



The Civic Government (Scotland) Act 1982
(Licensing of Short-term Lets) Order 2021 (the "Licensing Order")

The Town and Country Planning (Short-term Let Control Areas)
(Scotland) Regulations 2021 (the "Control Area Regulations")

ASSC Submission to Scottish Parliament Local Government
& Communities Committee



January 2021

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“Together, we will deliver 21st century tourism for all of Scotland, and we will do it in a way that is sustainable, inclusive and truly Scottish”¹ Fergus Ewing MSP, Cabinet Secretary for the Rural Economy and Tourism

1. OVERVIEW

1.1. The negative consequences of the proposed legislation on the Scottish tourist industry, its supply chain and our visitors

1.1.1. The Cabinet Secretary has a clearly articulated vision for the future of Scottish Tourism that we, the ASSC as the professional body for Scotland’s self-catering industry, strongly support. But regrettably, as you will see in this submission, that vision will, in our view, be seriously impaired if the Licensing Order and the Control Area Regulations become law, as a consequence of the very serious, and very predictable, negative impact this legislation will have on operators, potential visitors and the local economies that tourism supports.

1.1.2. Taken together, these 2 pieces of legislation seek to address specific perceived, and **distinct, problems in limited geographical areas involving a very limited number of holiday let properties and operators when viewed in the context of Scotland as a whole.**

1.1.3. **Self-catering holiday lets are the backbone of the Scottish tourist industry,** providing everything from affordable accommodation for family holidays at busy times of years to special occasion winter weekend breaks for couples and groups of friends. **The industry, which of course has been hugely damaged by Covid-19, is worth in excess of £723m in a normal year,** and that is excluding the very considerable direct and indirect impact businesses and their guests have on local economies.

1.1.4. It is an industry vulnerable to competition outside Scotland: from the **ease of access and availability of holiday let accommodation in the north of England** (often with shorter drives than to northern Scottish destinations) and from **cheap flights and cut-price accommodation in Europe.**

1.1.6. But as you will see as you read this submission in (partially at best) trying to address these geographically and numerically very restricted problems, the Scottish Government will be throwing the baby out with the bathwater. It is well known that **licensing regimes discriminate against small businesses in favour of larger ones.** The self-catering industry and its supply chain are predominately made up of small businesses. On any reasonable analysis, and on the survey feedback provided to us, **potentially 49% of these small business owners will close their properties, many retaining just for personal use as second homes.** Those that remain will be subject to significant and unknown increased costs, unnecessary bureaucracy and huge future booking and investment uncertainties.

1.1.5. All this will be **devastating to the Scottish tourist industry,** not just to business owners forced to close but to the supply chain that depends on it and to guests who will find prices go up and property availability decreases.

¹ <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/03/Scotland-Outlook-2030.pdf> page 5

1.1.6. We assume of course this is not the Scottish Government's intention but unfortunate unintended consequences, yet **we and others have pointed out these concerns many times – apparently falling on deaf ears.**

1.1.7. **The ASSC is absolutely not averse in principle to some form of regulation for aspects of the industry.** On the contrary, the ASSC developed, **and shared with the Scottish Government,** a comprehensive and robust set of policy recommendations, as set out in our Forward Together paper which forms Appendix 1. This provides a **proportionate, evidence-based and future-proofed solution** for national and local government in Scotland in terms of short-term regulation.

1.1.8. One must question how exactly this squares with the Cabinet Secretary's vision for Scottish Tourism quoted above.

1.2. **Our Key Concerns (explored in detail in the rest of our submission) -**

- This is a **blunt tool to fix a perceived and localised problem of amateur operators in, primarily, Edinburgh,** rather than being a solution that is appropriate for the whole of the Scotland.
- The self-catering sector is predominately small one or two property businesses: **the proposed licensing procedures and conditions will disproportionately disadvantage them as small businesses.** Licensing regimes primarily benefit medium to large businesses over small businesses: they have the resources and business imperatives to put up with the bureaucracy and future uncertainty that small business cannot neither match nor afford (Section 7).
- **This will lead to significant business closures.** Out of the 1184 respondees to our recent survey **nearly half (49%) would leave the self-catering sector if the proposed licensing scheme was introduced and of those 33% would leave their property empty or use it for family & friends²** (see Appendix 5). The reasons for this, explained in more detail in Section 7 are -
 - **The time and (unknown) expense involved** in making the initial licence applications and regular future licence renewal (at yet to be determined intervals that may vary from one local authority to another)
 - **The uncertainty** over how long consideration of a licence will take (up to 12 months initially) and **the very real uncertainty of whether or not it will be granted (or renewed)**
 - **The potential loss of future bookings this will create over extended periods.** Pending licence application decisions (taking up to 12 months) bookings will have to be conditional on a licence being granted or renewed: but the commercial reality is that most guests will simply not book on this basis. (Section 7³ as read with Appendix 2)
- Holiday lets are the Scottish Tourist Industry's backbone, particularly so for affordable family holidays. **It goes without saying how damaging business closures will be to**

² <https://www.assc.co.uk/wp-content/uploads/2021/01/ASSC-licensing-survey.pdf> Appendix 5

³ <https://www.assc.co.uk/wp-content/uploads/2021/01/The-Booking-Problem.pdf> Appendix 2

tourism in Scotland, its supply chain and the local businesses that only tourism makes viable (Section 8). And this, at a time **when the Scottish Government should be encouraging staycations both to help with post-Covid economic recovery and to help minimise climate change.**

- **Business closures will result in –**
 - reduced choice and reduced competition and the increased costs and bureaucracy for those that do not close, leading to **less availability and higher prices for family staycations in Scotland.**
 - reduced visitor numbers to support the many small business – cafes, restaurants, speciality shops, galleries and tourist attractions **that rely on current visitor levels for their viability**
 - **local trades and service providers**, particularly cleaning, laundry and housekeeping businesses **losing significant income.**
- **Small B&Bs will also be captured by the licensing regime, which we do not believe to have been the policy intention of the Scottish Government.** 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: (Section 9.1).
- **The long-term impact of Covid-19 seems have been ignored:** The prioritisation of this issue during a global pandemic, when related pieces of legislation such as the transient visitor levy have been dropped, and when many in the tourism industry are struggling for survival, needs to be seriously questioned: (Section 3).
- **Truncated and limited consultation** that did not follow SG's own published Best Practice: (Section 2).
- **The Scottish Government's failure to provide a BRIA as part of the consultation** which further detrimentally affected the effectiveness of consultation. **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 did not even publish a partial BRIA which again runs contrary to Better Regulation principles: (Section 4).
- **Lack of consideration of huge impact on Local Authorities' already stretched resources** through having to deal with an influx of tens of thousands of licensing applications and the many unanswered questions around the very significant start-up costs: (Section 5 as read with Appendix 4).
- **Inadequate BRIA when eventually published:** (Section 6).
- **Material issues with detailed provisions of the Licensing Order:** (Section 9).
- **Controls Area Regulations:** these must not apply retrospectively to existing businesses, and Control Areas should be initiated by genuinely representative local demand, or at least subject to making and having regard to properly representative local consultation: (Section 10)

- Last but not least: **the ASSC has provided robust alternative proposals to the Scottish Government that deliver their objectives without the very damaging unintended consequences to Scottish Tourism – but these have been ignored.**

In short, the legislation has been drafted without proper consultation and listening to the wide range of critical voices, without a timely and robust BRIA and as a result will demonstrably lead to severe unintended consequences. They are quite simply a sledgehammer to crack a nut and are highly likely to inflict the kind of damage on our vital sector, which is key to creating the memory-making holidays Scotland is famous for, from which it will never recover.

2. TRUNCATED & LIMITED CONSULTATION

- 2.1. The Scottish Government carried out 2 consultations, an initial consultation in July 2019 and a truncated consultation in October 2020 shortly before the draft legislation was published.

Material flaws in 2019 consultation

- 2.2. **The 2019 consultation failed to provide a definition of short-term letting. There was a lack of differentiation** between traditional models of accommodation and collaborative economy platform models. The consultation **failed to reflect empirical data** provided by the ASSC or Airbnb (Appendix 7). It also **conflated a number of issues** including residential housing shortages, anti-social behaviour, and tax avoidance.
- 2.3. **The 2019 Consultation failed to fairly and proportionately consult with operators.** Representatives from the hospitality, traditional holiday let and tourist industry wrote to Kevin Stewart MSP on 13th June 2019, in response to the announcement that the Scottish Government had commissioned Indigo House to conduct research into the impact of short-term lets on housing and communities in Scotland. The ASSC, alongside the Scottish Tourism Alliance and UK Hospitality had concerns about the scope and nature of the consultation. Our concerns manifested themselves when the consultation was published. They consulted with 592 affected residents, 63 community organisations, Airbnb hosts and just 5 professional self-catering operators. They only consulted in five localities across Scotland – ones that had expressed concerns about short-term letting (including Edinburgh and Skye)⁴. The ASSC conducted a survey of its members, reflecting the questions from the Indigo House survey. The results are, unsurprisingly, very different to those highlighted by the Indigo House report (Appendix 3).
- 2.4. In our view the Scottish Government has simply **not listened to critics, or industry experts** (including the Scottish Tourism Alliance, The Regulatory Reform Group, the Law Society of Scotland amongst others), but based this legislation on the lobbying of unrepresentative geographically restricted pressure groups. This does not amount to a viable consultation.

2020 Consultation: Failure to comply with SG's own Best Practice Guidance

- 2.5. The Scottish Government's 2020 consultation **did not follow the usual three-month practice but was instead condensed it into little more than four weeks.** The Scottish Government's own best practice guidance states: *"Consultations should be open for a minimum of 12 weeks, in order to meet existing SG commitments on consultation. In many instances, consultees will need time to consult with their members / user groups before submitting a*

⁴ <https://indigohousegroup.com/short-term-lets-research/>

response. Only in very exceptional circumstances should less than 12 weeks be given, and the reasons for this should be fully explained where this happens”.⁵

- 2.6. The **Law Society of Scotland** observed that the shortened period of consultation seemed to be **“driven by a desire to lay legislation before the Scottish Parliament in December so that the regulations can come into force by Spring 2021. No explanation is given for why this is necessary, particularly given the inevitable downturn in the use of short-term letting as a result of the COVID-19 pandemic.”**⁶
- 2.7. If the legislation goes through, we also intend to seek legal advice on whether or not Scottish Government’s failure to deliver on the reasonable legitimate expectations raised by their own best practice guidance gives grounds for judicial review

Failure to include B&Bs in consultation

- 2.8. **The Scottish Government’s Short-Term Let Delivery Group never suggested that B&Bs would fall within the scope of the regulations but they do now** (see Section 9). Consulting with the B&B sector should have been a basic duty, given the impact of the regulations on the sector. The STL Delivery Group failed to consult in a meaningful way with the B&B Association or individual businesses.

3. TIMING: IMPACT OF COVID-19

- 3.1. The Scottish Government’s consultation document from October 2020 – some seven months after lockdown – **made no reference to the impact of Covid-19 on the tourism sector.**⁷ Covid-19 has been devastating for Scotland’s tourism sector, with a large drop in tourist numbers and cancelled bookings as a result of various coronavirus restrictions. Frontline Consultants estimate that the **self-catering sector has lost £265m due to Covid-19 restrictions since September 2020 alone.**⁸
- 3.2. This figure does not even consider the footfall generated by self-catering visitors in local businesses, hospitality venues and visitor attractions. Bookings have plummeted and travel restrictions for those areas in Levels 3 and 4 have effectively wiped out a crucial part of the domestic market for those businesses that remain open.
- 3.3. The ASSC were one of **38 signatories to an open letter to the Scottish Government in October 2020**, including CBI Scotland, Scottish Chambers of Commerce, the Scottish Tourism Alliance, Scottish Land and Estates, FSB Scotland, UKHospitality, and the Scottish Retail Consortium to **call for a delay in the Scottish Government’s regulations to allow the**

⁵ Scottish Government, *Consultation Good Practice Guidance*. Url: <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2019/12/foi-201900009119/documents/foi-201900009119---information-released/foi-201900009119---information-released/govscot%3Adocument/FOI-201900009119%2B-%2BInformation%2BReleased.pdf>

⁶ Law Society of Scotland, *Consultation Response - Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland* (October 2020), p2. Url: <https://www.lawscot.org.uk/media/369667/20-10-16-plan-lic-consultation-short-term-lets-regulations.pdf>

⁷ Scottish Government, *Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland* (September 2020). Url: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2020/09/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/documents/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/govscot%3Adocument/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland.pdf>

⁸ The figures from Frontline Consultants are available to view here: <https://www.assc.co.uk/wp-content/uploads/2020/12/ASSC-Sectoral-Survey-on-Impact-of-Covid-19-Restrictions-December-2020.pdf>

tourism industry recover from the pandemic.⁹ This letter did not receive a reply from the Scottish Government (as of 14th December 2020).

- 3.4. This letter reflects widespread concern on the timing of the regulations. Interestingly, the **Minister for Local Government, Housing and Planning Kevin Stewart MSP** readily acknowledged this fact in the Scottish Government's consultation response: *"Perhaps the greatest number of comments centred on whether to proceed with regulation at this time or to delay it."*¹⁰ However, the volume of correspondence has not dissuaded the Minister at all.
- 3.5. The decision to proceed is made more perplexing when **similar legislation have been postponed by the Scottish Government**. There remains a real inconsistency in terms of regulations and legislation that has been prioritised by the Scottish Government. For instance, the 2020-21 Programme for Government advised that **plans for the Transient Visitor Levy have been put on hold due to COVID-19** and *"future consideration of the levy will take account of the changed context the industry is operating in."*¹¹ This was a welcome and pragmatic approach that the ASSC fully endorse. However, as the proposed short-term let regulations will impact a key part of the tourism sector, it defies sense that the consultation does not take cognisance of the *"changed context"* in this regard.
- 3.6. Moreover, the Scottish Government have **postponed the taxation element of their short-term let plans until 2021**, demonstrating once again that it is possible to review intended regulations in the light of Covid-19.
- 3.7. In their consultation response, the **Scottish Tourism Alliance** maintained the importance of the Scottish Government supporting the recovery of the tourism sector: *"We feel that if the government is seeking to support the tourism sector's recovery should not be pressing forward with this legislation in what is unprecedented times and still with no clear horizon for recovery, arriving at a wrong decision due to haste without greater consideration would cause significant harm to the sector as a whole and those that are dependent on it."*¹²
- 3.8. **The prioritisation of this issue during a global pandemic, when related pieces of legislation such as the transient visitor levy have been dropped, and when many in the tourism industry are struggling for survival, needs to be seriously questioned.**

⁹ Letter from 38 stakeholders to the Minister for Housing, Planning and Local Government, Kevin Stewart MSP, October 2020: <https://www.assc.co.uk/wp-content/uploads/2020/10/Letter-to-Kevin-Stewart-MSP-26-October-2020.pdf>

¹⁰ Kevin Stewart MSP quoted in Scottish Government, *Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland* (September 2020), foreword.

¹¹ Scottish Government, *Protecting Scotland, Renewing Scotland: The Government's Programme for Scotland 2020-2021* (2020), p121. Url: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/09/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021/documents/protecting-scotland-renewing-scotland/protecting-scotland-renewing-scotland/govscot%3Adocument/protecting-scotland-renewing-scotland.pdf>

¹² Scottish Tourism Alliance, *STL Consultation Response* (2020). Url: https://consult.gov.scot/housing-services-policy-unit/short-term-lets-licensing-scheme/consultation/view_respondent?_b_index=600&uuld=799462370

4. FAILURE TO PROVIDE A BRIA WITH CONSULTATION

- 4.1. Following on from the truncated consultation timeline, **no BRIA or partial BRIA was published to accompany the Scottish Government’s consultation.** The BRIA was only later published on 14th December.¹³
- 4.2. To quote the Scottish Government’s consultation document, *“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.”*¹⁴ However, the best way to ensure the efficiency and effectiveness of the regulations would have been to publish the BRIA at the same time as the consultation. Alternatively, the BRIA could have been produced at the consultation stage in draft or partial form then finalised before being laid with the drafted SSI.
- 4.3. The approach taken in this consultation **has not met the Scottish Government’s own Better Regulation principles, 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 did not even publish a partial BRIA which again runs 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.”*¹⁵
- 4.4. 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. Again, 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.”*¹⁶
- 4.5. In their consultation response, **the Law Society of Scotland flag the omission of a BRIA:** *“We note that no partial Business Regulatory Impact Assessment is available with the consultation. This seems vital and an omission as it is difficult to fully understand the impacts of the proposed regulatory regime (and whether there may be a better alternative) without detail. This makes it challenging for fully informed representations to be made.”*¹⁷
- 4.6. **The manner in which this consultation was undertaken undermines the Scottish Government’s commitment to Better Regulation.** When 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

¹³ Scottish Government, *Short-term lets – licensing scheme and planning control areas: business and regulatory impact assessment* (December 2020). Url: <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-business-regulatory-impact-assessment-bria/>

¹⁴ Scottish Government, *Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland* (September 2020), p47.

¹⁵ Scottish Government, ‘Supporting Business’. Accessed 13/12/20. Url: <https://www.gov.scot/policies/supporting-business/business-regulation/>

¹⁶ Scottish Government, *Business and Regulatory Impact Assessments (BRIA) toolkit* (2018).

¹⁷ Law Society of Scotland, *Consultation Response - Short Term Lets: Consultation on a licensing scheme and planning control areas in Scotland* (October 2020), p3.

the following: why was no full or partial BRIA published to accompany the consultation document? If a final BRIA was to be published in December 2020, why was this not explained in the October consultation document? Do the Scottish Government still believe in their Better Regulation principles given the lack of a partial BRIA?

- 4.7. As of 14th December, the SSIs had not been published by the Scottish Government. The Scottish Government's Short Term Let Delivery Group **refused to share the draft SSI**, or comment on how it has been amended in light of the consultation or any comments from the Law Society of Scotland. Again, we would suggest a lack of transparency.
- 4.8. It is also our view that **no assessment has been carried out under Article 1 of Protocol 1 to the European Convention on Human Rights**. The proposals on control areas could well result in the closure of businesses by reason of a change in public policy, without offering any fair compensation to the affected businesses.

5. LACK OF CONSIDERATION OF IMPACT ON LOCAL AUTHORITIES

- 5.1. Local authorities, the Royal Town Planning Institute, the Law Society of Scotland and legal experts **all predict a surge in licensing applications when the scheme goes live, potentially overwhelming local authority departments**. Appendix 4 sets out a range of concerns expressed by these stakeholders. **The ASSC is not alone in believing this has not been properly considered by the Scottish Government**.
- 5.2. The Financial Memorandum for the Planning (Scotland) Bill estimated that the cost to planning authorities of additional applications resulting from short-term lets would be between **£358,207 and £2.7m per year**. Given that this was prepared in 2017, the costs may have increased further. In addition, this estimation only deals with one aspect of the regulatory framework, planning, and did not consider the costs of licensing.
- 5.3. Research carried out by the RTPI in connection with the implementation of the Planning (Scotland) Act 2019 estimated the costs of a planning authority designating all or part of its area as a short-term let control area between **£640,710 (lower estimate) and £14,756,800 (higher estimate)**.¹⁸ It does not appear that additional funds will be available for planning authorities to carry out the necessary work.
- 5.4. Overloading local authorities will of course directly impact on business owners through increasing licence costs and the increased uncertainty flowing from the inevitable delays in licence application decisions.
- 5.5. The unprecedented scale and resource implications are well summarised by licensing expert **Stephen McGowan of TLT LLP**, providing a comparison with changes made to the liquor licensing regime:

"It has been put to me that councils can "gear up" and bring in temporary staff to help process these applications, but that would only take us so far. There are approximately 32,000 properties in Scotland registered on the successful Airbnb platform alone. By contrast, when the liquor licensing regime changed in 2009 there were around 16,500 applications to process and it was a mammoth task for everyone concerned. The licensing system is supposed to wash its own face and it will

¹⁸ <https://www.rtpi.org.uk/media/1211/rtpi-scotland-financial-implications-of-implementing-the-planning-scotland-act-2019.pdf>

be for local authorities to determine a fee for these applications to cover projected costs, but even that is not the full picture. Licensing is a specialist area and the impact of the new regime is not just about the cost of employing temporary office staff to process bits of paper. It's also about the inspections that will have to occur in order to produce reports that the properties meet the required safety standards. There is also the impact on police resource. Every application will need to be reported on and every person checked for criminal convictions and so on. The police may also be asked to report on evidence of antisocial behaviour. The police will see no percentage of the licence fee, and all of this will be happening on top of the other licensing business that both the council and the police are dealing with. It is not too wild a projection to see how the licensing system itself could creak and create delay and logjam, without the right precautions being taken.”¹⁹

- 5.6. **Local authority** responses quoted in Appendix 4 show that many are **concerned about the interplay of a new licensing regime during a period in which their resources are stretched due to Covid-19**. These concerns appear to have been ignored.
- 5.7. **Several local authorities highlighted their concerns** about the start-up costs in their consultation responses – but these appear to have been ignored. This raises many unanswered questions –
- 5.7.1. Does this really assuage their concerns about the immediate start-up costs, given that ‘hosts’ will have until April 2023 to apply for a licence?**
- 5.7.2. Can we assume from this that the Scottish Government will not be providing any extra funding to help local authorities with the initial costs?**
- 5.7.3. What is the estimated cost for a local authority setting up a licensing scheme?**
- 5.7.4. Are the Scottish Government intending to provide additional money for local authorities to prepare and establish the licensing regime?**
- 5.7.5. At a time of financial pressure, are local councils being expected to soak up these costs and recoup them years later through fees?**
- 5.7.6. How many local authorities have requested additional funding, including in the form of grants or loans, to assist with the initial set up costs of a licensing scheme?**

6. INADEQUACY OF BRIA

- 6.1. As previously noted, the Scottish Government did not publish a BRIA to accompany the release of their consultation, as required through standard practice. They eventually published the document in December 2020 – however, this contained **very significant shortcomings including a lack of proper evidence base and failure to assess wider economic impact**.

¹⁹ McGowan, S, ‘System overload? Licensing short term lets’, *The Journal of the Law Society of Scotland*, (February 2020). Url: <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-02/system-overload-licensing-short-term-lets/>

Data and Overall Assumptions

- 6.2. Scottish Government: "...we are using the 2019 data established in the Scottish Government's 2019 research as a baseline for this BRIA."²⁰ However, **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.**
- 6.3. The ASSC 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 did not conduct research in Argyll & Bute or Moray Speyside. This did not deliver a balanced outcome and businesses were **not** well represented as it suggested in the Scottish Government's BRIA.
- 6.4. Reducing the stock of self-catering properties will have a negative impact on working families most. Guests with special needs will to the large part use self-catering as the holiday of choice. Given that **inclusivity is a key priority for parliament**, this group of end users was not consulted with prior to the legislation being laid.
- 6.5. **The BRIA completely ignores the wider economic impact that will result from business closures.** (See also Section 8). These include direct losses of income to operators and their extensive local supply chains and the loss of local spending power from reduced visitor numbers. (See also our 2017 Economic Impact Report forming Appendix 10.)
- 6.6. Overall, the Scottish Government **are unable to provide full costings for what they want to do**, with lots of references like "...it is difficult to monetise these benefits precisely", or "...unable to be precise about the cost of the scheme". This does not provide a robust evidence base.
- 6.7. 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.*"²¹

Control areas

- 6.8. 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 not?
- 6.9. According to the BRIA²² Scottish Government are passing responsibility to local authorities on this by 'permitting' - paragraph 51 but the cost impact on businesses of control areas is

²⁰ *Short-term lets: licensing scheme and planning control area legislation Business and Regulatory Impact Assessment (BRIA)* (December 2020), p30. 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/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>

²¹ *Ibid*, p4.

²² Scottish Government, BRIA. Url: <https://www.gov.scot/publications/short-term-lets-licensing-scheme-planning-control-areas-business-regulatory-impact-assessment-bria/>

not assessed if planning permission is refused - 93 / 106 / 118. The only costings assume that planning is granted.

Evidence base missing in support of several claims

- 6.10. There are a number of assertions e.g. that regulation will increase STL use (contrary to the stated policy intention) that are without foundation - 21 last sentence; 59 multiple references.
- 6.11. Similarly, negative externalities appear to be anecdotal rather than evidenced (15(b)). Also, trends other than STLs are likely to be at play for bank and retail closures. Evidence base (from areas with low STLs) to provide a counterfactual? - 31/32. Opinion is presented as fact. Is there hard evidence of these claimed impacts? - 24(e)/25/26.
- 6.12. **Cleaners** – there is no impact assessment of the effect of the measures on cleaners, arguably the worst-affected sector after owners themselves. This is a major omission.
- 6.13. **Criminal Record Check** - is this costed anywhere, or will it be fully borne by councils?
- 6.14. **Fire safety** - with primary legislation to be enacted requiring fire alarms in all flats, does this not deal with the fire risk? **59 various references, 110(a)(ii).**
- 6.15. **Actual effects** - neatly summarised in 105 and 106.
- 6.16. **Prison** – what is the impact on a business and family of sending someone to prison for non-compliance or fining them £50k?

Dismissal of viable industry alternatives

- 6.17. 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*”.²³
- 6.18. It asserts 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.”²⁴
- 6.19. 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.
- 6.20. 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*

²³ *Ibid*, p12-13

²⁴ *Ibid*, p13

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.**”²⁵[our emphasis]

- 6.21. **However, this overlooks the simple fact that registration schemes already exist – for instance, the landlords registration scheme.** This comparison was provided by the ASSC in their policy papers circulated to the Scottish Government well in advance of the BRIA (Copy provided as Appendix 6)

7. IMPACT OF LICENSING ON OPERATORS

- 7.1. The licensing regime will result in significant bureaucracy, costs, booking uncertainty and investment uncertainty to business operators. This will disproportionately affect the small businesses which make up the vast majority of operators and will lead inexorably to business closures. The key concerns and their consequences are considered below from paragraph 7.6 onwards. Further detailed concerns are considered in Section 9 as read with Appendix 9.
- 7.2. How do we know businesses will close? In response to a survey the ASSC carried out in October 2020, of the 1184 responded **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 & friends²⁶. Owners keeping properties for their own use will of course significantly reduce property occupancy rates, thus making localised second home issues worse. See Appendix 5 for a full report on the survey.
- 7.3. No account has been taken of these survey results, suggesting that **such a huge proportion will leave market as licensing will render businesses unviable** (even by what may be considered to be a nominal fee. But compare Liquor Licensing with a small self-catering operator. The cost of the fee alone is disproportionate to turnover, let alone profit).
- 7.4. The BRIA states 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.”*²⁷ It also notes that the earnings of short-term let operators have fallen as a consequence of Covid-19.
- 7.5. **At a time when demand for properties has fallen, and we do not know when this will recover, operators have taken a financial hit – and yet the Scottish Government are going to burden them with more costs and regulation at a time when individuals and the wider industry can least afford it.**

²⁵ *Ibid*, p13.

²⁶ <https://www.assc.co.uk/wp-content/uploads/2021/01/ASSC-licensing-survey.pdf> Appendix 5

²⁷ *Ibid*, p29

The booking problem

- 7.6. The combination of long periods to decide on licence applications (12 months for the first and 6 months for a renewal), the frequency of licence renewal and the fact that at peak periods many guests are booking up to 12 months ahead **creates a perfect storm for booking uncertainty** for both operators and their guests.
- 7.7. To get round this, **operators will need to make potentially affected bookings conditional on obtaining a licence (or a renewal) failing which they will be able to cancel without penalty.** To do otherwise would be both dishonest and also risk potential breach of contract legal claims, all of which would lead to reputational damage for Scottish Tourism. Appendix 2 explains the problem in more detail and demonstrates how the risk of refusal is a very real risk.
- 7.8. **But the commercial reality is that guests will simply not book if their bookings are conditional. And many will simply vote with their feet by booking outwith Scotland.** This was recently raised with the Minister who responded - *“With regard to the handling of bookings, please see paragraph 7.15 of the consultation report. We would expect the licence to be covered by booking terms and conditions in the same way as any other scenario in which the accommodation becomes unexpectedly unavailable, such as through fire damage or flood”* (Kevin Stewart MSP, Minister for Local Government, Housing and Planning, in his letter of 11 Dec 2020 letter to Willie Rennie MSP). There is of course no similarity between the risk of fire/flood which everyone understands and the risk of a discretionary licence not being granted under a totally new, untested, regime. **This shows a complete lack of practical understanding of commercial contracts in the tourism sector.**

Serious concerns over grounds for licence refusal

- 7.9. **Refusal of a licence (or of its renewal) is a very real risk.** There are many reasons for refusal, in particular –
- Breach of planning control (1982 Act amended by Para 5 of Sch 2 of the Licencing Order)
 - Applicant would not be able to “secure compliance” with conditions (1982 Act amended by Para 6(b) of Sch 2 of the Licensing Order). That includes standard conditions the local authority may choose to apply to licences
 - The Council “considers” there will be a resulting over provision of short-term lets (1982 Act amended by Para 6(c) of Sch 2 of the Licensing Order) , This is completely subjective.

It is simply impossible for a business owner, or a prospective guest, to quantify this risk in any way.

Uncertainty over licence fees

- 7.10. **Operators do not know how much they will be charged for a licence or even whether it will be an annual fee or a single fee with the application.** The Scottish Government states 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.”²⁸ Furthermore, the criteria for setting fee levels do not appear to be linked to the cost of administering the licences but, rather, the revenue generated. This contradicts a statement elsewhere that it is to be cost neutral.

Uncertainty and potential impracticality of licence conditions

7.11. The mandatory conditions for premises licences (liquor licences) are set in stone. There is very little interpretation available to the individual licensing boards in councils throughout Scotland. The mandatory conditions proposed for this licensing regime are completely different and offer a very wide discretion and interpretation by each council. That means where one council area may accept certification by the premises, other councils may insist on specific professional certification thereby adding further costs.

Uncertainty over licence validity period

7.12. **The validity period of a licence is uncertain, and could vary substantially from Council to Council and from time to time.** This is provided for by Par 8 of Sch 1 to the 1982 Act as amended by Para 7 of Sch 1 to the Licensing Order. This gives complete flexibility to the Council to decide the period before renewal is required =

- 3 years (the default)
- “such *SHORTER* period as the licensing authority may decide” (NOT disapplied by the Order)
- “such *longer* period as the licensing authority may decide” (introduced by the Order)

Inspection costs

7.13. Councils may also require inspections and there is a suggestion premises could be charged for these inspections. **There is no other regime (liquor licensing, building, planning and similar) where premises are charged for an inspection which is a statutory requirement.** The unknown is terrifying self-catering operators. The prospective costs (as the additional work to be added to on the council’s licensing departments is to be self-funding) is also a serious consideration. For someone who operates self-catering premises fees of £500 to £1,000 initial application fee, plus an annual fee proposed in the consultation, are concerning. The financial burden may be enough to push operators to sell up now or convert short-term lets to long-term lets, thus materially impacting the tourism industry in a negative way.

8. NEGATIVE IMPACT ON LOCAL ECONOMIES AND SCOTTISH TOURISM

Impact on local economies

8.1. If as reasonably anticipated a very significant number of businesses close, this will have a serious negative impact on the many local economies that rely on the tourist industry. Holiday let businesses employ local housekeepers, cleaners, laundry services and local

²⁸ *Ibid*, p16.

tradespeople. Given the competition to maintain standards, holiday let owners often spend money more frequently on additional property maintenance (painting etc) than they would on their own property. Their guests spend money in local food shops, cafes, gift shops, galleries, restaurants, tourist attractions etc – many of which would simply be unviable or unnecessary without visitor spending. This is further considered in our 2017 report (currently being updated) on the Economic Impact of Short-term Letting (Appendix 10).

- 8.2. Respondents to our recent survey pointed out that the impact of the regulations would not be limited to self-catering.** The majority of respondents feel that there is going to be a significant negative impact to businesses in the wider supply chain. This emphasises the value that STL provides to the wider economy from the operators themselves. Respondents were of the view that the impact of the proposed licensing scheme would also entail negative knock-on effects on hospitality (**89%**), local activity providers (**83%**) and local attractions (**85%**). There will also be a negative impact on laundry providers and cleaning services. **66%** feel that it would have a detrimental impact on guests²⁹. This was not assessed as part of the BRIA.

Impact on potential visitors

- 8.3.** Business closures will lead to less choice and availability of holiday properties. This (coupled with the extra cost to those that carry on) will in turn be likely to drive up prices through reduced competition. Lack of certainty over many advance bookings being fulfilled will be off putting to prospective guests. Scottish tourism has to compete with England, where no such licensing regime applies (and North of England holiday lets are often a shorter drive away), and destinations further afield served by cheap flights. And this all at time when for environmental reasons and economic revival reasons the Scottish Government wishes to, quite rightly, encourage staycations.

The wider consequences for the Scottish Government's vision for Scottish tourism

- 8.4. Scotland Outlook 2030: Responsible Tourism for a Sustainable Future -**

***Our picture of success:** We will provide a wide range of immersive, responsible and authentic visitor experiences that reflect our strengths and changing visitor trends. Every visitor expectation will be met, with each visitor enjoying a world-class experience creating ambassadors for Scotland all over the world. Our visitors will stay longer throughout the year, see more of Scotland and spend more during their visit.*

***The Context:** "Consumers are increasingly connected, informed and keen to get the most from their visit with high-quality, memorable experiences. By connecting visitors with outstanding experiences that are authentic to the place they're visiting, we can increase the value per visitor while contributing to thriving places across Scotland.*

***Our Commitment:** "We will nurture Scotland's tourism assets to deliver high quality, memorable experiences that benefit visitors and the places they visit"³⁰.*

- 8.5.** Our **First Minister** notes: "These are challenging times, both for the tourism sector and for Scotland as a whole. It means that an innovative, resilient and welcoming industry is vital, not only for Scotland's future prosperity, but for Scotland's place in the world. Scotland becoming the tourism industry world leader is an ambition I share. Yes, it is bold, but I

²⁹ <https://www.assc.co.uk/wp-content/uploads/2021/01/ASSC-licensing-survey.pdf> Appendix 5

³⁰ <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/03/Scotland-Outlook-2030.pdf> page 27

believe there is no country better equipped to rise to the challenge. I look forward to working together to achieve it.”³¹

- 8.6. **Fergus Ewing MSP, Cabinet Secretary for the Rural Economy and Tourism:** *“Tourism has never been more important, both to Scotland’s economy and to its wellbeing.... The unique reach of tourism across Scotland, and its valuable contribution to inclusive growth, means that it can be a positive force for Scotland’s future – a force that is good for our visitors, our communities, our businesses and for our environment... This strategy puts people and place at its heart. It not only recognises the value of all of those who work in our industry, but also those who live in communities where tourism plays a key role. It acknowledges the importance of the businesses which deliver those authentic and memorable experiences our visitors seek.”³²*
- 8.7. **The ASSC asks: How can we achieve this if some of our small but very authentic places creating those stories and experiences no longer exist?**

9. SPECIFIC CONCERNS WITH THE LICENSING ORDER

Unexpected Inclusion of B&Bs

- 9.1. Andrew Mott of the Scottish Government’s Short-Term Let Delivery Group was initially unable to confirm to the ASSC whether B&Bs were included in the accommodation types to fall within the scope of the regulations.³³ Some two days later, he came back to say the following:

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

9.1.2. *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.*

9.1.3. *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.”*

- 9.2. B&Bs will therefore be captured by the regulation – is this really the policy intention of the Scottish Government? Furthermore, 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.

³¹ <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/03/Scotland-Outlook-2030.pdf> page 4

³² <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/03/Scotland-Outlook-2030.pdf> page 5

³³ ASSC email communication with Short-Term Let Delivery Group, December 2020.

Repairing Standard

- 9.3. Mandatory Conditions for the licensing scheme will include meeting Repairing Standard Legislation and EPC legislation. **However, 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 was amended to cover short-term lets, the EPC legislation has not been amended to cover B&Bs.
- 9.4. Simon Roberts, Scottish Government Better Homes Division, maintains that **it was never Scottish Government's intention that self-catering should be part of Rep Standards, as there is not a Tenancy.**³⁴ Self-catering or short-term lets is a Licence to Occupy, not a tenancy. The SSI was therefore poorly drafted to assume a Tenancy.
- 9.5. This is **yet another** unintended consequence of the regulations, with operators potentially being liable for approximately £5,000 in order to meet the minimum standards of EPCs. **This was not identified in the BRIA.**

Other issues

- 9.6 In addition to the issues above, the ASSC has a significant number of **real concerns with specific provisions of the Licensing Order.** They are too numerous and detailed to usefully summarise and we refer the Committee to the detailed note forming Appendix 9. You will see that many of these issues share a common perspective, and one which in our view has pervaded the whole process at many levels, namely a serious lack of understanding of the practical and commercial realities of the holiday letting tourist industry.

10. COMMENTS ON THE CONTROL AREA REGULATIONS

- 10.1. **The ASSC understands why in certain circumstance Control Areas could be a useful tool in discouraging second home ownership in geographically confined areas where this is demonstrably reducing the availability of affordable housing stock for local residents (though we note that there are other ways this can be addressed including using existing powers).**
- 10.2. However, we have a number of issues and suggestions (references are to SG Consultation document)-
- 10.2.1. It needs to be quite clear that as is normally the case a requirement for planning permission cannot apply retrospectively** to properties currently being used for short term lets.
- 10.2.2. The creation of Control Areas should be initiated in response to properly representative requests from local communities,** or at minimum they should be properly consulted by Council considering creating Control Areas.
- 10.2.3. Additional burdens will be placed on local authority planning teams to manage the requirements of a new scheme at a time when they can least afford it. A proper impact assessment of the costs for each local authority is required]**

³⁴ ASSC email correspondence with Scottish Government Better Homes Division, December 2020.

10.2.4. The Scottish Government are passing responsibility to local authorities on this by ‘permitting’ - paragraph 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 (Appendix 4.)

10.2.5. What compensation will Councils pay if they exercise these powers and, effectively, close a business down?

10.2.6. How can there be additional capacity for events (like the Edinburgh Festival) if planning control area rules outlaw the operation of STLs? 97, final bullet.

11. ASSC ALTERNATIVE PROPOSALS MADE TO SCOTTISH GOVERNMENT

11.1. The ASSC is not averse to regulations. On the contrary, the ASSC has developed a comprehensive and robust set of policy recommendations, as set out in our Forward Together paper (Appendix 1)³⁵. This should be read alongside the ASSC Code of Conduct that all members abide by (Appendix 8). This provides a proportionate, evidence-based and future-proofed solution for national and local government in Scotland in terms of short-term regulation. This paper seeks to support the Scottish Government’s commitment to regulate the short-term rental sector in Scotland. Overall, it aims to -

- Ensure the responsible growth and sustainability of the self-catering industry
- Strike an appropriate balance for the tourist economy, visitors and local residents
- Provide a proportionate, evidence-based and future proofed solution for national and local government
- Provide consumer protection for visitors using short-term lets in Scotland

11.2. The ASSC recommends that in place of a disproportionate and blanket licensing regime in Scotland, the ASSC propose a more targeted and bespoke response as set out below:

- The introduction of a **registration scheme, with mandatory health and safety criteria**, rather than licensing, as the most proportionate and achievable for local authorities in Scotland.
- This approach recognises the Scottish Government’s intention to regulate short-term lets but achieves the **same policy objectives in a more proportionate and cost-effective manner**.
- Registration for letting agents and private landlords is an **established and evidence-based system that encourages best practice and offers a legal framework for enforcement**.
- The Isle of Man’s registration system for short-term lets also provides a useful benchmark and case study for consideration.

³⁵ https://www.assc.co.uk/wp-content/uploads/2021/01/2020_ForwardTogether.pdf Appendix 1

- **A registration scheme can also provide the data required by local authorities who may wish to consider introducing a short-term let control zone within their locality³⁶.**

11.3. **Why has registration been so easily 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? Throughout this process **the ASSC has continually sought to work constructively with policymakers** to make the regulations work for communities and the tourism industry, recognising the Scottish Government’s strength of intent to regulate, but also to ensure that anything taken forward is not disproportionate and which would threaten the fragile recovery of Scottish tourism in these challenging times.

11.4 **Recommendations to Mitigate Unintended Consequences of proposed legislation, should the Committee accept the SSIs.** 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 -

11.4.1 Insertion of Grandfather Rights: We believe that **grandfather rights should be granted to operators and property managers who have been operating for 3 years and over.** There is precedent for this in alcohol licensing. In the transitional process for the Licensing (Scotland) Act 2005, premises had to have a current licence. That was because there was a transition from one licensing regime (The Licensing (Scotland) Act 1976) to the 2005 Act. The current proposal is to introduce a new licensing system but a grandfather right approach could still be used and would reduce the uncertainty for some operators.

11.4.2 During the transition period from the 1976 Act to the 2005 Act, there was a period for all premises licence holders to lodge new applications by a specific deadline. Once lodged, the licence holder benefited from grandfather rights re the application. There was still scope for objections and proper consideration of the licence but it meant the operator could trade in the knowledge over provision would not apply. It also meant planning, building control and environmental services would not have an impact on the application. This in no way fettered Councils from taking action against operators who were not meeting the standards and requirements of planning, building control or environmental services – the point here was the method of ensuring compliance with the regulations of each of these three departments was through the actions of the departments themselves and not through the licensing process.

11.4.3 Change of use planning permission in Short-Term Let Control Zones should not be retrospective and existing operators should automatically be covered by established use rights.

11.4.4 Grandfather rights would give the following advantages to existing professional self-catering and short-term let providers:

- Continued certainty to pre-existing professional businesses

³⁶ <https://www.assc.co.uk/wp-content/uploads/2020/09/Licensing-or-Registration.pdf> Appendix 6

- Would not result in an increase in cost base over that already in place
- Target the ‘significant minority of bad operators’ without negatively impacting the innocent majority of professional operators.
- Opportunity for local authorities to revoke grandfather rights if evidence of inappropriate activity is forthcoming.

11.4.4 The ASSC’s proposal for grandfather rights is **supported by Scottish Land & Estates**:
“We remain of the view that this is not the time to introduce these measures. However, given the Scottish Government’s position is to progress with licencing, we wholeheartedly support ASSC’s calls to grant Grandfather Rights to operators and property managers who have been operating for 3 years and over. Many of our members can already demonstrate that they run professional, safe businesses so all the extra cost to the owner and the local authority in licencing would serve no real benefit. Such an approach would allow for a sensible level of discretion on the part of the local authority without putting visitors at risk.”

11.4.5 Creation of a Working Group: The ASSC also believes that the regulations would benefit from the **creation of Working Group to steer the guidance for local authorities**. This could be chaired by a prominent national tourism body, such as VisitScotland, and could include relevant industry, regulatory and legal stakeholders such as:

- The ASSC
- The Regulatory Review Group
- Solace
- Gilson Gray LLP

12. THE WAY FORWARD

12.1. The ASSC has fully and proactively engaged with the Scottish Government throughout this consultation process, as we have done throughout the regulatory discussions, devising proportionate, evidence-based and future-proofed solutions for national and local government in Scotland in terms of short-term regulation – for example, see our *Forward Together* paper.³⁷ Our concern lies not with regulation per se – we want to ensure a balanced and proportionate approach for business, tourism and local communities and get a regulatory framework in place that works for all.

12.2. 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, the lack of consideration to the alternatives to the proposed regulation, as well as the failure to follow best practice.

12.3. 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. Moreover, the SSIs will result in unintended consequences for Scottish tourism, as evidenced by the points raised on

³⁷ ASSC, *Forward Together* (2020). Url: https://www.assc.co.uk/wp-content/uploads/2020/08/2020ForwardTogether_Covid.pdf Appendix 1

the repairing standard and the fact that the regulations will capture B&Bs. This could have been avoided through proper consultation with industry.

- 12.4. 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 and burden local authorities during a period of immense financial and resourcing challenges.
- 12.5. The ASSC affirms that the proposed SSIs are drafted to deal with a housing problem, however the greatest resultant impact will be on Scotland's vital tourism industry. In order to meet the policy objectives, the SSIs should be redrafted with this in mind.