



Initial Review of Implementation and Impact of Short-Term Let Legislation with Specific Focus on the Highland Region

According to Richard Heaton, a previous First Parliamentary Counsel and Permanent Secretary of the Cabinet Office, in launching the Good Law Initiative said *“good law is necessary, effective, clear, coherent and accessible. It is about the content of law, its architecture, its language and its accessibility – and about the links between those things. Excessive complexity hinders economic activity, creating burdens for individuals, businesses and communities. It obstructs good government. It undermines the rule of law.”*

There is already evidence that clearly demonstrates that the Scottish Short-term Let Legislation is not necessary, will not be effective, is over complex, incoherent and is challenging in terms of compliance and accessibility. It is already acknowledged, in the Tourist industry in Scotland, that excessive regulatory complexity is hindering economic activity and has created significant burdens for individuals and businesses. All of that with a total absence of any evidence to show that the legislation will achieve its purported aims.

The Scottish Government’s postponement of the Licensing application date to 1st October 2023 has been accompanied by a delay to the implementation review promised for the Summer of 2023. Tourism and the provision of small accommodation play a major and undisputed role in the local economies of many areas of Scotland and particularly the Highlands. Delays in any monitoring, evaluation and review of the impact of the legislation on small businesses exacerbates the damage already being done and highlights the complete inadequacy of the Business Regulatory Impact Assessment undertaken as part of the passing of the legislation.

Examination of the Highland Council Licensing Register, together with comparison of information provided in their response to an FOI submitted by the Association of Scotland’s Self-Caterers, produces warning signs that strongly indicate that Short-term Let Legislation is already having disastrous consequences for the sector, particularly in terms of costs, uncertainty, administrative burden and future investment. Most critical, however, are the implications for the enforceability, or otherwise, of the licensing and planning regulations and the impact of that on individuals, businesses and community cohesion.

Taken together with a potentially disastrous conflation of legislation to impose Planning Control Areas this is a potential black hole in terms of the inter-connected impact on self-catering operators.

A number of important facts emerge from consideration of the currently available data.

THC Freedom of Information Return

- Highland Council (THC) announced last year that they estimated 10,000 STLs in their area. They have used 8000 as the divisor for calculation of their fees. All other things being equal they have already **inflated “cost recovery” by 20%**.
- THC have or are going to recruit 21.3 FTE equivalent staff plus an apportionment of senior officer’s time. The annual salary bill for this will be approximately £900,000 including on costs, IT, inspection costs, etc. It is highly likely that staffing will be reduced in years 2 and 3 once the

initial “rush” is over and new licencees trickle in at a lower rate. Provision will need to be made for licence renewals but this is likely to be achievable through redeployment in 2026.

- Taking the average fees at £400 for 3 years and 8000 licence applications the fee income amounts to £3.2million or £1,067,000 hypothecated per annum.
- It is entirely reasonable to presume that THC are going to make a considerable excess of income over expenditure from STL licensing **IF** they achieve their 8000 applications target.
- Regrettably, there is another hypothesis that can be drawn from these figures which relates to the possible intent to dramatically reduce the numbers of self-catering and bed and breakfast businesses in Highland region.

THC Licence Register

- As of 29th May there are 18 weeks to go to before the new application submission date for existing operators of 1st October. 34 weeks have passed since licence applications systems should, and did in Highland Council’s case, opened
- Licence applications stand at 1701. This represents 21.3% of the 8000 Highland Council used to calculate fee levels and 17% of Highland Council’s 10,000 estimate of the number of STLs in the area in 2022.
- 1431 of the applications are for secondary letting. This is under 30% of those self- catering properties listed on Highland Council’s Non-Domestic Rates valuation roll and assumes all secondary letting applicants do not pay Council Tax.
- 171 applications are for home sharing with a further 99 for home letting and sharing. On various estimates this represents between 3 and 8% of these categories of short-term let operating in the region. More challenging, to the SG’s case that the licensing scheme will not deter responsible operators from applying, is that it suggests that **very few** B&Bs have so far applied.
- 838 licences have been granted as of 26th May 2023. 721 of these are for secondary lets with a further 117 for home sharing/letting. This is 10.5% of the 8000 Highland Council maintains it used for calculation of the cost recovery licence fee; or 8.4% of the 2022 estimate, with 18 weeks to go to the final submission date.
- 56 applications have been withdrawn. Whilst there is no way of knowing the reasons for the withdrawals there is at least one case where a licence was revoked following a neighbour objection (although this has now been returned); and there is considerable uncertainty surrounding the approach taken to planning requirements with respect to licence applications. Further, it is not known whether those that withdraw their application have lost the fees paid at submission or whether the local authority will refund these payments.

Questions:

1. What is a) The Highland Council’s (THC) and b) the Scottish Government’s (SG) justification for the financial forecasts and conclusions that can be drawn from the metrics gleaned from the Freedom of Information (FOI) return supplied by Highland Council?
2. Does the FOI data indicate grounds for challenging the legality of the fee calculation being restricted to **“cost recovery” only?**
3. How will THC reimburse licence applicants if overpayment of fees can be established by future legal challenge?
4. With 34 weeks gone from opening the scheme and 18 weeks to go to the new deadline, is it reasonable to assume that THC will:
 - a) be undertaking a concerted publicity campaign for the Licensing Scheme in the immediate future;

- b) will be unable to process between 75% and 80% of applications in the 18 weeks to the deadline **OR** are they;
 - c) purposefully managing a process that decimates self-catering and bed and breakfast provision by up to 50% of the 8000 fee divisor or 60% of the 10000 in the 2022 estimate.
5. If THC don't receive the 6400 applications still to be submitted to reach the 8000 target by 1st October 2023, what is their policy for addressing the shortfall?
 6. Will that policy pursue non-applicants who continue to operate after 1st October and, if so:
 - a) how will they be identified;
 - b) how will equality of treatment between STL categories be achieved; and;
 - c) what sanctions will be imposed after October 2023 and July 2024? For example, will they be undertaking an analysis of the NDR roll to identify operators who have not submitted a licence application by 1st October 2023? How will this analysis be replicated for CT paying operators?
 7. Does the SG's request that Local Authorities take a light touch approach with B&Bs and home sharers suggest that they already know that these categories of operators will be decimated by the Licensing Scheme?
 8. How will THC address this given the licensing register indicates that 95% of home sharers and 75% of secondary letters have yet to submit an application?
 9. What calculations have been made to forecast the worst- and best-case scenarios in terms of losses to the Highland economy resulting from the Licensing Scheme?
 10. What provision has been made by the SG and THC to enable analysis of the connectivity between PCA and Licensing in terms of:
 - a) forced business closures;
 - b) resulting losses to individual operators and the local economy;
 - c) changes in numbers of non-let second homes, empty homes, affordable homes; long term lets; etc?
 11. If, as the evidence gathered thus far strongly indicates, both the Licensing and PCA schemes are proving catastrophic to the self-catering and bed and breakfast sectors how will the SG and THC seek to:
 - a) address the damage caused, and;
 - b) recompense the applicants who have subscribed to a failed scheme and policy?

There are a lot more questions that SG Ministers and the LAs need to answer but the questions above provide a base for demonstrating that not only is the legislation ill-conceived, but its implementation is utterly devoid of any positivity from anyone's perspective.

Conclusion

There is only one way that the emerging disaster for individual livelihoods and the tourism economy more generally can be averted. The Licensing Scheme and associated SSI:

- Must be suspended until 2026, pending review and accompanied by establishment of a thorough and robust sectoral database.
- It is simply unacceptable (and indeed contrary to Provision of Services Regulations) to be implementing legislation, that is already having a very negative impact on people's business and livelihoods, on the grounds that the scheme itself will provide the data.
- The notion of a post implementation review is useless. Worse still it creates the illusion that the severe challenges faced by the sector can be addressed after the event. The damage is already done. The situation is irrecoverable and no amount of reassurance from the sg or assistance from helpful staff in Local Authorities can undo that damage.
- The only way to turn this round is to go back to the drawing board and establish a real basis for balancing the needs of local communities with the sector's contribution to those communities and the tourism industry in general.

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