**Short-Term Lets: Consultation on a Licensing Scheme and Planning Control Areas in Scotland – Submission from the Association of Scotland’s Self-Caterers**

1. **Definition**

First and foremost, the Scottish Government need to properly define what is meant by a short-term let. An appropriate definition of a short-term let is necessary before any discussion of how short-lets can be regulated – this applies to both licensing and planning aspects of the Scottish Government’s proposals. Moreover, a clear distinction needs to be made between professional and non-professional activity. The Association of Scotland’s Self-Caterers (ASSC) believes that the Scottish Government’s definitions are inadequate, misleading and impossible to enforce according to the proposals in this consultation. An ‘intuitive sense’ is not adequate.

Overall, the ASSC argues that the definition of who delivers the accommodation and what the accommodation is needs to be refined to adequately address the policy objectives. Furthermore, a proportionate and evidence-based approach should be adopted in order to deliver the policy objectives, as well as Better Regulation principles. [1]

We have set out specific concerns relating to the definition section of the consultation document below.

4.1 Professional operators do not define themselves as ‘hosts’, but owners and professional self-caterers. VRBO / Expedia have called their partners ‘Homeowners’ and ‘Property Managers’ since 1995 [2], while ‘host’ is an expression used by Airbnb. The expression ‘host’ has been attributed in modern parlance to someone who provides accommodation via an online platform. This is inadequate and does not represent the entirety of the sector to which the Scottish Government wish to regulate. The word host is misleading, unless the Scottish Government only intends this to apply to Airbnb hosts. We have highlighted below some existing definitions to inform the discussion:

* 'Holiday letting' is defined in the Housing Act 1988 as 'a tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday'. [3]
* Owners: an example Terms and Conditions may state: “The Contract for a short-term holiday rental will be between the owners of Mansefield House (referred to as “us” or “we”) and the person making the booking and all members of the holiday party (referred to as “you”, “your”, “guests”) under the following booking conditions. Scottish law will govern the Contract”.[4]
* Self-catering accommodation is defined by the Scottish Assessors Association as:

“2. Any lands and heritages –
a) which are not the sole or main residence of any person; and b) which either

i) are made available by a relevant person for letting, on a commercial basis and with a view to the realisation of profit, as self-catering accommodation for short periods amounting in the aggregate to 140 days or more in the financial year; or

ii) if they have not been made so available for letting in that year, are intended by a relevant person to be made so available for letting in that year and the interest of the relevant person in the lands and heritages is such as to enable him to let them for such periods.” [5]

* Non-Domestic Rates: If a property is available for let for under 140 days, it means a self-catering property is in the Council Tax system; if it is available for let for over 140 days it places the property in the non-domestic rates or business rates system. Form 1st April 2020, a self-catering property on non-domestic rates must evidence commercial occupancy of 70 days.
* Furnished Holiday Lets: The tax definition, recognised by HMRC, for a Furnished Holiday Let (FHL) income is a single stay of no more than 31 days with stays going over that threshold not being considered as FHL income but as standard rental income.[6] Considering the new tenancy agreement, an owner looking to accept holiday lets and a portion of lets of over 31 days (generally in low season) will now have to be a registered landlord and the guest have to sign a tenancy agreement for stays over 31 days. If you let a property for longer than 31 days, you are in breach of FHL taxation laws. To qualify as a FHL your property must be: in the UK or in the European Economic Area (EEA) – the EEA includes Iceland, Liechtenstein and Norway; and furnished – there must be sufficient furniture provided for normal occupation and your visitors must be entitled to use the furniture.

4.2 The ASSC would question the relevance of 28 days when this does not dovetail with any other legislation.

4.3 The 2019 consultation paper excluded private residential tenancies which is noted and accepted. The Private Housing (Tenancies) (Scotland) Act 2016 introduced a new type of tenancy called the Private Residential Tenancy (PRT). The introduction of the Scottish Private Residential Tenancy Agreement came into force in December 2017. Holiday lets have been excluded from the terms of the new lease agreements. A short-term let can be any length as long as it is not their primary residence and they do not have exclusive use of the property.

Terms and conditions for self-catering / short-term let properties should be revised to refer to paragraph 6 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 as opposed to section 12(2) and paragraph 8 of schedule 4 of the Housing (Scotland) Act 1988. For example: “The property is let for the purposes of a holiday let to which paragraph 6 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 applies. The booking agreement confers the right to occupy the accommodation for the agreed period only. You undertake to use the property solely for its purpose as self-catering accommodation and to accept the Owner’s right to refuse access to the accommodation to any person, whether the Responsible Person or guest of the Responsible Person, deemed unsuitable. Causing a nuisance or disturbance to neighbours or any unreasonable behaviour may result in the Owner requiring the Responsible Person or their guests to leave Mansefield House”.

4.4 The ASSC agrees with this.

4.5 The Scottish Government have indicated they require to consider the definition of short-term lets. In the 2019 consultation paper, this excluded a number of types of operation including self-catering properties on the premises of licenced hotels and B&Bs. This must be clarified. Does this mean a hotel with a large acreage owned by the same company would be excluded from licensing lodges or other short term let properties otherwise falling within the short term let definition? Using the word “premises” creates an interpretation issue. If the Scottish Government mean the self-catering option is part of the same premises, should that not still be subject to licensing? If a short term let is within a tenemental property, that would not exclude it. Just because a short term let is, for example, a separate “granny flat” attached to an existing B&B, that should not exclude it from the licensing regime.  It is important to present a level playing field all of those involved in the industry. Equally, using the word “premises” does not provide proper definition for operators who may have significant land and have located a combination of self-catering and hotel/B&B accommodation on that land. If this is owned by the one landowner then does that meet the definition of “premises”? This requires to be considered.

If one of the main policy drivers behind this legislation is to inform local authorities on the extent of short-term let activity, then hotels or B&Bs with self-catering and student halls used for short-term letting outwith term-time should be included. These need to be counted and should comply with health and safety standards as any other form of short-term let. Moreover, student halls of residence also need to be considered as this is noted in the 2019 consultation as being “whether used by students or others”. That means short term lets could be entered into over the period long term lets are not in place such as summer holidays. If that were to be done should they be subject to the same considerations as self-catering or should this be excluded if it is a short term let to students. If it is a short term let in an existing HMO property the property will be subject to HMO regulations and subjecting the operator to a different licensing regime may simply be unnecessary overall. It is, however, worth considering the point so the definition can be made clear.

4.6 If the policy objectives are to be achieved, all of the noted range of accommodation should be counted and should comply with health and safety standards as any other form of short-term let.

4.6(a**)**It is noted the 2019 consultation report refers to “independent (no shared facilities or concierge)” in the definition. This needs again to be carefully considered as it has potential to be misinterpreted and the terms should be clearly defined.

Short-term lets associated with hotels should be included. Reasons as above in 4.5.

4.6(b) “Less conventional” static accommodation is also excluded such as park homes, static caravans, chalets, huts and pods. This would presumably also apply to tepees. The definition of this requires to be much more detailed. Many self-catering operators advertise “pods” but these do not rely on shared facilities. The pods are simply studios which may be compact but do have sanitary and dish washing facilities. Is it the intention to exclude a “pod” which was a sleeping only area, such as a pod or hut which relies upon shared sanitary and/or washing up/laundry facilities? If so, extending the exclusion to park homes, static caravans and chalets means the exclusion is far reaching. How will these definitions be applied? Some operators already call themselves “chalets” when, in fact, they are more akin to lodges, being permanent wooden based structures with sleeping accommodation, kitchen and sanitary facilities, and a general living area.

4.6c There is no definition of a so-called “ghost hotel”, unless taken from a source like the Edinburgh Evening News. This definition should not be part of a Scottish Government consultation.

4.7(b) Under the definition of accommodation in the proposed definition for the Control Area Regulations, “accommodation” refers to class 7 premises in the UCO (Town Country Planning (Use Classes) (Scotland) Order 1997). The difficulty with using reference to the class 7 in the definition is that at present there is no required planning consent for short term lets using existing domestic or commercial accommodation. What planning consent class is it envisaged the planning consent which may now be required will fall in to? If that is going to be sui generis section of class 7, excluding class 7 in the definition would not be appropriate. Consideration therefore needs to be given first to how the planning use for the properties, where planning is required, will be defined. While it is noted planning will not be required in all cases, and indeed it is expected specific planning consent will only be required in a small number of cases, this remains a consideration to the definition.

4.7c As per The Private Housing (Tenancies) (Scotland) Act 2016.

4.7(e) Refers to “excludes immediate family”. The definition of “immediate family” is not provided here. The current “family” definitions that already exist in the private rented sector can be accessed below. What would be associated with this legislation? There are a number of definitions of immediate family throughout legislation and general interpretation. The definition goes on to say, “none of the guests are members of the same immediate family as a host or host’s household”. It gives examples such as father, mother, brother, sister, son or daughter. It does not refer to civil partners nor does it refer to step siblings such as we find regularly in blended families. It also does not refer to partners. This may not be as formal as a civil partnership; this may just be a cohabiting couple. This definition needs careful consideration.

[Private Housing (Tenancies)(Scotland) Act 2016](https://www.legislation.gov.uk/asp/2016/19/schedule/3/enacted)

Eviction ground 5 – Family member intends to live in property

(4) For the purposes of this paragraph, a person is a member of the landlord’s family if the person is—

(a)in a qualifying relationship with the landlord,

(b)a qualifying relative of the landlord,

(c)a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d)in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a)two people are in a qualifying relationship with one another if they are—

(i)married to each other,

(ii)in a civil partnership with each other, or

(iii)living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c)a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d)a person’s stepchild is to be regarded as the person’s child,

(e)a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B’s child.

[Housing (Scotland) Act 2006](https://www.legislation.gov.uk/asp/2006/1/section/128)

Family definition for HMOs

[Housing (Scotland) Act 2001](https://www.legislation.gov.uk/asp/2001/10/section/108)

Family definition which is used in Anti-social behaviour (Scotland) Act for exemptions from landlord registration requirement.

4.8 As per 2.4, the ASSC would question what the relevance is of 28 days, when this does not dovetail with any other legislation. See PRT legislation.

4.10 Unconventional dwellings are a growing part of the short-term letting sector and should be included for reasons at 4.5 above. If one of the key policy drivers behind this legislation is to inform local authorities on the extent of short-term letting activity, and to ensure the health and safety of guests is paramount, then all types of short-term let should be included. There is potentially more risk involved in unconventional accommodation activities that do not currently need to comply with existing rigorous regulations for self-catering properties.

4.11 This section confirms all short term lets will require a licence. While this will require operators who let their property out for very limited periods per year to obtain a licence, there may be scope to restrict the fees involved. While they will still require to meet safety and certification requirements, if the fee is lower for a lesser period of let, this may encourage those operators to remain within the hospitality industry rather than ceasing to operate. The fee may be difficult to monitor and this suggestion may cause additional cost to the licensing department in processing different fees. That may have the causal effect of increasing the fees across the board as the licensing sections are to be self-financing.

An ASSC survey from October 2020, which elicited over 1,000 responses, highlighted the concerns of Scotland’s self-catering industry from the introduction of short-term let licensing:

* Around a third (31%) of businesses would be rendered unviable if the current proposals for a licensing were introduced, while two-thirds (64%) felt it would have a negative impact.
* Nearly half (49%) would leave the self-catering sector if the proposed licensing scheme was introduced and of those 33% would leave the property empty or use it for family & friends. [7]

The proposal for licensing set out in this consultation is a very heavy-handed approach. The ASSC suggests that a registration scheme with associated mandatory health and safety, akin to Private Landlords Register is more appropriate, as set out in our proposals that have already been presented to the Scottish Government’s Short-Term Lets Delivery Group. [8] The system already exits and has been proven to work elsewhere. A Short-Term Let Register would achieve the policy aim of the Scottish Government and would also tie in with their voluntary regulation approach as part of Better Regulation principles.

4.12 There is already a robust regulatory framework for self-catering businesses in Scotland to ensure the health and safety of guests, residents and communities, as set out by the ASSC’s Code of Conduct. [9] A free registration system, with mandatory health and safety element, would encourage greater uptake and compliance, be easier to understand and enforce. A registration number would be the same as a licence number.

In relation to the comment, “Neighbours do not need to perform complex calculation adding up stays over a year to see whether a host requires a licence”, does this imply that neighbours should be secondary enforcers? This could promote vexatious objectors.

1. **Control Area Regulations**

Please see our previous comments at 4.7(b) in relation to the planning consent which will now be required in a Control Area Regulation.

In terms of our overall policy position, the ASSC arguethat short-term let control areas should:

* Be clearly defined at the national level by the Scottish Government;
* Be proportionate and non-discriminatory, in line with the EU Services Directive;
* Be evidence based;
* Be reviewed on an annual basis.

Short-term let control zones must be proportionate and non-discriminatory. Under the EU Services Directive, the European Commission reserves the right to take to court any jurisdiction found to be introducing laws which are not proportionate or in the public interest. In January 2019, the Commission sued the city of Brussels for introducing rules which were deemed to be disproportionate.[10] According to the European Commission, an authorisation scheme can only constitute an appropriate policy response in instances of high urban pressure.[11]

Short-term let control zones must have a firm basis in evidence. The evidence base can be derived from the short-term lets licensing scheme. Local authorities will be able to see how many short-term lets there are in certain areas. If this number exceeds a certain percentage of the total housing stock, a short-term let control zone can be introduced. This should be mandated at the national level, and the same rules should apply for all of Scotland’s 32 local authorities.

Given the dynamic nature of the housing market, it is only right that the evidence basis for short-term let control zones should be reviewed on an annual basis. At the start of each year, local authorities should review whether areas which are currently designated as short-term let control zones still meet the criteria for designation, as well as whether some areas have begun to meet those criteria, and hand out designations on that basis. Given that hosts will have to submit the postcode of their property when applying for a short-term letting licence, we believe that the postal address system is the simplest way of designating areas to become short-term let control zones.

Finally, given that the core aim of short-term let control zones is to protect residential housing stock, its controls should not cover homes which are genuinely being lived in for some portion of the year. As such, those letting spare rooms in their homes, and those who are intending to let for fewer than 140 nights per year, should not have to apply for planning permission to continue letting in a short-term let control zone. This latter point is in line with the existing tax distinction between domestic and commercial use. Homes which fall into the two categories articulated above would never be available on the long-term rental market, as they are being lived in for some proportion of the year. As such, it is not proportionate to limit short-term rental activity within them, and would not constitute a legitimate means of achieving the Scottish Government’s aim in this regard, which is to protect housing supply.

Having highlighted our proposal on control areas, we have set out concerns relating to specific points in the consultation document below.

5.1 – The Scottish Government has not effectively defined a short-term let. If this is the case (as per consultation question 1), what is the subsequent definition of secondary letting?

In terms of the definition of secondary letting, “secondary letting” means a type of short-term let [?] involving the letting of a room or rooms or the entire property, where the host does not normally live.” However, what does ‘normally’ mean”?

The consultation makes reference to 22,100 active listings on Airbnb. This figure represents the number of listings on one marketing platform. See our point at 4.1: is this legislation only relevant to Airbnb hosts? The ASSC would like to enquire why there is a clear focus on one corporate entity which seems to be driving policy. Can we assume that this legislation only applies to Airbnb hosts, not professional self-caterers who merely use the platform as a route to market?

In paragraph 5.1 it is referred to as being short term lets of whole properties. In paragraph 2.2 it is referred to as meaning a type of short term letting involving the letting of a room or rooms or the entire property where the host does not normally live. To resolve this, the definition needs to be clarified in legislation and the Scottish Government should ensure that any guidance documents replicate the legislation in respect of how this term is defined. There is currently no set legal definition of what constitutes someone’s main residence.

5.2 – 5.5 In March 2018, the ASSC obtained legal advice from Brodies LLP on the requirement for planning permission for self-catering properties which is pertinent to this section. Some of the main points from the legal advice obtained by the ASSC include the statement that: “…the commercial element (in self-catering use] is broadly similar to a residential property being occupied by a tenant paying rent…The question is therefore whether short stay occupation necessarily has different planning considerations/impacts. Short stay occupation involves people living in the property, just for shorter periods. However, that does not necessarily mean the nature/impacts of the occupation are different.”

The advice goes on to discuss how permanent residents can have different movements depending on a variety of issues, including employment, leisure interests, family circumstances, health. For instance, a family with teenage children might enter and leave the property many times during the day and night. Therefore, the advice maintains that: “Users of a self-catering property are therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use.”

The advice concludes with the following: “…reasonable arguments can be made that self-catering use does not involve a material change of use from residential use. That has been the outcome in individual cases decided by appeal reporters/inspectors and upheld by the courts. It is also impliedly supported by the statements in the Scottish Government Circular 4/1998.”

The ASSC affirms that how an individual property is advertised, managed or operated is not a matter for the licensing scheme. This proposed scheme suggests a catastrophic intrusion into the “peaceful enjoyment of your property”. The proposed licensing proposals may be an infringement on individual’s Property Rights, under UN law Protocol 1, Article 1 which protects your right to enjoy your property peacefully. [12]

5.7 This section refers to the fact it would be “open to individual planning authorities to consider the inclusion of policies relating to short term lets and their relevant local plans”. Without some guidance, short term let operators are going to be left with no real understanding of what planning permission is required from them and what they require to do, what standards they require to meet and what matters will be considered if they are in a position to lodge a planning application. The Scottish Government needs to bear in mind this is an existing business. This is not a new business coming to an area to operate. The business is established and the operator, (and in many cases its family) is reliant on the income from that business. Requiring these business to apply for planning permission when the business is ongoing and has not done anything wrong puts the operator immediately in an uncertain and difficult position, not least accounting for the stress involved in this and the business planning issues it throws up. This is not a case where planning permission should previously have been applied for and that has been overlooked by the operator. To leave guidance and policy considerations as an option for councils instead of a requirement puts the operators in an even more difficult position and effectively requires them to make planning applications blindfolded. Guidance and policy are imperative here and must be considered as a direction, not an option, to councils by the Scottish Government. Guidance should be issued by the Scottish Government to planning authorities in relation to these planning control regulations and planning consideration. The guidance should be open to consultation or at least available to be considered by consultees, such as the Law Society of Scotland, prior to being finalised.  This will allow input from those dealing with planning regularly and allows views from both private practice solicitors and local authority solicitors.

There is clear evidence that there would be a predisposition to refuse consent according to local development plans in some local authorities – for example, see the proposed plans from City of Edinburgh Council in terms of their licensing approach. This would amount to a de facto ban in any tenement residence. The legal opinion on ‘material planning’ matters needs to be resolved at a Ministerial level, and not left to local authority planning authorities.

5.8 This section addresses the proposal that dwelling houses used for secondary letting can be converted back to residential use without the need for further planning permission. Presumably that will be included as a new “Change Permitted” of the use classes. Is it anticipated there will be amendments to the Use Classes Order referred to previously in this submission?

The ASSC assert that ‘secondary letting’ is not a Use Class Order. It does not therefore require planning permission for change of use (for example, see the aforementioned Brodies legal opinion provided to the ASSC). If one has to apply for planning permission for change of use from residential to short-term let / ‘secondary letting’ (which is still in planning terms residential Use Class Order, or Sui Generis), there is no change in Use Class Order. Subsequently, you would clearly not need to revert to residential use without planning permission; and ergo, you do not need planning permission in the first instance.

5.9 In terms of the revocation of planning permission, many short term let properties do not have planning permission as this has not been required, therefore what planning permission is it that the Scottish Government considers could be revoked? Separately, granting planning permission for a period of 10 years only does not give the operators any certainty or security. Why should operators invest in properties when they do not know whether those properties will have planning permission within 10 years? While that may not be such a burden for operators of single dwelling houses, which may be capable of being sold on as a private dwelling house, consideration must be given to the large number of operators who have large sites.  These sites have been developed over years, in some cases handed down from generation to generation. In many cases these have gone from very basic chalets and have developed through to lodges varying in size and provision of facilities. Businesses cannot be expected to invest in upgrading, decoration, safety, development of sites and similar if they are only going to have this in place for a 10-year period. If a site is operated with a number of lodges, which come within the definition of short term lets and require individual licences, or a site licence (depending on which route Scottish Government decides to take in that regard), what can that site subsequently be used for if planning permission for short term lets is revoked? Lenders will not allow borrowing on sites with such an uncertain future. This will fetter operators in their bid to provide good quality, well maintained and modern, environmentally friendly lets.  While it may be the Scottish Government’s position that those are not the sites which are being targeted by this, the fact is they are subject to the same regulations in legislation which will be in place for all short term let operators. There are other controls within both licensing and planning which would reach the same outcome. If a premises is operating within an area out with its current planning consent, it can be served with an Enforcement or Prohibition Notice. If premises are operating and are no longer suitable, the licence can be revoked or renewal of the licence can be refused.

Overall, we believe that if a business has received planning permission and is established, it is unfair and disproportionate for it to live under threat of revocation and uncertainty of planning renewal after year 10. Do other businesses have this imposition? What does a business with a healthy booking sheet in year 10 tell its new and loyal customers if a local council decides not to grant permission to continue? The provides uncertainty for the business and does not send a good message for Scottish tourism. This is neither fair nor proportionate for our sector. See 5.2 comments.

5.10On the removal of Permitted Development rights, the reference to the GPDO at footnote 11 of the Consultation refers to an allowance for a 28-day permitted development right. This is the justification for section 5.10 under the heading “Removal of Permitted Development Rights”. The relevant legislation is the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 which, at Schedule 1, under the reference class 15 states “the use of land (other than a building or land within the curtilage of a building) for any purpose, except as a caravan site or an open air market, for not more than 28 days total in any calendar year, and the erection or placing of moveable structures on the land for the purpose of that use”.

The specific definition refers to “land” or any “erection or placing of movable structures on the land for the purpose of that use”. Moveable structures could be marquees, tepees, yurts and other similar “movable structures”, however, the Scottish Government has already excluded these movable structures from the proposed definition of short term lets. There would, therefore, be no permitted development. As such sections 5.10 to 5.13 are not relevant and this should not form part of the SSI.

5.11 What is the basis on which this removal is based?

5.13. The policy intention in this paragraph is unclear.

5.14 On the process for establishing a control area, the consultation notes that “it is important to note that a control area does not prohibit secondary letting within it, it merely requires planning permission; this is an important consideration in determining an appropriate process.” It is very clear from statements from City of Edinburgh Council that this is not the case. The Council wish to close down short-term lets in tenemental properties. For instance, the Convener of the Planning Committee, Councillor Neil Gardiner, has stated: “Once we get the legislation in place, these properties will be returned to homes and strong neighbourhoods restored across the city.” [13]

Unless in certain circumstances, there are no instances of secondary letting across Scotland operating without planning permission having been sought (i.e. operating illegally, either wilfully or in ignorance). There is no current requirement for change of use. Even if a local authority deems a change of use, Section 124 of the Town & Country Planning (Scotland) Act 1997 prevents enforcement action being taken if a breach of planning control has taken place for more than 10 years. This will apply to a large number of properties currently being operated as short-term lets (i.e. they will have been operated as short-term lets for more than 10 years). Clarity is needed in the guidance – and ideally also in the regulations – on the status of such properties and how they should be treated by local authorities if they are within an area subject to a control area – in particular whether the host can legally be required to apply for planning permission and if they don’t, whether any enforcement action can be taken against them.

To understand the difference between the process for establishing a control area and the process for establishing a Conservation Area, it is necessary to look at the specific legislation. A Conservation Area is established by virtue of the Planning (Listed Building and Conservation Area) (Scotland) Act 1997, Section 61 and 62. These sections detail how a conservation area is determined. The planning authority in question may determine which parts of the district are areas of special architecture or historic interest where the character or appearance within the areas is desirable to preserve or enhance. If that is the case it can then designate such areas as conservation areas. Historic Environment Scotland may also, after consulting with the planning authority, determine part of that authority’s district (not currently designated as a Conservation Area) meets the requirement of being an area of special architecture or historic interest of which the character or appearance is desirable to preserve or enhance and Historic Environment Scotland may designate that part as a Conservation Area. Section 62 provides that the planning authority or Historic Environment Scotland respectively give notice to the Secretary of State of the designation of part of the district as a Conservation Area and of any variation or cancellation of such designation.

The ability for a planning authority to designate all or part of its area as a short-term let control area was introduced by the Planning (Scotland) Act 2019 (the 2019 Act) which amended the Town and Country Planning (Scotland) Act 1997. The provision at section 17 of the 2019 Act does not refer to the manner in which the Short-term let control area will be introduced. It also does not determine the criteria which will be different to that of Conservation Areas. Is there going to be consultation before regulation is issued on the manner in which the control areas will be established?

5.15 The Scottish Government refers to transitional arrangements whereby those operating as short-term lets without planning permission, where planning permission should have been applied for, will be given a grace period during which an application for planning permission for an existing short term let can be lodged and no enforcement action will be taken. Will that grace period sit within the licensing grace period? The consultation refers to a period from 1st April 2022 to 1st March 2023 when operators will be able to apply for licences. Thereafter, from 30th April 2023 to 1st March 2024, local authority licensing departments will have the opportunity to consider the applications, fix hearings where necessary, and grant or refuse applications.

The Scottish Government’s consultation refers to the fact once the transitional period for new licence applications for short-term lets to be lodged has expired, which will be at 31st March 2023, those who have applied will be able to continue operating until 31st March 2024. From a planning point of view, the grace period therefore requires to extend to the same period. In addition, will planning be required prior to an application being considered or will that be a matter for each Local Authority licensing section to consider?  At present in terms of the Civic Government (Scotland) Act 1982 (the 1982 Act), into which this new licensing regime will be added, there is already provision for the manner in which licences are applied for and granted. We will address that further below, however, the 1982 Act does allow licensing committees, when considering applications, to take into account any matters. The result of that is they could take into account whether or not planning has been granted. Direction should be given in the Guidance to be produced to licensing authorities in this regard. The planning and licensing transitional periods should be dovetailed to avoid issues.

1. **Licensing Order under the 1982 Act**

Overall, the ASSC would propose alicensing system which:

* Has clear frameworks and national guidance from the Scottish Government;
* Is instant, low cost, and online;
* Automatically renews licences at the end of each year;
* Distinguishes between professional and non-professional activity

We argue that the licensing criteria should be set at the national level. This will prevent certain local authorities from introducing provisions which are disproportionate to the level of issues caused by short-term rentals. For instance, the licensing system proposed by the City of Edinburgh Council in its response to the Scottish Government’s 2019 consultation is clearly disproportionate, for a number of reasons:

* It states that a licence must be obtained from 28 days of activity, which would require a large number of non-commercial operators to apply for a licence;
* The local authority has complete discretion to cap the number of licences it gives out, without having to refer to any kind of evidence base to justify its decision; and
* The licensing system applies to both owners and properties, effectively at least doubling the workload for an individual who wishes to apply.

Moreover, the licensing application process should be entirely online. 75% of applications to the Scottish Landlord’s Register are made online, meaning that each local authority should have the necessary infrastructure and expertise to handle online licensing applications for short-term rentals.

The licensing process should also be as fast as possible. This is key to ensuring that as many users as possible engage with the licensing process. Moreover, obtaining a licence should be low cost. A high-cost licensing scheme will both act as a deterrent to non-commercial operators, and add a significant expense to responsible commercial operators, who already make a substantial contribution to local authorities via business rates.

We believe that our recommended system has the following advantages:

* It will give local authorities visibility over the extent of short-term rentals in their jurisdiction;
* It will disincentivise bad actors from registering, and allow local authorities to target enforcement resources against bad actors;
* It will not disincentivise operators from signing up, as it is so straightforward.

Ultimately, our system will allow local authorities to fully understand the extent of short-term letting in their jurisdiction. This will allow them to target their enforcement resources, and to make evidence-based policy decisions regarding short-term rentals. In particular, local authorities will be able to target information campaigns at those in the licensing database regarding any potential controls on short-term rentals and the national minimum safety standards.

Actors who do not wish to register, but wish to continue operating, will be taking a risk, as if they are found to be operating but not to be in the licensing database, they will face prosecution**.** In the same way, if a private landlord doesn’t register, the council can send them a rent penalty notice (RPN). Renting out property without being registered with the council is a criminal offence and landlords can be fined up to £50,000 if found guilty. Further enforcement penalties can be attributed to not complying with fire and safety regulations and anti-social behaviour legislation.

Crucially, a straightforward system will likely have much higher uptake than an expensive or time-consuming system. The disadvantages inherent in introducing a complicated system can be seen by looking at HMO licensing elsewhere in the UK:

* In London, Licence applications have been submitted for only 25% of the 138,500 private rented properties that require licensing under mandatory HMO or additional licensing schemes.
* In Oxford, the National Landlords Association branded the city council’s HMO licensing scheme a “complete failure” due to the fact that less than half of those eligible to register actually did so. Indeed, the only impact of the scheme, according to the NLA, was to drive up rents and force people out of the city.
* Across the UK, Freedom of Information Requests sent by Simple Landlords Insurance to over 90 local authorities showed that two thirds (65/90) of local authorities have no idea how many landlords are breaking HMO licensing rules, nearly one third (29/90) have no idea how many properties should come in under the new regulatory scheme and over a third (31/90) did not prosecute any landlords for infractions of existing rules in the last two years.

An HMO licence can take up to a year to process. Given this, it is clear that many landlords have decided that it is not worth their while to sign up. This has created a lose-lose situation, wherein consumers do not receive the necessary protection, and local authorities do not have the necessary information to enforce the law. A simpler system, with a higher uptake, would solve this issue.

Moreover, a simple system will be much kinder to already-stretched local authority budgets. Stephen McGowan, partner and head of licensing in Scotland at UK law firm TLT, has outlined the potential issues with the introduction of a licensing scheme in terms of processing applications: “Provision will need to be made to deal with the impact of such a magnitude of applications on local authority resources. A massive rush of applications of this order could bring licensing administration to a halt, and have a knock-on effect on reporting obligations with Police Scotland and other authorities such as Fire and Building Standards, who will likely have to comment on each application. This could impact on processing times for other types of civic licence.” [14]

Short-term let licensing would be the biggest licensing scheme that local councils have been asked to implement since the relicensing of alcohol and they are being asked to do this at a time of stretched resources and financial constraints (and this is likely to continue given the nature of the pandemic). More cost-effective and less onerous alternatives exist. Under our suggestions, short-term rental operators would simply sign up to a national licensing database, against which local authorities would be able to check. As per the Landlord Registration scheme, each council has a formal register listing the STL operators in its area. These are held on a central database that is provided by the Scottish Government, dedicated to the new licensing system. Local authorities would not therefore have to use scarce manpower resources to process thousands of applications, and all of the associated paperwork and correspondence.

Below are some examples of existing licensing schemes from around Europe which we consider to be examples of best practice:

* In Hamburg, residents must register with the city and display a housing protection number on their listing. The scheme is free of charge and hosts can complete the process in less than ten minutes online.
* The Netherlands will introduce a new registration system in 2020. The system will be administered by the central government and will be online, declarative, and instant.
* In Andalusia, the processing period for a licensing application takes up to a month, but hosts are issued with a temporary permit for a month to ensure that they can operate straight away.

Having highlighted our proposal on licensing, we have set out concerns relating to specific points in the Scottish Government’s consultation document below.

6.1. A requirement to gain a licence for all short-term lets is entirely disproportionate.

* 1. As the consultation again makes reference to figures from one accommodation platform alone, is this merely an issue with Airbnb? If this is the case, then data needs to be properly assessed:
* The vast majority (84 percent) of host accounts in Scotland have one listing on the platform, with 94 percent of hosts sharing space in one or two homes.
* Host accounts with multiple listings are in the absolute minority of Airbnb’s platform. Hosts accounts with more than five properties account for just 1 percent of the total host community in Scotland. These are typically more traditional commercial holiday letting businesses and hotels who are reaching new consumers by using Airbnb in addition to their usual marketing channels. [15]
	1. There is a robust regulatory regime for self-catering businesses in Scotland. This includes health and safety regulations, including Fire Regulations specific to self-catering properties, a tax regulatory regime. etc.

6.6 If operators require to comply with mandatory conditions at the time of application, and inspection is required, that can create a delay for the application being dealt with at a licensing committee hearing. For licensing authorities who are going to have significant numbers of new licence applications, coupled with existing licensing requirements from both liquor, betting, gaming and general licensing as well as HMO licensing, there is a possibility of a strain on resources. Applications lodged in terms of the 1982 Act must be considered within 6 months. If the application is on a licensing committee shortly before the 6 month period and, for whatever reason, inspection has not been able to take place, the practical result of this can be that the licensing committee either requires to deem the application “not considered” or refuse the application. A refusal means the applicant cannot apply for a further year. Applicants may not understand the difference between a refusal (the inability to apply for a further year) and a decision the application is not considered (which means the application falls and a new application requires to be lodged).

Equally, were it to be the case that before an application can be lodged, inspection requires to take place, this will place a significant burden on the sections of the council requiring to inspect, most likely Environmental Services. If premises only have a one year period to apply and council departments, due to restrictions such as the current Covid-19 restrictions or, simply due to pressure and burden of other work, are unable to inspect within that time period, applicants will be precluded from applying. This needs to be carefully considered to avoid issues with compliance where premises already comply but the local authority department is unable to carry out the inspection in time.

The Scottish Government has indicated it cannot see why the proposed licensing regime is onerous. The fact the mandatory conditions are not mandatory but leave scope for licensing authorities to interpret and determine verification methods means these procedures will vary between local authority areas. The mandatory conditions should be considered by the Scottish Government and specific conditions should be put in place, as has been done in the Licensing (Scotland) Act 2005.  This should give complete clarity on what documentation requires to be lodged at the time of application. This should be straightforward enough given the content of the mandatory conditions. This avoids inspections causing delays. If premises require to be inspected there should be a separate timescale for the inspection. If it is agreed inspection is not practical prior to application, inspection should be carried out after the premises have opened similar to Environmental Services carrying out Food Hygiene and other similar inspections once food and drink/restaurant premises have opened.

6.7 The consultation states that local authorities’ “may request photographs and documentary evidence or they may wish to visit the property to inspect it/and or relevant documentation…The method for verification shall be determined by the local authority.” This will result in 32 different schemes leading to more complexity for our sector.

6.9 Professional self-catering owners already comply with a robust health and safety regulatory regime. The ASSC provides Guidance Sheets on compliance requirements. [16] This covers 6.9- 6.27.

While the repairing standard exists for HMO licensing, the operators of short term lets do not currently have to comply with the minimum repairing standard. That creates issues with fire safety and other regulations.

6.10 – 6.13 Repairing Standard: Holiday lets are not subject to the Repairing Standard so long as the let is for less than 31 days and expressly for holiday purposes. Consequently, property used for short holiday lets will not be covered by the minimum energy efficiency standards set out in The Energy Efficiency (PRS) (S) Regulations 2019.This was a small but significant victory for the sector and means self-catering properties will not be obliged to undertake property improvements. This is in contrast to other domestic landlords. It doesn’t remove the need for an EPC, but there is no need to fear getting a domestic EPC for larger or less energy efficient buildings.

The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019

Modification of section 12 of the 2006 Act

**1.**—(1) Section 12(1) (tenancies excepted from the repairing standard duty) of the 2006 Act([1]) is modified in accordance with paragraphs (2) and (3).

(2) Omit paragraphs (c) to (e).

(3) At the end insert—

(f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday…

([1]) Section 12 was amended by paragraph 9(2)(a) and (b) of schedule 2(1) of the Land Reform (Scotland) Act 2016 (asp 18) which amendment has effect subject to transitional provisions in S.S.I. 2017/299.

6.14The requirement for the host to display the licence should be a requirement for the host to display a licence or a certified copy in keeping alcohol legislation. There is no need for the principal to be displayed. The principal may be required to be lodged if there is a renewal and/or variations to the licence and if the principal is lost it will require to be replaced at a cost to the operator. A certified copy (certified by the licensing committee clerk or a solicitor) should be sufficient.

6.15The requirement to display information highlighting issues of electrical and fire safety in the property does not make sense. If there is a gas safety record, AICR and PAR which is all certified there should not be any “issues”.

The ‘host’ must display in the property information highlighting issues of electrical and fire safety in the property. Unlike the other requirements in this section, this is not a requirement in other tenures as far as we are aware. We are therefore uncertain what form this would take, how detailed it should be and what points it should cover. To resolve this concern, we suggest that the Scottish Government provides template wording for this requirement in guidance.

6.21Testers of electrical equipment carrying out PAT testing are private individual companies. While one would hope those supporting the hospitality industry are not taking advantage, inevitably there will be exceptions to that. It should not be for any tester to define when an operator requires to test. If there is a suggestion testing requires to be done more frequently, that should be carefully considered. Advice should be forthcoming from the council departments not from a tester.

6.22 -6.24 Professional self-catering owners comply with fire regulations, specifically designed for the sector.

Moreover, as the mandatory conditions allow different licensing authorities to determine what their conditions will be, the issue encountered by operators here is that some licensing authorities may insist upon a third party carrying out a formal Fire Safety Risk Assessment. That is not what is envisaged for operators and that should be carefully defined. It should be made clear that the operators must ensure a suitable and sufficient Fire Risk Assessment is carried out but that the Fire Risk Assessment can be carried out by the operator. If a Fire Risk Assessment requires to be carried out by a third party, this will incur further cost to operators.

6.28 – 6.33 This is covered by the ASSC Code of Conduct*.* [17]

On 6.28 specifically, maximum occupancy should not be set by each individual local authority. The criteria for occupancy should be based on Building Regulations. These regulations should clearly define what is required for the premises to operate. The likely hood is Building Control will calculate the capacity and intimate this to the licensing section within the relevant council. This capacity should be a standard calculation based on general circulation space, number of beds available in bedrooms and the size of bedrooms to accommodate additional beds and sanitary provisions.

The capacity of premises need not be specifically defined by the current layout of the premises and the bedroom facilities. Because a bedroom presents as a double, if the space within that bedroom is suitable to install further single beds or even bunkbeds, that should be an up to an operator as long as there is sufficient space to allow 4 beds in the room. Operators must be given some flexibility to be able to use rooms as family rooms or individual rooms depending on the requirements of different guests. The space available should be the test for capacity, not the current use of that space.

6.32 If inspections require to be carried out, a timescale for these inspections to be carried out pre-application or post application, should be fixed. This should be within a period of weeks after a formal request is made for the inspection. This is to ensure applicants do not get to the stage where an application cannot be considered within the six-month timescale due to the fact an inspection could not be arranged. Requiring floor plans for sleeping areas and similar is a cost. To have plans prepared for a new licence application, depending on the size, will cost anything from £500 to £2,000 plus VAT. Many of the properties are not VAT registered, and will not be able to reclaim the VAT. A location plan can easily be obtained from Ordnance Survey for a reasonable sum (approximately £30) and can be downloaded and lodged with the application even if that is through an electronic portal. Layout plans are quite a different matter. Size information should be able to be given in narrative rather than being required on scaled plans.

6.35The operator cannot be required to oblige a third party to carry out actions.  The operator can provide the third party with their licence number and can check this is being displayed on their advert, where possible, however, the operator cannot be expected to ensure any platform, holiday letting agency or channel manager is complying with their responsibilities.

 6.39 Professional self-catering owners comply with antisocial behaviour legislation: existing anti-social behaviour legislation, enables enforcement of existing powers available to local authorities. This includes Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004, which enables local authorities to serve an Antisocial Behaviour Notice on a private landlord when an occupant or visitor engages in antisocial behaviour at, or in the locality, of the property. The Scottish Government introduced the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 that granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use. We note comments made by the Scottish Government’s Minister for Local Government, Housing and Planning on that 2011 Order: “Local authorities have quite comprehensive powers to deal with antisocial behaviour and noise nuisance; I expect them to use those powers effectively…I challenge local authorities to consider using it [Order 2011] and other antisocial behaviour powers, as well as the powers in relation to noise and environmental health that are currently at their disposal… The powers may not be being applied properly, which might be the difficulty in all this…Under the order that I mentioned, the antisocial behaviour notice is served not on the people in the property who are causing the problem but on the landlord. That is extremely important. Folk having left a property should not affect in any way, shape or form the serving of a notice on the landlord.” [18]

6.40 See 6.39

6.41 Although it is good practice, it is not always possible to greet guests in person. This can be communicated prior to guest arrival.

6.42 While it may be appropriate for the licensing regime to require major variations to the premises are intimated to the licensing authority (just as they would require to intimate variations for a layout in relation to liquor licensing) this is not a requirement in general for other licences under the 1982 Act.  It would be prohibitive for operators to require to apply to the licensing authority for approval to increase the number of beds or replace the existing number of beds.  Operators should be able to operate the short term let premises in conjunction with the mandatory conditions and the occupant capacity.  Licensing authorities are extremely busy and applications take time to process.  Any such application would carry a fee and there would be a delay.  If an operator requires to change the layout of a bedroom this should not be something which requires an application as long as the operator is not exceeding the occupant capacity of that bedroom.

6.43 The issue with floor plans is indicated above. The Scottish Government have indicated the licensing process is not onerous. The requirement to provide operating plans creates a significant additional cost to applicants. In a registration scheme there would be no such cost.  The requirement to produce detailed layout plans while containing dimensions will result in applicants requiring to instruct architects or draughtsmen.  If licensing authorities are able to amend this condition, it will then be possible for operators to find themselves in the same position as premises licence applicants (applying for a liquor licence under the Licensing (Scotland) Act 2005, as amended) which requires detailed layout plans, to a specific scale with specific dimensions.  This creates a very expensive and onerous condition which the Scottish Government undertook it would avoid.

6.44 As per 6.43. This is entirely burdensome and unnecessary.

6.45If local authorities are able to set further limits in occupancy these must be for specific reasons.  The Scottish Government in its consultation has given examples “such as noise, litter and anti-social behaviour”.  The reasons for setting limited occupancy must show a causal link to issues from those premises.  Licensing authorities cannot be allowed to set restrictions on premises where there is a perception there may be an issue.  Restrictions should not be put in place where there is potential or existing issues in the vicinity of the premises unless it can be shown the issues occurring in the vicinity originated specifically from the short term let premises.  It is absolutely necessary for a causal link to be established and there is significant Case Law on this subject.

6.46 This is a residential issue and not associated with short-term lets. Commercial short-term lets are subject to commercial waste arrangements as is any other business: already covered by local authorities.

The clauses at 6.4.6 to 6.4.9 infer local authorities will be allowed to require additional facilities from operators.  If local authorities are able to insist operators contract with commercial waste management, this will be an additional cost which operators will not be able to support. Operators, in the main, do not pay non-domestic rates but pay council tax and, therefore, use their domestic bins. Operators are able to acquire additional bins in certain council areas by paying for these additional bins. Were operators be required to contract with commercial waste removers, in many cases this would make the operator’s short term let business unviable. There should be significant restriction on this or very detailed guidance. There are other alternatives for proper management of waste. If there is a one-off increase in waste, operators can use local recycling and disposal facilities provided by the relevant council. Waste management contracts require to be monthly.

6.47 Why would a residential rent generate more waste than a residential property? This is irrelevant and there is no evidence base to support this section of the consultation.

6.48 See 6.46. Commercial waste is covered by commercial waste contracts.

6.49 ‘Hosts’ (?), owners and guests should be made aware of their obligations via the ASSC’s Code of Conduct.

6.52 Regarding meeting guests on arrival, local authorities may require the host to ensure that the principal guest is met in person on arrival to receive the keys to have the “house rules” (including relevant licence conditions) explained to them. This may be done by the host or hosting intermediary. This is contrary to Covid-19 protocols and may not be practical or possible for agencies who work in rural areas.

6.54 Curfew on leaving and arrival is impractical. Arrivals can be delayed through no fault of guests or hosts and departing guests may have to catch an early flight. Early departure is actually fairly common, even for UK visitors who wish to get some miles under their belt before breakfast or avoid rush hour traffic.

6.56 The ASSC are uneasy about a business being forced to declare occupancy stats which are essentially private. Will the public have access to this information? Many businesses do already voluntarily submit monthly stats to the VisitScotland occupancy survey, and any business using the SuperControl booking system can do this at the click of a mouse.

6.61 This is looking extremely expensive and onerous for short-term letting businesses. The whole industry is in the middle of a very difficult year with huge uncertainties ahead in the short, medium and possibly long term. Simply being open in 2020 has seen short-term letting businesses, like all hospitality, incur much higher running costs and significantly reduced margins which are looking thin. Hospitality businesses must reinvest to even stand still as furnishing and fittings become ‘tired’ and visitors’ expectations are high. The various fees suggested associated with this licensing scheme will be an unwanted and a significant burden.

6.36 to 6.60 We are concerned that collectively these discretionary licensing terms are quite onerous and if imposed by local authorities they could drive operators out of the sector by making their businesses unviable (financially and/or through overly burdensome bureaucracy). At the very least, we suggest the guidance sets out that these additional terms should only be imposed in exceptional circumstances where it can be evidenced that there is a need for additional terms to resolve problems which are being experienced at a local level. The local authority should be required to justify the need for additional terms in a policy statement on their website with reference to supporting evidence of a problem. This should also set out how operators can challenge their decision to impose additional terms if they consider the local authority is not justified in imposing them.

6.67 We are concerned that there seems to be no proposal to set a minimum term for a licence. A minimum term for local authorities to grant licences should be determined by Scottish Government. There should be no confusion or compromise. The ASSC believes that there should be a minimum term for a licence (three years) and that licences should be granted for a period up to five years.

6.8 Compliance with licence conditions is the host’s responsibility (even if they are not the owner of the accommodation) – would it not be the responsibility of the owner in the same way as PRT agreements?

6.83. An applicant must be a fit and proper person to be licenced as a host of specified accommodation. It is not uncommon for an owner to use more than one agency (local or OTA) as well as direct marketing and booking. Who would be the licensee in this situation? Logic suggests it would be the owner – that being the case, would that mean 6.8 (compliance, as above) the owner would be responsible not the host? There is an inconsistency in logic about who is responsible in certain situations (owner/host).

6.111 There should be an appeals process if a host feels unfairly treated.

6.139 There are significant issues here on sharing of what is private data with councils and between councils, let alone the public. This is particularly so with occupancy details.

The Scottish Government have set three questions in respect of the consultation – the definition, the control areas, and licensing order – and are only interested “in any issues you have identified with our proposals and how they might be resolved.” However, there are issues which do not neatly compartmentalise into this structure and approach. In respect of both the planning and licensing aspects of the consultation overall, the ASSC are concerned that the Scottish Government have, at the time of writing, not published a Business Regulatory Impact Assessment (BRIA). We understand that this will be published when the secondary legislation is laid before Parliament.

To quote the consultation document on p47, “The purpose of this consultation is to help the Scottish Government ensure that the legislation laid at the Scottish Parliament in December is as efficient and effective as possible.” We would argue that the best way to ensure the efficiency and effectiveness of the legislation would have been to have published the BRIA at the same time as this consultation. Alternatively, the BRIA could have be produced at the consultation stage in draft or partial form then finalised before being laid with the drafted SSI.

The ASSC contend that the approach taken in this consultation has not met the Scottish Government’s own Better Regulation, nor has it fulfilled best practice. The completion of BRIAs is central to the objectives of Better Regulation – they are required to assess the costs and benefits to any business from the proposed regulations. The Scottish Government have not even published a partial BRIA which again would appear to run contrary to Better Regulation principles. As the Scottish Government note, “Partial BRIAs should be carried out at consultation stage. The final BRIA builds on the partial BRIA and the consultation analysis. Both of these BRIAs require Ministerial sign-off.” [19]

A partial BRIA would have enabled and facilitated responses by those the Scottish Government’s intended regulations would affect. It could have then been fed into the production of a final BRIA, building on the information received in the consultation analysis, thereby improving the efficacy of the regulations overall. To quote the Scottish Government: “The BRIA helps assess the impact of new legislation, as well as other changes such as voluntary guidance or policy changes, even where they do not necessarily present additional obvious burdens. In such cases it can either help confirm understanding that the impact will not change or identify and address unintended impacts which have not been identified.” [20]

We assert that this consultation appears to undermine the Scottish Government’s commitment to Better Regulation. If the BRIA is published when the secondary legislation is laid in December 2020, there will not be adequate time for stakeholders to respond in any meaningful way to affect the regulations. We are left posing the following questions: why was no full or partial BRIA published to accompany the consultation document? If a final BRIA will be published in December 2020, why was this not explained in the consultation document? Do the Scottish Government still believe in their Better Regulation principles given the lack of a full or partial BRIA?

Aside from the lack of a BRIA, we are extremely perturbed that the consultation document makes no reference to the impact of COVID-19 on the tourism sector which has been devastated by the pandemic, with a large drop in tourist numbers and cancelled bookings as a result of coronavirus restrictions. The self-catering industry was one of the hardest hit sectors due to the impact of Covid-19, as operators closed their business due to lockdown restrictions until early July 2020, and were reliant on business support grants to see them through. The situation regarding Covid-19 remains ever-changing – indeed, while our operators had benefited from the reopening of tourism accommodation, particularly through the domestic market, our sector will now be impacted by new restrictions placed upon indoor gatherings and we face the prospect of possible travel restrictions.

As our October 2020 survey demonstrates, the short-term let consultation takes place at a precarious time for self-caterers in Scotland: 94% of respondents have stated an estimated negative financial impact of Covid-19 to their business, while 63% are feeling pessimistic about their business right now. Indeed, respondents also maintained that the impact of the regulations would not be limited to self-catering. Respondents were of the view that the impact of the proposed licensing scheme would also entail negative knock-on effects for supply chains, such as hospitality (89%), local activity providers (83%) and local attractions (85%). 66% feel that it would have a detrimental impact on guests. [21] Short-term let regulation is not solely an issue affecting those offering short-term let accommodation, it impacts a number of businesses in our important tourist economy. We do not believe that this has been granted the full consideration and attention it deserves.

Furthermore, failing to take into account the effect of Covid-19 does not accord with the approach taken in respect of the introduction of a tourist tax. The Scottish Government’s 2020-21 Programme for Government advised that plans for the Transient Visitor Levy have been put on hold due to COVID-19 and that “future consideration of the levy will take account of the changed context the industry is operating in.” [22] This was a welcome and pragmatic approach that the ASSC fully endorse. However, as the proposed short-term let regulations will see financial and administrative burdens placed on self-catering operators – who are an important part of Scotland’s tourism industry, generating £723m per annum for the Scottish economy [23] – it defies sense that the consultation does not take cognisance of the “changed context” in this regard. Our sector is facing extreme difficulties and these proposed regulations will act as an additional constraint on the recovery of Scotland’s tourism industry. Our October 2020 survey also highlighted that 95% believe that the regulations should be delayed whilst the sector recovers from Covid-19 and the same number believe the regulations require greater parliamentary scrutiny. [24]

Finally, the ASSC has fully and proactively engaged with the Scottish Government throughout this consultation process, as we have done throughout the regulatory discussions. As this submission makes abundantly clear, our concern lies not with regulation per se – we want to work with the Scottish Government to ensure a balanced and proportionate approach for business, tourism and local communities. Introducing short-term let licensing and planning restrictions is not a straightforward task but one that necessitates detailed scrutiny of proposed regulations. At a time when other important pieces of regulation were postponed by the Scottish Government due to Covid-19, we are disappointed at the truncated nature of this consultation, the rapidity of the timetable associated with the legislation, and the lack of consideration to the alternatives to the proposed regulation. The ASSC remain greatly concerned that the haste of this work will not result in a well-designed and proportionate regulatory framework and could be one which may have negative consequences for the fragile recovery of Scottish tourism.

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