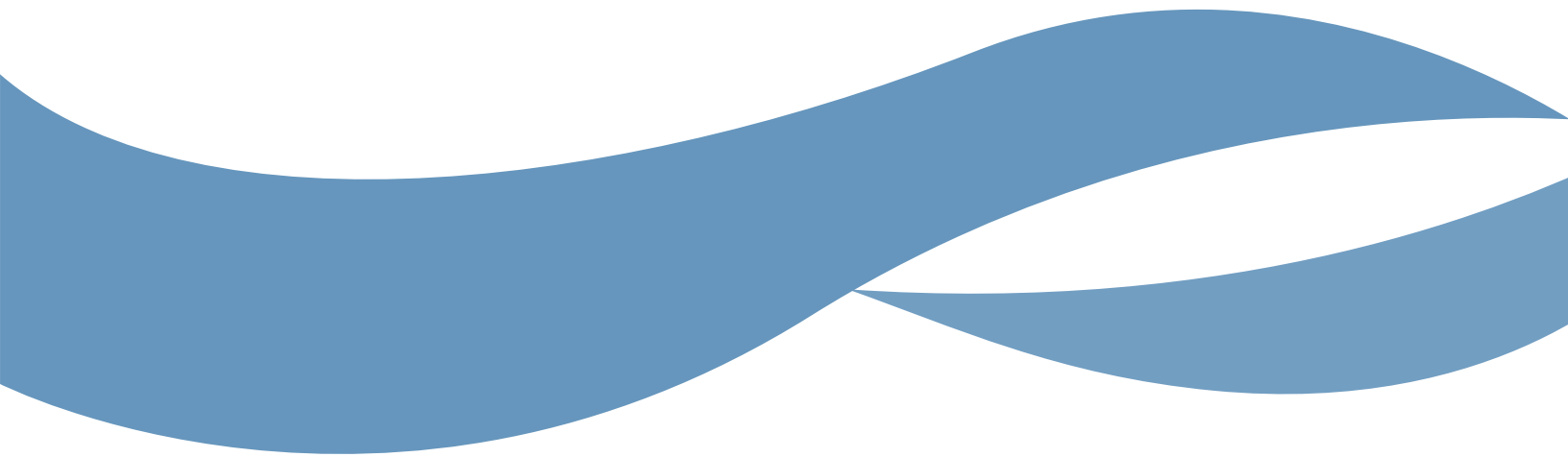


Consultation response to the proposed short term lets licensing scheme and planning control areas in Scotland

12 August 2021

About Scottish Land & Estates

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



Introduction

As an organisation representing many rural businesses with interests in a variety of short-term lets we would like to note our regret that this consultation continues to be progressed at a time when the industry is reeling from the devastating impacts of Covid-19. The Scottish hospitality industry in particular has been severely impacted due to the lack of visitors during the preceding 18 months. At a time when those contributing to the vital tourism industry in Scotland should be receiving further sustained support from the Scottish Government, the sector finds itself having the additional burden of attempting to unravel the possible implications of these far-reaching proposals, including the closure of reputable and long-established businesses. The proposed licensing scheme is contrary to Scottish Government public messaging that Scotland offers and provides a welcoming hospitality industry, when these measures will potentially, according to a recent survey of Association of Scottish Self Caterers (ASSC) members, see the closure of up to 49% of holiday self-catering accommodation units.

SLE agrees that the safety of people using short-term lets is paramount and we also understand there is a need to ensure that homes in which people can live remain available in so-called 'hot-spot' areas. In our view all that is needed to achieve this at this time is a simple registration scheme similar to that proposed by the Association of Scottish Self Caterers (ASSC) in 2017 to allow proper enforcement of existing health and safety standards and appropriate planning policy which prioritises housing development for residential use.

In our view, it is clear these current proposals will leave a direct and long-term negative impact of cost and bureaucracy on the short-term lets sector at a time when it is already struggling to cope with the impact of Covid-19. Local authorities, who would be expected to inspect the short-term lets, have similarly raised their concerns regarding the negative impact to their operations in terms of administration and charges, highlighting that the Scottish Government's estimations for the cost of an inspection is considerably distorted and does not reflect the reality of the task.

These proposals will also have indirect negative effects on businesses such as pubs, restaurants, local shops and their supply chains as well as tourist attractions at a time when they desperately need to see growth in their sector, not a contraction. According to the Scottish Government's own figures within the 'Rural Scotland Key Facts' (RSKF) report published in February 2021, 14 % of Small – Medium Enterprises (SMEs) in rural Scotland are directly linked to the accommodation and food services businesses. The probability of nearly half of holiday self-catering accommodation units closing their doors as a result of these proposals would have a significant social, community and financial impact across rural areas in particular.

Additionally, the RSKF report numerically and editorially highlights that a "lower percentage of people in rural Scotland have experienced neighbourhood problems compared to the rest of Scotland". Noisy neighbours and regular loud parties are a problem for only 3% of rural populations, compared to 11% in urban areas.

These figures are important, as a key driver put forward for the proposed licensing is to tackle the problems of noise and ‘party houses’ which, as the Scottish Government’s own statistics demonstrate, are almost four times more likely to occur in urban locations, rather than rural areas. The existing short-term let proposals for rural areas across Scotland are therefore largely unjustified on that basis, but still appear to reflect the ‘one size fits all’ approach to licensing to address challenges that are largely confirmed to urban setting. It is further evident from the Scottish Government’s short-term lets documentation and response from their representatives within the working group that none of the data within the RSKF report has been considered as part of this process.

At the commencement of this process, the Scottish Government stated that a ‘significant minority’ wished to see the currently proposed licensing outcome. This is however very different to what the majority of those affected by the proposals wish to see as an outcome, and we believe that it is further evidence that taking a Scotland-wide licencing scheme is fundamentally flawed. The consultation process is also potentially in breach of Scottish Government’s own best practice guidelines in terms of transparency, accountability, proportionality and consistency. It is therefore noted, with great concern, that these proposals will be laid before Parliament as a Scottish Statutory Instruction which we do not consider offers an appropriate level of scrutiny for such a fundamental change and at a time of crisis for the sector that will be most heavily impacted.

The current proposals have been designed as ‘one size fits all’ licensing which does not accurately reflect the short-term lets sector across Scotland. We are concerned that these proposals have been heavily shaped with mainly urban (but also limited rural) ‘hot-spots’ in mind, with little consideration of the majority of establishments that operate outwith these areas. We note the five areas selected for study were either city centre or very popular rural tourist destinations. SLE consider the Business and Regulatory Impact Assessment (BRIA) commissioned by the Scottish Government has failed in its duty to take a Scotland-wide view of the industry. This is clearly demonstrated by the fact that the BRIA did not consider or assess as part of its methodology any areas north of Fort William and Isle of Skye, a region which accounts for almost one third of Scotland’s land mass, and relies on tourism to support a fragile rural economy. We predict and quite expect this will have given a distorted picture in terms of the impact and problems that need to be addressed. For a balanced approach across Scotland we are of the view that research looking at the positive impact of short-term lets in areas requiring investment and diversification should have been considered or carried out in drawing up this proposal. The BRIA has not done this, but confirms its methodology, reported findings and any recommendations are therefore deeply flawed.

On page 45 of the BRIA, Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison, MSP comments that “I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.”

We do not support any part of that statement, and cannot see any basis for the Cabinet Secretary's position. Unfortunately this is not a one off occurrence and SLE and other business organisations have raised concerns about the validity of other BRIAs. Concerns which following implementation have been found to have been valid. BRIAs should provide an accurate picture of the impact rather than falsely downplaying the impact on businesses. We urge the Scottish Parliament to address this issue as a matter of urgency.

We are not aware that any of our members, those industry bodies and representatives who were part of the working group, accommodation businesses, or other tourism bodies in Scotland have supported the BRIA. If there had been a degree of support the ASSC, the Scottish B&B Association, Airbnb and UK Short-Term Accommodation Association would not have resigned from the Working Group.

We consider the BRIA has completely failed to portray any semblance of an accurate representation of the short term lets sector across Scotland and is consequently not fit for purpose on the summary basis that.

- Large elements of the short-term lets sector have been totally omitted from its considerations in terms of the diversity of business operations and their geographical spread
- The Assessment and recommendations are heavily biased on urban hot spot areas (Edinburgh in particular), which therefore entirely fails to reflect the diverse nature of all short-term let businesses potentially affected, and their Scotland-wide geographical spread
- Point B1.7 of the BRIA notes that it had studied "a range of approaches adopted (to short term lets) in cities in countries around the world". We have questioned how much research was undertaken across rural areas similar to those in Scotland, which according to Scottish Government 2021 statistics accounts for a total of 98% of Scotland's land mass. The lack of any response to this question is perceived that the answer is probably none.
- There is a proposal within the BRIA that monitoring the subsequent impact of the licensing will take place. There is however absolutely no base line data against which such monitoring can be measured, and therefore without a comparator no impact assess figures can initially be assessed.
- It is evident the content of the Scottish Government's 'Rural Scotland Key Facts' (RSKF) report published in February 2021 has not been considered as part of the BRIA. We consider such an omission to be greatly concerning. The RSKF report contains important and directly pertinent information which calls into question much of the motivation and reasoning for the licencing of short term lets across Scotland, and rural areas in particular.

Chapter 4. Definition

We do not agree with the definitions as set out in these proposals. In our response to the previous consultation, we stressed the importance of ensuring that short-term lets in remote rural areas should not be treated in the same way as short-term lets in city centres. The issues these proposals are intended to address do not exist in much of the Scotland, particularly in rural areas where short-term lets are a valued and essential part of local communities and economies. To apply this definition country-wide does not meet with the Scottish Government's commitment to rural proof policies and regulations nor does it take into consideration the impact on different sectors or groups as should happen in a fit for purpose BRIA.

By including 'accommodation that comprises part of a house or flat' we are concerned this may interfere with the "personal enjoyment" of one's property, infringing on the individual's Property Rights under European Human Rights Law. People have a right under UN law – Protocol 1, Article 1 which protects a person's right to enjoy their property peacefully. This includes a defence against unreasonable restrictions being placed on use of property. While government can interfere in this way with property rights it must be proportionate and clearly justified in the public interest and there is a legal test to be met. For this reason, and due to lack of evidence of problems within this property type, we are of the view that accommodation which forms part of someone's permanent (or main residence) home should not be included in this definition.

As raised in our earlier submission, 'lets for work' is not holiday accommodation and not the type of accommodation associated with the problems the regulations intend to address, therefore it should be specified as an exemption, in the same way that sporting or art events have highlighted. We have members who have advised that they let out accommodation to their contracted night labour 3-4 weeks a year, and occasionally for a similar length of term for additional contracted workers at harvest time. This would typically be through a temporary employment contract which includes the provision of accommodation for the period of employment. We are advised the properties are in good condition and meets the required health and safety standards, but licensing and potential planning fees could be prohibitively expensive, making renting for such a short period unviable. This would mean that it would be very difficult to attract temporary employees. Our position remains that we do not consider there has been sufficient evidence brought forward to justify the inclusion of 'let for work' in this definition.

The document makes reference to 'hosts', a term typically used by one accommodation platform – Airbnb – or amateur accommodation providers. This term does not accurately reflect the professionalism of our members or their self catering businesses. Further clarification of the preferred terminology will be best advised upon by a professional industry organization such as ASSC.

A simple registration scheme similar to that as proposed by ASSC in 2017 would be more appropriate at this time to help local authorities understand the scale of short-term lets in their area, allowing them to ensure existing health and safety standards are met.

The exclusion of bothies from the Licencing Order as previously requested is noted. We were subsequently asked to comment upon the revised definition of the term 'bothy'. This has been provided with the addition of the word 'mains' in relation to water supply. The revised definition for a bothy is now proposed to read:

“bothy” means a building of no more than two storeys which—
(a) does not have any form of— (i) mains electricity, (ii) piped fuel supply, and (iii) piped mains water supply,
(b) is 100 metres or more from the nearest public road, and
(c) is 100 metres or more from the nearest inhabited house,

Chapter 5. Control Area Regulations

We do not support the necessity for retrospective planning permission, and believe that this should be limited to a discretionary power for local authorities. In areas where there is currently no acute need for planning controls to be implemented but where the planning authority anticipates growing demand, they should be able to choose to apply a planning control area which applies only to future short-term lets. The licensing scheme will ensure planning authorities have a record of existing lets while not imposing retrospective planning permission on these businesses which will stretch planning authority resources without adding any real value. Where the local authority already has serious concerns about the number of short-term lets in an area it should then be able to apply retrospective planning permission throughout.

'Secondary letting' is not a Use Class Order and it does not therefore require planning permission for change of use.

We consider that a 10-year revocation threat is a disproportionate approach. If a business has received planning permission and is established, it is unfair and disproportionate for it to live under threat of revocation and uncertainty of planning renewal after 10 years. SLE members have already advised that such an approach would have added unnecessary risk and prevented them from investing tens of thousands of pounds bringing their properties into the short-term lets sector. This uncertainty in perpetuity will effectively disincentivise investment in the sector to the detriment of remote rural communities throughout Scotland. Once planning permission is granted, it should remain in place.

In our view, further detail is required of how consultations will be undertaken in relation to the establishment of short-term let control areas. They must be timely, transparent and meaningful.

Chapter 6. Licensing Order

These proposals are complex and not simple to comprehend. They will require a disproportionate amount of work and cost for people who already comply with the vast majority of the proposed requirements. SLE members who operate short-term lets will already have invested significantly in their properties to ensure they offer a genuine and warm welcome to visitors whilst also meeting health & safety standards and required building legislation. The additional requirements to comply with the new proposed licensing will potentially impact heavily upon their already strained financial resources, none of which can reasonably be expected to be recouped from their guests. The proposals deliver little genuine purpose, particularly for those operators in rural locations and place an unreasonable additional pressure at a time when their businesses are attempting to recover from the effects of Covid.

Across multiple properties the cost of a license fee could potentially reach thousands, if not tens of thousands of pounds. As part of the consultation process, local authorities have already confirmed the Scottish Government's estimations for licensing (approximately £300 - £500) have been severely underestimated, and in some cases possibly totally in excess of £2,000 for a single three bedroom property. This is totally inappropriate or disproportionate, in particular considering that for SLE members with an existing property this will be a cost associated with unnecessary duplication of work, factors that have not been considered or reported upon as part of the BRIA.

We are supportive of new short-term let operators having to reach the same standards of safety for their guests to ensure a level playing field. However, a licensing scheme is a disproportionate and heavy-handed approach. It remains a blunt tool to resolve a perceived and localised problem of amateur operators in Edinburgh, rather than being a solution appropriate for all Scotland. Local authorities and Police Scotland have confirmed they already have the powers to address problems of anti-social and disruptive behaviour in short-term lets without additional licencing or regulation.

Licensing will significantly burden operators who are under severe financial pressure due to the impact of Covid-19. This impact exposes potential shortcomings of the proposed new licensing: (a) the impact on resource stretched local authorities having to deal with an influx of tens of thousands of licensing application: and (b) the impact any disproportionate licensing scheme could have on the recovery of Scottish tourism.

The plans have been criticised by one of the country's leading licensing law experts, [Stephen McGowan](#), who claimed that it would lead to a flood of applications that could overwhelm local authorities. The [Law Society of Scotland](#) have also warned that increased regulation would place additional burdens on local authority teams to manage the requirements of a new scheme.

Additionally, SLE shares much membership with the ASSC. A recently conducted survey of their members on the consultation elicited nearly 1,200 responses. Some of the main findings were as follows:

- **95% believe that the regulations should be delayed** whilst the sector recovers from Covid-19 and the same number believe the **regulations require greater parliamentary scrutiny**.
- **83% oppose the proposed licensing scheme** for short-term lets, while **68% are not supportive of short-term let control zones**.
- **Around a third (31%) of their total businesses would be rendered unviable** if the current proposals for a licensing were introduced, while **two-thirds (64%) felt it would have a negative impact**.
- **Nearly half (49%) would leave the self-catering sector** if the proposed licensing scheme was introduced and of those 33% would leave the property empty or use it for family & friends.
- **Respondents maintained that the impact of the regulations would not be limited to self-catering**. Respondents were of the view that the impact of the proposed licensing scheme would also entail negative knock-on effects for supply chains, such as hospitality (89%), local activity providers (83%) and local attractions (85%). 66% feel that it would have a detrimental impact on guests.
- **The short-term let consultation takes place at a precarious time for self-caterers in Scotland**. 94% of respondents have stated an estimated negative financial impact of Covid-19 to their business, while 63% are feeling pessimistic about their business right now.

There is a clear view within the sector that despite some minor revisions and clarifications, the current proposals are not fit for purpose, do not provide a proportionate and balanced regulatory framework, and are a real threat to the livelihoods of the thousands of individuals and businesses.

These are professional operators who are a longstanding presence in their communities – but particularly in rural and remote areas – providing an economic and social benefit for the local area and other associated businesses.

Given the devastating impact that Covid-19 has had on tourism, we and our members remain perplexed as to why this consultation and the regulations are proceeding at such a rapid pace, especially as similar legislation (for example, the tourist tax) has been postponed due to the pandemic.

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