

# **Short term lets: Consultation on a Regulatory Framework for Scotland**

Shelter Scotland  
response

July 2019

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## SUMMARY

Shelter Scotland recognises the popularity and value of short term lets to the Scottish economy. At a time when people in Scotland are experiencing a housing emergency, with rising homelessness, insecurity and affordability for thousands of families, it is vital that every aspect of our housing system is considered as a whole. Short term letting by individuals of their main or second home - including the letting of rooms and whole houses - has long played a part in our housing mix. In recent years the emergence of digital platforms such as Airbnb has transformed the accessibility and scale of sector whereby homes are let less and let more. In our view, left unchecked, the short term lets market now threatens the health of our housing system as a whole.

Shelter Scotland believes that meaningful regulation and monitoring of the sector is overdue and calls on Government to act to ensure proportionate regulation by learning lessons from other European jurisdictions. Ministers should act to protect people in housing need from any further hollowing out of Scotland's housing system.

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# QUESTIONNAIRE RESPONSES

## **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 and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation**

Shelter Scotland urges the Scottish Government to consider the negative impact that short-term letting growth is having on the housing market in some areas and the chronic lack of housing supply. In 2018 there were 12,000 Airbnb hosts in Edinburgh – up from 9,000 in 2017 and 6,300 in 2016, and this sharp rate of growth should be considered in the context of a chronic lack of housing in Scotland as additional data on the impact.

Shelter Scotland believes that the sharp increase in short term lets is having an adverse impact on housing supply across Scotland, but crucially in saturated housing markets like Edinburgh where demand already exceeds supply. It is very difficult to track how much residential housing (either owner occupied or for private rent) has been transferred to short term letting. However, evidence on rising rent levels and private rental markets (such as figures on ‘time to let’ for private rentals), as well as direct insight from communities suggests that there is a negative impact on the housing market in some areas with a displacement of residential accommodation to short let accommodation.

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

Yes, a regulatory framework should distinguish between sharing i.e. whether a whole property is being let or part of a property e.g. a spare room because the impact on the supply of housing is different. Of Airbnb’s 2017 listings, 55% were renting an entire home, 43% a room. Short term letting is no longer solely part of a wider “sharing economy” as it was set out to be. Instead, the majority of properties are being rented whole and on a longer-term basis (i.e. not just for a few days at a time), leading to a reduction in residential accommodation.

Shelter Scotland believes that letting out a room/part of a property should be subject to less regulation than letting out an entire property – since this has a lesser impact on the reduction of housing in Scotland. As the consultation paper describes, this is amateur activity contrary to running a business of short term letting. It is the latter which is directly limiting the housing available for residents across Scotland, and as a result driving up rents in the private sector. Heavily regulating properties that are rented out for sharing/swapping will not address the

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issue of dwindling housing supply and therefore any regulatory framework should make a distinction.

Any regulation must avoid creating further incentives for short term letting, since this could have an adverse effect on housing supply in Scotland's already struggling climate. Stronger regulation and licencing should be imposed on whole property hosts, as opposed to hosts renting a spare room/part of a property when "swapping". This has the potential to limit the number of whole properties in the city being let and protect other occupants in the neighbouring units who have been victim to noise and antisocial behaviour by frequent guests.

**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, a distinction should only be made for the way in which a property is used instead the focus should be on empowering local enforcement of existing laws to protect communities from anti-social behaviour.

Shelter Scotland is anecdotally aware of antisocial behaviour and noise complaints in the stairs of tenement buildings which contain a number of frequently used short term lets. Shelter Scotland believes that any regulation on noise and antisocial behaviour should be consistent across all property types.

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

Shelter Scotland broadly supports the proposed definition of short term lets set out in the consultation paper.

Condition B states that a property must be let at least once for a period of less than 28 days. Shelter Scotland supports this definition, and its policy intention to recognise short term lets within the context of the new Private Residential Tenancy (PRT). However, the Private Housing (Tenancies) (Scotland) Act 2016 Schedule 1 states that a tenancy cannot be a PRT if it is a holiday let – more clarity is needed on what is defined as a holiday let. There are holiday lets surpassing 28 days which at present, wouldn't be covered by either short term lets regulation or PRT protection.

In line with this, Shelter Scotland believes that condition B should be amended to mean that the accommodation had been let at least once for a period of less than 90 days – as is the case in other cities regulating short term lets – rather than the current 28-day limit. This would ensure that short term lets running over a month – as is the case with many lets during the Edinburgh fringe festival for example – are encompassed by the definition.

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

Shelter Scotland has concerns about the growing prevalence of short term 'holiday' lets in some areas of Scotland. These are shared by other organisations, communities and political parties across the country. Short term letting has seen a significant growth in recent years following the rise of online platforms such as Airbnb. This sudden growth means that the sector is largely unregulated – as is the removal of residential housing from the system.

Short term lets were intended to give people visiting a town or city greater flexibility, and the experience of "living as a local" rather than a traditional hotel. The idea was to allow people to rent out spare rooms in their homes as part of a wider sharing economy. However, today over half of short term lets are being marketed as an entire property rather than a spare room. Shelter Scotland is aware of anecdotal evidence that short term lets are impacting long term residents and communities, through noise pollution and the erosion of communities. As a housing organisation, Shelter Scotland has significant concerns about the impact of the growth of short term lets on the supply of housing.

Some areas are affected much more by this than others, namely those with high tourist numbers and already pressurised housing markets. Shelter Scotland does not dispute the economic benefits that short term letting brings to both individuals and wider Scotland, and the flexibility the model offers to tourists, transient workers and other groups, but these come at a price. Scotland simply does not have enough homes to meet demand, particularly in already saturated housing markets like Edinburgh. Evidence shows that there are 53 residents to each Airbnb let in Edinburgh. This concentration surpasses other cities: London, New York, Berlin and Barcelona. The figure is almost four times greater than that of London, where there is an Airbnb listing for every 160 residents. This is in a city where demand for housing already drastically exceeds supply.

Evidence also suggests that the growth of short term lets is having an adverse effect on the housing stock available to those looking for a permanent home, this chronic lack of choice is pushing rents up. There is a fear that some would-be private landlords choose to move to the short-term letting market in the hope this will be more lucrative. Scotland is in the grip of a housing crisis, there is already a shortage of housing. If short term lets continue to grow at their current rate, and building stagnates, this crisis will grow too.

Other complaints range from the maintenance of communal stairs, which are largely left to the long-term residents to manage as opposed to absent landlords, to excessive noise, as well as the loss of a sense of community in areas which once housed long term tenants. This is a particular problem in city centre

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tenements, which many argue are not designed to cater for regular comings and goings of guests.

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

No.

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

Shelter Scotland is seriously concerned that short term lets are stripping residential housing from Scotland's already limited stock at a rate that building cannot keep up with. Scotland does not have enough homes to meet demand, and if short term let growth continues at its current rate with more homes removed from residential stock – particularly in already saturated housing markets – rents and house prices will continue to rise, meaning more households will struggle to afford their housing costs.

It is hard to quantify the exact impact that a growth in short term letting has had on Scotland's housing availability due to a lack of evidence. That said, there are a number of indications which suggest that short term letting is putting increasing pressure on already saturated markets. There is agreement across the sector that the growing trend has an adverse effect on the supply of residential housing, particularly in places like Edinburgh where demand already exceeds supply.

The chronic shortage of affordable housing in Edinburgh is well evidenced. Shelter Scotland, CIH Scotland and SFHA research commissioned in 2016 found that an affordable housing requirement in Scotland of 12,014 dwellings per annum over five years would be needed to begin tackling a shortage of homes. It is important to note that this is just an initial step, decades more building is needed to address the current shortage. A further 17% growth in households is expected between 2012 and 2037, we need more affordable homes built long past 2021 to ensure there is a home for everyone.<sup>1</sup> The existing housing shortage risks being exacerbated by a growth in the short-term letting sector.

The sharp rate of growth in short term lets in saturated housing markets like Edinburgh is extremely worrying and will directly increase rents and house prices for households looking for a permanent home, as with any removal of housing from the system. We have already seen the impact of a chronic lack of housing supply which is pushing up rents and house prices: 15 out of 18 areas of Scotland saw increases in average 2-bedroom private rent levels between 2017

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<sup>1</sup> Shelter Scotland, CIH Scotland & SFHA (2016) [Affordable Housing Need in Scotland](#)

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and 2018 – peaking at an increase of 6.5% in the Lothian region. In addition, the average house price in Scotland went up by 75% between 2003 and 2013. The human cost of this is individuals struggling to find housing that they can afford that meets their needs, and to cover their housing costs on an ongoing basis – resulting in arrears, other debts, and potentially eviction and homelessness. In fact, the main reason people came to Shelter Scotland for support last year was because they were struggling to pay or afford their housing costs. An increase in short term lets – and subsequently, rents – could negatively impact the ability of households to afford their home.

Scotland is in the grip of a housing crisis, there is already a shortage of housing. There is a fear that some would-be private landlords choose to move to the short-term letting market in the hope this will be more lucrative. The private rented sector is an integral part of Scotland's housing system which is increasingly catering for households on lower incomes or those who would previously have used social housing. Any displacement of private rented accommodation into short term letting is a significant cause for concern. With more owners looking to Airbnb and other short-term letting options, rather than renting properties longer term or selling their home, households are being left with limited options when finding a home. This could lead to some households taking on tenancies they cannot afford due to a lack of choice, this will push people into financial difficulty, and could increase the risk of homelessness.

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

Shelter Scotland believes that current planning legislation is not strong enough in regulating and limiting short term lets. **Whole properties being let out as short term lets for longer than just a few days should require planning permission to convert these properties from residential to commercial use.** This would allow for the collection of better data on the number of properties being used for short term lets locally and nationally, and would allow planning authorities to consider whether such a change was appropriate for the local market. It might also deter unfit landlords from carrying out short term letting as they would be required to be in contact with the local authority, and lead to greater consideration and expense from owners transitioning into short term letting for lucrative gain, thereby more fairly taking account of the societal impact of such a move.

Currently, a lot of responsibility rests on the local authority's shoulders to enforce planning legislation. Shelter Scotland broadly supports the decision to empower councils to make these decisions given the local impact of short term letting, but a lot is being asked of local authorities. This raises questions about the ability of local authorities to fulfil these duties in the face of limited resources.

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Consultation should be carried out with local authorities to determine the best way to enforce planning legislation compliance. Planning permission rests on each local authority's individual assessment of whether a property has changed its use to become significant – on a case by case basis. The flexibility of this assessment means that there is huge disparity in the types of short term lets that are required to have planning permission across the country, and some properties which have had a significant material change in use are in breach of planning legislation. A more robust definition of whether there has been a 'material' change in use is essential to ensure that there is consistency across Scotland in regulating short term lets, along with a strong enforcement system to ensure compliance. In his consultation response, Andy Wightman MSP outlines that under the Licensing (Scotland) Act 2005, planning permission is required for a licensed premise before a licence can be issued. If a licensing scheme were therefore introduced for short-term lets, it would thereby follow that planning permission were required.

Shelter Scotland supported the proposal in stage 2 of the Planning (Scotland) Bill which would require all properties being let out in their entirety as short term lets to require full planning permission. This is a clear definition for local authorities to enforce and does not burden them with further assessment. While this amendment wasn't passed in stage 3, a blanket rule like this should go hand in hand with a strong enforcement mechanism.

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

Shelter Scotland is aware of complaints of the "erosion of communities" through reduced residential housing supply, noise and antisocial behaviour caused by a growth in short term lets – these primarily relate to short term lets in shared buildings such as tenements in Edinburgh and Glasgow.

The current powers possessed by local authorities on antisocial behaviour in short term lets have limited success due to enforcement action being difficult to apply because it is often problematic to identify and contact property owners. Shelter Scotland recommends greater regulation by way of a licencing system for short term let hosts from the Scottish Government, as recommended by the City of Edinburgh Council working group in 2018. This would make it easier for local authorities to contact owners and undertake enforcement action and ensure that communities are protected.

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

Shelter Scotland agrees with the Scottish Expert Advisory Panel on the Collaborative Economy's view that while complaints are small, they are likely to



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be significantly under reported due to the disparity in the way short term lets are regulated across the 32 local authorities.

A complaints system should be clear, easy to use and as consistent as possible across local authorities to ensure that communities are protected. The current complaints system is not fit for purpose and as such allows little insight into the problems caused by short term lets. More effective complaints systems and recording would allow greater understanding of the problem.

Currently, a lot of responsibility rests on the local authority's shoulders to record and act on complaints. Shelter Scotland has concerns with the amount being asked of local authorities under increasing budget cuts. Consultation should be carried out with local authorities to determine the best way to implement and manage complaints systems and any resource or support required for local authorities to carry these out effectively.

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

Shelter Scotland is in favour of any initiative that ensures all accommodation types are safe and secure for everyone in Scotland. Shelter Scotland is in favour of expanding protection to a number of groups, for example expanding the definition of Houses in Multiple Occupation to include accommodation regularly used by contract and transient workers.

Shelter Scotland agrees with the recommendation from the Scottish Expert Advisory Panel Report on the Collaborative Economy that hosts should have to declare that they are compliant with the relevant health and safety guidelines to their accommodation type i.e. fire and safety legislation and we would welcome an aligning of standards in short-term lets to the private rented sector. This would ensure safety of occupants and also takes away the perverse incentive for a landlord to choose short-term lets over long term renting as a way to avoid having to invest in a property to bring it up to certain standards.

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

The eligibility criteria for non-domestic rates in the consultation document seems reasonable, but needs to be enforced more effectively in practice.

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

Shelter Scotland supports the recommendation from the Barclay Review that would require self-catering accommodation to provide more evidence to local

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authorities, as this would provide better data on the extent of short term letting and help prevent the loophole whereby property owners can assert to be a self-catering premise without actually letting, in order to activate a council tax exemption.

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

If the property is no longer the principle accommodation of the owner, then it is being run as a business and should be taxed as such. Shelter Scotland believes that short term lets should not be eligible for rates relief through the Small Business Bonus Scheme.

Over 86% of short term lets qualify for tax relief through the Small Business Bonus Scheme (SBBS), and some of the 86% are obliged to pay no local tax at all. This means that many owners operating a business (rather than “sharing” a property) are not being adequately taxed, and as a result are provided with an incentive to use their properties for short term letting rather than residential accommodation, which Scotland is severely lacking.

Shelter Scotland believes that a change in the way that the SBBS provides tax relief for short term lets is necessary. 86% of short term lets being offered tax relief, when over half of short term lets are whole properties and therefore operating as a business, could encourage more landlords to move over to this model of letting which has a number of detrimental societal impacts. When considering this, the Scottish Government should look at taxing hosts on the money they have gained through short term lets.

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

In relation to tourist tax, Shelter Scotland supports the model used in Amsterdam by which Airbnb reached an agreement with the city to manage the collection of the tourist tax through the online platform. If a system of registration and/or licensing were to be introduced for short-term lets, a tax could be paid through this. Options should be explored with local authorities and short-term letting platforms to determine the most effective way to collect a tourist tax which does not place undue burden on already-stretched local authorities.

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

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Shelter Scotland broadly supports the design principles set out in the consultation paper, particularly the “robust”, “responsive” and “promoting safe practice” principles.

Shelter Scotland is concerned that housing does not feature as a consideration under the “responsive” principle. There is a chronic shortage of housing in Scotland and the growth in short-term letting is exacerbating that – it is essential that any responsive action taken by the Scottish Government or local authorities acknowledges and addresses both the national and local housing context.

Shelter Scotland would also suggest that under “cost effective” it is recommended that any profit made through regulation (i.e. licencing or regulation fees from hosts) is reinvested back into mechanisms of regulation and enforcement for short term lets.

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

Shelter Scotland broadly supports the decision to empower councils to make these decisions given the local impact of short term letting, but a lot is being asked of local authorities. This raises questions about the ability of local authorities to fulfil these duties in the face of limited resources.

Shelter Scotland agrees that the local context should be considered when regulating short term lets, but national direction is essential. For example, a local authority should be able to set a cap if their evidence suggests this is necessary in their area, but this should be within the context of a national initiative such as the requirement for all whole property short term lets to have full planning permission. This would reduce the burden on local authorities to implement, manage and enforce the entire system of regulation.

Shelter Scotland agrees with the regulatory framework set out to cover the participants and property in two separate strands. This will help to ensure compliance from hosts, obtain a better quantitative idea of the number of properties being used for short term letting and ensure safety is upheld.

Shelter Scotland supports the licensing proposal set out in the framework as opposed to a registration only model. A registration only model risks becoming simply a list of hosts, as is the case with the landlord register, rather than a mechanism for effective monitoring and enforcement. Both registration and licensing would enable better understanding of the amount of residential housing being removed from the system by short term letting, but licensing would better address the issues around antisocial behaviour and erosion of communities.

The licensing framework in the consultation only allows “oversight by the licensing authority”. It is not clear if or how licensing would seek to tackle the volume of short term lets. Shelter Scotland are in favour of a model of licensing

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which would allow a local authority or a licencing authority to refuse licensing if there were already too many short term lets in a particular area – i.e. a high quantity of short term lets and a lack of 4 bed homes for residential accommodation. This would work in the same way that limits the numbers of HMOs in an area. This additional feature would add on volume control to licensing.

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

Shelter Scotland supports the policy intention to let local authorities implement appropriate measures for their areas specific local conditions and concerns – i.e. charging varying licencing fees by council area, particularly those where demand for housing is high or there is evidence of community erosion. However, a national overarching framework to ensure consistency across Scotland is essential.

**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?**

Shelter Scotland agrees with the policy intention to let local authorities implement appropriate measures for their areas specific local conditions and concerns and supports the idea of a national overarching framework to ensure consistency across Scotland.

Shelter Scotland believes that the national framework should set out a mandatory licensing scheme (as per Level 2 in the consultation paper) but consistent across the country rather than at a local authority's discretion. Licensing has the potential to curb numbers of short term lets and limit its expansion – particularly in saturated housing markets like Edinburgh, in which a deterrent to current owners could be necessary in order to preserve the provision of residential housing.

In relation to the market-based mechanisms proposed in level 3, Shelter Scotland is in favour of some kind of financial charge to letting out whole properties. While Shelter Scotland has no issue with the fundamental business model of short term letting, or the idea of the sharing economy it was created in line with, evidence suggests that short term letting is inadvertently negatively affecting housing supply in Scotland particularly where hosts are letting out their whole property for significant periods. A financial charge should be explored in order to prevent this

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growth continuing at its current sharp rate. Shelter Scotland favours stronger regulation through higher charges to hosts who let their properties out in their entirety, rather than sharing or swapping which have no negative impact on housing supply.

Shelter Scotland supports the idea of these charges varying by council area – particularly those where demand for housing is high or there is evidence of community erosion.

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

Shelter Scotland supports the 2018 recommendation from the Scottish Expert Advisory Panel on the Collaborative Economy that 90-day restrictions on short term lets should be carried out as experiments in large Scottish cities like Edinburgh.

Shelter Scotland believes that a trial period is important to get a better understanding of how frequently short term lets are used in the city and assess the potential benefits of a restriction to noise and antisocial behaviour levels and the erosion of communities.

That said, a cap on the number of days a short term let can operate wouldn’t necessarily address the issue of displacement of housing because it doesn’t ensure that these properties will be used for residential accommodation for the remainder of the year. While a cap could act as a deterrent to owners considering short term letting, in saturated housing markets like Edinburgh, some properties may only need to be let out for a few weeks/months a year to make a greater profit than they would letting their property out under a longer term private residential tenancy in addition to the perceived risk and hassle of renting to a long term tenant, and there is a danger therefore that owners choose to leave their properties empty for the remainder of the year.

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

Shelter Scotland doesn’t believe that a regulatory regime should make a distinction between commercial hosts, small scale hosts and those with property portfolios. This is an issue of housing supply, and as such, a regime should only differentiate between hosts letting out entire properties and those sharing/swapping.

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

Shelter Scotland believe that the host and/or owner of the property being let should be subject to enforcement and sanctions. This is because an owner may have nominated a host who is not managing the property sufficiently and thus both would be subject to enforcement and sanctions in the same way a letting agent and a landlord would be.

Shelter Scotland supports a model of enforcement that tackles both host an owner in the same way that landlords must abide by a tenancy agreement and a fit and proper person test, and letting agents must adhere to the code of practice.

The host may not necessarily be the owner, so it is essential that regulation takes comprehensive details of the property in order to carry out enforcement with the right individuals.

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

No.

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

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