct way in the legislation?

We welcome the Scottish Government commitment to work with stakeholders to prepare guidance for both local authorities and, separately, hosts and platforms in spring 2021. This will be important to ensure clear understanding and a consistent approach to the new legislation.

The Council would like the Local Government and Community Committee to seek clarification of the following points:

(A) The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021

- a) Further clarification is required around the inclusion of bed and breakfasts. They are not specifically excluded, however, guest houses are. What is the proposed definition of a guest house?

The draft policy note (para 25) does make reference to the planning approach as given in the Use Classes Order. We note from recent communication with Scottish Government that from this approach Class 7 premises are excluded and use of houses (class 9) as B&Bs is a form of home sharing and these will require a license.

The regulations, or the policy note or the related guidance that is to be produced must clarify for the public and Council the 'plain english' application of the Use Classes Order i.e. a clear definition of guesthouse and clear definition of B&B.

- b) Further clarification is required for s.3(3) – Designation of activity. This states that the use of separately bookable accommodation for a short term let is a single activity provided that-
- (a) All the accommodation is located on a single site

- (b) The accommodation has shared facilities (toilets, washing or kitchens) and
- (c) The accommodation is not, or does not form part of, a house or a flat.

If a site with several static caravans or pod style accommodation, for example, has a mix of units within it i.e. some pods with just a bed but some with a toilet and kitchen facilities within the unit, this would suggest that the site would need individual licences for each of these self-contained units but one licence for the other units which use shared facilities within the same site. Is this the intention?

(B) The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021

In the 2020 Consultation, the Planning focus of the consultation 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).

Secondary letting was 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 is re-emphasised in the Draft Policy Note which states "The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas."

The Draft Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 provides "where an area is designated as a short-term let control area a change of use of a dwellinghouse to use for the purpose of providing short-term lets is deemed to be a material change of use and so constitutes development under section 26 of the 1997 Act".

The explanatory note states that Regulation 2 makes provision about what constitutes providing a short-term let for the purposes of section 26B of the 1997 Act. This excludes letting to family members and for the purposes of facilitating provision of work or services and the letting of certain accommodation and such excluded accommodation is set out in the schedule.

There is concern that wording of the Draft Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 inadvertently includes B&B accommodation which is operated under the permitted development rights for a Class 9 dwellinghouse. The current definition of short-term let does not specify that the sleeping accommodation relates to dwellinghouses where the 'host does not normally live' (i.e. reference to the consultation which made a distinction between short term letting and secondary letting). The schedule of excluded

accommodation also does not exclude B&B properties which are operated under Class 9 dwellinghouse.

3. Will local authorities have adequate resources, powers and expertise to make a success of their new powers and duties?

Very unlikely in the timescales proposed.

This proposed licensing scheme has a disproportionate effect on the Highlands – in relation to both the substantial number of short term lets within the area and the geographical distance that has to be covered.

The previously submitted consultation response provided by The Highland Council did not take into account the additional work and resources required for glamping pod style/unconventional dwellings as short term let accommodation, which has now been added into the draft Regulations. The clarification on B&Bs also adds significantly. These further increase the significant workload and resourcing required.

In addition, current Council staff who would be involved in the licensing/enforcement process are heavily involved in dealing with the Covid-19 pandemic. The timescales for introducing this licensing scheme are unrealistic for both local authorities and for operators who may have to carry out extensive work to ensure premises meet the repairing standard, especially for units which previously didn't need to.

Another reason the Council would suggest a delay in implementation would be appropriate is to take into account the circumstances the sector currently faces. Both the Scottish Government and the Council have recognised that the tourism sector is one of those that has been hardest hit by Covid-19 and related restrictions on business activity. While many will have received some public sector support there are also some who have not and many more will have taken on debt to survive until trading circumstances approve. Once this does happen a priority for many will be to repay this debt and it would therefore seem particularly inappropriate to introduce additional costs to business at this time by introducing any scheme too quickly.

It is recognised other local authorities may be in a different position and it is therefore strongly recommended that:

- a) The date the Licensing Order and Control Area Regulations comes into force remains as 1 April 2021 (Subject to the approval of the Scottish Parliament);**
- b) For the Licensing Order, Local Authorities are given discretion depending on local circumstances to choose the implementation date in a 12-month window from 1st April 2022 to 1st April 2023;**
- c) all existing hosts to have made an application for a licence within 12 months of the implementation date;**
- d) all hosts providing short-term let accommodation in the area to be licensed within 24 months of the implementation date.**

This would allow flexibility to accommodate local circumstances but ensure all short-term let accommodation in Scotland is licensed by 1st April 2025. Given the significant implications for the Highland Council area we feel this flexibility is completely appropriate.

Highland Council Contact:

Mr Alan Yates,
Environmental Health Manager
Environmental Health
38 Harbour Rd
Inverness
IV1 1UA

Tel: 07795 591246

Email: alan.yates@highland.gov.uk