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Fiona Campbell
Chief Executive
The Association of Scotland's Self Caterers (ASSC)

By email to: fiona@assc.co.uk

21 July 2023

Dear Fiona,

Thank you for your correspondence over recent weeks addressed to Scottish Ministers about short-term lets licensing. As you are aware, while I am the lead Minister for this policy I continue to liaise with other Ministers across different portfolios on this matter.

Before addressing the specific issues raised in each of your letters, I would like to reassure you that I have considered the information you have sent to me carefully, alongside discussions I have had with other stakeholders and partners with an interest in the scheme.

I recognise that the ASSC is concerned about the use of licensing to regulate short-term lets. As I have said when we've met, I believe the Scottish Government has struck the right balance with short-term lets regulation in Scotland through legislation approved by the Scottish Parliament that puts in place mandatory conditions for all types of short-term lets and provides powers to local areas to address local issues. Having taken into account all available evidence, I do not plan to extend the deadline for existing short term let operators to apply, nor will I be instructing officials to make amendments to legislation. I believe that operators and local authorities have enough certainty to proceed, and in the 2 months remaining our joint efforts are best focused on ensuring operators are aware of the deadline, and encouraged to submit an application if they wish to continue providing accommodation, noting the clarity this also brings to local authorities to plan and deliver the scheme.

E-mail received 22 June – tourism activity and Gilson Gray letter

Thank you for sharing the findings of the snap poll you undertook and the most recent STA stakeholder survey. I note that it highlights concerns among some operators. As you are aware, the mandatory licensing conditions are based on existing legislation and practice. This should be straightforward for hosts to ensure compliance with and as you recognise many will be doing so already. More broadly, the benefits of licensing for short-term let businesses and tourism in Scotland is that it provides assurance to guests and investors in terms of fundamental safety standards.

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I also recently met with Marc Crothall and we discussed the STA survey in particular, recognising that while the macroeconomic environment remains challenging, with inflation and the cost crisis impacting on business confidence, there are also promising indications for recovery. I do recognise that some businesses will be making a decision here and now on their future operations and I also note that thousands of operators have been successful in applying for a licence since the scheme opened. We will continue to monitor and assess the current conditions within the tourism sector and the implementation of the legislation, using key sources of evidence.

I will respond on the points raised in the Gilson Gray letter below, as I understand these will have informed your subsequent correspondence about potential illegalities.

Letter received 27 June - local authority Short-Term Let licensing policies: illegalities

We've spoken to all councils about learning from the Edinburgh Judicial Review (JR). I also met with the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) on 13 July and I am aware through the SOLAR network, and through engagement with COSLA who represent councils across Scotland, that licensing authorities have been comprehensively briefed on the JR outcome.

I am clear that councils must make their own informed decisions on utilising the powers available to them. I am advised that in Edinburgh the council has adjusted and republished its policy, and that application decisions are being processed as we speak, giving certainty to operators. Based on the existing legislative framework, we remain of the view that short-term let licensing can be operated effectively by councils so as to respect the convention rights of hosts and guests in short-term let accommodation.

I have taken into account your representations and on balance I believe that the existing deadline of 1 October 2023 should remain. I recognise that you take a different view on this. As you will know this reiterates the view expressed in my letter of 5 June to you, and that contained in my letter of 28 June to the Local Government, Housing and Planning Committee. The 28 June letter also provides an update from a SOLAR short-term let working group about the applications that have been processed by the licensing authorities represented on the group. This confirms the view of Gilson Gray that licences are being granted, even in cases where objections have been heard and considered by licensing authorities.

From a planning perspective, I am aware that officials have prepared a separate reply which will issue to you shortly after this letter, bringing together the various responses we've already provided on the points you've raised in previous correspondence.

Joint letter with Sykes Cottages received 30 June – alternative to licensing using Anti-social Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”)

During the development of short-term lets regulations, we considered alternatives to licensing including whether regulations (made under Part 8 of the 2004 Act) might extend landlord registration to cover short-term lets. As I set out in my letter to you of 5 June 2023, these alternatives were found to be unsuitable and could not deliver on all aspects of our short-term lets policy.

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A significant disadvantage of using a system designed for a different purpose is it imposes constraints on short-term lets regulation, and we consider it an integral aspect for local areas to be able to include additional, but proportionate, conditions to address issues relevant to individual cases and local areas. Using the 2004 Act, in particular, would also have had broader implications for short-term lets in the context of other legislation, for example the Tenancy Deposit Scheme regulations and Letting Agent Regulation, as well as restricted appeals to be dealt with by the Housing Tribunal, which would not have been sustainable.

Email with letter received 10 July 2023 - titled 'Eleventh hour'

Your letter outlines six examples of how you feel we've not undertaken meaningful engagement or adequately listened to your sector.

The first point relates to correspondence and information you sent to me in May 2023 and which I answered on 5 June in writing and also when we met with Mr Lochhead on 21 June.

The second point questioning the validity of responses from officials is incorrect. The public consultation in 2019 sought views on a regulatory approach which might involve registration and/or licensing of short-term lets. The consultation responses were analysed and a report was published in October 2019. These views were used to inform the Scottish Government's decision to proceed with licensing in 2020, which was the focus of further consultation in 2020. Many respondents took the opportunity at that point to also comment again on the policy of licensing versus registration. Ministers and officials have also provided information in evidence to the LGHPC about why licensing was chosen over registration, and to you and other stakeholders directly in correspondence and meetings over the past three years. This is a point that I will not be revisiting.

The third point about guidance – I am aware that officials took on board the feedback from your outstanding issues brief (4 May 2023) and inserted additional points into the guidance for licensing authorities about requesting floor plans and the use of additional conditions. In addition, officials also clarified points about legal entities, relevant persons and the number of licences required. Officials also removed content we had inserted about home exchanging/ home swapping, in light of the points you raised. We are in discussion with SOLAR and considering your points about lending and transfer provision. In terms of the feedback from the Industry Advisory Group, we took on board some of this feedback by adjusting the guidance on fee setting and ensuring case law was referenced. While the Group was given the opportunity at the same time to comment on the updates proposed to the Short-Term Let Stakeholder Planning Guidance, none were received.

The fourth point relates to your correspondence of 27 June, which I have answered in this letter.

The fifth point about our commitment to continue monitoring licensing implementation was re-stated in my 28 June letter to the LGHPC. The update we will provide in 2024 will be shaped and informed with stakeholder engagement, and I have invited you to be part of this. My reference to 'preliminary' recognises that the transitional period will still be underway in 2024, with many applications from existing hosts being processed by licensing authorities but not fully determined.

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The sixth point on our stated intention to update aspects of the BRIA in 2024 is not an admission that the legislation is flawed. The BRIA was based on estimates, for example application and fee levels, which we will update with actuals in 2024.

Email with letter received 11 July 2023 – titled ‘Red flags and Solutions’

At our meeting on 11 July I provided you with a further opportunity to provide me with specific examples of why you are opposed to licensing. Your subsequent letter mentions 14 points that I will respond to below:

1. Planning - It is perhaps helpful to reiterate what we have set out in our separate correspondence to you. We do not agree with you on this matter and do not consider planning/ licensing legislation or Scottish Government guidance on short-term lets planning or licensing requires revision. The references to planning in the Licensing Order do not amount to a re-consideration of planning issues for the purposes of licensing. They just enable a council to delay or refuse a STL licence where planning has not been approved.
2. The purpose of licensing – We have always been clear that the purpose of licensing is to ensure short-term lets are safe and to address issues faced by neighbours. This is set out in the Policy Note to the Licensing Order, within our licensing guidance, on the campaign page signposted from our marketing activity/ materials and on the my.gov website.

In terms of complaints by neighbours/ residents, I recognise licensing authorities are well-versed in handling complaints across other licensing regimes/ matters. We have had previous discussions with SOLAR, and it may wish to develop further guidance for neighbours setting out what the grounds might be to be classed as a valid complaint about a short-term let.

Section 6.5 of our licensing guidance notes, ‘In order to assist guests, neighbours and others in making a complaint, the Scottish Government encourages licensing authorities to publish details on how complaints can be made on their webpage, including: grounds that would not be considered valid for a complaint, relevant contact details, and estimated timescales for acknowledging and responding to complaints.’ The guidance goes on to reference the handling of frivolous or vexatious complaints.

3. The granting of licences – As I have stated within this response, both mandatory conditions and the power for licensing authorities to set additional conditions is important to regulate the safety of short-term lets. Furthermore, page 12 of your 4 May document titled ‘Outstanding Issues’ quotes paragraph 5(3) of Schedule 1 of the Civic Government Act 1982 which obliges a licensing authority to grant an application unless certain grounds for refusal are established.
4. Local licensing policies – I have answered this point within this response under the section relating to your letter of 27 June.
5. Provisional licences – We are already discussing transfer provision with SOLAR to consider how this can be handled under the existing legislation, and whether an amendment is required. We will provide an update to the IAG in due course.

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6. New accommodation – As above.
7. Temporary licences – This is a matter for local areas to decide. It may be helpful to point out that, unlike temporary exemptions, licensing authorities cannot use their discretion about which mandatory and/or additional conditions hosts must comply with in order to be granted a temporary licence.
8. Home letting/ home sharing – Host of both of these types of short-term let may already apply for a licence under the current legislation. They must comply with mandatory and additional conditions, if these are applied by licensing authorities. You do not explain why these types of let should be treated differently to secondary lets, and should not have to comply with additional conditions set by the licensing authority. In any case, we have designed the legislation as it is because we believe all types of let should comply with mandatory and additional conditions, unless a licensing authority decides otherwise in order to grant temporary exemptions. I understand that calls to carve out specific types of short-term lets from licensing have been rejected previously for these reasons.

As regards planning, home letting or sharing would not automatically be deemed a material change of use within a short-term let control area: section 26B(3)(b) of the Town and Country Planning (Scotland) Act 1997 provides that, for purposes of section 26B, a short term let does not include “a tenancy of a dwellinghouse (or part of it) where all or part of the dwellinghouse is the only or principal home of the landlord or occupier”. Whether such a use involves a material change of use requiring planning permission is for the planning authority to judge on case-by-case basis (section 26 of the 1997 Act).

9. Second home owners – whether a property is a second home is not a material planning consideration. Second home owners that use this accommodation for short-term lets are secondary letting and it is appropriate they are regulated under the licensing scheme.
10. Fast track mechanisms for registered landlords to be granted temporary licences/ exemptions – It is already possible for councils to do this by taking a risk-based approach to ensure compliance, including consideration of other accreditation and allowing self-certification where appropriate.
11. Mid-term rentals – It is unclear why you consider these require a separate regulatory framework. The duration of lets was considered through consultation and discussion with stakeholders during development of the legislation, and we believe the decision not to restrict the duration is the right choice. Short-term lets must be licensed unless a specified tenancy means they are exempt and covered under other regulation.
12. Fees – civic government licensing provides councils with the discretion to administer schemes based on cost recovery. We believe this is appropriate for local areas to determine, as they have different structures/ needs that will incur different costs.



13. Enforcement Framework – as highlighted to you on 21 June 2023, we've spoken to partners about this and understand they will explore this with the intention to agree a joint protocol for handling of complaints about hosts operating without a licence. We'll keep the IAG updated as this develops.
14. Scottish Government Statement of Intent – my letter of 28 June to the Local Government, Housing and Planning Committee is a comprehensive statement setting out our view that short-term let licensing is appropriate for the whole of Scotland, including island and rural communities.

In closing, I do appreciate the time and effort you dedicate to highlighting issues in the short term let sector. We have made some adjustments based on your feedback but, clearly, there are some areas where we take different views. As I said when we met, in the execution of my duties I review evidence and listen to a range of stakeholders, making decisions based on a number of factors. Noting the strength of feeling, I would encourage continuing dialogue that is constructive and respectful.

Short-term let licensing is now law in Scotland. Going forward I would welcome your input in your role on the New Deal for Business Group, and of course we will invite the Independent Advisory Group to contribute to the process of short-term let licensing updates in the coming months. I will continue to be responsive, and if new evidence comes to light I will instruct the appropriate action, noting that I remain accountable to Parliament.

In the meantime, I wish you the best for the summer.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul McLennan', with a long horizontal flourish underneath.

PAUL MCLENNAN

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