



Notes from STL Regulation BRIA - Written Evidence from the Association of Scotland's Self-Caterers (ASSC)

Introduction

The Scottish Government has published a Business Regulatory Impact Assessment to accompany the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 ("the Licensing Order") and the Town And Country Planning (Short-Term Let Control Areas) (Scotland) Regulations 2021 ("the Control Area Regulations").¹

Data and Overall Assumptions

The Short-Term Let Delivery Group is "...using the 2019 data established in the Scottish Government's 2019 research as a baseline for this BRIA."²

This data predates the global pandemic which has devastated the tourism sector, including reducing the demand for short-term let accommodation. Uncertainties remain and **we should not be using evidence to inform this BRIA from a completely different context.**

Overall, the Scottish Government **are unable to provide robust costings for what they want to do**, with multiple references such as "...it is difficult to monetise these benefits precisely", or "...unable to be precise about the cost of the scheme" etc.

Tax: the BRIA is undermined by reference to taxation as the **related tax impacts on business are unknown.**

"Both these instruments will be complemented by possible changes to taxation to make sure short-term lets make an appropriate contribution to local communities and support local services. The review of the tax treatment of short-term lets is being progressed by the Scottish Government separately."³

A justifiable evidence base is missing in support of several claims:

- A number of assertions e.g. that regulation will increase STL use (contrary to the stated policy intention) are without foundation - **21; 59 multiple references.**

¹ Scottish Government, *Short-term lets: licensing scheme and planning control area legislation Business and Regulatory Impact Assessment (BRIA)* (December 2020). Url: <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2020/12/short-term-lets-licensing-scheme-planning-control-areas-business-regulatory-impact-assessment-bria/documents/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/govscot%3Adocument/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria.pdf>

² Scottish Government, *BRIA*, p30

³ *Ibid*, p4.

- Similarly, negative externalities appear to be anecdotal rather than evidenced (**15(b)**). Trends other than STLs are likely to be at play for bank and retail closures - **31/32**. Opinion is presented as fact rather than hard evidence of these claimed impacts - **24(e)/25/26**.
- There is no impact assessment of the effect of the measures on **property managers or cleaners**, arguably the worst-affected sectors after owners themselves. This is a significant omission.
- Is a **Criminal Record Check** costed or will it be fully borne by the local authority?
- With primary legislation to be enacted requiring fire alarms in all domestic properties, this will address **Fire Safety** concerns - **59 various references, 110(a)(ii)**.
- **Actual effects** are neatly summarised in 105 and 106.
- The impact on a business and family of sending someone to **prison or fining them £50k** for non-compliance has not been assessed.

Explanation of Lack of BRIA

- The BRIA, dissatisfactory attempts to explain the lack of a partial BRIA to accompany the 2020 consultation paper:

“We did not publish a partial BRIA with the 2020 consultation paper, as we were not seeking stakeholders views on a range of options (which was covered by the 2019 consultation) but were seeking feedback on the specific elements of our proposed regulatory scheme. However, the views expressed in the 2020 consultation, and further engagement with local authorities afterwards, has provided useful information for this BRIA.”⁴

- The BRIA therefore only focuses on two options: (a) do nothing; or (b) go ahead with the Licensing Order and the Control Area Regulations.
- This does not follow due process or diligence.

Industry Alternatives: Registration

- The BRIA notes that the Scottish Government did “carefully consider industry suggestions for a registration scheme” and set out reasons why they “do not regard this as a viable alternative”.⁵ In short, they do not believe it could be delivered quick enough and risks being either cheap and ineffectual or a more expensive way of delivering the benefits of licensing.
- The BRIA notes that “there was, and remains, significant industry lobbying for a registration scheme as an alternative for the licensing scheme.” However, they assert that a **registration scheme would necessitate primary legislation and would therefore not be deliverable in the current session of Parliament**. This is regarded as too slow compared to licensing via the 1982 Civic Government Scotland Act:

“Development and Parliamentary consideration of a Bill, followed by secondary legislation and an implementation period, would likely push back the opening of a registration scheme to sometime in 2024 (whereas the licensing scheme will open in April 2022). The Scottish Government’s view is that such a timetable is too slow when the 1982 Act provides a suitable mechanism for regulation.”⁶

- The need for primary legislation to have a registration system is used as the principal reason for rejecting this proposal on the grounds of timing but, **with the announced delay, the timing would now be identical to licensing**. This would argue that the more proportionate registration system should be preferred.

⁴ *Ibid*, p12

⁵ *Ibid*, p12-13

⁶ *Ibid*, p13

- The BRIA also dismisses the argument put forward that a registration scheme would be more cost effective, less onerous and less bureaucratic:

“...this entirely depends on the requirements of the registration scheme. A “light touch” registration scheme is likely to be less costly to administer than the licensing scheme but, by the very nature of being “light touch”, would not deliver the same assurances and protections around safety and would not provide the tools to manage noise and nuisance. Local authorities are also well-practiced at administering licensing schemes under the 1982 Act and are likely to be able to adapt systems and practices in order to extend to the licensing scheme. **A registration scheme would require new, unfamiliar infrastructure which local or national government would need to establish and fund.**”⁷[my emphasis]

- **Local Authorities are already comfortably using the landlord’s registration scheme**, which could merely be amended slightly to reflect STLs. A comparison of the two schemes provided by the ASSC in their policy paper on the subject⁸. To suggest that “new, unfamiliar infrastructure” would be required is disingenuous.

Summary Costs and Benefits by Sectors and Groups Affected

Costs to local authorities and recovery through fees

- The Scottish Government state that the fee should cover the establishment of the scheme, running costs and supporting functions: “...the costs involved in establishing and running their licensing scheme and all the supporting functions should be covered by the fees from the scheme.”⁹
 - **Several local authorities highlighted their concerns** about the start-up costs in their consultation responses.
 - The BRIA does not assuage their concerns about the **immediate start-up costs**, given that ‘hosts’ will have until April 2023 to apply for a licence.
 - We can assume from the BRIA that the Scottish Government will not be providing any extra funding to help local authorities with the initial costs, which will put pressure on already stretched resources.

The Scottish Government state that the fees are a matter for local authorities to determine, setting their own structures and levels, and can differentiate according to types of STL. They acknowledge that it will be a considerable undertaking for local council licensing teams by that this will be recouped through fees:

“Local authorities will be responsible for establishing and running the licensing scheme. This will be a significant undertaking for licensing teams across Scotland and will impose new costs. Local authorities can recover the costs of establishing and running the scheme through fees.”¹⁰

To inform the estimate of the cost of introducing the scheme, Scottish Government officials spoke to officials from several local authorities (7 out of 32) to discuss the tasks and costs involved in establishing and running this scheme: City of Edinburgh Council, Glasgow City Council, West Lothian Council, Argyll & Bute Council and Highland Council.

Given that there were a number of factors that could lead to a significant degree of variation in the cost to local authorities, the Scottish Government are “**...unable to be precise about the cost of the scheme,**

⁷ *Ibid*, p13.

⁸ <https://www.assc.co.uk/policy/licensing-or-registration-for-short-term-lets-in-scotland/>

⁹ *Ibid*, p16.

¹⁰ *Ibid*, p18.

and how this will vary by local authority” and instead have “devised and costed two indicative scenarios for the time and cost involved in processing an average licence application and renewal.”¹¹

- **F1. Scenario 1: lower operating cost**
- **F2. Scenario 2: higher operating cost.**

These costings are set out on p46-47 but are unclear. Why haven't they looked at the average cost in terms of staff times, tasks etc and then multiplied it by the average number of likely short-term lets within a given area (e.g. using the amount of STLs in Edinburgh, for example)?

Hours: It is unclear as to whether the suggestion is that one licence application will require 9.8hours or 6.6hours for a renewal at the lower operating cost; and 16.6hours and 11.3hours at the higher end, or where these estimates come from. The BRIA should clearly identify the cost associated per licence.

Fees¹²

F4. Licence fees

81. Table 1, below, outlines the application and renewal fee that would need to be charged to recover establishment and running costs, as set out under our hypothetical scenarios. This assumes 32,000 short-term let applications or renewals are submitted and processed in one year, and thereafter on a three yearly renewal cycle. These are **average, indicative amounts**, expressed both as an upfront cost as well as (in brackets) on an equivalent annual basis when spread over the three year duration of the licence.

	Application	Renewal
Scenario 1	£223 (£74)	£148 (£49)
Scenario 2	£377 (£126)	£249 (£83)

Table 1. The **average indicative fee** for processing an application or a renewal across all local authority areas and all types of short-term lets given the assumptions underlying each scenario. Figures in brackets show the fees on an annualised basis, i.e. spread over the three year duration of the licence.

82. Local authorities are unlikely to charge a single, average fee. Table 2 below illustrates how the application and renewal fee (from scenario 2) could, in theory, be varied to offer a discounted fee to low volume hosts. Of course, this fee differentiation could be done in any number of ways and **this table is purely illustrative.**

Length let:	Low volume		Regular	
Discount	Application	Renewal	Application	Renewal
0%	£377 (£126)	£249 (£83)	£377 (£126)	£249 (£83)
25%	£314 (£105)	£208 (£69)	£419 (£140)	£277 (£92)
50%	£236 (£79)	£156 (£52)	£471 (£157)	£312 (£104)

Table 2. This shows how the fees could be tailored to offer a specified percentage discounted fee to low volume short-term lets, using four illustrative levels of discount. This is based on the scenario 2 average costs and we assumed that a discount is offered on 40% of short-term lets, being those that

The BRIA also makes a comparison to the fee structure and approach in respect of **HMO licensing**. The lowest fee charged for an HMO licence varies from £229 to £1,906 across Scotland.

¹¹ *Ibid*, p21-22.

¹² *Ibid*, p24

Costs of mandatory licensing conditions

- The mandatory licensing conditions and associated costs for a typical two-bedroom property are set out at Annex C of the BRIA.
- Given that data provided by the ASSC illustrates that 44% of the self-catering sector accommodate 7+, a two-bedroom property does not reflect the STL sector.
- The BRIA indicates the following costs:
 - Displaying information - £22 one off
 - Gas safety – £80 annually
 - Fire safety – no change anticipated
 - Legionella - £17 one off
 - Private water supplies £200 one off
 - Planning permission – variable, between £520 and £1000
 - Smoke, fire alarms, carbon monoxide - £220
 - Electric fittings in reasonable state - £180 (every 5 years)
 - Portable appliance testing report - £100 annually
 - Maximum occupancy - £22 one off
 - Listings: EPC - £150 one off for EPC if needed
 - Insurance – £100 annually
- The ASSC believes these figures fall far short of reality, having analysed them independently, for example:
 - The cost of DM Hall (ASSC Partner for Business) to carry out a Legionella Risk Assessment is dependent on size, but costs an average of £120 + VAT.
 - In terms of insurance, too many factors come into play to assume an annual average, including post code, buildings sum insured, contents sum insured, age and type of property, previous claims etc. Our Partner for Business, Bruce Stevenson has advised that the premium across their book of business is £767.
 - On this evidence, the BRIA shows a keen lack of understanding of the true cost of compliance.
- These figures do not reflect possible additional conditions placed on businesses by local authorities including physical moderations such as door closers and carpets.
- In addition, these figures do not reflect the additional costs incurred by rural or island businesses.
- Annex 3, 5: If you have a large, or commercial, private water supply, you must have at least one sample taken for testing by your local council every year. This includes secondary letting¹³. The BRIA does not indicate an understanding of this legislation.
- Annex 3, 7: The requirement of smoke and fire alarms is not best practice, but legal requirement, covered by pre-existing legislation¹⁴. The BRIA does not indicate an understanding of this legislation, nor the cost of compliance.
- Businesses may have to employ a licensing and/or planning consultant to successfully secure the permissions, which will increase the cost considerably.

Mandatory conditions include reversing the exclusion of STLs from **The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019**, “where 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”. The unintended consequences of including STLs in the Repairing Standard may have a considerable financial impact on properties that do not meet future minimum standards (up to £5,000)

¹³ <https://www.mygov.scot/test-private-water-supply/>

¹⁴ <https://www.gov.scot/publications/practical-fire-safety-guidance-existing-premises-sleeping-accommodation/>

as part of EPC legislation. This is not relevant where the guest is not burdened with the cost of energy during their stay. This unintended consequence should be reflected in the BRIA.

Costs from planning application

- Planning consent for a change of use might be expected to cost the applicant in the region of £520 to £1000. The services of an architect to produce plans and drawings associated with any application may increase the cost considerably.
- The Scottish Government are passing responsibility to local authorities regarding control zones by 'permitting' discretionary powers to consider whether and how to make use of these powers and assure themselves that the use of these powers has the intended impact – **51**, but the cost impact on businesses of control areas is not assessed **if planning permission is refused - 93 / 106 / 118**. The only costings assume that planning is granted.
- If a Local Authority changes or tightens its planning policy, by use of a control area, this has a profound impact which has not been costed. (Annex C1).
- **What compensation will councils pay** if they exercise these powers and, effectively, close a business down?
- How can there be additional capacity for events (like the Edinburgh Festivals) if planning control area rules ostensibly outlaw the operation of STLs? **97**.

Wider economic context

The BRIA notes that **“the tourism economy has been badly affected by COVID-19”** and that “Visit Britain has forecast that international visits to Scotland in 2020 may be down 78% compared to 2019, to 775,000, with spend down by 85% to £388 million. They have also forecast that spending from domestic overnight and day visitors in Scotland may both reduce by over 50% from 2019 levels, to £1.6 billion and £2.8 billion respectively.”¹⁵

They also note that the **earnings of short-term let operators have fallen as a consequence of Covid-19:**

“These figures suggest that short-term let hosts’ earnings will likely have fallen markedly following the COVID-19 pandemic.”¹⁶

“With regard to the regional effect of COVID-19 on the tourism sector, the Scottish Tourism Alliance note that demand for self-catering accommodation was in most demand in rural and coastal areas of Scotland around Summer.”¹⁷

Demand for STL has fallen, we do not know when this will recover and operators have taken a financial hit, yet the Scottish Government are going to burden these businesses with more costs and regulation at a time when individuals and the wider industry can least afford it.

Potential impact of this legislation on the tourist economy

“It is possible that the time and cost involved in applying for a short-term let licence will lead to a reduction in the amount of short-term let accommodation capacity. It could also increase the cost of short-term let accommodation if these costs are passed on in whole or partly to tourists. However, **it is difficult to quantify the total net effect on short-term let capacity.**”

This is another instance of the BRIA **not being able to quantify the likely effect of the policy**, and renders the BRIA insufficient.

¹⁵ *Ibid*, p29

¹⁶ *Ibid*, p30

¹⁷ *Ibid*, p30

Post Implementation Review

“We will monitor and evaluate the impact of our proposals to ensure that they are effective and targeted. We have committed to make further provision in the next Parliament around fines and sanctions which we are not able to progress through secondary legislation. **At this time, we will also consider what other changes are necessary or expedient to ensure that the policy intentions are delivered.**”

Despite the impact of Covid-19 on tourism, the Scottish Government are intent on pushing ahead on an ambitious timeline. In order to mitigate some of the likely unintended consequences of their approach, **the ASSC argues that grandfather rights should be provided to self-catering operators who have been operating for 3+ years and that the Scottish Government should establish a Working Group to contribute to the guidance that will be prepared for local government.**

Key Questions:

- **Overall approach:** what changes are the Scottish Government willing to consider at this point?
- **Data:** Why are the Scottish Government using pre-pandemic data to inform this BRIA when the tourism sector has been devastated by Covid-19?
- **Registration:** why has registration been disregarded by the Scottish Government, with particular reference to the comment “[it would require] new, unfamiliar infrastructure which local or national government would need to establish and fund”, when we have the Scottish Landlords Register?
- **Control areas:** the only costings provided assume that planning is granted. If a Local Authority changes or tightens its planning policy, by use of a control area, this has a profound impact which has not been costed. Why?
- **Local authorities:** what is the estimated cost for a local authority setting up a licensing scheme? Can you explain the totals for the lower operating cost and higher operating cost in terms of the indicative costings of the licensing system?
 - Can you clarify whether the Scottish Government are intending to provide additional money for local authorities to prepare and establish the licensing regime? The initial set up costs was highlighted as a concern by several local authorities in their consultation responses.
 - At a time of financial pressure, are local councils being expected to soak up these costs and recoup them years later through fees?