

## POLICY NOTE

### THE TOWN AND COUNTRY PLANNING (SHORT-TERM LET CONTROL AREAS) (SCOTLAND) AMENDMENT REGULATIONS 2022

#### SSI 2022/33

1. The Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 (“the Control Area Amendment Regulations”) are made in exercise of the powers conferred by sections 26B(5) and 275 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

#### **Purpose of the instrument.**

2. Section 26B was inserted into the 1997 Act by the Planning (Scotland) Act 2019. The effect of section 26B is to allow planning authorities to designate all or part of their area as a short-term let control area (“a control area”).
3. Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.
4. The Control Area Amendment Regulations amend the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 ([SSI 2021/154](#)) (“the Control Area Regulations”) to update the definition of short-term let and excluded accommodation so that they are consistent with the definition in the Licensing Order<sup>1</sup>.

#### **Policy Objectives**

5. The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.
6. The Licensing Order establishes a 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 as well as to assist with handling complaints effectively.
7. The Licensing Order complements the Control Area Regulations which make provision for local authorities to designate control areas. 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

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<sup>1</sup> The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (SSI 2022/xxx).

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.

8. The licensing scheme and control areas will be complemented by possible changes to taxation to make sure short-term lets make an appropriate contribution to local communities and support local services. The review of the tax treatment of short-term lets is being progressed by the Scottish Government separately.

### **The Control Area Amendment Regulations**

9. Planning permission is required for any material change of use of a building or land. Outside of a control area, it continues to be the case that it is for the planning authority to consider whether any change of use of a dwellinghouse is material and therefore requires planning permission on a case-by-case basis. In terms of section 26B of the 1997 Act, once a control area is designated by a planning authority, a change of use of a dwellinghouse to provide short-term lets will always require planning permission.
10. The Control Area Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas and allow planning authorities to consider applications for consent for change of use in relation to planning matters.
11. Regulation 2 of the Control Area Regulations sets criteria to establish what does or does not constitute a short-term let for the purposes of section 26B of the 1997 Act in addition to the criteria set out in section 26B(3) of the 1997 Act. It sets out exclusions around the provision of accommodation to family members, persons living in the property to provide work or services to the provider of the accommodation or a family member, and types of accommodation set out in the Schedule to the Control Area Regulations.
12. Regulation 2 of the Control Area Amendment Regulations aligns the definition of short-term let in regulation 2 and the schedule of the Control Area Regulations with the definition at article 3 and schedule 1 of the Licensing Order, insofar as it is relevant to the regulation of change of use dwellinghouses in terms of section 26B of the 1997 Act.

### Excluded tenancies

13. Section 26B(3)(a) of the 1997 provides that providing accommodation by means of a private rented tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) does not constitute a short-term let. Regulation 2(2)(b) has the effect the provision of accommodation by means of an “excluded tenancy” does not constitute a short-term let either. A definition of “excluded tenancy” is inserted into regulation 1(2) of the Control Area Regulations. Only prospective tenancies are relevant, so tenancies which can no longer be entered into, which are included in the Licensing Order, are not included here<sup>2</sup>.

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<sup>2</sup> Tenancies under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003) are also not excluded.

14. Student residential tenancies are excluded, but without reference to paragraph 5(3) of schedule 1 of the 2016 Act (c.f. the Licensing Order) as this refers to accommodation for which planning permission has been granted for use for housing students.

#### In the course of business

15. Regulation 2(3) adds the qualifier “in the course of business” to the definition of short-term let. As commercial consideration includes payment of money and benefits in kind, it would include goods arranged to be exchanged in lieu of money. The “in the course of business” test precludes arrangements which are not commercial in nature from being within scope of a short-term let.

#### Excluded accommodation

16. Regulation 2(4)(a) removes hotels, guest houses, boarding houses, hostels and aparthotels from the list of excluded accommodation for consistency with the Licensing Order.

#### *Hotels, guest houses, boarding houses and hostels*

17. Section 26B of the 1997 Act applies only to the change of use of a “dwellinghouse”. It is envisaged that some hotels, guest house, boarding houses or hostels may also comprise a dwellinghouse within part of the premises. The changes to the definition of excluded accommodation will mean that a change of use of such a dwellinghouse within a control area to use for the purpose of providing short-term lets will not be excluded from the scope of section 26B of the 1997 Act.
18. The addition (see paragraph 22 below) of premises licensed under the Licensing (Scotland) Act 2005 (“the 2005 Act”) to the list of accommodation excluded from the scope of the Control Area Regulations will exclude most dwellinghouses on the premises of hotels. For the small minority of hotels which are both unlicensed and have dwellinghouses on the premises: the use of these dwellinghouses to provide accommodation to workers is excluded by regulation 2(1)(d) of the Control Area Regulations; the use of these dwellinghouses to provide short-term lets would be within scope but, in most cases, we would expect that these dwellinghouses would already have planning permission for use for this purpose. In the case that a dwellinghouse is not excluded for any of the preceding reasons, it is the policy intention that it is within scope of the Control Area Regulations.
19. Similar arguments apply as to hotels with regard to the treatment of dwellinghouses (other than the only or principal home of the landlord or occupier) on the premises of guest houses, boarding houses and hostels.

#### *Aparthotels*

20. Serviced apartments comprising an aparthotel (as defined in the Control Area Regulations) would normally be expected have planning permission for that change of use; they should not be excluded from the scope the Control Area Regulations.

#### *Residential accommodation*

21. The definition of residential accommodation at paragraph 1(e) of the schedule to the Control Area Regulations is amended by regulation 2(4)(a)(ii) to align with the definition used in the Licensing Order.

#### *Premises licensed under the 2005 Act*

22. Premises licensed under the 2005 Act are added to the list of excluded accommodation by regulation 2(4)(a)(iii) to align with the Licensing Order. This has the effect of, for example, excluding dwellinghouses on the premises of hotels where they are already licensed specifically to offer accommodation under the 2005 Act.

#### *Interpretation*

23. Regulation 2(4)(b) adds to and amends the interpretation of various terms in the schedule, to align with corresponding terms in the Licensing Order.
24. For more background information on the definition of short-term let, see the Policy Note for the Licensing Order.

#### **Consultation**

25. In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The 2019 consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The [reports on the 2019 consultation and research](#) were published in October 2019.
26. In January 2020, Kevin Stewart MSP, Minister for Local Government, Housing and Planning, [announced plans to regulate the short-term let sector](#) in the Scottish Parliament. In September 2020, the Scottish Government launched a second public consultation (“the 2020 consultation”) on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a licensing scheme and planning control areas for short-term lets in Scotland* in December 2020.
27. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the Control Area Regulations in chapter 6.
28. The Scottish Government laid the 2020 Licensing Order and Control Area Regulations in December 2020. The Control Area Regulations were approved by the Scottish Parliament, and came into force on 1 April 2021. The 2020 Licensing Order was withdrawn in February 2021 in response to concerns raised by stakeholders and members.

29. A stakeholder working group was established in February 2021 to develop guidance on the licensing scheme and planning control areas, and to consider whether any changes to the 2020 Licensing Order were needed. The stakeholder working group met in February, March and May 2021<sup>3</sup>, prior to the publication of a revised Licensing Order and draft Business and Regulatory Impact Assessment (BRIA) for consultation from 25 June 2021 to 13 August 2021. This third public consultation (“the 2021 consultation”) was accompanied by draft guidance on the licensing scheme and control areas for hosts and operators, platforms and local authorities. *Planning Circular 01/2021: short-term let control areas* was also published on 25 June 2021<sup>4</sup>, allowing planning authorities to progress with plans to designate control areas.
30. The Scottish Government published its report on the 2021 consultation in November 2021. This report can be found on the Scottish Government website<sup>5</sup>.

#### *Issues specific to the Control Area Amendment Regulations*

31. The 2021 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of the Licensing Order, including the definition of short-term let (which is relevant to the Control Area Amendment Regulations) and the BRIA.

#### **Impact Assessments**

32. The Scottish Government has conducted pre-screening or full impact assessments, for: Children’s Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection (DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA). These can be found in the 2020 consultation report. They will be updated and published in early 2022, in parallel with revised and updated guidance documents.

#### **Financial Effects**

33. An updated *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published in November 2021 to accompany the laying of the Licensing Order and Control Area Amendment Regulations. The BRIA is attached as a separate document and can be found on the Scottish Government website.
34. The cost of a planning application (currently £401)<sup>6</sup> is not affected by the Control Area Amendment Regulations.

Scottish Government  
Directorate for Local Government and Communities  
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<sup>3</sup> The minutes of the stakeholder working group meetings, more information about the working group and a list of members can be found here: Short-Term Lets Stakeholder Working Group - gov.scot ([www.gov.scot](http://www.gov.scot)).

<sup>4</sup> [Planning circular 01/2021: short-term let control areas - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/short-term-lets/)

<sup>5</sup> All Scottish Government consultation and research documents on short-term lets from 2019, 2020 and 2021 and impact assessments can be accessed from [www.gov.scot/publications/short-term-lets/](http://www.gov.scot/publications/short-term-lets/)

<sup>6</sup> Set in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120).