

Licensing of Short Term Lets
Response from Propertymark
October 2021

Background

Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Question 1. How would you describe your view of the proposed licensing system for short-term lets?

Propertymark is broadly supportive of the principle of the proposed licensing system for short-term lets but believes there are a number of matters that require clarification and amendment in order for the system to function as intended by Scottish Government.

Question 2. Why do you think this?

Propertymark understands the importance of ensuring that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests. As indicated in our response to the Draft Licensing Order and Business and Regulatory Impact Assessment Consultation, we are pleased to see the Scottish Government taking steps to regulate short-term lets so that effective health and safety requirements are put in place to protect those seeking a short-term let and to take the strain off the private rented sector and level the playing field regarding regulation of each industry.

We anticipate that the proposed licensing system for short-term lets will have three main, positive impacts. Firstly, we believe the system will help to protect existing communities in areas with high visitor numbers through the management of short-term let licences, ensuring that an appropriate number are allocated and providing local authorities with an understanding of activity in a particular area. Not only will this enable local authority housing decisions to be made on an informed basis, but it will help to balance local housing need with business interests, whilst supporting the viability of important community services.

Secondly, we feel the system will help to elevate safety standards for short-term let guests through adherence with mandatory safety requirements. Unlike the private rented sector, which has rightly been required to comply with numerous health and safety measures, short-term lets have been less constrained and we feel this is likely to have exacerbated the predominance of short-term lets in some areas. We agree with Scottish Government's stance that safety is paramount in whatever form of accommodation being used and are pleased to see improved parity in standards across the short-term let and private rented sectors.

Thirdly, we feel the proposed system recognises that the lack of regulation of short-term lets has incentivised investment in the sector to the detriment of the private rented sector. We acknowledge that the licensing system and corresponding safety requirements represent additional costs to the sector but feel that they are unlikely to be prohibitive to legitimate short-term lets. Alongside

improved safety standards, we feel that the licensing system will help to create a more level playing field in which short-term and private rented accommodation needs can be met and sustained.

Question 3. Thinking about your response above, how do you think the proposed licensing system could be improved?

In our response to the Draft Licensing Order and Business and Regulatory Impact Assessment Consultation, we highlighted two key issues with the Order, namely regarding the definition of short-term lets and the effect of the Order on Houses in Multiple Occupation (HMOs). We do not feel that either of these matters were resolved by the amendments outlined by the Cabinet Secretary for Social Justice, Housing and Local Government in October 2021, and would therefore urge the Scottish Government to consider further amendments as follows.

Regarding the definition of short-term lets, as set out in Article 3 of the Order, we propose that explicit reference to accommodation let for the purpose of a holiday should be included for clarity. We feel the addition of a second clause to paragraph 6 of Schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 creates ambiguity around the short-term lets definition, and we suggest that the present clause is rephrased such that short-term lets, as defined by the Order, are precluded from being private residential tenancies. Further confusion is created by wording within the Policy Note, which creates a distinction between a holiday let and short-term let with regard to responsibilities under the repairing standard. Without clarification, the ambiguity on whether a holiday let falls within the scope of the Order could result in failure to regulate the sector as intended by the Order.

We have also previously highlighted our concern over the potential impact of the Order on landlords who provide accommodation in HMOs and feel that the Order should be drafted to explicitly exclude arrangements where landlords are already subject to licensing requirements under the private rented sector framework, to avoid duplication. Article 2(2) of the Order states that a short-term let licence will be required where at least one guest meets the short-term let requirement, but the Scottish Government has made it clear that the regulatory framework for short-term lets “should complement, not duplicate” the framework already in place in the private rented sector, which includes the licensing of HMOs.¹

In this regard, we would urge Scottish Government to extend the definition of a HMO to include circumstances in which accommodation is being provided to contract and transient workers to ensure that, where licensing obligations might be triggered across multiple regimes, the HMO licensing framework would apply as opposed to the short-term lets one. Such an amendment to the HMO definition would have the additional benefit of affording contract and transient workers the same health and safety rights as those that reside in shared rented property full-time.

Question 4. Is there anything else about the proposed licensing system, or its potential impact, that you would like to mention to the Committee?

Provided the issues highlighted in our response to question three are reflected upon and the Order is suitably amended, we feel the system is likely to have largely positive consequences. We feel that the proposed timeframe for implementation is appropriate but would caution that adequate funding must be made available to local authorities to ensure that the system is appropriately implemented, administered and enforced.

¹ Scottish Government, April 2019: www.gov.scot/publications/short-term-lets-consultation-regulatory-framework-scotland/documents.