



13th January 2022

Dear First Minister,

Short-Term Let Licensing: Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022: Legal Competency and Alignment with the European Union

Ongoing legal advice regarding The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 has highlighted significant concerns regarding the draft regulations. The Association of Scotland's Self Caterers (ASSC) are of the view that the proposed licensing regime is incompatible with the legal requirements of the Provision of Services Regulations 2009, as amended (the "2009 Regulations") and the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 (the "2018 Regulations") which preserved the 2009 Regulations, notwithstanding the UK's withdrawal from the EU. In addition, there is a potential human rights violation (Protocol 1, Article 1 and Article 17 of the Charter on Fundamental Rights – Right to Property).

Our members are operators of legitimate businesses that contribute £867m to the Scottish economy. They are enquiring of the ASSC whether there is a possibility of a legal challenge to the legislation. The ASSC therefore wants to ensure that the potential challenge is brought to the attention of, and properly considered by, the Scottish Government before the proposed SSI goes to plenary.

The European Commission (EC) is currently consulting on STL Regulations¹: *"This initiative aims to develop responsible, fair and trusted growth in short-term rentals, as part of a well-balanced tourist ecosystem. It also aims to ensure a level playing field for all accommodation service providers and to respond to the many requests from interested parties for EU-wide action in this area. This will involve offering balanced solutions for cities, peer and professional short-term rental providers and platforms, while benefiting in particular small and medium-sized firms"*.

The EU seeks to avoid regulatory fragmentation. Registration appears to be the best practice approach, illustrated by the regulatory framework developed in Portugal. Given the current Scottish Government's policy to continue alignment with EU policy, should the EC favour registration, Scotland will be out of step in terms of STL regulations going forward. Northern Ireland and the Isle of Man already have registration schemes in place. The UK and Welsh Governments are currently consulting on registration schemes, recognising that licensing is disproportionate. In order to avoid regulatory conflict, it may be prudent for the Scottish Government to reconsider their approach.

The Provision of Services Regulations protect UK businesses and consumer rights by maintaining obligations on UK competent authorities to ensure that their regulation of service activity is proportionate and justified in the public interest. Justifications for imposing policy and regulatory restrictions on short-term accommodation rental services must be supported by clear evidence that the general interest needs to be protected. Further, they must evidence the link between short-term accommodation rental services and the protection of the general interest. The Regulations require that an authorisation (licensing) scheme can only be implemented under certain circumstances: to treat issues

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13108-Tourist-services-short-term-rental-initiative_en

locally, if these issues are justified by an overriding reason of general interest. In these circumstances where a general interest has been evidenced, an authorisation (licensing) scheme must be simple, fast, easy to complete; and the criteria should be clear, objective and transparent. The Order, as drafted does not meet these requirements. Competent authorities, in this case the Scottish Government, are obliged not to impose disproportionate or unnecessary requirements on businesses that seek to provide services, unless justified. The requirements of the SSI as drafted are disproportionate, unnecessary and are not justified. To date, the Scottish Government has not provided an, evidence-based justification for its proposed SSI and continued approach.

The consequences of passing legislation which is disproportionate and will have a material and damaging impact on the short-term let sector of the hospitality industry in Scotland must be carefully considered by the Scottish Government and this must be reviewed before any final decision is made on this proposed legislation. The Scottish Government must take into account the potential, material issues with the appropriateness, competency and proportionality of the proposed SSI if it determines that it should come into force. It is the view of the ASSC in particular, and many short-term let operators and others involved in the tourism industry, that this has clearly not been done. Evidence of this is in the ASSC written submissions to the Committee and to the Consultations carried out, in other trade and operator submissions and referred to in more concise form in this letter.

The ASSC has previously called for a delay in implementation until short-term let operators recover from the pandemic and the SSI is scrutinised further. We reiterate this request, with the support of other key trade organisations including Scottish Agritourism, FSB, NFUS, Scottish Land & Estates and the Scottish B&B Association. This would also give the Scottish Government the opportunity to benefit from EC recommendations which are due to be published in the first quarter of 2022.

With our thanks for your consideration in advance.

Yours sincerely,

Fiona Campbell

**Chief Executive
Association of Scotland's Self-Caterers**