

# **Proposals for a licensing scheme and planning control areas for short-term lets in Scotland**

## **Island Communities Impact Assessment**

**Scottish Government**

**December 2020**

# 1. Introduction

- 1.1. Seven impact assessments have been prepared in respect of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (“the Licensing Order”) and the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (“the Control Area Regulations”):
- A **Business and Regulatory Impact Assessment (BRIA)**, examining the likely costs and benefits of the Licensing Order and Control Area Regulations.
  - A **Children’s Rights and Wellbeing Impact Assessment (CRWIA)**, which is used to identify, research, analyse and record the impact of a proposed law or policy on children’s human rights and wellbeing.
  - The results summary of **Equalities Impact Assessment (EQIA)**, examining the impact on different people and groups, prevent discrimination and identify opportunities to promote equality.
  - A **Data Protection Impact Assessment (DPIA)** is required by the General Data Protection Regulation (GDPR) for all projects (including new policy and regulation) involving personal data and privacy.
  - A summary assessment against the **Fairer Scotland Duty** aims to help the public sector make better policy decisions and deliver fairer outcomes. The duty focuses on socioeconomic inequality issues such as low income, low wealth, and area deprivation.
  - An **Island Communities Impact Assessment (ICIA)** is required by the Islands (Scotland) Act 2018 where a policy or strategy is “likely to have an effect on an island community which is significantly different from its effect on other communities”. The requirement to carry out an Island Communities assessment is not yet in force yet but Scottish Government has committed to completing them for new policies.
  - A summary of the pre-screening document for the **Strategic Environmental Assessment (SEA)**. The SEA helps to protect the environment by allowing planners and decision makers to consider the likely significant environmental effects of plans, programmes and strategies.
- 1.2. All of the impact assessments examine the impact of Licensing Order and Control Area Regulations. The proposals are summarised and the consultation process and outcomes explained in chapters 1 to 7 of the *Consultation report on proposals for a licensing scheme and planning control*

*areas for short-term lets in Scotland* (“the 2020 consultation report”) which can be found at: [www.gov.scot/publications/short-term-lets/](http://www.gov.scot/publications/short-term-lets/).

- 1.3. The policy objectives and design principles (which may be found at **Annex D** of the 2020 consultation report) are common to all of the impact assessments.

### **Policy objectives**

- 1.4. The high-level policy purpose behind the licensing and planning control area interventions is intended to be as follows:
- **Licensing** – 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 areas** – 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.

### **Contribution to national outcomes**

- 1.5. The regulation of short-term lets supports the following National Performance Framework objectives:
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
  - We have thriving and innovative businesses, with quality jobs and fair work for everyone.
  - We tackle poverty by sharing opportunities, wealth and power more equally.
  - We live in communities that are inclusive, empowered, resilient and safe.
  - We value, enjoy, protect and enhance our environment.
  - We are creative and our vibrant and diverse cultures are enjoyed widely.

## 2. Island Communities Impact Assessment

### Introduction

- 2.1. Section 7 of the [Islands \(Scotland\) Act 2018](#) (“the 2018 Act”) sets out a specific duty for relevant public bodies, including the Scottish Ministers, to “have regard to island communities” in carrying out their functions. A related duty under section 8 of the 2018 Act requires relevant authorities to undertake an Island Communities Impact Assessment (ICIA) “in relation to a policy, strategy or service which, in the authority’s opinion, is likely to have an effect on an island community which is **significantly different from its effect on other communities** (including other island communities) in the area in which the authority exercises its functions.”
- 2.2. This screening assessment is of the potential impact of the Scottish Government’s proposals in respect of the regulation of short-term lets on island communities. Island communities are defined in the 2018 Act as:
- consisting of two or more individuals, all of whom permanently inhabit an island (whether or not the same island), and
  - based on common interest, identity or geography (including in relation to any uninhabited island whose natural environment and terrestrial, marine and associated ecosystems contribute to the natural or cultural heritage or economy of an inhabited island).
- 2.3. Whilst the relevant provisions in the 2018 Act are not yet in force, this screening assessment has been prepared as if it were.

### Objectives

- 2.4. The objectives for the licensing scheme and control areas are set out in chapter 1 above.

### Application of policy to island communities

- 2.5. The licensing scheme and powers to establish control areas are being created by the Licensing Order and Control Area Regulations. These SSIs are being laid in December 2020 and, subject to the will of the Scottish Parliament, should come into force on 1 April 2021.
- 2.6. Our proposals deliver on a commitment made in Programme for Government 2018-19 to give local authorities the powers they need to balance the economic and tourism benefits of short-term lets with wider community needs and interests.

- 2.7. The principal component of our licensing scheme is a set of mandatory safety standards which will apply to all short-term lets across Scotland. It is right that guests should be assured that any short-term let they book is safe: no matter whether the property is a cottage on Canna, or a flat in central Edinburgh.
- 2.8. In addition, local authorities will have discretion to add further licence conditions tailored to local needs and circumstances. Needs and circumstances will vary from urban, to rural and island areas, and indeed within different urban, rural and island areas. Our proposals provide consistency on safety standards across Scotland, but flexibility for local authorities to adapt measures to suit their communities' needs.
- 2.9. Local authorities will also be able to establish control areas covering all or part of their area. Highland Council, for example, could choose to designate all or part of Skye as a control area where planning permission would always be required for a change of use from a dwellinghouse to secondary letting (a whole property short-term let).
- 2.10. Taken together, these powers will give local authorities flexibility to achieve a balance that is right for the communities they serve.

### **Current situation on the islands**

- 2.11. Short-term lets can offer people a flexible and cheaper travel option, and have contributed positively to Scotland's tourism industry and local economies across the country. In certain areas, particularly tourist hot spots, high numbers of short-term lets are causing problems and often making it harder for people to find homes to live in. This is true, both in rural and island locations as well as urban areas.
- 2.12. Engagement with stakeholders, responses to our consultation and evidence from our research identified up a number of positive and negative impacts of short-term lets relevant to island communities.
- 2.13. **Positive** impacts include:
  - a) Short-term lets support the tourism and visitor economy, which can be vital to island communities through:
    - (i) income received by hosts,
    - (ii) support for local businesses such as restaurants and shops by short-term let guests, and
    - (iii) employment opportunities, such as cleaning and maintenance.

- b) Short-term lets support the wider rural economy through providing accommodation for seasonal workers.
- c) A number of hosts in rural and island areas noted that running a second property (or properties) as a short-term let provided them with full-time employment and allowed them to sustain their position in the community. They noted that alternative employment opportunities were often limited.

2.14. Tourism-related enterprises are over-represented relative to the national average in many rural areas: for instance, Argyll & Bute, and Highland, have the highest proportion of tourism businesses in Scotland as a share of their business sector overall<sup>1</sup>.

2.15. **Negative** impacts included:

- a) Reduced availability of residential housing – particularly in areas where there are high concentrations of short-term lets and/or second homes. We have heard concerns about people being unable to take up jobs in certain locations, including Skye and the Western Isles, due to lack of available housing<sup>2</sup>.
- b) Increased strain on local public services.
- c) Negative impacts on communities' quality of life, for example due to noise and anti-social behaviour. The majority of noise and anti-social behaviour concerns related to urban areas, and tenement or flatted dwellings where neighbours live in close proximity. We are also aware that noise and anti-social behaviour can be an issue in rural and island areas, particularly from larger 'party mansion' type properties.

### **What data is available about the current situation in the islands?**

2.16. Our research<sup>3</sup> into the impact of short-term lets on communities found that just over half (51%) of short-term lets in Scotland were found in just 24 council wards (out of 354), demonstrating that short-term lets are geographically concentrated.

2.17. Of those 24 wards, 4 include island communities as follows:

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<sup>1</sup> See *Tourism in Scotland; the economic contribution of the sector* (2018) commissioned by the Tourism Leadership Group:

<https://scottishtourismalliance.co.uk/wp-content/uploads/2019/06/Tourism-Economic-Narrative.pdf>

<sup>2</sup> Note that housing shortages in island locations could be down to a number of factors beyond short-term lets, including: second and homes, a smaller private rented sector than in urban areas and the challenge of trying to match need and demand in smaller communities.

<sup>3</sup> <https://www.gov.scot/publications/research-impact-short-term-lets-communities-scotland/>

Ward	Entire Home	Private Room	Shared Room	Total	% of total	Dwellings (2017)
Skye	663	412	8	1083	3.4%	16,759
Oban North and Lorn <sup>4</sup>	332	108	1	441	1.4%	5,171
Caol and Mallaig <sup>5</sup>	244	172	9	425	1.3%	3,971
Oban South and Isles <sup>6</sup>	263	116	12	391	1.2%	5,894

2.18. In May 2019, some 1.2% of homes in Scotland were listed on Airbnb (as home sharing, home letting or secondary letting). However, in Skye this rose to 18.6% (the highest penetration rate by ward in Scotland). For context, the penetration rate in Edinburgh City Centre Ward was 16.2%.

2.19. The research also provided a breakdown of the total number of Airbnbs in operation in each local authority, including the three local authorities that exclusively cover island areas, as illustrated in the table below.

Local authority	Entire home / apartment	Private Room	Shared Room	Total (May 2019)	% of total (Scotland wide)
Na h-Eileanan Siar	397	113	3	513	1.6%
Orkney Islands	198	98	0	296	0.9%
Shetland Islands	163	62	0	225	0.7%

2.20. The total population of Scotland's islands, as at the 2011 census, was 103,702<sup>7</sup>. The total population of Scotland at the 2011 census was 5,295,000. This suggests that just under 2% of Scotland's population lives on islands (in 2011).

2.21. The number of short-term lets on the islands of Skye, Na h-Eileanan Siar, Orkney Islands, Shetland Islands is 6.6% (2,120) of the Scottish total. The

<sup>4</sup> Includes Luing

<sup>5</sup> Includes Rum, Canna and Eigg

<sup>6</sup> Includes Mull, Tiree and Coll

<sup>7</sup> <https://www.scotlandscensus.gov.uk/documents/censusresults/release1c/rel1c2sb.pdf>

number of short-term lets operating across all islands in May 2019<sup>8</sup> would be significantly greater, with strong contributions from Arran, Bute and Mull, for example. This emphasises the importance of tourism, and short-term lets, for island communities compared to Scotland as a whole.

- 2.22. Although Airbnb have a large share of the short-term letting market, they are not the only platform for short-term lets in Scotland. Homeaway (Expedia) and Booking.com, as well as other platforms and independent operators with their own website or marketing channels, are important too. The above data quoted only covers short-term let properties listed on Airbnb, and is a snapshot of the picture in island communities.

### **How does any existing data differ between different islands?**

- 2.23. We have limited data at present on short-term let numbers by island, and the data we have relates only to Airbnb properties. Our licensing scheme will provide local authorities with clear data on the exact number, type, and location of every short-term let across Scotland. However, even from the limited data available, it is clear that the intensity of activity varies significantly from island to island.

### **Are there any existing design features or mitigations in place?**

- 2.24. At present there is no statutory regulation of short-term lets per se but there is a range of existing legislation that applies to short-term let accommodation.
- 2.25. There are also a number of trade bodies representing the sector, such as the Association of Scotland's Self Caterers and the UK Short Term Accommodation Association, both of whom have developed voluntary codes of conduct for their members, focussed on safety and quality.

### **Consultation**

- 2.26. The consultation process and outcomes are covered in chapters 1 to 7 of the 2020 consultation report.

### **Screening decision**

- 2.27. Our proposals for regulation are likely to have an effect on island communities which are significantly different from its effect on other communities (including other island communities). This is because the level of short-term let activity, and its impact, varies significantly by island. For example, Skye has a

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<sup>8</sup> Figures quoted in our research was based on InsideAirbnb data from May 2019 and is before the impact of the COVID-19 pandemic.



relatively high proportion of short-term lets, and longer tourism season compared with, say, Orkney.

2.28. Consequently, we consider that a full ICIA is required.

### **Island Communities Impact Assessment**

2.29. In the following paragraphs we have set out areas in which the licensing scheme and control areas may impact islands differently to mainland Scotland.

### **Licensing related costs (compliance and fees)**

2.30. Island communities may face increased costs in order to comply with the requirements of our licensing proposals. This may be through higher licence fees than urban areas due to rurality and less opportunity for economies of scale in many areas; although this is not necessarily the case for HMO fees, see below. It may also be due to the cost of implementing safety measures in order to meet the mandatory standards required to obtain a licence. For example, if a contractor was required to travel to an island to complete an electrical safety check, this may be more expensive than for urban, or even rural, mainland areas.

2.31. The majority of our mandatory licensing requirements relate to either existing legislation or good practice, that many responsible island and mainland hosts will already be following. In such cases, there will be little additional cost over and above the licensing fee. In the cases where there are significant costs, as discussed in the BRIA, these costs may be passed on in part or in full to guests. These additional costs are, arguably, more readily passed on to guests in closed system. For example, anyone letting out a cottage on Orkney will have to meet the same mandatory conditions and anyone wanting to stay in a cottage on Orkney will have to stay in a cottage meeting these conditions.

2.32. The cost of licence fees will be set by local authorities at a level to cover the costs they incur in setting up and running the licensing scheme. This is already the case for existing civic licence schemes, as well as HMO licensing. The below table sets out HMO licensing fees for island-based local authorities, and other local authorities where their area contains significant island settlements.

Local Authority	Licence Duration	Number of occupants <sup>9</sup>	Application Fee	Renewal Fee
Argyll & Bute	Up to 3 years	Up to 10	£848	-
Highland	Up to 3 years	Up to 10	£801	-
Na h-Eileanan Siar	Up to 3 years	Flat fee	£290	£220
North Ayrshire	Up to 3 years	Flat fee	£959	£716
Orkney	Up to 3 years	Up to 9	£440	-
Shetland	Up to 3 years	Up to 6 persons	£229	-

2.33. To put this in context, across Scotland HMO fees range from £229 (Shetland) to £1,906 (Glasgow). It is notable that the three local authorities covering islands-only areas<sup>10</sup> have some of the lowest HMO fees in Scotland.

2.34. Ultimately, the fees will be set by individual local authorities taking into account a range of factors, which include:

- geography and rurality;
- staffing and IT requirements, and any other existing overheads;
- accuracy of applications and numbers of objections and complaints;
- numbers of short-term let properties and turnover rates;
- the type of short-term lets being licensed (home sharing, home letting, and secondary letting); and
- the level of compliance and the inspection regime (e.g. physically inspecting all properties, a sample of properties, or accepting certification).

2.35. Further detail on licence fees and compliance costs has been set out in our Business and Regulatory Impact Assessment (BRIA).

<sup>9</sup> Many local authorities set fees based on number of occupants but some choose to have a flat fee structure.

<sup>10</sup> Na h-Eileanan Siar, Orkney and Shetland.

## **Seasonality**

- 2.36. A number of stakeholders highlighted that certain islands have much shorter tourist seasons than others, and asked whether licence fees would take this into account. We are not specifying the fees that local authorities should charge, as this will depend on the volume of activity in their area and their cost base. However, local authorities will have wide-ranging flexibility to vary fees by a number of parameters including size and type of short-term let and to offer discounts for low volume activity. This should be sufficient for local authorities to take seasonality into account when setting their fee structures, if they felt that would be appropriate because it varies across their area. Local authorities will need to be mindful to ensure that income from fees is sufficient to cover their costs in running the scheme.
- 2.37. However, where a whole local authority area, such as Orkney, has the same season, clearly this cannot be a determinant for Orkney in setting fees. As discussed above, the cost of fees is more likely to be capable of being passed on to guests on islands and the cost per booking is likely to be marginal in any consideration of which island to visit.

## **Island-specific safety considerations**

- 2.38. We are conscious that our mandatory requirements include elements such as gas safety inspections which may not be applicable to many island properties off the gas grid. Homes on islands are typically heated using fuel oil.
- 2.39. This was raised during one of our 2020 consultation workshops with local authority environmental health officers, in the context of whether or not to include unconventional dwellings within the definition of a short-term let. They suggested a general overarching requirement to ensure the accommodation was safe and noted that environmental health officers are capable of tailoring their inspections to the particular circumstances in each property. Where they are in any doubt, they would seek professional advice (e.g. from an electrician).
- 2.40. We will expand on this in guidance for local authorities, which we will publish in spring 2021.

## **Differing needs on different islands**

- 2.41. A number of stakeholders have asked how we will ensure our legislation accounts for the distinct needs of different islands. For example, they noted that Arran and Skye have housing pressures for workers due to high concentrations of short-term lets and second homes, whereas other islands do not.

- 2.42. We believe that our licensing scheme and powers to introduce control areas provide the right combination of national consistency and local flexibility that will allow local authorities to strike the right balance between tourism and economic benefits and community needs and concerns in their areas. Some local authorities may want to designate control areas in all or part of their area and might consider that some islands would benefit from such designation. Similar considerations apply in other urban and rural areas on the mainland.

### **Delivery**

- 2.43. Delivery of the licensing scheme, and any control areas will be carried out by local authorities.
- 2.44. Local authorities may wish to designate all or part(s) of their area as control area(s). However, this would require some form of consultation and notification to Ministers for approval prior to designation.
- 2.45. The licensing scheme will also be delivered by local authorities, although there will be a degree of national consistency as all local authorities must apply the mandatory conditions, primarily relating to safety.
- 2.46. Local authorities may also wish to add additional conditions to individual and/or all licences they issue in order to strike the right balance between the tourism and economic benefits and community needs and concerns in their area.

### **Monitoring**

- 2.47. Prior to COVID-19, there had been a period of significant growth in short-term lets over a few years:

*According to the secondary data analysis, as of May 2019, across Scotland as a whole there were 31,884 active Airbnb listings based on analysis of Airbnb listings data provided by Inside Airbnb. The research showed that short-term lets have continued to increase, with a three-fold growth in Scotland between April 2016, when there were just under 10,500 Airbnb listings in Scotland, and approximately 32,000 as at May 2019.<sup>11</sup>*

- 2.48. Collaborative economy platforms, such as Airbnb, have undoubtedly facilitated rapid growth in the number of short-term lets. However, it is not always easy to distinguish between new businesses coming to market and existing businesses moving to these platforms as a route to market. Much of the available data on short-term lets is limited to that provided by Airbnb or scraped data from sources such as InsideAirbnb.

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<sup>11</sup> Scottish Government research, 2019.

- 2.49. The licensing scheme will provide both local authorities and Scottish Government with accurate data on short-term let activity at a local and national level. The Scottish Government will publish an annual report on short-term let activity, aggregating data from local authorities, and closely monitor trends in data. We will closely monitor trends nationally and locally to determine if any further interventions are required.
- 2.50. Local authorities may wish to use data from the licensing scheme as part of the evidence base for the introduction of any overprovision policy or designation of a control area, although some may act sooner on existing evidence where there are obvious pressures.

### **Evaluation and Review**

- 2.51. The process of developing our regulatory proposals for short-term lets involved extensive engagement with individuals and organisations from communities across Scotland, including island communities.
- 2.52. Our independent research in 2019 also involved engagement with residents, local authorities and businesses on Skye.
- 2.53. Engagement with individuals and organisations from island communities across Scotland identified four impacts that were significantly different:
- a) licensing-related costs;
  - b) seasonality;
  - c) island-specific safety considerations; and
  - d) differing needs on different islands.
- 2.54. Consideration has been given to each of these impacts during policy development, and we believe that our proposals strike the right balance between consistency across Scotland in relation to safety and flexibility for local authorities to tailor their schemes to best suit the needs of their local areas.
- 2.55. In addition, the scheme will providing clear and comprehensive data on the location, and type of short-term let activity (home sharing or letting, or secondary letting).

### **Recommendations**

- 2.56. We consider that the legislation is appropriate for the whole of Scotland, including island communities, and offers considerable flexibility to local authorities on how it is implemented. We intend to work with local authorities,

not least in the preparation of guidance, as they work towards implementation so that we can facilitate the sharing of ideas and best practice. We hope this will be of particular value to island local authorities and local authorities with island communities.

- 2.57. The Scottish Government is prepared to take action in the next Parliament if we continue to see issues, or the data suggests that further interventions are required.