



October 2020

Airbnb response to the Scottish Government's consultation on new regulations for short-term lets

Introduction

The Airbnb platform has helped millions of ordinary people monetise their spaces and their passions, while keeping the financial benefits of tourism in their own communities. It is often the preferred choice of travellers who are looking for more affordable and flexible accommodation options, and can unlock new opportunities for travel for everyone.

With up to 97 pence of each pound spent on the platform being paid directly to hosts, Airbnb boosts the incomes of Scotland's residents, whilst helping pubs, restaurants and local businesses reach new consumers. Visitors spend an average of £100 per day in local communities, and spent £162 million in Scottish restaurants and cafes in 2018.

Airbnb welcomes the opportunity to respond to the Scottish Government's consultation on a licensing scheme and planning control areas for short-term lets. We have consistently welcomed a balanced, transparent and responsible framework for the future regulation of short-term lets in Scotland. However, the proposed approach is one of the most onerous and regressive worldwide, going far beyond what is necessary to attain—and in some ways even contravening—the stated policy objectives.

Airbnb is a vital part of Scotland's economic future. A study conducted by BIGGAR Economics finds that jobs are supported by Airbnb guest spending and Airbnb host income. In Scotland, Airbnb **supports over 33,500 jobs**, generating **£677 million per year in economic impact**. This includes over 31,000 jobs in the tourism economy, and over 2,000 jobs in the wider economy. There are listings on Airbnb in every constituency, in every local authority across the country. This activity has helped generate jobs for local people, overwhelmingly demonstrating that activity on Airbnb supports local communities, local economies and livelihoods across the country.

By introducing these measures, the Scottish Government is putting almost 17,000 jobs at stake.

This study found that a 50 percent reduction in Airbnb nights, would reduce Gross Value Add by £338.5 million and support 16,775 fewer jobs. This would be equivalent to increasing the unemployment rate by 0.6 percent (from 4.5 percent to 5.1 percent). At a time when many are struggling to make ends meet, we're asking the Scottish Government to rethink their proposals in light of this impact.

Many listings on Airbnb in Scotland are located outside traditional tourist districts, which are not served by hotel-supported tourism. We want to continue to support economic recovery in Scotland, and have continued to [collaborate with VisitScotland](#) over the past few months to promote hidden gems in Dumfries & Galloway, Ayrshire, Moray, Angus and Dundee. We would urge the Scottish Government to have conversations with VisitScotland about how tourism targets can be achieved should the availability of tourism accommodation be impacted by this significantly, particularly as many tourism businesses across the country suffer in the COVID-19 crisis.

We've laid out our key concerns with the system here:

- **The government's consultation document** - which will impact millions of guests, tens of thousands of hosts and countless nearby businesses - **makes no mention of the global pandemic and its impact**. Since these proposals were suggested by the Scottish Government in January 2020, the way people live, work and travel has completely changed. COVID-19 has significantly damaged the Scottish tourism industry and the greater economy, and it is clear it will continue to do so for the foreseeable future.



- **The Scottish Government has rushed this consultation** - breaching its own guidance without adequate justification. In light of the current effects of COVID-19, we cannot understand why there is apparently such a pressing need to lay legislation before the Scottish Parliament in December, when hosts will not have to be licensed until 2024. With only four weeks to respond, and no Business and Regulatory Impact Assessment (BRIA) published in relation to these proposals, nobody responding to this consultation could have a proper understanding of their impact, or the time to meaningfully engage in the detail. There is no explanation for the Scottish Government's failure to follow its own policies and guidance in producing a BRIA. We firmly believe that if the Scottish Government had done so it would have identified more viable alternative measures to its current proposals.
- In the absence of this information, we commissioned our own study, conducted by BiGGAR Economics. **By introducing these measures, the Scottish Government is putting almost 17,000 jobs at stake.** This study found that a 50 percent reduction in Airbnb nights, would reduce Scottish Gross Value Add by £338.5 million and support 16,775 fewer jobs. This would be equivalent to increasing the unemployment rate by 0.6 percent (from 4.5 percent to 5.1 percent).
- Setting aside the exceptional circumstances, **the proposed regulations are unreasonable and entirely disproportionate**, and we can only conclude that the Scottish Government's intent is to regulate short-term lets out of existence. In order to be proportionate, the system must minimise its impact to that which is necessary to achieve its public policy objectives (e.g. protecting the availability of residential housing and ensuring short-term lets are safe). Despite this, the current proposals do not take into account the different public policy objectives in different parts of the country, or that different types of host and short-term let require different approaches to achieving the public policy objectives. This leads to irrational results. For example, someone offering up their spare room for one night of the year will be subject to more regulation than private rented sector landlords, defying any sense of reason or proportionality. The restrictions are so disproportionate that they would be vulnerable to legal challenge on several grounds, including incompatibility with the European Convention on Human Rights. They are also incompatible with best practice principles for regulating short-term lets from the European Commission and general EU legal principles. Should Scotland ever rejoin the European Union, any legislation implementing these proposals would therefore be open to challenge.
- **Scotland will have one of the most regressive regulatory regimes for short-term lets worldwide.** Hosts operating in remote areas of Scotland will face more stringent regulation than hosts in major cities, including Beijing, Amsterdam, Paris and Barcelona. We have repeatedly presented evidence-based policy solutions that are simple and effective. They have all been ignored in favour of a vocal minority, concentrated in Edinburgh. This will have a material impact not only on Scottish hosts, but on the country's tourism industry.
- **The proposed system is complex, clunky and costly**, and will not address the strategic priorities and public policy objectives set out by the Scottish Government, including affordable housing shortages. Leading Scottish law firm Shepherd and Wedderburn LLP estimates a host renting out a spare room could face costs of over £700 to comply with the mandatory licensing requirements, notwithstanding the costs of the licence system itself which will be determined by the local authority. These restrictions will not solve Scotland's housing crisis, which is a result of a growing population and decades of underinvestment in affordable house building – as opposed to listings on Airbnb, which make up less than one per cent of housing stock.
- **The proposed system will encourage more professional operators, directly contradicting the Government's stated objectives.** From our experience working with governments all over the world, complex, arduous and expensive licensing systems favour professional operators and penalise ordinary households. The current proposals are counter to the Scottish Government's stated objective of looking to target, and meaningfully control, these professional operators. They are likely to create a barrier to entry for almost all non-professional hosts, be extremely costly to administer, and inflict a confusing patchwork of regulation across the country.



We want sensible regulation and we strongly believe it's important to get Scotland right. We have worked collaboratively with governments across Europe. For example, we were the first platform to implement a 90-night limit in London, underpinned by the 2015 Deregulation Act.

We want to work together on viable solutions that protect communities, secure the long-term sustainability of our sector and spread the benefits of tourism. As such, systems of this technical complexity must be designed in consultation with the platforms and those who interact with them. Here's a better way forward:

- **A tiered approach to licensing**, with the lightest possible obligations for occasional, non-professional hosts (spare rooms hosts and those letting out their primary home for a few weeks a year), and stricter obligations for commercial and professional operators.
- **National oversight and guidance**. In order to protect the short-term lets industry and ensure that local authorities proportionately balance the needs of communities, hosts, housing and tourism, the Scottish Government must implement clear criteria, in legislation, that define where and when it is appropriate to introduce licensing systems, beyond the mandatory criteria, and set clear criteria for implementing control areas (as the Scottish Government has done for [Rent Pressure Zones](#)).
- **Creating a robust evidence base first**, leaving it for local authorities to choose more restrictive approaches. For Scotland, a national registration system - similar to Scotland's Landlord Registration system - should provide an evidence base first and local areas should choose if they require a more onerous licensing system once that evidence has been collated.
- **Control areas should only be adopted where there are issues of serious housing concern**. More control and transparency over the activity in a specific area via a licensing system should be a sufficient means to control short-term lets. Control areas should only be implemented if an independent examination of the operation of the licensing system (presented as part of a Local Development Plan) has determined that short-term lets are having a significant impact on the availability of housing stock in the area. If control areas are required, it is essential that they are put in place at the same time as policies in the Local Development Plan that set clear criteria for when planning permission will be granted.
- **A digital first approach that is simple, online and prompt**. Hosts should be able to apply for a licence and otherwise comply with regulations in a single visit to a user friendly website, with no requirement for prior in-person validation. This supports the [Scottish Government's digital strategy](#) which states that digital is 'at the heart of everything we do' so 'Scotland is recognised throughout the world as a vibrant, inclusive, open and outward-looking digital nation.'
- **Licences should be granted instantly with minimal renewal requirements**. All hosts who are required to obtain a licence should receive a licence number upon submission of the online application. If additional steps are required after the application is submitted, then hosts should receive a provisional licence number that becomes permanent upon completion of the additional steps. Absent material changes of circumstance, hosts should not need to renew their licences.
- **A commitment to data minimisation**. Consistent with data protection best practices, hosts should only be required to provide the minimum data necessary to process an application. Under the current proposals, if local authorities use all criteria outlined by the Scottish Government, second home owners will need to complete 75 steps in order to be fully compliant. The Scottish Government needs to streamline compliance requirements.

In addition to our consultation response, we are attaching two studies for your consideration. As we refer to these reports throughout our submission, please note the context of each study below:

- [Stakeholder consultation on short-term let regulation and recovery in Scotland](#): We commissioned this report from BritainThinks and the University of Brighton, which reveals insights from stakeholders across Scotland on the proposed regulations. It includes input from local authorities, destination marketing organisations, residents associations, hosts on Airbnb, trade associations and politicians.



- Economic impact study from BiGGAR Economics: In the absence of a Business and Regulatory Impact Assessment by the Scottish Government, we commissioned an economic impact assessment from BiGGAR Economics, which examines the overall economic impact of Airbnb in Scotland and in local authority areas, and the impact that these regulatory proposals could have on livelihoods, communities and the economy in future.

Costs to the economy

The Scottish Government's proposals will be a major, and lasting, barrier to the recovery of the tourism sector. We would urge the Scottish Government to have conversations with VisitScotland about how tourism targets can be achieved should the availability of tourism accommodation be impacted by this significantly, particularly as many tourism businesses across the country suffer in the COVID-19 crisis. One national level stakeholder stated in response to the BritainThinks consultation on regulatory issues in Scotland:

“The tourism and hospitality sector needs a major kick-start and heavy-handed regulation at this time would only make this more difficult.” (National level stakeholder)

Since these proposals were suggested by the Scottish Government in January 2020, the way people live, work and travel has completely changed. COVID-19 has significantly damaged the Scottish tourism industry and the greater economy, and it is now clear it will continue to do so for the foreseeable future. At a time when other key pieces of legislation, such as the Transient Visitor Levy, have been postponed due to the impact of COVID-19, we ask the Scottish Government why they have not adopted a consistent response to the tourism industry as a whole.

One national level stakeholder set out in response to the BritainThinks consultation on regulatory issues in Scotland:

“As a sector we're already on our knees. People want short-term letting. There's a market demand. If they come in with a more heavy-handed approach and our profits dwindle then that market will disappear. Then jobs disappear.” (National level stakeholder)

We believe that further consultation setting out the costs and benefits of the government's current proposals is absolutely essential before any decision is taken on what legislation should be put to the Scottish Parliament. That is why we are calling on the Scottish Government to follow their own guidance and publish the Business and Regulatory Impact Assessment without delay. It is impossible for all interested stakeholders to engage in a meaningful discussion on the impact of proposals without one. There is no explanation for Scottish Government's failure to follow its own policies and guidance:

- The Scottish Government's Policy on Business Regulation says: “Our Better Regulation agenda aims to reduce unnecessary burdens on business by ensuring all regulation follows the Better Regulation principles of being proportionate, consistent, accountable, transparent and targeted only where needed”.
- It advises that “Better Regulation is supported by a range of measures including Business and Regulatory Impact Assessments”. BRIA's are to be prepared in order to “assess the impact of new legislation..or policy changes [to] identify and address unintended impacts which have not been identified”.
- The Scottish Government's guidance says that “partial BRIA's should be carried out at consultation stage. The final BRIA builds on the partial BRIA and the consultation analysis. Both of these BRIA's require Ministerial sign-off”.

We firmly believe that if Scottish Government had followed its advice, it would have identified more viable alternative measures to its current proposals. The publication of a BRIA immediately before legislation is laid in Parliament cannot address these procedural flaws. Otherwise we are being asked to respond blindly to proposals without any evidence of what their effects could be on Scotland's tourism industry and the wider economy. We would also urge the government to conduct an impact assessment on the additional resources, including increased staff numbers and costs associated with



investment in technology, which will be required by local authorities to deliver the proposals effectively and efficiently.

In the absence of a formal assessment, we commissioned an economic impact assessment from BiGGAR Economics, which examines the overall economic impact of Airbnb in Scotland's local authority areas and the impacts this could have on livelihoods, communities and the economy in future:

- A study conducted by BiGGAR Economics finds that jobs are supported by Airbnb guest spending and Airbnb host income. In Scotland, Airbnb **supports over 33,500 jobs**. This includes over 31,000 jobs in the tourism economy, and over 2,000 jobs in the wider economy. This includes 14,026 jobs in Edinburgh and 6,453 jobs in Highland.
- **By introducing these measures, the Scottish Government is putting almost 17,000 jobs at stake.** This study found that a 50 percent reduction in Airbnb nights, would reduce Gross Value Add (GVA) by £338.5 million and support 16,775 fewer jobs. This would be equivalent to increasing the unemployment rate by 0.6 percent (from 4.5 percent to 5.1 percent). In areas like Highland, which are more dependent on tourism, the unemployment rate increases by 2.7 percent.
- **We question why the Scottish Government is choosing to disproportionately affect people and communities who are reliant on the tourism industry to create jobs.** Areas of the country with high dependence on tourism had the highest proportions on furlough (Highland 40 percent, Argyll and Bute 37 percent).
- **At a time when many are struggling to make ends meet, we're asking the Scottish Government to rethink their proposals in light of this impact.** By streamlining and simplifying the requirements, we can protect jobs and livelihoods. A 10% reduction in Airbnb nights, would reduce Scottish GVA by £67.7 million and support 3,355 fewer jobs - equivalent to increasing the unemployment rate by 0.1 percent (from 4.5 percent to 4.6 percent).

Given the impact and long-term uncertainty of the COVID-19 pandemic, the national government should also be responsible for tracking the economic impact of these measures and should be open to the prospect of reversing or reviewing some implemented measures if they are shown to be ineffective or having a negative impact on local economies and communities.

The latest State of the Economy report, published by the Scottish Government's own chief economist Gary Gillespie, highlights the risks that the Scottish economy is facing and states that the economy may still not return to pre-pandemic levels until the end of 2023. We ask that the Government continually monitors the changing economic situation and does not rule out a delay at this juncture. Notwithstanding a delay in implementation, we stand ready to explore other ideas that could be pursued in lieu of full implementation.

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

As a starting point, we support a clear definition of what constitutes a short-term stay. Under the current definition, it is not clear what 'temporary' means in practice. We would appreciate further clarity on the trigger point for when a short-term stay becomes a long-term tenancy. For example, would a 60 day booking in a short-term let still be classed as 'short-term letting'? Other governments across Europe have set out clear delineations of what constitutes a short-term stay:

- In Ireland, a stay over 14 nights is not a short-term stay
- In London, a stay over 90 nights is not a short-term stay

Secondly, it is vital to set clear boundaries between non-professional and professional providers, to protect the flexibility that the collaborative economy affords to communities across Scotland (4.11). Applying regulatory requirements to non-professional and professional hosts, and to non-professional hosts who let spare rooms or only let for a de minimis number of nights, would make the proposals



more consistent with UK public law principles of proportionality and rationality, and with European Commission guidance.

For many hosts, the flexibility provided by listing on Airbnb works for them, with some hosts choosing to share their spare room, and some their whole property whilst they are away. In addition, the variety of listings available on the platform helps travellers visit the UK by offering flexibility in destination, accommodation and costs: with savings being particularly significant during big events.

By applying the same regulatory burden to hosts universally, regardless of whether the let is professional or merely occasional supplementary income, the Scottish Government risks pushing non-professional hosts out of the accommodation sector and increasing the professionalisation of short-term letting.

Hosts who let their property for fewer than 28 days have no impact on the housing market, nor is there a substantial negative impact on communities (4.7). In addition, these people are not businesses or professionals. That is why there should be clear legal delineation between occasionally letting a home (“home sharing”) and letting a property that is not a primary residence. We believe that homesharers should fall outside of the scheme or, at the very most, be subject only to simple, instant, online registration.

Staggered thresholds will ensure a fair and equitable system that holds everyone to account but protects those engaged in the collaborative economy from unnecessary and burdensome regulation. As a starting point, we would recommend a delayed and phased approach, and that the Scottish Government establishes a national registration system before the implementation of licensing protocols. Where licensing systems are established, this approach could work on the following levels:

- **Level one (temporary licence; under 28 nights /year for all property types; home sharers year round):** Any activity below 28 nights a year and home sharing and home letting should be exempt from the proposed licensing system. As landlords wishing to have a lodger in their home do not have to interact with the landlord register, we do not believe that spare room hosts should be subject to an onerous licensing system. We request that occasional homesharers use a simple, online, free and instant system, with hosts attesting that they have understood existing health and safety standards in Scotland.
- **Level two (home letting and secondary letting; 28-139 nights p/year):** A simple, centralised, online system deployed nationally. This could be broader in scope than the above, more basic process, with fees and more direct power available to enforce rules as necessary. Hosts in this category should not be subject to control area regulations. We request this group use a simple, online and instant registration system, with a nominal fee, with hosts attesting to the mandatory criteria outlined by the Scottish Government.
- **Level three (professional; 140+ nights p/year):** Anyone letting for 140 nights or more per year would be categorised as a professional, in line with the existing threshold for commercial activity that triggers a liability to pay business rates, and so we support “change of use” planning requirements for this group where required, as well as licensing with a proportionate fee.

Tiered and phased systems have been adopted by other governments across Europe. The Netherlands passed new legislation in October 2020, offering cities new policy instruments to regulate short-term lets. Cities presenting robust evidence of housing scarcity and/or livability issues are able to opt into a new regulatory framework, overseen by the national government. Before making use of a prescribed menu of policy instruments, cities need to demonstrate and substantiate negative community impact. Then, cities can introduce a registration obligation, followed by an obligation to report night criteria, and finally, introduce a licensing requirement. The introduction of each more far-reaching step is only possible if the previous step has been taken and municipalities have thoroughly substantiated that taking the next step is necessary and proportionate.



Airbnb supports this approach and we are working with the government in the Netherlands to introduce this system, which comes into force in January 2021. We would urge the Scottish Government to examine best regulatory practice across Europe, which we have highlighted both in our 2019 consultation submission and 2017 submission to the Collaborative Economy Expert Panel.

The proposals set out that all secondary letting should fall within the scope of control areas where they have been established (4.13). Under this definition, people who wished to do a one week house swap would require planning permission. This is irrational and appears to be a disproportionate restriction on property rights that could be incompatible with the European Convention on Human Rights (under the Scotland Act 1998, legislation of the Scottish Parliament must be compatible with the European Convention on Human Rights).

We suggest that secondary homes should only fall within the scope of the control areas if they are liable to pay business rates, that is to say, they are marketed for at least 140 nights in a year, and actually let for at least 70 nights in a year. It makes much more sense to align the planning law with existing tax law in Scotland than to arbitrarily put all secondary lets within the remit of the planning control zones.

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

Firstly, it is unclear why planning permission is necessary in addition to one of the most onerous and regressive licensing proposals we have seen worldwide (5.1). We believe more clarity is urgently needed as to why both a licensing system of this nature and planning controls are necessary in tandem. The impact this will have on the tourism sector and Scotland's wider economic outlook will be catastrophic. In fact, we believe that control area regulations may not be necessary at all given the wide scope of the licensing scheme as set out.

In our experience in multiple countries, any system that requires planning permission is inefficient and, essentially, constitutes a de facto ban on short-term rental activity in a given area (5.6). This is often because it is costly for local authorities to process planning applications. In addition, we ask the Scottish Government to assess the additional financial and administrative burden on local authorities with the introduction of control areas. According to the Planning Act 2019 Financial Memorandum¹, *"planning fees cover only 63% of the cost of processing, on average, it may be assumed that the cost to planning authorities of these additional applications will be between £358,207 and £2.71m per year."*

In addition, according to the BritainThinks report, planning powers introduced as part of the regulation 'are much more divisive' across Scotland. The report states:

- *Stakeholders in Edinburgh are keen to see the city council be provided with the means to license STL hosts and implement control zones to limit the number of STLs in given areas within Edinburgh.*
- *Stakeholders in other parts of Scotland are much more cautious over what benefits such powers would result in, warning that they could have unintended consequences. These concerns are drawn from how other regulatory schemes concerning overprovision are perceived to have failed in Scotland, for example with HMOs.*

Therefore, we request that control areas not be permitted until the licensing scheme has been in action for at least two years, the evidence of which can then be used to frame a pragmatic and transparent control area policy, overseen by the Government. Where planning permission is denied, local authorities must give clear and fair reasons for the decision and provide opportunity for appeal.

¹ [https://www.parliament.scot/S5_Bills/Planning%20\(Scotland\)%20Bill/SPBill23AFMS052019.pdf](https://www.parliament.scot/S5_Bills/Planning%20(Scotland)%20Bill/SPBill23AFMS052019.pdf)



Looking at similar zoning systems implemented by the Scottish Government, such as [Rent Pressure Zones](#), there are clear criteria that must be met by local authorities on application to define these zones (5.7). Rent Pressure Zones ask local authorities to provide evidence to the Scottish Government, which demonstrates rent increases and qualitative analysis. We urge the Scottish Government to examine and replicate the evidence based approach already in other comparable zoning legislation.

Ultimately, control area regulations should only be implemented as a last resort in emergency circumstances, based on a broad evidence base and consensus at every level. At the very least, the criteria for control areas must be set at a national government level and must be robust and transparent to avoid the arbitrary enforcement of regulation which essentially bans short-term letting in particular areas.

Given that under the current proposals licences would be mandatory for all short-term lets (6.1), we question the immediate need for control area regulations in tandem with onerous licensing proposals. A licensing system of the nature proposed will already provide a disproportionate impact on tourism accommodation. However, given the Scottish Government intends to enact planning legislation, we believe that it should only be deployed in emergency situations. More on how this can be administered below:

- **Proper national oversight is crucial.** We believe that ministerial “notification” does not constitute a stringent enough check on local authority power (5.14). Local authorities should have to provide comprehensive justification and have to meet certain, defined, centralised criteria before they allocate a control area (5.6). This will ensure a pragmatic and consistent approach across Scotland. In [Rent Pressure Zones](#), there are clear criteria that must be met by local authorities on application to define these zones.
- **Control zones should only be implemented in extreme cases.** It should be illegal for councils to be able to deny planning permission to all short-term lets as part of their local development plans (5.7). We believe that councils must be required to justify each case – blanket bans are unfair to those who rely on short-term lets for supplementary income. Where bans are implemented, they should be open to a transparent and straightforward appeals process.
- **For simplicity, business continuity and certainty, there should be a clear set of defined criteria.** For instance, local authorities should present evidence to justify a change to its Local Development Plan on the basis that despite having a licensing scheme in place, short-term letting is having a significant impact on the availability of housing stock. The evidence base should be placed under triennial review, so that if, for example, new housing stock is built which dilutes the concentration of secondary short-term lets in a ward, the control area status can be revoked.
- **There must be due process for revocation (5.9).** If local authorities are able to revoke planning permissions after ten years, they must be required to give operators with planning permission at least one year’s notice of their intention to revoke the permission. This will give businesses operating in control areas more certainty. In Rent Pressure Zones, these are a temporary measure and cannot exceed five years.
- **Proportionality must be built into the system.** A dwelling house used for secondary letting for a period of under 28 days is not diminishing the housing stock, the host is not a professional and requiring planning permission would create unnecessary barriers for occasional use (5.11). The same point applies where a host is allowing the use of a spare room.
- **It is unclear how licensing and planning systems will interact with one another.** If decisions to grant licensing and planning committees are shared within local councils, they may disagree on certain decisions - this can happen with other systems where licensing and planning interact. A report from BritainThinks addressing stakeholder reaction to Scotland’s proposed regulatory regimes for short-term lets highlighted similar issues with alcohol licensing. “*Where licensing and planning crossover - alcohol licensing, for example - if one department issues a grant and licensing says it’s fine then the planning board has to feed into that, and sometimes they disagree.*” Therefore, we recommend that the Planning Act 2019 be amended to clarify how short-term lets planning and licensing regulations interact. We recommend that any licensing system form the evidence base of acute housing pressure.



- **This adds additional, astronomical costs to hosts.** Applying for planning permission alone currently costs £401. It is often necessary to engage consultants to support the host in the process of obtaining planning permission. This can cost thousands. These costs would be incurred by any host, including for the use of a single bedroom in a property or where a host wanted to do a “house swap” to keep down the costs of a family holiday.

We welcome further clarification on how the Scottish Government plans to combine the notification requirements for licensing with planning permission given that planning permission is required before hosts can apply for a licence in control areas. It should not be the case that planning permission is required before a licence. The control areas should be evidence-based, and there will not be a satisfactory evidence base as to the scale of short-term letting in Scotland until the licensing scheme is up and running. As stated, we believe two years’ worth of evidence from the licensing scheme is required before this can happen.

The complexity and severity of control area requirements will ultimately generate incredible uncertainty for hosts, at a time where budgets are under more strain than ever (5.17). In addition, the requirement to obtain planning permission for the type of short-term lets described in the consultation is unreasonable and a disproportionate restriction on property rights that could be challenged as incompatible with the European Convention on Human Rights.

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

We support the Scottish Government’s commitment to ensuring the health and safety of visitors and surrounding communities but we believe the current proposals are unreasonable and disproportionate.

Whilst the findings from the Indigo House consultation response highlighted a disparity in understanding of existing regulatory standards around health and safety, we would strongly advocate that adopting a campaign around education is a more appropriate response than an onerous licensing process. The Scottish Government’s most recent approach to health and safety measures, introduced as a result of the COVID-19 pandemic, was issued as guidance and not legislation. We urge the Scottish Government to pursue a similar course of concerted health and safety guidance for short-term lets. This is a classic case of using a sledgehammer to crack a nut.

The system as proposed will simply shut out ordinary people that want, and often need, to supplement their income (6.1). The result will be an exclusively professional industry, which was never the stated objective of government policy. Indeed, the conclusion of the Scottish Government’s own report on the so-called “sharing economy” highlighted the potential benefits of a more inclusive tourism industry.

Mandatory licensing requirements for all puts somebody letting a bedroom in their own home in the same category as licensed industries including those selling alcohol or providing gambling services - a move that defies all sense of proportionality and leads to a completely professionalised industry.

Good licensing systems aim to provide a defined set of effective tools, guarding against fragmentation, so that businesses are able to operate in a consistent and predictable way. This is what they look like:

- **An online, one-stop shop** - hosts should be able to comply with regulations in a single visit to a user friendly website, with no requirement for prior in-person validation (6.6). The vast majority of hosts on Airbnb are not businesses or professionals. The Scottish Government should adopt a digital first approach to licensing approval - simple, online and prompt.
- **Collaboration with platforms on notice and action processes.** Airbnb has worked with governments around the world to support compliance with, and enforcement of, fair and proportionate regulatory frameworks for short-term lets. Rather than trying to impose obligations on intermediaries to display licence numbers (which, for the reasons explained below, is a flawed proposal), we recommend that the Scottish Government instead collaborates with platforms on compliance and enforcement measures, and agrees detailed



notice and action processes with platforms that are consistent with existing legal frameworks.

- **Affordable for hosts** - non-professional hosts should be able to register for free or at a nominal cost, with higher non-burdensome fees for professional hosts (6.62).
- **Data minimisation** - consistent with data protection best practices, hosts should only be required to provide the minimum data necessary to process an application. Under the current proposals, if local authorities use all criteria outlined by the Scottish Government, second home owners will need to complete 75 steps in order to be fully compliant. The Scottish Government needs to streamline compliance requirements.
- **Instant and one time only application** - Hosts should not need to repeat a licence application, except in the case of material changes of circumstance. If all the necessary criteria are met, hosts should be able to welcome their first guests without delay or the requirement for a follow up. Home sharing licences and temporary licences should be received at the point of application. If more verification is required for secondary letting, hosts should receive their licensing number in a specified proportionate timeframe on application (6.35).
- **Nationally consistent** - to minimise fragmentation, local authorities should adopt common processes and systems within a country (such as uniform licence numbers and obligations), so hosts are treated equally wherever licensing obligations exist. There should be a single licensing platform - managed by the Scottish Government which links to local authority digital platforms for everyone to be licensed.
- **Private database** - there is no justification for a public database of registered hosts or listings. Any data held within a private database should be processed strictly in accordance with GDPR (6.139).

Staggered thresholds will ensure a fair and equitable system that holds everyone to account but protects those engaged in the collaborative economy from unnecessary and burdensome regulation. As a starting point, we would recommend a delayed and phased approach, and that the Scottish Government establishes a national registration system before the implementation of licensing protocols. Where licensing systems are established, this approach could work on the following levels:

- **Level one (temporary licence; under 28 nights /year for all property types; home sharers year round):** Any activity below 28 nights a year and home sharing and home letting should be exempt from the proposed licensing system. As landlords wishing to have a lodger in their home do not have to interact with the landlord register, we do not believe that spare room hosts should be subject to an onerous licensing system. We request that occasional homesharers use a simple, online, free and instant system, with hosts attesting that they have understood existing health and safety standards in Scotland.
- **Level two (home letting and secondary letting; 28-139 nights p/year):** A simple, centralised, online system deployed nationally. This could be broader in scope than the above, more basic process, with fees and more direct power available to enforce rules as necessary. Hosts in this category should not be subject to control area regulations. We request this group use a simple, online and instant registration system, with a nominal fee, with hosts attesting to the mandatory criteria outlined by the Scottish Government.
- **Level three (professional; 140+ nights p/year):** Anyone letting for 140 nights or more per year would be categorised as a professional, in line with the existing threshold for commercial activity that triggers a liability to pay business rates, and so we support “change of use” planning requirements for this group where required, as well as licensing with a proportionate fee.

Fee structures should be based on these tiers, which are more representative of how much hosts will earn from the activity, rather than on property size or maximum occupants as laid out in the consultation paper (6.62).

This is not only something that is supported by Airbnb, but stakeholders across Scotland. As stated in the report by BritainThinks:



For some stakeholders, the current challenges faced by the tourism sector as a result of COVID-19 increases the need for a more light-touch approach, and there is therefore interest in the role a registration scheme could play as an alternative to licensing.

“The tourism and hospitality sector needs a major kick-start and heavy-handed regulation at this time would only make this more difficult.” (National level stakeholder)

Stakeholders also see advantages in a registration scheme which would be nationwide rather than a licensing scheme that was fragmented across different councils. It is felt this would result in greater cost efficiencies, enable comparison of data between different areas, and create lower barriers to entry for hosts.

“From a local authority point of view, it’s relatively resource light in a time where government finances are going to be quite strapped...a no fee arrangement doesn’t put people off letting their property or parts of their property.” (National level stakeholder)

Our position is clear: licensing should be simple, online and instant. High barriers to compliance and tough fines for short-term lets hosts are not the panacea to all issues in urban areas across Scotland. Only a small minority of people - be they hosts or guests - cause problems. The focus should be on holding them accountable, while allowing everyone else to benefit from Scotland’s vibrant tourism economy.

An online, one stop shop

Local licensing systems for individual hosts are complex and often ineffective unless they are designed in consultation with the platforms who must interact with them. We would welcome ongoing technical discussions with the Scottish Government regarding building digital first systems that are simple for everyone to engage with.

The fundamental issue with short-term lets licensing systems is that by their very nature, they are regressive and largely built to cater for an offline world. Physical visits and document validation can artificially slow down the licensing process when hosts are following local requirements.

Simplification and digitalisation of licensing will ensure that everyone engaged in the accommodation sector - be they hosts, guests, internet platforms or local authorities - has clarity on what is expected of them and how they interact. It is important to note that in the context of the pandemic, the way we conduct business is likely to increasingly be online. That is why **a digital first approach is key**.

This approach has been adopted by governments across Europe.

- **Hamburg** set up an easy digital registration system, which allows hosts to register in real-time, for free and receive their registration number directly (when their address data is consistent with the city’s register). Registration is free, and takes 5-10 minutes.
- **Portugal** set up a national registration system and it is easy and online. All new users must register online, and receive a number that they must put in online or offline advertisements.
- **French** cities have the power to introduce registration systems for short-term tourist accommodation. This procedure is free, online and only takes a few minutes to complete. Hosts obtain a registration number automatically from their city hall’s website and include it on their listing on Airbnb. No documents need to be uploaded.
- **Andalucia**, although not ideal since it is a regional registry, also set up a simple online registry for short-term lets and rooms.

We believe that the compliance process in Scotland should be as straightforward as possible. This means it **must** be entirely online. Earlier in this section we laid out how we see this working in practice - a simple, online one stop shop where hosts can comply with the regulations online and operate without delay.



Collaboration with platforms on notice and action processes

The proposals suggest that platforms and other intermediaries would also be subject to the requirement to display a licence number (6.35). This proposal is legally flawed; it falls outside the Scottish Government's powers under the enabling 1982 Act (which only allows the Scottish Government to introduce a licensing scheme for property owners and does not include powers to impose obligations on intermediaries), would breach domestic law if applied to Airbnb (and potentially other short-term rental platforms too), and ignores the practical relationship between platforms and their users. For clarity, Airbnb is a platform that enables hosts and guests to connect, and that hosts content published by its users. Airbnb is not the accommodation provider, publisher, or advertiser with respect to listings displayed on the platform.

It is established case law that Airbnb is an information society service provider (ISSP) under the e-Commerce Directive and the eCommerce Directive Regulations 2002. As an ISSP, Airbnb acts as a hosting provider that benefits from the protections from liability for information stored at the request of its users and the prohibition against general obligations to monitor the information stored on the platform. The proposed requirement to display a licence number would constitute a prohibited general monitoring obligation - for example, in order to comply, platforms would need to implement filtering mechanisms to identify which of the listings hosted on the platform are subject to the licensing scheme, and to identify which listings are compliant.

Aside from the legal issues, it would also not be an effective enforcement mechanism. Instead, we recommend that the Scottish Government works collaboratively with platforms to establish detailed notice and action takedown processes for illegal content, which would involve local authorities providing sufficient information to enable platforms to identify illegal content and then to take appropriate action with respect to that content. A notice and action process would also be consistent with existing legal frameworks for the removal of illegal content by hosting providers. In countries where local governments have introduced a fair and proportionate short-term lets regulatory framework, Airbnb has also been able to support compliance by voluntarily displaying a permit field on the listing page that the host then populates with the relevant permit number.

In addition we're asking for:

- **Clarity on licence revocation (6.109).** There needs to be further guidance on why and how licences will be revoked. It is not clear who the ultimate arbiter of what "reasonably practicable" prevention measures are (6.40). If it is the local authority, this could simply become a mechanism to revoke a licence every time a complaint is made. At the very least, if local authorities do introduce this provision, they should be required to issue clear guidance on steps that hosts can take to reduce the chances of antisocial behaviour, and hosts should have the right to appeal against any accusations that they have not taken such steps.
- **Consistent with COVID-19 guidance.** Advising any face-to-face meeting between hosts and guests entirely contravenes current COVID-19 guidance and should be removed from all regulations (6.41). Local authorities could just demand an in-person inspection for every application, thus slowing down the process and prohibiting activity altogether. The Scottish Government should be responsible for determining the method for verification to ensure standardisation across the licensing system and compliance with national COVID-19 guidelines.

We recommend a simple, light-touch, online, free and instant declarative system for those hosts letting their spare room or for any property let for fewer than 28 nights a year. We also believe that operators should be granted temporary licences once they have made their application, so that they can begin or continue operating. This will prevent local authorities from artificially delaying responsible, non-professional hosts.

Instant and one time only process



We believe there should be no delay in issuing licence numbers if all the necessary criteria are met. If further validation is required, a host should be able to welcome their first guests without waiting for follow-up. In addition:

- **Hosts should not need to repeat or renew their licence, except when material circumstances have changed (6.125).** Hosts should have certainty about their income and the legality of their revenue in order to be able to plan their lives and for the future. Licences should be automatically renewed if the owner of the licence does not wish to alter the terms of the licence, they are in full compliance and there have been no complaints about the property. We don't believe that local authorities should have the ability to vary the length of time that a licence will be granted and hosts should be granted a licence for three years, with low cost annual subscriptions (6.67).
- **The Scottish Government must issue guidance on appropriate timeframes for granting licences.** To avoid regulatory fragmentation and ensure business continuity, the Scottish Government should give local authorities advice on timeframe and grace periods for licence applications and grants (6.87). We agree that with the uncertainty for the tourism sector likely to continue into the new year, all hosts should not be licenced before 31 March 2024.
- **There should be no grounds for objection if you meet the licensing criteria (6.74).** The grounds for objection need to be more robust and detailed, and we would welcome sight of a more comprehensive framework for assessment from the Scottish Government. Subjective issues such as noise or impact on the character of a neighbourhood should not be rejected on the opinion of one, potentially vexatious, neighbour. Where an application is rejected, the applicant should always have access to legal challenges.
- **There should be clear warnings issued before local authorities issue fines (6.114).** A maximum fine of £50,000 is disproportionate and would represent one of the most severe punishments for non-compliance in the world (6.115). We would welcome more clarity on how local authorities are going to fund policing the licence requirements.

Affordable for hosts

The application of these requirements nationwide will simply deter hosts who are bringing great value to their communities all across Scotland, and not necessarily impact housing availability. Hosts are Scotland's teachers, nurses, musicians and artists. Homesharing gives these people a flexible source of income, with almost 40 percent of Scottish hosts stating this supplementary income helps their monthly household hosts.

At a time of huge economic uncertainty, these proposals will mean less income for individuals and local businesses, and higher prices for the tourists and visitors, from which Scotland has benefited, and will rely on in future. Almost 20 percent of hosts in Scotland are not in the labour force (e.g. retired) and 4 are unemployed.

Under these proposals, **it will be financially unviable to be a spare room or an occasional host.** There are concerns from stakeholders in Scotland that costs and complexity will shut out non-professionals from the market:

“There'll be 32 different versions of the regulations we'll see across Scotland, in each local authority...the path we're going down will be more expensive and will make it far less economically attractive for amateur hosts.” (National level stakeholder)

Leading Scottish law firm Shepherd and Wedderburn LLP estimates a host renting out a spare room could face costs of over £700 to comply with the mandatory licensing requirements, notwithstanding the costs of the licence system itself which will be determined by the local authority. Meanwhile, a host requiring planning permission could face costs of thousands of pounds in application fees and professional costs.



We believe that the Scottish Government should set very strict and clear guidelines on what can be charged by local authorities for a licence (6.61). Licences should be as low cost as possible to avoid unnecessary barriers to entry for the smallest operators. At the very least, the Government should implement a maximum cap on the licence fee that any local authority can charge. As outlined earlier in our submission, many governments across Europe have implemented free, simple systems for homesharers. Scotland risks being the most expensive, and therefore most professional place to host in Europe.

Ultimately we agree that the homesharing licence should not require the same fee as secondary letting (6.62(a)). That being said, we believe that there is a group in the middle; secondary letting hosts renting out properties on a non-professional basis for under 140 nights a year. This group should also not pay the maximum fee charged to professionals letting properties for over 140 nights a year, as it may discourage them from short-term letting altogether and leave properties empty, posing specific risks to the property and neighbouring properties such fire safety, anti-social behaviour and criminal misuse (illegal access). We welcome increased clarity on the fees for differing property types.

A commitment to streamlining licensing requirements

In our experience working with governments all over the world, complex, arduous and expensive licensing systems favour professional operators and penalise ordinary households. The current proposals go counter to the Scottish Government's stated objective of looking to target and meaningfully control these professional operators (design principle 6).

This has been highlighted by stakeholders as part of the BritainThinks report:

“Overprovision policy was seen as a panacea to everything but it’s not been. Licensing just couldn’t get to grips with overprovision policy. It’s a minefield. We don’t think it’s going to give residents the protection they want.” (Aberdeen stakeholder)

In addition:

- **This licensing system will deter good hosts with high barriers to compliance:** We asked hosts in Scotland how Edinburgh City Council's proposed licensing system would affect their interest in continuing to host on Airbnb. **60 percent said they were less likely to host on Airbnb if this licensing system were introduced.**
- **This will impact the economy.** For Edinburgh alone, a 50 percent reduction in listings would impact the Gross Value Add by over £142.1 million and impact more than 7,031 jobs. In Highland, this would reduce Gross Value Add by £65.0 million and support 3,227 fewer jobs. [According to a study conducted by BritainThinks](#), stakeholders in the Highlands saw the STL sector as playing a very important role in the recovery of the tourism sector in certain parts of the country which are reliant on the additional accommodation stock they provide.
- **But not incentivise individuals to put their property on the long-term rental market.** We asked hosts in Scotland how the introduction of similar systems would affect how they host. Over half (51 percent) of surveyed hosts in Scotland said they would no longer advertise their space on Airbnb and would not put it on the long-term rental market either. Of that 51 percent:
 - 17 percent of hosts surveyed said they would leave their property empty
 - 34 percent said they would still live in, but not let their property

[Secondary letting hosts will need to complete 75 steps](#) and potentially pay thousands of pounds to comply. This would be incredibly slow and labour intensive, at a time when local authority budgets are scarce. If local authorities choose from the menu of options available to them (3.7 and 6.3), realistically, the only people who will be able to comply with these restrictions are professional hosts (and even then it will be incredibly onerous). The Scottish Government should provide local authorities with clear information on when and where it is proportionate to introduce further licensing criteria beyond the mandatory requirements.



Mandatory licensing requirements (3.7 and chapter 6) for all types of hosts puts somebody letting a bedroom in their own home in the same category as licensed industries, leading to a completely professionalised industry. In addition, any claim that the Scottish Government is seeking parity with the private rented sector is disingenuous and incorrect. It takes 20 minutes to register as a private landlord in Scotland; the proposals set out for the regulation of short-term lets could take months, involve changing the features of a property, in-person inspections, and navigating the complex planning process, if in a control area. The following table sets out key points of comparison:

Private Rented Sector Landlords vs. Short-Term Lets Hosts			
	Rent out my spare room	Rent out my entire property to under 3 people	Rent out my entire property to over 3 people
Private rented sector	No registration. No cost.	Register as a landlord. It's online, national, takes 20 minutes to complete and costs £66.	Register as a landlord. HMO licences range from £500-£3,000
Short-term lets	Fully licensed. Over £700 to comply with mandatory requirements. Licence cost unknown.	Fully licensed. Over £700 to comply. Licence cost unknown.	Fully licensed <ul style="list-style-type: none"> ● Over £700 to comply ● Licence cost unknown Planning permission required. <ul style="list-style-type: none"> ● £400 for an application, ● £2,000-£3,000 for consultant

Below are the requirements that we would suggest removing from the licensing system all together:

- **Making physical alterations to your property (6.42).** If enacted in full, these regulations essentially give licensing authorities total control over the aesthetic and functional aspects of a let. It is also against the spirit of conserving communities to ask hosts in old Edinburgh flats, for example, to rip up hardwood floors and replace them with vinyl.
- **Purchase noise monitoring systems (6.50b).** Noise pollution is not exclusive to short-term lets. Local authorities already have powers to deal with antisocial behaviour and setting limits on occupancy in certain properties is not guaranteed to reduce antisocial behaviour.
- The requirement that all **furnishings should have labels (6.25)** attached which show that they meet fire safety standards will be costly and confusing for non-professional hosts, who cannot be expected to carry out the role of health and safety officers.
- **Check-in curfews (6.54).** Local authorities should not have the draconian power to prescribe when guests can and cannot arrive at a property. This rule is especially impractical in the context of travel times. If guests are delayed by travel disruption, the idea that they would not be allowed to check in to their accommodation due to local restrictions seems entirely unfair and would severely impact the desire to visit Scotland or particular local authority areas. We would welcome clarity on what the Scottish Government classifies as a “reasonable excuse”.
- **Submission of nights hosted (6.56).** It is unclear why, given that the Scottish Government has decided against nightly caps, these proposed regulations could require hosts to provide information on how many nights their property was let or, worse, was “available” for let. Many hosts may advertise their property for 365 days a year without any intention of actually hosting for that many days. The platforms will still present the property as having been “available” for a full year, even if the host only welcomed guests once. This metric will not accurately represent occasional hosts and actually risks misrepresenting the number of hosts that let their properties professionally.



- **Neighbour notifications (6.69).** Under current planning permission rules, it is the Local Authority's responsibility to notify all neighbours. Councils should maintain that responsibility for planning permission, but not for licensing.
- **Public register (6.139).** We are concerned that the suggested register of short-term lets may contravene data protection law. We cannot see why there should be public registers of short-term rental licence holders, complete with addresses and the name of the host. This could lead to hosts being intimidated by neighbours, whilst also advertising to potential criminals that the property might not be lived in full time, endangering the safety of residents and guests. A register could be a useful tool for the Scottish Government to have internally, as it would help with evidence bases for the planning control areas, but under no circumstances whatsoever should it be made public. Such a register should be administered nationally, rather than by each individual local authority.

Conclusion

Airbnb has significant concerns about the proposals and the impact they would have on tens of thousands of hosts across Scotland as well as the tourism industry, which has suffered badly as a result of the COVID-19 pandemic. If enacted, Scotland would have one of the most regressive and bureaucratic regulatory regimes for short-term lets anywhere in the world.

Airbnb is a vital part of ensuring the tourism sector - and, consequently, the country's economy - recovers from the pandemic. We ask the Scottish Government why they are risking economic recovery long-term when a simple, online, straightforward solution could serve the Government's objectives.

We have always said that we would welcome sensible regulation of our industry. But we firmly believe these proposals go too far and will harm non-professional hosts who are trying to earn extra income during these difficult times.

We have worked with many governments across Europe on straightforward approaches, but we must speak out against an approach which is so detrimental to Scottish jobs, livelihoods and the tourism industry when it is on its knees.

We want to work together to find a better way. An open, simple and inclusive approach will ensure that Scotland's tourism sector not only survives, but thrives. We hope the Scottish Government considers our proposals to protect the income and livelihoods of Scottish residents and communities in the years ahead.

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