

**Short Term Lets: Consultation on draft Licensing Order and Business and Regulatory Impact Assessment (BRIA)**

**Response from Propertymark**  
**August 2021**

**Background**

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 17,500 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.

**Introduction**

2. 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. It is positive 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 therefore welcome the opportunity to submit representations to the Scottish Government's consultation on the Short-term Lets draft Licensing Order and Business Regulatory Impact Assessment (BRIA) to help ensure that the licencing legislation which forms part of the new regulatory regime is as effective and efficient as possible.

**Questions**

**For Paper 2, [Draft Licensing order](#): please state your issues and how to resolve them.**

3. Propertymark notes two key issues with the Draft Licensing Order (referred to hereafter as "the Order") and how they may be resolved. The first relates to the lack of clarity around whether holiday lets are included in the definition of short-term lets as set out by article 3 of the Order. The second issue relates to the effect of the Order on landlords of Houses in Multiple Occupation (HMOs) who let rooms to people under the private rented sector (PRS) and short-term lets regimes, giving rise to multiple licensing requirements.
4. There is little doubt that the Scottish Government's intention is for holiday lets to be included in its plans to regulate short-term lets. Based on the defining criteria of a short-term let, as set out in article 3 of the Order, holiday lets would indeed be in scope. This position is supported by paragraphs 16 and 17 of the Policy Note (at pages 2-3), which clarifies that, "before any exclusions are applied, the purpose of the stay is immaterial: both work and leisure stays are within scope." However, there are two consequential amendments made by the Order (at page 21) that serve to explicitly set holiday lets outwith the scope of the article 3 definition. It

is therefore unclear whether or not holiday lets are indeed short-term lets for the purposes of the Order.

5. The first amendment that dilutes clarity on whether holiday lets are included in the definition of short-term lets is paragraph 1 of Schedule 4's consequential amendment to paragraph 6 of [Schedule 1 of The Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), in respect of holiday lets. Once amended it would add a second clause (highlighted below in bold) reading as follows:

(1) A tenancy cannot be a private residential tenancy if the purpose of it is to confer on the tenant the right to occupy the let property for a holiday. *(Currently the only clause)*

**(2) A tenancy cannot be a private residential tenancy if it is a short-term let within the meaning of article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021"**

It is unclear why this additional clause is needed. If holiday lets are indeed included in the Order's definition of a short-term let, simply amending the existing clause to exclude tenancies that are short-term lets within the meaning of article 3 of the Order would suffice.

6. The second amendment which causes uncertainty over whether holiday lets are included in the article 3 definition, is the consequential amendment [to section 12 of The Housing \(Scotland\) Act 2006](#), which sets out the tenancies to which the repairing standard duty applies. Currently, section 12 (f) of the 2006 Act states that the repairing standard duty applies to any tenancy of a house let for human habitation *unless* "it is a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday." The amendment made by the Order would continue to exempt holiday lets from the repairing standard duty *'unless the tenancy is a short-term let'* as defined by article 3 of the Order. This makes an explicit distinction between the two; setting holiday lets outwith the statutory definition of a short-term let.
7. The Policy Note paragraphs on consequential amendments provides no clarity on the matter – on the contrary, it leads to further confusion. At paragraphs 164-165 (page 24) it states, "Whilst most holiday lets will be short-term lets, this will not always be the case. For example, a let to family members may constitute a holiday let but is excluded from the definition of short-term let." It also states that "Paragraph 2 of Schedule 4 of the draft Order amends the 2006 Act, so that the exemption of holiday lets from the repairing standard is narrowed to exclude short-term lets, having the effect that short-term lets are subject to the repairing standard." These notes serve to punctuate a distinction between holiday lets and short-term lets, for the purposes of article 3 the Order.
8. We believe the above issues can be resolved by including an explicit reference to accommodation let for the purpose of providing holiday accommodation in the definition of a short-term let at article 3, and by reviewing the consequential amendments that make a distinction between holiday lets and the Order's definition of short-term lets.
9. The second issue we would like to bring the Scottish Government's attention relates to the impact the current drafting could have for landlords who provide HMOs and could therefore trigger obligations under the new short-term lets regime while already being subject to requirements under the private rented sector regulatory framework.

10. Article 2(2) of the Order states that a short-term let licence will be required where at least one of the guests meets the short-term let requirements but the Scottish Government have made it clear that the regulatory framework for short-term lets “should complement, not duplicate” the framework already in place with the PRS, which includes the licensing of HMOs.<sup>1</sup> Its consultation on proposals to expand the definition of a HMO via The Houses in Multiple Occupation (Scotland) Order 2019<sup>2</sup> would ensure that where accommodation is being provided to “contract and transient workers”, they are afforded the same health and safety rights as those who live in a shared rented property as their only or main residence. Such an extension to the definition of HMOs would ensure that where such properties occupied by people in circumstances that would trigger licensing obligations across multiple regimes, the HMO licensing framework would apply, not the short-term lets one.
11. There is currently no published timetable for bringing this legislation into effect but without it, landlords who provide accommodation under both the PRS and short-term lets regimes will be required to have multiple licenses. This issue can be resolved by doing two things. Firstly, the Scottish Government should progress and implement its plans to extend the definition of a HMO to include circumstances in which accommodation is being provided to “contract and transient workers”. Secondly, the Order should be drafted to explicitly exclude arrangements where landlords are already subject to licensing and registration requirements under the PRS framework, to ensure multiple licensing requirements are avoided.

**For Paper 3, [Draft Business and Regulatory Impact Assessment \(BRIA\)](#): please state your issues and how to resolve them.**

12. As noted in answer to question 1, we have highlighted that the Order, as currently drafted, could lead to duplication in circumstances where multiple licensing obligations are triggered across both Private Renting (HMOs) and short-term lets regimes. This would have a considerable administrative impact on local authorities and place unnecessary burdens on affected landlords. This issue can be resolved by doing two things. Firstly, the Scottish Government should progress and implement its plans to extend the definition of a HMO to include circumstances in which accommodation is being provided to “contract and transient workers”. Secondly the Order should be drafted to explicitly exclude arrangements where landlords/property owners are already subject to licensing and registration requirements under the private rented housing regime.

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<sup>1</sup> <https://www.gov.scot/publications/short-term-lets-consultation-regulatory-framework-scotland/documents/>

<sup>2</sup> <https://www.gov.scot/publications/houses-multiple-occupation-hmo-consultation-adding-new-categories-definition-hmo/pages/7/>