

## Andy Wightman MSP: response to Scottish Government consultation on short-term lets - licensing scheme and planning control areas

### **1. Please identify any issues with the proposed definition as set out in chapter 4, and how to resolve them.**

In my response to the previous Scottish Government consultation, I called for a robust definition of short-term lets. The definition provided in chapter 4 is clear and helpful. However, there are a few issues I would like to raise that seem important in order to ensure that it is as precise as it needs to be.

4.1: The glossary of terms starting on page 7 defines a host or licensee as “a person or company providing accommodation for short-term letting, including commercial landlords”. What is the definition of “providing” here? In a situation where a property owner has signed a contract with a letting agency for example to manage the whole letting operation, who is providing the accommodation? This is a fundamental question because throughout the consultation paper, it is not clear who is responsible for applying for a licence.

4.7: Following on from my observations above, the applicability of criteria e) at 4.7 is ambiguous since a host that is a company cannot have family relationships. Is this criteria only to be applicable where natural persons are hosts?

In relation to criteria d) *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)*, is this intended to encompass for example farm stays, where a person might swap accommodation for provision of services (in this case farm labour)? It is clearly intended to encompass home swapping (*reciprocal use of a property*). I question whether encompassing either or both of these types of activity is proportionate.

4.8 As the consultation document notes, ‘medium-term lets’ will be captured by this definition. It is right that lets of more than 28 days that are not private residential tenancies should be safe in relation to fire, gas and so on. People needing accommodation for work, for example, should be protected.

However, I am aware that many operators of serviced accommodation where flats may be let for some months at a time for workers employed in, for example, Edinburgh on an IT contract with a financial services company, are being given private residential tenancies. Given that these provide greater levels of protection to tenants, it seems odd to be insisting that such lets be governed by the short-term let regime when tenants and landlords are already content with the PRT regime.

4.10: The definition excludes unconventional dwellings such as caravans. This means that seasonal workers on farms who stay in a caravan will not be protected by the licensing regime, whereas seasonal workers who share a house or flat will be. I understand that this anomaly may simply have to be lived with.

### **2. Please identify any issues with the proposed control area regulations as set out in chapter 5, and how to resolve them.**

5.8: I agree that properties used for secondary letting should be able to revert to residential use without planning permission.

5.11: I agree with the removal of permitted development rights within short-term let control areas.

5.14: I do not agree with requiring ministerial consent for creating a short-term let control area. Establishing a control area should be within the exclusive power of the local planning authority.

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### **3. Please identify any issues with the proposed licensing order as set out in chapter 6, and how to resolve them.**

6.1: Does this mean that every individual property will require a licence or that each host will require a license irrespective of how many properties they let? In other words, will a person operating 30 short-term lets require 30 licences?

6.6 Planning permission is listed as a self-declaratory mandatory condition in Annex C. Checking whether a property has planning consent to be operated as a short-term let is straightforward, and there is no obvious reason why this should not be a verifiable condition.

6.12: I agree that short-term lets should meet the Repairing Standard.

6.34: I agree with the mandatory conditions set out. However, I would urge that should also include the Title Number (Land Register) or Search Sheet Number (Register of Sasines). This is important because there are title conditions that prohibit the commercial use of domestic properties. Although this is not a matter that can be regulated by local authorities, it would be useful for neighbours in the same block and subject to the same conditions to be aware that another property is proposing to breach their title conditions. Indeed, I would go further and make it a mandatory licensing condition that there are no title conditions preventing a property owner from using a dwelling for commercial purposes.

The mandatory condition d) taxation appears a bit of an oddity. It is not an obvious evidential condition and cannot easily be verified unless an applicant is asked specifically that they are in compliance with (rather than merely aware of) specific tax obligation with appropriate statutory references.

6.35: The obligation in 6.34 to display the licence number on listings or adverts is on hosts. However, 6.35, extends the obligation to display this information to any “platform, holiday letting agency or channel manager”. I question whether this is within devolved competence given the reservation of business associations and whether regulations could require a company based in California to display a licence number.

6.76: The licence application should also include the Title Number (Land Register) or Search Sheet Number (Register of Sasines).

6.75 – 6.79: These sections imply that any host must apply for a separate licence for each property they operate. As per my previous point, clarity is needed.

6.80 – 6.83: These sections contain references to HMO licensing and landlord registration. It would be helpful to clarify how these areas and short-term let licencing interact. Could someone who provides misleading information in an application for a short-term let licence, has a licence revoked or has a licence application turned down could also be deemed not a fit and proper person to hold a HMO licence or be on the landlord register? Second, how will the licencing regime interact with the Private Housing (Tenancies) (Scotland) Act 2016? If a tenant with a private residential tenancy is evicted on the ground that the landlord wishes to use the property as a short-term let, is that relevant information for the fit and proper person check?

6.139: The register of short-term let hosts must be open data. It should also be future-proofed, so should be technically ready to be incorporated into SCOTLIS – containing UPRNs as well as URNs.

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Additionally, other countries that have introduced short-term let licences have experienced problems with fake licence numbers appearing on booking platforms. Creating a new numbering system with fraud prevention measures helps. However, without a requirement for platforms to check if the numbers are real, or a process by which local authorities can check numbers are real, there will be fake numbers. Ensuring the register is open data helps. Even better would be an open register with an API that booking portals can make use of to automatically check licence numbers.