

# **The City of Edinburgh Council's Response to the Scottish Government's Consultation on Short Term Lets**

***Question 1 – Are you aware of any additional data on the impacts of short term lets (over and above that set out in Annex A – The Short Term Rental Sector, Housing and Tourism in Scotland) which the Scottish Government should take into account when considering proposals for regulation?***

Recent analysis (using Airbnb data) published in April 2019 by the Scottish Parliament Information Centre (SPICe), has shown that there were over 12,000 registered Airbnb properties in Edinburgh in 2018. This figure is a significant increase from research available to the City of Edinburgh Council (Council) where the overall number was calculated at approximately 9,000 registered properties in 2017. The number of Airbnb properties has continued to grow each year from 2009 when there was a total of eight registered properties in the city. Airbnb reports that 21% of the 9,000 properties (1,890) registered in 2017, operated in excess of 90 days, which would indicate they are no longer being used on a residential basis. The research available indicates that short term lets are predominately located within the city centre and adjoining areas. Analysis from the Chartered Institute of Housing points out that there are two Airbnb lets for every 13 homes within the City Centre Ward (11).

Analysis carried of the housing market impacts in Edinburgh in 2018 showed that the rapid growth in short term lets over a short period was having a detrimental impact on both supply and rent levels. There are over 60,000 private rented sector (PRS) homes in Edinburgh, which represent a quarter of the city's housing. Presently there is an estimated loss of 10% of the PRS sector attributed to short term lets. The loss of traditional PRS properties is more prevalent in the city centre and in the north of the city, with the loss of stock running at up to 30% in some northern parts of Edinburgh. Across the city, PRS stock levels fell c.5-6% between 2014-2017 which may be attributable to a number of factors, including changes in taxation and regulation of PRS. However, it should be noted that over the same period the city saw 2,700 more properties per year listed as available on Airbnb, while PRS stock fell 560 per annum. The speed and size of rent increases within the city continues to be a substantial issue. Research indicates rising rents occurring in those areas bordering a high concentration of Airbnb, suggesting a displacement of demand. In those areas bordering the city centre, rents have increased around 20-27% over the period 2014-2017.

The Council is acutely aware of the need for more robust data on the short term let sector. There is nothing to stop an individual property or room being advertised on multiple rental platforms which can lead to over reporting. Therefore it is of the utmost importance that accurate data is made available to ensure an appropriate response to this issue. The Scottish Government could request that online platforms provide the requisite data to allow the extent of the sector to be accurately quantified.

***Question 2 – Should a regulatory framework distinguish between sharing, swapping and secondary letting?***

Through work carried out by Council officers along with data collected from complaints received about short term lets, it is clear that commercial operations cause the majority of problems.

Where a home owner or occupier is renting out their entire property as a short term let for a limited period (swapping), this is not a significant concern. It is accepted that there is not a general concern about residents renting out their home for short periods of absence such as a family holiday. Similarly, where a home owner or occupier is renting out a spare bedroom while remaining in residence (sharing), is not of particular concern. As an alternative to a licensing system for the aforementioned types of accommodation, there may be some benefit in a registration scheme. The scheme could be a mechanism to improve the standards of short term lets by introducing minimum safety requirements along with the means to ensure that all the operators of short terms lets are 'fit and proper.' A registration system would also allow local authorities to ascertain where short term lets are operating within their respective areas. The Scottish Government may wish to consider the proportionality of such a scheme to improve public safety.

The Council is concerned about the scale of short term lets where a property is offered for rent for significant periods of the year, meaning that it is no longer used as a primary place of residence. Similarly, and often connected, is a concern that an owner is not living in the property and therefore not managing it adequately. It is the Council's view that any short term let operating on a commercial basis (secondary letting), or with regularity, is no longer used as a residential home. The loss of significant number of homes as a result is damaging the supply and affordability of housing in the City. In response to these concerns, the Council is of the opinion that a licensing system should be introduced which will require those operating for significant periods of the year to require a licence. This would afford local authorities a degree of control over a sector which is causing major issues in the city.

Therefore, the distinction between secondary letting and that of swapping and sharing and a regulatory system which reflects that, would have considerable merit. Furthermore, the Scottish Government may wish to consider giving local authorities some flexibility around defining suitable properties to respond to local needs.

***Question 3 – Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.***

In Edinburgh, the majority of short term lets are in tenement properties, concentrated in areas of the city which already have high demands for housing. Regular use of any tenement flat as a short term let is inconsistent with tenemental living, and often leads to anti-social behaviour and undue nuisance to other residents. This is a significant concern for the Council and is an area which generates a high number of complaints. The existence of short

term lets operating in tenement properties also leads to substantial pressures for on-street residential parking which is already at a premium.

Although there is a body of evidence which demonstrates the acute problems that short term lets can cause in tenements, the issue is certainly not restricted to this type of accommodation. Residents have experienced persistent difficulties as a result of anti-social behaviour in properties which have a shared or common space. The transfer of noise into neighbouring properties is another well-known problem, especially in main door tenement flats but can also lead to complaints from residents in detached or semi-detached accommodation. Through data collected from the Council's complaints system and the experience of officers, it is clear that short term lets can cause difficulties in nearly every type of property.

Therefore there may be some merit in a regulatory system differentiating between types of property, which should be left to the discretion of local authorities. This will give Council's a degree of flexibility to regulate within their areas in such a way that will cater to local needs. When considering tenement properties in the context of sharing, swapping or secondary letting, the Council suggests that the definition of a tenement is taken from section 26 of the Tenements (Scotland) Act 2004 and that any regulatory system should take account of this existing definition.

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

The Council notes the conditions that must be met in order for a property to be considered a short term let. In respect of condition (a), the Council's Short Term Lets Member Officer Group had previously recommended that a licence be required for anyone either operating a property on a commercial basis or in excess of 45 days. This took into account the trend of owner/occupiers letting their properties out during the Edinburgh Fringe Festival and Christmas/New Year periods. The Council actively engaged with the relevant sector and heard alternatives to the proposed 45 day threshold. The 120 day limit that was put before the Council sparked concerns that this would effectively mean properties being available every weekend throughout the year. This played a part in influencing the Council's decision.

However, the Council's concerns are not just primarily focused on short term lets during the Festival/Festive period as it should be noted that they are received all year round. However there are clear spikes during the Festivals period. The Council is aware of the benefits that residents can enjoy when renting out their homes or rooms over a short period of time and is keen not to impose too heavily on this option being available. Those who operate short term lets as a commercial activity create the most substantial burden for the Council and this must be addressed. The Council is clear that any discretionary regulatory system with a days per year limit is not a barrier to enter the market. It will simply present local authorities with a robust means of regulation to reflect the growing commercialisation of the sector.

The Council recognises the definition put forward within the consultation document and agrees that the 28 day limit is appropriate. The Council accepts that the issue of short term lets is a national one and having given careful consideration to the level of complaints and enquiries which are continually received on the issue, the Council agrees that the 28 days per year limit prior to requiring a licence in particular, will help to alleviate some of the concerns expressed.

***Question 5 – Do you have any comments on the positive or negative impacts of short term lets?***

The Council recognises that the shared or collaborative economy has many positive aspects. Any measures which are introduced should recognise the importance of visitors to the economy. In Edinburgh's case, it provides critical additional accommodation during important times of the year, e.g. the summer festivals and can give visitors a more authentic experience. Due to the city's popularity as a tourist destination, Edinburgh has a history with short stay lets and the Council is happy to facilitate the responsible operation of the sector, thus improving the tourist offering. As Edinburgh's economy continues to grow, this type of accommodation can also cater for visitors to the city on short term business. Furthermore, having the ability to rent a room home for a short period can enable residents to ease financial pressures and support the responsible maintenance and use of homes. Short term letting can also encourage more responsible landlords who ensure that their properties are better maintained than they otherwise would be, to ensure they are attractive to guests. The potential income that can be generated from short term letting is acknowledged.

Nevertheless the impact of short term lets on Edinburgh continues to be a significant concern. Complaints regarding short term lets are wide ranging and continue to be received by the Council. When considered at a strategic level, the complaints cover a number of broad types and include:

- Impact on available housing supply within the city (availability, affordability etc);
- Erosion of sense of community in areas with dense concentrations of short term lets;
- Short term letting is generally not suitable for tenement properties;
- Properties which are used as short term lets may not reach the same safety standards as other types of visitor accommodation;
- Noise and antisocial behaviour created by guests using short term lets;
- Short term lets which operate on a commercial basis may not be paying rates or other council charges required.

The Council's Short Term Lets Working Group has heard from officers and interested parties and, through debate and discussion, a number of conclusions can be drawn on the impact of short term lets.

The Council has substantial concerns about the scale of short term lets where a property is offered for rent for significant periods of the year such that it is no longer used as a primary place of residence. Similarly, and often connected, is a concern that an owner or occupier is not living in the property and therefore not managing it adequately. In relation to this concern, the Council has identified the following adverse impacts on the city which cannot be sustained and require urgent action at local and national level:

- a) Any short term let operating on a commercial basis, or with regularity, is no longer used as a residential home. The loss of a significant number of homes as a result is damaging the supply and affordability of housing in the City.
- b) The majority of short term lets are in tenemental properties, concentrated in areas of the city which already have high demand for housing.
  - i. The concentration in certain areas is eroding the sense of community in some neighbourhoods
  - ii. Regular use of any tenement flat as a short term let is fundamentally inconsistent with tenemental living, and often leads to anti-social behaviour and undue nuisance to other residents

With regard to point (b) above, it must be emphasised that the impact of short term lets is not limited to tenement properties. Council officers have responded to a number of enquiries and complaints across a broad range of property types, across the whole of the city.

The Council has further concerns that the taxes and other charges paid by operators of short term lets do not reflect the burdens they create for Council services and resources. There is further apprehension that there is no clear requirement for short term lets to adopt the same level of protection to the public required in other types of accommodation, for example safety checks in the form of gas or electrical safety certificates.

Edinburgh has experienced a year on year increase of short term lets since 2009 and there is no evidence to suggest that the trend will halt anytime in the near future. With over 12,000 properties being recorded as operating within the city, it is no longer sustainable for there to be a lack of regulation.

As noted in question 1 of our response, the growth of the short term rent sector has had a profound effect on the city's housing. Research commissioned by the Council shows that there is a clear correlation between the areas experiencing the highest short stay let usage and growth, and the downturn in rental supply for the traditional PRS. The study further concludes that housing stock in areas of the city popular with short term lets, has fallen by as much as 30%. In postcodes which border those short term let hotspots, rents increased by 20-27% within a 3 year period. The effect this has on residents cannot be underestimated

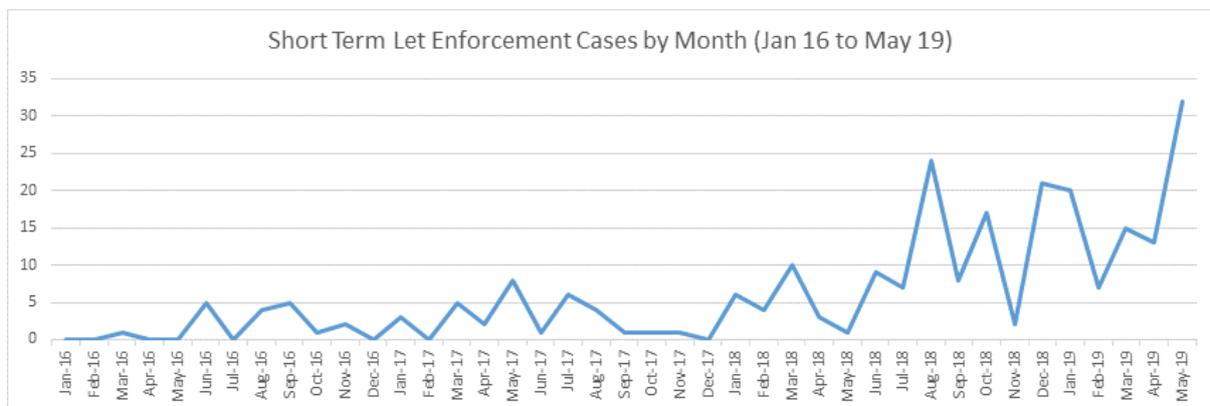
with affordable housing in certain areas of the city becoming more of a precious commodity. Council officers have also conducted some preliminary research which indicates that house prices in areas which have a high concentration of short term lets experienced higher increases than the rest of the city. Edinburgh’s average house price increased by 20% between 2010 and 2018 while those short term let hotspot areas saw increases on average of 30%. This may be attributable to a number of factors and further research is required to draw final conclusions from the data available.

Separately, the Council is aware of recent data which indicates that in 2019 Edinburgh hotel bookings and overall performance is down on the previous January to April 2018. The Council would suggest that the Scottish Government liaises with the hotelier sector to gather their views and any data they may be able to provide.

In conclusion, the Council is well aware of the positive impact that this sector has on the city’s economy and of the positive experiences that visitors and hosts can gain as a result of using short term lets. However the overwhelming evidence of the challenges it creates for local services and residents cannot be ignored. Therefore it is clear that regulation is required to help strike a balance that addresses those issues whilst helping the city’s economy and tourist offer to further develop.

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

As previously noted, the Council receives complaints related to short term lets on a regular basis. Complaints vary from noise and anti-social behaviour to issues of waste control, overall management of the properties and the hollowing out of communities in certain parts of the city. This is further reinforced when considering data on the number of enforcement cases the Council has dealt with or is in the process of managing. The table below details the cases month by month with a marked increase in the last year and especially around summer periods.



A Short Term Lets Virtual Team has been created to co-ordinate existing powers across several services. The virtual team review all complaints received about short term lets and,

where possible, identify and implement a response to address poor practice through any powers available to the Council. The team also encourage good practice and assist in collecting intelligence on how the short term lets industry responds to this approach. Analysis of some cases received indicates that the majority of complaints received relate to low level disturbance but which nonetheless can have a serious impact on residential amenity. For example, visitors who use flats will often arrive and depart at anti-social hours and in the process of doing so will disturb neighbouring properties when moving through communal areas. A large number of cases to date allow two night minimum stays and there have been several cases where one night stays have been permitted by the host. In these circumstances, the likelihood of disturbance, with guests changing over on a more regular basis, also has a tangible impact on residential amenity. It is clear that the negative impact of short stay lets on residential amenity, have been well documented in a number of appeal decisions which have been handed down by Scottish Ministers.

The setting up of the Virtual Team appears to have given residents more confidence in coming forward to raise a complaint or enquiry. In terms of the complaints received being broken down into the types of complaints, the data below has been updated to take account of the most recent information, alongside a change in how complaints about short term lets are categorised:

Area	Period	Cases
Planning Enforcement	January to December 2018	117
	January to June 2019	109
Private Rented Sector Enforcement and Trading Standards	June 2017 to June 2018	21
	June 2018 to June 2019	20
Family Household and support (ASB)	From April 2019	22
Environmental Health	From July 2018	5
<b>Total</b>		<b>294*</b>

\*note: a small number of cases require investigations by more than one service area.

In some areas of the City it is not uncommon for the majority of properties in a tenement to be holiday lets which can cause significant issues for permanent residents. Council officers are aware of some instances where there is only one residential property in a stair, with the rest operating as short term lets throughout the year.

An example which is worthy of note are the numerous queries that the Council's Planning Enforcement team received relating to the Western Harbour area of Edinburgh. They were being investigated on a case by case basis and as part of that process, it became evident that there was a wider problem affecting a number of different blocks within the

developments. The issues identified were causing significant disruption to residents, impacting on their amenity and causing anti-social behaviour which had necessitated police action on occasion.

Western Harbour was of particular interest as a short stay letting agent was based in one of the buildings. It had actively marketed its services so as a result, it acts as the agent for a large proportion of the short stay let properties in the area. Moreover, there was an established holiday let apartment business that rents out properties in two complete stairs but also acts as factor for one of the blocks.

Through dialogue with the local Residents Association, it was apparent that the short stay lets were operating as a large scale commercial business with approximately 40 short stay lets. The cleaning regime was akin to a hotel with cleaning carts being used in the corridors and lifts and one of the flats being used as a linen store with a commercial laundry company being used. This intensive use of the properties was causing issues with wear and tear as well as disruption, amenity and security problems.

As a result, Council officers worked with the Residents Association and Factors to look at ways of tackling the issues in a more comprehensive manner. In this instance, it was identified that properties in this block were not be permitted to be used as short stay lets, as per their title deeds. The Factors and Residents Association took collective action to enforce the deeds and wrote to the properties with regards to the requirements of the deeds. This was then followed up by a strongly worded letter from the Council outlining the planning position with regards to the change of use to short stay let, the potential planning enforcement action, the health and safety responsibilities and also the potential commercial waste requirements as a majority of the properties were paying business rates. This particular case gives an indication of the exceptional circumstances which were required to achieve a successful outcome (i.e. clear title deeds, factoring and strong community support) along with emphasising the significant amount of Council resource required over a prolonged period of time.

Using existing powers which are available, the Council's Planning Enforcement Team has also piloted taking action against key safes on listed buildings. One case in the Grassmarket area of the city resulted in the enforcement notice for the removal of 11 key safes attached to one such listed building. The action was upheld when appealed to the Reporter. The Enforcement Team served a notice to secure the removal of the key safe boxes as it was identified that they had been installed without listed building consent. The success of this pilot highlights that in certain circumstances it can be appropriate to take action against multiple key safes on a single property. It also underlines the limitation on the powers that local authorities currently have to tackle this sort of complaint.

The wider disruption and impact of short term lets can also be seen in other services like waste management and parking.

How waste generated from short term lets is handled will vary on whether the use is classed as commercial or non-commercial. The Council's Waste Management Team typically experience problems with residential short term lets, serviced apartments and managed

student accommodation operating during holiday periods. Whole properties which are let for the majority of the year can be linked to increased volumes of waste for which there is no collection capacity. It can also lead to poor levels of recycling and contamination of recycling and litter. In terms of student accommodation, these properties will be exclusively used by non-council tax paying students during term time. However during summer months the operation is more akin to a hotel which leaves the Council in a position of providing household waste collections to a profit making business with no recompense. This again leads to increased volumes and poor recycling. In terms of enforcement, current legislation means it is extremely challenging to take appropriate action as it is not designed to deal with this type of situation.

The operation of commercial short term lets is the most significant concern of the City of Edinburgh Council and the example above highlights the difficulties they can present.

***Question 7 – Do you have any comments about the impact of short terms lets on the housing market?***

Edinburgh is one of the most highly pressured housing markets in the country. Increasingly there needs to be a cross tenure approach to meeting housing needs and addressing homelessness in the city. Around 14% of homes in the city are for Social Rent, compared to 22% nationally. Around a quarter of homes in the city are in the private rented sector (PRS), this is almost double the national average. We rely heavily on the PRS to provide permanent and medium-term temporary housing for homeless people.

It has been well documented that rents in Edinburgh have risen three times the national average over the 12 months to February, as reported by Your Move in March 2019. This rise has been strongly linked to the increased presence of short term lets in the city. David Alexander of DJ Alexander Letting and Estate Agents commented “There has been a surge in property moving across to short term rental and when that comes off the longer term rental market it means there is less property and all that does is push prices up.”

The Council commissioned Rettie & Co to conduct research which assessed the impact that the short term let sector is having on rents within Edinburgh’s traditional private rented sector and the availability of residential property in the city. It is estimated that there is a loss of around 10% of PRS homes to short term lets in recent years. The loss is more prevalent in the city centre and north Edinburgh. The rapid growth in short term lets is having an impact on both supply and rent levels. Between 2014 and 2017 the city saw 2,700 more properties per year listed as available on Airbnb, while PRS stock fell 560 per annum. Research also indicates a displacement of demand, with rents rising significantly above average (between 20-27% over the period 2014-17) in areas bordering a high concentration of short term lets.

Furthermore, the incentives for landlords switching to short term lets are highlighted in Rettie’s research. Its estimated that 1 bed short term lets need only be rented out for 180

days beds (140-160 in more central locations) to receive the equivalent rent as a full time PRS tenancy. For two beds, this can be as low as 90 days in central locations.

Loss of PRS stock has impacted the uptake of the Council's Private Sector Leasing scheme and ability of homeless people to secure PRS tenancies. High rents place people on lower incomes at greater risk of losing PRS tenancy. Overall, there seems to be a pattern of short terms rentals displacing the PRS. Demand currently outstrips need, putting increasing pressure on an already limited supply resulting in rents that are not affordable to people on low and moderate incomes.

***Question 8 – Do you have any comments on the restrictions imposed on short term lets by planning law?***

As stated in the consultation response and elsewhere in this response the volume of short term lets and issues arising from them has increased significantly in recent years. The Council's adopted Edinburgh Local Development Plan (November 2016) was prepared prior to this substantial rise and has no specific development plan policy relating to the change of use to a short term let, or a policy which prevents or restricts the loss of housing to short term lets. However, there is specific planning guidance for short term let uses in the non-statutory Guidance for Business in the form of advice on what to consider when assessing whether planning permission is required and also what to consider if planning permission is required.

In Edinburgh's case, short term lets impact both on residential amenity and on the significant loss of housing stock to other uses, in a city where there is a need and demand for homes, specifically affordable homes.

At the present time the Council assesses planning applications for 'short term commercial lets' and enforcement action on a 'case by case basis' as a matter of fact and the degree to whether it considers a material change of use to a 'short term commercial let' has taken place which would require planning permission. The Council generally concurs with paragraph 4.16 of the consultation of the stated key issues in determining whether the change of use is material.

Where the Council considers a change of use has occurred, the impact of the change of use is assessed against policy Hou 7 of the adopted Edinburgh Local Development Plan (November 2016) which states 'Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.'

In recent years the Council have increasingly taken enforcement action against unauthorised changes of use to short term commercial lets. As acknowledged by the consultation, the Council has to date successfully defended all enforcement appeals to the Scottish Government in this regard. To date no subsequent appeal to the Court of Session has proceeded to determination.

The planning law position on this issue is far from ideal. Currently the Council as the Planning Authority is only assessing the cases where either planning permission for change of use is sought, a certificate of lawfulness is submitted for an existing or proposed use or planning enforcement concerns have been raised. Given the volume of properties in Edinburgh being used for short term commercial let, it is likely the current system captures only a very small portion of the properties that would be deemed to be requiring planning permission for change of use if they were assessed.

In addition, the current lack of definition of meaning of development for short terms lets and the requirement to assess case by case on whether there has been a change of use creates difficulties in creating appropriate, city wide, local development plan policies on this subject.

It is recognised that short term lets were considered through the Planning Bill, with the new Bill passed setting out:

- The meaning of “development”: the use of dwellinghouse for short –term holiday lets is now included in the act as development;
- That a planning authority may designate all or part of its area as a short term let control area, and that;
- In a short term let control area, the use of a dwellinghouse for the purpose of providing short-term lets is deemed to involve a material change of use of the dwellinghouse.

The Council notes that these provisions of the Planning Bill have no stated date for coming into force after the Bill obtains Royal assent and becomes an Act, and that commencement of these provisions will require further regulations.

The Council welcomes these changes, specifically that the definition of development will now include short term lets. The Council considers that it would be very helpful if these provisions were brought into force in early course, prior to most of the Bill.

However, the Council currently reserves its position on the future steps it wishes to take in terms of planning law and policy in this regard, including the designation of control areas.

The options for future planning policy on short term lets will need to be consulted upon, by the Council, later this year as part of the next development plan for Edinburgh City Plan 2030. Through this consultation the following wider issues will be considered:

- Whether development plan policies on the change of use to short term lets / and or the loss of housing is required,
- Whether the Council, in light of short term lets now being included in the meaning of development should promote a control area to manage the impact of short term lets on Edinburgh’s residents and housing stock.
- The impact of policy changes on the Council’s resources.

**Question 9 – Do you have any comments on powers to tackle antisocial behaviour caused by short term lets?**

Complaints received about short-term lets are initially investigated as per any rented property. This is done by locality and is inconsistent. There needs to be a clear procedure established and workers dealing with complaints of this nature need to have more in depth training.

This can be a lengthy process depending on the level and nature of complaints being received and is dependent on the co-operation of landlords, owners or agents.

If landlords, owners or agents fail to engage with this process the Council needs to move to issuing Anti-Social Behaviour Notices (ASBN's) – these have restricting powers where conditions on the notice can be attached to minimize disruption/disturbances/noise/impact on other residents in a block and/or the impact to the surrounding community. Again, this can be a lengthy process and causes frustration to those impacted by ongoing anti-social behaviour.

Failure of the landlords, owners or agents to comply with the conditions of an ASBN will lead to the consideration of a Management Control Orders (MCO's). Current powers are quite restrictive only taking control of the property or rent abatement for a period of one year. This causes difficulties for the council and limits options of the use of these properties as the burden falls on the Council to bring these properties up to standard for alternative use such as a House in Multiple Occupation, private rented accommodation, or use as temporary accommodation. The current legislation needs to be reviewed so there is more flexibility as to the duration of the MCO's. Additionally at the moment the MCO is for one year's duration. Therefore potentially changing this to six monthly periods with the ability to be extended dependant, on the specifics of the case, would be more effective.

**Example:** Management Control Order – Fountainbridge/Haymarket Area, Edinburgh.  
October 2013

Two properties located in the Fountainbridge/Haymarket area of Edinburgh were rented out as short-term lets for the purpose of accommodating stag and hen parties. On a weekly basis, neighbouring residents were being disturbed by antisocial behaviour, noise and nuisance emanating from these properties. Often the disturbances occurred in the very late/early hours of the morning, interrupting residents' sleep and enjoyment of their homes. This resulted in both properties being served Antisocial Behaviour Notices (ASBN's).

This case had been ongoing for several years and the Council had lobbied the Scottish Government to close a loophole in Antisocial behaviour legislation to give it powers to tackle this problem resulting in the The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 being introduced.

The notices were sought because of the ongoing antisocial behaviour which was having a detrimental impact on the health and wellbeing of residents. Despite extensive efforts by the Council and Police there was a reluctance of the owner to address this. Both properties

were owned by the same person. The notices set out a number of conditions with which the owner had to comply.

Three of these conditions were as follows:

- The first property was not to be occupied by more than 8 persons (previously 16).
- The second was not to be occupied by more than 10 persons (previously 20).
- The properties were not to be occupied by 'stag' or 'hen' parties and these properties were not to be advertised as suitable for 'stag or hen' parties.

After intensive monitoring it was clear that the owner had little or no intent to comply with any of the conditions on the notices. Discussions took place between partners to decide what further action could be taken. It was agreed that a MCO would be sought.

During the period up until the court hearing, the Council had to seek and was successful in obtaining an interim interdict against the owner. The interdict held up all the original conditions of the ASBN's.

On the 23 October 2013, Under the Anti-Social Behaviour etc (Scotland) Act 2004 the Council was successful in obtaining a MCO, the first in Scotland, for the two properties meaning the Council took over the landlord control and responsibility for these properties for the maximum twelve month period that current legislation allowed.

At that point the Council were not able to honour bookings that already existed for the properties. It was felt that the properties needed to be fully checked before occupation could be considered. For example, there was no evidence to support that the electrical or gas installations were serviced or approved and initial viewings of the property indicated that there were more serious issues to contend with, including the storage of gas bottles in one of the properties living areas. Due to a number of factors, including health and safety both properties had to remain unoccupied.

In addition, the Council's non-statutory planning guidance in respect of businesses was amended to make specific reference to short stay commercial leisure apartments (the so called "party flats" used for short stays often associated with Hen or Stag weekends, or on the occasion of major sporting events). This was done in order that there was an explicit policy basis for any future formal enforcement action.

Since the matter was before the Committee, planning enforcement notices were served in respect of the two flats. The owner did not appeal those notices and they therefore took effect. The two-month period for compliance ran out with no action being taken by the owner which meant that once the term of the MCO came to an end, these properties could no longer be used for the purposes of short term lets.

Throughout the action taken the Council were successful in being granted substantial expenses by the court which the landlord was instructed to pay.

Since the MCO's expired, the owner sold both properties which are now being returned to use as residential homes. Feedback from the neighbours and elected members was exceptionally positive. The neighbours said they could not express the difference the action that had been taken had made to their quality of life.

Whilst a successful outcome the Council's experience in this case illustrates the significant barriers and risks from pursuing this course of action:

1. The Council and the then Lothian and Borders Police had to divert significant resources from other community safety issues into investigating and evidence gathering in this case;
2. Residents affected raised concerns over the significant impact on their health by the antisocial behaviour which continued whilst lengthy legal proceedings were pursued;
3. The case was so complex that it required a Senior Counsel (a QC) to argue for the MCO in the legal actions and the Council's actions in this case were subject to a separate judicial review;
4. The Council legal costs which were recovered after the conclusion of the legal cases were approximately £30k and illustrates the level of financial risk in using these powers if the council were to be unsuccessful;
5. The Council's true costs were in fact much higher over a number of years and likely to be several times the cost recovered. These included officer time to gather evidence, support residents, case manage and internally prepare the legal case none of which can be recovered. For example, even after obtaining the MCO the Council had to engage services of a security company to deal with people who arrived at the property unaware that their booking would not be honoured;
6. The statutory definition of Antisocial behaviour is a significant threshold of evidence which is required to demonstrate that the antisocial behaviour has had an impact on an individual not of the same household. Normally this would require the complainer to attend court and give evidence of that impact;
7. Given the scale of the challenge facing the Council with short term lets, the complexity of using these powers and significant cost incurred it is clear that these could only be used in the most extreme cases and would not be feasible to replicate that approach across the large volume of complaints already received.

***Question 10 – Do you have any comments about complaint systems for short term lets?***

As evidenced in our response to question 5 of the consultation, the Council regularly receives complaints attributed to short term lets on a regular basis. It is pertinent to note that in the last 6 months the Council has already received the same amount of short term let complaints, compared to the previous 12 month period. This causes a significant drain on resources as the complaints are broad in nature and can involve officers from any number of different departments. Accordingly, any licence fee should account for the cost of

enforcement and dealing with complaints, as well as the resources required to administer the licensing process.

As well as the considerable costs involved in dealing with complaints, officers have found it challenging to resolve them to a reasonable conclusion. The Council has found that the prevailing cause of complaints involves accusations of anti-social behaviour (ASB). However the resources required to prove that ASB has occurred places a heavy burden on enforcement teams, often meaning that a satisfactory result is unattainable.

As it stands the complaints system for short term lets is not well enough known to members of the public which adds to their frustration of not knowing how or who to direct complaints towards. There are inconsistencies in responses and the knowledge base in this area needs to be strengthened

***Question 11 – Do you have any comments on safety issues related to short term lets?***

At present there are no regulations which govern safety relating to short-term lets. This means there is no requirement for fire safety prevention, no fire alarms no electrical checks and no requirement for fire escapes even although sometimes properties used as short-term let's can be at the top of tenement buildings and accommodate up to twenty persons. This, along with the lack of proactive inspections at present, is a significant concern. The Council would strongly suggest that the Scottish Fire and Rescue Service are approached in order to gather any views they may have.

Separately, it can be argued that short term lets are operating at a competitive advantage compared to hotels and similar types of accommodation which are required to have a range of health and safety measures in place and consequently have numerous duties imposed upon them.

If these properties were required to be licensed as with HMO's they would have to adhere to a Health and Safety Framework.

***Question 12 – Do you have any comments on eligibility for non-domestic rates?***

We agree with the proposal that evidence of both intention to let and actual letting should be provided before these properties are assessed under Non-Domestic Rates. Although any changes around this criteria would mostly be relevant to the Assessor, we would emphasise the importance of requesting evidence of actual letting here rather than just being able to demonstrate that the property is being actively marketed.

***Question 13 – Do you have any comments on the eligibility requirements recommended by the Barclay Review?***

We support and look forward to the criteria for self-catering accommodation being laid out as a result of the Non-Domestic Rates (Scotland) Bill. The Council previously took part in the 17/9/18 Barclay Implementation Consultation process and would reiterate our comments made here. This being that local discretion in the criteria for these properties being entered on the Valuation Roll should be limited.

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

In terms of the Small Business Bonus Scheme (SBBS), the Council is particularly concerned that a percentage of short term let properties do not contribute a proportionate amount to local services. The rateable value of the vast majority of short stay let accommodation in Edinburgh will be low enough to make them eligible for SBBS. As noted in the Barclay Review, under the terms of the scheme a property which has a low enough rateable value and is registered as a non-domestic property can receive 100% relief from all local charges. In Edinburgh, it is thought that this loophole is being exploited on a more frequent basis. The current circumstances, where properties can receive total relief from local taxes but place a heavy burden on local services through complaints and enquiries, are unsustainable. In principle, the Council believes the SBBS should be equitable. There is no reason to exclude registered self-catering accommodation if they meet the same criteria as other eligible businesses.

Overall, the Council has concerns that any significant action to address this would result in a loss of income in general taxation to licensing authorities as it may encourage operators to go to the SBBS. While not ideal, those properties who currently pay Council Tax are at a minimum making some contribution to local services.

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

In principle, the Council is clear that taxation should not, in any way, incentivise properties to move to becoming a short term let or encourage those already operating as such to remain within the market. As has been noted earlier in our response, Edinburgh's level of housing stock is under considerable strain which is due to a significant degree to the rise in numbers of short term lets. Therefore the Council would suggest that the Scottish Government carefully consider the impact that any new taxation scheme could have.

With regard to enforcement the Scottish Government may wish to reflect on whether Revenue Scotland could have a more proactive role in tax paying enforcement.

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

The Council supports the design principles proposed in the consultation paper. In particular, the Council is mindful of the benefits that this sector brings to the city and appreciate that some hosts and guests will not be aware of their responsibilities or best practice guidelines. Therefore a proportionate, user-friendly and responsive regulatory regime will enable local

authorities to have an appropriate level of control on the sector. It will also be important for any regulatory systems to be robust enough to avoid anyone looking to circumvent the regime as technology continues to advance. The Council is aware of companies operating in London who offer advice to hosts in order for them to side-step local regulations. Some of these companies were the focus of a BBC investigation and it is important that any licensing or registration system has cognisance of this new development in the short term lets sector.

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

It is clear that as pressures from the operation of short term lets mount on a city or region, the vast majority of major destinations have resorted to new or additional statutory powers. These powers typically impose a cap on the total number of properties used as short term lets, and/or a cap on the number of days that an individual property can be used as a short term let. The motivating factors are very similar to the issues faced by the City of Edinburgh, namely a desire to protect the supply of residential homes and to minimise the disruption to local communities.

The Council acknowledges that the provisions in the Planning Bill, if commenced, would enhance the Council's ability to assess whether a property in planning terms is suitable to be used for short term lets at all. However, the provisions of the Planning Bill do not provide the Council with a structure to suitably regulate operators of short term lets across the city.

The Council would therefore request that the Scottish Government introduces a discretionary licensing system for operators of short term lets. The Council expects that each individual authority could consider the relevance of the licensing system and choose whether to adopt the scheme in its area. At present, there are over 5000 HMO properties in Edinburgh which requires significant resources and competent legislation. With current estimates showing that there are over 12,000 properties available for short term let, it is clear that any regulatory regime must be robust enough to cope with demand.

At a minimum, a regulatory system must be capable of the following:

- A licence will be for both the individual property and the owner or agent/manager of that property;
- Any owner or operator shall be fit and proper;
- The local authority shall have the discretion within the licensing system to control or otherwise cap the total number of short term lets licensed either across the local authority area or in more defined areas of the local authority;
- A licensed property must meet certain safety standards, e.g. gas appliances must be safety checked;
- The location, character and suitability of properties will be relevant; and
- A licence will be required for anyone either operating a property on a commercial basis or in excess of a specified limit set by the local authority. In Edinburgh's case this would be proposed at 28 days.

It is the view of the Council that the preferred method of introducing a licensing system is by means of regulations introduced by the Scottish Government under Section 44 of the Civic Government (Scotland) Act 1982. Amending the licensing system for houses in multiple occupancy (HMOs) under the Housing (Scotland) Act 2006 is the least preferred option, as this could have wider implications for unrelated housing matters, and the licensing scheme under the Act applies Scotland wide. Failing this, the Council would view the introduction of fresh legislation as the most suitable alternative.

As noted above, anyone who operates for more than 28 days would require a licence under the licensing system proposed by the Council. For those who are operating for less than 28 days in a year, the Council would also request the necessary powers to introduce a registration system. This scheme would allow local authorities to ensure that all short term let operators are fit and proper and satisfy requirements that properties meet minimum safety standards. Furthermore, it will enable council's to keep track of the numbers and locations of short stay lets in the respective districts. The Council strongly believes this two tier system will help to better manage the sector in order for it operate in harmony with the rest of the city.

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

As previously stated in Q.17 of our response, the Council is requesting the introduction of a discretionary registration and licensing scheme which should be at least capable of the following:

- A licence will be for both the individual property and the owner or operator of that property;
- Any owner or operator shall be fit and proper;
- The local authority shall have the discretion within the licensing system to control or otherwise cap the number of properties licensed either across the local authority area or in specific areas of the local authority;
- A licensed property must meet certain safety standards, e.g. gas appliances must be safety checked;
- The location, character and suitability of properties will be relevant.

A licence will be required for anyone either operating a property on a commercial basis or in excess of a specified limit set by the local authority. In Edinburgh's case this would be proposed at 28 days. The Council has major concerns about the scale of short term lets where a property is offered for significant periods of the year such that it is no longer used as a primary place of residence. Therefore the introduction of a days per year limit is viewed as an effective tool in managing the profound effect that short term lets have on the city's housing supply and services in particular.

It is noted from the consultation paper that the Scottish Government is proposing a national framework which will provide local authorities with a range of powers to apply appropriate measures for their area. The Council is broadly supportive of this proposal which allow

councils to introduce a registration or licensing scheme at their discretion, which will cater for local needs.

One of the most significant reasons why the Council is requesting that a registration and licensing regime is introduced is to improve the health and safety standards and reduce nuisance in short term let properties. A national framework which prescribes an appropriate minimum set of conditions to drive up safety standards would be welcomed. The Council suggests that similar to those existing provisions within the House in Multiple Occupancy (HMO) regime may provide an appropriate base from which effective controls and conditions could be developed. It would also be prudent that councils are given discretion to apply their own local conditions to respond to the needs of their communities. Furthermore, any legislation which is introduced must be robust enough to properly deal with those properties which do not meet the required standard. The current process for tenants reporting properties to the Housing and Property Chamber 1<sup>st</sup> Tier Tribunal is time consuming and unsuitable for short term tenancies. It can also place a significant burden on officers who report a property by way of a third party referral. The Scottish Government may wish to consider what mechanisms may be appropriate in this regard.

***Question 19 – Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short term lets and whether conditions and/or charges should vary according to the type of property, its location or the number of rooms?***

The Council considers that a market based approach to tackling this issue has not worked and cannot be sustained. The current position in Edinburgh provides clear evidence that this type of approach has ultimately failed. The Council strongly believes that local authorities should be given the necessary powers to develop their own policies for implementation of these powers, subject to proper consultation with the community and relevant stakeholders. This would be a process similar that of the Licensing Board adopting a local statement of policy explaining how they will go about using their statutory powers.

Councils already have gained valuable experience in setting their own appropriate local conditions and systems. For example for Houses in Multiple Occupancy, local authorities can determine conditions to reflect a number of different factors like the property's size, occupancy or location.

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

The City of Edinburgh Council firmly believes that local authorities should be given the necessary powers to set a local policy with regard to the operation of short term let properties. It is well documented that the concentration of short term lets in Edinburgh is particularly high compared with other parts of Scotland. Following some discussion with partner local authority officers and analysis of research, the Council is acutely aware that

the impact that this sector has on local authority services and local communities differs in each area. Consequently, the Council agrees that the definition of short term lets proposed by the Scottish Government is appropriate with regard to the 28 day threshold. Setting a policy will give local authorities effective powers to manage the impact the industry has on local services and residents. Council's should be able to determine their own policies for those which will require a licence to operate. It is clear that similar limits introduced in other cities has have had the desired effect.

The Council also notes from the consultation that the Scottish Government considers that a national framework will help to ensure a consistent approach to this issue across the country. The Council is supportive of this with regards to safety standards/requirements for properties and operators being fit and proper. However the Council is clear that having the flexibility to set its own policy will be the most effective method of dealing with issues that local authorities face.

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

Research available to the Council suggests that a significant number of short term lets in Edinburgh operate in excess of 90 days per year. It is highly likely that properties being offered in excess of 90 days are no longer being used as a main place of residence and may be operating on a commercial basis. The increase of short term lets within Edinburgh is believed to be having a direct impact on the availability of residential homes in the city. As noted above, the most affected sector of the housing market is PRS. There are over 60,000 PRS homes in the city, which represent a quarter of the city's housing. At present there is an estimated loss of 10% of the PRS sector in the city to short term lets. Consequently, the Council strongly believes that a licence should be required for those considered as commercial hosts. This will allow local authorities to manage the number of properties operating as commercial short term lets within the city and will assist with efforts to provide more housing for our residents.

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

In terms of enforcement, violations and sanctions, the Council broadly agrees with what is set out in the consultation paper. The Council would agree that guests cannot be considered in terms of enforcement proceedings and as such any sanctions and powers should apply to hosts, platforms and hosting intermediaries.

Any licensing system which is introduced should allow for the recovery of costs in relation to administration and enforcement. This must include dealing with those properties and operators who are unlicensed. The Council suggests that any instruments created for dealing with unlicensed properties should mirror those in the Civic Government (Scotland) Act 1982 or the Housing (Scotland) Act 2006. Nevertheless, it should be stressed that in the case of unlicensed properties in particular, there should be a mechanism, subject to

appropriate checks and balances, which allows councils to halt the operation of such properties until they comply with regulation. This could take the shape of improved powers equivalent to Rent Penalty Notices as set out in the Housing (Scotland) Act 2006. Alternatively powers to issue an improvement or prohibition notice similar to those found in health and safety legislation.

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

The Council has no further comments to add.