

To: **Local Government and Communities Committee,**  
Scottish Parliament

Re: Draft SSI  
**“The Town and Country Planning (Short Term Let Control Areas)  
(Scotland) Regulations 2021” (“SSI”)**

Submission from the  
**Scottish Bed & Breakfast Association (SBBA)**



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The SBBA is affiliated with the (UK) Bed & Breakfast Association (BBA), who fully endorse and share this submission, and who have provided much of the content.

The SBBA is the trade association for B&B and guest house owners (and those starting B&B and guest house businesses) in Scotland; we are a member organisation of the Scottish Tourism Alliance. We are an independent, not-for-profit organisation with the following objectives:

- 1) To represent the interests of members, and to campaign on behalf of those interests (for example, to the Scottish Government, the UK Government, regulatory bodies and the EU);
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Our affiliate organisation the BBA was established in 2006, and is a member of the Tourism Alliance. It won the “Sector Representation Award” from the Trade Association Forum in 2010 as being the best trade association (out of 313 in the UK across all sectors) at representing its membership.

Our Chairman, David Weston (who also chairs the BBA), sits on the UK Government’s ‘Tourism Industry Forum’, which is chaired by UK tourism minister Nigel Huddleston MP. David Weston takes responsibility for this submission, and his email is [david@scottishbandbassociation.org](mailto:david@scottishbandbassociation.org)

*Questions posed by the Committee:*

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

**No**, quite the contrary. **The proposed changes are disproportionate and will put costly and onerous new burdens on many microbusinesses across Scotland**, and will **damage tourism and fragile local economies**, especially in highland, island and rural communities.

The problems the proposed changes are supposed to solve are localised and specific – typically, arising from unregulated and unchecked tourism accommodation on “platforms” like Airbnb in city centres, mainly Edinburgh.

The main purpose of this regime (we believe) should be to bring accommodation on "peer to peer platforms" - which gave rise to the term "short term lets" and are the source of the problems - **into a comparable safety compliance, inspection and enforcement regime as that already applied to our members** (B&Bs & guesthouses).

Yet the SSI as drafted will load unnecessary costs and onerous administrative burdens on established, safe and compliant small B&Bs across Scotland – **which nobody suggests are causing any problems**.

**Now is not the time** to further burden established, safety-compliant B&Bs given the disproportionate impact of Covid-19 on the Scottish tourism sector. Our (UK-wide) member survey in December found that on average, B&Bs had their sales turnover in 2020 **down 60%** compared with 2019; the ONS showed UK GDP\* was down 8.6% in 2020 - so that means that **B&Bs and guesthouses have been hit seven times harder** than the economy as a whole. Hence the need for very targeted support measures to aid recovery, NOT for onerous and costly new burdens on micro-businesses that are **already complying with health and safety regulations** and are NOT contributors to the problems the SSI is intended to address.

\* 3rd quarter 2019 - 3rd quarter 2020, ONS

The licensing scheme’s potential requirements in respect of (for example) EPC certificates, reporting, occupancy limits, minimizing noise (including potentially having to replace wooden flooring etc.), arrival & departure time curfews, and reporting, are **onerous for microbusinesses**, and unnecessary in the case of the vast majority of the properties that will be burdened by the SSI as drafted.

Instead, as requested by many tourism and business stakeholders, the Scottish Government should **pause, consult on, prepare a proper economic impact assessment on, and review** these proposals in order to give the industry time to recover from the devastating effect of the pandemic.

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

**No** – the SSI as drafted hits the wrong targets. Established, safety-compliant B&Bs should not be captured by the regulations (as all small B&Bs under “UCO 9” would be under the existing draft SSI), and this could have been addressed by proper consultation with industry.

As we and others have said from the outset, a no or low cost accommodation registration scheme would have allowed regulators to enforce the problem properties to the same standard as established B&Bs are already enforced to.

**Other possible mitigation measures could include “grandfathering rights” to exempt established, identified and enforceable businesses from the new rules.**

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

**No** – as evidenced by the local authority responses to the consultation, many local councils are concerned about the resource implications of the regulations at a time when their budgets are already stretched, as well as the administrative burden and the lack of specific Scottish Government funding for set-up costs.

Additional burdens will be placed on local authority planning and licensing teams to manage the requirements of a new scheme at a time when they can least afford it – despite claims that councils will be able to recoup this later down the line through fees (which in turn would imply disproportionate fees which would be highly damaging to microbusinesses). A proper impact assessment of the costs is required and it underlines the case that the Scottish Government should **pause, consult on, prepare a proper economic impact assessment on, and review** these proposals.

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### **Oral evidence**

We would like to emphasise that we would be happy to give oral evidence to the Committee, to expand on this submission, and to constructively help the Committee to improve the proposals and better target them.

<< END of formal submission to the Committee, 22 Jan 2021 >>

## Background and context

On 18 March 2017 we gave evidence at the Scottish Parliament to the Culture, Tourism, Europe & External relations Committee. Our evidence included our call for a “level playing-field” of regulation and enforcement, as between traditional microbusinesses (like B&Bs) and similar-sized enterprises that have chosen another business model – ie, in the “Collaborative Economy”. Our call for a level playing-field was echoed and agreed at that Committee by the Scottish BHA (representing hotels in Scotland) and by the Association of Scottish Self Caterers (representing providers of self-catering accommodation in Scotland). [See pages 5-21 inclusive]

In July 2019 we gave a submission to the consultation on “Short Term Lets” [See pages 22-28 inclusive], in which we said, *inter alia*:

- commercial short-stay letting of property (for example, on “peer-to-peer” platforms like Airbnb)... **should be regulated in the same way** as businesses of an equivalent size who sell in a traditional way
- We would favour a **simple low-cost registration scheme for tourism accommodation** of the kind which the APPG for Tourism recommended (in its report on the “Sharing Economy” last year) that the UK Government consider. This would provide a practical starting point for risk-based safety enforcement by the Scottish Fire Service and others.
- It is of vital importance that the enforcement of safety legislation (eg fire and gas safety) is properly applied (on a proportionate, risk-based basis) to ALL tourism accommodation offered to paying guests, regardless of the business model.
- At present, we have an intolerable and unfair situation whereby (for example) a two-bedroom B&B is subject to enforcement, whilst its neighbour letting two identical rooms on a platform like Airbnb is in practice subject to no checks or inspections and is allowed not to comply with any safety regulations. Hence the various tragedies including the seven deaths from Carbon Monoxide in 2013 and 2019 in Airbnb premises. Enforcement bodies must be part of the solution and have the appropriate powers, information and resources.
- The Scottish Government should check whether it and regulators such as the Scottish Fire Service has powers to demand of “peer-to-peer” platforms that they provide data to allow their “hosts” (‘responsible persons’ in fire safety legislation) to be identified and thus allow regulators to protect public safety as they are required to do by law. If those powers are insufficient, they should act to create those powers. (Airbnb are on record as stating that they refuse all requests by Fire Authorities to identify responsible persons, without a Court Order.)

In October 2019 we gave a further submission [see pages 29-30] within the confines of the very limited remit allowed at that stage (a licensing regime had already been decided upon), in which we warned of the potential of B&Bs being unintentionally included within the proposed licensing regime – we said:

- As we understand it, UCO “Class 7” (Hotels and hostels) are excluded from the definition of a “short term let” under 4.7. These are premises used “as a hotel, boarding house, guest house, or hostel”. **We would like to clarify that this means that “traditional” B&Bs and guesthouses are NOT subject to the proposed legislation on short-term lets.** Should a B&B or guesthouse happen NOT currently to be classed under “Class 7”, we would like it clarified that the application for change of use class to Class 7 will be expedited by the appropriate planning authority, to avoid businesses not intended to be subject to these regulations being drawn in.

## Annexes on following pages:

- 1) **p5 – p21**: SBBA submission to the Scottish Expert Advisory Panel on the Collaborative Economy (2017) – 17pp
- 2) **p22 – p28**: SBBA submission to Scottish Government ‘Short Term Lets’ Consultation (July 2019) – 5pp
- 3) **p29 – p30**: SBBA submission to Scottish Government ‘Short Term Lets’ Consultation (October 2020) – 2pp

To: **Scottish Expert Advisory Panel on the Collaborative Economy**

Submission from the **Scottish Bed & Breakfast Association (SBBA)**



The SBBA is affiliated with the (UK) Bed & Breakfast Association (BBA), who fully endorse and share this submission, and who have provided much of the content, as this issue is common to the whole UK.

The SBBA is the trade association for B&B and guest house owners (and those starting B&B and guest house businesses) in Scotland; we are a member organisation of the Scottish Tourism Alliance. We are an independent, not-for-profit organisation with the following objectives:

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Our Chairman, David Weston (who also chairs the BBA), sits on the UK Government's 'Tourism Industry Forum', which is chaired by UK tourism minister Tracey Crouch MP. David Weston takes responsibility for this submission, and his email is [david@scottishbandbassociation.org](mailto:david@scottishbandbassociation.org)

We recently (18 March 2017) gave evidence at the Scottish Parliament to the Culture, Tourism, Europe & External relations Committee. Our evidence included our call for a "level playing-field" of regulation and enforcement, as between traditional microbusinesses (like B&Bs) and similar-sized enterprises that have chosen another business model – ie, in the "Collaborative Economy". Our call for a level playing-field was echoed and agreed at that Committee by the Scottish BHA (representing hotels in Scotland) and by the Association of Scottish self Caterers (representing providers of self-catering accommodation in Scotland).

We understand from the consultation paper that the Scottish Expert Advisory Panel on the Collaborative Economy will be considering a number of areas, including:

1. Balancing competition and regulation
2. Peer to Peer accommodation
3. Implications for taxation
4. Workers' rights
5. Transportation & logistics
6. Collaborative financing
7. The changing role of consumers (to also being providers)
8. Implications for creating social value and supporting public services

The above list does **not** include consumers' rights and protections, which we consider to be a major area of concern raised by the unregulated "Collaborative Economy", but we assume the Panel, and certainly the Scottish Government, **are** concerned about public safety and protecting consumers, so we will address this crucial area in detail in our submission.

## QUESTIONS and Summary Responses from the SBBA

The panel have asked the following questions, to which we respond below in this paper; our summary responses are immediately below in blue for convenience:

1. What are the key opportunities that you see for the collaborative economy in Scotland?

SBBA response: in our sector, their opportunity is to take a substantial share of the serviced accommodation market. Whilst unfettered with any restraint due to compliance enforcement – and hence able to undercut compliant and regulated businesses such as our members - the collaborative economy has grown hugely. There are already over 12,600 listings in Scotland on one platform (Airbnb) alone, compared (for example) with some 2,100 B&Bs listed on VisitScotland's website.

2. What are the key challenges that you see arising for the collaborative economy in Scotland?

SBBA response: the collaborative economy has grown exponentially without restraint or challenge so far; their challenge may be to maintain commercial success whilst protecting consumers to the same extent as similar-sized traditional businesses are required to. Competition would then be on a fair basis.

3. Are contributors (consumers, providers and businesses) to the collaborative economy suitably protected by existing legislation? If not, what are the gaps/how could it be improved?

SBBA response: **NO, consumers are almost completely unprotected** by the existing regulatory regime – critically, by the lack

of enforcement of regulations on collaborative economy “hosts” even whilst the regulations are enforced on similar or identical traditional B&Bs next door. There is a significant public safety risk as a result of this enforcement failure. The consumer is not being properly protected, because of:

- (a) the failure by regulators (eg Fire & Rescue Authorities and others) in enforcement of existing regulations on health and safety (in particular, fire, gas safety (Carbon Monoxide) safety and food hygiene),
- (b) a failure by the collaborative economy businesses (eg Airbnb) to properly and fully inform the premises owners (“hosts”) of the regulations they are responsible for complying with, and how to comply with them (and other risks they may be unwittingly taking, by for example having no public liability insurance), and
- (c) a failure by those businesses to perform proper (or indeed any) checks that the premises they are listing are compliant with safety regulations.

There are also considerable financial risks to consumers (and to “hosts”) in the collaborative economy arising from the fact that much of the accommodation is not covered by public liability insurance.

4. Do you think that the collaborative economy is suitably regulated whilst still allowing competition and innovation to flourish? If not, what are the gaps?  
SBBA response: NO, there is no enforcement of existing regulations on accommodation in the collaborative economy; the regulations are only enforced on traditional businesses (eg B&Bs, guest houses and hotels), but not on collaborative economy premises. We detail many of the “gaps” below.
5. What do you think are the barriers which are constraining growth of the collaborative economy in Scotland?  
SBBA response: there are none. It has grown unconstrained.
6. What role do you think government should play?  
SBBA response: the Government should take action to ensure:
  - Consumers are protected (especially as regards fire & gas safety)
  - Similar-sized microbusinesses in Scotland operate under a level playing-field of fair and proportionate regulation and enforcement
  - The reputation of Scotland as a tourism destination will not be undermined
  - The Government’s future revenue is not undermined as economic activity migrates from taxpaying businesses to individuals who may easily avoid or under-declare tax, and global digital “platforms” who do not pay tax in Scotland
7. Do you have any general comments about the collaborative economy?  
SBBA response: (1) We welcome competition but it must be fair – currently our members are (rightly) held to compliance with many rules and regulations, especially on consumer safety, whilst our newest commercial competitors in the “collaborative economy” (similar in size

and risk to our members) have been unconstrained by any enforcement – this is unfair and anti-competitive. (2) In the accommodation sphere (and others), “collaborative economy” is a highly misleading phrase – the main player, Airbnb, is a multi-billion Dollar US corporation and is a purely commercial business. There is nothing “collaborative” about it.

## Summary

B&Bs and guest houses are suffering by being undercut by unregulated, unchecked and perhaps sometimes unsafe accommodation being offered on websites such as Airbnb, whose owners avoid cost of complying with the regulations put in place to protect the public. They have been allowed to do so by a failure in the enforcement of those regulations – even though they are enforced on B&Bs and guest houses of a similar size (and risk to the public).

The public believe some protections must be in place to ensure their safety – especially when they book a well known global brand. Yet with “platforms” Airbnb that is not the case.

For example, while local fire officers visit and check B&Bs and guest houses to ensure their safety, they do not visit or check Airbnb accommodation for fire safety (and nor do Airbnb themselves) – despite the fact that the same rules are supposed to apply. Travellers should not be put at risk in this way.

The **Scottish Bed & Breakfast Association** is pleased that the Scottish Government has commissioned this enquiry into the damaging effects of the huge growth in Airbnb accommodation in Scotland – effects which include reducing the availability of affordable housing in Scottish cities as landlords switch properties to more lucrative Airbnb rentals. We will help the enquiry as much as we can – and hope that it will result in real action being taken to protect the public and Scotland’s tourism reputation.

The scale of the problem is stark: whilst VisitScotland list 2,160 B&Bs, Airbnb already have more than 12,600 listings across Scotland.

## Our responses to the Panel’s seven questions – in detail:

### Questions (1) and (2):

We do not intend to expand on our summary responses above.



**Question (3):**

***Are contributors (consumers, providers and businesses) to the collaborative economy suitably protected by existing legislation? If not, what are the gaps/how could it be improved?***

NO, consumers are not being protected by existing regulation and (especially) enforcement.

There is no consistency of enforcement of regulations, as between traditional businesses (eg hotels and B&Bs) and “hosts” selling via peer-to-peer websites (such as Airbnb).

Scottish Fire & Rescue has been given a duty by Parliament to ensure that they have an appropriate inspection and enforcement regime in place to protect the public, based on actual risk. They (and other Fire & Rescue Authorities (FRAs) across the UK) are failing to carry out this duty with respect to the fastest-growing sector of tourism accommodation – that is, premises on so-called “collaborative economy” platforms such as Airbnb.

To illustrate the scale of the issue, just one of the peer-to-peer platforms, Airbnb, now has more than 52,000 listings in the UK; there are some 25,000 traditional B&Bs. Airbnb has over 12,600 listings in Scotland; this compares with some 2,100 B&Bs listed on VisitScotland’s website.

**EVIDENCE (UK):**

A) The London Fire Brigade, in a Freedom of Information response (August 2014) stated in respect of “peer-to-peer” platform host premises:

*“We would only come across them... by complaint”*

B) Julian Hilditch, National Resilience Adviser at the DCLG Fire Resilience and Emergencies Directorate stated (October 2014) in respect of “peer-to-peer” platform host premises:

*“Fire Authorities ... visit these premises for the purpose of audit and enforcement in the event of **either a fire safety concern being raised with them by a member of the public, or indeed in the event of a fire**”.*

C) An investigation by ITV, whose findings were broadcast on ‘ITV Tonight’ in July 2015, revealed Freedom of Information responses from 14 Fire & Rescue Authorities across the UK, admitted to making (in 2014):

- Inspections of B&Bs: 507
- Inspections of “peer-to-peer” host premises: NONE

None of the Airbnb host premises visited by ITV appeared to be fully compliant with Government fire safety guidance for the smallest premises taking paying guests.

If the Airbnb host premises visited by ITV were a representative sample, that would indicate that some 2,520 Airbnb premises across the Scotland (ie 20%) may not even have working smoke alarms on each floor, let alone be properly compliant with fire regulations.

ITV's investigation found that online platforms such as Airbnb rely on the fact that the premises owner or 'host' is responsible for compliance, whilst the website owner is not. It is of course in the platforms' commercial interests to play down regulatory requirements, so as to encourage hosts to list their premises.

The ITV Tonight programme asked: "are Airbnb hosts even aware that their rented rooms fall within the fire regulations?" Airbnb host Claire Bentley-Smith told the programme:

"I have never read what to do if there was a bad situation here. I thought they just came as a guest in your home in the same way a friend or family person would."

Airbnb said in a statement to ITV:

"We require hosts to follow their local laws and we encourage all hosts to take some basic steps to keep their homes safe - and if guests alert us to a hazard or safety issue at a listing, we immediately suspend the listing and investigate."

D) Scottish fire Safety Consultant Dr Bob Docherty QFSM, PhD, CEng, FIFSM(Life), FIFireE, MEI, who has 33 years' experience in the Fire Service in Scotland, told ITV in July 2015 that Fire & Rescue Authorities were still not even thinking about "peer-to-peer" premises:

*"I think it's a new phenomenon and I don't think it's on their radar at all. Unless they are told about them then they do go under the radar and Fire and Rescue Services won't know about them until something happens - they get a complaint or there is a fire."*

When the B&B Association contacted Dr Docherty directly after the ITV Investigation was made public, expressing our dismay at its findings, he told the Association:

*"I am not quite sure why you should be 'hugely disappointed' – especially given the reluctance of the Government to regulate, the*

*Minister to do anything including DCLG, CFA, Institute of Fire Engineers, Institute of Fire prevention Officers et al!*

*“Only the Institute of Fire Safety Managers is tackling enforcement (and the stupidity and lack of competency and consistency of some fire and Rescue services to deal with enforcement).”*

*“I served 33 years in the fire service and spent that last 10 years in my service as Assistant Firemaster, Director of Fire Safety for Strathclyde Fire Brigade, and was the highest ranking officer in Scotland with that portfolio – so my expectations of how fire and rescue services should enforce (or not) is based on fairly sound experience.”*

*“I don’t speak and didn’t on the programme for anyone other than myself and my company but my comments are based on experience and knowledge gained in my second career as a fire engineer and fire safety consultant.”*

E) Example ‘case study’: To point up the stark contrast between the lack of inspection of “peer-to-peer” host premises and the regulation of bona fide B&Bs, the ITV investigative team spoke to Simon Shouler, who used to run a two-bedroom B&B in his 16th century home (taking in guests on average some 25 nights a year) until the Leicestershire FRA came to inspect his property and closed it down in September 2014 because the FRA judged it non-compliant with fire regulations.

Mr Shouler was told the property needed fire doors and an interconnecting smoke alarm system. Every day local fire authorities make similar inspections of B&Bs and guest houses - but no such inspections are made of the much larger (and fast growing) number of similar premises listed on “peer-to-peer” websites like Airbnb, Wimdu, OneFineStay and others. The SBBA wonders how many of the 15,000+ premises across Scotland (and 70,000+ premises across the UK) on “peer-to-peer” websites would - like the Shouler's two-bed B&B - be closed down for being unsafe, if a fire officer was ever to visit them?

The DCLG National Resilience Adviser’s assurance that an “audit” visit would take place **after a fire has happened** might (we submit) be seen by consumers of “collaborative economy” accommodation services as less than reassuring.

Parliament has decided that regulation and enforcement in this area must be based on actual risk, not on factors such as business model.

The above evidence shows that there is extreme inconsistency of enforcement amounting to regulatory failure – and directly resulting in an anti-competitive marketplace in which there is a two-tier treatment of businesses with the same risk profile: one business type (ie the traditional accommodation business, a B&B or guest house) is being disadvantaged whilst another, competitive business type (ie on so-called “collaborative economy” platforms) is being given an unfair advantage. Another direct result, of course, is significant and growing public safety risk.

Meanwhile Airbnb deny any responsibility for public safety – for example they are in legal dispute with three guests who were seriously injured when a balcony collapsed at an Airbnb property they booked in Brighton. Elsewhere they have (reportedly) quietly paid compensation to families, without making any admissions of liability.

#### GAS SAFETY – CARBON MONOXIDE:

The West Yorkshire Coroner’s “Section 28” Report following the Corfu tragedy in 2006 (when two British children, Christi & Bobby Shepherd, were poisoned by Carbon Monoxide in accommodation contracted by Thomas Cook) included these specific recommendations to providers of tourist accommodation:

4. The responsibility for Health and Safety checks should not be delegated to Tour Representatives who are often inexperienced and over worked and will lack the time, knowledge and commitment to carry out this task. The responsibility for this should be by suitably qualified specialists in Health and Safety. Furthermore, and where appropriate, this should include suitably qualified and experienced specialists, in particular experts of Health and Safety, e.g. gas safety. **Such specialists should visit the relevant accommodation and carry out full and detailed Health and Safety checks, the reports from which should be publically accessible.** In organisations that do not have suitable in-house personnel for this purpose then suitably qualified and experienced Consultants should be instructed.
5. Arising from recommendation (4) above, Tour Operators and **the owners and controllers of hotels, apartments and holiday premises should devise and/or subscribe to suitable Health and Safety accreditation ratings.**
6. Within the structure and hierarchy of **every provider of hotels, apartments and holiday premises there should be a robust internal structure for a system of management, supervision support and training in respect of Health and Safety issues.**

Traditional tour operators, hotels and B&Bs do have such procedures and have been tightening them since the Corfu tragedy and the Coroner’s report; “collaborative economy” businesses like Airbnb, however, continue to deny any responsibility for the safety of their accommodation, and carry out no such inspections.

Since the Corfu tragedy there has already been at least one death from Carbon Monoxide at tourist accommodation let by Airbnb.

A Canadian tourist was reportedly killed by Carbon Monoxide at an Airbnb property in Taiwan in December 2013 - seven years on from Christi & Bobby Shepherd's deaths in Corfu and nearly two years after the BBA had first warned UK regulators of the potential for tragedy at unregulated, unchecked accommodation on Airbnb and similar websites.

Airbnb deny any liability for the death and claim not to be responsible for checking the gas or fire safety of any of their listed accommodation

The death in Taiwan are described below in a report by Zac Stone, whose own father was killed at an Airbnb rental in Texas by a tree that had been dead for two years.

Mr Stone says about the CO death in Taiwan:

"The details of her death are sparse, reported in part by local English-language media: A leaking water heater placed on a fully enclosed balcony next to the room she was staying had filled the apartment with carbon monoxide. Her five friends staying in the adjoining room were hospitalized and survived. The apartment was being run as an illegal hostel by two men who lacked proper permitting, and didn't bother to install a carbon monoxide detector or conform to "structural or fire safety standards."

During the 2013 holiday season, a Canadian woman and five of her friends stayed together in Taiwan for a wedding, booking accommodations through Airbnb. On December 30, she was found dead. Airbnb did acknowledge her death, in their statement to me. But her tragic accident, like my father's, has been left out of the company's self-reported narrative about its safety record until now.

I was able to unearth a few more details from William B. Smith, a San Francisco lawyer, who presented this account at a legal conference in March. While her heirs had originally reached out to him about representing them in a lawsuit against Airbnb, they decided to go their own way after the company offered "\$2,000,000 to resolve the wrongful death case while telling the family that there is no basis for liability... and it is being offered only for humanitarian reasons," according to his paper.

After her death, [Airbnb] began promoting a program to give out free smoke detectors and carbon monoxide detectors to American hosts who asked for them. Still, more than 11,000 rentals are available for

rent in Taiwan on Airbnb, with no requirement of demonstrating working carbon monoxide detectors or permitting."

The full report from which the above extract comes is at:  
<https://medium.com/matter/living-and-dying-on-airbnb-6bff8d600c04>

Mr Stone concludes of Airbnb's health & safety practices:

**"Nothing is currently done to make sure hosts actually comply with safety guidelines (or even read them),** which is a problem particularly for newer properties on the platform, which Airbnb's customers, as opposed to employees, are left to vet for safety. Should the company demand more from aspiring hosts—submitting an application, passing a safety quiz, hopping on the phone with an Airbnb safety rep, or undergoing a home inspection (an idea which Chesky himself [Airbnb's CEO] has suggested)—they'd burden the seamlessness of the minutes-long sign-up process and deter new registrations."

Had the hosts of the Texas property [where Mr Stone's father was killed] opted to become part of a community of more traditional B&Bs, they would have encountered a cumbersome but rigorous process, according to the Texas Bed and Breakfast Association's executive director Connie Hall. "For new members, they are inspected with an overnight stay, and then every two years, our properties are inspected," she says, covering everything from cleanliness to decor, and ensuring that individual rooms have a deadbolt, smoke detectors are functioning, and landscaping seems safe. "As far as the safety stuff, it's mandatory for our members that they meet all these criteria," adds Hall.

Introducing similar measures would not only require Airbnb to spend money, it would also mean flirting with liability it would rather outsource to hosts. (As the company's website clearly states: "Airbnb has no control over the conduct of Hosts and disclaims all liability.")

Mr Stone also notes that, whilst Airbnb will not inspect properties for compliance, they DO send professional photographers to host properties to get better photographs, so the rentals sell better and generate more revenue (Airbnb is currently valued at \$30 billion). He comments:

"Airbnb is willing to send someone to make sure your trees look beautiful in their photos, but won't deal with whether or not those trees will fall on your head."

Consequently now, because of the huge growth in "collaborative economy" accommodation on Airbnb and similar "platforms", consumers are more at risk of death from Carbon Monoxide now than they were in 2006 when the Thomas Cook tragedy occurred. Tour operators and hotels have tightened inspection procedures since (as recommended by the Wakefield Coroner's report), but consumers booking "collaborative economy" accommodation are

entirely unprotected.

### INSURANCE:

The ITV investigation in July 2015 (see above) also highlighted the danger for both 'hosts' and guests using “collaborative economy” online platforms due to the lack of insurance cover for paying guests in premises insured by standard home insurance. Graeme Trudgill of the British Insurance Brokers' Association warned:

"If you rent out items on the internet for payment, you need to make sure you're properly insured in case something goes wrong. If you are lending a tool to a neighbour that is absolutely fine; providing no money changes hands your contents insurance, your occupier's liability will cover that risk. However the game changer is where there is money changing hands or if you advertise it on a sharing economy website. If you are doing that, then you need to refer it to your insurance company because it massively changes the risk for them."

### **Scottish Regulatory Review Group recommendations**

In 2015 the Regulatory Review Group reviewed part 3 of the Fire (Scotland) Act 2005, and recommended to the Scottish Government (recommendation 12) that:

*“The growth in use of peer to peer platforms needs to be considered further specifically the implications of **non-compliance of fire regulations.**”*

### Question (4):

***Do you think that the collaborative economy is suitably regulated whilst still allowing competition and innovation to flourish? If not, what are the gaps?***

NO, as we have explained above, it is in effect unregulated (mainly through a near-total lack of enforcement of existing regulations on “collaborative economy” premises, whilst the regulations are enforced on traditional businesses of an identical size and risk). This means that competition is unfairly distorted in favour of the “collaborative economy”, at the expense of compliant, tax-paying traditional businesses.

Taking the “gaps” or anomalies in regulation one by one:

### **Government revenue from taxation:**

The Scottish and UK Governments face a significant loss of tax revenue as

economic activity migrates to “collaborative economy” platforms, because:

- “Hosts” (property owners) benefit from much higher tax thresholds per room than B&Bs and hotels (under HMRC’s “Rent a Room” scheme, hosts need not pay UK income tax on their first £7,500 of income; whereas a 10 bedroom guest house would by comparison typically pay significant tax on its first £75,000 of turnover, and a 100 room hotel would typically pay substantial corporation tax on its first £750,000)
- Many hosts are not declaring letting income, so evading the tax due (which is much more difficult for HMRC to police than tax due from established hospitality businesses which have to publish accounts)
- The platforms themselves are structured and managed in such a way that they largely do not pay corporation tax in the UK; and
- The VAT system gives a huge advantage to “collaborative economy” businesses such as Airbnb: this is because VAT is only charged on a “service fee” rather than the full accommodation cost (for example for Airbnb which charges a 6-12% service fee to guests (in addition to the 3-5% fee it charges to hosts), consumers will pay 1.2% - 2.4% VAT on the accommodation cost rather than the 20% a guest house or hotel would have to charge. (In Airbnb’s case, even this VAT is being collected in the Irish Republic rather than the UK.)

For those living in Scottish cities on lower incomes, **a loss of affordable housing** is being seen, as flats and houses are taken out of the residential rental market by landlords who find it more lucrative to let their properties on a short-term basis through online platforms such as Airbnb. We welcome the fact that the Scottish Government has commissioned a detail study into this loss of affordable housing.

**Illegal discrimination** by “hosts” as regards the “guests” they accept is being allowed in the “collaborative economy” whilst (rightly) being enforced against as far as traditional businesses are concerned. As an example:

On 18 November the BBC Mark Forrest radio show (broadcast across 40 BBC Local Radio stations) discussed Airbnb and regulation, and interviewed Stephen Liddell, an Airbnb host (and author of “How to get rich on Airbnb”) - he said:

- he has smoke and CO detectors and first aid kits [not adequate to comply with Government guidance on fire safety probably: no fire alarm system]
- the only checking Airbnb did was of his identity and bank account details
- *(asked by Mark Forrest if it is easy to turn down enquirers you don't like the look of)* he confirmed “yes, we politely turn them down if we don't like the look of them”

The latter of course is illegal discrimination in the provision of services, and contravenes the Equality Act 2010, which requires service providers to accept all purchasers without discriminating between them. Hotels and B&Bs accordingly accept all booking requests from those able to pay. By contrast, discrimination is the core of Airbnb's working model - hosts see a name and ‘profile’ of each prospective guest, and can pick and choose which to accept and which to reject. The Airbnb system allows the host to reject an enquiry for which availability exists, and simultaneously reopen availability for all other enquirers.



In the USA, a study by Harvard Business School in 2014 found that this has in fact led to systematic discrimination, for example by hosts against black guests, and by guests against black hosts (who consequently had to charge 12% lower prices on average for similar properties, according to the Harvard study). Similar findings have been made by other studies since.

**Question (5):**

We do not intend to expand on our summary responses above.

**Question (6):**

***What role do you think government should play?***

**POTENTIAL SOLUTIONS – DEREGULATION ON A “DE MINIMUS” BASIS**

A simplification and easing of regulatory burden on the very smallest micro-enterprises has been negotiated between the British Hospitality Association (BHA, acting on behalf of ourselves and other sector representatives) and the music copyright licensing bodies, PRS and PPL.

The exact detail is not relevant here, but the principle is that the discussions are leading to the very smallest premises being exempted (here on a discretionary waiver policy basis) from the full licensing requirements on a "de minimus" basis.

The criteria proposed by PPL (to align with PRS's exemption policy) is:

*PPL will not charge a licence fee for background music or the supply of music to bedrooms within Small Residential Hotels & Guesthouses in holiday accommodation businesses meeting all the following criteria:*

- *The premises has 3 guest bedrooms or fewer*
- *The premises is the sole holiday accommodation business operated/owned by the proprietors*
- *The owner lives on the premises, which is his/her domestic residence*
- *The premises is not licensed for the sale of alcohol (by the local authority)*
- *Facilities are only available to resident guests.*

As two regulators plan to adopt the above criteria to simplify regulation, align criteria between themselves, make it more proportionate and reduce burdens on very small businesses, it would seem appropriate that these criteria (or very similar) could be considered for a new "de minimus" approach for other regulatory areas, eg fire regulations, food hygiene etc.

There would be a great benefit in aligning the criteria across different areas of regulation in this way, and it would be simpler in practice, easy to understand (by businesses, regulators and enforcement authorities), and it would enable

the strong growth of micro-enterprises in the accommodation sector, including of course in the “collaborative economy”.

Such an approach would:

- Regulate proportionately to the size of enterprise
- Help the growth of the collaborative economy
- Reduce the burden on the smallest enterprises, and
- Level the regulatory playing-field

## POTENTIAL SOLUTIONS – INFORMATION, CHECKLIST AND VERIFICATION

The **Woskow Review** to the UK Government in November 2014 on the “sharing economy” recommended:

The government should set clear minimum standards for health and safety, including fire safety, for all providers of accommodation. For example, there should be a working smoke alarm on every floor, and guests must be made aware of the escape plan.

**Platforms should make these rules clear upfront to their hosts.**

Egregious breaches of regulation – for example, letting out a large number of rooms through sharing economy platforms, but not complying with tax and regulatory requirements – **must be dealt with firmly**. The government, local authorities and sharing economy platforms should work together to ensure that **all legal requirements are met**.

Our suggestion is that online platforms in the accommodation sector (eg Airbnb and others) should be given a duty to ensure their users (“hosts”) are properly informed, by having a simple “YES/NO” checklist for all their property owners, whereby the owner must click “YES” through a short list of all the key questions, and only be listed if they click yes to all. The checklist we are recommending to Government is:

**CHECKLIST: to be listed, click “yes” to each question below:**

1. Do you have Public Liability Insurance?
2. Do you have House and Content insurance that covers damage by paying guests?
3. If you have a mortgage, do the lender’s conditions allow you to take paying guests?
4. If you have a Leasehold or Tenancy Agreement, does it allow you to rent out your property?
5. Do you comply with the Fire (Scotland) Act 2005, by following the Scottish Government’s Official Guidance?
6. If you provide food and/or drinks for guests, have you registered with your local authority?
7. If you have gas, has the boiler, and all gas appliances, been checked by a registered “gas-safe” engineer within the last 12 months?
8. Have you clarified with your local authority as to whether “change of use” planning permission is required. If so, has this been granted?

(The above covers only the most important items and ignores most of the 140 or so regulations that may apply, including music copyright licensing, guest registration, access statements, etc etc.)

Of course, such a checklist, whilst valuable, would not be sufficient protection for the public by itself, reliant as it is entirely on self-assessment – so our recommendation would also be that platforms be given a duty of care to their users which would require them to perform reasonable “due diligence” towards protecting their safety – which would extend to at least performing an appropriate process of audit and verification – for example, spot-checks on individual premises to thoroughly check compliance.

### POTENTIAL SOLUTIONS – ENFORCEMENT POWERS AND PRACTICE

The Government should ensure that enforcement bodies charged with protecting the public (eg the Scottish Fire & Rescue Service):

- Have the powers to require “collaborative economy” businesses (like Airbnb) to identify “host” premises owners, so the regulators are able to do their duty;
- Actually exercise those powers, and make an appropriate level of inspections of “collaborative economy” premises to ensure public safety, on exactly the same risk-based basis as they use for premises using traditional business models.

#### Question (7):

***Do you have any general comments about the collaborative economy?***

The problem is that new technology has enabled completely new business models that are outside the scope of existing regulations, which are thus no longer fit for purpose (eg for protecting the public). For instance:

- **Uber** is an online platform and competes with taxi and private hire firms, but owns no cars and employs no drivers
- **Airbnb** is an online platform and competes with B&Bs and hotels, but owns no accommodation – the consumer sees Airbnb as hospitality brand and accommodation provider, and assumes that (as with any other major brand they deal with, eg Premier Inn or Hilton) the accommodation will have been checked for safety compliance; however, it is not checked by Airbnb themselves (who don’t own the accommodation so deny responsibility), and it is currently not checked by any UK regulator either

As to barriers to growth, in the UK at least, the opposite is the case as far as the “collaborative economy” is concerned – the regulatory landscape is distorted strongly in their favour: the UK Government is giving collaborative economy companies an unfair advantage by allowing them to take a more relaxed approach to the rules than established players, according to the CEO

of Whitbread (owners of Premier Inn and Costa) in November 2015.

In an attack on Airbnb, Andy Harrison claimed that both the Government and new industry players could be doing more to ensure a level playing field in complying with the law, including on the paying of tax:

*“It’s a fact that the government is not keeping up with the pace of change of technology,”* Mr Harrison said at the annual conference of the CBI. *“They are not using the information available, they are not requesting the information. I don’t think they are putting a sufficiently strong requirement on the new companies to follow the same regulations as we do.”*

Harrison pointed out that 40% of people on Airbnb list “multiple” properties:

*“These are probably professional landlords,”* he said. *“How does the government or Airbnb know that these landlords are complying with all the same laws that we are, whether it’s health and safety, consumer protection or paying their taxes?”*

*“We are not looking for any special favours; we just want to make sure regulation keeps up with technology and **there is a level playing field.**”*

The CEO of Intercontinental Hotel Group (IHG), Richard Solomons, echoes the “unlevel playing-field” argument, believing that Government and regulators show “naivety” about online businesses, and that they should treat internet players in “exactly the same way” as traditional companies:

*“Traditional hotel businesses, which are often far bigger employers than internet ventures, are currently at a disadvantage”* he said, singling out Airbnb as one example where online firms were subject to different rules.

Airbnb was “an interesting concept”, said Solomons. *“But what about fire and life safety, what about food safety, what about security issues, what about cleanliness – all those things that we [hoteliers] are required to keep to a standard? What about paying tax?”*

*“If you are paying somebody for a service and that service is sold as a major operation, it’s becoming a big business then why would different standards apply?”*

*“Regulation needs to **treat online businesses the same way as existing businesses** so that existing businesses are not put at a disadvantage.”*

This was indeed a key recommendation to the UK Government in the **Woskow Review** on the “sharing economy” in November 2014, which said (p11):

***Regulations should apply in the same way to businesses that see themselves as part of the sharing economy and to traditional hospitality providers.***

Link: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf)

It is dismaying that regulatory failure means that customer safety is now a competitive factor between “collaborative economy” business models and traditional businesses; Our view is that businesses should compete on service, quality and price but NOT on the safety and security of our customers – that should be a given.

It should be a common factor between businesses that all the services they sell are compliant with the regulations passed by Parliament for public safety.

Sadly, that is NOT the case with the “collaborative economy”, and that is almost entirely due to regulatory failure (particularly as regards enforcement practice).

[www.scottishbandbassociation.org](http://www.scottishbandbassociation.org)

## **Response ID ANON-FUKT-927E-1**

Submitted to **Short-Term Lets: Consultation** Submitted on **2019-07-19 12:05:31**

### **Questions**

**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 and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation?**

**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 and briefly summarised above) which the Scottish Government will take into account when considering proposals for regulation?:**

The growth in short-term holiday lets has helped drive a five per cent increase in rents in Edinburgh.

A report by letting company Your Move showed rental prices in Edinburgh had risen by three times the national average of 1.7 per cent over the 12 months to February.

The report said the average rent in Edinburgh and the Lothians was now £699 per month - the highest in Scotland.

David Alexander, of city estate agents DJ Alexander, said the boom in Airbnb and other short-term lets was undoubtedly a big factor in the rise in rental prices.

He said: "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.

"Edinburgh is a very strong long-term rental market and property is always in demand. There is already a shortage of supply so when landlords opt for Airbnb it means there is even greater pressure with the inevitable result of higher prices.

"It's not the only reason for rising rents but it is definitely a factor."

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

Yes

### **Please explain your answer.:**

Yes it is appropriate to distinguish between genuine "sharing" or "swapping" - ie a non-commercial transaction where no money changes hands - and commercial short-stay letting of property (for example, on "peer-to-peer" platforms like Airbnb). The latter should be regulated in the same way as businesses of an equivalent size who sell in a traditional way. The latter is NOT "sharing".

## **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

### **Please explain your answer.:**

Yes, because there is an important additional element in respect of flats in multiple-unit buildings: the effect on the amenity, security and privacy of the letting on others living in the same building. These third parties have had no say in the short-term letting of another unit in their building and cannot control it, but (as experience in Edinburgh and elsewhere clearly shows) their own lives can often be severely impacted. Their rights to quiet enjoyment of their property must be taken into account by policymakers.

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

### **Do you have any comments on any other aspect of the definition of short term lets?:**

No

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

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

Yes, the negative impacts are:

- >> Loss of housing, especially rented housing
- >> Increase in rents for residents (eg the +5% example in Edinburgh cited above), especially hitting those on lower incomes
- >> Loss of amenity, security and privacy to neighbouring residents in tenement buildings and apartment blocks
- >> Safety risk to guests as the "peer-to-peer" platforms currently avoid regulation and responsibility

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

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

Negative examples of the safety risk include the six deaths in May 2019 in Airbnb accommodation in Chile due to Carbon Monoxide poisoning

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

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

This has been severe in many areas, both on the rental market (where short-term lets have for instance pushed rents up £33 a month (5%) on average in Edinburgh and the Lothians [see under Q1], directly affecting struggling low-income groups the most; and on house purchase prices.

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

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

We think the Wightman amendment is fair and sensible.

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

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

"Anti-social behaviour" also includes the noise from slamming doors and trundling luggage bags waking other (non-letting) tenants in the same or neighbouring buildings at unsocial hours. Such persistent loss of amenity must not be under-estimated by policy-makers.

Converting what was an apartment block of residents into a de-facto hotel comes at a huge cost to residents in their quality of life, privacy and security.

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

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

Yes as we said in Q9 above, such anti-social behaviour is vastly higher than reported incidents would imply, as most of it is "low-level" noise and disruption on a daily basis which would not individually give rise to formal complaints but which, in aggregate, add up to an unacceptable loss of amenity, privacy and security and the loss of householders of their right to quiet enjoyment of their homes.

A robust complaints system needs to be considered, which allows for enforcement of, for example, guest arrival times and procedures.

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

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

YES, there is a huge safety issue on short-term lets, as the accommodation is unregulated and un-inspected and almost entirely non-compliant with safety laws (eg on fire and gas safety).

Platforms (eg Airbnb) to NOT inspect accommodation for safety, and deny any responsibility for its safety. The sector has avoided the safety clampdown on gas boilers following the Thomas Cook tragedy in Corfu in 2006 and the Wakefield Coroner's report requiring tourism accommodation providers to take safety actions; Airbnb and other platforms claim not to be accommodation providers for these purposes. An Airbnb guests was killed by Carbon Monoxide in Taiwan in 2013, and six Airbnb guests were killed by Carbon Monoxide in Chile this year.

The Fire & Rescue Authorities do NOT visit and inspect accommodation on peer-to-peer platforms, so it is left to ordinary guests to check them for fire safety - for instance, the three-storey property let by Airbnb in Plymouth, Devon, which was inspected by fire officers in 2017 only as a result of a complaint from a guest; the property was called a "death trap" by Judge Ian Lawrie. The court heard the only fire extinguisher had not been tested since 2002 and polystyrene tiles would have given off poisonous fumes in a fire. There was no emergency lighting, some doors had the wrong locks on them and there was a dangerous storage of bedding and other combustible materials at the base of the single staircase.

Defending lawyer Nick Lewin said a lot of people advertised homes on Airbnb with "complete and utter ignorance of fire regulations".

An investigation by the ITV "Tonight" programme broadcast on 16 July 2015 found that:

- 1) All 14 Fire Authorities quizzed admitted to making NO inspections of peer-to-peer platform (P2P) premises last year, whilst inspecting 507 B&Bs;
- 2) A fire service veteran and fire safety expert told ITV that the risks posed by P2P premises were still "not on the radar" of Fire & Rescue Authorities;
- 3) None of the 10 Airbnb host premises visited by ITV appeared to be fully compliant with Government fire safety guidance for the smallest premises taking paying guests;
- 4) Closures are still taking place of small B&Bs found not to be compliant with regulations, whilst thousands of similar P2P premises are left unchecked;
- 5) P2P websites are not effectively informing 'hosts' of their legal responsibilities as premises owners; and
- 6) Both P2P 'hosts' and guests are at financial risk, because their insurance cover does not extend to paying guests (this was underlined this year in a report by 'Pikl', which found that 100% of insurers of residential property do NOT cover short-letting to paying guests in their residential insurance policies).

If the Airbnb host premises visited by ITV were a representative sample, that would indicate that some 33,400 Airbnb premises across the UK (20% of 167,000) may not even have working smoke alarms on each floor. (See <http://www.bandbassociation.org/ITVinvestigatesAirbnb.htm>)

In the USA a recent survey of Airbnb hosts found that most properties lack fire extinguishers and first-aid kits, half are without carbon-monoxide detectors and one in five lack a smoke detector.

The report on the study of 120,000-plus properties in 16 US cities reported "safety deficiencies" in Airbnb 'venues' and described the results as "troubling". The study, by the Centre for Injury Research and Policy at the John Hopkins' Bloomberg School of Public Health in Baltimore, found 80% of a sample of 120,691 Airbnb venues reported having smoke detectors, 56% CO (carbon monoxide) detectors, 42% fire extinguishers and 36% first-aid kits, and noted: "This is substantially lower than the universal requirement for hotels."

The report, entitled Reported Fire Safety and First-Aid Amenities in Airbnb Venues in 16 American Cities, was published by the BMJ (British Medical Journal) in May 2018.

The authors note the information they have drawn on is "self-reported by hosts" and state: "There is no validation of the accuracy of the host's reporting [of fire-safety features] or if they are in working order." The assumption must therefore be that these figures if anything err on the side of understating the actual lack

of safety precautions.

The report authors point out the safety features examined for the study are "standard for hotels and homes" and conclude: "The low proportions reported for some cities are troubling."

The report notes of hotels and short-term rental properties: "Guests are often unfamiliar with their surroundings and the venue's layout.

"To help mitigate these challenges, hotels have standards that legally require fire-protection specifications such as posted fire-escape routes, fire doors, fire extinguishers, smoke detectors, fire sprinkler systems and exit passageways.

"The same is not true for privately owned short-term rental properties now available through peer-to-peer accommodations. These emerging hospitality settings are not uniformly regulated . . . Most are not regulated."

If the 169,000 UK premises on Airbnb reflect similar characteristics to those found in the USA by John Hopkins' Bloomberg School of Public Health, we can assume that:

33,600 premises on Airbnb in the UK do NOT have smoke detectors;

73,920 premises on Airbnb in the UK do NOT have carbon monoxide detectors; 97,440 premises on Airbnb in the UK do NOT have fire extinguishers; and 107,520 premises on Airbnb in the UK do NOT have first aid kits.

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

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

No comments

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

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

No comments

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

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

No comments

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

**Do you have any other comments on taxation relating to short-term lets?':**



The Scottish Government should carry out a thorough assessment of the tax being lost to the Scottish and/or UK economy (a) by tax evasion by hosts, EG as a result of non-reporting of short-let income, and (b) as a result of the effective rate of VAT being around 4% on Airbnb-type lets compared with 20% on guesthouses and hotels (because the 20% VAT only applies to the Airbnb "service fee").

The wider tax context must be taken into account when looking at potential new charges - ie business rates, VAT etc.

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

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

These 10 principles seem very appropriate.

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

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

We would favour a simple low-cost registration scheme for tourism accommodation of the kind which the APPG for Tourism recommended (in its report on the "Sharing Economy" last year) that the UK Government consider. This would provide a practical starting point for risk-based safety enforcement by the Scottish Fire Service and others.

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

**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 prefer a registration scheme rather than a licensing scheme. We believe market mechanisms and competition should ultimately control capacity rather than Government intervention - BUT that of course Government should ensure that (a) all accommodation offered to paying guests is safe and complies with existing minimum standards required by law, and (b) Government policy should take into account third parties affected - EG loss of amenity, privacy and security by neighbours in tenement buildings, and rental price increases on low income people resulting from short-term lets.

**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?**

**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?:**

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

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

Such limits are almost impossible to enforce. Owners can simply create a new identity on the platform or use a second platform, to sell further days.

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

**Do you have any comments on how regulations should deal with commercial hosts?:**

Yes it would be very fair and appropriate to make a distinction, for example between those letting rooms in their own family home, in which they also live (eg a three bedroom B&B in a five bedroom home or a homeowner offering three bedrooms in his home on Airbnb), and commercial hosts with large-scale property businesses (eg multiple units and/or in multiple locations, in properties not their main residence). On the principle of proportionality, the latter should face compliance requirements and taxation/charges comparable to similar-scale traditional hospitality operators such as large hotels.

Currently, commercial hosts (accounting for over a third of listings on sites like Airbnb) are in effect operating unregulated hotels, and undercutting hotels by saving on safety compliance and taxation.

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

It is of vital importance that the enforcement of safety legislation (eg fire and gas safety) is properly applied (on a proportionate, risk-based basis) to ALL tourism accommodation offered to paying guests, regardless of the business model.

At present, we have an intolerable and unfair situation whereby (for example) a two-bedroom B&B is subject to enforcement, whilst its neighbour letting two identical rooms on a platform like Airbnb is in practice subject to no checks or inspections and is allowed not to comply with any safety regulations.

Hence the various tragedies including the seven deaths from Carbon Monoxide in 2013 and 2019 in Airbnb premises. Enforcement bodies must be part of the solution and have the appropriate powers, information and resources.

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

The Scottish Government should check whether it and regulators such as the Scottish Fire Service has powers to demand of "peer-to-peer" platforms that they provide data to allow their "hosts" ('responsible persons' in fire safety legislation) to be identified and thus allow regulators to protect public safety as they are required to do by law. If those powers are insufficient, they should act to create those powers.

(Airbnb are on record as stating that they refuse all requests by Fire Authorities to identify responsible persons, without a Court Order.)

We believe that the Scottish Government and the UK Government should as far as possible work together and align their approaches on these important issues, as it is better to have the highest possible level of policy consistency across the UK.

**About you (optional)****1 Which of the following best describes you. Please choose all that apply:****If other, please specify.:**

Trade association representing B&Bs and guest houses across Scotland

**2 How did you hear about the consultation? Please choose all that apply.****If other, please specify.:**

Through our membership of the Scottish Tourism Alliance

**If you are a host, please answer the following questions.****3 Which of the following describes your short-term letting listing(s)? Please choose all that apply.****4 Do you list your room/property/properties on more than one platform?**

Not Answered

**5 How many properties did you have available for short-term letting in 2018?****How many properties did you have available for short-term letting in 2018? :****6 Approximately how many nights was/were your listing(s) occupied in 2018?****proximately how many nights was/were your listing(s) occupied in 2018? :****7 For hosts with more than one property, do you have properties in more than one local authority area in Scotland? Not Answered****About you****What is your name?****Name:**

David Weston

**What is your email address?****Email:**

david@scottishbandbassociation.org

**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Scottish Bed & Breakfast Association

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response only (without name)

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

**Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Slightly satisfied

**Please enter comments here.:**

**Response ID ANON-RA1J-6KCA-K**

Submitted to **Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland**  
Submitted on **2020-10-16 15:06:55**

**Questions**

**1 Please identify any issues with the proposed definition as set out in chapter 4, and how to resolve them.**

**Question 1:**

[We made a fuller submission at an earlier stage of this process (July 2019), and are NOT generally in favour of the approach now chosen; hence this brief submission confines itself to remaining points within the remit of the current consultation.]

As we understand it, UCO "Class 7" (Hotels and hostels) are excluded from the definition of a "short term let" under 4.7. These are premises used "as a hotel, boarding house, guest house, or hostel".

We would like to clarify that this means that "traditional" B&Bs and guesthouses are NOT subject to the proposed legislation on short-term lets.

Should a B&B or guesthouse happen NOT currently to be classed under "Class 7", we would like it clarified that the application for change of use class to Class 7 will be expedited by the appropriate planning authority, to avoid businesses not intended to be subject to these regulations being drawn in.

**2 Please identify any issues with the proposed control area regulations as set out in chapter 5, and how to resolve them.**

**Question 2:**

**3 Please identify any issues with the proposed licensing order as set out in chapter 6, and how to resolve them.**

**Question 3:**

We have never been in favour of a licensing scheme, preferring a low-cost registration scheme. However, if a licensing scheme has been decided on, we strongly advise that thought be given to making it affordable to micro-businesses. The regulations seem to provide for the relevant department to decide how much to spend, then divide that figure by the number of properties and charge accordingly.

To us, that is a recipe for over-spend in cost and consequently for very small enterprises to be hit with punitive charges as the price of doing any business at all. That would be unfair, disproportionate and damaging to Scotland's economy and to tourism.

The main purpose of this regime (we believe) should be to bring accommodation on "peer to peer platforms" - which come within the definition of "short term lets" - into a comparable safety compliance, inspection and enforcement regime as that currently applied to our members (B&Bs & guesthouses). The licensing scheme should NOT be aimed at being financially punitive.

The license fee for the smallest properties/businesses should be set bearing this in mind, and after consultation with industry representatives - and kept under review.

## About you

**Which of the following best describes you. Please choose all that apply:**

Trade association

**If you answered 'Other', please state:**

**How did you hear about the consultation? Please choose all that apply:**

Referred by local authority / government / MSP / councillor

**Other (please state):**

**What is your name?**

**Name:**

David Weston

**What is your email address?**

**Email:**

david@scottishbandbassociation.org

**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Scottish Bed & Breakfast Association

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response only (without name)

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

**I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.**

I consent

**Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**