

14th January 2022

Dear Cabinet Secretary,

**LICENSING OF SHORT-TERM LETS**

We write to ask for clarification on your responses to questions raised at the Local Government, Housing and Planning Committee on 21st December 2021. These questions revolve around assurances given by you in your letter to the Committee in October 2021 where you stated that:

*“We have committed to monitoring and evaluating the impact of our proposals to ensure that they are effective and targeted.*

*“The first indications of future activity will emerge in April 2023, as all existing operators will need to have submitted an application for a licence by 1 April 2023 in order to continue operating. We will work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023. This review will identify whether any further measures are required to control numbers but also seek to confirm that the wider sector is still healthy, making sure we have avoided unintended consequences.*

*“Over the winter, we will reconvene the stakeholder working group to finalise the guidance on the licensing scheme. I look forward to continuing constructive engagement with the stakeholder working group to do this and prepare for implementation in 2022.”*

## Following the Committee’s consideration of the regulations, and if MSPs vote to introduce the legislation next week, we will require clear and unequivocal answers to our questions before we are able to make any decisions on future engagement with your officials on licensing.

## We understand that Committee members were reassured by you over the *“industries desire to get back round the table to discuss implementation.”* We are puzzled by this reassurance as we do not believe it is an accurate reflection of reality. On our part, any constructive engagement over Licensing could never be unconditional and it is unreasonable of you to presume that it was. We do not believe that we would be able to commit to involvement with any reconvened Stakeholder Working Group in the absence of an honest settlement of the following issues:

1. **How can the impact of licensing be monitored and evaluated when there is no baseline data in place by which it can be properly measured and assessed?**

Without that data any commitment to monitor, evaluate and make requisite changes to the regulations are completely worthless.

1. **The Draft Guidance is already in place. What additions and amendments can be made to this Guidance when it can only reflect the requirements of the short-term let regulations as approved?**

We do not believe that the minor adjustments made inremoving overprovision powers; simplifying publicity and notifications; adding an appeal for temporary exemptions; reducing public liability insurance requirements; focused use of inspections; stronger guidance on fees; facilitating home sharing and bed and breakfast; and removing natural names from the public register represent any meaningful commitment by the Scottish Government to reduce the burden of licensing on legitimate businesses. For example, the current Guidance makes no meaningful attempt to facilitate home sharing and bed and breakfasts, and the legislation makes this impossible to achieve. In addition, cost recovery rules mean that fees must be limited to actual local licensing authority costs but you implied that fees could be scaled according to the size of the business concerned. This is not cost recovery but a direct tax in line with those applied through non-domestic rates.

Furthermore, the evidence given to the Committee makes it clear that the promised review of licensing in Summer 2023 could find that additional powers may be awarded to local authorities to “control numbers” of short term lets including the formal introduction of overprovision as a criteria for licensing. We believe that this provides the strongest possible indication that the Scottish Government intends to use licensing to reduce the numbers of short-term let properties, thereby forcing closure of those businesses. As such engagement with the Working Group could only work against our members and hosts best interests.

1. **What possible benefits could be gained for our members and hosts from any further involvement with the Working Group? Are we expected to accept your assertion that licensing will deliver a level playing field when the overwhelming majority of our members and hosts already comply with the mandatory health and safety requirements?**

It can be argued that the Scottish Government would be the only party to benefit from the involvement of industry on a Working Group. That involvement would lend a veneer of respectability to erroneous claims by the Scottish Government that you want to constructively engage with the sector to make licensing work. Hitherto, there has been no meaningful consideration of the potential impact of licensing on self-catering and bed and breakfast businesses, including supposed unintended consequences, nor any proper attention given to alternative proposals. This makes it clear that the Scottish Government’s priority is to deliver licensing supporter demands to ‘manage down’ the volume of short term lets. The unintended consequences identified by industry have been summarily dismissed as scaremongering, exaggeration, over-estimation, and protectionism. Furthermore, our members and hosts have been characterised as potential harbourers of criminal activity by supporters of licensing and this baseless and unevidenced assertion has gone totally unchallenged by the Scottish Government.

1. **Who will be called to membership of a reconvened stakeholder working group and what will be the credentials for membership?**

Will the same organisations remain in place, or will others be added or removed? In terms of the specifics of testing your veracity and commitment to working constructively with industry, we would therefore ask:

1. **In the absence of an accurate database in each local authority area on the numbers, location and type of short term lets, how does the Scottish Government intend to *“work with local authorities to review levels of short-term let activity in hotspot areas in summer 2023”*?**

By your own admission the first indications of future activity will emerge in April 2023 when all existing operators will need to have submitted an application for a licence by 1 April 2023 in order to continue operating. As there are significant gaps in the data held by local authorities, particularly in respect of the volume of home sharing and bed and breakfast operators, it is disingenuous to suggest that any meaningful review of either the levels of or health of short-term let activity in hot spots, or anywhere else, can be undertaken. Existing operators will have a maximum of 6 months between October 2022 and April 2023 to submit a licence application to continue operating.

With that being the case, we pose the following questions:

1. **How will licensing authorities deal with existing operators who aren’t aware that they have to submit an application by 1 April 2023 to continue operating?**
2. **How do you and your officials intend to: (a) categorise; (b) identify; and (c) measure unintended consequences when you have completely dismissed evidence from industry stakeholders that licensing will be administratively and financially burdensome, will cause many micro-businesses to cease operating, and will increase the numbers of empty second homes in rural areas?**

Finally, turning to legal matters:

1. **What consideration has been given to the Licensing Order’s compliance with European law, including the current European Commission’s consultation on a Europe wide establishment of a Registration Scheme for self-catering accommodation?**

Unless and until we receive unambiguous, categoric and documented answers to these questions, we cannot possibly engage with a reconvened Working Group. We will continue to believe that the Scottish Government is intent on decimating our members’ livelihoods and must concentrate on providing them with the requisite support to deal with this ill-considered, illogical and draconian legislation.

We look forward to receiving your response at your earliest opportunity.

Yours sincerely,

**Fiona Campbell**

**Chief Executive**

**Association of Scotland’s Self-Caterers**