



Short Term Lets: Consultation on a regulatory framework for Scotland

16 July 2019

Comments from the Cockburn Association on the Scottish Government consultation paper.

Background and Executive Summary

The Cockburn Association welcomes this consultation and calls for urgent action to address the problems associated with Short Term Lets (STL) in Edinburgh. Our comments focus exclusively on the impact in Edinburgh, which is our primary area of interest.

The untrammelled use of whole properties for short-term holiday and other accommodation is a serious issue in Edinburgh and some other parts of Scotland. Many cities across the world have experienced disruption to housing markets and community amenity by the expansion of STL provision.

We fundamentally disagree with the proposal in para 4.81 bullet point 3 of a variable seasonal system for Edinburgh as outlined. The crisis in this city is due in part of over-tourism and the impact that this is having on the City overall, and especially on housing stock in the city centre. There is strong evidence to show that STL are displacing both normal letting and owner occupation stock, leading to significant and damaging shortages of housing for residential need. Instead the system should be less permissive during periods of large tourist demand. In Edinburgh, tourism extends through most of the year. This proposal would render any benefit of proposed regulatory useless to this City.

We believe that the secondary letting of whole properties is more disruptive than swapping (e.g. an exchange of houses between two families) and sharing (such as the letting of a spare bedroom to a student or occasion worker). We also believe that tenements should be distinguished from detached or semi-detached properties due to their communal nature. If permitted at all, any licensing of STL in tenements should have other owners' consent and a threshold put in place to avoid over-dominance of STL in any given stair.

We support the introduction of a registration scheme for all STL and a licensing system for secondary lets (whole property lets). Safety standards should be like those outlined in the Housing Act for rented property for secondary lets

We can see some benefit in the proposed Short Term Let Control Areas proposed in the recently passed Planning Bill. However, we are still of the view - supported by recent enforcement decisions by the Scottish Government - that secondary letting entails a Change of Use to either Class 7 or Class 11 of the Use Classes Order. As part of this process, Scottish Government should issue suitable planning guidance.

Our comments cover most of the 23 questions asked in the consultation document.

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 believe that this is a sensible distinction. House swapping for holiday purposes is usually short-term in duration and should not be confused with secondary letting which is a commercial activity. Some distinction might be made between those who operate 2 or more secondary lets, and those who have a holiday or second home but choose to let it out when not in use. However, in practice this could be difficult and is open to abuse.

From our perspective, whole property or secondary letting is the main issue that needs to be regulated and especially when operated on a scale beyond letting a second or holiday home.

We see less of an issue with the letting of a spare bedroom, which is a sensible arrangement and for some, a crucial enabling component in entering into the housing market.

Consideration might also be given to emerging accommodation issues, such as hutting. The Scottish Government have supported the expansion of huts across Scotland and consideration to folding the letting of these into this framework should be made.

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.

Indeed. The Cockburn believes that there is a strong need for such distinction especially for tenement properties. There should be a presumption against STL in tenemental properties where the introduction of commercially let properties can have a disruptive impact on the communal nature of this type of building. However, this presumption might be lifted if most individual property owners agreed with such a use. Policy recommendations for local authorities should be development – e.g. no more than 50% of properties in a common stair can be used for whole property letting.

Question 4

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

Overall, we agree with the conditions set out in para 3.11 in developing a definition of STL. With condition 'a' (28-day cumulative threshold), we support this as it is consistent with the concept of temporary use of land or a temporary change of use of land in planning legislation. We also agree with 3.13 in that the purpose for a guest staying is not a relevant regulatory matter. Similarly, we agree with the proposed list of exclusions found in para 3.14.

Question 5

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

The points raised in para 4.8 are a good summary of the main impacts. In addition, there is some evidence in Edinburgh that STL are displacing mainstream letting thereby removing much needed rental stock from the market. Similarly, evidence from property experts has shown that up to 75% of residential accommodation in the city has been sold to purchasers outside of Scotland. Whilst some of this will be parents investing in student accommodation for children, much of it is purely investment activity with the STL providing an immediate income stream.

There is a concern about related issues of insurance and Title Deeds, which might restrict the use of a property for STL. The implications for tenements and tenemental properties is more acute in the event of major fire or flood if one's insurance is null and void because of unauthorised use.

Question 6

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

We have not explored this further.

Question 7

Do you have any comments about the impact of short-term lets on the housing market?

We believe that STL have a significant impact in Edinburgh on the housing market. In a BBC report "*Housing crisis: are cities unaffordable?*" (BBC news, 30 April 2019), between 2010 and 2018 Lothian region, including Edinburgh, saw a 39.8% rise in the average private rent for a one-bedroom property; a 42.3% increase for two-bedrooms; and 46.6% for three-bedrooms, according to Scottish government figures.

A report by property experts Grants in 2018, which appeared in The Times, said "In Edinburgh, curiously, 75% of buyers are from outside Scotland. Either Edinburgh investors are going elsewhere or they are being beaten to it by outsiders. In the last 12 months, there has been an increase of over 30 per cent of buyers from London or overseas and we expect this growth to continue." The article also reported that the number of England-based landlords registered with Scotland's leading tenancy organisation had risen from 260 in 2012 to 1,388 in 2017. It goes on to say, "This has compounded fears that investors are pushing first-time buyers out of the market, especially in popular areas such as Easter Road and Leith Walk where prices have risen by as much as 33% in a year."

The exponential growth of short-term holiday lets, powered by the disruptive technology company Airbnb has added to challenges. Another BBC report *What the Airbnb surge means for UK cities* (29 April 2018, BBC news), indicated that listings have doubled in Edinburgh since 2016, rising fastest during the Edinburgh Festival Fringe. It goes on to say that just over 12,000 properties are listed in Edinburgh, but the effect is greater than in London as this accounts for a much bigger proportion of the city's property and population. Greatest pressure is within the World Heritage Site, with the Old Town taking the biggest hit.

Increased foreign and out-of-Scotland investment in residential property; significant inflation on traditional tenancy rents; exponential increase in short-term letting,

mostly for tourism or non-residential purposes. Added to this the significant expansion of student residences and hotels, it is hard not to see a crisis in identity.

Question 8

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

Firstly, it is important to make a distinction between Planning law and other frameworks for the regulation of buildings. In some instances, they overlap and in others they do not. For example, the Building Regulations for fire management are different for a B&B establishment than for a hotel. The Housing Act imposes risk mitigation measures (e.g. electrical and gas inspections). All of these have important implications for STL.

Secondly, it is important to recognise that whole property lets are also covered by existing planning legislation. Successive dismissal of enforcement appeals has established that a STL for holidays purposes is sufficiently different in use that the Sui Generis use of a property as residential has changed and is Class 11 (Assembly and Leisure) or Class 7 (Hotel and Hostel). The Scottish Government should provide clear and unambiguous guidance on this issue. In this regard, we note that Class 9 (Houses) offers a qualification of use “as a bed and breakfast establishment or guesthouse, where at any one time not more than 2 bedrooms are, or in the case of premises having less than 4 bedrooms 1 bedroom is, used for that purpose” (Town & Country Planning (Scotland) Use Classes Order 1997). This provides clear guidance on sharing where the owner remains as a resident. Sharing is not, in our view, a significant issue but any licensing or regulatory scheme should still record it for data management purposes.

Planning law is clear where a change of use takes place. Important in consideration of STLs, any material change over a duration of less than 28 days in any given year does not require a Change of Use application. Thus, a whole-house swap for a three-week long holiday sits within the existing framework and does not require a Change of Use. However, the challenge sits when a property is acquired either for the specific purpose of short-term letting, or a change in circumstances of an owner takes place resulting in a property being used for STL purposes. It is an essential principle of planning law that regulation applies to land, and not to people. With that said, it is possible for temporary consent to be granted. Suitable guidance should be developed to explain this.

The Planning Bill recently passed by the Scottish Parliament allows planning authorities to designate areas as Short Term Let Control Areas, whereby “the use of a dwellinghouse for the purpose of providing short-term lets is deemed to involve a material change of use of the dwellinghouse” provided the property is not a Private Residential Tenancy or the property in whole or in part is the only or principal residence of the landlord or occupier. Guidance needs to be prepared as a matter of urgency for planning authorities and communities.

Furthermore, it is essential in our view that Local Development Plans address STLs as a key policy issue for planning management. Guidance on this should be prepared by Scottish Government’s Chief Planner as part of this exercise. We would advocate that, in addition to individual property regulation, an area-based approach be considered with clear thresholds for STL in defined areas. This could compliment the Short Term Let Control Zones proposed in the latest Planning Bill (as passed). A maximum threshold could be imposed for streets (no more than 10% of properties can be used, for example). This should be considered in the context of other tourist or transient person accommodation including hotels, guest houses and B&Bs.

Question 9

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

Areas designated a “Short Term Let Control Area” should be required to put in place adequate enforcement and management processes.

All registered STL should agree to a Code of Conduct seeking to minimise anti-social behaviour. This might include access to contact details of owners/managers and a framework for addressing complaints including recommended time spans for dealing with them.

We accept that a balance needs to be struck between the right of people enjoying a property and the right of neighbours and others to not have their amenity affected. A degree of tolerance is needed but currently, the onus of responsibility rests entirely on affected parties to prove a sustained impact on their amenity. A review of the effectiveness of current powers to deal with anti-social behaviour is therefore recommended.

Question 10

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

We agree on that communities and residents need to be aware of systems. Most local authorities have processes in place to aid reporting. We recommend that any regulatory system require STL owners/hosts to provide full contact details to all relevant neighbours so that there is a direct channel of communication available. Appropriate Codes of Conduct should be prepared. Sanctions need to be proportionate but clear and should include the concept of a “Fit Person” meaning repeated offences and a demonstratable poor attitude towards local communities and residents can result in a licence being withdrawn.

Question 11

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

We agree that there should be parity in health and safety regulation for all STL as per the Expert Panel report.

About key safes, we believe that additional regulation for tenement properties is required due to the communal nature of common stairs. Consent of all owners/occupiers in a stair should be sought before any key safes are fixed to any part of the building.

Question 12

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

Question 13

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

Question 14

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

Question 15

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

We have no specific response to questions 12- 15. However, we note that the rules regarding taxation and rates includes period of availability as well as periods of actual lets to qualify. This would appear to be different from the emerging regulatory picture coming from this consultation. The Barclay review suggests a property should be available for use for 140 days in the year and let for 70 days to be exempt from Council tax and eligible for non-domestic rates. A restriction of 90-days maximum as suggested elsewhere sits uneasy with this. An alignment of proposals would be beneficial.

Question 16

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

The proposed Design Principles are too focused on STL providers. A key requirement should be the fundamental need to protect residential amenity, viability and community cohesion. Whilst this might form part of the STL Control Area guidance framework, it is essential that no community is impacted negatively by the uncontrolled commercial letting industry. So, whilst it must be fair across the hospitality sector (5) it must be fair to the local community and residents needs as well.

This is completely missing from the proposals and needs to be addressed. We feel that the vest interests of the STL industry has been given too great a weight in this consultation paper.

Question 17

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

The consultation is not clear on what is proposed, other than noting that there are several ways to introduce a regulatory framework. It is therefore difficult to comments on the proposed scope.

Overall, the Cockburn has suggested that amendments to the existing Housing Act would be the most expedient way forward, together with statutory guidance (for Control Areas) and voluntary guidance.

As already stated, additional guidance is required on how the current Planning system should be applied. This includes temporary use, Changes of Use, and an indication of what Use Class STL are to be considered.

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?

We accept that different parts of Scotland will have different regulatory requirements when it comes to STL. As suggested in 4.65, the responsibility for conforming to any local regime should sit firmly with the host.

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?

We believe that the three options are mutually-inclusive and suggest that properties should be registered and licensed. However, if it were a choice, a licensing system provides more control and is therefore the preferable option. In terms of market-based mechanisms for control, this could be achieved in conjunction with a licensing system.

We support the thinking in para 4.73 in that sharing has a less significant impact on the housing market and community/amenity issues than secondary letting. For some individuals, access to the housing ladder might require the opportunity to “let out the back bedroom”. A registration scheme in itself might be suitable for this.

We would be cautious about the ancillary advantage of revenue support for local Councils as a driver for regulation.

Question 20

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

We fundamentally disagree with the proposal in para 4.81 bullet point 3 of a variable seasonal system for Edinburgh as outlined. The crisis in this city is due in part of over-tourism and the impact that this is having on the City overall, and especially on housing stock in the city centre. There is strong evidence to show that STL are displacing both normal letting and owner occupation stock, leading to significant and damaging shortages of housing for residential need. Instead the system should be less permissive during periods of large tourist demand. In Edinburgh, tourism extends through most of the year. This proposal would render any benefit of proposed regulatory useless to this City.

We agree with the suggestion in para 4.73 that a higher regulatory standard & charge be applied to whole property letting rather than sharing or swapping. With that said, checks would need to be put in place to ensure that this is not abused.

In terms of a limit in the number of days available for secondary letting, we would firstly point to comments made elsewhere regarding temporary changes of use. Here, 28 days provides a flexible framework for casual letting.

We have some reservations about the 90-day proposal, especially in the context of 4.81 Point 2 where platforms are required to notify hosts when this limit has been reached. This has been abused in cities like London, where a host simply transfers letting arrangement to another of the main digital or traditional platforms that now exist. It must also be acknowledged that some hosts might develop their own networks for letting (e.g. past customers, direct marketing, etc).

If there is to be a threshold limit, it must be the responsibility of the host to adhere to it. The regulatory framework should allow for suitable sanctions for non-compliance, and a “Fit Person” process should be put in place, whereby a license can be withdrawn from hosts who are repeatedly unwilling to conform to the framework (akin to alcohol licensing).

Question 21

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

We can see the logic in distinguishing between commercial hosts and individuals who might have a second home or investment property which is let.

As a starting point, we would advocate a low threshold for make this distinction, with a small-scale host being an individual or family who in addition to their main or principal property own one other property that they might let. Two or more additional properties should define the host as a “commercial host” although there might be some qualifying criteria around this (e.g. if a small host is bequeathed a property, they might be given a year or so grace before commercial threshold applies).

Question 22

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

Both owners of STL accommodation and managers/factors should be subject to enforcement and sanctions.

Question 23

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

The Cockburn Association convened a mini-conference on this subject, titled, *The AirBnB phenomenon - Impact and Opportunities of the Collaborative Economy and Disruptive Technologies: how should Edinburgh respond to short-term letting?*. A Conference paper was produced and can be found at <http://www.cockburnassociation.org.uk/blog/59/41/The-AirBnB-Phenomenon/>

It is clear that the short-term letting industry is unregulated, with few real controls. It is clear that, in parts of Edinburgh, the proliferation of “AirBnB” is having a significant impact on resident amenity and community cohesion. Finally, it is clear that short-term letting is important and needed, both for tourism purposes but also wider business support.

There is some evidence of displacement from the assured tenancy market with the introduction of new regulations. However, the scale and medium-term impact is unclear.

The Cockburn Association believes that effective regulation is now an imperative and is required as a matter of urgency.

Short-term lets must be regulated. The evidence shows that this is the position adopted by other major tourist cities. Without regulation, there is a risk that the character and demography of areas of Edinburgh will be changed to the detriment of the qualities that make the city special, and without the approval of residents.

Regulation needs to be put in place urgently. Though more information is needed on the components of the dramatic increase revealed by Rae (2017) in properties listed on Airbnb, it seems beyond doubt that not only is change taking place, but the rate of change is rapid and the scale is significant. Market equilibrium is not instant or constant. The time to act is now.

A system of licensing offers the most pragmatic way forward. The recent and relatively recent licensing and regulation regimes for landlords and for Houses in Multiple Occupation provide a point of reference. The Scottish Government should address the issues revealed in this report and

set a regulatory framework. The Housing Act could be amended through secondary legislation or statutory instrument to provide the licensing powers. **Speed is the key**, because the need is now, so whichever route is fastest should be pursued.

Proof of insurance permitting short-term letting should be part of the licensing regime, except for detached properties. In addition, other safety certifications should be required, consistent with a standard Short Assured Tenancy. These measures would provide reasonable protection for all parties.

In tenement properties, consent from a majority of owners (excluding the proposer) should be required before a licence is granted. Tenements are special habitats: their care, maintenance and occupancy are vital to the environmental, social and economic sustainability of Scottish cities, and, in turn, this requires mutual tolerance amongst those in the tenement.

The Use Classes Order should be amended to remove ambiguity, while providing a proportionate response. Short-term letting of an entire residential unit for more than 90 days in a calendar year, regardless of the platform or agency used, should be deemed to be commercial use, requiring planning permission. This would allow the “sharing” idea as originally conceived to operate without the need for planning permission.

Monitoring is needed. In particular, the impacts of the measures proposed here need to be assessed, and the findings should influence a review within a two year period.

The Cockburn Association
Trunk's Close
55 High Street
Edinburgh
EH1 1SR
www.cockburnassociation.org.uk

The Cockburn Association is a registered Scottish Charity (SC011544)

Any correspondence concerning this paper should be sent to Director@cockburnassociation.org.uk