

**Association of Scotland’s Self-Caterers Briefing on the Scottish Government’s Licensing Order**

**Introduction**

Self-catering is hugely important to Scottish tourism in terms of jobs, revenue, and world-class experiences offered to guests. To be such an essential part of Scotland’s tourism mix is even more remarkable for our sector, which generates **£867m per year**, when most self-caterers operate small or micro businesses. Our professional self-caterers are diligent and considerate business owners who are too often unfairly maligned. They do not, for example, ‘hollow out communities’, as some have claimed, but rather are part of local communities across Scotland and have been for many, many years. However, the impressive contribution made by the self-catering sector is being put at risk by the Scottish Government’s plans for short-term let licensing. **The ASSC agrees with the former Cabinet Secretary for Tourism Fergus Ewing MSP who labelled the plans *“arbitrary, irrational and draconian”***.[[1]](#footnote-1)

**The Scottish Government’s licensing regulations were unfit for purpose when withdrawn in February 2021 and remain so in January 2022 as industry and expert insight has been dismissed. We believe they should be opposed for the following reasons**:

1. **Self-catering boosts local economies across Scotland – but onerous licensing puts this at stake**
* The 17,794 self-catering units on NDR generate **2.4 million** visitor nights per year; **£867m** total visitor spend; and support **23,979 FTE jobs**.[[2]](#footnote-2) At a local level, self-catering is worth **£89m to Argyll & Bute / Dunbartonshire, £3m to Renfrewshire** and **£32m to Ayrshire.** Such self-catering properties are **legitimate, bona fide businesses** whose owners depend on the money generated for their livelihood.
* The industry still has **no clarity regarding the fees associated with a licence** which is causing real anxiety. SOLAR have suggested that if full cost recovery applies, the fees would be more like **£1,500-£2,000**, well above the average indicative fee in the BRIA, which would be crippling to small businesses.[[3]](#footnote-3)
* With the prospect of hefty fees, no wonder **55% of respondents to an ASSC survey said they would leave the sector if licensing was introduced.**[[4]](#footnote-4)Any fee that is added to the existing cost of doing business will be untenable for small businesses, especially in light of the global pandemic, with huge increases in energy prices, services and consumables.
1. **Self-caterers are already regulated, while other forms of accommodation are not**
* Professional operators are already regulated sothe mandatory conditions are essentially duplication and therefore unnecessary. **If the rationale behind introducing licensing is compliance with basic health and safety, why are hotels, serviced accommodation, etc exempt?** This exempt accommodation is not licenced on the basis on health and safety but on the sale of alcohol. Subsequently, larger businesses are facing less regulatory obligations, resulting in discrimination against small businesses.
* At this crucial stage of Covid recovery, we must work collaboratively to protect Scotland’s £867m self-catering industry and not burden small businesses who do so much to promote and enhance the country’s unique tourism offering and boost local economies.
1. **Short-term let licensing will not solve housing challenges**
* **Licensing regulation deals with the safety of an activity, not housing**. Planning Control Area legislation is solely related to the use of a property. They are two entirely separate pieces of legislation dealing with totally different issues. Neither piece of legislation will in any way ameliorate the issue of second homes.
* There is **no empirical data which demonstrates a link between short-term lets and the housing market**; moreover, we know that there are five times as many empty homes in Scotland than self-catering units.At no point will this legislation tackle homelessness or depopulation as alleged by some MSPs.[[5]](#footnote-5)
* Any regulations pursued **need to be underpinned by robust empirical data**. Unfortunately, there has been a tendency to focus on so-called ‘scraped data’ from Airbnb which can lead to misleading conclusions about the nature of the short-term letting landscape in Scotland.
1. **Licensing won’t just hit tourism but will burden local councils at a time they can least afford it**
* The extra cost burden to local government who will be responsible for administering the scheme is unreasonable. This includes human resources, digital infrastructure, committee approval, inspection, enforcement, appeals. The Scottish Government have confirmed that **councils will receive no additional funding to assist with start-up costs**. This comes at a time of immense strain to local authority budgets, who are under extreme financial/capacity pressures as a result of austerity compounded by the pandemic.
* New licensing schemes appear to be the last thing that local authorities need in terms of financial resource or manpower. A one size fits all approach is not supported by local authorities; they should not be additionally burdened at this time, particularly as **many do not want the mandatory powers**.
1. **But don’t just take our word for it – here are concerns raised by stakeholders in West Scotland and beyond:**
* **Argyll and Bute Council**: *“…The start-up costs for local authorities in establishing all the components of the licensing regime including additional resource, costs associated with implementing new or developing existing ICT systems and general licensing and planning processes/policies are considerable. It will be difficult to recover these from licensing fees where preparatory works and applications received are may be made over 2 financial years. Consideration should be given to financing local authorities to offset start-up costs…The scheme will introduce new costs to businesses and the impact to the local economy as not clear from the BRIA. Covid will also have an impact as businesses seek to recover in difficult economic circumstances. This requires further assessment…”*[[6]](#footnote-6)
* **Renfrewshire Council**: *“…we note the proposed requirement that local authorities must be satisfied that the Mandatory Conditions will be able to be met by the licence holder prior to granting a licence. We are not persuaded that this requirement is necessary and note that this is not a specific requirement in other similar licensing regimes such as HMO licensing…We are very concerned that, particularly when taken together with the 9 month determination period referred to above which will apply after the initial transition period, this additional requirement regarding Mandatory Conditions will require considerable resources to be allocated to short term lets licensing…We anticipate that, based on the proposed checks involved, fees for short term lets may require to be comparable to HMO licence fees to ensure that the cost of operating the short term lets licensing regime can be recovered, as with other licensing regimes under the 1982 Act.”*[[7]](#footnote-7)
* **East Renfrewshire Council**: *“As a smaller mainland local authority with very low levels of short-term lets we are still concerned whether the volume of resources that will be required to set up and operate a full licensing scheme is proportionate…we are still concerned that the differences in size and geography, and therefore operating costs, are likely to result in a disparity in the fee levels being set across the country and how this may impact STL levels.”*[[8]](#footnote-8)
* **West Dunbartonshire Council**: *“For smaller authorities with fewer short term let premises it may be difficult to fully resource an effective and efficient service without the fees being very high and thereby creating a wide and varying fee structure across the country. There is a concern about the level of Fees that a smaller Local Authority may charge where they are not dealing with a large volume of applications and have limited resources to deal with such applications. The fee structure may not be of a sufficient level to meet resource concerns and the adverse comparisons by the public as to differing fee structures around the country as can happen in Civic Government Licensing.”*[[9]](#footnote-9)
* **Our opposition to STL licensing is shared by the** **Federation of Small Businesses (FSB)**, **Scottish Land & Estates**, **Scottish Agritourism**, **NFU Scotland**, **Scottish B&B Association**, **and** **Scotland’s Best B&Bs.[[10]](#footnote-10)**
* In addition, many of your constituents will have responded to the Scottish Parliament’s Local Government, Housing and Planning Committee survey on the STL regulations in which **respondents overwhelmingly opposed the Scottish Government’s plans**.
1. **But it doesn’t have to be this way as a viable, cost-effective alternative exists**.
* Under our exemption proposal, **Article 3(1) of the Licensing Order could be amended to provide that an activity is exempt from the licence requirement if it is in respect of “registered accommodation” *and* the “registration conditions"** (existing mandatory licensing conditions) are being complied with. This would provide a robust and legally effective regulatory regime – if an owner fails to register or having registered fails to comply with the mandatory conditions, they would no longer be exempt from the licensing requirement and would therefore be in breach of the Licensing Order with resulting legal penalties.
* A register could be introduced via the **Development of Tourism Act 1969**. Moreover, contrary to the claims of the Scottish Government, **a fit and proper person test can be included in our proposals**, just as it is with the Landlord’s Register. If it can work for the long-term market, it can work for short-term lets.
* This proposal has the support of Visit Scotland and a number of tourism stakeholders, and also has legal support from **Hazel Moffat, Head of the Public Law & Regulatory Division of Burness Paull**. Moffat was appointed to the Scottish Parliament’s Non-Government Bills Drafting Panel and has stated the following: *“The exemption proposals…introduces a simple alternative of registration which would help address some of the underlying legal concerns with the current licensing regime being entirely disproportionate and unnecessary when looking at the specific policy objectives as well as costly and unworkable from an operational perspective.”*

**It’s time to back small business and protect livelihoods**

**This one-size fits all, onerous and disproportionate licensing system will damage Scottish tourism and discriminate against small and micro businesses like self-catering and B&Bs, especially in rural areas, and comes at the worst possible time for industry when Covid-19 remains an ongoing issue, and when the sector is still in recovery mode. We therefore urge you to oppose the Licensing Order and back small businesses in Scotland, protecting jobs and livelihoods – and then let’s work together for a regulatory framework that benefits all affected stakeholders.**

1. <https://www.assc.co.uk/short-term-let-licensing-approved-by-committee/> [↑](#footnote-ref-1)
2. <https://www.assc.co.uk/wp-content/uploads/2021/08/Economic-Impact-Study-%E2%80%93Scotland-Report.pdf> [↑](#footnote-ref-2)
3. This was estimated by the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) during the stakeholder discussions at the Short-Term Let Working Group. [↑](#footnote-ref-3)
4. <https://www.assc.co.uk/measuring-the-unintended-consequences-of-short-term-let-licensing/> [↑](#footnote-ref-4)
5. For further information on housing issues, please consult: <https://www.assc.co.uk/policy/housing-and-short-term-lets-in-scotland-the-facts/> [↑](#footnote-ref-5)
6. <https://consult.gov.scot/housing-and-social-justice/short-term-lets-draft-licensing-order-and-bria/consultation/view_respondent?_b_index=600&uuId=246870012> [↑](#footnote-ref-6)
7. <https://consult.gov.scot/housing-and-social-justice/short-term-lets-draft-licensing-order-and-bria/consultation/view_respondent?_b_index=720&uuId=9683015> [↑](#footnote-ref-7)
8. <https://consult.gov.scot/housing-and-social-justice/short-term-lets-draft-licensing-order-and-bria/consultation/view_respondent?_b_index=660&uuId=673652465> [↑](#footnote-ref-8)
9. <https://consult.gov.scot/housing-services-policy-unit/short-term-lets-licensing-scheme/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&_q__text=West+Dunbartonshire+Council&uuId=124670121> [↑](#footnote-ref-9)
10. See here for more information: <https://www.assc.co.uk/2021-short-term-let-consultation-responses/> [↑](#footnote-ref-10)