



## **ASSC BRIEFING FOR MSPs ON SHORT-TERM LET LICENSING – SEPTEMBER 2023**

**The issue of short-term let regulation is complex and the debate polarised. There are numerous misconceptions about the current position taken by organisations such as the ASSC, and others in the tourism sector. This briefing is intended to set out the facts of the matter, and urge parliamentarians from all political parties, to consider the impact the forthcoming legislation will have in their communities, and across Scotland as a whole.**

Scotland's short term lets need to be regulated. We agree with the Scottish government and the anti-STL lobby on this point. We are, and always have been, pro-regulation.

However, what has been legislated for, and the policy objectives behind it, do not align. The current legislation is not fit for purpose – not least because its application by some local authorities has been found to be unlawful. Numerous councils are facing legal challenge about their STL policies. Until legal judgment has been passed, businesses and individuals should not be expected to apply to potentially unlawful schemes.

In order to balance the needs of both sides of the debate, we believe that Scotland needs:

- A statutory 'licensing' scheme akin to that proposed in Wales, which would provide the mechanism to address health and safety in tourism accommodation:
- We are pro-regulation and consider the health and safety of guests of upmost importance. A licensing scheme, such as that proposed by Wales, would achieve this without putting livelihoods at risk.
- Operators should be required to provide evidence of health and safety certification to operate. This evidence should include certification proving the correct and adequate insurance, evidence of fire risk assessments, gas safety certificates, proof of electrical safety, and other such assurances which the government sees fit to include.

A scheme of this kind will achieve the Scottish government's policy ambitions, whilst taking away the complexity, red tape and enormous costs of its current scheme.

It will also enable the desired crack down on the far and few rogue operators or party flats. It would be a strong signal to domestic and international visitors that tourism accommodation in Scotland is safe, meets certain criteria and is of the high standard.

### **The industry has always been pro-regulation**

The ASSC has long championed fair and effective regulation of the short-term let market – we have called for proportionate, justifiable and targeted regulation since 2016. We also worked with MSPs and the Scottish Government to put in place Planning Control Areas where it could be evidenced there was a demonstrable link between STLs and housing pressure. More recently, we engaged constructively with Ministers and Officials, only to see our concerns and regulatory solutions completely ignored despite the establishment of a 'New Deal for Business'.

We support the government in its ambition to regulate the sector. However, the current legislation fails to strike the right balance, which can easily be achieved if the government and tourism businesses collaborate. However, the licensing regulations in their current form will damage Scottish

tourism for no material benefit, costing jobs and livelihoods in Scotland's £1bn self-catering sector, and threaten the viability of world-renowned events like the Edinburgh Festival and Fringe.

Our latest survey shows that around two-thirds of operators are actively contemplating closing their doors to guests due to the never-ending regulatory burden. The number of operators considering leaving the sector has increased since the First Minister Humza Yousaf said there would be no further delay to short-term let licensing.

### **Unlawful policies remain across local council areas**

STL licensing is inconsistent with the Provision of Services Regulations 2009 due to a fundamental lack of human interest; it is incompatible with small accommodation business operators Convention rights protected by Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1"); and the dual requirements of planning and licensing are oppressive and disproportionate.

Following the decision by Lord Braid at the Court of Session which ruled that City of Edinburgh Council's licensing policy was unlawful in common law and also contravened the Provision of Services Directive 2009, other imminent legal challenges are expected. This includes against Glasgow City Council, Dundee City Council, Argyll & Bute Council, as well as The Highland Council.

### **High fees are disincentivising operators**

Fees are not being set on a cost recovery basis as some councils are setting fees at extortionate levels. The secondary letting figures for City of Edinburgh, Dundee City Council and Perth & Kinross Council are particularly stark when compared to other local authorities for equivalent sized properties.

- Edinburgh: 11-15 occupants is £3,872 for a one-year licence and £5,869 for 16-20 occupants;
- Dundee: £3,100 for 12-20 occupants for a three-year licence; and
- Perth and Kinross: £1,600 for 11+ occupants.

The ASSC has estimated the average fees for both homesharing/letting and secondary letting for those accommodating more than four occupants average above £1,000. This should be viewed in the context of the BRIA estimations, as well as fees for other types of property. The Scottish Government's estimated fees in the BRIA were £216-£434 for a three-year licence. The fee for a three-year private landlords' registration is just £86.

Unsurprisingly, the number of applications remains extremely low. As evidenced by official statistics, licensing applications remain but a trickle up to 31 March 2023. The situation in Scotland's two largest cities is stark. It showed Edinburgh Council had only received 90 "valid applications" for short-term let licensing in a city where the local council previously believed there were 12,000 such properties. In Glasgow, just 78 had been received.

What the official statistics don't show is the total cost for these applications for small businesses like self-catering and B&Bs. For many, it is a cost too high to bear and many long-established self-caterers have already said enough is enough. Like with DRS, small business has little to no confidence in the system.

The reticence around applications is down to several factors, ranging from the costly and onerous nature of licensing – which will cause thousands of small tourism accommodation businesses to close if the regulations remain in their current form – to the uncertainty surrounding the legality of local schemes.

### **The licensing legislation was meant to be about health and safety, not housing**

Short-term lets must meet certain conditions to get a licence. These are to ensure the safety of the accommodation; that was the overriding rationale for introducing the regulations. Professional operators, like those in self-catering, were already complying with the existing regulations which

make up the mandatory conditions of licensing. However, the original intention has morphed into other policy objectives, such as tackling housing shortages, as well as capturing a whole range of accommodation including B&Bs and home swapping.

Licensing concerns the safety of the activity and does not involve housing. That's why overprovision powers were removed from the regulations back in 2021. In any case, reducing the number of STLs will not address housing issues in local communities which is a much more multifaceted problem – and small tourism accommodation businesses should not be used as a convenient scapegoat. Even housing and homelessness charities have stated that this legislation is “tinkering around the edges” of the housing crisis, and that the only way to increase the supply of housing is to build social and affordable homes in the communities they are most needed. Likewise, more effort should be made by national and local government to bring long term empty homes back into use.

One of the unintended consequences of this legislation is likely to be an increase in the number of second homes. A recent ASSC survey has shown of those who intend to close their business after 1<sup>st</sup> October, only 15% intend to sell their property. 95% say their property would not be suitable as affordable housing.

### **There are viable and workable alternatives to licensing in its current form**

Genuine and meaningful partnership working can deliver beneficial results. The ASSC wants Scotland to be a leader in smart regulation which balances the needs of our economy and communities, not one which is burdensome and which other countries and the EU seek to avoid as an example of bad practice.

The Housing Minister Paul McLennan MSP has highlighted that the Welsh Government are seeking to introduce short-term let licensing. However, while it may use the same terminology, the proposed Welsh system is completely different to that envisaged by the Scottish Government:

- Wales is looking to introduce a system that is low cost, easy to navigate and instantaneous. It involves an online application system based on attestation, or uploading of documents, which will give an immediate license number and ability to operate.
- They propose the licensing regime be operated by a resourced central body, rather than placing the burden of cost and administration onto local councils.
- They also propose a single set of rules, meaning that councils cannot impose additional conditions that have the effect of a de facto retrospective ban on large numbers of businesses.
- The intention is for a framework on fees that will apply across all of Wales, rather than allowing local authorities to introduce different and complex fee structures.
- The intention is to base the scheme along the lines of Rent Smart Wales, which makes it closer to the ASSC's proposals for STL regulation in Scotland to be brought within the scope of the landlord register.

The ASSC has put forward a number of ways in which licensing could be amended to make it fit for purpose but there's so little time remaining. We need to break the stalemate, reset relations and get around the table to unlock solutions.

**The Scottish Government must suspend the regulations now rather than seeking to unpick it further down the line once irrevocable damage has been done to the tourism sector. This will enable a much-needed review and for genuinely meaningful industry engagement – in the spirit of the New Deal for Business – to arrive at a proportionate, fair and legally sound legislative framework that works for all.**