

From: [Redacted – s38(1)(b)]@assc.com >

Sent: 10 February 2025 14:37

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

Cc: [Redacted – s38(1)(b)]@parliament.scot; [Redacted – s38(1)(b)]@gov.scot>; Short Term Lets Delivery Group [Redacted – s38(1)(b)]@gov.scot>

Subject: Concerns Over Maladministration, Enforcement Actions, and STL Licensing Policies

Importance: High

Good afternoon,

Please find attached letter which has been sent to City of Edinburgh Council. Although it is addressed to City of Edinburgh Council, it has wider ramifications across Scotland.

I would be extremely keen to meet with you to discuss at your earliest convenience.
With thanks in advance.

All the very best,

[Redacted – s38(1)(b)]

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

Tel: 07958771106

Email: [Redacted – s38(1)(b)]@assc.co.uk

Web: www.assc.co.uk



Attached PDF

Cllr [Redacted – s38(1)(b)], City of Edinburgh Council City Chambers 253 High Street
Edinburgh EH1 1YJ

10th February 2025

Concerns Over Maladministration, Enforcement Actions, and STL Licensing Policies

Dear Cllr [Redacted – s38(1)(b)], I am writing to formally raise concerns regarding the City of Edinburgh Council's approach to short-term let (STL) licensing and planning requirements, which have resulted in three successful legal challenges and now an increasing number of complaints of maladministration.

Maladministration and Legal Challenges

The Council's implementation of STL licensing has led to widespread grievances among self-catering operators, many of whom have now lodged formal complaints of maladministration. The primary issue stems from the Council's continued demand for planning permission or a certificate of lawfulness, despite the Court of Session ruling that such requirements were not mandatory for businesses operating before 5 September 2022.

This unlawful approach has led to self-catering operators being charged thousands of pounds in unnecessary planning fees, amounting to a projected cost to the Council in excess of £300,000, potentially rising to over £1 million should further complaints be upheld.

The repeated legal defeats, including two Court of Session rulings and a third instance where the Council conceded its policy was unlawful pre-Judicial Review, highlight serious concerns about the fairness, legality, and financial burden of these policies. Unjust Enforcement Action It has come to our attention that the Council has taken enforcement action against a legitimate operator who holds an STL licence and has a pending Certificate of Lawfulness appeal. This case has now been referred to the Procurator Fiscal, potentially unlawfully, raising questions about the Council's approach to enforcement. Such actions create further uncertainty and financial distress for responsible operators who have already made significant investments to comply with licensing requirements.

A De Facto Ban and Human Rights Concerns

The policies adopted by the Council amount to a de facto ban on STL operations, as noted by Lord Braid in his rulings, which described them as "oppressive and disproportionate." These policies have significantly restricted lawful business operations and appear to be in direct conflict with Article 1, Protocol 1 of the Human Rights Act, which guarantees the right to peaceful enjoyment of one's own property. This failure to balance regulatory oversight with fair and proportionate governance is harming small businesses and tourism in Edinburgh, which depends on a well-regulated but viable STL sector.

Health and Safety Concerns in Temporary Exemptions

We are particularly concerned about the Council's recent decision to abandon health and safety requirements for Temporary Exemptions during the Festival period. These exemptions will allow certain hosts to bypass essential safety checks, including gas, electrical, fire safety, and legionella testing, undermining the very justification for the STL licensing scheme. It is also notable that there are legal requirements for these maZers which lie outwith STL Licensing. To suggest that operators do not need to

comply with existing legislation places them at legal risk. This decision raises significant risks:

- **Public Safety:** Exempting temporary operators from safety standards creates a two-tier system where visitor safety is compromised. If health and safety measures are necessary for year-round operators, why should they not apply equally to temporary exemptions?
- **Council Liability:** If a tragedy were to occur in an exempted property, the Council may bear responsibility for failing to uphold public safety.
- **Black Market Growth:** This inconsistency will further incentivize unregulated STLs, as operators may conclude that if exemptions do not require safety compliance, neither should long-term lets.

A Call for a Fair and Sustainable Approach

Edinburgh's economy and cultural reputation depend on a fair, well-regulated STL sector. The Council's current policies are damaging the city's ability to host major events, including the Edinburgh Festivals, which have relied on self-catering accommodation for decades. The Association of Scotland's Self-Caterers (ASSC) has warned that these regulations are harming both operators and visitors while failing to deliver meaningful oversight. Rather than a punitive approach, we urge the Council to engage with industry representatives to develop fair, sustainable policies that uphold safety and economic viability. I would welcome the opportunity to discuss these concerns further and look forward to your response on how the Council intends to address these pressing issues.

Your sincerely, [Redacted – s38(1)(b)] Chief Executive, Association of Scotland's Self-Caterers

Minister for Business/ Private Office

Please see the following advice from short-term lets and planning policy officials on the points raised in the ASSC's article. If you have any questions or require further advice please don't hesitate to get back in touch with us.

1. Legal Challenges and Maladministration: Edinburgh Council has faced three legal defeats regarding its STL policies. Despite judicial rulings confirming that planning permission is not mandatory for businesses operating before September 2022, the Council continues to demand unnecessary planning applications, burdening operators with excessive costs. Over 100 complaints of maladministration have been lodged, with projected costs exceeding £1m, if all potential claims are upheld.

The judicial review held that the mandatory planning permission required by the short-term let control area does not apply retrospectively to existing operators. However that does not mean that they do not require planning permission, it means rather that they require planning permission if the planning authority consider that a material change of use has occurred in any particular case. That has always been the law. It is for the planning authority to consider whether or not a planning application is required on an individual case-by-case basis for pre-existing operators.

2. Unjust Enforcement Actions: Licensed self-catering operators are being subjected to enforcement action, including cases referred to the Procurator Fiscal, despite pending planning appeals. These actions have been described as “oppressive and disproportionate” by Lord Braid, raising serious concerns about potential violations of the Human Rights Act.

The judicial review brought against CEC in December 2023 did not refer to this issue. Furthermore the phrase ‘oppressive and disproportionate’ does not appear at any point in the decision of Lord Braid. Enforcement action is separate and distinct from any planning application and appeal process and it has been firmly established that the two can be running concurrently. Should the application for planning permission be granted the enforcement action would no longer apply. The phrase ‘oppressive and disproportionate’ comes from CSOH35, but only in paragraph 59 in relation to one of CEC’s additional licensing conditions at the time (STL 9) re floor coverings.

3. Health and Safety Concerns: The decision to abandon key health and safety requirements for temporary exemptions during Festival periods has created a two-tier system, exposing guests and operators to unnecessary risks.

Temporary exemptions provide licensing authorities the powers to strike a balance between the needs and concerns of local communities and the wider economic and tourism benefits of short-term lets.

The legislation enables licensing authorities to grant temporary exemptions for up to three periods not exceeding six weeks in total within any 12-month period. Temporary exemptions can have conditions attached to them too. Licensing authorities can check and enforce any conditions that are attached to a temporary exemption. Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator.

4. Economic Devastation: the ASSC has lost 15% of its membership since the STL regulations were implemented. The decline in available self-catering properties is reducing accommodation options, increasing costs for visitors, and damaging local economies, particularly in rural and island communities.

In response, the ASSC has suggested 5 key reforms from government to ease the present crisis:

- 1. Moratorium on Planning Enforcement Actions** – Suspend enforcement actions until clear legal standards are established.

The Scottish Government consider that clear legal standards and procedures for planning enforcement action are in place. There would be no justification in a moratorium on enforcement action where a use is operating without the required planning permission.

- 2. Introduction of a New Use Class for STLs** – Create a distinct planning category to remove ambiguity and ensure fair application of regulations.

It is unclear how and why ASSC considers this would be beneficial. Creating a separate use class for short-term lets would not in itself change the legal position that planning permission is required for a material change of use to short-term let. We remain unconvinced of the benefits and appropriateness of any such changes to use classes.

- 3. Enforcement of Procedural Safeguards** – Ensure local authorities adhere to due process, including proper notice periods and appeal rights.

It is for each authority to ensure that they comply with their statutory duties.

- 4. Clarification of Short-Term Lets' Role in the Housing Market** – Address disparities in regulations affecting STLs, second homes, and vacant properties, with the latter two outnumbering self-catering units in every local council area.

We have invested £3.7 million to date to bring almost 11,000 privately owned homes back into use as warm, safe and secure housing since 2010.

We know that the best method in unlocking these homes is often advice and support for private owners. That is why the Partnership work with local authorities and our network of empty homes officers to deliver essential services aimed at supporting these owners. Building on the success of the Partnership approach we have committed a further £2 million to help local authorities unlock barriers, develop a targeted approach and embed empty homes work across their services.

From April 2024 local authorities also have powers to charge up to 100% premium (double the full rate) on council tax for second homes.

- 5. Engagement with Industry Stakeholders** - Work collaboratively to develop a fair and sustainable regulatory framework.

We are working collaboratively with stakeholders having commissioned VisitScotland to chair an expert guidance group, which brings together expertise from across the industry and local authorities to provide recommendations on clarifying the short-term let guidance to operators and licensing authorities. VisitScotland will present their recommendations on this in March.

Kind regards,

[Redacted – s38(1)(b)] Short Term Lets | More Homes Division

From: [Redacted – s38(1)(b)]@GOV.SCOT >

Sent: 27 February 2025 14:03

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Cc: TEE : Hospitality Policy and Strategy [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; TEE : Tourism Policy and Strategy [Redacted – s38(1)(b)]@gov>scot >

Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

[Redacted – s38(1)(b)]/ [Redacted – s38(1)(b)]

Dropping Ministers from copy list for now. Can you consider the request below from [Redacted – s38(1)(b)] please and provide some top line advice as requested by PO. This is the article I referred to in the other exchanges today regarding the oral PQ doing the rounds.

Best,

[Redacted – s38(1)(b)]

From: [Redacted – s38(1)(b)]@gov.scot> **On Behalf Of** Minister for Business

Sent: 27 February 2025 12:42

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Cc: TEE : Hospitality Policy and Strategy [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; TEE : Tourism Policy and Strategy [Redacted – s38(1)(b)]@gov>scot >

Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hi [Redacted – s38(1)(b)]

[Redacted – s38(1)(b)] has noted the following article that ASSC have published today - [Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse - ASSC](#) and has asked for urgent advice on the points they have raised.

I believe this article may be following the letter [Redacted – s38(1)(b)]sent in to SG last week.

Grateful if this advice could be with PO by COP tomorrow.

Happy to discuss

Many thanks

[Redacted – s38(1)(b)]

Office of [Redacted – s38(1)(b)]MSP, Minister for Business

MinisterforBusiness@gov.scot

St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 07796 707 844

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Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 10:51

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Cc: [Redacted – s38(1)(b)]@gov.scot>

Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hi [Redacted – s38(1)(b)]

Just a comment below from me.

[Redacted – s38(1)(b)]

From: [Redacted – s38(1)(b)]@gov>scot>

Sent: 28 February 2025 10:42

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Cc: [Redacted – s38(1)(b)]@gov.scot>

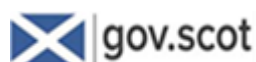
Subject: FW: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hi [Redacted – s38(1)(b)] and [Redacted – s38(1)(b)],

Please see final draft. I need to get this over to our unit head for clearance who finishes at 12.30 so appreciate if you have any views on changes to this please let me know ASAP as I want to send it over to [Redacted – s38(1)(b)]at 11am.

BW,

[Redacted – s38(1)(b)]Short Term Lets | More Homes Division



From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 10:40

To: [Redacted – s38(1)(b)]@gov.scot>

Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Thanks [Redacted – s38(1)(b)], Happy for it to go now.

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The legislation enables licensing authorities to grant temporary exemptions for up to three periods not exceeding six weeks (in total?) within any 12-months period.

Temporary exemptions can have conditions attached to them too. Licensing authorities can check and enforce any conditions that are attached to a temporary exemption. Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can

choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator.

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We are working collaboratively with stakeholders having commissioned VisitScotland to chair an expert guidance group, which brings together expertise

from across the industry and local authorities to provide recommendations on clarifying the short-term let guidance to operators and licensing authorities.

From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 10:19

To: [Redacted – s38(1)(b)]@gov.scot>

Subject: FW: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hi [Redacted – s38(1)(b)],

I have updated with a contribution from us under the other headers. I think the empty homes lines need to be more concise but wanted to get something over to you asap as I need to get it over to [Redacted – s38(1)(b)] fairly urgently as she finishes at 12.30 today.

[Redacted – s38(1)(b)]

From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 09:51

To: [Redacted – s38(1)(b)]@gov.scot>

Cc: [Redacted – s38(1)(b)]@gov.scot>

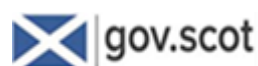
Subject: FW: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hello again [Redacted – s38(1)(b)],

I just wanted to let you know we have been asked by [Redacted – s38(1)(b)] for some advice following an article that the ASSC have published yesterday. Deadline is COP today. We are working with Planning on this, are you able to provide clearance on it when it's ready? And if not do you know who else should provide clearance on this before we send it back to [Redacted – s38(1)(b)]?

Best wishes,

[Redacted – s38(1)(b)] Short Term Lets | More Homes Division



From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 09:47

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hi All

Planning thoughts in red below, subject to any additional thoughts by Tom. Happy to discuss

[Redacted – s38(1)(b)]

From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 27 February 2025 15:01

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Subject: FW: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Hello folks Seeking contributions for some ministerial advice that needs to go up to Mr McKees PO by COP tomorrow.

I have pulled the key parts out of the article cited, below.

As always, happy to discuss.

1. Legal Challenges and Maladministration: Edinburgh Council has faced three legal defeats regarding its STL policies. Despite judicial rulings confirming that planning permission is not mandatory for businesses operating before September 2022, the Council continues to demand unnecessary planning applications, burdening operators with excessive costs. Over 100 complaints of maladministration have been lodged, with projected costs exceeding £1m.

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Temporary exemptions provide licensing authorities the powers to strike a balance between the needs and concerns of local communities and the wider economic and tourism benefits of short-term lets.

The legislation enables licensing authorities to grant temporary exemptions for up to three periods not exceeding six weeks within any 12-months period. Temporary exemptions can have conditions attached to them too. Licensing authorities can check and enforce any conditions that are attached to a temporary exemption.

Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator. Licensing authorities have the power to decide whether to consult the Chief Constable and the Scottish Fire and Rescue Service in respect of applications for temporary exemptions. Licensing authorities can grant or refuse an application for a temporary exemption. If they grant a temporary exemption, they should provide the host or operator with a temporary exemption number (like a licence number) Where a licensing authority chooses not to use their powers to grant any exemptions, they can comply with this duty by publishing a statement on their website to the effect that applications for exemptions will not be granted under any circumstances.

4. Economic Devastation: the ASSC has lost 15% of its membership since the STL regulations were implemented. The decline in available self-catering properties is reducing accommodation options, increasing costs for visitors, and damaging local economies, particularly in rural and island communities.

In response, the ASSC has suggested 5 key reforms from government to ease the present crisis:

- 1. Moratorium on Planning Enforcement Actions** – Suspend enforcement actions until clear legal standards are established.

The Scottish Government consider that clear legal standards and procedures for planning enforcement action are in place. There would be no justification in a moratorium on enforcement action where a use is operating without the required planning permission.

- 2. Introduction of a New Use Class for STLs** – Create a distinct planning category to remove ambiguity and ensure fair application of regulations.

The Scottish Government are considering the potential for such a use class. However it should be noted that creating a use class would not in itself change any requirement for planning permission

- 3. Enforcement of Procedural Safeguards** – Ensure local authorities adhere to due process, including proper notice periods and appeal rights.

It is for each authority to ensure that they comply with their statutory duties

- 4. Clarification of Short-Term Lets' Role in the Housing Market** – Address disparities in regulations affecting STLs, second homes, and vacant properties, with the latter two outnumbering self-catering units in every local council area.

Empty homes are a wasted resource at a time when Scotland needs more homes, and can be a blight on communities. Our actions are helping to bring more empty homes back into use as warm, safe and secure homes for those in need. We know that the reasons why homes become, and stay, empty are varied and complex. Last

year we published an independent audit of empty homes and the interventions needed to help return them to active use. The report and our response are available on the Scottish Government website: [Bringing empty homes back into use: audit of privately owned empty homes - gov.scot](#) & [Empty homes research publication: letter to committee - gov.scot](#). The audit found that the Scottish Empty Homes Partnership project is one of the most effective frontline interventions in tackling empty homes. Our investment of £3.7 million to date has brought almost 11,000 privately owned homes back into use as warm, safe and secure housing since 2010.

We know that the best method unlocking of these homes is often advice and support for private owners. That is why the Partnership work with local authorities and our network of empty homes officers to deliver essential services aimed at supporting these owners. Further information about the Partnership and the network of empty homes services is available from their website at: [Home | Scottish Empty Homes Partnership](#). The Partnership's annual reports contain a range of case studies that show the breadth of work taking place across Scotland including our island communities: [Publications | Scottish Empty Homes Partnership](#).

Building on the success of the Partnership approach we will commit a further £2 million to help local authorities unlock barriers, develop a targeted approach and embed empty homes work across their services. We are delivering on the actions from the audit – this includes compulsory purchase reform and the new grace period from the council tax premium for new owners taking on empty homes and renovations or repairs are being undertaken. Further information on the existing council tax premium for long-term empty homes is available from the Scottish Government website: [Empty homes - More homes - gov.scot](#). We are still considering respondents views on increasing the empty homes premium beyond 100%.

Local authorities have broad compulsory purchase powers that are being used to tackle empty homes: We have commenced a reform programme to modernise the compulsory purchase process to make it clearer, fairer and faster with a commitment for a consultation in 2025. Alongside this we are considering the justification and benefits of introducing compulsory sales orders, against a complex practical and legal background, and to make sure they would be compatible with Convention rights. We are working with the Scottish Empty Homes Partnership and local authorities to explore the practicalities of a potential compulsory sales process for long term empty homes, and how this might add value to existing compulsory purchase powers to help with consideration of this complex area

5. Engagement with Industry Stakeholders - Work collaboratively to develop a fair and sustainable regulatory framework.

We have commissioned VisitScotland to chair an expert guidance group, which brings together expertise from across the industry and local authorities to provide recommendations on clarifying the short-term let guidance to operators and licensing authorities.

From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 27 February 2025 14:03

To: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

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Subject: RE: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

[Redacted – s38(1)(b)]/ [Redacted – s38(1)(b)]

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Best,

[Redacted – s38(1)(b)]

From[Redacted – s38(1)(b)]@gov.scot> **On Behalf Of** Minister for Business

Sent: 27 February 2025 12:42

To: [Redacted – s38(1)(b)]@gov.scot>

Cc: TEE : Hospitality Policy and Strategy [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; TEE : Tourism Policy and Strategy <[Redacted – s38(1)(b)]@gov.scot>

Subject: ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

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I believe this article may be following the letter [Redacted – s38(1)(b)] sent in to SG last week.

Grateful if this advice could be with PO by COP tomorrow.

Happy to discuss

Many thanks

[Redacted – s38(1)(b)]

Office of [Redacted – s38(1)(b)] MSP, Minister for Business

MinisterforBusiness@gov.scot

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From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 03 March 2025 08:22

To: [Redacted – s38(1)(b)]@gov.scot>

Cc: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Subject: RE: Advice - ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

[Redacted – s38(1)(b)]

Thanks for sending the below to [Redacted – s38(1)(b)]. Is there a reason that [Redacted – s38(1)(b)] were not copied? Same for [Redacted – s38(1)(b)] as much relates to planning. Under point 1 and 2 – can you be clearer about which judicial review? ASSC says there have been three legal defeats. I am only aware of two JRs – one on licensing and one on planning.

When you forward to those MPOs – please can you make it clearer what relates to ASSC points and what is policy advice? Perhaps put '**SG view**' underlined at start of policy advice and put a text box round the ASSC bit?

Is the ASSC piece purely about Edinburgh or general about STL regulation?

At point 3 – Can you make it clear that the 2022 Licensing Order gives LAs the power to vary which conditions apply to temporary exemptions and that the decision was made by CEC to vary its own policy following public consultation in 2024?

Could you change the points under 4 from numbers to a, b, c and d? At 4e – please make it clear that ASSC is part of the expert guidance group.

I've added some points in red to 4d.

Thanks

[Redacted – s38(1)(b)]

From: [Redacted – s38(1)(b)]@gov.scot>

Sent: 28 February 2025 13:44

To: Minister for Business <MinisterforBusiness@gov.scot>

Cc: [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>; [Redacted – s38(1)(b)]@gov.scot>

Subject: Advice - ASSC article - Scotland's Self-Caterers Urge Scottish Government to Act to Avert Sectoral Collapse

Minister for Business/ Private Office

Please see the following advice from short-term lets and planning policy officials on the points raised in the ASSC's article. If you have any questions or require further advice please don't hesitate to get back in touch with us.

1. Legal Challenges and Maladministration: Edinburgh Council has faced three legal defeats regarding its STL policies. Despite judicial rulings confirming that planning permission is not mandatory for businesses operating before September 2022, the Council continues to demand unnecessary planning applications, burdening operators with excessive costs. Over 100 complaints of maladministration have been lodged, with projected costs exceeding £1m, if all potential claims are upheld.

The judicial review held that the mandatory planning permission required by the short-term let control area does not apply retrospectively to existing operators. However that does not mean that they do not require planning permission, it means rather that they require planning permission if the planning authority consider that a material change of use has occurred in any particular case. That has always been the law. It is for the planning authority to consider whether or not a planning application is required on an individual case-by-case basis for pre-existing operators.

2. Unjust Enforcement Actions: Licensed self-catering operators are being subjected to enforcement action, including cases referred to the Procurator Fiscal, despite pending planning appeals. These actions have been described as "oppressive and disproportionate" by Lord Braid, raising serious concerns about potential violations of the Human Rights Act.

The judicial review brought against CEC in December 2023 did not refer to this issue. Furthermore the phrase 'oppressive and disproportionate' does not appear at any point in the decision of Lord Braid. Enforcement action is separate and distinct from any planning application and appeal process and it has been firmly established that the two can be running concurrently. Should the application for planning permission be granted the enforcement action would no longer apply. The phrase 'oppressive and disproportionate' comes from CSOH35, but only in paragraph 59 in relation to one of CEC's additional licensing conditions at the time (STL 9) re floor coverings.

3. Health and Safety Concerns: The decision to abandon key health and safety requirements for temporary exemptions during Festival periods has created a two-tier system, exposing guests and operators to unnecessary risks.

Temporary exemptions provide licensing authorities the powers to strike a balance between the needs and concerns of local communities and the wider economic and tourism benefits of short-term lets.

The legislation enables licensing authorities to grant temporary exemptions for up to three periods not exceeding six weeks in total within any 12-month period.

Temporary exemptions can have conditions attached to them too. Licensing authorities can check and enforce any conditions that are attached to a temporary

exemption. Licensing authorities have the right to visit premises and should develop a risk-based approach to prioritising any such visits. Licensing authorities can choose to, but do not need to, inspect every premises and are not liable for any failures of the host or operator.

4. Economic Devastation: the ASSC has lost 15% of its membership since the STL regulations were implemented. The decline in available self-catering properties is reducing accommodation options, increasing costs for visitors, and damaging local economies, particularly in rural and island communities.

In response, the ASSC has suggested 5 key reforms from government to ease the present crisis:

- 1. Moratorium on Planning Enforcement Actions** – Suspend enforcement actions until clear legal standards are established.

The Scottish Government consider that clear legal standards and procedures for planning enforcement action are in place. There would be no justification in a moratorium on enforcement action where a use is operating without the required planning permission.

- 2. Introduction of a New Use Class for STLs** – Create a distinct planning category to remove ambiguity and ensure fair application of regulations.

It is unclear how and why ASSC considers this would be beneficial. Creating a separate use class for short-term lets would not in itself change the legal position that planning permission is required for a material change of use to short-term let. We remain unconvinced of the benefits and appropriateness of any such changes to use classes.

- 3. Enforcement of Procedural Safeguards** – Ensure local authorities adhere to due process, including proper notice periods and appeal rights.

It is for each authority to ensure that they comply with their statutory duties.

- 4. Clarification of Short-Term Lets' Role in the Housing Market** – Address disparities in regulations affecting STLs, second homes, and vacant properties, with the latter two outnumbering self-catering units in every local council area.

We have invested £3.7 million to date to bring almost 11,000 privately owned homes back into use as warm, safe and secure housing since 2010.

We know that the best method in unlocking these homes is often advice and support for private owners. That is why the Partnership work with local authorities and our network of empty homes officers to deliver essential services aimed at supporting these owners. Building on the success of the Partnership approach we have committed a further £2 million to help local authorities unlock barriers, develop a targeted approach and embed empty homes work across their services.

From April 2024 local authorities also have powers to charge up to 100% premium (double the full rate) on council tax for second homes, **which is now the same as the premium that can be charged on long-term empty homes.**

[If short-term lets are secondary letting (renting the entire premises) they will likely be second properties for their owners. Many short-term lets are also second homes for part of the year]

Empty homes and second homes (purely used for personal use) and are not 'regulated' in the same way as short-term lets, as they are not used as guest accommodation and therefore are still domestic residences (no requirement to meet safety conditions).

5. Engagement with Industry Stakeholders - Work collaboratively to develop a fair and sustainable regulatory framework.

We are working collaboratively with stakeholders having commissioned VisitScotland to chair an expert guidance group, which brings together expertise from across the industry and local authorities to provide recommendations on clarifying the short-term let guidance to operators and licensing authorities. VisitScotland will present their recommendations on this in March.

Kind regards,

[Redacted – s38(1)(b)] | Short Term Lets | More Homes Division

