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## NORTH AYRSHIRE COUNCIL

11 June 2019

### Cabinet

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**Title:** **Scottish Government Consultation: Short-term Lets**

**Purpose:** To provide Cabinet with details of a recently published Scottish Government consultation on short-term let accommodation and the proposed consultation response.

**Recommendation:** That Cabinet approves the draft response at Appendix 1 for submission to Scottish Government.

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### 1. Executive Summary

- 1.1 The term 'short-term let' applies to properties which are available to let for short periods of time, and are typically self-catering accommodation, which is increasingly booked via online platforms such as Airbnb.
- 1.1 Short-term lets can have a significant benefit to tourism and the related economy; however, they can also be the cause of challenges including loss of mainstream residential accommodation, inconsistency in taxation, and anti-social behaviour issues.
- 1.2 For this reason, the Scottish Government has issued a consultation asking for stakeholder views on local issues to inform a potential national regulatory framework for short-term lets.
- 1.3 This may involve registration and/or licensing of short-term lets and enabling different local authority areas to tailor the approach to their needs and priorities, with the possible addition of a financial mechanism to control numbers of short-term lets.
- 1.4 The consultation questions and proposed Council response are provided at Appendix 1. Cabinet is invited to approve this response for submission to Scottish Government.

### 2. Background

- 2.1 In April 2018, the Scottish Government published a consultation document entitled 'Short-term Lets: Consultation'. The consultation paper sets out a summary of the available evidence in relation to the short-term let industry, an outline of a potential regulatory approach, which might involve registration and/or licensing of short-term lets and asks for views on what the powers available to local authorities should be. The paper also signposts other action being taken by the Scottish Government which may impact on short-term lets.

- 2.2 While the Scottish Government welcomes the economic benefits which the development of new models of short-term letting brings to Scotland, it does recognise the challenges they can cause. While there has clearly been a significant growth in short-term lets in recent years, there is limited information on the impact in individual local authorities.
- 2.3 For a let to be considered 'short-term', the Scottish Government outlined the following conditions that must be met:
- The accommodation is made available for use for letting for a cumulative period of 28 days or more in any rolling period of 365 days (this includes being advertised as available for let)
  - At least one of the lets commencing in the same rolling period is not a private residential tenancy (as outlined in the Private Housing (Tenancies) (Scotland) Act 2016)
- 2.4 There are circumstances where people stay for a short or unpredictable period outwith their primary residence that do not fall within the definition of short-term lets. These include licensed hotels and B&B accommodation, hostels, refuges, care homes, and student accommodation.
- 2.5 Short-term lets generally involve the letting of all or part of a domestic property, but can also take the form of serviced apartments and furnished accommodation with hotel style services. The accommodation is usually booked through online platforms (for example Airbnb, booking.com etc.).
- 2.6 It should be recognised that short-term let activity benefits the national and local economies through tourism and the associated economic activity, including the wide range of spin-off and supply chain businesses supported by the sector.
- 2.7 Short-term let accommodation is not solely for tourism purposes. It also provides a valuable service, for example, to:
- people who are wishing to relocate to an area and require short-term accommodation before securing a long-term solution
  - contract workers looking for short-term accommodation
  - existing homeowners who are looking for alternative accommodation while carrying out work on their own property
- 2.8 New collaborative accommodation platforms are part of a wave of 'disruptive technologies', which often operate in a significantly different way from previous businesses. This means that current management and regulatory systems may not be appropriate or applicable. Disruptive technologies can also generate new challenges which require to be addressed.
- 2.9 Some examples of the challenges that the rise in short-term let accommodation, particularly that booked through online platforms, are:

- Loss of residential housing, leading to lack of availability and choice, higher rents and higher house prices, and reduced community cohesion through high proportions of transient visitors
- Loss of amenity in the surrounding neighbourhood through antisocial behaviour of guests, and property damage, maintenance and repair issues
- Personal safety risks to hosts, guests and other residents
- Regulatory mismatches between the short-term lets, hotel and B&B sectors, e.g. in terms of health and safety and taxation
- Enforcement of guest and host compliance with existing statutory and voluntary requirements, e.g. industry codes of practice
- Loss of revenue to public authorities. The Barclay Review reported ineligible properties benefitting from the Small Business Bonus Scheme

### 3. Proposals

- 3.1 The Council response to the various questions posed by the consultation paper are provided in Appendix 1. It is proposed that the Cabinet approve the submission of this response to the Scottish Government.

### 4. Implications/Socio-economic Duty

<b>Financial:</b>	There are no financial implications arising from this report.
<b>Human Resources:</b>	Not applicable.

<b>Legal:</b>	There may be future legal implications for the Council, pending the outcome of the consultation report and next steps. The consultation paper proposes a potential new regulatory framework for the short-term let sector.
<b>Equality/Socio-economic Duty:</b>	Not applicable.
<b>Children and Young People:</b>	Not applicable.
<b>Environmental &amp; Sustainability:</b>	Not applicable.
<b>Key Priorities:</b>	<p>The proposals in this paper would contribute to the following North Ayrshire Council Plan priorities for:</p> <ul style="list-style-type: none"> <li>• Active and strong communities</li> <li>• Inclusive, growing and enterprising local economy</li> <li>• People and communities are safe</li> <li>• Affordable, modern and well-designed homes that meets residents' needs</li> <li>• Vibrant, welcoming and attractive places</li> <li>• A sustainable environment</li> </ul>
<b>Community Benefits:</b>	Not applicable.

## 5. Consultation

5.1 The consultation response involved input from the following Council services:

- Physical Environment (Housing)
- Economic Growth (Planning, Trading Standards, Tourism & Coastal Economy)
- Democratic Services (Licensing)
- Finance & Corporate Support (Revenue & Benefits)

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For further information please contact **David Hammond, Senior Manager, Housing Strategy & Corporate Sustainability**, on **01294 324764**.

### Background Papers

*Scottish Government (2019), Short Term Lets: Consultation*

## Appendix 1: Response to Scottish Government Consultation: Short Term Lets

- 1 Are you aware of any additional data on the impacts of short-term lets (over and above that set out), which the Scottish Government should take into account when considering proposals for regulation?

*Although there is a published study on the impact of second home ownership on Arran, this does not specifically identify additional data on how second homes are occupied. Second home ownership on Arran is high, and the study identifies impacts on the housing market and economy, particularly identifying the lack of affordable housing for workers on Arran.*

- 2 Should a regulatory framework distinguish between sharing, swapping and secondary letting?

*Yes. We believe these distinctions are useful as the impacts that such forms of short-term letting can have are varied. Swapping and secondary forms of letting can have more potential for antisocial behaviour than sharing as there is no oversight by a host who is present in the location.*

*Secondary letting is particularly problematic owing to its potential to inflate housing markets and/or diminish Private Rented Sector (PRS) occupation in areas where housing is in short supply.*

- 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.

*Yes, as different property types can give rise to different challenges.*

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

*No. The definition is comprehensive and takes cognisance of the range of different types of short-term let accommodation.*

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

*Within North Ayrshire most potential impacts arising from short term lets relate to the Isle of Arran, and the challenge of ensuring affordable housing options that support community sustainability and economic development.*

*Arran has the second largest number of self-catering bookings in Scotland after Edinburgh. Meanwhile, growing the housing supply on Arran – particularly affordable housing - is challenging to achieve because of land availability, land values, and high construction costs.*

*Second homes are known to have an inflationary effect on housing markets, further challenging community sustainability. Increased ability to capitalise on second home ownership - which can potentially occur through unregulated growth of this sector – could incentivise and therefore further grow second home ownership.*

*There is also evidence to suggest that short term letting in areas of high tourism can lead to a diminution of PRS capacity. Edinburgh City Council have recently estimated a loss of*

*10% of PRS capacity to the short-term let sector. Given that Arran is second to Edinburgh for self-catering visits in Scotland means that this risk of PRS reduction is also likely to be high for Arran.*

*Analysis of Arran's economy published by the Arran Economic Group in 2017 has shown that the island experienced a growth of its economy by 10% in 2016. However, the same report has also highlighted a decline in the overall population and the lack of labour supply as being the principle threat to continuing economic growth. The report attributes a lack of affordable housing as the main reason for a diminished labour supply.*

*This relationship between affordable housing and tourism growth shows that for growth to be sustainable, affordable housing is a key requirement. We therefore welcome a regulatory framework that ensures local authorities have the requisite powers to ensure that growth of short term letting is managed, sustainable, and does not lead to the diminution of affordable housing options. Such levers would allow us to harness the opportunities that this sector can offer whilst at the same time mitigating against risks that could undermine our economic base and the fabric of our rural communities.*

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

*No.*

7 Do you have any comments about the impact of short-term lets on the housing market?

*See response to Question 5.*

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

*On Arran, second home ownership is an issue, but there is no clear evidence to highlight that altering planning law would respond to the issue.*

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

*While short lets are not a major problem in relation to antisocial behaviour in North Ayrshire, this may be attributable to under reporting. Arran has a high number of holiday lets but there are no reported antisocial behaviour incidents arising to date.*

10 Do you have any comments about complaint systems for short-term lets?

*It is presently unclear what recourse there is when complaints arise from participants in short-term letting activity. Consideration should be given to expanding the role of an existing ombudsman, or the creation of a new ombudsman, to hear complaints from participants in the sector and provide determinations. It appears that complaints regulation is currently ad-hoc within the sector, with participants using online review systems (on the short-term letting platforms themselves, or third-party review sites such as TripAdvisor) to log complaints.*

11 Do you have any comments on safety issues related to short-term lets?

*Clarity is required on the area of health and safety legislation that short-term lets fall within, as there are a number of potential stakeholders in local authorities, including Environmental Health, Trading Standards, and Planning.*

*We would support a similar standard to be introduced for short-term lets as exists for the PRS sector, i.e. the Repairing Standard. This would ensure that short-term letting hosts have adequate liability for ensuring that there is adequate smoke and fire detection, gas safety etc. for their guests.*

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

*The current requirement to intend to let a property for 140 days or more in a financial year without any evidence of actual letting provides an easy opportunity for property owners to avoid council tax by switching to non-domestic rates as a self-catering unit. The council has a high number of second homes on the Isle of Arran and Millport and in recent years there has been some movement towards non-domestic rates, which has reduced the Council's council tax income. The Non-Domestic Rates (Scotland) Bill and subsequent secondary legislation will address this issue.*

13 Do you have any comments on the additional eligibility requirements recommended by the Barclay Review?

*It is currently too easy for an owner of a property to switch from Council Tax to Non-Domestic Rates to avoid taxation, but this must be balanced against the right of an owner to decide what to do with their own property. Legislation should allow for the legitimate movement of property between council tax and non-domestic rates but not for tax avoidance reasons. The Barclay review recognised this weakness in the non-domestic rates system and the Non-Domestic Rates (Scotland) Bill and subsequent secondary legislation is trying to address this known loophole, which is welcome.*

*The Bill and secondary legislation may make it more difficult for owners of a property to switch from council tax to non-domestic rates by making it a condition that a property must be let for 70 days and an intention to let for 140 days in a financial year. This change should protect the Council's council tax income and may also result in self-catering units moving back to council tax because an owner cannot prove they let their property out for 70 days or more per year.*

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

*Most self-catering units in North Ayrshire have a Rateable Value below £15,000 and are therefore eligible for 100% small business bonus scheme relief. If the property meets the eligibility criteria of a small business, then they should receive rates relief just like any other business. The Non-Domestic Rates (Scotland) Bill will give Councils discretion to decide if a property is a dwelling or should be rated as a self-catering unit and secondary legislation will introduce the requirement to let for 70 days, together these reforms may reduce the number of self-catering properties receiving rates relief and help Councils retain council tax income.*

15 Do you have any other comments on taxation relating to short-term lets?

*No.*

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

*No, the proposed design principles appear appropriate.*

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

*We support the recommendations within the consultation for the development of a national framework to allow councils powers to take action against the owners of the short-term lets should antisocial behaviour be persistent and where they are failing to address the issues.*

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

*We would support some usage of market-based mechanisms to control short-term lets in specific circumstances. We would welcome disincentives applied to 'secondary letting' forms of short-term let. This is because of the risk of inflating housing markets in locations such as Arran and Cumbrae where, in effect, residential dwellings are transformed into exclusively commercial units. This would further reduce an already restricted housing supply. This could be facilitated through a registration or licensing scheme.*

- 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?

*As per the response to the question above, the primary challenge is the regulation of secondary letting. The introduction of charging could, in principle, address the imbalance between the attractiveness of secondary letting and traditional PRS activity in some areas. Consideration would need to be given to potential unintended consequences, such as a detrimental impact on the tourism industry through reduced availability of accommodation, as well as the administrative burdens of implementing and collecting any charges.*

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

*We support the case for the effectiveness of a 90 days limit per year. This is particularly important towards ensuring that short-term lets do not lead to a diminished PRS market. We would like to see this proposal extended beyond large cities where demand is particularly high. Such demand poses the risk of compromising the PRS sector which is particularly vulnerable to a 'substitution risk' if an unrestricted and high demand short-term let runs alongside it. Edinburgh City Council have already estimated a 10% diminution of the PRS sector. In North Ayrshire a healthy PRS is essential in helping meet housing need on Arran, furthermore research has shown that there are affordable housing access issues already present, which could be inhibiting the Arran economy from growing further. As 18-35s year old cohort forms close to 50% of PRS tenure in Scotland, means that this risk if left unchecked is likely to impact on young people's housing options in Arran.*

- 21 Do you have any comments on how regulations should deal with commercial hosts?

*In the PRS sector, there are few, if any, distinctions applied between private landlords with one property, and landlords with multiple properties. It is accepted, however, that there are VAT issues to be considered for those operators whose turnover exceeds the taxable turnover threshold.*

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

*Our view is that enforcement and sanctions should be levied on hosts not guests. In North Ayrshire's PRS, enforcement and sanctions are administered via Licensing Committee. The*



*remit of the Committee could be extended to include short-term lets, subject to appropriate resourcing and training.*

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

*No.*