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Document Title	Short-Term Lets Consultation Response

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**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Head of Development

**SUBJECT:** Short-Term Lets Consultation Response

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## **1 PURPOSE**

1.1 To note the submission of a response to the Scottish Government's consultation on Short Term Lets: licensing scheme and planning control areas in Scotland.

## **2 RECOMMENDATIONS**

2.1 Members are asked to note the contents of this report and the Council's response to the proposals set out in the Consultation Paper. The response can be found in the Background Papers attached to this report.

## **3 BACKGROUND**

3.1 The '[Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland](#)' was published by the Scottish Government 14/09/2020, with a submission response date of 16/10/2020.

3.2 As Local Authorities remain in the response phase to the Covid-19 pandemic, the ability to prioritise and collate a full response to the Consultation from all services areas in the short time scale set by the Scottish Government, has been difficult. The Consultation response does however reflect views from Strategic Housing, Planning, Licensing, and Economic Development (including Tourism).

3.2 In April 2019, the Scottish Government launched an [initial consultation](#) and commissioned [independent research](#) into the impact of short-term lets on people and communities. The 2019 consultation paper set out the Scottish Government's understanding of the benefits of, the issues around, short-term lets, the principles that would help guide an approach, and some proposed approaches to regulations.

3.3 Following the 2019 consultation, in January 2020, the Scottish Government announced plans to establish a licensing scheme for short-term lets using

powers under the Civic Government (Scotland) Act 1982 and give local authorities the power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019.

- 3.4 The purpose of the current consultation is to set out a definition of short-term lets and detailed proposals to create the licensing scheme and establish control areas. The review of tax treatment was considered out with the scope of the consultation and will be reviewed separately by the Scottish Government. The consultation sought comments on the detail of the licensing scheme and controls areas. The consultation did not seek views of whether to implement a licensing scheme or control areas nor on the broad framework of the approach.
- 3.5 The consultation sets of the proposed definition for the Licensing Order and Control Area Regulations. It sets out that all short-term lets will require a license regardless for how many or few nights per year the accommodation is advertised for short term let.
- 3.6 The consultation also sets out that all secondary letting will fall within the scope of control areas, where such areas have been established. Control Area Regulations will allow planning authorities to designate all or part(s) of their areas a control area. Within such an area, the use of a property for secondary letting would require planning permission. Outside such areas, the current case-by-case consideration would continue to apply.
- 3.7 The requirement to seek planning permission in a control area would not imply any predisposition to refused consent. Referring to local authorities local develop plans and local housing strategies, it would be open to individual planning authorities to consider the inclusion of policies relating to short-term lets.
- 3.8 The consultation further sets out that all short-term lets will require a licence and that there will be a range of mandatory conditions for the licencing scheme which will apply across Scotland. The proposed standards take account of a number of standards and requirements which already exist for residential properties including: the Tolerable Standard, the Repairing Standards standard terms for HMO licensing; landlord registration requirements and various Fire Regulations.
- 3.9 The Council's response acknowledges the need for the introduction of a licensing scheme and planning control to manage short term lets going forward. It recognises that requirements for properties to be licensed will ensure a level of protection for individuals that did not previously exist.

The Council considers that the Local Housing Strategy and Local Development Plan are the key documents which should set out the Council's overall approach. The Council's response sought clarification on the role of LDP in relation to NPF4 as well as responding to specific details on; the displaying of notices, anti-social behaviour, fees, mandatory conditions verifications, consultation partners and standard requirements, as well as the interaction with HMO licensing.

The Council's response also set out three key areas which it considered to be imperative for the Scottish Government to address;

The licensing scheme brought in will require resources across local authorities departments. It is estimated that it will take between 6- 18 months to set up a licensing system prior to implementation. It is vital that the Scottish Government allow fees to reflect the resource required by Local Authorities to comply with legislation.

Where a licensing scheme and control areas are brought into legislation, the Scottish Government should support Local Authorities to work jointly to evidence the full effects of short term lets on housing systems, linking also to employment, tourism and welfare.

The Scottish Government should ensure that all stakeholders are adequately resourced to carry out consultation work appropriately, most importantly Police Scotland and the Scottish Fire and Rescue Service.

#### **4 POLICY IMPLICATIONS**

- 4.1 There are no implications on Council policies arising from this consultation.
- 4.2 The Consultation responses will be used to shape legislation, which if passed by Parliament, would come into force by April 2021. This would give councils powers to manage pressures created by the use of whole properties as short-term lets.
- 4.3 The Council will publish an annual review of the Local Housing Strategy 2018-23 early 2021. This will take account of any new duties arising from the Consultation.

#### **5 EQUALITIES IMPACT ASSESSMENT**

- 5.1 The Scottish Government commissioned [independent research](#) into short term lets and its impact on communities in 2019. It also consider considers equalities impact.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – None
- 6.2 Personnel - None
- 6.3 Other - None

## 7 BACKGROUND PAPERS

7.1 The East Lothian Council response can be found in the attached papers below.

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<b>DATE</b>	16/10/2020

## **Background Paper 7.1: East Lothian Council's response to consultation on a Licencing Scheme and Planning Control Areas for Short Term Lets.**

### **Context**

East Lothian Council welcomes the opportunity to respond to the Scottish Government's consultation on a regulatory framework for short term lets.

The proposed measures to introduce licence schemes and planning control for short term lets has implications for a number of Local Authority Departments. As such the following departments have fed into this consultation response; Housing Strategy, Planning, Licencing, Environmental Health and Economic Development/Tourism. East Lothian is widely viewed as an attractive place to live but faces many housing challenges as it seeks to meet the demands of a growing population and changing household composition.

East Lothian currently has a population of 105,790. The population has seen an 8.5% increase over the last ten years, constituting the third largest increase nationally. The population is projected to increase further by 15.1% by 2043. This is the second highest projected increase in Scotland.<sup>1</sup>

At the end of March 2017, there were 30,649 owner-occupied homes in East Lothian, accounting for 65.1% of the stock. The average house price to earnings ratio in the county is 5:2 to 7.63. House prices are higher in the east of East Lothian, in part due to the greater affluence. The private rented sector accounts for 11.3% (5,300 homes) of housing in East Lothian. There is a total of 435 registered landlord organisations in East Lothian, and an additional 4,770 individuals registered as landlords. This averages around 1.1 property per landlord. HMO licenses account for 0.9% of the PRS in East Lothian, most likely reflecting the smaller property sizes used by PRS landlords. Increasing numbers of older and vulnerable people in the PRS and average rents continuing to rise above LHA levels, continues to pose challenges for the sector.

There are around 11,000 social rented homes in East Lothian, comprising nearly 24% of the total housing stock. The Council owns the majority of social rented housing (8,649 homes), with housing associations owning the balance (2,215). SESPlan HNDA2 figures show a need for circa 553 new additional units of housing per annum in East Lothian over the period 2012-30, comprising of 370 affordable housing units and 183 units of market housing.

Homelessness continues to be a priority for East Lothian. East Lothian has been allocated £160,000 for the period 2019/20 and it is expected that this amount will be repeated during 2020/21 and 2021/22. Rapid Rehousing presents many challenges to East Lothian within the housing context set out above. As the Scottish Government introduce new legislation such as the Unsuitable Accommodation Order and the suspension of local connection referrals, East Lothian's housing market will continue to be under significant pressure.

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<sup>1</sup> NRS 2018 population estimates

Central to any regulation and licensing of short term lets is the preparation of evidence. East Lothian Council is aware that there are a number of existing short term lets in East Lothian. According to Scottish Government research, in May 2019 East Lothian had 397 entire houses or flats and 117 private rooms available for rent on Air B&B, one of the more popular online platforms. This amounts for 1.6% of the stock of Air B&B properties in Scotland. Anecdotally, the majority of properties available for short –term lets are situated in North Berwick and Gullane areas which are aimed at the golf market and families with children. A further 15% are in the Dunbar and East Linton area, aimed at a similar target market. It is important to consider the positive contribution that a small proportion of short-term lets can make to the economy. It is imperative than East Lothian Council build a further evidence base on which to decide whether there should be control areas and if so, what policies should be introduced. Evidence will also be required to defend any subsequent appeals of planning permission being refused. To this end East Lothian Council is currently commissioning research into the extent and concertation of short term lets in the county. Following this, we will continue to closely monitor the situation and should it become clear that there are issues arising as a result, then we would look into introducing such designations where there was a greater level of control required.

East Lothian Council will also seek to evidence any knock-on effects of control areas set up in neighbouring authorities, given close proximity to City of Edinburgh Council and Midlothian Council.

East Lothian is supportive of the principle of proposed introduction of both the licensing scheme and planning controls to manage short term lets going forward. There is strong evidence to show that in certain areas of Scotland, there can be management issues with properties that are available for short term lets, particularly in relation to local housing supply, but also for the safety and security of guests who occupy properties available for short terms lets. The requirements for properties to be licensed should provide a level of protection for individual properties that did not previously exist by placing more onus and responsibility on the owners/hosts to offer safe and secure accommodation for guests. Our view is that the LHS and LDP should set out the Council's overall approach to regulating the size of the short term letting market in our area.

In addition, the ability to designate parts of our local authority areas will offer greater control where the issue is more widespread.

East Lothian considers the following areas to be imperative;

- 1) The licensing scheme brought in will require resources across local authorities departments. It is estimated that it will take between 6- 18 months to set up a licensing system prior to implementation. It is important that the Scottish Government set fees which reflect the resources required by Local Authorities to comply with legislation. Setting fees at an adequate level will also ensure East Lothian Council is able to fulfil its duty in supporting short term let providers who provide good, quality accommodation to visitors in East Lothian.
- 2) Where a licensing scheme and control areas are brought into legislation, the Scottish Government should support Local Authorities to work jointly to

evidence the full effects of short term lets on housing systems, linking also to employment, tourism and welfare.

- 3) The Scottish Government should ensure that all stakeholders are adequately resourced to carry out consultation work appropriately, most importantly Police Scotland and the Scottish Fire and Rescue Service.

### **Chapter 3**

Paragraph 3.3 of the consultation explains that Control areas “help manage high concentrations of secondary letting (where it affects the availability of residential housing *and* the character of a neighbourhood)”. East Lothian Council suggests that this should be amended to read “(where it affects the availability of residential housing *or* the character of the neighbourhood)”.

### **Chapter 4**

The definition of shorter term lets within the consultation paper is generally appropriate, as is the list of exemptions. It also makes the necessary variations to allow for a different approach through the Planning process to secondary letting which is often the most problematic. However, the definition solely concentrates on use of a bedroom or living room for guests. It is proposed that the definition should be extended to include and make reference to the use of and access to toilet and shower/bathing facilities. East Lothian Council also welcomes the distinctions set out in paragraph 4.10 with reference to “unconventional dwellings”.

### **Chapter 5 – Control Area Regulations**

#### Paragraph 5.14 – Establish Control Areas

Paragraph 5.14 sets out that establishing a control area will require “a similar process to that used to establish conservation areas...The conservation area process requires some form of consultation (not specified in legislation) and notification to Ministers for approval”. East Lothian Council agrees that any designation of control areas must be evidence based to ensure that any subsequent appeals of planning permission being refused can be defended confidently and reasonably. It is recommended that included in the legislation or prior to any legislation being approved the following is set out;

1. Clarification of whether the ability to designate control areas will be available through the provisions of the Local Development Plan? Including the introduction of new policy and creation of associated boundaries for control areas. We also feel that the process needs to reflect the role that local authorities have in developing their policies and the interests of the local community as well as planning, strategic housing and economic development should be the basis with levels of discretion for Local authorities in deciding how best to use these new powers.



2. Clarification where local authorities feel it necessary to set control areas, the Scottish Government must clearly set out what information/analysis and statistics would be required to justify the designation.
3. Clear guidance on the breadth of evidence required i.e. whether evidence gathered over a period of 1 year is sufficient.
4. Clear guidance in relation to the scale of the area that may be designated i.e. could this be as local as a single street or would it be necessary to designate all of a town as a control area.

Control Areas should be adequately considered within the current Planning legislation. Given the timing of the Planning (Scotland) Act 2019 and NPF4, where many local authorities are at different stages of reviewing and/or preparing their replacement LDPs, it is recommended that an amendment could be made to current LDPs to allow the control areas designations to be made. Alternatively, the designation of control areas could be made through supplementary planning guidance. The Local Housing Strategy also provides a solid ground to introduce any new legislation and set out the requirement for an evidence gathering exercise which takes into account the full housing system in East Lothian. This could be provided through LHS' yearly updates. The Scottish Government should provide clarity on these matters.

## **Chapter 6 – Licensing Order**

It is estimated that a minimum of 6 months and a maximum of 18 months will be required to set up the new licencing regime.

### Paragraph 6.7 – Mandatory Conditions Verification

Given the expected impact on resources, East Lothian Council recommends that verification of mandatory conditions should be carried out through submission of documentary evidence. This will reduce requirements to carry out physical property inspections. It is therefore recommended that any IT system has the capability to retain large files and documents.

### Paragraph 6.9 – Consultation Partners and Standard Requirements

In paragraph 6.9, the consultation document sets out the range of existing standards and requirements for residential properties. Within this paragraph it is recommended that the Scottish Government make clear the implications on consultation with Police Scotland and Fire and Rescue Service. All licences processed through the Civic Government Act 1982 require consultation with both of these partners, neither of whom are referred to until paragraph 6.81. East Lothian Council requests that the Scottish Government make local authorities aware of what arrangements have been made with Police Scotland and the Scottish Fire & Rescue Service with regards to consultation and resources.

### Paragraphs 6.14-6.17 – Displaying of Notices

In reference to Displaying License and Safety Awareness, there is a lack of consistency in the language used between paragraphs 6.14 to 6.17. The Scottish Government must set out clear expectations for hosts and local authorities, this must go further than “display”, “clearly and prominently display” and “should be made available for guest to see”. It is recommended that a blanket term is used for the displaying of all licencing and safety awareness documents i.e. they must all either be displayed clearly (for example, on a wall), or be made available to the guests through a welcome pack. If the latter is considered to be the best option, the Scottish Government must make their expectations clear of whether this is a physical copy or can be provided to guests electronically.

### Paragraphs 6.41 and 6.52 – Anti-Social Behaviour

East Lothian Council welcomes the Scottish Governments efforts to tackle anti-social behaviour in short term lets, and agrees with the proposals in principle. There are, however, concerns regarding the “greeting of guests” in how this will be managed and policed by the local authority. Anecdotally, there is an awareness that not all hosts live in the same area as their property and/or business may let multiple properties at unspecified times. The Scottish Government must provide clear Guidance to both the host and the Local Authority with regards to who is liable for carrying out “meeting guests, explaining safety arrangements and set out house rules”. For example, must the host be physically present or can it be carried out via video conferencing? It is recommended that where a host sub-contracts either formally or informally meeting guests, providing safety awareness and house rules this is made known officially to the local authority and details are taken as appropriate. This should be required within the standard application with the information set out in paragraphs 6.75-6.78.

### Paragraph 6.62 – Fees

East Lothian Council recommends that the Scottish Government introduce a standard fee structure across Scotland. Many hosts have properties in multiple local authorities, being subjected to multiple local conditions, fees and regimes will introduce unnecessary complications to the system. Where the Scottish Government looks to set a fee, it must ensure that it cover the running of the overall licensing scheme. Importantly, East Lothian Council believes that there should be no difference between fees for home sharers and secondary letting as they both are required to meet the same safety features, and the processing of applications will require the same level of work. In addition, having a complicated fee structure will involve more resources to monitor and administer, both increasing the cost to the host and increasing the burden on the local authority.

### Paragraph 6.80 – Interaction with HMO Licensing.

East Lothian Council seeks clarification on HMO application renewals. The paragraph states that “we are not requiring anybody applying for a short-term let licence to apply

also for an HMO licence, even if the circumstances would otherwise require one.” Where a HMO application is due for renewal and the host has a short-term let licence, are they required to renew their HMO licence? Is the Scottish Government’s intention that all short-term lets will no longer require a HMO licence, where a short let licence has been sought first? East Lothian Council believes that the HMO licence continues to be important and should be sought in addition to a short term let licence.

#### Paragraph 6.125 – Renewal

The Scottish Government appears to prefer Monitoring and Compliance process rather than a Renewal System. While East Lothian Council understands the importance on monitoring, this will have a knock on impact on resources where regular and routine site visits are required as well as visits in reaction to complaints. Where this is the favoured option, the Scottish Government must ensure the fees are reflective of the true resource implications.

East Lothian Council welcomes the consultations attempt to bring together all existing legislation, and in recognition of this we would recommend that in line with the majority of Civic Government Act licenses, an annual fee/ licence period is preferable.

#### Paragraph 6.139 – Data sharing

In addition to the data specified in paragraph 6.139 East Lothian Council recommends that the following data is collected;

1. Property type
2. Number of bedrooms and living areas
3. Access to shared toilet and bathing facilities / Access to private toilet and bathing facilities.
4. Cost of stay per night
  - a. Where costs change at different points of the year, hosts are requested to share the minimum cost and maximum cost they will charge.
5. EPC Rating
6. Target Sector
  - a. short-term employment
  - b. tourism through-out the year
  - c. single tourist event
  - d. short-term housing provision for neither employment nor tourist purposes

By requesting the additional data above, it will allow local authorities to build a full picture of their housing system, the standards within properties and the full effects on the housing system.

The additional data request of “Target Sector” will allow East Lothian Council, and other authorities across Scotland to better understand how accommodation is being used

within the local area. This will also add to the evidence base where local authorities are considering control areas.

### General Comments

As previously noted, hosts are likely to have properties across a number of local authority areas. As such, East Lothian Council recommends that the Scottish Government provide local authorities with a template application (with the features to allow for the addition of some of information where the individual authority requires it).

East Lothian Council would also request that Local Authorities are provided with a template of licencing conditions, similar to the Residential Mobile Homes Guidance. As the Scottish Government will appreciate, the short time scales in which local authorities were expected to reply to this consultation has hindered the ability to seek information for all relevant departments. In particular, Environmental Health is imperative to the current response to covid-19, it could not be expected that this consultation would be prioritised during pandemic. The Scottish Government should ensure that further consultation work looks to ensure that all relevant stakeholders have been consulted in a timely and efficient manner prior to the introduction of legislation.