

SHORT-TERM LETS WORKING GROUP: MEETING 3

PAPER 4: ASSC NOTE & PROPOSED AMENDMENTS

The Scottish Government is circulating this paper provided by, and at the request of, the ASSC. The views expressed in this paper are those of the ASSC.

NOTE

Scotland's Tourism Accommodation Register (STAR)

The ASSC has provided a proportionate approach to registration that can be evidenced by the Scotland's Tourism Accommodation Register (STAR) that the ASSC launched in March, to illustrate how such a register could work. STAR is an innovative industry leading scheme designed to enable robust data capture of the Health & Safety compliance of accommodation providers in Scotland. It also provides evidence of the scale and regional distribution of the sector. STAR is a proportionate approach and appropriate for the whole of the Scotland.

The ASSC does not suggest that this is the final delivery mechanism for such a register, but it provides an evidence base to demonstrate the existing health and safety compliance of ASSC members, refuting the suggestion that they are unregulated, and providing evidence that they should not need to have to apply for a cost burdensome licence.

STAR seeks to support the Scottish Government's commitment to regulate the short-term rental sector in Scotland. Overall, it aims to:

- Ensure the responsible growth and sustainability of the self-catering industry
- Strike an appropriate balance for the tourist economy, visitors and local residents
- Provide a proportionate, evidence-based and future proofed solution for national and local government
- Provide consumer protection for visitors using short-term lets in Scotland.

Members of the ASSC already confirm their Commitment to Quality, the ASSC's Quality Assurance scheme. This is enshrined in the ASSC members Operating Agreement¹ along with the Code of Conduct², which signposts members to legal compliance and best practice, in the same way that the Highway Code approaches road use. The STAA has an aligned Code of Conduct, that we worked up together, and presented to the Scottish Government with a Policy Recommendation Paper³, which sets out how the vital self-catering sector in Scotland can be improved for customers, hosts, and all others involved.

Based on points noted above, the ASSC considers that the amendment to the ASSC will assist the Scottish Government to provide a proportionate, targeted and evidence-based approach to the regulation of short-term lets across the whole of Scotland.

¹ <https://www.assc.co.uk/wp-content/uploads/2021/02/ASSC-Members-Operating-Agreement.pdf>

² <https://www.assc.co.uk/policy/code-of-conduct/>

³ Ibid

BRIA

Can the Scottish Government please confirm that alongside the laying of the new SSI, a new BRIA will be undertaken and published, addressing some key concerns raised by the working group regarding costs to both operators and local authorities:

- The ASSC conducted an online survey in October 2020 to identify the impact of the licensing proposals on the self-catering sector. We suggested that a licence may cost approximately £1000 per property. This was refuted by the Minister for Housing, Kevin Stewart, but supported by the Working Group representative from SOLAR, who noted that STL licensing will be on a cost recovery basis, similar to HMO licensing which is almost £2,000 in Glasgow and £1,500 in Fife. Based on an indicative £1,000 licence, according to our survey, **around a third (31%) of businesses would be rendered unviable** if the current proposals for a licensing were introduced. **Nearly half (49%) would leave the self-catering sector** if the proposed licensing scheme was introduced and of those **33%** would leave the property empty or use it for family & friends⁴.
- Legal and planning stakeholders have highlighted the challenges that the Scottish Government plans will place on local authorities, many of whom did not support the proposals in the consultation process, and the financial impact this will have on already stretched resources⁵.

National Covid Recovery Plan

All decisions ongoing should be underpinned by the Scottish Government's commitment to the National Covid Recovery Plan. Furthermore, according to the Towards a Robust Resilient Wellbeing Economy Scotland Advisory Group Economic Recovery Report:

"The identification of areas where change might be executed through both willingness and determination, but at limited financial cost, should be given due attention. An example of such an area is regulation and planning.

"We should adopt a pragmatic approach that seeks to maintain adequate standards but breathes more life into sectors such as tourism and hospitality, renewables, and affordable housing. Progressive change will play an important role in redefining Scotland's prospectus for inward investment⁶".

Guidance

⁴ <https://www.assc.co.uk/wp-content/uploads/2021/01/ASSC-licensing-survey.pdf>

⁵ <https://www.assc.co.uk/policy/the-financial-impact-of-short-term-let-licensing-and-planning-controls-on-scottish-localauthorities/>

⁶ https://www.gov.scot/publications/towards-robust-resilient-wellbeing-economy-scotland-report-advisory-groupeconomic-recovery/?fbclid=IwAR1Tq_W9hCjq5TRc44oEPoVCDjeOZKc_HuCPPyiWQT1f_hp1YU6Sk7DuiJU

In response to the Minister's statement, and the Scottish Government's commitment to the current SSI, in particular using powers under the Civic Government Act 1982, and having regard to the amount of detailed work that has gone into the drafting, our logical first step before developing guidance has been to consider what changes are required to the legislation (the Order) from which the guidance will flow.

The ASSC has therefore chosen not to submit any guidance associated with the existing SSI, until the format thereof is agreed. Thereafter, the ASSC looks forward to contributing to the guidance to ensure that it is fit for purpose.

FIONA CAMPBELL
ASSOCIATION OF SCOTLAND'S SELF-CATERERS
APRIL 2021

PROPOSED AMENDMENTS

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 ASSC's Proposed Amendments

"I appreciate the ASSC's continued support for working collaboratively with other stakeholders and the Scottish Government to consider any changes required to legislation in order to make it as efficient and effective as possible, and in developing guidance that is comprehensive, clear and helpful⁷."

1 ASSC PROPOSAL

1.1 In response to the Minister's statement, our logical first step before developing guidance has been to consider what changes are required to the legislation (the Order) from which the guidance will flow. In doing so, our objective has been to design amendments that will achieve the following –

- effectively, but proportionately, address what we understand to be the key concerns the Scottish Government is seeking to address through the Order, in particular ensuring legally binding safety standard and providing publicly accessible information ownership and management of properties
- minimise the administrative burden and expense for what is in the main a "cottage" industry of very small businesses, and
- critically for Scotland as a future tourist destination, avoid the closure of many existing operators as evidenced by a recent ASSC survey and by the almost unprecedented volume of formal objections to the Order at Committee stage.

1.2 Our proposed drafting amendments are annexed. As a starting point we have assumed the Scottish Government is committed to the current SSI, in particular using powers under the Civic Government Act 1982 and having regard to the amount of detailed work that has gone into the drafting. On that basis, rather than proposing to completely replace the current draft Order, we are proposing to amend Article 3(1) to provide that an activity is exempt from the licence requirement if it is in respect of "registered accommodation" AND the "registration conditions" (essentially the existing mandatory licensing conditions) are being complied with. This would have the effect of providing a robust and legally effective registration scheme. So if an owner fails to register or having registered fails to comply with the registration conditions, they would no longer be exempt from the licensing requirement and would therefore be in breach the Order with resulting legal penalties.

1.3 It seems to us that a natural 'fit' would be for the Registrar to be VisitScotland, to complement their existing QA scheme. It would be a unique opportunity to support a professional and compliant tourism industry. It is also the model used throughout Europe, with STL registration delivered but the Tourism body. We have however provided in our draft amendments that the Scottish Ministers have the flexibility to designate, and change, the Registrar.

⁷ Letter from Minister for Local Government, Housing and Planning, Kevin Stewart MSP, 24th March 2021

2 BENEFITS OF ASSC PROPOSAL

2.1 Benefit to operators:

- Removes requirement to go through administrative, time and cost burdensome application process where basic health and safety standards are already met
- Ensures business as usual for responsible compliant operators
- Addresses concerns raised of unintended consequences for pre-existing operators.

2.2 Benefit to Scottish Government:

- Allows Scottish Ministers to use the powers available to them to introduce a licensing scheme, define certain activities and subsequently exempt them by exclusion from the licensing order
- Fulfils policy objective of all operators having a legal obligation to comply with basic safety standards
- Provides empirical data regarding scale of the sector across Scotland
- Gives Scottish Ministers readily accessible fallback of a ready made licensing scheme by simply amending the exemption should the registrations scheme not prove sufficient in the longer term
- Supports 'Towards a Robust, Resilient Wellbeing Economy for Scotland: Report of the Advisory Group on Economic Recovery (June 2020) report: *"We should adopt a pragmatic approach that seeks to maintain adequate standards but breathes more life into sectors such as tourism and hospitality, renewables, and affordable housing. Progressive change will play an important role in redefining Scotland's prospectus for inward investment"*⁸.

2.3 Benefit to VisitScotland:

- Opportunity to support a professional, vibrant and compliant tourism industry.
- Reflects the model used throughout Europe, with STL registration delivered but the Tourism body.

2.4 Benefit to Local Authorities:

- Avoids/reduces cost and human resource burden of administering businesses who are already compliant.

2.5 Benefit to Scottish Tourism

- Avoids the significant anticipated closure of businesses (as evidenced by ASSC survey and objections at Committee stage) if licensing rather than registration is mandatory, thus ensuring supply can meet increasing demand for staycations
- Removes uncertainty for future bookings for operators who do continue, which may drive potential guests to the North of England where no such problems exist.

⁸ https://www.gov.scot/publications/towards-robust-resilient-wellbeing-economy-scotland-report-advisorygroup-economicrecovery/?fbclid=IwAR1Tq_W9hCjq5TRc44oEPoVCDjeOZKc_HuCPPyiWQT1f_hp1YU6Sk7DuiJU

3 COMMENTARY ON PROPOSED AMENDMENTS

3.1 Amendments 1 and 2 simply exempt “registered accommodation from the requirement to have a licence **for as long as (but only as long as)** the “registration conditions” (which are the original mandatory licensing conditions with the few amendments discussed below) are being complied with. If the property is not registered and the registration conditions are not complied with, the exemption no longer applies so the operator is in breach of the Order for operating a business without a licence.

3.2 Amendment 2 also provides that for the exemption to apply, the registration scheme must be “compliant scheme” run by a person designated from time to time by the Scottish Ministers. We have suggested the default should be VisitScotland for the reasons outlined above.

3.3 Amendment 3 introduces a new (additional) Schedule which describes what is meant by a “compliant” scheme, what details an applicant to be registered must provide and specifies the “registration conditions”.

3.4 A compliant scheme must require the applicant to provide specified information which must be publicly available, and to comply with the registration conditions. This means that members of the public can easily check that an operator is properly registered and will have contact details should they have any concerns they wish to raise directly with the operator.

3.5 The registration conditions are essentially the mandatory licensing conditions as originally drafted with the amendment referred to below. That way the integrity of the mandatory conditions are preserved and still legally effective.

3.6 We have proposed introducing the registration scheme by way of an exemption to licensing rather than proposing registration through free standing legislation. This is because our preliminary legal analysis is that the 1982 Act does not give the Scottish Ministers powers to set up a registration system and we have not commissioned research into whether or not there are other legislative powers available to the Scottish Ministers to do this without primary legislation (and the Scottish Government Legal Directorate are best placed to give specialist advice in this anyway). However, the power to set up a licensing system logically includes the power to specify exemptions (as is done elsewhere in the draft Order). It does also occur to us that the Scottish Ministers may find some benefit in registration being prescribed by way of an exemption to licensing. It may give greater flexibility for the future either by fine tuning the exemption in the light of practical experience and by having a ready made licensing scheme to fall back on in the unlikely event of the registration scheme not delivering in a satisfactory way.

3.7 Amendments 4 & 5 are to remove the incorporation of compliance with stricter EPC requirements. As we have explained before this is not appropriate for short term lets many of which are very small businesses and older properties not readily economically adaptable and/or subject to conservation restrictions (e.g. located in conservation areas).

ANNEX: ASSC'S PROPOSED AMENDMENTS TO THE ORDER

- 1 Insert at end of article 3 (1) *"unless the activity is an exempt activity under article 4."*
- 2 Insert new article 4 and renumber remaining articles –

Exemption for Registered Accommodation

4.(1) *An activity specified in article 3(2) is an exempt activity –*
(a) where the accommodation is registered accommodation and the person carrying on the activity is the registrant, and
(b) the registration conditions are being complied with or, if there is a failure to comply, the failure is remedied within a reasonable period.

(2) Registered accommodation is accommodation registered under compliant registration scheme with [VisitScotland] or such other person as the Scottish Ministers designate from time to time as registrar.

(3) Schedule 2 applies

- 3 Insert new Schedule 2 and renumber remaining Schedules -

SCHEDULE 2

Article 3

Compliant Registration Scheme

Compliant Schemes

- 1 *A compliant scheme is a scheme which requires the applicant –*
(a) to provide the information specified in paragraph 2 when applying to register and to update it whenever it changes,
(b) to consent to the information being made available to the public [except for the applicant's phone number and email address], and
(c) to comply with the registration conditions specified in paragraph 3.

Registration Requirements

- 2 *The information to be provided by the applicant is –*
(a) the applicant's name
(b) the name of the owner, if other than the applicant
(c) the full address of the short-term let (including a postcode)
(d) the date of the application
(e) the type of premises

(f) the maximum occupancy limit or limits

(g) contact details (telephone number or email address) for the applicant or manager of the short-term let, and

(h) the energy performance certificate (if required for the premises)

Registration Conditions

3(1) The registration conditions are the conditions set out in paragraph (2) and in Schedule 4 modified as follows –

(a) References to the “holder of a licence” are references to the registrant,

(b) References to the “licensing authority” are references to the registrar,

(c) References to the “licence” are references to the “registration”,

(d) Paragraphs 1(a), 11 & 12 do not apply.

(2) The registrant must provide the registration number and identity of the registrar -

(a) within the premises in a place accessible to all guests, and

(b) on websites, booking platforms and marketing materials.

4 In Schedule 4 (Mandatory Licence Conditions), delete paragraphs 7(2) and 7(3), and the definition “repairing standard” in paragraph 14.

5 In Schedule 5, delete paragraph 2 (Housing Scotland Act 2006).

This approach has the full support of industry, namely the following stakeholders:

- **Airbnb**
- **Association of Scotland’s Self-Caterers**
- **Association of Serviced Apartment Providers**
- **Expedia**
- **Federation of Small Businesses**
- **NFUS**
- **Professional Association of Self-Caterers UK**
- **Scottish Agri-Tourism**
- **Scottish B&B Association**
- **Scotland’s Best B&Bs**
- **Scottish Guest House and B&B Alliance**
- **Scottish Land and Estates**
- **Short-Term Accommodation Association**
- **Scottish Tourism Alliance**
- **VisitScotland**

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April 2021