

Anita Stewart
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29 June 2023

Dear Anita

SHORT-TERM LETS INDUSTRY ADVISORY GROUP

Thank you for your correspondence of Monday 12 June 2023 in which you provided members of the IAG with draft versions of the Scottish Government's guidance relating to the short-term let regulations.

I am writing as Chair of the IAG and wish to acknowledge the efforts of you and your colleagues in reviewing the guidance and convey my appreciation for the support you have given VisitScotland in managing the IAG and finally giving the IAG time to consider the drafts before intended publication. I would stress, for the avoidance of doubt, that the views set out below are those of the IAG members, a group which VisitScotland facilitates. They should not be considered as VisitScotland's own position.

Having considered the updated drafts, the IAG met to discuss the papers on Thursday 22 June. In my capacity as Chair of the group, I committed to write to you with a formal response to the updated guidance you shared with us on Monday 12 June.

The Group concluded that:

1. The guidance, as drafted, is not directive enough and continues to leave too much room for interpretation for licensing authorities.

Members of the IAG remain concerned that the guidance does not offer enough by way of directive from Scottish Government to ensure that operators will not incur unintended consequences when licensing authorities implement their schemes.

Some examples of this include, but are not limited to:

- a. There are a number of examples in the drafts where the word 'encourages' has been added when IAG members consider the opportunity to use more directive language such as 'expects' would be appropriate. In some instances, the use of 'expects' appears to have been replaced by less directive language such as 'encourages' (e.g. Part 2, p5, para 1.10).
- b. The inclusion of the wording at Part 2, p26, clause 4.10, local authorities should "give due consideration to whether additional conditions are relevant, proportionate and justified to the use of accommodation" is not considered by IAG members to be directive enough, particularly in light of the Judicial Review. There is scope to cover this at sub-section (e) Prohibited condition (Part 2, p31).
- c. Similarly, at Part 2, p31, there is new wording advising against a "blanket approach" to new anti-noise conditions. This is considered by IAG members to be both too vague (i.e., does it refer to mandating carpets as per the Judicial Review?) and not directive enough (i.e., the wording could be more explicit, placing an expectation on licencing authorities).

- d. It is felt by members of the IAG that the wording around requirements for scale drawings remains unclear. There is perhaps a need to be explicit and say that architects' drawings are not required.
- e. Wording on temporary licences only suggests that councils may want to decide to grant temporary licences. This is not viewed as adequately directive, particularly in light of the Judicial Review.

There are other general concerns around the content, including, but not limited to:

- f. Part 2, p17 – where the previous guidance recommended setting lower fees for B&Bs, home sharing and home letting, that wording has now been removed. Some in the IAG have expressed concern with this approach.
- g. The section on “facilitating the sale of short-term lets” (Part2, p24) allows for a sale of a corporate entity, if the new buyer is a director, but there is nothing about facilitating a sale to a new private buyer or sole trader.
- h. And there remain concerns around the potential contradictions within the planning element.

The above are by no means exhaustive, but outline some of the concerns which members of the IAG continue to express in light of the updated drafts.

2. In the context of updating the guidance, members of the IAG are concerned that the impact of the Judicial Review may not have been fully considered as far as policies outwith the City of Edinburgh are concerned.

It was noted at the meeting that the Judicial Review had concluded elements of the Edinburgh policy to be ‘irrational and oppressive at common law’ and it ‘amounts to an unlawful and disproportionate interference’ under A1P1. Members of the IAG are concerned that there may be elements of other Councils’ policies across Scotland that could, if tested, fall foul of a similar challenge.

As such, members of the IAG consider it appropriate to ensure the guidance is robust enough to guard against such action. At the moment, IAG members are in agreement that the current draft may not meet the standard required when such a test is applied.

3. Concern remains around the impact of the present costs of doing business and the additional impact on businesses tasked with complying with the short-term let regulations. IAG members noted that Scottish Government’s initial motivation of the extension until October 2023 was to allow businesses more time during the cost of living crisis. At the time, the Cabinet Secretary said:

“We are taking a pragmatic approach to help support hosts in recognition of the wider cost of living crisis that is placing pressure on businesses.”

Consensus among members of the IAG was that the cost of doing business remains high and has in some respects worsened since that original decision was made back in March 2023.

4. IAG members remain concerned that licensing authorities will not have sufficient time to consider any alterations to their policies, not only in light of the updated guidance, but also in relation to the impact of the Judicial Review. It was unforeseeable that the Judicial Review decision would be available prior to publication of the updated Guidance, and this

generates complications for Scottish Government and for Councils in considering the implications of both the Judicial Review and the revised Guidance. Whilst it is not necessary for Councils to take policy amendments to Committee, Council Officers may feel this is necessary given the profile and complexity of the position they will now be in. Publication of the Guidance in July with a 1 October deadline is a very short and tight timescale to navigate.

Given all of the above, but particularly the conflation of the cost of doing business with the Judicial Review decision and the commitment of the Government to the new deal for business, it is the view of IAG members that Scottish Government should consider a further delay to the publication of the guidance and consider an extension to the application period currently set to 1 October 2023. This will allow Scottish Government the opportunity to strengthen guidance to provide enhanced direction to licensing authorities, particularly in light of the impact of the Judicial Review.

It will allow Scottish Government to recognise the ongoing cost of doing business pressures and incorporate the implementation of the short-term lets regulations into the developing framework and approach of the 'new deal for business' agenda. To go ahead with the 1 October deadline, although possible, will lead to further pressures and costs on short-term let businesses who, it is clear, are already under pressure from the wider economic landscape. This approach is also likely to place pressures on Councils as they manage both the application and decision process through the coming months.

Members of the IAG would like to put on the record that they make this suggestion in order to ensure that the regulations are as effective and efficient as they can be. Members of the IAG stressed they are not opposed to regulation, however it must be effective and proportionate, in line with the principles and objectives set out by the new deal for business.

I'd be happy to discuss the content of this letter in more detail should you require.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Dickson', with a horizontal line underneath.

Rob Dickson
Director of Industry and Destination Development