



21st December 2020

Dear Fergus,

I would like to update you on some of the recent conversations held with Scottish Government officials in terms of the next steps associated with the short-term let regulations. Significant areas of contention remain and we maintain that the regulations, if passed in their current form at the present time, will entail unintended consequences for the Scottish tourism sector as well as resource-stretched local authorities.

I spoke with Andrew Mott, Chair of the Short-Term Let Delivery Group, twice last week: the first call discussed the publication of the long-awaited Business Regulatory Impact Assessment (BRIA) and the second was to discuss the SSIs. The BRIA has serious shortcomings and we have outlined these, along with our other concerns about the manner in which the legislation has been progressed, to the Scottish Parliament's Local Government and Communities Committee, who are now taking evidence from affected stakeholders.

I have elaborated on some of the issues and concerns raised during my calls below:

Position of B&Bs vis-à-vis STL regulations

Andrew Mott was initially unable to confirm whether B&Bs were included in the accommodation types to fall within the scope of the regulations. Some two days later, he came back to say the following:

"Your understanding is correct: home sharing is defined in the Licensing Order (sch. 2, para 13) and includes bed and breakfast activity.

B&Bs are not listed as excluded accommodation at schedule 1. Guest houses are excluded (para 1(d) of sch. 1). Change of use from a house (class 9 in the Use Classes Order) to a guest houses (class 7) generally requires planning permission. So the exclusion applies to properties that have planning permission to operate as a guest house. A house (class 9) can be used to offer bed and breakfast without planning permission where no more than two bedrooms are used for this purpose or, in the case of premises having less than four bedrooms, only one bedroom is used for that purpose. A flat cannot generally be used to offer bed and breakfast without planning permission.

The use of houses (class 9) as B&Bs is a form of home sharing and we have always intended to include this activity within definition of short-term lets. Our 2019 consultation paper proposed excluding *"licenced hotels and B&Bs and self-catering properties on their premises"*. We have excluded (para 1(e) of sch. 1) restaurants with rooms and inns, for example, where they are already licensed specifically to offer accommodation under the Licensing (Scotland) Act 2005."

We are of the understanding that the Delivery Group **did not** consult with the B&B sector which we believe would be a basic duty given the impact of the regulations. The Chief Executive of the B&B Association intimated to me that he was perplexed by this omission and is extremely unhappy to hear of their inclusion in the regulations. Was this part of the Scottish Government's policy objective from the beginning?

Repairing Standard

Mandatory Conditions for the licensing scheme will include meeting Repairing Standard Legislation and Energy Performance Certification legislation. However, following extensive discussion, self-catering was excluded from Repairing Standard (The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019). B&Bs are also exempt from both pieces of legislation. While the Repairing Standard is being amended to cover short-term lets, the EPC legislation has not been amended to cover B&Bs.

Simon Roberts, from Scottish Government's Housing Standards and Quality, Better Homes Division, maintains that it was never Scottish Government's intention that self-catering should be part of the Repairing Standards, as there is no Tenancy. Self-catering offers a Licence to Occupy, not a tenancy, hence also being excluded from Private Residential Tenancy legislation. The SSI was therefore poorly drafted to assume a Tenancy. This is **yet another** unintended consequence of the regulations, with operators potentially being liable for up to £5,000 in order to meet the minimum standards of EPCs going forwards. This was not identified in the BRIA.

Impact of licensing on business

No account has been taken of our survey results suggesting that **49% of professional operators will leave the self-catering market**, as licensing will render businesses unviable (even by what may be considered to be a nominal fee: compare Liquor Licensing with a small self-catering operator. The cost of the fee alone is disproportionate to turnover, let alone profit). 33% of these would leave the property empty or use it for family & friends, thereby not returning these properties to the housing market.

We still assert that the 2019 consultation lacked rigour, was biased, and did not provide a robust evidence-base. The Indigo House research involved speaking to 583 affected residents, 63 community groups, some Airbnb hosts and 5 professional self-caterers, in five areas of Scotland that have a *perceived* problem. They only agreed to speak to the professional self-caterers because the ASSC made that happen, under duress. They did not conduct research in Argyll & Bute or Moray Speyside, for example, and we ask the question, why not? This did not deliver a balanced outcome and businesses were **not** well represented as it suggests in the Scottish Government's BRIA.

Grandfather Rights / Working Group

During my conversation with Andrew Mott, we also discussed the possibility of grandfather rights. Andrew Mott indicated that he would, in his advisory capacity, discuss this with the Minister for Local Government, Housing and Planning Kevin Stewart MSP. We therefore seek a commitment from the Minister to secure grandfather rights for operators of 3+ years. Andrew Mott was able to reassure us that it is still a 'work in progress and not absolutely set in stone'. We very much hope that this is the case.

I was gratified that Andrew Mott has agreed to establish a Working Group to develop the guidance on the regulations to help mitigate against further unintended consequences and interpretation by local authorities. We will, on his request, suggest that this Working Group will comprise: myself from the ASSC, Joanna Millar from Gilson Gray LLP (in her capacity as a licensing lawyer and representative of the Law Society of Scotland). Moreover, I will recommend the following to be included in the group: Working Group to be chaired by VisitScotland, and to include Regulatory Review Group, Solace, but **not** Airbnb or any other platform or private business.

It is perhaps a good thing that the SSIs are so poorly drafted as it proves what we've been saying all along: the regulations are ill-considered, rushed, disproportionate; bear no direct relationship to the problems it purports to address; are blanket rather than targeted; and are based on a partial and a partisan data set.

We firmly assert that the innocent majority – and I speak as someone who represents thousands of hard-working professional operators – should not be impacted by the conduct of a culpable minority. These regulations have been motivated by addressing a localised issue in Edinburgh with amateur hosts but will now consequently affect dedicated self-catering professionals the length and breadth of the country at a time when they can least afford it. As you know, the self-catering

sector has lost £265m since September alone – and that does not even consider the impact of the new Christmas restrictions.

While we want to work with the Scottish Government to mitigate the impact of the legislation for our sector, we are not acquiescing. I cannot emphasise enough that the ASSC remains utterly opposed to the legislation as drafted. The BRIA, which ought to have been published before the SSIs were laid, does not fully address the costs related to the introduction of the regulations. Meanwhile, the SSIs are fraught with unintended consequences, be it on B&Bs or the Repairing Standard, no doubt influenced by the rapidity of the timetable to get it introduced by Spring 2021.

They are the **last thing** our beleaguered sector needs at this challenging time.

Yours sincerely,

Fiona Campbell

Chief Executive

Association of Scotland's Self-Caterers