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ESTABLISHING A SHORT-TERM LET CONTROL AREA

■ circular

Scottish Planning Series

PLANNING CIRCULAR

**ESTABLISHING A SHORT-TERM LET
CONTROL AREA**

Circular 1/2021

Establishing a Short-Term Let Control Area

Contents

1. Glossary

2. Establishing control areas

- a) Introduction
- b) Legislative basis
- c) Reasons and evidence
- d) Designating one or more control areas

3. Determining planning applications

- a) Further information on handling applications
- b) Duration of planning permission
- c) Links with licensing applications

Annex A: Definition of a dwellinghouse

Annex B: Meaning of short-term let in a control area

Scottish Government

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1. Glossary

1.1. In this circular, the following terms are used:

“the 1997 Act”	means the Town and Country Planning (Scotland) Act 1997 ;
“the Control Area Regulations”	mean the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI 2021/154);
“GPDO”	means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ;
“control area”	means a short-term let control area designated under section 26B of the 1997 Act, as amended by the Planning (Scotland) Act 2019;
“dwellinghouse”	means, for these purposes, an independent dwelling (with its own front door, kitchen and bathroom) being accommodation which ordinarily affords the facilities required for day-to-day private domestic existence such as a house, flat, cottage, see also Annex A ;
“guest”	means a person occupying a property for the purposes of a short-term let;
“host” (or “operator”)	means a person or company providing accommodation for short-term lets;
“licensing scheme”	means the scheme established by the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 (SSI 2021/[xxx]);
“neighbour”	means, for our purposes, someone whose permanent residence is in close enough proximity to a short-term let to have a legitimate interest in its business, e.g. potentially affected by safety, noise, litter, nuisance;

“property”	means the accommodation (room, rooms or premises) let to the guest(s) as a short-term let;
“secondary let”	means the letting of a property where the host or operator does not normally live, for example a second home (and has the same meaning as in the licensing scheme);
“short-term let”	is as defined in the 1997 Act and regulation 2 of the Control Area Regulations, see also Annex B (and has the same meaning as in the licensing scheme);

2. Establishing control areas

(a) Introduction

- 2.1. Outside of a control area, it continues to be the case that it is for the planning authority to consider whether any change of use of a dwellinghouse is material and therefore requires planning permission on a case-by-case basis. Within a control area designated by a planning authority, such a change of use will always require planning permission.
- 2.2. The Control Area Regulations simplify and clarify the planning status of properties used for short-term letting in certain areas and allow planning authorities to consider applications for consent for change of use in relation to planning matters.
- 2.3. The Scottish Government's purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests. The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.

(b) Legislative basis

- 2.4. Section 26B of the 1997 Act allows planning authorities to designate all of their area as a control area or parts of their area as one or more control areas. They are not under a duty to designate control areas and may choose not to do so.
- 2.5. The Control Area Regulations are made under powers at section 26B of the 1997 Act. Section 26B provides that Scottish Ministers may make regulations relating to the procedures planning authorities must follow to make, vary or revoke a control area, the form of a designation of a control area, what constitutes a short-term let for the purposes of section 26B and any circumstances or descriptions of dwellinghouse to which section 26B does not apply.
- 2.6. Section 26B of the 1997 Act and the Control Area Regulations came into force on 1 April 2021.

(c) Reasons and evidence

- 2.7. In order to designate a control area, a planning authority will need to prepare a statement of reasons for their proposal. This is an important step in

explaining to people affected by the control area, and the Scottish Ministers, why the planning authority considers it necessary.

2.8. A planning authority might want to designate a control area for one or more of the following policy objectives:

- to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood);
- to restrict or prevent short-term lets in places or types of building where it is not appropriate; or
- to help local authorities ensure that homes are used to best effect in their areas.

2.9. Planning authorities should consider whether there are systemic material planning considerations across one or more areas in the planning authority area as part of deciding whether to designate one or more control areas. Systemic here might mean the same consideration repeated many times or that there is a cumulative impact from the use of dwellinghouses as short-term lets. Example indicators include:

- Changes to the look and feel of a neighbourhood, such as multiple keyboxes on many buildings or structures or wheelie suitcase noise on streets and in stairwells.
- Signs that local services are struggling, such as many instances of overflowing bins.
- Lack of affordable and appropriate housing for local residents, perhaps indicated by a high share of sale volumes to, and high prices paid by, non-residents.
- A significantly higher level of complaints relevant to use of dwellinghouses as short-term lets from neighbours spread across a number of tenements or properties than in a comparable area, within or outside the planning authority area.
- Detrimental impact on local amenity, with some businesses, schools or other services that serve, and are reliant on, permanent residents closing or relocating.

2.10. Another relevant consideration is whether there have been reasoned requests from community councils, residents' associations and other local groups. Planning authorities should have regard to such representation.

2.11. Ultimately, it will be for local authorities to determine whether a control area is required (based on some form of consultation) taking all relevant local circumstances into account. Planning authorities should keep their control area(s), or absence thereof, under review, perhaps aligned with any review of their local development plan.

(d) Designating one or more control areas

2.12. Under the provisions of section 26B of the 1997 Act, a planning authority may designate all of its area, or any part of its area, as a control area.

2.13. The process of designating an area as a control area essentially follows three steps as set out in regulation 3 of the Control Area Regulations.

2.14. The planning authority must:

- a) **notification and consultation:** publish notice of their proposal to designate an control area and consult on the proposal;
- b) **submission and approval:** submit their proposal to the Scottish Ministers and obtain their approval; and
- c) **publicity:** subject to approval of the Scottish Ministers, the planning authority must give notice of the designation, setting out the area to be covered and the date on which the control area will come into effect.

2.15. A similar process is followed for the variation of, or cancellation of, an existing control area.

Notification and consultation

2.16. Regulation 4 sets out the process for the notification of the proposed control area. Regulation 6 sets out the process for varying or cancelling a control area. The purpose is to allow members of the public to be aware of, and comment on, the proposed control area.

2.17. The planning authority is required to publish notice of the proposals in a newspaper circulating in the area to be designated as a control area. The planning authority must also publish the notice on their website and send the notice to each community council within the area of the proposed control area (regulation 4(1)).

2.18. The notice must (regulation 4(2)):

- a) contain a statement that the planning authority proposes to designate the area as a control area and a description, in general terms, of that area;

- b) state how further information in respect of the proposal, including a map of the area covered by the proposal and a statement of the planning authority's reasons for proposing to designate the area as a control area, can be inspected free of charge; and
 - c) state how representations can be made to the planning authority and the date by which they must be made.
- 2.19. The planning authority must allow a minimum period of 28 days from the last date on which notice is given for the submission of representations. The 28 days begins on the date on which the last part of the required notification (i.e. the newspaper advertisement, the website notice and/or the notice to relevant community councils is sent).
- 2.20. Regulation 4(3) sets out that the map of the proposed control area and a statement of reasons for proposing the control area must be made available on the planning authority's website and at an office of the planning authority. The latter is important for people who cannot access this information through the internet. Planning authorities should give consideration as to how to support people without internet at home, or with disabilities that prevent them from accessing the internet, to find the information that they need.
- 2.21. Planning authorities may consider additional notification methods in addition to the statutory requirements (for example by leaflet drops, social media or local signage) where they consider it appropriate to do so.
- 2.22. Regulation 6 sets out a similar process for the variation or cancellation of a control area once it has been created. Where a planning authority propose to vary or cancel a control area they must make information available and allow for representations to be made in the same way as set out above. They must publish a map showing clearly the area designated as a control area, any proposed changes to the area covered by the control area and a statement of reasons for varying or cancelling the control area, as the case may be.
- 2.23. Under regulation 7(1), the planning authority can modify the proposal to take account of any representation made in response to the consultation. The planning authority may not, however, make any changes to include an additional area in the control area which was not shown on the map of the control area (or proposed control area) that accompanied the consultation (regulation 7(2)).

Submission and approval

- 2.24. In accordance with regulation 8, where a planning authority either proposes to designate an area as a control area, or proposes to vary or cancel an existing

control area, the authority is required to give notice of the proposal to the Scottish Ministers.

2.25. Where the planning authority proposes to designate an area as a control area the notice must be accompanied by:

- a map of the area which the planning authority propose to designate as a control area; and
- a statement setting out the planning authority's reasons why the authority propose that the area should be designated as a control area.

2.26. Where the proposal is to vary or cancel a control area the notice must be accompanied by:

- a map of the affected control area;
- if the proposal is to vary a control area designation, a map of the area which it is proposed to exclude from, or include within, the control area; and
- a statement setting out the planning authority's reasons why the authority propose that the control area should be varied or cancelled.

2.27. The explicit approval of the Scottish Ministers is required before the planning authority can proceed to designate a control area or vary an existing control area. Although the planning authority is required to notify Scottish Ministers of their proposals to cancel an existing control area, Ministerial approval is not required for the cancellation to proceed.

2.28. The Scottish Ministers can either approve or not approve the control area(s). The Scottish Ministers cannot propose amendments to the proposals.

2.29. In considering the proposals, the Scottish Ministers will seek assurance that the planning authority has:

- a) taken reasonable steps to raise awareness in the proposed control area(s) and consulted appropriately;
- b) taken account of the views expressed in consultation and considered this with any other relevant evidence; and
- c) come to a reasoned decision as set out in the accompanying statement.

2.30. Obviously, a range of views may be expressed in consultation and the Scottish Ministers will be looking for a coherent and considered response,

recognising that it is unlikely that proposals can be modified to satisfy everyone.

Publicity

- 2.31. The final stage of the process of designating, varying or cancelling a control area is for the planning authority to publish notice of the designation, variation or cancellation, as the case may be (regulation 9).
- 2.32. For designation or variation of a control area, the notice cannot be given until after the Scottish Ministers have approved the proposal.
- 2.33. The planning authority must publish the notice in a newspaper circulating in the area and on the planning authority's website.
- 2.34. Notice of designation of an area as a control area must state:
 - the date on which the area is to be designated as a control area; and
 - How a copy of a map of the designated control area can be inspected.
- 2.35. Notice of variation of a control area must state:
 - the date on which the variation is to take effect; and
 - how a copy of a map showing the control area as varied can be inspected.
- 2.36. Notice of cancellation of a control area must:
 - state the date on which the cancellation is to take effect; and
 - identify the designated control area to be cancelled.
- 2.37. In all cases, at least 28 days must be allowed between the date of the publication of the notice and the changes taking effect.

3. Determining planning applications

(a) Further information on handling applications

- 3.1. Planning authorities should make sure that important information on any planning application is verified appropriately. For example, where planning permission is sought in respect of the use of someone's own home for short-term lets, the planning authority should establish that the property is indeed the only or principal home of the applicant.

(b) Duration of planning permission

- 3.2. Planning authorities can impose a condition when granting planning permission to require the permitted use to be discontinued after a specified period – this is known as “planning permission granted for a limited period”.
- 3.3. Planning authorities may consider applying a discontinuation condition of 10 years, or such other time period as they consider appropriate, when granting planning permission for secondary letting in a control area (or outside, if they see fit). The standard tests of necessity for conditions should be met in all cases.
- 3.4. The Scottish Ministers have powers under section 43(1)(aa) of the 1997 Act to give directions to planning authorities in relation to the imposition of conditions. The Scottish Government has no intention of using these powers in this context at present.
- 3.5. Where planning permission has already been granted, planning authorities cannot easily rescind it. Issues with short-term lets arising in property which already has planning permission may be addressed:
- through planning law if there has been a breach in planning control (i.e. the terms of the planning application or conditions have been violated); and/or
 - through refusing a licensing application or by applying licensing conditions and sanctions, where there are grounds to do so.

(c) Links to licensing schemes

- 3.6. Licensing authorities have the power to refuse to consider a licensing application if they consider that such an application would be a breach of planning control. This power is primarily designed to assist licensing authorities in processing licensing applications for secondary letting within control areas.

- 3.7. Furthermore, it is a mandatory condition of a short-term let licence to have made a planning application or to have planning permission already when providing short-term lets in property that requires planning permission in a control area¹.
- 3.8. This power and this condition are explained further in the guidance for licensing authorities on the licensing scheme.
- 3.9. Where a planning authority refuses planning permission, this must be communicated to the licensing authority. The licensing authority should then ensure that any licence contingent on the planning permission is then modified or revoked. Note that it will not always be necessary for the licence to be revoked. For example, a host may have a licence to let out one bedroom in their own home but have submitted a planning application to let out three bedrooms. In this case, the planning application might be declined but the licenced activity can continue.
- 3.10. Planning authorities may want to build in a process for confirming the licensing status of any property which is the subject of an application for planning permission. Some planning authorities may do this directly with the licensing authority but others might choose to do this with the applicant.
- 3.11. Planning authorities should be mindful of cases when making changes to planning policy how these might affect already licensed premises; i.e. premises licensed for short-term lets where, at the time of the granting of the licence, the use was not in breach of planning control.

¹ This is a mandatory condition set out in Schedule 3 of the Licensing Order. See Licensing Guidance Part 1 for more information.

Definition of a dwellinghouse

The definition of dwellinghouse is explained in [Planning Circular 10/2009](#): Planning Enforcement:

7. ... Although there is no definition of what constitutes a dwellinghouse, it is considered possible for a reasonable person to identify one by sight. If no reasonable person would identify a particular structure as a dwellinghouse, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse, even if it is being used as such. This is an important distinction which means that a building may be used lawfully as a dwellinghouse without acquiring the 'permitted development' rights associated with a building that is a dwellinghouse.

8. The above distinction (between use as and being a dwellinghouse) is important in circumstances where people have adapted or used unlikely or unusual buildings as their houses. However, under the terms of the General Permitted Development Order (GPDO) it may also apply, in certain circumstances, to ordinary flats: a flat may be used as a single dwellinghouse without acquiring 'permitted development' rights, because Article 2 of the GPDO specifically excludes them from the definition of 'dwellinghouse' for GPDO purposes. The criteria for determining whether premises are being used as a single dwellinghouse should include both their physical condition and the manner of the use. For the purposes of the 1997 Act, a single, self-contained set of premises can properly be regarded as being in use as a single dwellinghouse if it meets the following criteria:

- it comprises a unit of occupation, which can be regarded as a 'planning unit' separate from any other part of a building containing it;
- it is designed or adapted for residential purposes, containing the facilities for cooking, eating and sleeping normally associated with use as a dwellinghouse;
- it is used as a permanent or temporary dwelling by a single person, or by persons living together as, or like, a single family.

9. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities (e.g. a bathroom or lavatory) and the 'planning unit' is likely to be the whole building, in use for the purposes of multiple residential occupancy, rather than each individual unit of accommodation.

Meaning of short-term let in a control area

Section 26B of the 1997 Act, and the Control Area Regulations define a short term let for the purposes of the control areas. Use of a dwellinghouse for the purpose of providing short-term lets is deemed to be a material change of use in a control area. Planning permission is therefore required for short-term letting of any house or flat within a control area.

Note that the proposed Licensing Order could amend the Control Area Regulations and these amendments are **not** reflected below.

Section 26B(3) excludes:

- private residential tenancies under section 1 of the Private Housing (Tenancies) Scotland Act 2016; and
- tenancies of a dwellinghouse or part of it where all or part of the dwelling house is the only or principal home of the landlord or occupier

Regulation 2 of the Control Area Regulations defines a short-term let as provided where all of the following criteria are met:

- a) sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration,
- b) no person to whom sleeping accommodation is provided is **an immediate family member** of the person by whom the accommodation is being provided,
- c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,
- d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- e) the accommodation is not **excluded accommodation** (see below)

An **immediate family member** includes parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. It also treats children with one parent in common as siblings and stepchildren as children.

Excluded accommodation means a dwellinghouse which is, or is part of—

- a hotel,
- a boarding house,
- a guest house,
- a hostel,
- residential accommodation where care is provided to people in need of care,
- a hospital or nursing home,
- a residential school, college or training centre,
- secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or accommodation used as military barracks),
- a refuge,
- student accommodation,
- an aparthotel.



PLANNING SERIES:

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

Circulars contain Scottish Government policy on the implementation of legislation or procedures.

Statements of Scottish Government policy in the SPP, NPF and Circulars may be material considerations to be taken into account in development plans and development management decisions.

Planning Advice Notes provide advice and information on technical planning matters.

Further information in the Scottish Government's role in the planning system is available on the [Scottish Government website](#)

Information on the current programme of planning reform and implementation of the Planning (Scotland) Act 2019 is available on our [Transforming Planning website](#)



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