

Local Government and Communities Committee

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021

The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021

Submission by Airbnb

Introduction

- Airbnb welcomes this opportunity to comment on the proposed changes to the rules on short-term letting in Scotland and to inform the Local Government and Communities Committee in its scrutiny of statutory instruments that will determine the future regulation of the tourism industry in Scotland.
- Airbnb helps millions of ordinary people make money from their spaces and their passions. Airbnb keeps the financial benefits of tourism in its hosts' communities. Airbnb is preferred by travellers who seek affordable and flexible accommodation: we unlock new travel opportunities for everyone. We are proud to be part of Scotland's thriving tourism sector.
- Scotland is absolutely right to pursue new rules for short-term lets and we wholeheartedly support proposals that recognise the way people live, work and travel today. But this approach is a prime example of how over regulation can put key sectors at risk.
- Since first engaging in these regulatory discussions in 2017, Airbnb has sought to work constructively with stakeholders to introduce sensible and proportionate regulation for the short-term letting sector. We want to protect the livelihoods of local hosts who most need the additional income that welcoming guests into their homes can offer, whilst balancing the needs of local communities that may want more control over the activity.
- However, this solution will not solve Scotland's housing concerns, will significantly impact homesharers and cause a significant hit to tourism capacity. This legislation would lumber all hosts in Scotland with hundreds of pounds of licensing costs. In imposing these burdens, this legislation does not adequately discriminate between professional hosts and the ordinary people who may use Airbnb to generate vital additional income.
- The Scottish Government's approach to its consultation did not help ordinary people to understand the extent of regulation that is now proposed. The Scottish Government did not publish a partial Business and Regulatory Impact Assessment (BRIA), contrary to its own guidance. It did not issue drafts of the Statutory Instruments it has now laid before Parliament. This is contrary to the approach that the Scottish Government often takes when consulting on

potential legislative reform. Crucially, this legislation extends much further than short-term lets, covering all B&Bs. This was not mentioned in the Business and Regulatory Impact Assessment.

- For Scotland's local authorities, this legislation proposes the worst of both worlds: centralisation and fragmentation. It forces local authorities to incur the expense and administrative burden of creating licensing schemes regardless of whether or not they need or want them. It then leaves local authorities alone to create and fund these systems. The Scottish Government has still not provided clarity on the cost of funding a full system, with no economies of scale taken into consideration.
- This legislation threatens Scotland's tourism economy with one of the world's most restrictive regulatory systems on short-term lets. In the face of a predicted global financial shock, the Committee must consider whether it can allow such a threat to hamper and disadvantage Scotland's economy, when the survival of tourism is crucial to help local economies recover.
- We urge the Committee to oppose this legislation. The Scottish Government must not rush this decision. 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. Pause these discussions and reconsider the approach.
- We ask the Committee to consider the following:
 - **A revised BRIA.** It is crucial the Scottish Government takes a more considered approach to defining the benefits and costs of the proposals based on reliable evidence.
 - **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.
 - **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. The same point applies where a host is allowing the use of a spare room.
 - **There must be consistency across the regulatory framework.** We believe that "homesharing" lets that let all or part of a host's primary residence should be exempt from both the planning permission and licence requirements.
 - **A requirement for all local authorities to adopt 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.

1. Do the proposed changes strike the correct balance between protecting the long-term sustainability of local communities and promoting tourism and strong local economies?

- 1.1. The proposed changes do not strike the correct balance between protecting local communities and promoting tourism and strong local economies. Someone offering up their spare room for one night of the year will be subject to considerably more regulation than private rented sector landlords, defying any sense of reason or proportionality.
- 1.2. Mandatory licensing requirements for all types of hosts put 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 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 complex planning processes, if in a control area.
- 1.3. These regulations will impact millions of guests, tens of thousands of hosts, countless local small businesses and thousands of jobs across Scotland. They will prove a significant barrier to Scotland's economic recovery. The proposed system is complex, clunky and costly. It will not address the Scottish Government's strategic priorities and public policy objectives, such as tackling affordable housing shortages.
- 1.4. In answering the Committee's first question, we aim to provide the latest evidence on data on economic impact, community support, as well as technical analysis on the Business and Regulatory Impact Assessment (BRIA).
- 1.5. **By introducing these measures, the Scottish Government is putting almost 17,000 jobs at stake in respect of activity on Airbnb alone.** This does not account for the wider impact on the B&B sector, or the tourism industry as a whole. A study conducted by BiGGAR Economics in October 2020 found Airbnb guest spending and Airbnb host income supports 33,500 jobs in Scotland. According to BiGGAR's findings, this legislation puts almost 17,000 jobs at risk: this would be equivalent to increasing the unemployment rate by 0.6% (from 4.5% to 5.1%).¹ These findings were based solely on our data. The tourism sector as a whole is facing an incredible amount of strain, with hotels and B&Bs suffering as a result of the COVID-19 pandemic. At a time when many are struggling to make ends meet, we are asking the Committee to rethink these proposals in light of this impact. There are better, simpler solutions that can protect communities and protect the tourism industry in turn.

¹ <https://news.airbnb.com/wp-content/uploads/sites/4/2020/12/Airbnb-Economic-Impact-in-Scotland-BiGGAR-Economics-29Oct20-2.pdf>

1.6. **These regulations will be a lasting barrier to tourism recovery.** The tourism sector is a cornerstone of Scotland's economy; yet it has been disproportionately hit by the effects of COVID-19. The sector needs all the help it can find in order to recover.

1.6.1. In the face of COVID-19's impact on Scotland's tourism sector, the Scottish Government has postponed key pieces of legislation such as the Transient Visitor Levy. We must question why, in introducing this legislation, the Scottish Government has not adopted a consistent response.

1.6.2. Last year, Airbnb commissioned BritainThinks and the University of Brighton to undertake a consultation on regulatory issues in Scotland. This included input from local authorities, destination marketing organisations, residents' associations, Airbnb hosts, trade associations and politicians. One national level stakeholder responded:

"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)²

1.7. **Given the impact and long-term uncertainty caused by the COVID-19 pandemic, the Scottish Government should be responsible for tracking the economic impact of these measures. Parliament should not approve these regulations until such time as there is clarity on the impact that COVID-19 has had on our tourism economy and the Government has modelled that as part of a revised BRIA.**

1.8. Setting aside the exceptional circumstances, the regulations are unreasonable and entirely disproportionate. We can only conclude that the Scottish Government's intent is to regulate short-term lets out of existence. Below, we set out why.

1.9. **This legislation will take income from those who can least afford to lose it.** For many people in Scotland, Airbnb provides an economic lifeline; yet these are the people who will be hit hardest by this legislation.

1.9.1. **The vast majority of hosts on Airbnb are normal people, sharing their primary home to supplement their income.** Almost 40 per cent of Airbnb hosts in Scotland say the income helps their monthly household costs. Almost 20 percent of hosts in Scotland are not in the labour force and four percent are unemployed.

² <https://britainthinks.com/news/stakeholder-consultation-on-stls-in-scotland-a-report-for-airbnb-by-britainthinks>

1.9.2. **The cost of and complexity of compliance will simply shut out ordinary people.** 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. Almost 20 percent of hosts in Scotland are not in the labour force (e.g. retired) and 4 percent are unemployed.
- Hosts may have to pay almost £2,500 to comply. According to the BRIA, hosts will have to front £1,091 to comply initially with mandatory requirements (some of those costs are one off and some repeat annually) for letting out a spare room. This is irrespective of licensing costs (between £223 and £377 per licence), other criteria which may be set, plus an estimated £520-£1,000 one off fee where planning permission is required. Asking whether people who are unemployed or otherwise struggling financially could readily absorb hundreds or thousands of pounds is financially unviable.
- 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 the future.

1.9.3. **Short term lets provide clear benefits for vulnerable guests and hosts.** The Fairer Duty Scotland summary impact assessment of this legislation found short-term lets can help those on lower incomes by providing cheaper alternative accommodation for guests and an income supplement for hosts. In Glasgow, most short-term lets are in decile one of the Scottish Index of Multiple Deprivation.³ During the pandemic, hosts across the UK have provided over 1,200 free stays to help NHS staff and key workers to do their vital work in safety.⁴

1.10. **The Scottish Government is clearly favouring big business over the micro entrepreneurs that keep the Scottish tourism economy thriving.** Ordinary hosts on Airbnb will be at a competitive disadvantage to the businesses that offer types of accommodation excluded by the regime (e.g. hotels, hostels, serviced apartments). These businesses can shoulder the economic burden of the pandemic as opposed to an average Airbnb host. The Scottish Government has recently announced that it is excluding small businesses from receiving

³ <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-consultation-analysis/>

⁴ <https://www.airbnb.co.uk/d/medicalstaysuk>

government funding, which will affect hosts on Airbnb and small self catering businesses.

1.11. Our experience of working with governments all over the world has shown us that **complex and expensive licensing systems end up skewing the market to the benefit of professional operators**. This legislation – which puts a one-night-a-year host under the same regime as a professional bed and breakfast operator – will only serve to block entry for almost all but professional hosts.

1.12. **The Scottish Government has demonstrated consistent and systematic procedural failures throughout the consultation of this legislation.**

1.12.1. The Scottish Government rushed its most recent consultation, breaching its own guidance without adequate justification. **Rather than following the usual three-month practice, the consultation was condensed into little more than four weeks.** The Government outlines itself that “only in very exceptional circumstances should less than 12 weeks be given, and the reasons for this should be fully explained where this happens”. We would welcome further clarification as to why these circumstances were exceptional, other than, of course, being a moment of unprecedented economic hardship for the tourism industry.

1.12.2. **The Scottish Government chose to consult on new rules, asking stakeholders to do so blindly, without a Business and Regulatory Impact Assessment (BRIA), and the subsequent BRIA is seriously incomplete.**

- The BRIA was published on 14 December, almost two months after the consultation response deadline. This approach failed to meet the Scottish Government’s own Better Regulation principles and did not allow respondents any time to assess the impacts, costs and benefits of the proposed regulations.
- The Scottish Government’s own guidance states: “Consultation documents should be accompanied by a partial BRIA, to encourage comment by those the proposals may affect. For Final stage BRIAs – Update the partial BRIA with the public consultation results, any related and subsequent developments to the proposal and any impact on the decision being taken from these results.”
- In its response to the 2020 consultation, the Law Society of Scotland notes that the inclusion of a BRIA is “vital” and its omission makes it “challenging for fully informed representations to be made.”

- Issues with the drafting of the legislation could have been resolved. The Scottish Government has put undue pressure on the Committee to simply accept or reject legislation which has a plethora of unintended consequences.
- It is not clear why the Scottish Government has not followed its own process. There are other consultations which follow the Scottish Government's guidance, it's unclear why they have not done so in this case.

1.13. Having reviewed the BRIA, we have serious concerns that the Scottish Government has not given due consideration to the consequences of implementing this legislation. We strongly believe that if the Scottish Government had followed its own guidance, and produced a BRIA in accordance with and at the time of the consultation, they would have identified, and still could identify, more viable alternative measures to its current proposals that do not put the livelihoods of tens of thousands of people at risk.

1.13.1. **The Scottish Government has made no assessment of the economic impact of these proposals or who will be hit the hardest as a result.** The Scottish Government has simply conceded it is too difficult to predict. The Scottish Government's own BRIA Toolkit states: "As it is often difficult to predict accurately the exact costs and benefits you can use estimates and/or ranges. You should state whether these estimates/ranges represent extreme values or the most likely range of outcomes. Where there is uncertainty, make it clear and spell out any assumptions used to arrive at your estimates/ranges." No attempt has been made to conduct an assessment. We strongly recommend the Scottish Government conducts an impact assessment on how this would affect homeshares, small tourism businesses and low income families.

1.13.2. **Where data has been used in the BRIA, it is outdated and misinterpreted.**

- The BRIA states that: "Research for the Scottish Government on the impact of short-term lets on local communities identified that there were just under 32,000 active Airbnb listings in May 2019 across Scotland, with nearly 70% of these being secondary letting (whole properties)." We have, repeatedly, provided the Scottish Government with data on the size and impact of our community in Scotland, with appropriate context. To be absolutely clear, examining the total number of entire home listings in any given area is not necessarily an indication of impact on long-term housing. Very few of those listings would likely be available on the long-term housing market. An entire home is very often – but not always – already the home of the host. They are offering

their entire home to guests while they are themselves away. Thus, an “entire home” listing on Airbnb is not necessarily a property that would be available for long-term rental under other circumstances.

1.13.3. **At the request of the Scottish Government for more data and information about the impact of these rules, we commissioned a report by BiGGAR Economics, but these findings have been ignored without adequate justification.**

Attempts by the industry to provide robust data about the economic impact of this legislation have been ignored. In the absence of an economic impact assessment, Airbnb commissioned BiGGAR Economics to assess the impact of this legislation on the economy. We have shared these findings with the Scottish Government - they have not been included as part of the BRIA.

1.13.4. There is, in fact, **no empirical evidence produced in the BRIA that demonstrates short-term lets are to blame for an increase in housing costs across Scotland.** All evidence presented in the BRIA is anecdotal and the solution to Scotland’s housing crisis is not to undermine a sector which creates the jobs and income that, in many cases, keep roofs over people’s heads.

- When we surveyed hosts on Airbnb, 51% claimed that, if these regulations were introduced, they would neither let their property nor put it on the long-term rental market. 17% said they would leave their property empty. 34% said they would still live in, but not let their property.
- Airbnb listings make up less than one percent of housing stock while 132,000 households are on local authority housing waiting lists.⁵ According to Shelter Scotland: “regulation will only go some way in tackling this crisis. This is a problem of a lack of homes. In order to really alleviate the housing crisis in Scotland, we need to build more homes.”⁶

1.13.5. **Future impact on tourism capacity has not been considered, without adequate justification.** There is no evidence presented in the BRIA that considered whether there are enough beds in the right type of accommodation to attract tourists who could no longer access short term lets. Hosts opening up their homes is what makes large scale annual events such as Edinburgh Festival, The Open, the Highland Games and COP26 happen. These views have been shared, by local authorities, with the Scottish Government. These views have been ignored.

⁵ https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research

⁶ https://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/short_term_lets_in_scotland

1.13.6. **Proposals by the industry for a short-term registration system have been ignored, without adequate justification.**

- The Scottish Government rejected a registration scheme because it “would require a Bill (primary legislation) and would not have been possible to deliver in this session of parliament.” Instead, the Scottish Government is asking local authorities to front the cost of administering a system which does not require hosts to be licensed until 2024. Timing is not an issue, as hosts do not have to be licenced until 2024.
- According to the BRIA, the Scottish Government also rejected proposals for a registration system because “it would require new, unfamiliar infrastructure” for local and national governments. This is incorrect. The Scottish Government fails to mention they have already implemented a Landlord Register⁷, mentioned in the BRIA. The landlord registration system is simple, online, and inexpensive (£60 vs £377 for a short-term lets licence). In short, everything that the industry has been making a strong case for.
- The Scottish Government has simply shifted the cost burden to local authorities. The BRIA states that: “Local or national government would need to establish and fund [the registration system]”. However, the Scottish Government is already asking local authorities to set up the licensing system, without central funding.

1.14. Major decisions impacting Scotland’s tourism recovery - currently one of the industries worst affected by the COVID-19 pandemic - should not be made on the basis of vocal opponents, but through the Scottish Government’s own Principles of Better Regulation.

1.15. **Scotland will have one of the most onerous regimes for short-term lets worldwide.** This approach is an example of how policy can put key sectors at risk. It is disproportionate and simply goes far beyond what we’ve seen elsewhere in the world.

1.15.1. This regressive approach stands in stark contrast to governments across Europe who have implemented free, online and simple systems for homesharers.

1.15.2. All Scottish hosts will face stricter rules than any host in Paris, Amsterdam, Hamburg, Beijing or London. Hosts in Scotland will have to complete up to 75 steps and face months of bureaucracy, whereas hosts in Hamburg register for their right to host online, in five minutes, for free. The city then has everything they need to enforce their rules - effectively, fairly and efficiently.

⁷ <https://landlordregistrationscotland.gov.uk/>

- 1.15.3. Forward-thinking governments have taken different approaches. For example, in the Netherlands we are supportive of their phased and tiered approach towards an evidence-based registration system. In Denmark, we have worked with the tax authority to help hosts increase day limits and tax-free earnings.
- 1.15.4. We have consistently shared these case studies with the Scottish Government, as great examples of how we can work with the Government to implement simple, digital first and cost effective systems.
- 1.15.5. **There is not widespread support for the introduction of this legislation across Scotland.** According to polling conducted by ORB International for Airbnb, Scottish people do not support the introduction of these rules:
- 72% of Scots say that, until the pandemic is over and the state of the economy is clearer, the Scottish Government should pause any new regulations that would hurt the economy or the tourism sector.
 - 91% of Scots believe tourism will be central to Scotland's recovery from the pandemic.
 - 67% called on the Government to focus on policies that will boost tourism in the wake of the pandemic.⁸
- 1.15.6. **This legislation imposes Scotland-wide rules to tackle area-specific issues.** The disparity between the needs of Edinburgh and the needs of the rest of Scotland is reflected in stakeholder responses to the Scottish Government's consultation. There is no empirical evidence presented in the BRIA that quantifies the detrimental impact to communities across most of Scotland. On the contrary, short-term lets support sustainable communities. This sector keeps people in their homes, tourism spend in local communities and creates extra tourism capacity without having to build new hotels and infrastructure. It's simply a more sustainable form of travel.
- 1.15.7. **Some local councils face little to no issues of anti-social behaviour or housing constraints.** In responses to the Scottish Government's recent consultation on the new rules, North Ayrshire, West Lothian, West Dunbartonshire and South Lanarkshire – emphasised a relative – and sometimes total – lack of disturbance, antisocial behaviour and community or housing issues relating to short-term lets in their area.⁹
- 1.15.8. BritainThinks' report found that this legislation's proposed planning powers 'are much more divisive' across Scotland:

⁸ <https://www.eveningexpress.co.uk/news/scotland/most-scots-want-short-term-let-changes-paused-during-pandemic-airbnb-poll-shows/>

⁹ https://consult.gov.scot/housing-services-policy-unit/short-term-lets/consultation/published_select_respondent

- *“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.”¹⁰*

1.15.9. Any action that would restrict or reduce the number of short-term lets in Edinburgh would have a severe negative economic impact unless it is matched by an increase in lets outside Edinburgh.¹¹ By forcing Edinburgh and its neighbouring local authorities to adopt licensing systems, such rebalancing becomes extremely difficult.

1.16. Mandatory licensing forces local authorities to adopt licensing whether or not they need or want it while also leaving it up to them to create and fund their own systems. This jeopardises the revitalisation and future growth of tourism in the local authorities that need it most.

2. **Has the Scottish Government defined short terms in a clear and correct way in the legislation?**

2.1. We believe the Scottish Government has defined short-term lets in a clear way that distinguishes between the different types of host (homesharing, home-letting and secondary letting). The legislation still, however, risks serious unintended consequences.

2.2. We cannot understand why the Scottish Government has defined different subsets of short-term letting activity (homesharing, home-letting and secondary letting) when all operators are subject to the same licensing regime and the same costs.

2.3. In addition, **there is no definition of what constitutes a short-term stay, or where the trigger point lies between short-term and long-term letting.** This has been clarified in other jurisdictions across Europe. For example, in the Republic of 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. We urge the Scottish Government to provide further clarity and distinction between how these types of activity interact with one another.

2.4. **There are inconsistencies between planning and licensing legislative design principles.** The Scottish Government is adopting a

¹⁰ <https://britainthinks.com/news/stakeholder-consultation-on-stls-in-scotland-a-report-for-airbnb-by-britainthinks>

¹¹ BIGGAR Economics, *Scottish & Local Tourism Economic Impact Assessment*, October 2020

different approach to the scope of licensing to the approach the Parliament agreed to on planning in 2019. The Planning (Scotland) Act 2019 makes it clear that the letting of “a dwellinghouse (or part of it) where all or part of the dwellinghouse is the only or principal home of the landlord or occupier” is not subject to the requirement to obtain planning permission. Why then do the same principles not apply to licensing?

- 2.5. **These measures will disproportionately affect occasional homesharers, contravening guidance from the European Commission, and European legislation.** The European Commission has spent years studying the impact and regulation of the collaborative economy, making robust recommendations to member states for regulating this activity in a simple, proportionate manner. In line with European Commission guidance, Airbnb has long called for clear boundaries between non-professional and professional providers.¹²
- 2.5.1. The vast majority of hosts on Airbnb in Scotland share their primary residence. These families live in their home and in this sense ensure that it is safe and fit for habitation. Asking these hosts to comply with licensing requirements to share a spare bedroom is completely disproportionate.
 - 2.5.2. Many of these families host to cover household costs, or afford to travel themselves. Asking these hosts to comply with licensing requirements to afford a week long holiday seems an entirely disproportionate restriction on property rights: as such, it may be incompatible with article 1 of protocol 1 of the European Convention on Human Rights.
 - 2.5.3. **There must be a clear distinction between occasionally letting a home ('homesharing') and letting a property that is not a primary residence.** Homesharers should fall outside the regulations or, at the very most, be subject only to simple, instant, online registration. This should be standard practice at local authority level.
 - 2.5.4. Requirements must only be applied to professional hosts. This will ensure that the onerous proposed licensing system does not disincentive non-professional hosts who let spare rooms or only let for under 28 days a year. These people are not businesses or professionals.
 - 2.5.5. We also strongly recommend the removal of the requirement that all hosts obtain a £5 million public liability insurance policy. This imposes a massive and discouraging burden on hosts' use of their own houses.
- 2.6. **These rules are disproportionate.** The Scottish Government proposes that all secondary letting should fall within the scope of control areas where they have been established. It does not intend to permit any amount of secondary letting without the local authority granting a specific planning permission.

¹² <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-184-F1-EN-MAIN-PART-1.PDF>

- 2.6.1. This means that in situations where, for example, a property is let for most of the year as a student flat, the owner would need to apply for planning permission to let out the property for a couple of weeks in the summer months.
 - 2.6.2. This is disproportionate and unnecessary when the Regulations could have allowed a limited period of secondary letting using “permitted development rights”. That would mean that rather than such properties sitting redundant, they could be used for a limited period of time (e.g. up to 28 days) for secondary letting helping to support tourism and the local economy.
 - 2.6.3. If any individual council had a concern with that “default” position for any part of its area, the law already allows them to remove those rights through a relatively simple mechanism.
- 2.7. Airbnb also notes the concerns of many in Scotland’s B&B sector who are worried this legislation could impact them. These concerns were raised in the Scottish Parliament’s Culture, Tourism, Europe and External Affairs Committee by Marc Crothall of the Scottish Tourism Alliance.¹³ The Committee must be aware that the damage the Scottish Government intends to inflict on short-term letting could impact other accommodation types.
- 2.8. **As regards the definition of a short-term let, we make the following recommendations:**
- 2.8.1. There must be no grounds for objection if a host meets the licensing criteria. The grounds for objection otherwise need to be more robust and detailed. We would welcome a more comprehensive framework for assessment from the Scottish Government. When an application is rejected, the applicant must always have access to legal right of appeal.
 - 2.8.2. **Local authorities must be required to give clear warnings before they can issue fines.** The proposed maximum fine of £50,000 is disproportionate and would represent one of the most severe punishments for non-compliance in the world. In Scotland, selling alcohol without a license has a maximum fine of £20,000. We would welcome more clarity from the Scottish Government on how local authorities will fund the policing of the licence requirements.
 - 2.8.3. The requirement for property managers and co-hosts to apply for the licence in their name should be removed. This requirement is likely to discourage best practices in property management and to impact the supply economy around short-term lets.
- 2.9. **The Scottish Government is yet to define how local authorities should designate Control Zones.** The regulations in regard to short-term let control areas provide little detail on procedure and criteria.

¹³ <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13055>

- 2.9.1. These issues are left largely to individual local authorities. Local authorities have no explicit duty to consider the representations or explanation of the process by which the announcement of control areas should happen. This lack of detail and accountability is likely to lead to confusion and greater costs for hosts and local authorities.
- 2.9.2. The introduction of a short-term let control area means that planning permission will be required in non-primary residences, yet the vast majority of local authorities, including Edinburgh, have no planning policies that set out the criteria for judging whether an application for planning permission is likely to be acceptable. It is essential that appropriate policies are in place before a short-term let control area is proposed. If they are not, there is likely to be chaos in the planning system as hosts apply for planning permission when neither they nor local authority planners have any clear idea of what criteria should be considered in the determination of the application.
- 2.9.3. The Planning Minister himself recognised this point when he gave evidence to the Scottish Parliament on 24 October 2018. Responding to proposals set out by Andy Wightman MSP, the Minister noted that:

“Creating a requirement for Planning Permission [through the introduction of control areas] does not translate into being able to refuse Permission if there are no material planning considerations involved, and it is not clear whether a change in how a dwelling is occupied would be a material consideration in all cases. Robust Development Plan policies would also be needed to ensure that any decisions on Applications could withstand challenge”.

- 2.9.4. **Control Zones should not be implemented until there is sufficient data to justify their introduction.** At this point, the evidence can be used to frame a pragmatic and transparent Control Zones policy, overseen by the Scottish Government. Where planning permission is denied, local authorities must give clear and fair reasons for the decision and provide opportunity for appeal.

3. Will local authorities have adequate resources, powers and expertise to make a success of their new powers and duties?

- 3.1. Airbnb has worked with governments around the world to implement fair and proportionate regulatory frameworks for short-term lets. We have considerable experience in frameworks that are cost and resource effective, and those which are not.

- 3.2. **Airbnb wants to work together with local authorities, as they consider system implementation.** Any licensing system must be designed in consultation with all those it will affect, including online platforms and those who interact with them. Our experience shows us that such a system is most likely to succeed when it possesses the following characteristics:
- 3.2.1. 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
 - 3.2.2. A tiered approach to licensing: occasional, non-professional hosts should face lighter requirements than professional operators.
 - 3.2.3. National oversight and guidance: the Scottish Government should implement clear criteria that define where and when it is appropriate to introduce licensing systems; it should set clear criteria for implementing Control Zones, as it has done for Rent Pressure Zones.¹⁴
- 3.3. **There is a serious risk that some local authorities may be unprepared to introduce digital licensing systems and will instead introduce paper-based systems.**
- 3.3.1. Airbnb supports the aims of the Scottish Government's digital strategy, which seeks a future where "Scotland is recognised throughout the world as a vibrant, inclusive, open and outward-looking digital nation."¹⁵
 - 3.3.2. At the same time, a report by the Accounts Commission has concluded that Scotland's local authorities are at different stages of digital transformation and that further progress may be restricted due to insufficient workforce planning and a lack of skilled staff.¹⁶
 - 3.3.3. We urge the Scottish Government to conduct an impact assessment on the additional resources – including staff and technology investment – which will be required by local authorities to deliver the proposals effectively and efficiently. The Scottish Government must consider the impact of the regulations on local authorities' ability to deliver a streamlined and accessible registration and validation process.
 - 3.3.4. Analogue systems are likely to be costly, environmentally-unfriendly and unfriendly to users. They may also threaten COVID-19 safety requirements and users' compliance, if in person inspections are required.
 - 3.3.5. Every local authority should deliver its licensing system digitally. Hosts should be able to apply for a licence and otherwise comply with regulations in a single visit to a user-friendly website. There should be no requirement for prior in-person validation. The Scottish Government and local authorities should

¹⁴ <https://www.gov.scot/publications/rent-pressure-zone-rpz-application-requirements-local-authorities/pages/3/>

¹⁵ <https://www.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/pages/2/>

¹⁶ https://www.audit-scotland.gov.uk/uploads/docs/report/2021/nr_210114_digital_progress_lg.pdf

work with platforms, hosts, guests and industry bodies to implement a simple, centralised, online and prompt digital system. If local authorities are to be forced to create licensing systems, they should not be left to create 32 incompatible systems. This may require the Scottish Government to implement a working group made up of experts and key sector organisations.

- 3.4. **Local authorities will take on the cost burden.** We see no way to implement this 32 times over without either significant investment from the Scottish Government or further constraints on local authority budgets. The Scottish Government must urgently clarify how it expects the set-up and operation of these licensing systems to be cost neutral.
- 3.4.1. Each council will have to create a bespoke licensing framework. The set-up will require a huge amount of resources over a considerable period of time, during which many hosts will have no obligation to pay any fees and no central funding commitments from the Scottish Government.
- 3.4.2. Planning fees in Scotland cover only 63% of the cost of processing each application.¹⁷ Each local authority licensing system is likely to have teething problems. This is especially true of control zones. In our experience, requiring planning permission for short-term lets constitutes an effective ban. This is often due to the cost of processing planning applications.
- 3.4.3. The Scottish Government must also set very strict and clear guidelines on what can be charged by local authorities for a licence. Licences should be as low cost as possible to avoid unnecessary barriers to entry for the smallest operators. At the very least, the Scottish Government should implement a maximum cap on the licence fee that any local authority can charge. If fees are too high, this creates a high barrier to entry, ultimately resulting in fewer applications and decreased revenue for local authorities to implement their systems.
- 3.5. **Local authorities will be forced to implement local licensing systems, contrary to the Scottish Government’s design principles.**
- 3.5.1. In the Scottish Government’s amended regulatory design principles, published in tandem with the 2020 consultation, it states “councils are empowered to implement the regime that responds to local needs, of both residents and businesses (e.g. new festivals starting up)”. This is incorrect. Councils will be forced to implement licensing, regardless if this fits local needs or not.
- 3.5.2. Local authority licensing systems must reflect local needs. Local authorities must therefore be able to collect evidence on the effects of short-term lets in their area before they implement licensing systems.

¹⁷ [https://www.parliament.scot/S5_Bills/Planning_\(Scotland\)_Bill/SPBill23AFMS052019.pdf](https://www.parliament.scot/S5_Bills/Planning_(Scotland)_Bill/SPBill23AFMS052019.pdf)

- 3.5.3. This evidence supports the fact that the Scottish Government should have made this legislation "opt in" to local authorities so that only those with the resources and interest to administer it need to do so.
- 3.6. **Local fragmentation compounds complexity and makes Scotland a more expensive place to travel.** One national-level stakeholder surveyed as part of the BritainThinks report states: *“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.”*
- 3.7. By introducing a system where permission is required for even one night of operation - even for hosts who have applied under a regulatory exemption - the Scottish Government has created a huge, unnecessary administrative burden for local authorities. This is a classic case of unnecessary overprovision policy - guilty until proven innocent. If the Scottish Government has set criteria for satisfactory exemptions, why can’t hosts operate right away?
- 3.8. **Flexibility around temporary licences is extremely limited.** Although temporary licences can be granted, all stays will have to be continuous. Many hosts only share their home when they themselves travel.
- 3.9. **There is also no incentive for local authorities to grant licences to new hosts, as according to the current legislation, applications expire after 6 months of default.** After this, hosts will have to dispute their licence refusal in court. There is no timeframe stipulated whereby local authorities must review or approve the grant of the licence. Therefore, it is more resource intensive to approve the licence than to let the 6 month grace period expire. If a local authority fails to clearly respond to a licence application, hosts should be able to operate until the council has made a final decision. All we are asking for all hosts to have a fair hearing on their application, without going to court.
- 3.10. Ultimately, the Scottish Government has chosen to increase bureaucracy, shifting the cost burden to local authorities and Scottish hosts, contravening its own guidance and Better Regulation principles, with no money to front the set up of this complex system.

Conclusion

- We urge the Committee to oppose the enactment of this legislation. If enacted, Scotland will have one of the most regressive and bureaucratic regulatory regimes for short-term lets anywhere in the world. We are in no doubt that this will negatively impact Scotland’s standing as a leading tourism destination and its ability to recover economically as we emerge from the global pandemic.

- Scottish hosts on Airbnb are a vital part of ensuring the tourism sector - and therefore the country's economy - recovers. We ask the Scottish Government and the Local Government and Communities Committee why they are putting 17,000 jobs on the line, increasing unemployment in the long term, when a simple, online, straightforward solution could serve the Government's objectives.
- In short, the Scottish Government has failed to meet its own design principles:
 - Responsive: Local authorities have not been empowered, but forced to enact this legislation, with no central government funding.
 - Flexible and future proofed: This regulation is embedded in a past statute, with no requirement for digital implementation and no funding for digital systems.
 - Easy to understand by all: These rules run the risk of 32 different systems with different implementations, which is unclear to communicate to all hosts across Scotland.
 - Cost-effective: This is the most expensive short-term lets regime in Europe, by far. Other, forward-thinking governments have implemented free or low cost systems supporting normal people who want to earn supplemental income.
- In addition, the Scottish Government has consistently ignored constructive and cost effective solutions proposed by the industry. The Scottish Government also rejected proposals for a registration system because "it would require new, unfamiliar infrastructure" for local and national governments. This is incorrect. The Scottish Government fails to mention they have already implemented a Landlord Register¹⁸, mentioned in the BRIA. The landlord registration system is simple, online, and inexpensive (£60 vs £377 for a short-term lets licence). In short, everything that the industry has been making a strong case for. We urge the Committee to consider this as a viable alternative to what's in front of us.
- We ask the Committee to urge the Government to conduct further impact assessments and detail exactly what the regulations would mean for the tourism sector, for local authorities and for people who rely on income from short-term lets to keep a roof over their own heads.
- 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.

¹⁸ <https://landlordregistrationscotland.gov.uk/>