

The Regulation of Short-term Lettings in Ireland

1. Statement of the Policy Basis

Protection of residential rental stock in areas of high housing demand/need

The Strategy for the Rental Sector, published in December 2016) recognises the issue of potentially significant numbers of properties being withdrawn from the long-term rental market for use for short-term lettings and the negative impact this could have for the supply and availability of residential rental accommodation. The growing use of on-line platforms may, if not adequately regulated, facilitate and encourage this trend.

Short-term letting, where the dwelling involved is the permanent or long-term residence of a person or family, does not reduce the number of residential units available in the economy. Homesharing - the letting of a room or rooms within a home - can be an important source of income, helping “homesharers” to meet the costs of mortgages, rents or other household expenses. This can support their tenure security. It also supports tourism and associated economic activity and even social and cultural exchange.

The collaborative economy in Ireland can also contribute significant economic value, both in terms of the number of visitors and as a location for companies in this sector to invest. The perception of Ireland as a progressive, modern economy that is welcoming to innovative growth industries is also enhanced by the presence of companies offering collaborative economy services. Therefore, homesharing has many positive impacts and can generally be supported.

However a significant concern, where there is a shortage/demand for housing, is that the ability to use on-line platforms may encourage:

- landlords, who normally provide residential rental accommodation to tenants to seek to obtain higher returns by ceasing residential letting and moving to short-term letting to tourists and business travellers;
- investors to purchase residential units for short-term letting as an investment option.

These scenarios remove properties from the residential housing system. As a result, there may be less secure, long-term accommodation available for the resident population. The economic benefits to the individual of short-term letting may be outweighed by the negative social and economic impacts on the general population, which arise from a lack of access to housing.

Of immediate concern are areas where there is high demand for long-term residential rental properties and where there is a high risk of loss of supply due to short-term lettings. These are

likely to be areas where the lack of permanent rental accommodation is evident in large numbers of people on social housing waiting lists, where there are difficulties in establishing Housing Assistance Payment (HAP) or Rental Accommodation Scheme (RAS) supported tenancies, where rents are high or where a Rent Pressure Zone has been designated.

Amenity and nuisance issues - apartments and flats

In addition to loss of accommodation from the long-term rental market, there are further potential adverse impacts on local communities related to high concentrations of short-term lettings specific to apartments. The transient nature of short-term letting can have a disruptive effect on the daily lives and the cohesion of the owner occupier community in a multi-unit development and complaints of a public order nature related to short-term letting in urban areas have been received in some parts.

Other issues

The increased prevalence of on-line short-term letting platforms raises concerns in relation to other policy and regulatory issues, including consumer protection, accommodation standards and safety for both users and the existing resident community.

The lack of visibility and data on unregulated short-term letting is also a concern and constrains the ability to effectively monitor and regulate the activity.

Introduction

Throughout this document, the terminology used can be defined as follows:

- on-line intermediary platforms – those website companies which act as a portal to connect hosts offering their short-term accommodation with potential end-users.
- vendor – the hosting provider of overnight tourist-related accommodation, either as shared use in the vendor’s own home or as an entire property.
- vendee - the end user of the short-term letting service, e.g. tourists, business travellers.

Strategy for the Rental Sector – Working Group on Short-term Letting

Action 18 - We will provide clarity in relation to the appropriate regulatory approach, from a planning perspective, for short-term tourism-related lettings to address unintended consequences of short-term lettings, including withdrawal of supply from the rental market

Under Action 18 of the Strategy for the Rental Sector, the Department established a Working Group consisting of all the major public stakeholders with interest in Short-term Letting. A list of the membership of the organisations and participants on the Working Group is included at Appendix I. The proposals under consideration aim to facilitate the short-term letting of accommodation within permanent residences – homesharing, while protecting the existing stock of

residential property in areas of high demand, safeguarding neighbourhood amenity and consumer protection and to address negative effects of short-term letting. The proposals also aim to recognise the important role of short-time lettings in the provision of tourist accommodation and reflect the significant economic value generated by the sector.

The terms of reference of the Working Group (see Appendix II) require that it examines the adequacy of the current regulatory framework and its application to on-line platforms for short-term tourism-related lettings, and that it makes recommendations for necessary regulatory reforms, if any.

Previous papers circulated among and/or discussed by the Working Group have described models of regulation extant elsewhere, such as in Cook County, Illinois and Toronto; have described potential regulations for the home-sharing industry and short-term letting; and, have assessed the scale and profile of short-term lettings in Ireland; and have identified some of the pertinent economic issues. In terms of the impacts of the growth of short-term rentals sourced through on-line intermediation services, the Working Group considers that there are price and availability impacts which have negative repercussions for tenants and prospective tenants participating in residential rental markets. The price impact, in general, seems likely to be low to moderate in most markets.

A more pressing impact from a public policy perspective is that a number of residential units have been lost to the rental market, thereby contributing to the scale of homelessness being experienced particularly in urban areas. Short-term lettings also raise numerous duty of care and community-impact issues, particularly when contact between the vendor and vendee may have been minimal and when the vendor is not present during the vendee's stay. The Working Group has also discussed the possibility that the impacts of short-term letting may increase.

During the course of its examinations, the Working Group received a number of submissions from interested stakeholders as follows:

- Irish Hotels Federation,
- Air BnB,
- Deputy Eoin Ó Broin, Sinn Féin, and
- Irish Self Catering Federation (ISCF).

Current regulation and registration of tourist accommodation

Under the Tourist Traffic Acts 1939 - 2011, certain accommodation sectors (including Hotels, Guest Houses, Hostels, Caravan & Camping Parks, Self-Catering accommodation such as

apartment and cottage properties with more than 7 units on one site and Holiday Camps¹) are statutorily obliged to register with Fáilte Ireland, whereas other accommodation sectors (known as the listed sectors, such as Irish Home B&Bs, historic houses or self-catering operations - 7 units or less - and various types of tourist accommodation approved under Fáilte Ireland's Welcome Standard) are not.

Furthermore, Fáilte Ireland makes regulations for the statutory-covered sectors, laying down the minimum standards for registration under each of the specified sectors. It is important to note, however, that these regulations relate mainly to the quality of the product and the level of service and are primarily tourism-focused regulations.

In addition to the statutory regulations, Fáilte Ireland also offers voluntary quality assurance approval and listing systems [i.e. not subject to regulations] for the non-statutory accommodation segment, including Irish home B&Bs, historic houses with accommodation and self-catering. Such short-term accommodation providers, regardless of whether or not they use intermediary sales and marketing platforms, may apply for Fáilte Ireland approval but it is not mandatory.

Joint Committee on Housing, Planning and Local Government

In June 2017, the Oireachtas Joint Committee on Housing, Planning and Local Government agreed to examine the issue of short-term lettings and establish the impact, if any, of short-term lettings on Ireland's housing and rental market. The Committee held a series of meetings with invited stakeholders and experts from a range of perspectives. The Committee has made 13 recommendations to assist both the Department and the Working Group in their efforts to provide clarity on the appropriate regulation and management needed in relation to short-term lettings. The Committee's recommendations are listed at Appendix III.

European Commission

The European Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SME's ran a series of workshops in 2017 on the Collaborative Economy Short-Term Accommodation Rental Services. The aim of these workshops was to identify best practices, and on that basis, produce a set of shared guiding policy principles which Member States could agree to consider when developing policies and regulation in this sector, which is still in progress. The objective of guiding policy principles would be to reduce regulatory fragmentation in the Single Market, facilitate the implementation of EU legislation and promote best practices.

¹ Prescribed Terms: The Tourist Traffic Acts (1939-2016) specify that where certain terms are used to describe tourist accommodation, the proprietor using those terms must register with Fáilte Ireland. Registration may also require compliance with whatever current regulations are in force for that tourist accommodation sector. The Acts require Fáilte Ireland to maintain a public register of proprietors using the prescribed terms. The Register can be found here: <http://www.failteireland.ie/Supports/Get-quality-assured.aspx>

Proposed Regulation of Short-term Letting in Ireland

The primary goals of the regulatory proposals are to:

- Reduce the market impacts of short-term rentals on the long-term residential rental market;
- Facilitate the use by resident householders of unused capacity in their own homes for short-term letting and the associated economic benefits for them and the local economy;
- Ensure the quality of accommodation services provided, consumer protection and safety;
- Limit and mitigate any negative effects on residential communities, associated with high volumes of short-term lettings; and,
- Facilitate economic activity, specifically a growth in tourism accommodation capacity developing in a fair and equitable manner for all in appropriate areas.

The secondary goals of the regulatory proposals are to:

- Improve the information available to policymakers and thereby better inform future policy;
- Formalise channels of engagement and communication between on-line intermediaries and State organisations; and,
- Ensure that the regulatory approach is coherent with general approaches to the regulation of commercial activity.

Following its deliberations, the Working Group makes the following headline recommendations to the Minister:

1. A licensing and registration system should be put in place to encompass:
 - (a) all on-line intermediaries of short-term lettings under which, from a given date, a licence would be required to operate as an on-line intermediary of residential units located in the Republic of Ireland.
 - (b) All peer providers / hosts of short-term lettings, whether on a sharing basis or in relation to the letting of entire residential units would be required to register.

These respective systems would specify the obligations, including that all residential units offered for short-term letting be registered.

2. A central registration system should be put in place to encompass all residential units offered for short-term lettings under which, from a given date, the letting of registered residential units via an on-line intermediary would be permitted only for registered units. Breach of this requirement by a vendor would be an offence and would also be grounds for the revocation of a licence to operate as an on-line intermediary or other sanction. The process of registration should be straightforward and proportionate and would require that vendors positively state, and where appropriate, provide evidence, that the residential unit is compliant with relevant

statutory obligations, for example planning, fire safety, tourism and insurance requirements. Insurance requirements should satisfy specific requirements and cover specific risks and contingencies.

Those residential units which have failed to provide the required statement or evidence should be ineligible for registration or should be de-registered. Vendors should also be required to positively state that short-term letting of the residential unit in question would not detrimentally impact on the quality of life, safety or health of surrounding households, commercial entities or of the general public. The period of registration could be annual, permanent or a point in the range between annual and permanent.

3. A Statutory Authority(s) would be given responsibility for operating the licensing and registration systems. It would be open to the Statutory Authority in defined circumstances to revoke a licence or to de-register a residential unit. The Statutory Authority would be given general powers to oversee, manage and operate the licensing and registration systems, including graduated sanctions which could be applied to licensed on-line intermediaries or in respect of registered units / unit vendors. The Statutory Authority would also act as a first point of call for State bodies, such as the police or fire services, with an interest or concern regarding a specific registered unit, vendor or licensee.
4. 'Short-term letting' should be defined in law with reference to the law applying to residential tenancies. At present, there is no legal definition of short-term letting. One possible interpretation is the, "*Use of residential property – either entire dwellings or rooms within – for temporary letting for periods of less than one month at a time*".
 - A 'residential unit' should be defined in law to encompass units which could otherwise be used as a home, for instance, units which would meet the standards required for a valid residential tenancy.
 - Certain specific types of tourist accommodation such as hotels, hostels, bed and breakfasts etc., and dedicated commercial operations such as blocks of apartments operated as tourist apartments should be excluded from the definition of 'residential unit'. Note: Suppliers of Approved Bed & Breakfast accommodation are listed under contract by Fáilte Ireland on the basis that they provide visitors with the opportunity to share some time with people in their own homes.
 - The definitions of 'peer' and 'professional services' providers to be deployed in regulation would provide a further method of differentiation between vendors. Obviously, clear lines of demarcation would be required to ensure clarity and the detailed differentiation will require expert knowledge of the tourism industry and associated statute.

5. For residential units which are entirely let, a short-term letting use cap per unit should be imposed, with a maximum number of stays set per annum. The caps would be decided upon at local level by the relevant local authority, taking into consideration relevant factors to be outlined in the primary legislation such as availability of rental stock in the functional area, Rent Pressure Zones and tourism accommodation requirements in the area.
6. Responsibility for monitoring and enforcing the use caps, as well as ensuring that vendors meet the insurance and other requirements, should lie in the first instance with licensed on-line intermediaries, in that their platforms should be capable of preventing residential units from breaching the letting use caps. Responsibility for any necessary changes to platforms required to do so would rest with the on-line intermediaries.
7. Each on-line intermediary should provide a dedicated system by which neighbours of residential units advertised on their platform, or third parties (including State bodies) may raise concerns or make complaints. A transparent process should be put in place which ensures that genuine cases are satisfactorily resolved, with the emphasis placed on the public good and quality of life for all households. Reports to the Statutory Authority responsible for overseeing the system of licensing and registration should be required in respect of each complaint and its resolution. Clear criteria for the permanent removal of a residential unit from the on-line platform should be stated and adhered to, for instance, in circumstances of persistent negative impact or disamenity to neighbours, with an appeals system to be operated by the Statutory Authority responsible for overseeing the system of licensing and registration.
8. Licence conditions should require that on-line intermediaries provide detailed quarterly reports to the Statutory Authority responsible for overseeing the system of licensing and registration within a short specified period after the end of the preceding quarter, specifying, in respect of all residential units let during the preceding quarter, information including for example:
 - unique address identifier (Eircode), and
 - details of the vendor,
 - transaction statistics,
 - Vendee statistics,

The reports should also provide details on complaints received and resolution.

9. On-line intermediaries would accept instructions from the responsible Statutory Authority to suspend specific listings on the basis that the annual nights' cap has been breached due to cross-platform listing by a vendor. For instance, if a vendor leases a whole unit for X nights on platform A, and Y nights on platform B, then those platforms would accept an instruction to

suspend all listings for that residential unit for the year. As such, limits would be regarded as cross-platform caps.

10. On-line intermediaries would also be required by licence conditions to accept instructions from the Statutory Authority to permanently suspend specific listings in certain circumstances, such as for certain criminal or improper commercial activity, or for repeated antisocial behaviour.

11. The civil and consumer rights of vendees and potential vendees should be codified to prevent potential discrimination on equality grounds. Clear penalties, such as permanent suspension from the platform, should be in place for vendors who engage in any such discrimination.

Funding

The proposed regulatory approach would place a burden on the assigned State Authority to monitor and administer, not least in policing potential migration of vendors from platform to platform to evade annual caps. To resource such activity, an annual licence fee should be considered on the on-line intermediary industry (albeit that this levy is likely to be passed through to vendors and, ultimately, in part at least, vendees). It would be important to reflect proportionality in terms of the size of the proposed licence fee to prevent possible barriers to entry for new entrants.

Consideration should be given to a once-off or annual registration fee for individual peer providers and / or a nightly host charge. There are numerous potential issues with such a charge, which is effectively a tax. If a nightly host charge is introduced, this will mean that the host is likely to face three charges on their short-term letting income,

- (i) Through Income Tax,
- (ii) Through the nightly fee, and
- (iii) Through the pass through of levy on the intermediary, in the form of % commission fees.

It is likely such a fee will be passed on to the short-term renter. Finding the appropriate balance between ensuring that revenue is generated to sufficiently subsidise the establishment of this new regulatory regime without over-burdening the tourist industry will need to be carefully considered..

Enforcement

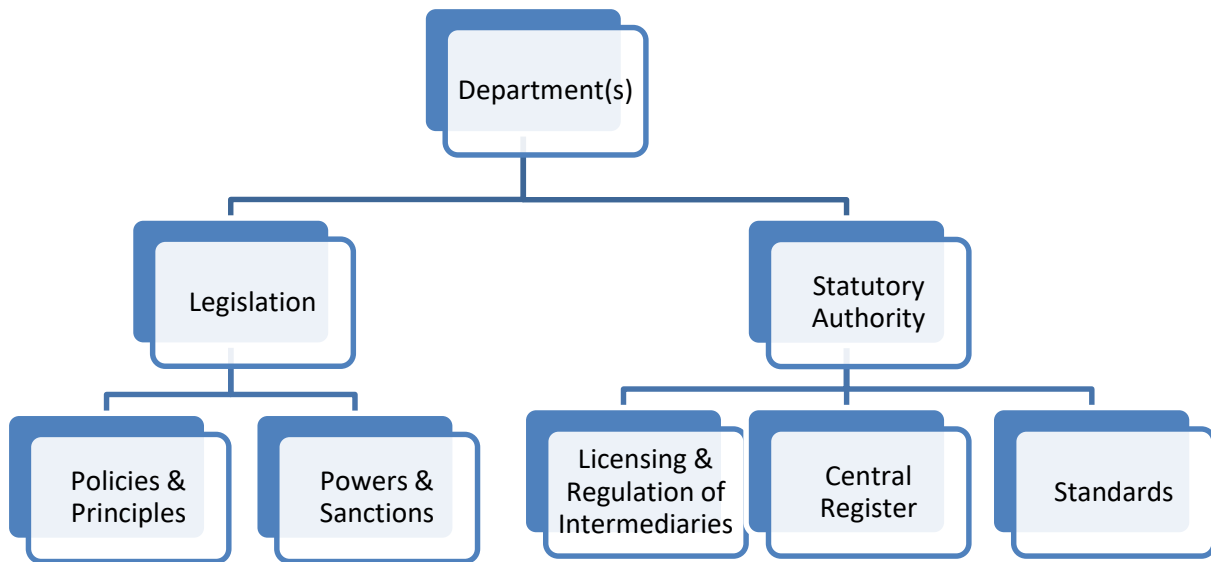
Insofar as possible, responsibility for enforcement would be accepted by the on-line intermediaries and would be executed automatically, using fairly straightforward modifications to the IT platforms used by the on-line intermediaries. This general delegated system of enforcement would be overseen by the Statutory Authority which would also have strong step-in powers. Compliance with the proposed measures by the on-line intermediaries would be gained through clear financial

penalties, reputational risk of non-compliance and sanction and other sanctions such as the revocation of licences.

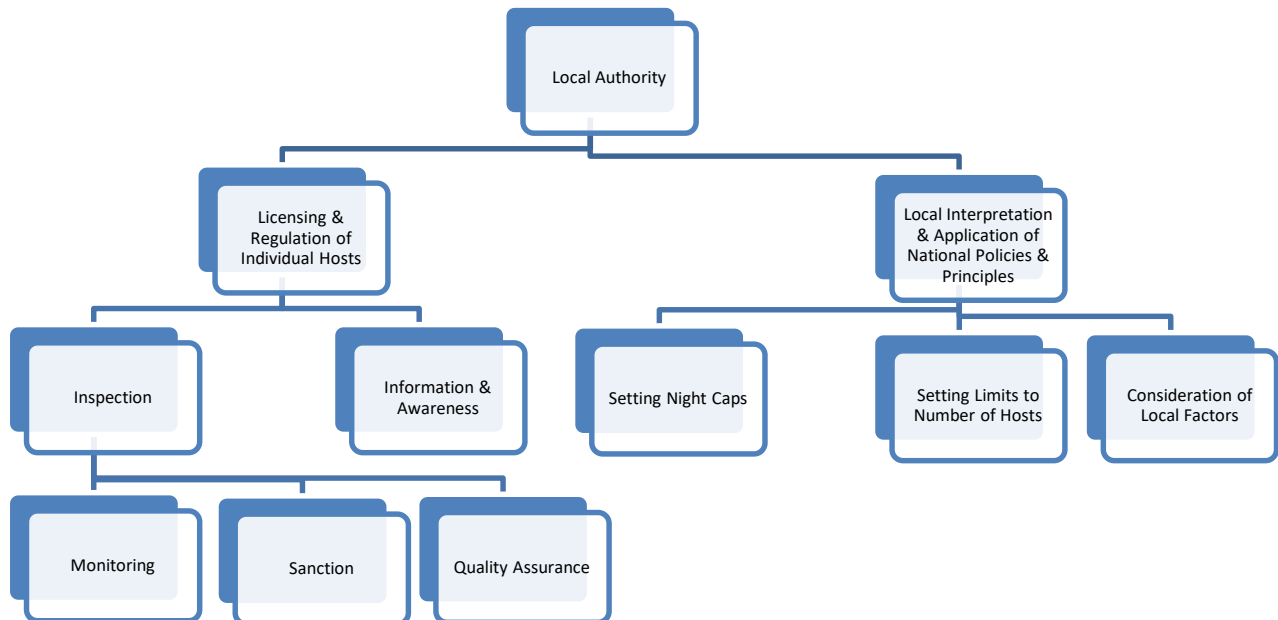
Legislation

It is likely that primary legislation would be required to underpin such a regulatory approach with local variance carried out by either regulation or local authority bye-law. It is noted by the Working Group that there are a number of complex issues involved in the drafting of such legislation, not least as to how the registration of Short-term Lettings will interact with regulation of the tourism sector as a whole and more specifically with traditional tourism accommodation providers. As such, it recommended that the Working Group reconvene to assist with the legislative process should a decision be taken to introduce statutory regulation of short-term lettings.

Regulation - National Level



Regulation - Local Government Level



Appendix I

Membership of the Working Group on Short-term Lettings

- Paul Dunne – DHPLG (Chair)
- Andrew Harkin – DHPLG (Secretary)
- Rachel Kenny/Tom Rabbette – An Bord Pleanála
- Betty Griffin/Gerri O'Sullivan – DTTAS
- Mary Conway – Dublin City Council
- Dr Dáithí Downey – Dublin City Council
- Christopher Doyle/Ciara McElholm – Office of the Attorney General
- Felix O'Kane/Brian Walsh – DBEI
- Rory Mulholland – D/Finance
- Rosalind Carroll / Kathryn Ward – RTB
- Eoin Corrigan – DHPLG
- Niall Cussen – DHPLG
- Niamh Drew – DHPLG
- Eamonn Kelly – DHPLG
- Linda Campbell – Fáilte Ireland

Appendix II

Strategy for the Rental Sector Working Group on Short-term Lettings

Terms of Reference

The Strategy for the Rental Sector recognises the issue of potentially significant numbers of properties being withdrawn from the long term rental market, particularly in Dublin, for use for short-term tourism-related lettings – and the negative impact this would have for the supply and availability of residential rental accommodation. The growing use of on-line platforms, such as AirBnB, may, if not adequately regulated, facilitate and encourage this trend.

Short-term letting, where the dwelling involved is the permanent or long-term residence of a person or family does not reduce the number of residential units available in the economy. Homesharing, the letting of a room or rooms within a home, can be an important source of income, helping “homesharers” meet the costs of mortgages, rents or other household expenses. This can support their tenure security. It also supports tourism and associated economic activity and even social and cultural exchange.

However a significant concern is that the ability to use Airbnb type platforms may encourage:

- landlords, who normally provide residential rental accommodation to tenants, to seek to obtain higher returns by ceasing residential letting and moving to short-term letting to tourist and business traveller customers;
- investors to purchase residential units for short-term letting as an investment option.

Both of these scenarios involve residential properties being lost to the residential housing system, meaning that less long-term and secure accommodation will be available to the growing numbers of families and people who need it. The social and economic impacts of difficulties in accessing accommodation are significant and will not be compensated by other economic benefits of the shift of residential units into short-term letting.

The Department is also concerned that the ability to use the short-term letting platforms might facilitate or promote the use of housing units, such as apartments, in multi-unit residential developments for bed and breakfast purposes contrary to the provisions of the planning acts and create planning enforcement difficulties for planning authorities.

The Strategy for the Rental Sector, published on 13 December 2016, is structured around measures in four key areas: security, standards, supply and services. Action 18 of the Strategy requires the establishment of a Working Group to provide clarity in relation to the appropriate regulatory approach, from a planning perspective, for short-term tourism-related lettings to

address unintended consequences of short-term lettings, including withdrawal of supply from the rental market. The role of the group will be to clarify planning guidance on this and to examine whether any further legislation is necessary:

1. To examine the impact, if any, of short-term tourism-related lettings on housing supply,
2. To examine the adequacy of the current regulatory framework and its application to on-line platforms for short-term tourism-related lettings,
3. To agree guidance for Planning Authorities to assist their application of the current regulatory framework to appropriately control unwelcome development and limit negative impacts on residential rental availability, while facilitating “homesharing”.
4. To identify issues which the current regulatory framework is unable to address adequately and make recommendations for necessary legislation, if any.

The output of the group will be a report on the appropriate regulatory approach for short-term tourism-related lettings and the identification of any necessary amendments to legislation required to effect such regulation. The Group will report in Quarter 4 2017.

Appendix III

Recommendations of the Joint Committee on Housing, Planning & Local Government on The Impact of Short-term Lettings on Ireland's Housing and Rental Market

1. that a two-level regulatory regime be introduced via primary legislation in relation to short-term lettings with a strict regime of regulations targeted at entire property, short-term commercial lettings at one level, and a less stringent second level focused at those that rent out their own primary residence for a period of 90 days or less per year;
2. that a licencing system be introduced for short-term lettings and short-term letting platforms; such a system should require platforms to register all hosts with the relevant local authority and to share information on letting type, availability and use with the local authority, and the revenue generated by the host with the Office of the Revenue Commissioners;
3. that casual short-term lettings of up to 90 days in a given year should be exempt from planning permission. Any short-term letting in excess of 90 days should require change-of-use planning permission;
4. that a study of the impact of short-term lettings on Ireland's housing and rental market be commissioned, focusing particularly on Dublin 1 and Dublin 7 and the ripple effect which may have been experienced in their surrounding localities;
5. that in order to track properties shifting from long term letting to short-term letting that landlords be required to provide a reason for a tenancy ending to the Residential Tenancies Board and the local authority;
6. that each local authority is adequately resourced and that they establish a role with specific responsibility for short-term lettings;
7. that the working group establishes the data required in order to continuously monitor the impact of short-term lettings. On foot of this, a system be put in place for short-term letting providers to be required to provide the Department with this data;
8. that a review of current planning and development laws and regulations should be carried out to establish whether they are robust enough to prevent abuse of the system;
9. that local authorities begin strict enforcement of Article 10(4) and ensure that apartments being used for short-term lettings have the necessary planning permission;
10. that the working group engage with stakeholders from other jurisdictions to establish the regulations or amendments they introduced to curb the impact of short-term lettings;

11. that the Memorandum of Understanding between the Department and Airbnb be ceased as the Committee do not believe the Memorandum of Understanding is sufficient or appropriate;
12. that educational material to help inform short-term letting hosts of their legal rights and responsibilities be posted on the website of the Residential Tenancies Board;
13. that adequate resources be provided to local authorities in order for them to undertake a systematic inspection and enforcement regime of short-term lettings and periodically publish the results of these inspections.