



9th February 2024

Local Government, Housing and Planning Committee

Dear Convener and Committee Members,

We write in response to the Minister for Housing's letter to the Convener of 30 January 2024 providing an implementation update for short-term let licensing. We raise substantive points about the Minister's letter which we believe deserves the attention of Committee but also wider consideration for all those with a stake in the continued success of our vital tourism industry.

"Short-Term Let Licensing Application Levels Across Scotland"

Near the beginning of his letter, we are concerned the Minister references "*informal feedback*" from licensing authorities that "*tens of thousands of existing hosts*" submitted applications before 1st October 2023. At this stage, we need **formal** data in order to properly evaluate the situation on the ground. According to FOIs received by the ASSC, the number of applications amounts to some 26,000, some way short of the Scottish Government's estimate of 32,000 given in the 2021 BRIA.

The three paragraphs on licensing applications in his letter, which gives the impression that the new regulatory regime is running along smoothly without faults, fails to consider the crucial interplay with planning. Central to the operation of the licensing legislation is its interaction with the planning regime. Evidence from our members and discussions with local authorities indicate that this interaction has created significant confusion among local authorities and operators.

This is evident in some of the policies set by local authorities. For example, some local authorities have adopted unlawful blanket policies requiring planning permission for all properties or all 'flats' used as short-term lets, regardless of whether a material change of use has occurred. Other authorities have based their requirement for planning permission on factors such as the number of bedrooms or the capacity of the property, which is also unlawful. There are inconsistencies between councils, with some demanding planning permission for certain homeletting situations, while others state that no planning permission is necessary. There is no commonality and no consistency.

It is clear from the evidence that the relationship between planning and licensing is still a major contributing factor in the delay of the awarding of secondary let licences. There is also evidence from our members that the requirement or potential requirement to assess planning as a prerequisite for a licence application is a barrier to applying which may reduce the effectiveness of the licensing scheme.

The process as it stands is confused and conflated, it discourages licensing applications being made, defeating the safety objectives of licensing. According to the 2021 BRIA, "*The Scottish Government remains committed to delivering a licensing scheme which **introduces measures to protect the safety of guests and neighbours [our emphasis]***".¹ It is imperative that this planning overreach is addressed.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2021/11/short-term-lets-business-regulatory-impact-assessment2/documents/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria/govscot%3Adocument/short-term-lets-licensing-scheme-planning-control-area-legislation-business-regulatory-impact-assessment-bria.pdf>, p14

“Operational Processes”

While the letter to the Convener notes that the Scottish Government have “*taken account of matters raised with us in correspondence...from industry bodies*”, the Minister declined an invitation to meet with the ASSC in person in the lead up to the update. This was a privilege afforded to global platforms (who are not representative of the thousands of indigenous small and micro businesses which form Scottish self-catering) but not the ASSC. This does not accord with the principles of the Scottish Government’s New Deal for Business. The lived experience of businesses is a necessity to formulate better public policy and dismissing or ignoring issues that have been flagged repeatedly, without proper examination, undermines trust and business-governmental relations.

The Scottish Government did provide feedback to the Industry Advisory Group on 31st January 2024 on the proposed provision in the SSI and operational challenges/improvements to the short-term let licensing scheme. This feedback ignored the many balanced recommendations made to address deficiencies in the scheme which are causing irrevocable damage to Scottish tourism and livelihoods. But crucially, this overlooked the most important point for our sector at the present time – planning – which is fundamentally interlinked with licensing. This issue **requires legislative change and must be addressed as part of the SSI before more damage is done. Legally sound recommendations have been made to reflect the recent Judicial Review and the general principals of planning which do not support the retrospective application of new planning policies on existing use.**

“Operational Improvements”

(i) **SSI to Amend Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022**

In a separate letter from Minister for Housing Paul McLennan MSP to Fergus Ewing MSP, on 15 January 2024, he made reference to the Implementation Update:

*“With regard to the forthcoming update on the implementation of short-term licensing, as my 27 October 2023 letter to the Local Government, Housing and Planning Committee outlines, this will be an ongoing iterative process to monitor delivery and to identify solutions to operational challenges within scope. While this will not alter the core principles, which the Committee and Parliament recognised as being integral to the Licensing Order, it still provides a broad base to ensure actions taken are meaningful and **this includes being open to amending legislation and guidance [our emphasis].**”*

We would commend any appetite to amend legislation and guidance to reflect the outcome of the two recent Judicial Reviews, which highlighted the legal deficiencies of City of Edinburgh Council’s licensing and planning policies, and an understanding of the urgent need to give clarity and reassurance to legitimate businesses that are vital across Scotland, benefiting local economies and communities.

Sadly, there remain various outstanding legal issues that have been flagged in light of the aforesaid Judicial Reviews that render some aspects of licensing and planning policies deficient across Scotland. It is critical to address these issues to remove uncertainty for existing operators, give reassurance to local authority planning and licensing authorities that their policies are lawful and to ensure consistency across Scotland.

The SSI referenced by the Minister in his letter to the Convener on 30th January 2024 would appear to miss the opportunity to amend legislation materially and meaningfully to help protect livelihoods in Scotland’s £1bn self-catering sector.

However, we do welcome the fact that the Minister will not amend the types of STL requiring a licence as that would have undermined the underlying purpose of licensing in terms of health and safety. The ASSC also supports the changes in respect of powers to enable the transfer of licences.

On temporary exemptions, these are provided for in the 1982 Act which states that this is for a 6-week period in any calendar year. It is well accepted that the calendar year is 1st January to 31st December annually. On this basis, to change the terms of temporary exemptions is absurd and it goes entirely against the spirit of the legislation and the original guidance.

Moreover, the Scottish Government needs to provide immediate clarification on what type of *“guest rooms in specific types of accommodation will be excluded.”*

Having reviewed the Scottish Government’s proposed amendments for secondary legislation and examples of operational challenges under consideration for non-legislative improvements, we were pleased to offer balanced and evidenced recommendations.

Aside from minor but significant legislative changes, the ASSC also outlined a number of suggested changes which could be made to **short-term let guidance** but the letter from the Minister to the Convener does not mention any proposed changes, nor does it reflect any consideration of our recommendations. We would therefore like to know whether this was an unintended omission, or if the government does not have any plans to alter existing guidance.

(ii) Short life sub-group

In recent times, we have seen a proliferation of sub-groups and similarly titled equivalents. While engagement is welcome, business is more concerned at being heard by government and on actual delivery – anything less is merely window-dressing. Furthermore, we would question why a sub-group which discusses matters of importance to tourism accommodation businesses is being led by a housing membership organisation and that the make-up of group reflects this.

Scotland’s Housing Network will be entirely inexperienced in understanding matters pertaining to STL licensing operation, let alone how it should be improved. Self-catering is an integral part of the tourism sector, not housing, and the regulations primarily impact tourism businesses including self-catering. These businesses are defined in [The Council Tax \(Dwellings and Part Residential Subjects\) \(Scotland\) Amendment Regulations 2021 \(legislation.gov.uk\)](#) and as such are quite clearly non-domestic and comply with business rates and associated legislation. They are also assessed under Furnished Holiday Let legislation by HMRC. They are not ‘residential dwellings’, nor should they be considered as such.

(iii) Comprehensive Update

The Minister states *“a more comprehensive update on implementation”* will occur in May/June 2024. Put simply, our industry cannot wait until half way through the tourist season for this to happen, with such degrees of uncertainty. Change is needed as soon as practicably possible – or hundreds, if not thousands, of self-catering operators will leave the sector, much to the detriment of our tourism sector and the jobs it supports. The impact on communities and economies across Scotland will be devastating, not to mention the impact on our festivals, and our reputation as a welcoming nation and place to do business.

The Minister further notes that the comprehensive update is to be informed by *“actual data in place of estimated information in previously published impact assessments.”* Throughout the regulatory discussions, the ASSC highlighted the need for robust and empirical data, unlike the scraped data from one online platform contained in the 2021 BRIA which has been shown to be wholly unreliable. We should not be looking at this retrospectively once the damage has been done. The 2021 BRIA should have been used to inform evidence-based legislation and it should not be amended in this manner three years later.

Conclusion

Local authorities in Scotland have the tools at their disposal to regulate short-term lets – however, in order for this to be truly effective, we must overcome the remaining challenges that the ASSC has repeatedly tried to articulate to the Scottish Government. Neither the proposed SSI nor the forthcoming comprehensive update on implementation will do that. Instead, legislation should be amended to clarify

the relationship between planning and licensing, and guidance should be amended on the subject. This will significantly ameliorate the scheme.

This is **not** about doing away with licensing, or undoing the robust regulatory framework overall, but ensuring it works, without causing damage to livelihoods and tourism in Scotland. The ASSC also wishes to make it abundantly clear that our industry **wants** to be regulated, and recommended a sound regulatory regime as far back as 2019. As a membership organisation, it is incumbent upon us to stand up for and represent the thousands of businesses who work tirelessly to make Scotland such a welcoming place for both domestic and international visitors.

Whilst we do not expect government to accede to every recommendation, the regrettable lack of any meaningful change for small and micro businesses across Scotland – especially following the recent Judicial Reviews – is deeply concerning. Further, it shows a total lack of commitment to the New Deal for Business. As the first test of this commitment, it is quite clearly failing.

Yours sincerely,

Fiona Campbell

Chief Executive

Association of Scotland's Self-Caterers