



## Consultation Response

### Response to the Scottish Government's Consultation on a Regulatory Framework for Short Term Lets in Scotland

Submitted by:

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The Scottish Association of Landlords (SAL) is the largest and only dedicated national organisation that represents landlords and letting agents throughout Scotland. We support and represent our members' interests through providing resources and assistance as well as delivering lobbying and campaigning work.

The Scottish Association of Landlords (SAL), welcomes the opportunity to respond to the Scottish Government's consultation on short term lets.

Whilst we recognise the value that short term lets provide to the Scottish economy, we consider that it is completely unjust that current legislation pertaining to safety requirements, taxation, landlord registration and anti-social behaviour favours those hosts offering accommodation to tourists/short term guests over landlords offering tenants a long term home in the private rented sector.

Part of the reason for the growth of the short let sector is that landlords have made an active decision to move their properties away from the private rented sector to avoid aspects of regulation including the new Private Residential Tenancy regime and "section 24" tax rules. There are concerns that this has contributed to a shortage in the number of homes available for long term let and led to rent increases, particularly in Edinburgh.

We would like to see parity in regulation and standards between the short term lets and the private rented sector to protect communities, remove rogue operators from the market, ensure the sector contributes to the public purse and ensure the safety of guests.

**Question 1** Are you aware of any additional data on the impacts of short-term lets (over and above that set out in [Annex A - The Short-Term Rental Sector, Housing and Tourism in Scotland](#)) which the Scottish Government should take into account when considering proposals for regulation?

No

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

Yes. We don't consider it necessary to regulate sharing as the host is present to oversee the arrangement and deal with any problems which might arise. We don't consider it is necessary to regulate swapping but consider that perhaps a time limit is necessary above which it does fall into regulation – perhaps swapping of your home for 8 weeks or more per year should be regulated. We do agree that regulation is needed where any duration of secondary letting takes place.

**Question 3** Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

No. We consider that this would introduce an added and unjustified layer of complexity into what is already quite a difficult situation to define. Even short term lets in detached properties can cause problems for the local community, should meet a certain standard of safety and be taxed in the same way as short term lets of flatted properties.

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

We have significant concerns that the definition is not sufficiently precise, robust or thorough. In particular the reference to PRTs in part b) is unhelpful and we consider it would be better to state that the property is not the main residence of the guests (if it were it would be a PRT regardless of the duration of the occupancy).

Whilst we would prefer the definition to be based on a number of days of actual occupation rather than simply being advertised, we recognise that the former would be more difficult to enforce than a period of advertising which is more publicly visible.

We also consider that a requirement for payment or payment in kind to take place should be included to remove occasional stays of friends/family from regulation. Many people would have friends/family staying for periods in excess of a cumulative period of 28 days per year.

We would suggest something more along the lines of: -

- a) The accommodation is made available for use for letting for a cumulative period of 28 days or more in any rolling period of 365 days. This might mean, for example, that it is advertised as being available to let; and
- b) The accommodation is occupied by guests in exchange for consideration (financial or otherwise); and
- c) The accommodation is not the only or principal home of the guests.

Further definition or guidance on what constitutes someone's main residence would be helpful as this term appears in a number of pieces of legislation yet is not well defined anywhere and there are conflicting views on its definition in case law.

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

No, we consider the assessment in the consultation paper to be a thorough one.

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

We are aware of some landlords and letting agents capitalising on the current lack of definitions of what constitutes a holiday/short term let and what constitutes someone's main residence to enter into holiday/short term lets that endure for many months as a means of trying to avoid the regulation that governs long term lets, in particular the open ended tenancy requirement in the Private Residential Tenancy legislation.

**Question 7** Do you have any comments about the impact of short-term lets on the housing market? We agree with what has been detailed in the consultation paper on the impact of short-term lets.

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

We agree that it is currently difficult to assess whether a material change has taken place, and it is confusing for hosts that different local authorities enforce the current planning legislation in different ways and to different degrees. It is also worth noting that if it can be proven that the change of use has endured for more than 10 years then the planning authority wouldn't currently be able to take any enforcement action. With respect to the current Planning Bill clause 11B, clarity is needed on how this would impact on properties which are already being used for holiday/short term lets whether this has been taking place for more than 10 years or less.

We consider it unnecessary to place restrictions on short term letting in planning law if a thorough system of regulation and taxation is introduced similar to that which applies to landlords offering long term lets in the private rented sector.

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

We consider that powers should be introduced to require hosts to deal appropriately with anti-social behaviour caused by their short term let guests with sanctions available to the local authority against hosts who fail to take action or persistently let to guests who cause anti-social behaviour.

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

We agree that there should be a complaints system allowing communities and residents to complain direct to short term let hosts with routes to escalate the complaint to a public/judicial body if the host doesn't respond in an appropriate manner.

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

We feel strongly that short term lets should be required to comply with the requirements of the Repairing Standard to ensure parity of safety standards across all private lets. The First-tier Tribunal Housing and Property Chamber should preside over any cases where it is alleged that the host has failed to comply and the local authority should have third party reporting rights in the same way that they do over longer term lets in the private rented sector (this is particularly important as short stay guests are unlikely to want to get embroiled in a protracted dispute over safety standards).

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

It is of great concern that neither hosts nor guests of short term let properties are contributing to local taxation if the property is registered for non-domestic rates and the Small Business Bonus Scheme applies. We consider it would be fairer and more straightforward to enforce if all rental properties (whether let out short term or long term) pay council tax.

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

We consider the recommendation to be fair but for the reasons stated in our response to question 12 we consider there is some merit in moving all residential property back into the council tax regime.

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

Please see our response to question 12 above.

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

In recent years a number of landlords have moved from doing long term lets in the private rented sector to doing short term lets to avoid the impact of the UK Government's "section 24" income tax changes on their business. We do not consider it fair that there is preferential tax treatment of hosts offering accommodation to tourists/short term guests over landlords offering people a long term home in the private rented sector.

It is also worth noting that we have anecdotal evidence to suggest that many short term let hosts do not correctly move their property into the business rates system, either because they are unaware they should or because they are concerned that this might lead to the local authority taking planning enforcement action over a material change in the use of the property.

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

We would like an additional principle to be added to state that the wider regulatory framework should not favour hosts offering short term accommodation over landlords providing long term homes in the private rented sector.

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

We would like to see a national register of short term let hosts/properties (similar to landlord registration but operated at a national level), a requirement to comply with the repairing standard and a requirement to comply with similar anti-social behaviour legislation to that which long term let landlords in the private rented sector must comply with. Any landlords who commit serious breaches of, or persistently fail to comply with any aspect of the regulation of short term lets should be removed from the register.

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

Apart from in exceptional circumstances we would like to see all requirements operate at a national level to avoid the confusion which arises when different local authorities have different requirements. Any discretionary local powers (for example to place a cap on numbers or introduce any licensing scheme) should require the approval of parliament and require the local authority to provide proof that it is necessary to protect the community in a local area. Any policy to place a cap on numbers should be used to restrict new entrants into the sector rather than driving established operators/businesses out.

**Question 19** Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short-term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?

The parity we've called for elsewhere in our responses between those offering long term and short term lets would go some way to control numbers and standards in the short term let sector. As discussed in our response to question 18, it might be appropriate to have some discretionary local

powers in areas where there is evidence of short term lets having a negative impact on communities but this shouldn't be used to drive out established operators/businesses.

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

We consider that this would be a difficult policy to enforce and that problems can be more effectively controlled using the powers suggested in our responses to questions 17, 18 and 19.

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

We don't believe that there should be a distinction between commercial hosts and small scale hosts. This would be difficult to enforce and add another layer of complexity into the regulatory framework. It also encourages avoidance techniques (transferring ownership to family members/companies) and evasion (not declaring some properties).

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

There should be similar requirements and penalties for non-compliance as already exist for landlords operating long term lets in the private rented sector.

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

No