POLICY NOTE

THE TOWN AND COUNTRY PLANNING (SHORT-TERM LET CONTROL AREAS) (SCOTLAND) REGULATIONS 2021

SSI 2021/154

1. The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 ("the Control Area Regulations") are made in exercise of the powers conferred by sections 26B(5) and 275 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of the instrument.

2. Section 26B is inserted into the 1997 Act by the Planning (Scotland) Act 2019. The effect of section 26B is to allow planning authorities to designate all or part of their area as a short-term let control area ("a control area").

3. Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.

Policy Objectives

4. The Scottish Government's purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.

5. The Licensing Order[1] establishes a licensing scheme to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with handling complaints effectively.

6. The Licensing Order is complemented by the Control Area Regulations which makes provision for local authorities to designate control areas. The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.

7. Both these instruments will be complemented by possible changes to taxation to make sure short-term lets make an appropriate contribution to local communities and support local services. The review of the tax treatment of short-term lets is being progressed by the Scottish Government separately.

[1] Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021.

The Control Area Regulations

8. Planning permission is required for any material change of use of a building or land. Outside of a control area, it continues to be the case that it is for the planning authority to consider whether any change of use of a dwellinghouse is material and therefore requires planning permission on a case-by-case basis. Within a control area designated by a planning authority, such a change of use will always require planning permission.

9. The Control Area Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas and allow planning authorities to consider applications for consent for change of use in relation to planning matters.

10. Regulation 2 sets out the definition of a short-term let for the purposes of section 26B. It also sets out exclusions around the provision of accommodation to family members, persons living in the property to provide work or services to the provider of the accommodation or a family member, and types of accommodation set out in the Schedule to the Regulations. The definition mirrors that in the Licensing Order insofar as it is relevant to dwellinghouses. For more information on the definition, see the Policy Note for the Licensing Order.

11. Regulation 3 sets out that, before designating an area as a control area, the planning authority must give notice of the proposed designation and that the Scottish Ministers must approve the designation. This is intended to allow members of the public to be aware of, and comment on, the proposed control area.

12. Regulation 4 then establishes that the notification is to be done through local newspaper advertisement, on the planning authority website and through a notice to relevant community councils. The notice is to contain certain details of the proposed control area and include information on how further information can be obtained, as well as how representations can be made to the planning authority. Regulation 4(2) provides that a minimum of 28 days from the date of the notice being given is to be allowed for representations to be made. The 28 days begins on the date on which the last part of the required notification (i.e. the newspaper advertisement, the website notice and/or the notice to relevant community councils is sent).

13. Regulation 4(3) sets out that a map of the area and a statement of the reasons why the area is proposed to be designated as an control area must be made available both on a website and at an office of the planning authority. The latter is important for people who cannot access this information through the internet.

14. Regulations 5 and 6 make the same requirements for notification and approval in respect of variation or cancellation of an control area once it is in place.

15. Regulation 7 allows the planning authority to modify any proposal to create, vary or modify a control area, having regard to any comments received during consultation on the proposed creation, variation or modification. Regulation 7(2) sets out that any changes cannot include changes to include an additional area in the control area which was not shown on the map of the control area (or proposed control area) that accompanied the consultation.

16. Regulation 8 lists the information to be included and accompanying materials to be submitted to Scottish Ministers by the planning authority when submitting the control area notice for approval by the Scottish Ministers. The planning authority cannot proceed with the designation or variation until the Scottish Ministers have approved the designation or variation as the case may be. Approval of the Scottish Ministers is not required for cancellation of a designation.

17. Before designating, varying or cancelling a control area, regulation 9 requires the planning authority to publish notice of any designation, variation or cancellation and to set out the date on which the designation, variation or cancellation comes into effect. This date must be at least 28 days from the date on which the notice is published.

18. Regulation 9(5) sets out that a map of the designated control area, or varied control area, must be made available both on a website and at an office of the planning authority.

Consultation

19. In April 2019, the Scottish Government launched a public consultation and commissioned independent research into the impact of short-term lets on people and communities. The 2019 consultation paper outlined possibilities for a regulatory approach, which included the licensing of short-term lets. In parallel with the consultation, what is now the Planning (Scotland) Act 2019 completed its passage through the Scottish Parliament and includes provision for the establishment of short-term let control areas. The reports on the 2019 consultation and research were published in October 2019.

20. In January 2020, Kevin Stewart MSP, Minister for Local Government, Housing and Planning, announced plans to regulate the short-term let sector in the Scottish Parliament. In September 2020, the Scottish Government launched a second public consultation ("the 2020 consultation") on the specific proposals for a licensing scheme under the 1982 Act and control areas, using powers created under the 2019 Act. The Scottish Government published its *Consultation report on proposals for a licensing scheme and planning control areas for short-term lets in Scotland* in December 2020. This report can be found on the Scottish Government website[2].

Issues specific to the Control Area Regulations

21. The 2020 consultation report sets out in detail how the Scottish Government responded to issues raised in respect of: the timing of regulation and the coronavirus (COVID-19) pandemic in chapter 4; issues in respect of the proposed definition of short-term lets in chapter 5; and issues in respect of the Control Area Regulations in chapter 6.

Impact Assessments

22. The Scottish Government has conducted pre-screening or full impact assessments, for: Children's Rights and Wellbeing (CRWIA); Equalities (EQIA); Data Protection

[2] All Scottish Government consultation and research documents on short-term lets from 2019 and 2020 and impact assessments can be accessed from www.gov.scot/publications/short-term-lets/

(DPIA); Fairer Scotland Duty; Island Communities (ICIA); and a Strategic Environmental Assessment (SEA). These can be found in the 2020 consultation report.

Financial Effects

23. The *Short-term lets: licensing scheme and planning control area legislation - Business and Regulatory Impact Assessment (BRIA)* was published on 14 December 2020 to accompany the laying of the Licensing Order and Control Area Regulations. The BRIA is attached as a separate document and can be found on the Scottish Government website.

24. The cost of a planning application (currently £401)[3] is not affected by the Control Area Regulations.

Scottish Government
Directorate for Local Government and Communities
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[3] Set in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120).