

Dear Cabinet Secretary,

SHORT-TERM LET LICENSING IN SCOTLAND

The Association of Scotland's Self-Caterers (ASSC) welcomes the recent announcement that the Scottish Government will provide a six-month extension for existing operators in terms of short-term let licensing applications, as set out in your letter (7 December) to the Convener of the Scottish Parliament's Local Government Committee.

This has been warmly received by our membership as it provides much needed reprieve during challenging times for business. However, real and pressing concerns still remain about short-term let licensing and we hope that we can work in partnership with the Scottish Government and local councils to resolve these for the benefit of Scotland's tourism sector.

The ASSC further believes that the delay provides an opportunity to take stock, assess the impacts related to the regulations, and then work constructively to ameliorate the outstanding issues. Many councils have now published their finalised schemes. From our analysis of Scotland's 32 local councils, we have concerns in relation to:

- The various discrepancies seen across local authority areas, including on fees, layout plans etc;
- Council licensing policies which are ultra vires in nature; and
- Instances where planning considerations going too far;

More broadly, we have reservations regarding:

- Barriers to investment; and
- New operators having to wait to open until a licence is granted.

i. Discrepancies across local authority areas

Fees

There are widespread discrepancies in local council short-term let licensing policies. While there will always be *some* differences in local schemes, and flexibility is built into system to address local priorities, it is the *extent* of these discrepancies which is of primary concern. Most notably, this can be seen in the fees attached to licences. These were meant to fall within a bracket of £214-£436 for a three-year licence and follow guidance to tailor according to licence type and accommodation size. Moreover, the Scottish Government said that local authorities could establish fee structures that will allow them to recover the costs of establishing and running the scheme.

However, we note that the following councils have fees that are higher than the Scottish Government's expectations: Aberdeen, Aberdeenshire, Argyll and Bute, City of Edinburgh, Dundee, East Dunbartonshire, Highland, Midlothian, Perth and Kinross, Renfrewshire, South Lanarkshire, and West Dunbartonshire.

As previously stated, we wholeheartedly welcome the delay for existing operators to apply for a licence but they will eventually be subject to fees which could push many out of business. We believe that where local councils have levied above and beyond Scottish Government expectations, there needs to be a clearer understanding of how they have arrived at such figures and whether there was adequate consideration on the impact on business costs.

Layout Plans

Angus, Comhairle nan Eilean Sair, Dundee, East Ayrshire, Edinburgh, Glasgow, North Ayrshire, Renfrewshire, Shetland, West Dunbartonshire, and West Lothian Councils are requesting floor plans reflecting the Licensing (Scotland) Act 2005.

Our understanding of the Order is that there is only a requirement to identify maximum occupancy and that the licence holder must ensure the number of guests does not exceed this. Further, we consider that there is no requirement for plans showing the location of equipment used for detection or warning of fire or smoke or for fighting fires, etc.

James Saunders, Scottish Fire and Rescue Service has confirmed that "*the SFRS do not require a plan drawing as part of the application process*". The existing fire legislation has not changed, so these plans are not required in terms of evidencing compliance with the Fire (Scotland) Act 2005. Technical layout plans can be expensive to commission and cannot be carried out by the operator themselves. Given the increasing cost of doing business, along with the new licensing fees which will be levied later next year, this will be an additional and potentially significant cost to businesses.

From Carpets and Cutlery Space to Hot Tub Curfews

Argyll and Bute, Dundee, East Ayrshire, East Renfrewshire, Highland, Inverclyde, Perth and Kinross, and West Dunbartonshire Councils propose that the licence holder must ensure that the bedrooms, living room and hallway in the premises are carpeted. Applying a condition like this would not be asked of a private landlord renting out a property where noise complaints had been levelled by neighbours. It also comes at a potentially significant cost to small businesses at a time when they are facing increased costs.

Angus, East Ayrshire, East Renfrewshire, Highland, and West Dunbartonshire Councils propose limitations on the use of hot tubs after certain hours. We would like to understand if there is empirical evidence to suggest that this is a particular problem in these areas. We note that there is no such curfew being applied to other accommodation providers or property types.

Meanwhile, Dundee City Council has additional conditions of "sufficient drawer space for the storage of cutlery and cooking utensils", and "a minimum of one door separation between the toilet and any area used in the preparation of food" has been included in the STL licensing regime. This appears to have been based on HMO guidance rather than being conditions suited to tourist accommodation.

ii. **Ultra vires policies**

Many local councils still have policies, which we contend are ultra vires, included in the additional conditions for their short-term let licensing scheme. This includes the provision and use of watercraft; provision of bicycles; and outdoor play equipment. These are part of the additional conditions stipulated by Aberdeenshire Council, Argyll and Bute Council, and Scottish Borders Council.

These activities are unrelated to the activity of short-term letting. A short-term let concerns the provision of accommodation to a guest. Accommodation means any building or structure, or any part of that building or structure, that is being let out to visitors. Such proposed additional conditions do not relate to the provision of accommodation. These additional conditions are about the safety of an activity, not the use of the property.

iii. **Planning considerations**

Local councils are taking different approaches to requirements around planning permission. Schedule 3: 13, references the need for planning permission “where the premises is in a short-term let control area”. Outwith these areas, some licensing authorities are asking applicants to check with their planning authority before applying for a short term let licence, while others are suggesting that planning permission or a certificate of lawfulness will be required.

We note that Aberdeen, Angus, Clackmannanshire, Dundee, East Dunbartonshire, East Lothian, Fife, Glasgow, Highland, Inverclyde, Orkney, Perth and Kinross, Stirling, and West Lothian Councils are requesting proof of planning permission or a Certificate of Lawfulness as part of the licensing requirements rather than deferring to the planning authority to consider this on a case-by-case basis. Other local authorities only require evidence of planning in Planning Control Areas.

iv. **Barriers to investment**

There seems to be some confusion in the application of the Scottish Government’s guidance to local authorities in terms of the locus or standing of a prospective purchaser to apply for a short term let licence over a property that they do not own.

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 states the following in the Introductory Text “Interpretation” at 2 (1) to define the ‘host’, the person who can apply for a short term let licence: “host” means a person who is the owner, tenant, or person who otherwise exercises control over occupation and use, of the accommodation which is the subject of a short-term let,“

‘Control over occupation and use’ is clearly a higher benchmark than someone who simply has the “permission” or “consent” of the owner of the property to apply to the relevant local authority for the short term let licence. This situation appears to be

causing confusion at local authority level. The Scottish Government's guidance does not align with the SSI.

A prospective purchaser does not have locus to apply for a short term let licence with just the "permission" of the owner. Moreover, there is no scope in the legislation for the local authority to exercise any "discretion" over "the control" or "use" description of "the host". There is no such discretion and an application granted under such supposed "discretion" would be unlawful.

While this remains the status quo, lenders such as Royal Bank of Scotland are not prepared to lend to new operators. Cumberland Business are similarly reviewing their position on lending. This creates an immediate barrier to investment.

v. New operators

Finally, the delays for existing operators are commendable but this does not help everyone engaged in short-term letting that is growing their business. This includes new operators such as the Homelands Trust, a small charity based in Lundin Links Fife. They currently provide respite breaks to people with disabilities, life limiting conditions and their unpaid carers in four purpose built, superbly adapted self-catering properties. The level of adaption provided for people with disabilities is unique in the UK let alone Scotland and puts Fife at the forefront of Scotland's provision of accessible tourism accommodation. The Trust also owns and operates the Paxton Centre which is wholly subsidised by its self-catering operation and provides valuable community hub services to the local area such as free meeting space for disability groups and other local non-profit organisations, a warm space and various free services and activities aimed at the elderly, disabled and other vulnerable groups in the local community.

Simon Allan, General Manager at the Homelands, has outlined the problems the organisation has faced which we have quoted below:

The demand for Homelands' self-catering properties is huge with people with a wide range of severe disabilities and their unpaid carers coming from across Scotland and the UK to have much deserved breaks in accommodation specially designed to cater for their complex requirements. The properties run at an occupancy of virtually 100% and are open 365 days per year.

Give the huge demand for such accessible properties the Trustees agreed to expand their offering and build a further 5 accessible lodges with 34 bed spaces for those with disabilities, life limiting conditions and their unpaid carers at a cost of £2.5 million. After Covid delays the project finally commenced in August 2021 and is due to complete in quarter 1 2023.

Unfortunately due to the timing the Trust now find themselves potentially falling foul of the existing hosts rules in the short term let licencing legislation meaning that despite the lodges being ready in Q1 2023 we will not be able to market, promote or occupy them until a licence is issued by Fife council, we cannot apply for a licence until just before completion in March 2023 as we will not have the necessary certification before that date to accompany our application (gas safety certificates, EICR, EPC, PAT etc), Fife council then have up to 9 months to issue a licence.

Given these timeframes there is therefore a distinct possibility that we will not be

able to use these new purpose built lodges until January 2024. This delay creates significant challenge for the Trust as the inability to generate any income from these properties leaves the Trust currently reviewing its other charitable activities as its ability to fund them will be seriously affected. The trust is also reconsidering its future plans of developing more accessible accommodation in other regions of Scotland as the current rules make any future developments unfeasible.

This happens at a time when the Trust is also seeing a massive increase in utility costs from 1st January with costs on its existing 4 lodges rising from £10k per annum for gas and electricity to potentially £54k per annum should there be no further support to mitigate business energy price increases from March 2023 (it rises to £30k if the support continues for the year 2023 at the rates in place until end March 2023, still an enormous increase!) as well as general inflationary increases in housekeeping and other general maintenance costs.

Finally like all self-catering operators our user base is not immune to the cost of living crisis and funds previously used to help finance their much needed respite breaks are already having to be diverted to pay for other basic essentials such as utilities meaning our occupancy levels in the next year (and ultimately the income we can generate) is under threat.

The short term let licencing regulations existing host rules therefore pose an significant threat to a unique organisation that has created a world class operation in the accessible tourism arena in Scotland. This project has provided invaluable respite breaks for over 1300 people with disabilities life limiting conditions and their carers each year for the last 7 years and had hoped to double this capacity with its five new accommodation units and then look to future developments in Scotland for much needed accessible accommodation, these future developments will now not happen in Scotland.

The Trust is not alone in falling foul of the unforeseen consequences of the short term let legislation which are now becoming apparent. Other third sector organisations who rely on Short Term Let income to fund the maintenance of their buildings and operations will have to consider the potential delay in being able to generate income when considering projects in Scotland to the detriment of our national heritage and our accessible tourism offering. We are sure this was not the aim of the licencing regime.”

Once again, the self-catering industry is incredibly grateful for this badly needed delay provided by the Scottish Government on short-term let licences. However, we cannot ignore those who may slip through the cracks due to bureaucracy and unintended consequences of licensing, such as the Homelands Trust. We sincerely hope that the Scottish Government and Fife Council can intervene to resolve this so that we do not lose this invaluable community asset.

We hope the points outlined in this letter can be addressed by the Scottish Government, working in tandem with the sector, local authorities and other relevant stakeholders, so we can reduce the regulatory burden on business to ensure that they survive and thrive in the future.

On behalf of the ASSC, we wish you a wonderful Christmas and a happy New Year. We look forward to working with you in 2023.

Yours Sincerely,

CEO, Association of Scotland's Self-Caterers.