

Local Government, Housing and Planning Committee: Short-Term Lets Scrutiny

Submission deadline: 16 January 2023

Introduction

VisitScotland would like to express our thanks to the Committee for inviting us to contribute to the scrutiny of the implementation of the short-term lets licensing scheme.

Tourism is a crucial industry to Scotland. It is an economic and social powerhouse which creates wealth and social benefits in every corner of the country and enhances the wellbeing of those who holiday here. VisitScotland plays a vital role in supporting industry to achieve the ambitions of the national strategy, Outlook 2030¹, for Scotland to be a world leader in 21st century tourism. We're working hand in hand with partners and our tourism and events industry to rebuild this vital part of Scotland's economy and provide the right support to lead the sector's recovery. It is in this context that we are pleased to share the following insights to the sector's response to the short-term lets licensing scheme implementation to date.

Context

Our high-quality visitor accommodation is one of the things that makes Scotland such a special destination and the small accommodation sector is a key contributor to the Scottish economy.

VisitScotland recognises that the legislation is already enacted and is designed to improve the safety of short-term lets. The health and safety of visitors is critical and industry bodies have long worked with businesses across Scotland to ensure the accommodation sector is compliant.

A proposed extension to the application period for existing operators has been cautiously welcomed. But we note that there are sector calls for an extension longer than the six months being proposed. Those representing the sector consider any extension as an opportunity to work with the licensing authorities and Scottish Government to mitigate some unintended consequences of how the guidance and new legislation has been interpreted which are beginning to surface.

VisitScotland role

Throughout the implementation process, VisitScotland has remained committed to working together with industry and Scottish Government to give businesses the right advice to help them through the process of applying for a short-term let licence.

After the implementation of the control area regulations in March 2021 and following the short-term let licensing regulations coming into force in March 2022, having had discussions with Scottish Government we established an Industry Advisory Group (IAG) to provide businesses with reliable and accurate information about what is required of them under the new legislation.

The IAG comprises industry bodies representing those affected by the legislation including Association of Scotland's Self-Caterers (ASSC), Scottish Tourism Alliance (STA), Scottish B&B Association, and UK Short Term Accommodation Association. The Group has so far:

- Developed accessible information for tourism businesses on the requirements of the legislation
- Developed a list of Frequently Asked Questions which has been published on visitscotland.org and is regularly updated

¹ [Scotland Outlook 2030 - Scotland's tourism strategy \(scottishtourismalliance.co.uk\)](https://www.scottishtourismalliance.co.uk)

- Used social media and newsletters to ensure businesses are aware of the legislation and how it might impact them
- Liaised with Scottish Government on the implementation, including concerns about potential for unintended consequences of the legislation
- Collated information on the licensing schemes being developed by councils to inform discussions on the policies being introduced

Challenges for implementation

In considering how the implementation process has progressed to date, we should consider the circumstances under which councils were tasked with bringing forward their respective short-term let licensing policies.

Following the regulations coming into force in March 2022, licensing authorities were required to establish their short-term let licensing schemes by 1 October 2022. While this period might normally be sufficient to allow councils to draft policies and establish their schemes, the period coincided with the local elections in May 2022.

Councils were required to observe a pre-election period no later than 14 March 2022 until the election on 5 May, and while this may not have directly impacted the work of officials pulling together policies, the election of new members and the subsequent establishment of new licensing committees in the months after 5 May followed by a summer recess period held up progress significantly. The sector experienced delays in policy drafting, consultation, Committee approval and publication across several councils. It is our view that the understandable challenges posed by the local elections were the primary reason that many councils did not have a scheme in place, open for applications, by the 1 October deadline. Additionally, consultation processes were not as extensive as might have been the case because of time constraints and Council officers inevitably being focussed on elections and then the introduction of new Members and establishing new Administrations etc.

Inevitably, the delays in the establishment of the schemes led to increased uncertainty and anxiety within the sector.

Focus of the regulations

Our understanding is that it was always the Scottish Government's intention that these regulations would be proportionate and risk-based. However, feedback from the sector to date would suggest that experience in both understanding the requirements and going through the process of applying has not been straightforward.

Where the Scottish Government has set out to regulate the unique circumstances of short-term let visitor accommodation, some of the requirements and additional conditions being adopted by councils appear to be consistent with equivalent policies for registered social landlords or houses of multiple occupancy, for example. This may be a symptom of the delays outlined above, however these conditions are not always necessarily suitable in the context of visitor accommodation and have caused further frustration within the sector.

By way of example and to provide the Committee with some insight into the issues, the following conditions and requirements have been highlighted to us by the sector as causing concern:

- Floor plans – some authorities are requesting floor plans reflecting the Licensing (Scotland) Act 2005. The sector's 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. 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.

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, this is an additional and potentially unnecessary cost to business.

- **Maximum Occupancy** – Although one of the mandatory conditions that is attached to all short-term lets licences is that the number of guests residing on the premises does not exceed the number specified in the licence, it appears that at least one council is adopting HMO licensing standards rather than short-term let requirements for this purpose.

This means that applicants have to consider technical ‘space standard’ for bedrooms, kitchens and living rooms, as well as ‘activity space’ for bedrooms and for cookers. Feedback from the sector suggests they do not consider this is the proportionate approach envisaged by the Scottish Government.

- **Carpets** – several councils are requiring that the licence holder must ensure that bedrooms, living room and hallway are carpeted. Applying a condition that the licence holder must ensure that bedrooms, living room and hallway are carpeted appears to go beyond what might be expected of a property in the private rented sector where noise complaints had been levelled. It also comes at a potentially significant cost to small businesses at a time when they are facing increased costs.
- **Bike hire / watercraft / swimming pools and ponds /play equipment** – several councils have additional conditions related to these activities. A short-term let concerns the provision of accommodation to a guest. However, these activities do not relate to the provision of accommodation. These additional conditions are about the safety of an activity, not the use of a property.

To further illustrate the point that these are separate matters, we understand from sector feedback that ‘bespoke additional’ insurance would be required for the use of any boat on the property, as self-catering insurers do not cover this.

- **Cutlery space** – We note that one council has the additional condition of “sufficient drawer space for the storage of cutlery and cooking utensils”. This appears to have been based on HMO guidance rather than being a condition suited to tourist accommodation which can come in various shapes, sizes and forms. For example, it is not clear why a short-term let without a kitchen facility should be required to have ample cutlery space.

In addition to the above conditions and requirements, sector feedback suggests that a number of businesses are concerned about the licence fees. This is particularly evident in Edinburgh² where costs are notably higher than the Scottish Government’s expectations³ and where each licence will only last for a period of one year initially. There are other councils where the licence fee is higher than expected. Councils are of course fully entitled to charge fees on the basis of cost recovery, but it was anticipated, that given the focus on a proportionate and risk-based approach, Councils adopting such an approach would not incur significant additional costs and could therefore apply lower fees.

Planning

² [Licences and permits applications – The City of Edinburgh Council](#)

³ [Supporting documents - Short term lets - licensing scheme part 2: supplementary guidance for licensing authorities, letting agencies and platforms - gov.scot \(www.gov.scot\)](#)

It is worth noting to the Committee how the conflation of the short term let regulations with existing planning regulations has resulted in significant impacts for the sector.

Councils are taking different approaches to requirements around planning permission. Schedule 3:6 of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2021⁴, 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.

There are also concerns from the sector around Edinburgh’s policy (4.14)⁵ on a ‘rebuttable presumption’ against the grant of a licence where secondary letting in a tenement or shared main door accommodation is considered as unsuitable. Many have reservations that this may be interpreted as a presumption against granting permission for short-term lets in tenement or shared main door accommodation.

The cumulative effect of this on the sector has been either to cause uncertainty or an expectation that the planning authorities will not allow permission in certain property types. There is some anecdotal evidence emerging to suggest that changes in planning policy have led to short-term lets being sold as a result.

Challenges for new business entrants

One of the objectives of Scotland’s national tourism Strategy – Scotland Outlook 2030⁶ – is to ensure that the value of tourism to Scotland’s economy continues to increase, delivering prosperity for all, by encouraging the right sustainable growth in the right areas. However, for new entrants to the visitor accommodation sector, the licensing regulations are proving challenging.

New entrants are unable to advertise or start taking bookings until they have received their short-term let licence, and as mentioned above, the introduction of control areas and planning permission is also adding to uncertainty. This combination is leaving businesses exposed to a period of uncertainty in which we now understand lenders are becoming unwilling to invest while it remains unclear whether a licence and planning permission will be granted.

This will directly impact business’ ability to raise capital and invest at a crucial time in the sectors recovery from the pandemic. It results in an inability to buy a business as an “ongoing concern” for a new entrant and or limits the scope to invest in an existing business (building extension / renovation etc.).

Conclusion

It is the sector’s view that the new legislation has undoubtedly caused increased costs and impacts beyond those intended. VisitScotland considers the priority should be to address those increased costs and impacts wherever possible by strengthening guidance and ensuring councils are able to comply with the guidance by providing support and assistance wherever possible. VisitScotland will continue to convene the Industry Advisory Group and through its industry support mechanisms do as much as is possible to support the introduction of the legislation.

**Prepared by VisitScotland
January 2023**

⁴ [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁵ [Licences and permits applications – The City of Edinburgh Council](#)

⁶ [Scotland Outlook 2030 - Scotland's tourism strategy \(scottishtourismalliance.co.uk\)](https://www.scottishtourismalliance.co.uk)