

202400434007

Correspondence between Scottish Ministers on the one hand, and on the other, the Association of Scottish Self-Caterers, the UK Short-Term Accommodation Association and/or Airbnb, since January 2023.

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1. Short-term let Planning and Response

From: Redacted <Redacted@assc.co.uk>

Sent: Thursday, June 27, 2024 11:29 AM

To: Minister for Public Finance <MinisterPF@gov.scot>; Minister for Housing <MinisterforHousing@gov.scot>; Minister for Employment and Investment <MinisterEI@gov.scot>; Deputy First Minister and Cabinet Secretary for Economy & Gaelic <DFMCSEG@gov.scot>

Cc: Ivan.McKee.msp@parliament.scot; iain@fivesg.com;

Paul.McLennan.MSP@parliament.scot; Redacted <Redacted@gov.scot>;

Tom.Arthur.msp@parliament.scot; Kate Forbes MSP

<kate.forbes.msp@parliament.scot>

Subject: Short-Term Let Planning

Importance: High

Good morning,

Many thanks indeed for your time yesterday. As you will appreciate, it is a complicated subject exacerbated by the conflation between short-term let licensing and planning (explanation attached).

Please find attached legal opinion from Burness Paull. Given that there is a clear difference in our legal advice and the Scottish Government's position, which would have a significant impact on the course of action required by operators (with significant associated cost implications) we would appreciate a prompt response to the attached advice. We will also be sharing this legal advice with both Highland and City of Edinburgh council.

Respecting the intention of the 2019 Planning Act, and the provision of Planning Control Areas to address 'number' of STLs, existing businesses should be protected by not being impacted by retrospective planning considerations (including NPF4). This is critical and requires:

- 1) Amendments to the STL Licensing Order, as per Burness Paull Memorandum
- 2) Amendments to the STL Licensing Guidance, as per Burness Paull Memorandum, and legal opinion

It is our view that a new Use Class Order (UCO) for 'Short-Term Lets' is critical, which existing operators would automatically be transferred to, offering grandfather rights to businesses that have invested in the small accommodation sector. It should be a mixed UCO - residential / STL, to enable properties to revert back to residential without requirement for planning permission.

Regrettably, unless the above points are addressed, planning will remain the most materially damaging element of the STL regulatory regime.

I look forward to hearing your thoughts.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted@assc.co.uk

Web: www.assc.co.uk

Attachment to item 1 – Conflation of Planning and Licensing

[The Conflation between Planning and Licensing - ASSC](#)

Attachment to item 1 – Judicial Review

Our Ref ASS/3013/00002/AOS

Your Ref

[Redacted] Association of Scotland's Self-Caterers

By email only: Redacted@assc.co.uk

26 June 2024

Dear [Redacted]

PLANNING POLICY JUDICIAL REVIEW

I refer to the enclosed letter from the Minister for Housing, Paul McLennan MSP, dated 21 June 2024. You have asked for advice on the last paragraph of the Minister's letter, which states as follows. "Turning to the issue of retrospective application of legislation, due to the location of the property in question now being a control area, the requirement to demonstrate proof that planning permission or a CLUD is in place applies to the holding of a license. As the relevant section of the licensing legislation applies to holding of a license going forward from when it is granted, it would be for the Scottish Courts to consider whether this is in fact a retrospective requirement. Similarly, the licensing legislation provides that a planning authority may decline to determine a license application until the planning situation is established. As this applies at the point an application for a license is made, it is again unclear that this could be considered retrospective. It would of course be open to any individual to seek a judicial review to obtain a legal ruling on whether or not these clauses of the licensing legislation are, in the Court's opinion retrospective."

In my opinion, the Minister's summary of the legal position is incorrect. There is no requirement for applicants to "prove" the planning position. Separately, no question of retrospectivity arises – in planning or licencing terms. Active: 119962257v1 2 The correct position is as follows.

1. Lord Braid confirmed in his judgment ([2023] CSOH 86) that section 26B of the 1997 Act does not apply retrospectively to operators where the change of use occurred prior to the designation of the control area (paragraph 32). Accordingly, there is only a deemed material change of use, and a requirement to apply for planning permission, where the change of use occurred after the control area came into effect.
2. The statement that "due to the location of the property in question now being a control area, the requirement to demonstrate proof that planning permission or a CLUD is in place applies to the holding of a license" is incorrect.
3. The only situation in which the law (i.e. the regulations read together with Lord Braid's Opinion) requires a person applying for a licence to prove positively that they have planning permission for use of the property as a short term let is where (i) the

property is in a control area, and (ii) the use of the property as a short term let commenced (or is proposed to commence) after the date the control area came into effect.

4. In all other cases (whether within or outwith a control area) the law does not require a person applying for a licence to prove that planning permission or a CLUD is in place. The licensing authority cannot insist on this.

5. As Lord Braid pointed out in his judgment, the “mischief targeted by what is now section 26B was the time expended and difficulties encountered by planning authorities in determining whether a change of use from a dwelling house to shortterm letting was material or not”.

6. It may be administratively convenient for licensing authorities to require applicants in all cases to “demonstrate proof that planning permission or a CLUD is in place”, but there is no legal requirement for applicants to do so, and it is unlawful to insist on this as part of the process for applying for a licence or as a condition of holding a licence.

7. This does not mean the licencing authority is without remedy should it have concerns about the planning position. As explained in our earlier memorandum of advice (copy enclosed), the regulations provide that the licensing authority may suspend consideration of an application if they consider there would be a breach of planning control (art. 7, 2022 Order; this applies to existing operators who submitted an application prior to 1 October 2023), or refuse to consider the application (Sch. 2, para. 8, 2022 Order; this applies to applications submitted after 1 October 2023).”. The licencing authority must act lawfully when exercising these powers. It cannot act arbitrarily. It would be irrational and unlawful for the licensing authority to exercise these powers simply on the basis that the applicant has failed to prove that using the property as a short term let would not be in breach of planning control (i.e. failed to “prove a negative”). The licensing authority must have reasonable grounds, supported by evidence, on which to suspect use of the property as a short term let would breach planning control. The requirement to hold a licence, or indeed the act of applying for a licence, is not a relevant planning consideration and does not indicate any change of use or breach of planning control.

8. Finally, granting a licence does not deprive the planning authority and the licensing authority of their right to take action against a licence holder should they have concerns about compliance with planning control after the licence has been granted. The licensing authority has the power to suspend or revoke a licence if in their opinion a condition of the licence has been contravened, which would include Mandatory Condition 13 (para 11, Sch. 1, Civic Government (Scotland) Act 1982). As explained in the enclosed memorandum, the 2022 Order conflates the roles of the licensing authority and the planning authority in a way that is apt to cause confusion and which is unnecessarily getting in the way of licensing authorities progressing otherwise legitimate, lawful and desirable applications for short-term let licences. This confusion is apparent in the Minister’s explanation where he states that “a planning authority may decline to determine a license application...”. Planning authorities do not determine licence applications. It is exclusively the jurisdiction of the licensing authority. The role of the planning

authority is restricted to providing advice to the licencing authority on the planning position as and when required.

Please do let me know if I can assist further.

Yours sincerely

[Redacted]

Partner and Solicitor Advocate

T: Redacted E: Redacted @burnesspaull.com

Attachment: The Judicial Review attachment also contained the Minister's correspondence of 21 June 2024 that is disclosed at item 4

Minister for Housing
Ministear airson Taigheadas
Paul McLennan MSP/BPA
T : 0300 244 4000 E : scottish.ministers@gov.scot

Redacted @assc.co.uk

Our Reference: 202400418490

Your Reference: Evidence for STL licence - Ward 20 CA

21 June 2024

Dear [Redacted],

Thank you for your correspondence referring to planning permission and an issue with Highland Council.

As you will appreciate, the Scottish Government cannot comment on individual cases. However in general terms the following information may be relevant. You enclose correspondence from an operator to Highland Council seeking to be issued a planning registration number without actually submitting an application for planning permission or a certificate of lawfulness. Their argument seems to be founded entirely on a view that planning permission is not legally required in their case. This assumption that planning permission is never required for change of use to a short-term let is not, and never has been, the case. I explain this below.

As noted Lord Braid ruled that section 26B of the Town and Country Planning (Scotland) Act 1997 cannot apply retrospectively. In planning terms this means, as section 2B of the 1997 Act cannot apply, that existing operators whose property lies within a newly created short-term let control area are not automatically considered material change of use. It does not mean however that other planning legislation which was in place at the time the operators made the change of use does not continue to apply. Lord Braid was not asked to consider, nor did he comment on that

point. Section 26 of the 1997 Act therefore applies, meaning that whether or not planning permission is required for existing operators is a matter to be considered on an individual case-by-case basis taking account of the individual factors in each individual case.

In legal terms this is an application of 'grandfather rights' – existing operators continue to be affected by, and have to adhere to, the legislation in place prior to the introduction of section 26B. It is perhaps worth noting that this position – that section 26B does not apply retrospectively and that section 26 continues to apply to pre-existing operators in control areas - is set out in the Scottish Government planning guidance on short-term lets. Not only was this guidance not challenged by the plaintiffs bringing the judicial review, it was specifically referred to by them as evidence to support their argument.

Lord Braid also referred to the fact that section 26 continued to apply in dismissing the request that enforcement notices issued by City of Edinburgh Council which referred to both section 26B and section 26 should be struck down as section 26B did not apply. In doing so, Lord Braid supported the view that pre-existing operators were subject to section 26 considerations and as such any unauthorised material change of use could be a breach of planning control subject to enforcement action. Therefore whether the individual in question requires planning permission or could obtain a certificate of lawfulness (CLUD) on the basis that planning permission is not required would be a matter for the planning authority to consider. In passing, it should be noted that a planning reference number cannot be issued where there has been no application for, or determination of, either a planning application or a CLUD.

In effect, the individual already has a planning reference number which would be for the last consent granted by the planning authority -this may well be the original grant of planning permission if no change of use has since been lawfully recorded with the planning authority since then.

Turning to the issue of retrospective application of legislation, due to the location of the property in question now being a control area, the requirement to demonstrate proof that planning permission or a CLUD is in place applies to the holding of a license. As the relevant section of the licensing legislation applies to holding of a license going forward from when it is granted, it would be for the Scottish Courts to consider whether this is in fact a retrospective requirement. Similarly, the licensing legislation provides that a planning authority may decline to determine a license application until the planning situation is established. As this applies at the point an application for a license is made, it is again unclear that this could be considered retrospective. It would of course be open to any individual to seek a judicial review to obtain a legal ruling on whether or not these clauses of the licensing legislation are, in the Court's opinion retrospective.

I hope this is helpful.

Yours sincerely

PAUL McLENNAN

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www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot ACTIVE: 117955472v2

Attachment to item 1 - Memorandum of Advice

[MEMORANDUM-OF-ADVICE-Civic-Government-Scotland-Act-1982-Licensing-of-Short-Term-Lets-Order-2022.pdf \(assc.co.uk\)](#)

Response to item 1

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400420946

Your Reference: Short-Term Let Planning

24 July 2024

Dear [Redacted],

Thank you for your e-mail of 27 June, following our meeting on 26 June. I note your comments and the attached proposals for amendment of the Licensing Order. I am aware that you have had previous discussions with the Minister for Housing on these matters. As you will be aware, we have a further meeting to be scheduled for August and I look forward to discussing these matters further at that time.

Yours sincerely,

IVAN McKEE

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

2. MC13 Urgent Clarification and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Thursday, June 20, 2024 11:13 AM
To: Minister for Housing <MinisterforHousing@gov.scot>; Deputy First Minister and Cabinet Secretary for Economy & Gaelic <DFMCSEG@gov.scot>; Minister for Public Finance <MinisterPF@gov.scot>; Minister for Employment and Investment <MinisterEI@gov.scot>; Central Correspondence Unit <scottish.ministers@gov.scot>
Cc: Redacted <Redacted @gov.scot>; Redacted@fivesg.com; Kate Forbes MSP <kate.forbes.msp@parliament.scot>; Ivan.McKee.msp@parliament.scot; Tom.Arthur.msp@parliament.scot; Paul.McLennan.MSP@parliament.scot
Subject: MC13 - Urgent Clarification Required

Good morning,

It has come to our attention that Highland Council are looking to request a Certificate of Lawfulness for all applicants of a secondary let short-term let licence. Whilst this is not a formal policy of Highland Council, this is being asked of all applicants where short-term let use started before the control area.

The rationale for this is that a Certificate of Lawfulness is required for all applications to ensure compliance with Mandatory Condition 13 to confirm a planning permission application is not required. The practical effect of this approach is that all existing applicants will be required to incur an additional £600 fee for a certificate of lawfulness to prove they do not need something. Most application will also require additional site plans and planning consulting fees, which can average £2000 in total.

Having taken legal advice on this, our understanding is, whilst a certificate of lawfulness would be helpful to confirm planning status, it is not a requirement as a condition of a licence application for an applicant, even in a control area where their use predated the designation of a control area. Discussions with Highland Council indicate most (95-96%) licence applications would not need planning permission as there would not be a deemed 'material change of use' (and therefore a certificate of lawfulness would be granted), however a requirement to provide a certificate of lawfulness as a blanket condition of a secondary let licence application is in our view unlawful.

We would be appreciate if the Scottish Government could provide advice on this issue as a matter of urgency.

All the very best,

[Redacted]
The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted
Email: Redacted @assc.co.uk
Web: www.assc.co.uk

Response to item 2

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400420259

Your Reference: let short-term

22 July 2024

Dear [Redacted],

Thank you for your e-mail of 20 June to various Scottish Ministers regarding Highland Council requirements for certificates of lawfulness (CLUDs) to confirm planning status.

Under licensing legislation it is open to any licensing board to consider whether or not any particular short-term let operation may be in breach of planning control when considering a license application. That is a matter for individual licensing boards. I note your comments that the ASSC has taken legal advice on such an approach, however you will appreciate that it is not for the Scottish Government to comment on such legal advice or to offer legal interpretation of legislation.

It would be open to any individual to seek a judicial review of Highland Council's, or indeed any other authority's interpretation of, and implementation of, legislation through a judicial review by the Scottish Courts.

Yours sincerely

PAUL MCLENNAN
Minister for Housing

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

3. Request to Meet and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Monday, June 17, 2024 5:25 PM
To: Minister for Employment and Investment <MinisterEI@gov.scot>
Cc: Tom.Arthur.msp@parliament.scot
Subject: Request to Meet
Importance: High

Good afternoon,

I would be hugely appreciative if I could secure a meeting with the Minister for Employment and Investment as a matter of urgency regarding the impact of STL regulations on the tourism sector in Scotland.

I am meeting with the Minister for Public Finance on 26th June at 11am and wonder if Mr Arthur may have availability to discuss, as this is a cross-portfolio matter. Alternatively, another time that suits would be equally appreciated.

I acknowledge gratefully that the Minister met with me very recently, although that was specifically regarding Visitor Levy. Having spoken to the Deputy First Minister, she confirmed that Mr Arthur is looking after the tourism portfolio while Richard Lochhead is recovering.

This is becoming a critical issue that is having a material impact on the Scottish economy and would be hugely grateful for a conversation.

Many thanks in advance.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Response to item 3

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400419479

26 June 2024

Dear [Redacted],

Thank you for your request to meet with me to discuss the impact on Scottish tourism of Short Term Lets (STL) licensing while I cover tourism and hospitality for Richard Lochhead. As you will be aware, Mr Lochhead's responsibilities are being jointly managed by both Ms Forbes, as Deputy First Minister and Cabinet Secretary for Economy, and myself.

At your recent meeting with the Deputy First Minister on 4 June I am aware the impact on tourism was also discussed, which has been noted and shared within government. I am therefore confident that the Scottish Government's understanding of ASSC's concerns is current and would not propose to meet again at this time given recent engagement. I would however be open to attending a future meeting of the Industry Advisory Group alongside my Ministerial colleague Paul McLennan as lead Minister for STL policy. I have asked policy teams to explore this option given it is the preferred route for future engagement.

Thank you again for your communication and I hope to engage with you, further to above, at a later date.

Yours sincerely

TOM ARTHUR

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

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www.gov.scot

4. Evidence for STL licence - Ward 20 CA

From: Redacted <Redacted @assc.co.uk>
Sent: Monday, June 10, 2024 7:53 AM
To: Minister for Housing <ministerhousing@gov.scot>; Deputy First Minister and Cabinet Secretary for Economy & Gaelic <DFMCSEG@gov.scot>
Cc: Paul.McLennan.MSP@parliament.scot; Kate Forbes MSP <kate.forbes.msp@parliament.scot>; Redacted <Redacted @gov.scot>; Short Term Lets Delivery Group <shorttermlets@gov.scot>
Subject: Fwd: Evidence for STL licence - Ward 20 CA
Importance: High

Good morning,

Please find below email regarding The Highland Council's interpretation of planning requirements in Ward 20, Badenoch & Strathspey.

As you will see, the planning authority is unlawfully demanding evidence of planning permission from an existing operator (operating pre designation of the Planning Control Area). This is both an additional unnecessary expense, which runs into thousands once you employ the services of an architect to draw up plans and a planning consultant to produce evidence in respect of NPF4 policy 30.

By far the biggest obstacle to the successful implementation of short-term let licensing is onerous dual licensing and planning permission requirements. The conflation of planning and licensing is the root cause of the vast majority of current industry/operator concerns, not just in Edinburgh, but across Scotland (see attached).

Planning permission can still be used as a mechanism to limit the number of STLs to address housing concerns. Targeted (data driven) Planning Control Areas can be used prospectively to limit new STLs where necessary. Any 'amenity' concerns can be dealt with directly by licence holders. This approach would significantly simplify licensing, reduce the planning burden on local authorities (who are already resource-strained) and eliminate some of the current distrust in the current STL licensing process. This can all be achieved through a small but important change to the licensing order. Detailed proposals have been put forward by the ASSC, supported by legal advice from one of Scotland's leading planning lawyers (see attached).

Consideration also needs to be made of a mechanism for 'grandfathering' existing STLs for planning purposes, potentially through a new use class order. If STL is now considered a material change of use, a new use class order is required.

All that said, the challenges facing our sector are not insurmountable and we believe there isn't much distance to travel before we can arrive at a mutually beneficial scenario for industry and government which benefits all stakeholders. It is in our collective interest to get the regulations back on track. How can this be achieved? We would suggest three main changes to remove the remaining barriers to the effective operation of the regulatory framework as it stands:

- That the 2024 Amendment Order is pulled, prior to further consideration by the LGHP Committee, for review to allow meaningful revisions to take place;
- That licensing and planning regimes are de-coupled, as per the ASSC's recommendation paper from February 2024, as this remains the biggest obstacle to the successful implementation of STL licensing; and
- That guidance is re-written, which should be produced by both industry and local authorities/COSLA. A similar approach has been fruitful regarding the development of Visitor Levy guidance.

Implementing such changes would result in a material, meaningful and tangible difference to addressing the major outstanding challenges, without in any way diluting the robust nature of the regulations, which largely industry supports. We are merely asking for game changing policy which will make a real difference to businesses across Scotland.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 4 – Conflation of Planning and Licensing

[The Conflation between Planning and Licensing - ASSC](#)

Attachment to item 4 - Evidence to LGHP Committee May 2024

[Microsoft Word - Evidence to LGHP Committee May 2024 v5 .docx \(parliament.scot\)](#)

Attachment to item 4 - Memorandum of Advice

[MEMORANDUM-OF-ADVICE-Civic-Government-Scotland-Act-1982-Licensing-of-Short-Term-Lets-Order-2022.pdf \(assc.co.uk\)](#)

Response to item 4

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted]@assc.co.uk

Our Reference: 202400418490

Your Reference: Evidence for STL licence - Ward 20 CA

21 June 2024

Dear [Redacted],

Thank you for your correspondence referring to planning permission and an issue with Highland Council. As you will appreciate, the Scottish Government cannot comment on individual cases. However in general terms the following information may be relevant. You enclose correspondence from an operator to Highland Council seeking to be issued a planning registration number without actually submitting an application for planning permission or a certificate of lawfulness. Their argument seems to be founded entirely on a view that planning permission is not legally required in their case. This assumption that planning permission is never required for change of use to a short-term let is not, and never has been, the case. I explain this below.

As noted Lord Braid ruled that section 26B of the Town and Country Planning (Scotland) Act 1997 cannot apply retrospectively. In planning terms this means, as section 26 of the 1997 Act cannot apply, that existing operators whose property lies within a newly created short-term let control area are not automatically considered material change of use. It does not mean however that other planning legislation which was in place at the time the operators made the change of use does not continue to apply. Lord Braid was not asked to consider, nor did he comment on that point. Section 26 of the 1997 Act therefore applies, meaning that whether or not planning permission is required for existing operators is a matter to be considered on an individual case-by-case basis taking account of the individual factors in each individual case.

In legal terms this is an application of 'grandfather rights' – existing operators continue to be affected by, and have to adhere to, the legislation in place prior to the introduction of section 26B. It is perhaps worth noting that this position – that section 26B does not apply retrospectively and that section 26 continues to apply to pre-existing operators in control areas - is set out in the Scottish Government planning guidance on short-term lets. Not only was this guidance not challenged by the plaintiffs bringing the judicial review, it was specifically referred to by them as evidence to support their argument.

Lord Braid also referred to the fact that section 26 continued to apply in dismissing the request that enforcement notices issued by City of Edinburgh Council which referred to both section 26B and section 26 should be struck down as section 26B

did not apply. In doing so, Lord Braid supported the view that pre-existing operators were subject to section 26 considerations and as such any unauthorised material change of use could be a breach of planning control subject to enforcement action. Therefore whether the individual in question requires planning permission or could obtain a certificate of lawfulness (CLUD) on the basis that planning permission is not required would be a matter for the planning authority to consider.

In passing, it should be noted that a planning reference number cannot be issued where there has been no application for, or determination of, either a planning application or a CLUD. In effect, the individual already has a planning reference number which would be for the last consent granted by the planning authority -this may well be the original grant of planning permission if no change of use has since been lawfully recorded with the planning authority since then.

Turning to the issue of retrospective application of legislation, due to the location of the property in question now being a control area, the requirement to demonstrate proof that planning permission or a CLUD is in place applies to the holding of a license. As the relevant section of the licensing legislation applies to holding of a license going forward from when it is granted, it would be for the Scottish Courts to consider whether this is in fact a retrospective requirement. Similarly, the licensing legislation provides that a planning authority may decline to determine a license application until the planning situation is established. As this applies at the point an application for a license is made, it is again unclear that this could be considered retrospective. It would of course be open to any individual to seek a judicial review to obtain a legal ruling on whether or not these clauses of the licensing legislation are, in the Court's opinion retrospective. I hope this is helpful.

Yours sincerely

PAUL McLENNAN

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www.gov.scot

5. Letter from STAA and Response

From: Redacted <Redacted @ukstaa.org>

Sent: Friday, May 10, 2024 6:00 PM

To: Minister for Housing <ministerhousing@gov.scot>

Cc: Paul.McLennan.msp@parliament.scot

Subject: Letter to the Housing Minister from STAA CEO Andy Fenner

To whom it may concern,

Please find attached a letter from [Redacted] of the UK Short Term Accommodation Association (STAA) congratulating Paul McLennan MSP on his reappointment as Housing Minister.

With kind regards,
[Redacted]

Redacted

Redacted @ukstaa.org
Vox Studios, Durham Street
London, SE11 5JH

Attached letter to item 5

UK Short Term Accommodation Association
310 Vox Studios Durham Street London
SE11 5JH

May 2024

Subject: Congratulations on your reappointment as Housing Minister

Dear Minister,

As the [Redacted] of the UK Short Term Accommodation Association (STAA), I am delighted to extend my heartfelt congratulations on your reappointment as Scotland's Housing Minister. It's truly wonderful to see you back in this pivotal role. I look forward to continuing our collaboration with you and your team as we, in our respective roles, build an exciting future for tourism in Scotland.

Over the years, I have had the privilege of collaborating closely with you, and your steadfast commitment to our industry has always been evident. Your dedication to understanding the unique challenges and opportunities facing the short-term let sector in Scotland has been invaluable. From our discussions on driving tourism to our collaborative efforts in refining Scotland's short-term lets licensing scheme, your leadership has made a significant impact. Your passion for supporting Scotland's short-term rental sector is deeply appreciated, and I am eager to explore how we can further enhance the positive contributions of short-term rentals to Scotland's economy and communities.

Once again, congratulations on your reappointment. Your return to the role brings a sense of continuity and reassurance, and I look forward to our continued collaboration for the benefit of Scotland.

Yours sincerely,

[Redacted]

Response to item 5

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @ukstaa.org

Our Reference: 202400413906

Your Reference: FW: Letter to the Housing Minister from Redacted

22 May 2024

Dear [Redacted],

Thank you for your very kind letter of congratulations on my re-appointment as the Minister for Housing, which you sent to me on 10 May 2024.

I appreciate the valuable input that the STAA has contributed to discussions on short-term lets licensing, which alongside other engagement is helping to inform my forthcoming update to Parliament on implementation.

I look forward to speaking again with you, and other booking platform representatives, in late September.

Yours sincerely,

PAUL McLENNAN

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

6. Letter for Business Minister, STAA and Response

To whom it may concern,

Please find attached a letter from [Redacted] of the UK Short Term Accommodation Association, congratulating Richard Lochhead MSP on his appointment as Minister for Business, with continued responsibility for tourism.

With kind regards,

[Redacted]

[Redacted]

[Redacted] @ukstaa.org

Vox Studios, Durham Street

London, SE11 5JH

Attached Letter to item 6

UK Short Term Accommodation Association
310 Vox Studios Durham Street
London, SE11 5JH

May 2024

Subject: Congratulations on your appointment as Minister for Business

Dear Minister,

As the [Redacted] of the UK Short Term Accommodation Association (STAA), I am delighted to extend my heartfelt congratulations on your appointment as Scotland's Business Minister. I look forward to continuing our discussions with you as we build an exciting future for tourism in Scotland and support the diverse businesses that are part of the short-term rental sector.

Over the past month, I have had the privilege of collaborating closely with you, and your steadfast commitment to our industry has been evident. Your dedication to understanding the unique challenges and opportunities facing the short-term let sector in Scotland has been invaluable. From our discussions on driving tourism to our collaborative efforts in refining Scotland's short-term lets licensing scheme, your leadership has been greatly appreciated.

I would like to extend my warmest congratulations on your appointment as Business Minister once again. I look forward to continuing to work with you and your team, to ensure the sustainable and responsible growth of our industry.

Yours sincerely,

[Redacted]

Response to item 6

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted]@ukstaa.org

Our Reference: 202400413775

Your Reference: Letter to the Business Minister

5 July 2024

Dear [Redacted],

Thank you for your correspondence of 10 May 2024 to Richard Lochhead, Minister for Business. Please accept my apologies for the delay in responding. You may be aware that Mr Lochhead is currently taking some time away from ministerial duties to recover from a period of illness. I have therefore been asked to respond on his behalf, and wish to express my thanks to you and the UK Short Term Accommodation Association (STAA) for the kind letter of congratulations.

We appreciate the valuable input that the STAA have contributed to discussions regarding short-term lets licensing and wider tourism topics. I understand that Mr Lochhead met with [Redacted], at Booking.com before taking unwell, to discuss ways in which tourism opportunities could be maximised in a way that is sustainable and equitable. I am also aware that you met with the Minister for Housing to discuss short-term lets licensing and the health of the tourism sector. Your ongoing support and input, as part of the Industry Advisory Group facilitated by Visit Scotland, is valuable to this monitoring work.

I look forward to working with you in an ongoing spirit of partnership and dialogue.

Yours sincerely,

TOM ARTHUR

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www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

7. Riag Survey and Response

From: Redacted <Redacted @assc.co.uk>

Sent: Thursday, April 25, 2024 8:13 AM

To: Minister for Housing <ministerhousing@gov.scot>; Minister for Small Business, Innovation, Tourism and Trade <MinisterSBITT@gov.scot>

Cc: Paul.McLennan.MSP@parliament.scot; richard.lochhead.msp@parliament.scot

Subject: RIAG Survey

Importance: High

Good morning,

Please find attached survey results which the ASSC collated on behalf of the Regulations Improvement Advisory Group, as part of the New Deal for Business review of regulations. I would draw your attention to the case studies at the end, which make for harrowing reading. This is the lived experience of real businesses in Scotland.

Short-Term Let regulations are having a devastating impact on small Scottish businesses. Regrettably the proposed amendments in the 2024 Order do not address industry's key concerns.

We stand ready to assist the Scottish Government to get these regulations right, and hope that given this opportunity to make meaningful changes, you will hear our concerns and work with us to protect our vital sector and the wider tourism sector before further damage is done.

As ever, please let me know how we can assist.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 7 – ASSC Survey

[Microsoft Word - New Deal for Business Survey.docx \(flywheelsites.com\)](#)

Response to item 7

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400411250

Your Reference: RIAG Survey

25 July 2024

Dear [Redacted],

Thank you for your correspondence to Scottish Ministers and providing your research in response to the Regulatory Improvement Advisory Group (RIAG) survey. I can confirm officials received this ahead of the meeting held on 02 May 2024 which you attended.

I understand from officials that the Short-term Lets licensing is not within the scope of the current work the RIAG are undertaking. The survey was looking to identify regulations that have been implemented for a minimum of 2 years, this requirement is to ensure there is an appropriate evidence base supporting the request for the removal or amendment of regulations. However, we will continue to engage and work with business to improve and ease the cumulative impact and regulatory burden that currently face business.

Regarding Short-term Lets, the licensing regime has been introduced to regulate the safety of properties used for short-term lets and provide assurance to guests visiting Scotland and local communities, safeguarding the reputation of good quality and responsible hosts. We are committed to ensure an ongoing iterative process monitoring delivery and identifying solutions to any operational challenges, as well as what emerging good practice looks like. Changes have already been made, for example, a new provision has been introduced enabling licences to be transferred in certain circumstances and the creation of a provisional licence that can be applied for if new short-term lets are being built.

I understand you were in attendance and representing the Association of Scotland's Self-Caterers (ASSC) on 23 April when the Minister for Housing met the Industry Advisory Group to discuss the monitoring of short-term let regulation. This supports our ambition to ensure an open, progressive and constructive dialogue that can assist this regulation to embed and succeed for the benefit of business, guests and Scotland.

I would like to thank you again for providing your feedback to the Regulatory Improvement Advisory Group and trust you have found the above helpful.

Yours sincerely

PAUL McLENNAN

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

8. STL Urgent Request to Meet and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Wednesday, April 10, 2024 5:58 PM
To: First Minister <firstminister@gov.scot>
Cc: Redacted <Redacted @gov.scot>; Humza.Yousaf.msp@parliament.scot
Subject: Fwd: Short-Term Let Regulations: Urgent Request for Meeting
Importance: High

Dear First Minister,

I am contacting you further to my email of 1st March to request a meeting to discuss the Scottish Government's short-term let regulations which are continuing to pose significant challenges to ASSC members across the country. This followed your discussions with Airbnb and the STAA in February 2024 in which you indicated a desire to speak with the ASSC.

We still welcome the opportunity of meeting to discuss this issue as it is of vital importance to the continued vibrancy and sustainability of Scottish tourism.

The Scottish Government have yet to lay the SSI, which was delayed, to amend The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022. The uncertainty for business has been damaging but we believe there are mutually beneficial solutions which can make the regulations work for all stakeholders.

We would therefore appreciate the opportunity of meeting with you before this comes to pass given the urgency to protect jobs and livelihoods in our sector.

Yours sincerely,

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

From: Redacted <Redacted @assc.co.uk>
Subject: Short-Term Let Regulations: Urgent Request for Meeting
Date: 1 March 2024 at 12:17:41 GMT
To: "firstminister@gov.scot" <firstminister@gov.scot>
Cc: Redacted @gov.scot, Humza.Yousaf.msp@parliament.scot, "Redacted @stalliance.co.uk" <Redacted @stalliance.co.uk>

Dear First Minister,

Further to your meeting with the Short-Term Accommodation Association on 28th February, and letter from the Housing Minister to the Local Government, Housing

and Planning Committee dated 29th February in relation to a delay in the laying of the Short-Term Let SSI, Redacted Scottish Tourism Alliance, and I request a meeting with you at your earliest convenience.

We wish to discuss a solution to the current impasse, to forge a constructive way forwards and to repair relations between the Scottish Government and Scotland's tourism sector.

We hope that you will be amenable to this request and look forward to hearing from you.

As an aside, many congratulations on the wonderful news that you and your wife are expecting!

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Response to item 8

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted]@assc.co.uk

Our Reference: 202400409046

1 May 2024

Dear [Redacted],

Thank you for your further email of 10 April addressed to the First Minister, seeking a meeting to discuss short-term lets regulation.

When I replied to you on 5 April, I acknowledged the First Minister had asked me to respond to your earlier email of 1 March. The First Minister is keen for engagement about this regulation to take place with me, as the Minister with responsibility for the policy. I am pleased we were able to meet on 23 April, as part of a wider meeting with the Industry Advisory Group, to specifically discuss ongoing monitoring about implementation of the short-term let and that we already have another meeting planned on 14 May to meet jointly with Mr FitzPatrick.

Thank you for sharing the survey you've recently conducted with your membership, as part of work linked to the better regulation activity under the New Deal for Business. This is helpful to consider as part of the overall picture, alongside information and indicators from a variety of sources.

Yours sincerely

PAUL MCLENNAN

Minister for Housing

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www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

9. STL Recommendations and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Thursday, February 29, 2024 8:14 AM
To: MSP McLennan P <Paul.McLennan.MSP@Parliament.scot>; Minister for Housing <ministerhousing@gov.scot>
Cc: First Minister <firstminister@gov.scot>; Humza.Yousaf.msp@parliament.scot
Subject: STL Recommendations
Importance: High

Good morning,

I understand, following your meeting with the First Minister and STAA / Airbnb yesterday, that you requested that the ASSC recommendation paper on short-term let legislation was re-sent directly to you.

Accordingly, please find attached. Also attached, feedback from the IAG.

We understand that an SSI will be laid today. Whilst we hugely appreciate having had the opportunity to meet with you repeatedly throughout the regulatory process, it is apparent that our very real concerns have failed to have been disregarded and regrettably the SSI will not address the critical issues that are causing irreparable harm to the traditional self-catering sector in Scotland.

We sincerely hope that, in line with the principals of the New Deal for Business which we wholeheartedly support, our recommendations will be given due consideration before more damage is done to indigenous Scottish businesses, livelihoods and the Scottish tourism sector.

As ever, we would be delighted to discuss this critical matter with you, or indeed with the First Minister, at your convenience.

With thanks in advance.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 9 – Implementation Update ASSC Recommendations

[Microsoft Word - Implementations Update Recommendations.docx \(assc.co.uk\)](#)

Attachment to item 9 - Memorandum of Advice

[MEMORANDUM-OF-ADVICE-Civic-Government-Scotland-Act-1982-Licensing-of-Short-Term-Lets-Order-2022.pdf \(assc.co.uk\)](#)

Attachment to item 9 – IAG Feedback to Proposed SSI

Short-term let Industry Advisory Group (IAG) feedback to proposed SSI

Following the further information provided by the Scottish Government in relation to the proposed SSI to amend the short-term lets legislation on Friday 16 February, members of the IAG have agreed to provide additional feedback.

IAG members wish to be clear in articulating that they do not want to change the core principles of the regulations, and that they are offering this feedback in good faith, with the aim of improving the legislation for all parties.

In addition, IAG members have expressed hope that the feedback provided will be considered in the context of ensuring the legislation meets the needs of businesses as well as communities in the spirit intended at the outset. Group members would also like to reiterate the importance of aligning the improvement of regulation from a business perspective with the Scottish Government's ambitions for the New Deal for Business.

The feedback provided relates to areas that are of immediate concern to members of the Group, and areas that are considered should be prioritised for the SSI being drafted. The rationale provided by the group is set out below.

Feedback for urgent consideration in advance of the SSI:

1) Licence policies and planning consideration

As set out in previous feedback, IAG members remain concerned that the planning consideration (as outlined in our previous feedback and set out in the below annex for awareness) is not being taken forward in the context of the SSI being laid before Parliament on 29 February 2024.

We understand from Mr McLennan's letter to ASSC of 14 February 2024 that the comprehensive update on implementation in May/June 2024 will be informed by data gathered via Heads of Planning with regards to planning activity for short-term lets, however, it is the clear view of IAG members that this will be too late.

Industry representatives on the Group note with concern that feedback from their members suggests that the planning issue has led to businesses being unable to apply for a licence and subsequent closures as a result. Both ASSC and SBBA have recorded a 5% reduction in their respective memberships since 1 October 2023. Anecdotal feedback suggests that planning has been a significant barrier that has led to this reduction.

As previously indicated, ASSC has commissioned legal opinion from Burness Paull (also attached for awareness) on what amendments would be required to resolve the issues identified. This has been provided in the spirit of goodwill to assist Scottish Government in delivering legislation that meets the needs of businesses as well as our communities.

It is the view of IAG members that adopting the suggested amendments in the proposal from Burness Paull at the earliest convenience would be the most

appropriate way to ensure the ambitions of the legislation are achieved without causing further unnecessary harm to the visitor economy.

IAG members advise that the inclusion of this provision is particularly urgent as lenders will be unwilling / unable to provide funding to businesses where planning enforcement over and above a licence application may compromise their application for finance. One such example from a lender runs as follows:

TO WHOM IT MAY CONCERN

We are a mortgage lender who have been involved in lending to the Short Term Let Sector within Scotland for over 15 years.

Over the last 2 years;

- Activity levels in relation to new STL property purchases has diminished considerably.*
- Existing borrowers who have been offered new lending products, which would provide them a saving of c3.5% on their pay rate, have stalled in their decision due to licensing uncertainty. This will have cost them £1,000's in additional costs that could have been saved in a more secure operating environment.*
- Those that have considered exiting the market have struggled due to the market conditions, or at very least have had to give a large discount to do so.*
- As an organisation we have adapted our policy and criteria on 2 separate occasions now to attempt to support the market, only for the current landscape of slow processing and uncertainty on licensing/planning meaning that we may have to consider a change again.*
- As an organisation who prides ourselves on knowing our markets well and being able to provide sound advice to clients/customers who we have supported for many years, it has been extremely challenging to do this with a constant changing landscape. We need clarity to be able to continue to support this important part of the visitor economy sector.*

2) Provisional licence

IAG members have welcomed the inclusion in the draft SSI of a new provision enabling a provisional short-term let licence application to be made in relation to any premises before or during construction for the use as a short-term let.

We note that Scottish Government has suggested it is still considering the inclusion of 'converted' buildings in this provision but that this is unlikely to be considered for this SSI. The IAG would be grateful for clarification as to the justification for not including converted buildings at this stage.

The IAG is of the view that where a property that has been empty or underutilised is being converted into a short-term let, the operator should be granted the ability to apply for a provisional licence. In not including this aspect within the new provision, IAG members consider this retains unnecessary barriers to new businesses joining the market, resulting in a detrimental impact on the visitor economy. Further, not applying this approach disincentivises operators from revitalising empty properties,

which should be considered a socially responsible and positive contribution to society and local economies.

Conclusion

These issues represent urgent matters that IAG members consider need addressed if we are to avoid a situation whereby the visitor accommodation sector is damaged unnecessarily. The Group is of the view that they have offered reasonable solutions in good faith to Scottish Government, and suggest they are willing to assist in delivering these amendments to improve the legislation for all parties.

In addition to these urgent issues, IAG members have agreed to continue working to provide necessary solutions to operational issues through changes to guidance. This is in an effort to ensure that local authority policies are proportionate and lawful. Again, IAG members wish to make it clear that the intention is to do this in good faith without altering the core principles of the legislation.

IAG members wish to reiterate that there is no intention to diminish the robust regulatory regime in place in terms of both licensing and planning, but it is to address the unintended consequences that have become apparent, and to prevent further damage to the tourism sector. It is their view that this can be achieved via minor amendments to the SSI and associated guidance. Should the recommendations be adopted, the industry impacted by the regulations will be reassured, and policy objectives will be met.

ANNEX – previously submitted feedback on planning

1) Licence policies and planning consideration

As required by the Civic Government (Scotland) Act 1982 (“the 1982 Act”), the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 (SSI 2022/32) (“the 2022 Order”), local authorities across Scotland adopted their Short-Term Let (“STL”) Licensing Policies. The Association of Scotland’s Self-Caterers still has significant concerns regarding various STL Licensing Policies across Scotland. These concerns arise in light of the recent decision of Lord Braid in the petition for Judicial Review of the City of Edinburgh Council Short-Term Lets Licensing Policy (case reference: [2023] CSOH 35) (the “Decision”) and in terms of provisions contained in The Provision of Services Regulations 2009 (the “2009 Regulations”). In light of the Judicial Review, the ASSC wrote to Glasgow, Highland, Argyll & Bute and Dundee City Councils. **They all conceded that their policies were unlawful and have since amended their policies.** The ASSC has since assessed Clackmannanshire and Fife Councils on the same basis and found their policies to be deficient.

We believe that many of the deficiencies identified by Lord Braid can be addressed by amendments to guidance, while there are some legislative changes that would provide greater clarity – particularly in Planning terms.

Central to the operation of the newly introduced Short-Term Let 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 confusion regarding the interaction between planning and licensing 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 home-sharing situations, while others state that no planning permission is necessary.

A current example of this Clackmannanshire Council's policy states that:

For secondary letting only, Planning Permission under the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) for the use of the premises as a short term let; or proof that an application for planning permission has been made under the 1997 Act, which has not yet been determined; or proof that planning permission is not required (for example, a certificate of lawfulness).

This policy appears to be confusing the requirements of a Planning Control Area, where an application for planning permission is a mandatory requirement under Schedule 3 to the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022. Glasgow City Council was also operating a similar policy. The ASSC has taken legal advice from Burness Paull LLP on the lawfulness of this position (and others), it is clear that this STL Policy proceeds on a basis that is wrong as a matter of fact and law.

Instead, all short-term let licences granted by licensing authorities are subject to the mandatory conditions set out in schedule 3 to the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022. Mandatory Condition 13 only requires planning permission to be in place, or an application to be pending, 'where the use of the premises for a short-term let requires planning permission under the 1997 Act'. Unless section 26B of the 1997 Act operates to bring about a deemed material change of use (which in Clackmannanshire and all other council areas, with the exception of Edinburgh, are not), the question of whether planning permission is required under the 1997 Act is a question of fact to be determined in the circumstances of each case. If there has been no material change of use, or if a material change of use is immune from planning enforcement through the passage of time under section 124 of the 1997 Act, planning permission is not required. Where a premises has been used or is proposed to be used as a short-term let and that use did not involve a material change of use, planning permission is not required, and an applicant for a short-term let licence is not in breach of Mandatory Condition 13.

Planning departments should only be concerned with the use and suitability of a building for short-term let purposes. Given that most short-term lets are residential properties, and the nature of a short-term let stay is typically a residential stay for a shorter period, planning permission for this use is not required unless there has been a 'material change' of this residential use. Historically, planning has only been a consideration for short-term lets when enforcement action has been initiated, typically if a neighbour deems that the use of a short-term let property has been a 'material change' or has had a negative impact on residential amenity. The vast majority of the secondary let short-term lets existing before the introduction of licensing have therefore not applied for planning permission due to the existing framework and have not been subject to any enforcement action.

In the past, enforcement action was one of the few levers available if there were concerns about the operation of a short-term let and its impact on local amenity. However, since the introduction of licensing, how an individual property is advertised, managed, or operated is a matter for the licensing scheme and should not be a planning consideration. However, there is evidence that this distinction is still not clear, and the dual requirement for planning and licensing is causing delays for secondary let applications, much to the confusion of operators who believe they are being assessed twice for similar concerns over amenity impacts (and incurring significant fees to apply for both planning permission and a licence).

There is evidence this dual requirement is also unnecessarily burdening planning departments. Schedule 2 of the licensing order contains a provision that:

"A licensing authority may, within 21 days of receipt of an application for a license, refuse to consider the application where it considers that use of the premises for a short-term let would

constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act")(1) by virtue of section 123(1)(a) or (b) of that Act."

This creates a burden on the licensing department to consider whether a short-term let could result in a breach of planning control (as opposed to clear evidence where a breach has occurred through enforcement action). Licensing departments are not qualified to make this assessment; therefore, it typically falls on planning departments to individually assess the planning status of a short-term let property. This process itself is time-consuming and complicated due to the subjective nature of whether a material change of use has occurred. It is questionable whether many local authority planning departments see the value of the role planning involvement in relation to short-term lets outside a Planning Control Area given these pressures on resources.

The requirement for planning permission for short-term lets is causing duplication of regulatory regimes in many cases given impacts on amenity and other conditions (such as guest capacity) are reviewed and controlled through licence conditions.

A clear exception to this would be in areas where a Planning Control Area has been introduced, where consideration of the number and intensity of short-term lets in a particular area would warrant a specific planning assessment on the suitability of any new short-term let in an area (though not retrospectively for any short-term let already in operation, as per judgement in *Iain Muirhead And Dickins Edinburgh Limited's Judicial Review Petition regarding City of Edinburgh Council's Short-Term Let Planning Control Area*).

The Scottish Government has tried to address uncertainty by publishing Planning Circular 1/2023; however, 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.

Recommendation

Legislation should be amended to clarify the relationship between planning and licensing, and guidance should be amended on the subject. The ASSC has instructed legal advice from Burness Paull LLP on how the Licensing Order could be amended, and guidance updated, to reduce the burden on licensing and planning authorities, and help the successful implementation of short-term let licensing, while still allowing for lawful operation under existing planning legislation. We note that South Ayrshire Council has taken a pragmatic and welcome approach.

We will share proposed wording with the Scottish Government by end of week commencing 22nd January. (provided)

Planning Control Area legislation will cover any new short-term let activity. Licensing covers any bad management / loss of residential amenity

Response to item 9

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400402279

Your Reference: STL Recommendations

11 March 2024

Dear [Redacted],

Thank you for your email of 29 February 2024 enclosing information that you have previously sent to me in connection to short-term let licensing implementation.

I have attached my letter to you of 14 February that notes we have responded to the Industry Advisory Group (IAG), that you are a member of, to acknowledge receipt, respond to your comments on our proposed Licensing Order amendments and to advise we will be in touch shortly about the other matters you raise (including planning).

Policy officials are liaising with Visit Scotland on this and I would be pleased to meet with the IAG in due course to discuss short-term let licensing implementation.

Yours sincerely

PAUL MCLENNAN

Minister for Housing

10. Letter to Local Government Housing and Planning Committee and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Friday, February 9, 2024 11:03 AM
To: Minister for Housing <ministerhousing@gov.scot>; Minister for Small Business, Innovation, Tourism and Trade <MinisterSBITT@gov.scot>
Cc: MSP McLennan P <Paul.McLennan.MSP@parliament.scot>; richard.lochhead.msp@parliament.scot; Redacted <Redacted @gov.scot>
Subject: Letter to Local Government< Housing and Planning Committee

Good morning,

Please find attached letter and attachments which we have sent for urgent consideration by the Local Government, Housing and Planning Committee.

As ever, we would be very pleased to discuss.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: [Redacted]

Email: [Redacted] @assc.co.uk

Web: www.assc.co.uk

Attachment to item 10 – Contribution to LGHP Committee

[Microsoft Word - ASSC letter to LG Committee - 8.2.24v5.docx](#)

Attachment to item 10 – Implementation Update ASSC Recommendations

[Microsoft Word - Implementations Update Recommendations.docx \(assc.co.uk\)](#)

Attachment to item 10 - Memorandum of Advice

[MEMORANDUM-OF-ADVICE-Civic-Government-Scotland-Act-1982-Licensing-of-Short-Term-Lets-Order-2022.pdf \(assc.co.uk\)](#)

Response to item 10

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400398549

Your Reference: Letter to Local Government< Housing and Planning Committee

14 February 2024

Dear [Redacted],

Thank you for sharing the letter you sent to the Local Government, Housing and Planning Committee on 9 February 2024. I am writing to provide some clarification about the points you raise in connection to letter of 30 January to the Committee regarding the implementation of Short-term Lets Licensing in Scotland. I will also share a copy of my letter to you with the Convenor. Applications Levels My letter reports that licensing authorities are processing tens of thousands of short-term let licensing applications.

I am pleased that the next quarterly official statistics publication in April will provide us with a complete picture and my letter emphasises the importance of using this official source. I agree that it is premature to draw conclusions from other sources at this stage, as licensing authorities are still reviewing applications and these will not show on public registers until validated. Planning You express concern about the interaction between licensing and planning, and how this is represented to Committee.

I am pleased to clarify that the comprehensive update on implementation in May/ June 2024, will be informed by data gathered via Heads of Planning about planning activity for short-term lets since licensing was introduced. We have responded to Industry Advisory Group (IAG), that you are a member of, to advise we will be in touch shortly about other matters raised by the IAG and this includes planning. I recognise the importance of raising awareness of planning permission requirements for businesses, and I wrote to all MSPs on 12 September 2023 to this effect, including explaining the significance of a material change of use from a wellinghouse to short term let accommodation, and that this requirement pre-dates the licensing scheme.

Operational Processes

The Scottish Government is committed to engaging with the short-term let sector and I recall we met regularly during 2023 (April, June, July and September) in the lead up to the application deadline for existing hosts in October. We also corresponded at length, which provided the opportunity to consider your views and for me to set out our response on numerous short-term let matters, and to explain that I was keen that the IAG played a key role in drawing together industry feedback going forward. In comparison I met the global platforms, who are not members of the IAG, on one

occasion in September. As you have highlighted, my officials wrote to you via Visit Scotland on 31 January 2024 to respond to feedback from the IAG. However, it is not true that the IAG recommendations have been ignored. We responded in full about the feedback you gave on the legislative matters proposed for the upcoming instrument, which included provisions to address several matters you have raised with us previously, and there was consensus on many aspects. On other matters the letter specifically said, 'This is an ongoing iterative process to monitor delivery and to identify solutions to operational challenges within scope' and 'We are keen to engage with stakeholders to consider the operational matters identified through this monitoring, and to explore nonlegislative options for improvements. We therefore welcome your contributions and will revert to you shortly on the other matters mentioned in your recommendation document.'

Operational Improvements

The Judicial Reviews recently brought in connection to short-term let licensing and planning were specifically about one licensing authority's local policies and not the legislation itself. My letter of 27 October to the Committee was clear that we have no plans to alter the core principles of short-term let regulation in Scotland, which Parliament has already approved via legislation. My letter to Fergus Ewing MSP of 15 January 2024 outlines that we are open to amending legislation and guidance within this scope. This is evidenced by the secondary legislation we will shortly bring forward that will include provision to introduce powers enabling the transfer of short-term let licences and the option for prospective hosts constructing buildings for short-term let use to apply for a provisional licence that can be confirmed once the premises are complete. This clearly demonstrates we have listened to businesses and acted to make operational adjustments.

You raise concern about proposed changes to temporary exemptions. You state that existing legislation refers to calendar years. While this is the position under the Civic Government (Scotland) Act 1982 for other licensing regimes, sub-paragraph 6 of Part 2 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 modifies the 1982 Act for short-term let licensing. Paragraph 1A is inserted that states temporary exemptions 'must not exceed 6 weeks in any period of 12 months'.

I am pleased to confirm that in line with my commitment to the Committee, the implementation update will include further actions being taken in partnership with COSLA/ licensing authorities and other stakeholders. Actions such as reviewing and updating Scottish Government guidance to reflect secondary legislation changes and other non-legislative operational improvements. You ask why a group being facilitated by Scotland's Housing Network is considering matters linked to short-term let licensing.

I hope it is helpful to explain that this group predominately involves licensing authorities because, as the administrators and decision makers in relation to local licensing schemes, they are able to fully consider points raised by stakeholders (such as hosts and operators and the IAG) through an operational lens.

We will of course continue to engage with all stakeholders about the implementation of short-term lets regulation. We want an open, progressive and constructive dialogue that can assist this regulation to embed and succeed for the benefit of our tourism sector, our wider visitor economy and communities across Scotland.

Yours sincerely

PAUL MCLENNAN

Minister for Housing

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

11. Short-Term Let Licensing Implementation Update and Response

From: Redacted <Redacted @assc.co.uk>
Sent: Thursday, January 25, 2024 6:54 PM
To: Minister for Housing <MinisterHousing@gov.scot>; MSP McLennan P <Paul.McLennan.MSP@parliament.scot>
Subject: Short-Term Let Licensing Implementation Update
Importance: High

Good evening,

In light of the upcoming STL Implementation Update, we commend an 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.

Having reviewed the Scottish Government's proposed amendments for secondary legislation and examples of operational challenges under consideration for non-legislative improvements, the ASSC is pleased to have offered some recommendations for your consideration. We believe that these would resolve the outstanding issues, draw a line in the sand and allow the small accommodation sector to get on with doing what we do best - welcome people to Scotland!

I would be extremely keen to discuss these personally with you. Might you be available to have a meeting to discuss?

The IAG has requested sight of any proposed SSI in advance of it being laid, and changes to guidance prior to them being published. Reflecting the Scottish Government's commitment to a New Deal for Business, we feel that this would be appropriate, and very much appreciated.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 11 – Implementation Update ASSC Recommendations

[Microsoft Word - Implementations Update Recommendations.docx \(assc.co.uk\)](#)

Attachment to item 11 - Memorandum of Advice

[MEMORANDUM-OF-ADVICE-Civic-Government-Scotland-Act-1982-Licensing-of-Short-Term-Lets-Order-2022.pdf \(assc.co.uk\)](#)

Response to item 11

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202400395954

14 February 2024

Dear [Redacted],

Thank you for your e-mail of 25 January 2024, seeking a meeting to discuss the information you attached relating to short-term lets implementation. I apologise for the delay in responding, although I am aware policy officials corresponded via Visit Scotland on 31 January. I welcome your contribution to the Implementation Update and your feedback is being considered along with information from other stakeholders.

We will be in touch via the Short Term Lets Industry Advisory Group to follow up on the points you have set out in your correspondence. Please note that the SSI being laid is pro-business to address concerns about constraints to developments of new short term lets and investment in short term let businesses.

Yours sincerely,

PAUL MCLENNAN

Minister for Housing

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www.gov.scot

12. Response following SNP Conference

Response

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @airbnb.com

Our Reference: 202400392988

Your Reference: Airbnb discussion with FM at SNP Conference

22 February 2024

Dear [Redacted],

I understand that you had a recent discussion with the First Minister at the SNP conference regarding a proposal for a roundtable meeting with the UK Short Term Accommodation Association, booking platforms and other tourism stakeholders, with the aim of exploring how industry can support the Scottish Government in its ambitions to promote Scotland as a world leader in tourism.

The First Minister has asked me to reply on his behalf in my capacity as Minister for Housing. My officials discussed your proposal with VisitScotland. After careful consideration of your proposal, I have come to the conclusion that existing activity and engagement across all parts of the tourism sector is comprehensive enough to support the Scottish Government in its ambitions to promote Scotland as a world leader in tourism. In particular, the Tourism and Hospitality Industry Leadership group (ILG) is the strategic leadership forum for driving forward the ambitions of Scotland Outlook 2030 and on growing the value and enhancing the benefits across Scotland. The ILG aligns policy and stakeholder engagement on five priority areas that are reflected in Scotland Outlook 2030, which are Innovation, Sustainable Workforce, Community Empowerment, Net Zero Acceleration and Sustainable Transport.

Please note that the ILG works on these priority areas across sectors. It does not engage with particular sectors or service providers individually. For more information on the ILG work, please visit VisitScotland's website at Tourism and Hospitality Industry Leadership Group | VisitScotland.org.

Yours sincerely

PAUL MCLENNAN

Minister for Housing

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www.gov.scot

13. Housing and STL in Scotland and Response

From: Redacted <Redacted @assc.co.uk>
Sent: 07 December 2023 12:31
To: Redacted <Redacted @assc.co.uk>
Subject: Housing and Short-Term Lets in Scotland

Good afternoon,

It is a pleasure to attach a new briefing on Housing and Short-Term Lets in Scotland, for your consideration.

Self-catering properties have long been woven into the fabric of Scottish communities, especially in rural and remote areas, contributing significantly to the local economy and enriching Scotland's tourism offerings.

The ASSC has compiled this paper which addresses the misconception that short-term lets are a primary cause of Scotland's housing crisis. By presenting a holistic view, considering factors such as empty homes, demographic changes, and the need for increased housing construction, the ASSC aims to contribute to an informed conversation about an appropriate regulatory framework.

The paper also outlines the outcome of the recent Judicial Review against City of Edinburgh Council.

As ever, I would be very happy to discuss.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 13 – The Facts

[Microsoft Word - Housing in Scotland Briefing 2023.docx \(assc.co.uk\)](#)

Response to item 13

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted]@assc.co.uk

Our Reference: 202300389435

Your Reference: Housing and Short-Term Lets in Scotland

22 December 2023

Dear [Redacted],

Thank you for your e-mail of 7 December 2023 enclosing the ASSC's new briefing on Housing and Short-Term Lets in Scotland.

I appreciate your efforts in outlining your recommendations and setting out the information in your briefing. I would like to assure you that my officials and I will consider the points that you have raised and the highlighted data. As you will know, shortterm let licensing data is now published on a quarterly basis as official statistics. These statistics will be used to inform an update to Parliament on the implementation of short-term let licensing in early 2024, which will also include feedback from the Independent Advisory Group, which I am pleased that you continue to be a member of.

Thank you for your continued engagement.

Yours sincerely,

PAUL MCLENNAN

Minister for Housing

14. 2024 Review and Response

From: Redacted <Redacted @assc.co.uk>

Sent: Friday, October 13, 2023 2:20 PM

To: Minister for Housing <MinisterHousing@gov.scot>

Cc: Redacted <Redacted @gov.scot>; MSP McLennan P <Paul.McLennan.MSP@parliament.scot>

Subject: 2024 Review

Importance: High

Good afternoon,

Perhaps you could confirm when it would be convenient to meet with you to discuss the scope and delivery of the 2024 STL Implementation Review.

With thanks in advance.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: 07958771106

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Response to item 14

T: 0300 244 4000 E: scottish.ministers@gov.scot αβχ δ

[Redacted Redacted] @assc.co.uk

Our Reference: 202300381326

Your Reference: FW: 2024 Review

10 November 2023

Dear [Redacted],

Thank you for your email of 13 October asking to meet with me again to discuss the scope and delivery of the implementation update I have agreed to provide Parliament in 2024.

Please find attached a copy of my letter of 27 October 2023 to the Local Government, Housing and Planning Committee, setting out the scope of the short-term let implementation work we are undertaking. We have discussed short-term let licensing during various meetings together over the past six months, which includes our intention and activity to monitor licensing implementation. Most recently we spoke in more specific detail on this matter during the meeting with Mr Ewing MSP on 27 September 2023. Officials agreed to engage with your further and, as a result, I am aware you have been in dialogue with [Redacted]. I agree with [Redacted] latest response of 26 October, attached, which encourages you to engage with the implementation monitoring work through the Industry Advisory Group (IAG) on STL licensing as the best route to contribute.

I welcome the IAG's input, in line with the scope of the implementation update, and look forward to hearing about what is working well and where improvements can be made, in order to inform emerging good practice and operational delivery undertaken by licensing authorities.

Yours sincerely,

PAUL MCLENNAN

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www.gov.scot

Attachment to item 14 – October Letter to LGHP Committee

[Minister for Community Safety and Legal Affairs.dot \(parliament.scot\)](#)

15. Judicial Review and Response

From: Redacted <Redacted @assc.co.uk>

Sent: Monday, July 24, 2023 8:53 AM

To: Minister for Local Government Empowerment & Planning
<MinisterLGEP@gov.scot>; Joe.Fitzpatrick.msp@parliament.scot

Cc: Minister for Housing <MinisterHousing@gov.scot>; MSP McLennan P
<Paul.McLennan.MSP@parliament.scot>

Subject: Judicial Review

Good morning,

Please find attached letter, for your consideration, as Minister for Local Government Empowerment and Planning.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attached letter to item 15

To Joe FitzPatrick MSP, Minister for Local Government Empowerment and Planning

cc. Paul McLennan MSP, Minister for Housing

24th July 2023

Dear Minister,

Judicial Review

In your capacity as the Scottish Government's Minister for Local Government Empowerment and Planning, I am writing to inform you of developments relating to short-term let planning regulations and inform you of further legal action that the industry will be undertaking.

The self-catering sector is one which benefits communities the length and breadth of Scotland, generating £867m per annum for the Scottish economy. The sector is keen to work with the Scottish Government to ensure a sustainable future for the industry so it can continue to be an integral part of Scotland's tourism economy, welcoming visitors from home and abroad. However, it has recently been subject to regulations which are patently unfit for purpose, disproportionate, and regressive.

Regrettably, the industry has been left with no option but to petition City of Edinburgh Council regarding their planning policy. This is not a decision which was taken lightly and could potentially have implications for other local authorities in Scotland.

Following the recent judgment from Lord Braid regarding the Council's short-term let licensing policy, it has been confirmed that Policy 4.11 is unlawful. It is entirely inconsistent with Scottish Government advice as well as the recent planning circular. This policy requires a planning application or certificate of lawfulness application to be made for **all** secondary let licence applicants, but it does not make any distinction between those operating as a lawful short-term let before 22 September 2022. Those operators are not lawfully obliged to have planning permission unless there had been a material change of use; therefore, making a planning application should not be a condition for making a secondary let licence application.

Schedule 3 of the Licence Order does not mandate this. It only requires a planning application '*where the use of the premises for a short-term let requires planning permission under the 1997 Act*' – for instance, where there has been a material change of use. Rather than another judicial review, we believe there still may be the opportunity to rectify the issue and amend this requirement in the Council's policy. We would implore you to discuss this matter with your counterparts at City of Edinburgh Council as soon as possible.

This is by far the biggest obstacle to licence applications in Edinburgh. Without this, despite the exorbitant fees, people just want to get on with applying for a licence but have a fundamental disagreement with the way planning is being dealt with, particularly as many were informed – in good faith – many years ago that planning

permission was not required. The focus had historically always been on registering as a self-catering unit on Non-Domestic Rates, which was seen as the way to 'register' as a short-term let.

The ASSC believes that South Ayrshire Council is a good example of how it should be done, and is an exemplar of good practice. We are aware they have taken extensive legal advice from planning lawyers. Consequently, they have now amended their policy, that if you operated before 1 October 2022, unless you have had any enforcement action taken, planning permission will not be a requirement to proceed with a licence application. We fully support this lawful and pragmatic approach and we believe that the Scottish Government should signpost other local authorities to this.

The alternative is the DPEA being inundated with hundreds of planning / certificate of lawfulness appeals. Those in Edinburgh operating before 22 September 2022 will be forced to unnecessarily apply for a certificate of lawfulness under s150 of the Planning Act to confirm there has been no material change of use, facing a significant and needless financial burden. This should not be a requirement in Edinburgh, as it is not a requirement in other council areas, although we are aware Glasgow City Council is taking a similar approach.

We want a short-term let regulatory framework that works for all stakeholders. Time is of the essence to get this right, and back on track. We believe that the matter can be resolved now while City of Edinburgh Council are in the process of updating their Licensing policy, to save the embarrassment of further legal challenges and another rewrite, as well as saving your own department from resourcing challenges to deal with appeals.

We look forward to hearing from you at your earliest convenience.

Yours sincerely,

[Redacted]

Association of Scotland's Self Caterers

Response to item 15

T: 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202300369291

Your Reference: Judicial Review

11 August 2023

Dear [Redacted],

Thank you for your letter of 24 July regarding judicial review of City of Edinburgh Council's guidance on short-term letting planning policy.

The Scottish Government is aware of the judicial review. It is for individual planning authorities to develop their own guidance and interpret the legislation in so doing. Such guidance can be challenged as is the case in Edinburgh through judicial review and it would be for the Courts to decide whether the planning authority's interpretation of legislation is correct or otherwise.

You will appreciate I cannot comment further on an active judicial review.

Yours sincerely,

JOE FITZPATRICK

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www.gov.scot

16. Licensing Control Areas and Response

From: Redacted <Redacted @assc.co.uk>

Sent: Tuesday, July 4, 2023 8:34 PM

To: MSP McLennan P <Paul.McLennan.MSP@parliament.scot>; Minister for Housing <MinisterHousing@gov.scot>; Richard.Lochhead.msp@parliament.scot; zzzMinister for Small Business, Innovation & Trade <MinisterSBIT@gov.scot>

Cc: Redacted <Redacted @highland.gov.uk>; Redacted <Redacted @highland.gov.uk>; Redacted (Valuation Joint Board) <Redacted @highland.gov.uk>; Redacted <Redacted @hotmail.co.uk>; Redacted <Redacted @stalliance.co.uk>; Redacted <Redacted @gov.scot>; Short Term Lets Delivery Group <shorttermlets@gov.scot>

Subject: Fwd: Licencing and Control Areas (what Else!)

Importance: High

Good evening,

Please see correspondence below. Perhaps I could ask Scottish Government officials to provide a detailed response as a matter of urgency.

Please confirm how this aligns with the principals of the New Deal for Business.

It it becoming impossible to run a business under these circumstances.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Begin forwarded message:

From: Redacted <Redacted.co.uk>

Subject: Licencing and Control Areas (what Else!)

Date: 4 July 2023 at 17:26:53 BST

To: Redacted @assc.co.uk

Afternoon [Redacted]

We have operated a self catering property in Carrbridge, Cairngorms National Park for nearly 30 years. The property is deemed by The Highlands & Western Illes Valuation Joint Board to be a self catering Unit, and we are covered by business rates accordingly. The property is in the Badenoch And Strathspey Short Term Let Licencing Control Area.

Due to the Edinburgh Judicial Review it is now unclear as to what we are obliged to do in terms of both licencing and Planning Permission. With regard to the latter the Highland Council Website is less than clear stating planning permission will definitely be required in the Control Area if the property is a dwelling house. Their website states: "In a control area the use of a dwellinghouse (including flats) as a short term let (secondary letting) will always be material and therefore require planning permission." We are further confused as to the status of our property. Is it a Self Catering Unit as categorised by the Valuation Joint Board or is it a dwellinghouse? This is further complicated by the Joint Board requiring documentary evidence of the property being used for this purpose (which has been provided). If it is already established that it is a Self Catering Unit, why do we then need planning permission for a status that is already accepted? It should also be remembered that in 2003 we were informed by Highland Council that as the property was used as self catering accomodation it would be subject to non-domestic rates, so they are already aware of the property's status. The above may provide further grounds for their planning permission requirement to be ultra vires.

More generally, we have received no communication at all from Highland Council as to licencing or planning requirements. This is a dereliction and a failure in their duty of care towards our business. They are fully aware of the status of the property but have done nothing to advise about these changes. If we were not members of the ASSC, it is possible we wouldn't know at all. How many other businesses are unaware of these changes?

Whilst we have no objection in principle to licencing and operators ensuring they provide a safe and compliant environment for guests, the current position is a shambles. Those elements of the programme which would promote best practice are drowning in confusion.

Can you offer any advice as to what we should do within the published time frames? As always the responses to the industry from the Scottish Government can be glacial which doesn't help whan faced with an October deadline.

Kind regards

Redacted, Carrbridge.

Response to item 16

T: 0300 244 4000 E: scottish.ministers@gov.scot αβχ δ

[Redacted Redacted] @assc.co.uk

Our Reference: 202300366592

14 August 2023

Dear [Redacted]

Thank you for your e-mail of 5 July enclosing correspondence from [Redacted], Carrbridge. I apologise for the delay in responding.

The Scottish Government and Scottish Ministers cannot comment on individual cases, but I do note that, having operated the property in question as a short-term let or self catering business, [Redacted] would be able to claim a certificate of lawfulness on the basis that the use has existed for more than 10 years. They would not therefore have to apply for any further planning permission, although they may wish to seek a certificate of lawfulness to confirm the uses status in planning terms.

For the avoidance of doubt, and as you will be aware, planning permission is only required where it is not already in place or the operator cannot prove that the use does not require such permission. On the more general comment regarding the perceived dereliction of duty on behalf of the Council in not informing Redacted of the legal requirements which apply to their business, I have to note that the general principle in law is that responsibility for ensuring that they are aware of and comply with any changes to legislation that may affect their business rests with the relevant operator not the authority. This is true of all businesses across the whole country and is in no way unique to the short-term let sector.

I understand from the correspondence that [Redacted] are in the process of applying for a license and therefore complying with the requirements of the legislation and I wish them every success in the future operation of their business.

Yours sincerely,

PAUL MCLENNAN

Minister for Housing

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

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www.gov.scot

17. STL Question

From: Redacted <Redacted.com>

Sent: Sunday, July 9, 2023 10:59 PM

To: Minister for Housing <MinisterHousing@gov.scot>; Paul.McLennan.MSP@parliament.scot

Cc: zzzMinister for Small Business, Innovation & Trade <MinisterSBIT@gov.scot>; Cabinet Secretary for Wellbeing Economy, Fair Work & Energy <CabSecWEFWE@gov.scot>;

Neil.Gray.msp@parliament.scot; Richard.Lochhead.msp@parliament.scot; Redacted <Redacted@stalliance.co.uk>; Redacted <Redacted@assc.co.uk>; Redacted <Redacted@hotmail.co.uk>

Subject: Question regarding the aims of Short Term Let Licensing - Meeting with Redacted CEO ASSC 11 July - In my capacity as a director of the ASSC

Dear Minister

The attached letter expresses my significant concerns in relation to the aims of the Short Term Let Licensing legislation and in particular the link that has been, and continues to be made, between short term lets and the availability of housing. I raise the points in light of the Opinion of Lord Braid in the Judicial Review of the City of Edinburgh Council Short Term Lets Licensing Policy. Onerous implementation of short term let licensing by local authorities across Scotland is driving small accommodation providers out of business. The aim of the onerous conditions is questionable particularly in light of the Opinion of Lord Braid in the Edinburgh Judicial Review.

I would be extremely grateful if you would please read the attached in advance of your meeting with [Redacted] of the ASSC, on Tuesday 11 July

Kind regards

Yours sincerely

[Redacted]

Tel Redacted

email: Redacted.com;

Redacted

Attachment 1 of item 17

Shona Robison
Cabinet Secretary for Social Justice, Housing and Local Government
The Scottish Parliament
Edinburgh
EH99 1SP
By Email: CabSecSJHLG@gov.scot

8 December 2022

Dear Cabinet Secretary

Question regarding the locus of prospective purchasers of short term let accommodation to apply for a Short Term Let Licence

I write in relation to the above and further to your letter of 7 December 2022 to Ariane Burgess MSP, Convener of the Local Government, Housing and Planning Committee.

This letter is written in my personal capacity and follows a letter I addressed to the Deputy First Minister John Swinney MSP dated 30 November 2022. For ease of reference, I have attached a copy of that letter to the enclosing email.

Firstly, I would like to say how grateful I am that you have extended the period of time in which existing short term let operators must apply for a short term let licence. I live on Skye and the anxiety around the application process and costs of compliance for short term let operators during the cost of living crisis has been very difficult to watch. Their anxiety has been greatly alleviated by your decision, so my heartfelt thanks for that decision.

I write in a personal capacity because, as you will see from the attached letter, my partner and I are looking to acquire a new property that will fall within the short term let licensing legislation and will require us to obtain a short term let licence in order to operate the property.

There seems to be some confusion in the application of the Scottish Government's guidance by 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. We have experienced this ourselves with the Highland Council.

In response to our question as to whether we, as a prospective purchaser of a property requiring a licence, could apply, the Highland Council stated the following:

"The host or operator of the let can apply for a licence or they can have an agent of their choice apply on their behalf.

The agent will need to have permission from the host or operator to apply for a licence on their behalf.."

The Highland Council's interpretation of "**control over occupation and use**" is closer to the SSI than your interpretation which simply requires 'permission' from the owner.

This contrasts with the Scottish Government's guidance on the point which aligns with your letter to the Convener. The Scottish Government's guidance does not align with the SSI. My reading of the law is that 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.

It would appear that there is much confusion over the issue. I wonder whether you should consider amending the legislation to achieve your intention with regard to a prospective purchaser as stated in your letter of 7 December to the Convener?

Many thanks in advance

Kind regards

Yours sincerely

[Redacted]

Attachment 2 of item 17

Question in relation to the updated Scottish Government Guidelines for Short Term Let Hosts and Operators Aims of the Short Term Let Licensing Order 2022

Dear Minister

I would be grateful for your response to my letter below. I write this in my capacity as [Redacted]. I should add that I have also seen a copy of an email sent to you by [Redacted] on 7 July in relation to the impact of STL licensing and in particular the damaging implementation of the legislation by local authorities. I agree entirely with the content of that email and would commend its guidance to you. I am also aware that you are meeting with [Redacted] of the ASSC on Tuesday 11 July. I hope that you will take the content of this letter into account when you meet with [Redacted].

I have worked with [Redacted] since 2020 to represent small accommodation owners and to protect these businesses from the onslaught of STL Licensing and the ensuing Planning Control Areas. [Redacted] has worked tirelessly to protect the industry, an industry that has been, and continues to be, unfairly maligned, notwithstanding its huge contribution to the Scottish economy and its potential for ongoing growth and wealth generation for the people of Scotland, particularly in rural areas such as Skye where tourism is the main driver of the economy.. I am deeply concerned by the current situation and the closures of small accommodation providers across Scotland - including where I live on Skye - as a result of the short term let licensing legislation. Actively shrinking short term let accommodations across Scotland, and specifically in rural areas - will not release homes - either to rent or buy - to first time buyers and families. The housing market is complex and the price of property is unrelated to the short term let sector. The myth that shrinking the short term let sector will produce homes is only in the belief of those who are largely uninformed. The short term let sector is now being made a scapegoat for economic forces that are embedded in the housing market and that will not be solved by shrinking the short term let sector.

I would ask that you bear these statements in mind when you read the following. To quote Lord Braid's recent Opinion in the Judicial Review of City of Edinburgh Council Short Term Lets Licensing Policy "the government decided to tackle regulation in two ways, the one in parallel with the other this it did by amending the planning legislation through the 2022 Control Order and at around the same time by amending the 1982 Act, by virtue of the 2022 Licensing Order"

The history of the Scottish Government's short term let licensing legislation is beset with poor drafting and so called 'unintended consequences'. So the unwitting inclusion of Bed and Breakfasts in the 2022 Licensing Order due to the failure to properly define them in the list of excepted properties - to the catastrophic definition in the 2022 Licensing Order of the operator of an STL as 'host' which in reality prevents anyone from purchasing an STL property with a mortgage (if the legislation is strictly applied rather than adopting 'the fudge' proposed by the then Housing Minister Shona Robison on 7 December 2022 in her letter to the Convener of the Local Government Housing and Planning Committee (LGHPC)). Please see my attached letter to Shona Robison MSP. I have not received a response to my

question in relation to the details of the legislation and correct interpretation). It is clear to me that the 2022 Licensing Order is intended to unlawfully actively shrink the self-catering industry in Scotland. Here is the intention very clearly laid out in 'an opinion' given by Mr Tony Cain 'in evidence' before the LGHPC on 14 December 2021 in response to a question from the Convener:

Here is the Convener's question: Convener Ariane Burgess - "What would we need to do to manage down the levels of STLs?" Here is Mr Cain's response: Tony Cain - "I think we need to go through a process of removing licences and permissions to operate. People will say we can't do that. This is their business - and I was thinking about this earlier. We regularly prohibit activities that were previously unregulated. And this is one of those areas. Ten years ago there was no such thing as a STL. It has taken ten years to get to a place where we understand how to manage and the risks of unmanaged STLs. We simply now need to select those that can no longer operate. I would suggest Edinburgh's approach around tenements. STLs there are extremely difficult to manage. I would also argue for strict liability for the owner. The idea that someone can disappear out of the country with nobody liable for their bad behaviour"

Mr Cain's 'response' was implemented by Edinburgh City Council through its policy implementing the STL licensing legislation. That policy was found to be unlawful. Lord Braid stated that "if planning permission is granted, the primary function of the licensing authority is then to regulate how the STL property should be operated safely and in such ways as to address potential nuisance, rather than to determine whether the property is of a suitable type or in a suitable area" It is in this respect that the Scottish Government's licensing scheme, so the 2022 Licensing Order becomes potentially unlawful.

Please look again at the updated Scottish Government Guidelines for Short Term Lets Licensing Scheme: "The aims of the licensing scheme are: ● To ensure all short-term lets are safe; ● To facilitate licensing authorities in knowing and understanding what is happening in their area" Lord Braid clearly states that licensing and planning are separate - complementary, but separate. This from a Planning Officer within one of the local authorities: "Yes, at the moment everyone's focus is on the licensing changes as this new regime will be relied on to provide evidence for any move towards further planning control. I take your point about the perceived 'risk' associated with the three year license, although it is not clear what grounds there would be for refusing the license when it comes up for renewal. Overprovision of self-catering properties seems to be outwith the remit for licensing and only a matter for planning within a planning control zone that has been subject to public consultation etc".

Whenever licensing has been raised in the public domain, SNP politicians have been quick to raise concerns over the housing crisis and the lack of affordable housing, offering STL licensing as the silver bullet for solving the housing crisis - particularly in rural areas. But Licensing does not mean Planning. As is clear from Lord Braid's Opinion, licensing cannot be used to achieve planning objectives. The guidelines to hosts and operators in relation to licensing should make no reference to Planning considerations at all. But they do! Licensing is only concerned with Health and Safety. Licensing is not concerned with Planning.

From Lord Braid again: “The question of whether there should be secondary lets in a particular area, or in a particular type of building, is one for the planning authority. Although the licensing authority need not consider an application at all if planning permission has not been applied for, and may refuse an application if there is no planning permission, once it has been established, by planning, that a particular property is suitable for STL (including secondary letting) the function of the licensing authority is (as the policy notes say) to ensure that STLs are safe for visitors, and to address issues raised by neighbours” And yet, as can be seen from the aims of the Scottish Government updated STL guidance for “Hosts and Operators”, licensing continues to be confused with planning. The aim “To facilitate licensing authorities in knowing and understanding what is happening in their area” makes absolutely no sense, except in terms of an unlawful planning consideration, and evidences the poor drafting and confusion on the part of the Scottish Government, and the Scottish Government’s aim to close short term let premises through onerous and costly licensing. And premises are closing as a result of onerous licensing costs and conditions. They are disappearing without trace. The Scottish Government is not tracing their closure. As the government readily admits: “There is no single official data source that fully captures the size of the short term let sector” in Scotland.

Between October 2022 and January 2023, 220 homes were put on the market on Skye. 16 of the sales were operating as bed and breakfasts whilst 95 were self-catering properties with the whole residence or parts of it being made available for self-catering. Well over half of these were the main residence with an annex, pod or chalet on the grounds. There are early indications that the prospect of licensing has forced the owner operators to sell up because they supplemented their increasing mortgage payments by letting out a room or rooms. The cost of licensing has forced them to re-evaluate their ability to remain in their home and on the island. One element of the Provision of Services Regulations that is not mentioned by Lord Braid but makes the licensing of premises with the clear aim of closure unlawful is: “Prohibited requirements A competent authority must not make access to, or the exercise of, a service activity subject to any of the following: a. the case-by-case application of an economic test making the granting of authorisation subject to: i. proof of the existence of an economic need or market demand; ii. an assessment of the potential or current economic effects of the activity; or iii. an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority”. Again if the aim of licensing is “To facilitate licensing authorities in knowing and understanding what is happening in their area” - licensing clearly falls foul of the Provision of Services Regulations. The stated aim above falls within the “Prohibited Requirements” I would be grateful for your response - not in general terms but with specific reference to the points in this letter and in relation to the aim of Licensing and the fact that that aim - to close self-catering businesses - means it is prima facie unlawful.

It is hard to see a way forward at the moment. But one must be found. The local authorities are dealing with legislation that gives them carte blanche to impose frankly ridiculously onerous conditions. So onerous that small accommodation providers are ‘voting with their feet’ and leaving the sector. Some endeavour to sell, others decide to keep their properties and inhabit them as second homes. Either way, the properties do not arrive back on the property market for first time buyers

and are removed from the short term let market, thus shrinking the Scottish economy.

I look forward to your response to this letter and your active engagement with the representatives of the small accommodation sector in Scotland to protect it as a vital constituent of Scottish tourism in order to achieve economic recovery and growth and to achieve the aims of Scotland Outlook 2030.

Kind regards

Yours sincerely

[Redacted]

Response to item 17

Minister for Housing Ministear airson Taigheadas Paul McLennan MSP/BPA abc d
T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted.com]

Our Reference: 202300366014
Your Reference: Short Term Let Licensing

7 August 2023

Dear [Redacted],

Thank you for your correspondence of 9th July 2023. I responded to correspondence from [Redacted] on 21 July 2023, which I am aware you will have seen and has since been published on the ASSC website. I hope that this letter responds to the points you have raised.

Yours sincerely,

PAUL MCLENNAN

Minister for Housing

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www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

18. Meeting with ASSC

From: Redacted <Redacted @assc.co.uk>
Sent: Thursday, June 8, 2023 9:25 AM
To: Minister for Community Wealth & Public Finance <MinisterCWPF@gov.scot>
Cc: Tom.Arthur.msp@parliament.scot
Subject: Meeting with Association of Scotland's Self-Caterers

Dear Mr Arthur,

I would like to like to begin by thanking you for your contribution to the debate in the Scottish Parliament on Scottish tourism on 7th June where you recognised its contribution to local economies and noted we all had a shared ambition to see the sector flourish.

I would also like to thank you for your involvement in the New Deal for Business NDR Sub-Group, which I attended earlier this week.

The Association of Scotland's Self-Caterers (ASSC) represents professional small business owners that form an integral part of our tourism offering and who are absolutely vital for the future prosperity and sustainability of the tourism sector overall. However, our members have numerous concerns relating to the regulatory burden which we are keen to discuss with you, especially as you stated that the Scottish Government were "*committed to doing all that we can to support the tourism sector*" and that your "*door is open to constructive engagement*".

In that spirit, we would welcome the opportunity to meet with you to discuss two policies which fall under your remit:

- The consultation on council tax for second and long-term empty homes, and thresholds for non-domestic rates for self-catering properties; and
- The proposal for the introduction of a local visitor levy.

We believe that there are unintended consequences arising from these measures. We further appreciate the demands on your time but given how these may impact our membership, as well as the pressing need to get any regulations/legislation right, we would be extremely grateful for two separate meetings if possible.

My diary remains flexible to accommodate a meeting(s) at your convenience.

Yours sincerely,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Response to item 18

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202300362216

6 July 2023

Dear [Redacted],

Thank you for your email of 8 June. Please accept my apologies for the delay in responding. Firstly thank you for your engagement on the New Deal for Business sub-group on non-domestic rates. I recognise the ongoing challenges and value the important contribution of self-catering accommodation providers to Scotland's accommodation sector and our visitor economy as a whole. Our consultation on council tax for second and empty homes, and thresholds for non-domestic rates is seeking views on potential changes from the widest possible array of stakeholders from across the country.

The consultation will close on 11 July 2023 and I would welcome the views of the ASSC in this process. Regarding the Visitor Levy Bill, I am committed to engaging with businesses to ensure that any levy implemented by a local authority places minimal compliance burdens on accommodation providers. To that end I would be delighted to meet with you to discuss how we can work together to ensure these two policies can deliver for both business and communities.

I would be grateful if you could contact my Assistant Private Secretary, [Redacted], via email at MinisterCWPF@gov.scot to make the necessary arrangements.

Yours sincerely

TOM ARTHUR

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www.gov.scot

19.STL: Outstanding Issues and Recommendations and Response

From: Redacted <Redacted @assc.co.uk>

Sent: 08 May 2023 12:09

To: Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>

Cc: dundee@shona.robison.scot

Subject: Short-Term Let Licensing: Outstanding Issues & Recommendations

Good afternoon,

I hope that this finds you well.

Please find attached briefing on outstanding issues and recommendation for solutions relating to Short-Term Let Licensing. Also attached is written evidence requested by the Local Government, Housing and Planning Committee in January, all of which is still outstanding. This has been shared with Housing Minister, Paul McLennan.

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 other countries seek to avoid as an example of bad practice.

We must strive to work collaboratively to protect Scotland's £867m self-catering industry and not burden small businesses who do so much to promote and enhance the country's unique tourism offering and boost local economies.

The Scottish Government has two pathways towards a more equitable, fair and effective STL regulatory landscape. It could:

- 1. Implement the ASSC's proposal to pivot licensing to align with the Antisocial Behaviour etc (Scotland) Act 2004.**, which would satisfy the aims of the regulations, covering the safety of the activity; or
- 2. Consider the various amendments to the 1982 Act and re-draft the guidance** associated with Licensing Order 2022, in collaboration with industry and local government stakeholders.

We sincerely hope that the solutions outlined in this document can be actively considered by the Scottish Government so that we can arrive at a proportionate and fair regulatory regime, where unintended consequences are minimised, and the self-catering sector can survive and thrive into the future.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 19 – Outstanding Issues

[Microsoft Word - Short-Term Let Licensing Outstanding issues May 2023.docx \(assc.co.uk\)](#)

Attachment to item 19 – Evidence to LGHP Committee

[Microsoft Word - Evidence to LGHP Committee January 2023.docx \(assc.co.uk\)](#)

Attachment to item 19 – Evidence to LGHP Committee

[Microsoft Word - ASSC letter to LG Committee - 8.2.24v5.docx](#)

Response to item 19

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202300357220

Your Reference: ASSC

5 June 2023

Dear [Redacted],

Thank you for your emails of 4 and 21 May addressed to a number of Scottish Ministers, with enclosures setting out your outstanding issues with short-term let licensing and recommendations to address these. I am responding on behalf of the Scottish Government, as this policy sits within my portfolio of responsibility, however, as you are aware, I am liaising with my ministerial colleagues about this cross-cutting regulation. We recognise that short-term lets have contributed positively to Scotland's tourism industry and local economies across the country. The growth of the sector has accelerated rapidly over the past decade, not just across Scotland but globally.

Scotland is therefore not alone in identifying the need to regulate short-term lets. Licensing has been introduced in Scotland to ensure short-term lets are safe and the people providing them are suitable. It also provides local areas with the option to apply additional conditions to address local issues with short-term lets where these are causing problems for neighbours and residents. Development of the legislation took place over four years, with extensive consultation and engagement with stakeholders.

Alternatives were considered, including those proposed by ASSC, however, these could not provide the same level of provision as licensing. In particular, alternatives do not provide the same level of enforcement, which of course is a last resort but ensures there is a fair system. Regulating short-term lets now brings this form of accommodation in line with regulation of other accommodation sectors such as hotels, caravan parks and houses of multiple occupation. It also offers benefits to the sector, as a licence represents assurance to guests and others that they can have confidence in the safety status of the accommodation they are staying in. Where concerns have been raised about implementation matters, I am aware my officials have been responsive in listening to these and engaging with licensing authorities to consider and secure resolution where possible.

We continue to monitor implementation and to work with all parties on application of the legislation. As you are aware, we have committed to an initial review early next year and I want to work with you on the scope and handling of this. Your email of 21 May raises concerns about planning matters. I am aware Scottish Government planning policy officials have been in dialogue with you in recent months to respond to your concerns. An updated planning circular was published on 17 May that

provides clarification on these matters, in line with the previous responses you have received. We will consider and reply to your latest correspondence in full separately.

I have also considered the letter from Gilson Gray Solicitors that you forwarded. I do not agree that a further extension of the deadline for existing hosts is necessary. Those that submit applications before the 1 October 2023 deadline can continue operating until their application is determined. Licensing authorities have up to 12 months to determine applications from existing hosts, and can apply to a Sheriff for an extension if required.

I understand Edinburgh Council has not determined licensing applications relating to the judicial review, and the above timeframe would enable the Council to review its policy if required.

Thank you for sharing your thoughts as we look to update the Scottish Government guidance for hosts and licensing authorities. We will consider these and share revised versions with stakeholder groups for views before these are published in June. This includes the Industry Advisory Group you sit on that is facilitated by Visit Scotland.

When we met in April, we agreed to meet again, and I know you have also approached the Minister for Small Business, Trade and Innovation for a meeting as well. We will look to set up a joint meeting and my office will be in touch to arrange this.

Yours sincerely,

PAUL MCLENNAN

Minister for Housing

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www.gov.scot

20. Meeting following JR and Response

From: Redacted <Redacted @assc.co.uk>
Sent: 19 April 2023 22:45
To: MSP McLennan P <Paul.McLennan.MSP@parliament.scot>; Minister for Housing <MinisterHousing@gov.scot>
Subject: JR

Dear Paul,

It was great to see you yesterday - many thanks indeed for your time.

Thank you also for your commitment to support the self-catering sector and work towards resolving the many issues that still present themselves where short-term let regulations are concerned.

We also welcomed the First Minister's appreciation that small businesses are the back bone of the Scottish economy in the Chamber yesterday. Our sector is very much part of that crucial ecosystem. The ASSC believes that any meaningful reset in relations between government and business must include a rethink on short-term let licensing as the current regulations remain unfit for purpose, will cost jobs and damage Scotland's vital tourism sector.

We briefly touched on the Edinburgh Judicial Review yesterday. Having since spoken to the JR team, I thought it worth updating you that it will be heard by the Hon Lord Braid on 11th and 12th May. He will then have three months to make a judgement. The losing party may well then appeal. Should the result have an affect on Edinburgh's licensing policy (or indeed other local authority policies), this timescale will have a material affect on the ability for licensing policies to be changed prior to 1st October. I thought you ought to know.

Also to note that licences are already being refused in Edinburgh. [Redacted] are requesting that these decisions are being delayed until the outcome of the JR.

In the meantime, I have asked [Redacted] to confirm action points from yesterday and I will get another list of outstanding issues and solutions over to you soonest.

I am sincerely looking forward to working collaboratively with you to ameliorate these regulations and get them back on track.

All the very best,

[Redacted]
The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted
Email: Redacted @assc.co.uk
Web: www.assc.co.uk

Response to item 20

Minister for Housing
Ministear airson Taigheadas
Paul McLennan MSP/BPA

T : 0300 244 4000
E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202300354410

Your Reference: JR

22 May 2023

Dear [Redacted]

Thank you for your email of 19 April, and I am glad that you found our meeting to be productive. The Scottish Government is keen to work with organisations such as the ASSC to aid hosts and operators as much as possible through this transitional period.

Since the Scottish Government is not a party to the judicial review currently taking place in Edinburgh, I'm afraid it would be inappropriate for me to comment on any potential outcomes until the judgement is handed down. However we are monitoring the situation closely, and will continue to work with stakeholders to facilitate the implementation of the new licensing system.

Yours sincerely,

PAUL MCLENNAN
Minister for Housing

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www.gov.scot

21. Moffat Centre STL Accommodation Review and Response

From: Redacted <Redacted @assc.co.uk>

Sent: 22 February 2023 17:11

To: Cabinet Secretary for Social Justice, Housing & Local Government
<CabSecSJHLG@gov.scot>

Cc: Redacted <Redacted @gov.scot>; Redacted <Redacted @gov.scot>; Short Term Lets Delivery Group <shorttermlets@gov.scot>

Subject: Fwd: Moffat Centre Short-Term Let Accommodation Evaluation Review 2022/23

Good afternoon,

Further to ongoing consideration by the Local Government Housing and Planning Committee, please find below email from one of our members.

This specifically relates to the issues that the ASSC has raised regarding investment. Licensing has created an insurmountable barrier to investment, buying or indeed selling a short-term let. This is the reality that legitimate businesses are facing.

Having sought legal counsel and liaised with lenders including the Royal Bank of Scotland, Cumberland Business (one of the only lenders specialising in the sector) as well as members of the National Association of Commercial Finance Brokers, they all concur that the position outlined below is now the reality for the small accommodation sector.

Amending the guidance will not ameliorate this situation.

It is critical, therefore, that this very grave situation and 'unintended consequence' is given due consideration and a solution is found.

Our written evidence to the LGHP Committee, submitted in January, goes into this in detail.

I look forward to hearing from you.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

From: Redacted <welcome@Redacted.co.uk>

Subject: Moffat Centre Short-Term Let Accommodation Evaluation Review 2022/23

Date: 22 February 2023 at 13:17:42 GMT

To: "[Redacted]@assc.co.uk" <Redacted @assc.co.uk>

Hello [Redacted]

We hope you are well.

The findings of the Moffat Centre Review make unsurprising reading.

We have been trading successfully for just over 20 years and now wish to retire so our home and business was placed on the market last summer. We have been under offer since October 2022.

Everything appeared to be progressing well with the sale. All the relevant surveys have been carried out to the satisfaction of our buyer who wishes to continue operating a hospitality business from the property. Our sale, however, is now likely to collapse as our buyer's bank is making his loan conditional on him securing a STL Licence. That in itself would not be a fatal blow to the the sales process. The conundrum is the mandatory requirement by the Scottish Government that public liability and buildings insurance must be in place before a licence is granted. Our buyer is obviously unable to purchase insurance cover on a property he does not yet own!

Both ourselves, our solicitor and our buyer's solicitor have been in contact with [Redacted] of Highland Council's Licensing team, but no resolution is forthcoming. [Redacted] says Redacted hands are tied by the mandatory conditions of the STL Licensing scheme, although redacted has written to [Redacted] in the STL Policy Team at the Scottish Government for clarification on various policy issues. All the solicitors agree that the fault lies in the lack of precise detail in the legislation and its generally opaque nature. It's a half baked cake.

We know there's a range of different lending criteria imposed by banks and building societies. We have checked with our own lender who states that they would be more flexible in their approach. They also report that the STL Licence requirements are causing significant issues, especially with regard to the inability of local authorities to give precise timescales on how long it would take to consider individual licence applications. This in turn is causing delays in loan approvals as well as confusion and uncertainty in the market.

You can imagine how angry we feel about this whole situation and the amount of anxiety it is creating. Not to mention the additional legal costs that we are now incurring because the sale of our home and business has suddenly become much more complex.

We imagine that there must be many other hospitality businesses going through the same sorry experience.

To end on a lighter note: we hope you enjoyed your starring role on TV!

Best wishes

[Redacted]

Tel: Redacted

Attachment to item 21 – Moffat Centre Evidence

Good evening,

The Moffat Centre for Travel and Tourism Business Development at Glasgow Caledonian University was commissioned by the Association of Scotland's Self-Caterers (ASSC) to undertake an evaluation of the short-term let sector in Scotland. The *Moffat Centre* is the UK's largest university-based consultancy and research centre for tourism and travel market research.

This independent study from respected policy experts in their field provides important findings for policymakers in respect to the Scottish Government's short-term let regulations. We hope that you find it of interest.

Aims

Using a mixture of quantitative and qualitative research, the objectives of the review were as follows:

- To explore the positive and negative impacts of the short-term let legislation on the sectors operators in Scotland;
- Assess how short-term let across different locations (urban and rural) have been affected by the STL licensing scheme legislation so far; and
- Summarise assessments and, where applicable suggestions and alternatives to short-term let licensing based on the opinions and experience of the STL operators.

Main Findings

Some of the main findings included:

- The majority of operators felt that STL licensing was **time consuming and complicated**.
- Over-three quarters (77.5%) found that the STL legislation was a **significant or a medium threat to their business**;
- Most **do not intend to apply for the licence until at least September 2023**. As a result, it is anticipated that immediately before the October 2023 deadline, councils will receive the majority of applications; and
- Many stated that the regulations **create uncertainty for their future operations**. The most frequently cited issues were the high cost of the application, a lack of necessary tradesmen to conduct surveys and safety and compliance checks in remote communities, the complexity of the application process, confusion about the necessity of all licensing requirements, and the lack of sufficient planning and structure in the proposed legislation.
- Participants also highlighted that the licensing legislation has **no clear purpose**, with confusion as to whether it aims to ensure health and safety standards or address housing challenges.
- The legislation **doesn't recognise that these challenges manifest themselves differently across urban and rural areas**, with a one-size fits all approach being irrelevant for their business.
- Alternatives to legislation are available, such as **voluntary and compulsory registration**.

As ever, we are here to assist policy makers in getting this critically important regulatory framework right to support Scotland's economic recovery.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Attachment to item 21

[Moffat Centre Short-Term Let Accommodation Evaluation Review 2022/23 - ASSC](#)

Additional E-mails in response to Item 21.

From: Redacted <Redacted@assc.co.uk>
Sent: 24 February 2023 09:35
To: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>
Cc: Minister for Business, Trade, Tourism & Enterprise <MinisterBTTE@gov.scot>; Redacted @gov.scot>; Redacted @gov.scot>; Short Term Lets Delivery Group <shorttermlets@gov.scot>; Redacted @stalliance.co.uk; Redacted @parliament.scot>; localgov.committee@parliament.scot
Subject: Orderly Exit
Importance: High

Dear Cabinet Secretary,

I am writing to you on behalf of my members who have run a self-catering property in Redacted, Argyll, for over thirty years. Despite operating a successful small business which has accommodated thousands of guests to the area, they are now seriously contemplating leaving the sector due to the cumulative impact of regulation, most notably short-term let licensing.

If they decide to remain in business, and having made a substantial investment in order to fully comply with the regulations, they then face the real prospect of being plunged off a financial cliff if their licensing application is denied.

We concur with the owners who argue that to deny an existing operator a license and then give them only 28 days to close is unbelievably cruel and financially crippling. The Association of Scotland's Self-Caterers would therefore like to ask whether consideration could be granted to enable existing operators the time required to have an orderly exit from the marketplace, perhaps around 12-24 months from the point that an application from an application being denied.

While it has been claimed that the Scottish Government's regulations are not onerous, the small business in question has spent over £13,000 on matters pertaining to the regulations. For an operator to make such adjustments to a property, only to have their licence rejected, would be perverse and demonstrably unfair.

We sincerely hope that an adequate solution can be reached to help these hardworking professional operators who have spent their working lives making Scotland a welcoming place to visit.

All the very best,

Redacted
The Association of Scotland's Self-Caterers (ASSC)

Redacted
Web: www.assc.co.uk

From: Redacted <redacted@assc.co.uk>

Sent: 22 February 2023 17:11

To: Cabinet Secretary for Social Justice, Housing & Local Government
<CabSecSJHLG@gov.scot>

Cc: Redacted <Redacted @gov.scot>; Redacted <Redacted @gov.scot>; Short
Term Lets Delivery Group <shorttermlets@gov.scot>

Subject: Fwd: Moffat Centre Short-Term Let Accommodation Evaluation Review
2022/23

Good afternoon,

Further to ongoing consideration by the Local Government Housing and Planning
Committee, please find below email from one of our members.

This specifically relates to the issues that the ASSC has raised regarding investment.
Licensing has created an insurmountable barrier to investment, buying or indeed
selling a short-term let. This is the reality that legitimate businesses are facing.

Having sought legal counsel and liaised with lenders including the Royal Bank of
Scotland, Cumberland Business (one of the only lenders specialising in the sector)
as well as members of the National Association of Commercial Finance Brokers,
they all concur that the position outlined below is now the reality for the small
accommodation sector.

Amending the guidance will not ameliorate this situation.

It is critical, therefore, that this very grave situation and 'unintended consequence' is
given due consideration and a solution is found.

Our written evidence to the LGHP Committee, submitted in January, goes into this in
detail.

I look forward to hearing from you.

All the very best,

Redacted
The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Begin forwarded message:

From: Redacted

Subject: Moffat Centre Short-Term Let Accommodation Evaluation Review 2022/23

Date: 22 February 2023 at 13:17:42 GMT

To: "chiefexecutive@assc.co.uk" <chiefexecutive@assc.co.uk>

Hello Redacted

We hope you are well.

The findings of the Moffat Centre Review make unsurprising reading.

We have been trading successfully for just over 20 years and now wish to retire so our home and business was placed on the market last summer. We have been under offer since October 2022.

Everything appeared to be progressing well with the sale. All the relevant surveys have been carried out to the satisfaction of our buyer who wishes to continue operating a hospitality business from the property. Our sale, however, is now likely to collapse as our buyer's bank is making his loan conditional on him securing a STL Licence. That in itself would not be a fatal blow to the sales process. The conundrum is the mandatory requirement by the Scottish Government that public liability and buildings insurance must be in place before a licence is granted. Our buyer is obviously unable to purchase insurance cover on a property he does not yet own!

Both ourselves, our solicitor and our buyer's solicitor have been in contact with Redacted, but no resolution is forthcoming. Redacted says Redacted hands are tied by the mandatory conditions of the STL Licensing scheme, although he has written to Redacted in the STL Policy Team at the Scottish Government for clarification on various policy issues. All the solicitors agree that the fault lies in the lack of precise detail in the legislation and its generally opaque nature. It's a half baked cake.

We know there's a range of different lending criteria imposed by banks and building societies. We have checked with our own lender who states that they would be more flexible in their approach. They also report that the STL Licence requirements are causing significant issues, especially with regard to the inability of local authorities to give precise timescales on how long it would take to consider individual licence applications. This in turn is causing delays in loan approvals as well as confusion and uncertainty in the market.

You can imagine how angry we feel about this whole situation and the amount of anxiety it is creating. Not to mention the additional legal costs that we are now incurring because the sale of our home and business has suddenly become much more complex.

We imagine that there must be many other hospitality businesses going through the same sorry experience.

To end on a lighter note: we hope you enjoyed your starring role on TV!

Best wishes

Redacted

Response to item 21

T : 0300 244 4000 E : scottish.ministers@gov.scot

[Redacted Redacted] @assc.co.uk

Our Reference: 202300344895

Your Reference: Short-Term Let

23 March 2023

Dear [Redacted],

Thank you for your email dated 20 February, copied to other ministers, sharing details of the Moffat Centre Short-Term Let Accommodation Evaluation Review 2022/23. Thank you also for your emails dated 22 and 24 February regarding barriers to investment. I am responding as I have portfolio responsibility for short-term lets.

I note that main findings of the Moffat Centre review include concern from operators that licensing is time consuming and complicated, and over three-quarters considered the licensing scheme was a significant or medium threat to their business.

Although I can appreciate that experiences may differ, some licensing authorities have shared positive feedback from early applicants. Glasgow City Council and Highland Council both set out that initial feedback in relation to their online application processes was mostly positive, as part of their evidence to the Local Government, Housing and Planning Committee on 7 February. Indeed, this was also noted by a participant in the Moffat Centre review: Participant 2: "Found the process of applying much less onerous than first thought".

I would hope that once hosts have gone through the process they will find it to be straightforward, and offer benefits including a level playing field for all short-term let operators in Scotland. Indeed, respondents to the Moffat review that indicated support recognised that the licensing scheme provides many benefits including a more robust and safer environment for guests and a higher level of professionalism for the industry.

I am aware that the ASSC's view remains that the Scottish Government should consider an alternative approach to regulating short-term lets. As I've said publicly, and when we previously met, we have considered alternative approaches to licensing, including registration as part of our 2019 consultation and registration proposals put forward by the ASSC. To be robust and effective, a registration scheme would need to make much the same requirements as the licensing scheme does.

I am aware that my officials met with you on 9 March and that you remain concerned about the impact of the licensing scheme on new entrants, and those looking to sell

their business as a going concern. Applications for a short-term let licence do not need to be made by the property owner. This could apply to situations such as a tenant of a long-term let seeking to let out a spare room in their home as a short-term let.

This may also apply to a prospective purchaser of a property that they intend to operate as a short-term let. However, where the host is not the owner of the property the consent of the owner (or each owner) must be provided in the licensing application and an application must be refused if that is not provided. We do not consider providing consent of the current owner/s to be an onerous requirement. In addition, licensing authorities have been given powers to issue temporary licences. Temporary licences have a maximum duration of 6 weeks or, if an application has also been made for a licence, until the application is determined.

Where a licensing authority wanted to support a purchaser in continuing to provide short-term lets without significant delay, the licensing authority could grant the purchaser a temporary licence pending consideration of their licence application. We will continue to work with stakeholders to monitor the ongoing implementation of the scheme, and respond to facilitate common processes where possible to do so. This will include monitoring numbers of new hosts applying for a licence, and working with licensing authorities to encourage a pragmatic approach to ensuring licensed, well run businesses can be sold as a going concern without interruption (provided the new applicants can demonstrate compliance with the licensing scheme requirements).

In your email dated 24 February you asked for ministers to consider allowing existing operators to continue operating for a period of up to 12-24 months in the event that their licence application is refused. Licence applications must be granted by licensing authorities unless there are valid grounds to refuse them, such as an applicant not being assessed as fit and proper, or the premises being unable to secure compliance with mandatory licence conditions. It would not be reasonable in circumstances where a licence has been refused to allow a host to continue operating for up to two years. In the event that a licence is refused, hosts are able to appeal the decision.

I hope this reply is helpful.

Yours sincerely,

SHONA ROBISON

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

22. Congratulations to the DFM

Dear Kate,

May I first take the opportunity to personally congratulate you on your return to the Scottish Government. I also extend the warmest regards from the Association of Scotland's Self-Caterers on your recent appointment as Deputy First Minister, Cabinet Secretary for Economy and Gaelic. The ASSC commits to working cooperatively and constructively with you and your team going forward.

We welcome both the recent comments from First Minister John Swinney emphasising the need to support business and economic growth, but also your pledge to reduce the burdens on business.

In recent times, there have been differences of opinion between tourism businesses and the Scottish Government over contentious issues like short-term let regulation but we share your view that government and business working together in lockstep can deliver sound and effective public policy. In your recent Sunday Times opinion piece, you stated: "I want to get stuff done." Those sentiments are certainly shared by the many thousands of self-catering operators across Scotland in what is a female-led industry, worth £1bn per annum to the Scottish economy, which I am proud to champion.

Given that you will now take over the reins of the New Deal for Business, we further believe that there are opportunities to reset the relationship and work together to find mutually beneficial solutions to the outstanding challenges on vexed issues like short-term let licensing. These outstanding challenges are not insurmountable; we both believe in regulation and we both want to make it function effectively for all affected stakeholders.

In recent times during regulatory discussions with Ministers and officials, the ASSC has provided ample evidence showing the negative impact on small business, as well as supplying fair, balanced and legally sound policy alternatives which would ameliorate the regulations, but unfortunately these have not been given the due level of consideration required.

We met in person back in September 2023 and discussed how licensing was playing out and I know that you were thinking strategically on the issue. In a social media post at the time, you said "nobody wants to see excellent and reputable owners shutting up shop", yet sadly that is playing out on the ground right now. The proposed SSI amending the Licensing Order only offers some minor tinkering and does not provide the demonstrable change needed to save jobs and livelihoods.

Furthermore, the same problems we discussed in September last year endure, as do more localised issues raised in follow-up conversations in the following months relating to the level of licensing fees charged by Highland Council.

I hope that I can meet with you, alongside my colleague and your constituent [Redacted], at your earliest convenience to discuss a sustainable future for this key industry in the spirit of the New Deal for Business.

All the very best,

[Redacted]

The Association of Scotland's Self-Caterers (ASSC)

Tel: Redacted

Email: Redacted @assc.co.uk

Web: www.assc.co.uk

Response to item 22

Deputy First Minister and Cabinet Secretary for Economy and Gaelic Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit airson Eaconamaidh agus Gàidhlig Kate Forbes MSP Ceit Fhoirbheis BPA

T: 0300 244 4000 E: scottish.ministers@gov.scot αβχ δ

[Redacted] Association of Scotland's Self-Caterers

By email: [Redacted] [@assc.co.uk](mailto:[Redacted]@assc.co.uk)

17 May 2024

Dear [Redacted],

Thank you so much for your email of 15 May 2024, with kind words and your message of congratulations on behalf of the Association of Scotland's Self-Caterers. Your commitment to working with me in my role as Deputy First Minister and Cabinet Secretary for Economy in advancing Scotland's economic prosperity is welcomed.

As you mentioned, the First Minister has been clear that driving economic growth is a critical and leading purpose of the Scottish Government, and is essential to underpinning public services and support for communities.

Partnership and dialogue going forward is essential as we navigate the complexities of our economic landscape. The work already undertaken through the New Deal for Business is a positive indication of that collaboration in action.

I look forward to working closely with your organisation to explore opportunities for collaboration, share insights, and develop strategies that will benefit the people and businesses of Scotland.

I would be delighted to accept your invitation and meet in the near future, subject to parliamentary business. I would be grateful if you could contact my Diary Secretary, [Redacted], via email at DFMCSEG@gov.scot to arrange a mutually convenient date and make the necessary arrangements.

Yours sincerely,

KATE FORBES

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www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

23. Data Protection

12th September 2023
Humza Yousaf
First Minister Bute House 6,
Charlotte Square Edinburgh

firstminister@gov.scot

Dear First Minister,

Potential Breach of: - ECHR, the Human Rights Act 1998 and the Scotland Act 1998, The Data Protection Act 2018 and The European Union's General Data Protection Regulation

I write as Redacted, with a genuine plea to reset the relationship between your government and our 1700 strong membership, to whom we owe a duty of care. I fully understand your government's commitment to fulfil the settled will of the Scottish Parliament through delivery of The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 and The Town and Country Planning (Short Term Let Control Areas) (Scotland) Regulations 2021. I would therefore hope for reciprocal understanding when the ASSC identifies serious risks to our members safety and security that have emerged during your legislation's implementation phase, and that you are able to recognise and reflect on the consequences for untold numbers of innocent and often vulnerable individuals across the small accommodation sector.

At the outset I want to assure you that this letter is based on the belief that you would not want your government to be linked to the negative impact that the STL legislation is having on people's lives. The content also relies on legal opinion obtained from a top tier, independent commercial law firm, together with verifiable examples of the current and potential misuse of personal information.

Since March 2022 the ASSC has been in contact with over 12000 operators of short term let accommodation. Our single aim has been to provide advice and support in preparing for submission of their application to the STL Licence scheme operating in their locality. No other organisation in Scotland has done more for operators in this regard. Despite this support, it is solely for individual operators to decide, in their personal circumstances, whether to submit their application by the due date.

That being the case, it is with mounting unease that we continue to observe the apparent determination of your government's Ministers and the STL legislation's supporters to drive it to its inevitable conclusion, under three weeks from now, on Sunday 1st of October.

Your Housing Minister, Paul McLennan, announced last week that a total of 6323 license applications had been submitted across the 32 local licensing authorities by 31st August. This figure constitutes 19.75% of your own government's estimate of 32000 STLs in Scotland. At the same time Mr McLennan fervently encouraged people to submit their application by the 30th of September, saying that the process

was more straightforward than many anticipated and that no applications had been refused to date. This without seeming to take account of the multiplicity of other reasons that might be causing as many as 80% of operators to decide not to apply. The notion that there might be other and more significant personal reasons to desert their business and livelihoods never seems to have occurred to him.

Together with other Scottish parliamentarians, I am copying this letter to Kate Forbes as my constituency MSP. I would hope that she can confirm that I have shared my concerns over the risks to community cohesion posed by the Short Term Let legislation since February 2021, and as recently as last month.

In my letter to Kate on the 18th of August I said that there is now evidence that the debate surrounding licensing and planning controls of short term lets, including self-catering and bed and breakfasts, is having a negative impact on community relations. Neighbour is being set against neighbour and some residents are being increasingly vocal in their criticism of tourism and visitors in general. Whilst this might not be the intention of the legislation the reality should not be disregarded, as it has the potential to turn very nasty. At that time I was already aware of two cases in my local area where disputes had ended in violent attacks. I continued by saying that this division in communities may be exacerbated when it comes to enforcement of the licensing regime after 1st October. There is already evidence that vexatious objectors are planning to report allegedly unlicensed operators to their Local Authority or the Police.

We have since learned that the impact on community cohesion, and the related prospects for the well-being economy, are already being severely compromised by the availability of the personal data of license applicants and, in some cases, the ability to cross reference this with planning applications related to short term lets.

The ASSC continues to believe that the legislation itself is based on a misdiagnosis of the problem, followed by misapplication of the wrong remedies. In a spirit of co-operation and collaboration, however, we have continually offered more proportionate and balanced solutions whilst simultaneously assisting many thousands of people in their preparations for licensing. We have been variously described as everything from alarmist to entitled parasites over the last two years, merely because we have tried to highlight the shortcomings of the STL legislation on behalf of our members. This low-level abuse has intensified more recently, to the extent that the great majority of our sector now feel under attack from all quarters, including the Scottish Government and Local Authorities. Crucially, the feedback coming from the short term let community now shows such a fundamental flaw in the implementation process that we are unable to continue to advise applicants to submit their applications before they seriously consider how their personal data, published on Licence Application Notices and Local Authority Licensing Registers, might be used against them by those with ill intent.

Potential Breach of Article 8 of the ECHR and the Scotland Act 1998

Legislation of the Scottish Parliament must be compatible with the rights identified in the European Convention of Human Rights. We have obtained legal advice that has highlighted that the publicity requirements of the 2022 Order in requiring specific

categories of personal data of applicants to be provided on public notices and on a public register may breach the applicant's right to respect for a private life and for the protection of their personal data under Article 8 of the ECHR. The Court of Justice of the European Union determined in November 2022 in the Joined Cases C-37/20 Luxembourg Business Registers that public registers which incorporated detailed personal information about individuals who were the beneficial owners of companies was a serious interference with Article 8 rights. As a direct consequence Companies House in the UK has introduced measures to allow of the redaction and the removal of certain categories of personal data for directors who can demonstrate risk to their safety.

The publicity requirements in the 2022 Order run entirely counter to this case and these developments and we believe would also be regarded as a similar, unjustified and unwarranted interference with Article 8 rights. The requirement to list the applicant's date of birth for example goes beyond what is strictly necessary and proportionate to operate a short-term licensing regime. This regime requires considerably more personal data of applicants to be published as compared to parallel requirements of the Scottish planning regime without clear justification and objective basis. If this is correct, then the 2022 Order is beyond the competence of the Scottish Parliament and thus open to legal challenge.

Potential Breach of the Data Protection Act and the GDPR

The Data Protection Act 1998 and the GDPR further specifies a considerable onus on data controllers – in this case local authorities- to ensure personal data of applicants is processed in a manner that is lawful, fair and respects GDPR principles of data minimisation, only processing data for a proper purpose etc. To the extent that there are clear vulnerabilities with the underlying legality of the 2022 Order as explained above, there are similar challenges to the actions being taken by local authorities in enforcing the publicity requirements without any consequential safeguard mechanisms. This is particularly true for cases where applicants have disclosed material personal safety concerns and evidence of stalking, harassment and criminal behaviour directed to them, as a consequence of being short term let operators. Such obvious consequences of the 2022 Order ought to have been considered through the conduct of legally required Data Privacy Impact Assessments and safeguards embedded within the licensing regime to protect an individual's right to privacy, protection of their personal data and personal safety. The licensing regime utterly fails in this regard.

Irrespective of whether Local Licensing Authorities are complying with the letter of the law it is now clear that the Data Protection legislation's intention, to empower people to take control of their data and protect individuals from its misuse, is being undermined to a significant extent. Further, individuals are encountering substantial difficulties in getting their personal data removed from public view, even when they are aware that this is a possibility.

Whilst Argyll & Bute provides a rare example of having a privacy notice this only gives an email contact for the possible redaction of personal information, including names and addresses, after the event. At the same time Argyll & Bute gives a hyperlink for those wishing to object to an application where the objectors' personal

details are neither published nor shared with the applicant, or anyone else, until such time as the application is being determined.

We also understand that the enforcement framework being planned by your government with SOLAR and COSLA and Police Scotland will take active steps to protect the privacy of individual complainants, with no such protection being offered for those who are to be accused of a criminal offence. The lack of balance in this approach and the heavy handedness being contemplated is regrettable. It hardly represents the “light touch” enforcement strategy that we had been informed would be the case.

In Edinburgh there is no sign of the requisite privacy notice anywhere on their websites. Critically, there is precious little, if any, evidence that any Licensing Authority in Scotland has conducted a data privacy impact assessment, as required by the relevant legislation and regulation.

We are now receiving a deluge of examples demonstrating the impact that this is having on perfectly law-abiding, hard-working and sometimes vulnerable self-catering and bed and breakfast owners and their staff. Whilst we have no intention of breaking confidentiality for the individuals concerned, we can say that they originate from a broad range of urban and rural local authority areas and, in some cases, the individuals concerned have already suffered serious harm directly related to the publication of their personal information.

There are instances of operators who have worked in the security services and law enforcement, well versed in protecting their personal information from public scrutiny, who have now decided that the risks to them and their loved ones which are posed by a licence application are simply too great to take. Others tell us that the Licence Notices and online Licence Registers are providing a valuable resource for those who wish to pursue activity that ranges from threatening behaviour involving discrimination, harassment and victimisation, through formulation of mass objections to planning and license applications, and on to criminal activity involving burglary, blackmail, identity theft, online fraud, graffiti, squatting, stalking, child abduction and domestic violence. I am old enough to remember the arson attacks on Welsh holiday cottages in the 1960's. It does not stretch credulity too far to anticipate that this might re-occur in our rural and remote communities, ably assisted by postcodes and satellite mapping technology.

There are also serious questions being raised as to the use of the data by Local Authorities for enforcement purposes and whether this use is permissible, under the terms of the Data Protection Act 2018. We have documentary evidence that officials plan to use, for example, the data to refer Council Tax paying home sharers to the Scottish Assessors for apportionment of their home for Non-Domestic Rates. Even if this was an acceptable practice by the authority concerned, no advance notice has been given of this possible use to any applicants. Once more this is contrary to the terms of data protection legislation.

It is hardly surprising, therefore, that many of the over 20000 who are still to apply have decided that the risks posed to their personal safety and security, through the publication of their personal data, are simply too serious to ignore. Essentially the

Licensing and Planning Data held and published by Local Authorities, in compliance with the duties outlined in the Short Term Let Legislation, provide what might best be described as a Call Sheet for Criminal Activity. The implications of and consequences for community cohesion are extremely serious. I don't believe that your government would want to be even remotely associated with this outcome.

The ASSC stands ready to support you in action to address these very serious concerns. It is not too late to suspend the relevant SSIs, pending a review to deal with this and other problems with implementation. Suspension would help avoid a deeply divisive debate, scheduled for the Scottish Parliament this Wednesday, and give the Scottish Government an opportunity to demonstrate its commitment to monitoring its own regulations and listening to the tourism industry, in line with your New Deal for Business principles.

Please don't hesitate to get in touch with me if you or your advisers would like to discuss these matters further.

My email address and telephone number are provided below.

With kindest regards,

Redacted

Redacted

Response to item 23

Minister for Housing Paul McLennan MSP

T: 0300 244 4000 E: scottish.ministers@gov.scot αβ χ δ

[Redacted] Association of Scottish Self-Caterers

25 September 2023

SHORT TERM LET LICENSING – DATA PROTECTION

Dear [Redacted],

Thank you for your letter of 12 September, addressed to the First Minister, about human rights and data protection considerations in the context of short-term lets licensing. I am replying as these matters fall within my portfolio.

The Scottish Government deplores all forms of abuse, and takes the matter of data protection very seriously. I would reassure you that I have fully considered the matters you raise. The Civic Government (Scotland) Act 1982 (“the 1982 Act”), as modified by the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“the Licensing Order”), sets out the respective duties of hosts and licensing authorities to provide and disclose data publicly. The applicant must disclose certain information in a site notice to be displayed at the premises for 21 days from the date the application is made.

The licensing authority must disclose certain information in the register of applications, which the public must be given access to. The information being disclosed in the site notice and in the register of applications is restricted so that there is no unnecessary disclosure of personal data about the applicant or any other person – for example, an applicant’s date and place of birth is not included in the site notice or register of applications.

The disclosure requirements for the short-term let licensing regime reflect the similar disclosure requirements, already in place, for other 1982 Act licences. Those disclosure requirements are less intrusive than the disclosure requirements for the landlord register. Indeed, the impact of these disclosure requirements were considered by the Scottish Government in the Data Protection Impact Assessment prepared for the purposes of the Licensing Order¹ and we also engaged with the Information Commissioner on the disclosure requirements.

The Order has been subject to significant parliamentary scrutiny having been laid in December 2020 and considered at Committee before being withdrawn in February 2021 to make some modifications. The updated Order was then laid in November 2021 and passed by the Parliament in January 2022. I therefore consider the disclosure requirements under the short-term lets licensing regime are proportionate and as such compatible with ECHR Article 8, enabling the disclosure of relevant information while respecting the Convention rights of short-term let hosts. The 1982 Act, as modified by the Licensing Order, requires the disclosure of only the minimum information necessary for the effective operation of the licensing regime.

I also consider that the disclosure requirements enable the lawful disclosure of limited personal data by licensing authorities in compliance with data protection legislation. The deadline for existing hosts (those in operation prior to 1 October 2022) to apply for a licence is 1 October 2023. Existing hosts must therefore apply for a licence on 30 September at the very latest to take advantage of the transitional arrangements, which allow them to continue operating while their application is determined by the relevant licensing authority. After that date, any existing host who has not applied for a licence will have to cease trading until they have applied for, and obtained, a short-term let licence. If a host has concerns about how their personal data will be processed following submission of their licence application they should contact their licensing authority.

However, I would emphasise that any concerns about the data processing procedures employed by individual licensing authorities do not bring into question the lawfulness of the short-term let licensing regime itself. Accordingly, existing hosts must apply before 1 October 2023 in order to continue trading while their application is being determined by the licensing authority.

Yours sincerely,

PAUL McLENNAN

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

www.lobbying.scot St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

24. Airbnb Correspondence

Ivan McKee MSP

Minister for Business, Trade, Tourism and Enterprise
Scottish Government St Andrew's House,
Regent Road
Edinburgh
EH1 3DG

Ref No. AUK-2022-08001
11 August 2022

Dear Mr McKee,

Thank you for your letter to Mr Chesky dated 21 June 2022.

We appreciate your concern and recognise that the subject of disputes around the world is a sensitive and complex issue with many conflicting views. As a global platform operating in 220 countries and regions and more than 100,000 cities, we must consider the impact we have and make difficult decisions on behalf of our community.

We have developed a framework for evaluating listings in all disputed regions in consultation with experts. In the case of Israel, we have applied this framework to the West Bank and while listings continue to operate, all profits generated for Airbnb by its Host community in the entire West Bank are donated to non-profit organizations.

We are committed to acting responsibly and we have not taken this decision lightly. This is a challenging historic conflict and the situation continues to evolve. Going forward, we will continue to ask questions, listen to experts and our community and continue to learn. We welcome dialogue with the Scottish Government on this issue.

Yours sincerely,

Redacted

Airbnb

Response to item 24

Minister for Business, Trade, Tourism and Enterprise Ivan McKee MSP
T: 0300 244 4000 E: scottish.ministers@gov.scot αβχ δ

[Redacted]
The Watermarque Building Ringsend Road
Dublin
Ireland

Email: Redacted @airbnb.com

28 March 2023

Dear [Redacted],

Thank you for your letter of 11 August 2022. I note your response outlined the actions you have taken to develop a framework for evaluating listings in all disputed regions. I also note that this methodology has been applied to the West Bank, and that all profits generated for Airbnb by its host community there are donated to non-profit organisations. Airbnb are currently included on the UN High Commissioner for Human Rights' Database as being involved in listed activities related to the provision of services and utilities supporting the maintenance and existence of settlements, including transport.

My understanding is that the Database is scheduled to be reviewed in the coming months and will be updated shortly. In December 2021 the Scottish Government wrote to all public bodies in Scotland to advise them that they should consider the UNHCHR Database (of companies identified as being involved in activities related to illegal Israeli settlements in occupied Palestine) as part of their human rights due diligence processes.

On publication of any revised database, the Scottish Government will again write to Scottish public bodies, making them aware of the updated list of companies, and confirm the role that this should play in their human rights due diligence processes. To further assist in their decision making, we will provide an update to those Scottish public bodies who have indicated that they have a relationship with you, or with one of your subsidiaries, based on your response.

Thank you again for taking the time to engage with me on this matter.

IVAN McKEE

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh

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www.gov.scot

