



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 21 December 2021

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 21 December 2021

CONTENTS

	Col.
INTERESTS	1
DECISION ON TAKING BUSINESS IN PRIVATE	2
SUBORDINATE LEGISLATION	3
Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 [Draft]	3
Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 [Draft]	3

LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
16th Meeting 2021, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fergus Ewing (Inverness and Nairn) (SNP)

Murdo Fraser (Mid Scotland and Fife) (Con) (Committee Substitute)

Andrew Mott (Scottish Government)

Rachel Nicholson (Scottish Government)

Shona Robison (Cabinet Secretary for Social Justice, Housing and Local Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 21 December 2021

[The Convener opened the meeting at 10:00]

Interests

The Convener (Ariane Burgess): Good morning and welcome to the 16th meeting in 2021 of the Local Government, Housing and Planning Committee. I ask all members and witnesses to ensure that their mobile phones are on silent and that all other notifications are turned off during the meeting.

Apologies have been received from Meghan Gallacher; Murdo Fraser is attending as substitute for her. As this is Murdo's first appearance at the committee, I invite him to declare any interests that are relevant to the work of the committee.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning. I have two interests that might be relevant to the committee's work and today's session. I am a member of the Law Society of Scotland, although I am not currently practising, and I derive some income from two rental properties that I have an interest in, although neither of those is let on a short-term basis.

Decision on Taking Business in Private

10:01

The Convener: Item 2 is consideration of whether to take items 6, 7 and 8 in private. Item 6 is an opportunity for members to consider the contents of the committee report on short-term lets, item 7 is a chance for the committee to agree its approach on the scrutiny of the Non-Domestic Rates (Coronavirus) (Scotland) Bill and item 8 is an opportunity for the committee to give further consideration to its approach to national planning framework 4. Do members agree to take items 6, 7 and 8 in private?

As no members object, we agree to take items 6, 7 and 8 in private.

Subordinate Legislation

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 [Draft]

Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 [Draft]

10:02

The Convener: Item 3 is to take evidence as part of the committee's work on short-term lets. This is the committee's final evidence session on the order and the regulations. After taking evidence from the cabinet secretary, the committee will debate the motions recommending approval of the order and the regulations. I welcome Fergus Ewing, who is attending the meeting.

I also welcome Shona Robison, the Cabinet Secretary for Social Justice, Housing and Local Government; Andrew Mott, who is the head of the housing markets unit; and Rachel Nicholson, who is a lawyer in the housing and elections branch of the legal directorate in the Scottish Government. Thank you for joining us.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison): I am grateful for the opportunity to speak to the two motions seeking approval for the instruments. With the committee's permission, I intend to speak to both instruments together.

We are committed to ensuring that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with the wider economic and tourism benefits of short-term lets. We have consulted extensively to take this forward.

In 2019, we consulted on the broad principles of a regulatory framework, and that consultation showed broad support for some form of regulation. That formed the basis for the proposals to implement a licensing scheme and control areas, which were announced in January 2020. In September 2020, we launched a second consultation on detailed proposals for legislation, which was then laid in the Scottish Parliament in December 2020.

As the committee will be aware, the licensing order was withdrawn in February 2021, following concerns that were raised by some members and some tourism stakeholders. In response, we established a working group made up of a wide

range of stakeholders to explore and resolve those concerns. The working group made helpful suggestions for changes to the legislation, which was reflected in the draft that we published for the third consultation in June. Further pragmatic and significant changes were made to the licensing order following careful consideration of the consultation responses that we received. The changes were set out in my letter to this committee in October and included the removal of overprovision powers and stronger guidance on fees.

I know that short-term lets bring many benefits to hosts, visitors and the Scottish economy. They are an important source of flexible and responsive accommodation for tourists and workers. However, they have also caused issues for local communities that need to be addressed.

At the heart of the licensing scheme are basic safety standards that will help to protect guests, hosts, neighbours and communities across Scotland. Many hosts will already be following those standards as a matter of compliance with existing law or best practice. We do not consider those standards to be onerous.

Where there are other problems such as noise, nuisance, littering, antisocial behaviour, the loss of residential housing stock and adverse impact on local communities, the licensing scheme, together with the control area legislation, will give local authorities the powers to address those problems. Issues arise in rural and urban areas across Scotland and we expect local authorities to use their powers to do no more or less than is necessary to tackle them.

I understand the impact that Covid-19 has had on the tourism sector, which is why this Government has supported the tourism and hospitality sector throughout the pandemic, not least through an extension of the 100 per cent non-domestic rates relief for all retail, leisure and hospitality premises for 2021-22. However, we need to put the legislation in place now, so that councils can get their licensing schemes ready. Many local residents and communities are keen to see progress on the issue and today provides the opportunity for us to make sure that that happens.

The control area regulations were laid in December 2020 and approved by the Scottish Parliament; they came into force on 1 April 2021. Control areas will help to manage high concentrations of secondary letting, where it affects the availability of residential housing or the character of a neighbourhood and they will help to restrict or prevent short-term lets in places or types of building where it is not considered appropriate. That will help local authorities to ensure that homes are used to best effect in their areas. The City of Edinburgh Council and

Highland Council are both moving forward with proposals to designate control areas. The control area amendment regulations align the definition of short-term let for control area purposes with that in the licensing order.

We will continue to work with and listen to stakeholders. We will shortly reconvene the stakeholder working group to finalise the guidance on the licensing scheme and prepare for implementation. We will work with local authorities to review the levels of short-term let activity in hotspot areas in summer 2023. The review will identify whether any further measures are required to control numbers and check that we have avoided any unintended consequences.

I believe that our proposals take a robust but proportionate approach to the regulation of short-term lets and that they are right for Scottish circumstances. Therefore, I ask the committee to support the motions. I look forward to any questions that members may have.

The Convener: Thank you very much, cabinet secretary. It was great to hear you clearly set out the purpose of the proposed licensing scheme for short-term lets.

The committee has heard that there might be insufficient data about short-term lets in Scotland to support the introduction of a licensing system. What data did you have access to when developing the proposed licensing system?

Shona Robison: First, the evidence that is set out in our business and regulatory impact assessment suggests that the market appears to be recovering towards pre-Covid-19 levels of activity, although we will have to keep an eye on that.

We used the 2019 data, which was established in the Scottish Government's 2019 research, as a baseline for our BRIA. The BRIA also sets out trends in existing data sources, which include the non-domestic rates roll and data provided from Airbnb. Both those sources show a period of rapid growth in the short-term lets sector over the past decade.

Baseline activity, however, is challenging, not least because properties can appear multiple times on the same platform or on different platforms. The licensing scheme will help to clarify the levels of activity locally and nationally, thereby allowing us to map a more comprehensive picture of short-term let activity across Scotland for the first time, which will be helpful.

Clearly, the number of short-term lets varies from area to area. There is quite a concentration in some areas—particularly in Edinburgh and some rural parts of Scotland, such as the Highlands, where rates can be well above 10 per cent. As I

have said, more comprehensive data will be gathered through the licensing scheme.

The Convener: Last week, we heard from witnesses who felt strongly that regulation of overprovision is required if the legislation is to have its intended effect and is to empower local authorities. If the control areas as outlined do not deliver, are you prepared to revisit the overprovisioning aspect of the regulations and, if so, when?

Shona Robison: As I have said in my opening remarks, we believe that the package of measures in the licensing scheme, plus the short-term let control area powers for local authorities, will be enough. We think that those will give local authorities the powers that they need to address concerns. As I have set out, Edinburgh and Highland have moved forward with proposals for control areas and other local authorities may do that, too.

However, I also flag that we would have a review in the summer of 2023, which would give us an option to look at whether more controls are required. We will be able to take stock of where we are and, if that shows that these powers are not sufficient to address areas of concern, we would have an opportunity to look at that as well as at anything that is not working with the licensing scheme, or any concerns from the tourism sector. Summer 2023 would be the opportune moment for having a look at all those things.

The Convener: Thank you for providing that clarity and the potential timeframe. We move to questions from Miles Briggs.

Miles Briggs (Lothian) (Con): Good morning to the cabinet secretary and to the other members of the panel. I have a few questions about the evidence that the committee has heard on a different approach—specifically, on regulation through a registration scheme rather than through the licensing scheme that has been put forward. In your consideration of the issue, why was the suggestion of a registration scheme, rather than a licensing scheme, not taken forward?

Shona Robison: We considered registration as part of the 2019 consultation, and we have also considered the proposals that the Association of Scotland's Self Caterers made earlier this year for registered accommodations to be exempt from the licensing scheme. We do not believe that registration offers the same protections as licensing does to guests, neighbours and local communities. To be robust and effective, a registration scheme would need to involve many of the same requirements as the licensing scheme. We understand that the policy intention of those proposals for registration would be to ensure compliance with broadly the same mandatory

conditions as are set out in the licensing scheme. However, we did not see a draft registration scheme, and it is not clear how such a scheme would be enforced.

My main point is that I do not think that registration would include any provision for a fit and proper person test, or additional conditions to be attached to the registration. Those are important components of the licensing scheme, which a parallel registration scheme would potentially undermine. That fit and proper person test is important, not least from the point of view of safety. The committee heard concerns from Police Scotland about possible criminal activity.

The alternative was given full consideration, but we believe that the licensing scheme as proposed is proportionate—not onerous—and provides a level of protection for those who use short-term lets.

Miles Briggs: A key aspect that I think you accepted in your opening statement was that most of the concerns that have been raised have been about a certain few areas in the country—tourism honeypots, for want of a better word. Witnesses have argued that the Government has taken a disproportionate approach in introducing a Scotland-wide licensing system. What assessment has taken place of the control areas that have been put in place and why has a Scotland-wide scheme been seen as necessary when the issue is seen as being very much around key pressured tourism areas?

10:15

Shona Robison: The licensing scheme seeks to ensure that every short-term let across Scotland meets basic safety standards. Those should be the same whether the let is in Edinburgh or the rural Highlands. That is important for urban and rural areas, and for businesses large and small. There needs to be a level playing field.

During the consultation and in on-going correspondence we have heard from residents in many places across Scotland including Glasgow, Ayr, Applecross in the Highlands, Loch Lomond and the Trossachs national park, the Isle of Harris, North Berwick, St Andrews and West Linton, among others. They have highlighted a range of concerns about short-term lets including the impact on local housing supply, noise and antisocial behaviours. Those are not just urban issues.

Delivering national consistency on safety standards is also important, and allowing and enabling local authorities to use additional powers beyond the core elements as they see fit to meet the needs of local communities. As I said earlier, we have committed to working with local

authorities to review the levels of short-term let activity in the hotspot areas in the summer of 2023 to see whether any further measures are required.

Control areas came into place in April, and the City of Edinburgh Council has consulted widely on that. If it wants to move forward, it would need ministerial approval to make the whole of Edinburgh a control area. Highland Council has moved forward with just Badenoch and Strathspey, which it sees as an area of particular concern. Local authorities can use the powers if they want to and see that as a proportionate response to local issues, but they are not required to use them. I think that that is the right balance. It gives local authorities the ability to use the powers, if they so wish, and the control areas require ministerial approval.

Miles Briggs: Finally, would you accept that the national safety standards could have been achieved through a registration scheme and did not necessarily need a licensing scheme?

Shona Robison: No. As I set out earlier, the licensing scheme gives the additional protections. It makes sure, for example, that the fit and proper person test is there. As the committee heard at its previous evidence session, there is a lot of support among local authorities for the scheme, which would allow them to use the additional powers that have been given to them, if they so wish. There would be no requirement on them beyond the core element of the licensing scheme, but I think that local authorities welcome the fact that they would have additional powers to deal with things such as noise, antisocial behaviour and littering, as appropriate to their areas. The licensing scheme does that in a way that I am not convinced a registration scheme would have done.

The Convener: I believe that Mark Griffin has a supplementary on that question.

Mark Griffin (Central Scotland) (Lab): I will continue that line of questioning from Miles Briggs. You said at the start of your opening statement that you wanted to give local authorities powers to address concerns. It is clear that there are concerns in some local authority areas, but we have not heard the same level of concern in other areas. Was any consideration given to devolving the powers completely to local authorities, giving them the discretion to decide whether to introduce a licensing scheme to address their local circumstances?

Shona Robison: I think that this is the right balance. The response from local authorities is, in the main, supportive. Also, beyond the core measures in the licensing scheme, it is about devolving power to local authorities to decide whether to take forward those additional powers on antisocial behaviour, littering or noise to meet

concerns in their local area. They should obviously do that in a proportionate way.

There is no requirement for local authorities to use the powers to create short-term letting control areas, but authorities that want to do so and that see those as a way of addressing issues in their areas will do so. As I said, two local authorities have proposed control areas. I think that we have struck the right balance. We want basic safety standards to apply everywhere, as they should. Beyond that, local authorities have a lot of discretion about whether to use the additional powers.

Mark Griffin: Has there been any consideration of running pilot projects in local authorities that have particular concerns?

Shona Robison: Extensive consultation has taken place. Work has been done on the provisions and substantial changes have been made. It is right to go ahead with this across Scotland. We want everyone in Scotland who uses short-term lets to have the same basic protections and assurances and we want a level playing field for hosts, too. It is not fair that some hosts have put in place all the measures that they should have when others have not done so. That is not fair to hosts who have done the right thing. It is important to create a level playing field across Scotland.

Murdo Fraser: I have a couple of questions about costs to local authorities and to businesses. The committee has had a lot of evidence from local authorities and from the sector about potential costs and there has been a lot of criticism of the figures in the business and regulatory impact assessment, which assessed the estimated costs as being £200 to £400 per property. The evidence that the committee has heard suggests that it could be far higher than that. The Society of Local Authority Lawyers and Administrators in Scotland has said that fees are more likely to be £1,500 to £2,000, which would be a major burden for councils and small businesses.

Individual councils have also raised concerns. In my area, Perth and Kinross Council has raised the issue. Fife Council has said that the fees set out are incredibly low and that the BRIA should be more realistic and should not give applicants false hope of low fees.

How were the figures in the BRIA calculated? How robust are they? If it turns out that the local authorities that submitted evidence to the committee are correct, how will the balance be made up? Will they be expected to raise the fees on a full cost recovery basis, or will the Scottish Government step in to provide additional financial assistance?

Shona Robison: I will begin with the issue of local authority resources. A total of 23 local authorities responded to our consultation in 2020. Only three of those responses expressed the opinion that the Scottish Government should provide any grant or loan funding to support the establishment of the licensing scheme. Eleven local authorities responded to the 2021 consultation. Two of those authorities highlighted concerns about resourcing.

Outside of the consultations, no formal requests for additional funding have been received so far. We have engaged extensively with local authorities and other stakeholders to finalise the legislation, which we think is efficient and effective.

You asked about fee calculation. An updated BRIA was published on 23 November. That was informed by consultation responses and other information that was provided to us, including concerns raised by stakeholders. As part of the process of updating the BRIA, Scottish Government officials and economists worked through all the information that was made available to us by stakeholders.

We engaged with Airbnb, the ASSC, the Scottish Bed and Breakfast Association and local authorities in particular about their concerns on the level of fees and the impact on the tourism sector. That all informed the final version of the BRIA.

The costs that are set out in our BRIA reflect the Scottish Government's best estimates of average costs and fees across Scotland and a range of scenarios. The actual fees to be charged will, of course, be determined by local authorities following Scottish Government guidance. The average cost will depend on local conditions. The assumptions in our fee model have been informed by discussions with local authority licensing officials.

The guidance will say that fees should only recover costs, so local authorities should not go beyond that. It will also set out that there should be a proportionate, risk-based inspection regime. That is where there has been some disagreement. There have been worries that every property will be inspected numerous times in the course of the licensing scheme but we have said that inspection should be proportionate and risk based. That could be based on a number of factors but, in itself, it should keep the costs down because the inspection level would drive any fee costs.

I hope that that reassures the sector. The guidance will set out very clearly the level of inspection that we will expect local authorities to carry out. It should be risk based and not onerous.

Murdo Fraser: Thank you for that response, cabinet secretary. It is helpful that you confirmed that the scheme will take a full cost recovery

approach but there is still a wide discrepancy between the figures that are in the BRIA and those that are quoted by, for example, SOLAR. Can you explain the reason for that? I would think that people working in local government would have a closer understanding of the likely costs than Scottish Government officials would.

Shona Robison: It is about having a proportionate, risk-based inspection regime. If we were to do an analysis of fees that was not founded on a risk-based inspection regime and if every property was inspected every year, the fee level would be higher. However, we are not asking local authorities to do that. That would not be proportionate.

The guidance will set out the detail of how we will ask local authorities to set up a risk-based inspection system. A range of issues that could be brought to the local authority's attention—for example, if there had been any concerns about particular properties or about somebody being a fit and proper person—would determine which properties might be inspected more than others. The local authorities understand that approach and proportionate fees. That is what we will ask them to do and it will help considerably in keeping the costs down. That is probably where the difference in the figures lies.

Murdo Fraser: Convener, I have a slightly different question on the costs of compliance. Perhaps you will want to bring in Paul McLennan at this point. I think that he had a follow-up question to my earlier one.

The Convener: Yes. Paul, would you like to ask your supplementary question now?

Paul McLennan (East Lothian) (SNP): I refer to my entry in the register of members' interests. I am a serving councillor in East Lothian Council.

I will expand on Murdo Fraser's questions. We have had indications that the average fee would be £436. Feedback that we got from some tourism body surveys appeared to indicate that many operators would leave the industry as a result of the licensing scheme because of the additional cost. Do you share that concern?

The majority of operators already comply with the safety standards. What are your thoughts on that?

Shona Robison: Many do comply. Therefore, making sure that all comply creates a level playing field. That is important.

I have set out the reasons why there have perhaps been differing approaches to the level of fees, so the guidance on that will be important. I should also say that the fee should be proportionate to the size of the business. The large operators with large party houses should pay

more than those with one room in a host's house. The fee should be proportionate to the ability to pay and the size of business, which will be set out in the guidance. All that will mean that the fees should not be onerous. As I said earlier, it is about cost recovery. All that taken together means that the fees should be manageable, and proportionate to the size of the business.

10:30

Murdo Fraser: I have another question on costs, but from a slightly different angle. It is not only the cost of the licence fee that must be considered, but the costs of compliance to businesses. I accept the cabinet secretary's point that some businesses already comply, but for others, the BRIA in June calculated that compliance costs could be £963. Operators have suggested that the actual average cost could be three times that amount—as much as £3,000. The difficulty is that the cumulative costs add up, and act as a real deterrent to participation in the tourism sector.

What is being proposed impacts not only short-term lets, but, due to the way in which the regulations have been framed, small bed and breakfast properties. In the area that I represent, towns such as Pitlochry are heavily dependent on tourism as a source of income. They have a broad range of small accommodation providers and owner-run bed and breakfasts that are also being caught by the regulations, which are seen simply as another form of taxation.

The providers are struggling to see what benefit they will get out of the new regulations, and they will be hit by substantial annual costs in order to comply with them. Why have bed and breakfasts been brought into the ambit of the regulations, when doing so could mean that some of them decide to drop out of the industry altogether?

Shona Robison: At the heart of the regulations is a set of basic safety standards. I hope that we agree that all premises should comply with that set of basic safety standards. As you said, some are already doing so, and if others are not, they should be. That would create a level playing field to ensure the safety of those using those properties, which is at the heart of the measures.

Murdo Fraser then talked about bed and breakfasts. As I said, the set of mandatory standards, which will help to protect the safety of guests, should apply to the whole self-catering sector. Many bed and breakfast hosts will already be following the standards as a matter of compliance with existing law or best practice; therefore, we do not consider the standards to be onerous.

B and Bs have been included from the beginning, and one of the important reasons why is that, if they were not included, a number of premises would potentially be relabelled as B and Bs in order to avoid licensing. That concern was expressed during the consultation. It would be very difficult to define B and Bs in order to differentiate them from other types of provision. Therefore, we took the view to leave B and Bs in the scope of the licensing proposals. The relabelling issue would have been a considerable concern should they have been excluded.

Murdo Fraser: I have just one follow-up question. The cabinet secretary might be aware that bed and breakfast owners have had a really tough time over the past couple of years because of the number of restrictions that have impacted on tourism. At the moment, they are also experiencing substantial increases in costs, such as energy costs, which are a major part of the cost base of B and Bs. In the area that I represent, I have seen a lot of people leaving the B and B sector, and successful B and Bs are being turned back into private houses. That has a negative impact, because it narrows the choice of accommodation for visitors, who are so important to the economy, particularly in rural Scotland.

Why was it not possible in drafting the order to exclude B and Bs where the owners live on the premises? That would seem to be an obvious cut-off point. There is a clear distinction between something that is available for short-term let and the discrete side of accommodation, and a traditional B and B where the owners live in the same building and provide other services such as breakfast or teas and coffees. Was it not possible to draft the legislation in that way?

Shona Robison: No. I think that it would have been difficult to have a specific definition that would exclude some but not others in the way that you describe. The danger in doing that is that some operators could redefine their businesses as B and Bs to avoid licensing, as I said earlier.

The point about the scheme not being onerous is important. The level of fee for a small B and B should be proportionate to the level and size of the business. I was struck by the evidence of Andrew Mitchell, from the City of Edinburgh Council, when he said, first of all, that

“The inclusion of traditional B and Bs makes sense. If they are not included, a loophole would be created, which would allow every short-term let to provide a wee breakfast and claim that they were exempt from licensing laws. We strongly support the closure of that loophole by including traditional bed and breakfasts in the definition.”

He then—this is the important bit—said:

“As I said, each local authority will deploy licensing systems that reflect what it sees as the risks. For example, if somebody is living in a property, which is more likely to

be the case for traditional B and Bs, they might be subject to a less onerous inspection regime with fewer requirements.”—[*Official Report, Local Government, Housing and Planning Committee*, 14 December 2021; c 11-12.]

Therefore, the fee would be proportionate to that.

Traditional B and Bs should not be concerned about the proposals at all. A lot has been said that might have worried them, but I would like to say that we want them to continue. They are an important part of the tourism sector and there is nothing in the proposals that is onerous or to be concerned about. I think that local authorities will take a sensible approach to the way in which they deploy the licensing scheme that will ensure that traditional B and Bs continue to be supported and that there is nothing onerous in it for them.

Murdo Fraser: Thank you.

The Convener: We will move to questions from Miles Briggs.

Miles Briggs: I want to continue Murdo Fraser’s line of questioning on unintended consequences. Witnesses from the sector have told the committee that licensing of short-term lets could lead to many owners leaving the sector, potentially costing Scottish tourism tens of millions of pounds in lost revenue annually. How would the cabinet secretary respond to those claims?

Shona Robison: I do not think that that will be the case. Over the past few months, with the level of staycations that there has been, the self-catering sector has been quite buoyant. We will keep an eye on that, as we are in a tricky situation at the moment. However, given the guidance that I talked about earlier and given the way in which the scheme would work in practice, the sector really does not have anything to be concerned about. With regard to the concerns that people will leave the sector en masse, I do not believe that that would happen.

It is also important to note that we have made considerable changes to the proposals to respond to concerns from the sector. For example, we have removed the minimum energy performance certificate requirements and the overprovision measures, and we have simplified many of the aspects that the sector raised concerns about. We have listened and tried to make the scheme as straightforward as possible. Once it is in operation, I think that operators and hosts will realise that, actually, any issues that they were concerned about have not come to pass.

Miles Briggs: We have touched on the issue of disproportionate impact. What assessment has been made of the effect on those who, for example, rent out a property for the month of August in Edinburgh during the festival, or those in rural areas who rent out properties during the

summer months when we have peak tourism? Real concern has been expressed that the scheme will have a disproportionate impact on small and rural businesses, as a percentage of their income. Do you share those concerns? How can they be overcome, given that the sector is often very different in different parts of the country at different times of the year?

Shona Robison: I think that the point that Miles Briggs is getting at is about facilitating home sharing and bed and breakfasts. We want to facilitate responsible home sharing, and licensing authorities will have wide discretion to grant temporary exemptions or temporary licences under the Civic Government (Scotland) Act 1982 and the licensing order. We will develop guidance on granting temporary exemptions and temporary licensing with licensing authorities. That will cover things such as short-term temporary periods of letting during the festival and so on.

Andrew Mott might want to say a little more about those short periods of letting.

Andrew Mott (Scottish Government): As the cabinet secretary said, there are powers for temporary exemptions and temporary licences, which could facilitate somebody renting a room for a short period or whatever, and we will produce guidance on that. It will be up to each local authority to determine their temporary exemption policy, and they will have quite a wide range of powers in that regard. Some local authorities might want to have such policies and others might not, and they will be able to set certain limitations. For example, a local authority could say that it will grant short temporary exemptions of, for example, three weeks for home sharing for a festival, but that it will not grant exemptions for secondary letting. There is quite a wide range of powers to facilitate dealing with the peak pressure from events.

Miles Briggs: How many exemptions would you expect to be made available? You will know about the pressures in Edinburgh during the festival, when a lot of people rent out a spare bedroom in their homes. I have received emails from constituents who say that they need the extra money to make ends meet. With the costs of energy rising, people are acutely aware of the potential to bring in additional income. How many exemptions would you expect each council to provide? Do you expect there to be a cap?

Shona Robison: No, there will not be a cap. It will be down to the local authorities to decide that, as they know their areas better than we do. For example, the City of Edinburgh Council will know the requirements during the festival period, and it will be for it to decide the appropriate response, which I am sure that it will do in a sensible way. The council wants to ensure that there is enough

accommodation for people coming to the festival and the fringe, so I am sure that it will operate the system in a way that enables demand to be met.

Paul McLennan: I want to expand on what can be done to monitor the impact of the licensing scheme. You mentioned that it will be reviewed in 2023. Is there a format for the review? It is really important to review the scheme, but what will that look like?

10:45

Shona Robison: We have not decided on the format per se, but I would want it to be open and to take contributions from stakeholders, local residents, communities and local authorities—the same groups that have been involved in the three consultations so far. We would revisit those stakeholders and find out how the scheme is working for them as providers and hosts, and for the users of short-term lets and those who are impacted by those lets. We want to look at that in the round and be open in doing so.

Paul McLennan: Would that information come back to the committee? Perhaps that is a process for the clerks. How would the Scottish Government take the review forward? Would there be transparency about what comes out of it?

Shona Robison: I am happy to engage with the committee on that. We could follow up nearer the time with some thoughts about how that might work. We want to be open and transparent about that process. We would welcome the committee's involvement in that.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): I refer everyone to my entry in the register of members' interests: I am still a serving councillor on East Ayrshire Council.

Nicola Robison from Police Scotland told the committee on 14 December that Police Scotland is broadly supportive of the licensing scheme and welcomes the inclusion of the fit and proper person test to ensure the safeguarding of guests and neighbours. She told the committee about criminal exploitation arising from a lack of regulation. Do you recognise the risk of criminal activity? How would the licensing scheme help to combat that?

Shona Robison: Yes, that issue affects a small part of the sector. In the main, the sector is law abiding and provides good and safe premises for people to use. I want to put that on the record.

Undoubtedly, there is some criminality. The evidence that was given by Nicola Robison shows the importance of having the fit and proper person test as part of the licensing scheme. That is critical because Police Scotland would be able to flag up any concerns about someone not being a fit and

proper person. That could be used by the local authority in deciding whether to grant a licence. There is a small element of criminality, but that is not something that we can ignore.

Elena Whitham: Tourism stakeholders have raised concerns about the application process being a de facto ban. They alluded to what is happening in Dublin where there is uncertainty about whether the licensing renewal process might stymie their business. How would you respond to those concerns? Are they well founded?

Shona Robison: No, I do not think that they are well founded. Let me say a couple of things. Where a licensing authority fails to determine an application on time, the application is deemed to be granted for a period of one year. A licensing authority cannot kick a licence application into the long grass, if that was the concern. Existing hosts and operators who apply before 1 April 2023 can continue to operate while their licence application is processed. I do not accept there is any issue of a de facto ban.

The processes are probably quite different in Dublin. Applications here will be deemed to be granted for a period of one year. There is nothing to be gained by delaying an application. Local authorities will want to be swift and efficient in dealing with licensing applications.

Elena Whitham: Can you reassure us that the licensing authorities will not be able to use the licensing scheme as a means of revenue generation and that fees applied will cover their own costs only? Can you confirm that you will provide guidance—we have already heard a lot about that—to licensing authorities on parameters for setting the fees, and on other issues that require local flexibility? As you have already said, local authorities know their communities best.

Shona Robison: The principle is cost recovery only; local authorities cannot go beyond that. The guidance will set out in more detail what we think is important to make sure that local authorities are following that principle. We want the scheme to be proportionate, not onerous. The guidance will be clear on that.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I have a couple of questions that deal with broader antisocial behaviour issues. We have heard evidence that we already have powers to deal with antisocial behaviour. However, we also heard from a City of Edinburgh Council official that existing powers for dealing with antisocial behaviour do not really fit the short-term lets sector, as those are more about dealing with long-term behaviours. There is a balance of views on the issue, cabinet secretary. What is your view? Why do you think that a licensing scheme would

offer us a better solution than a registration scheme?

Shona Robison: First, we expect all relevant authorities to use all the powers that are available to them to deal with antisocial behaviour. Existing antisocial behaviour legislation is, however, better suited to handling issues with longer-term residents when follow up and enforcement is more straightforward. I am sure that Willie Coffey has had to deal with cases along those lines, as I have, and he will know that it takes some time to work through the legislative process and to support people in doing that.

The licensing scheme will give local authorities and Police Scotland transparency by letting them know who the owners of short-term lets are and ensuring that they are fit and proper people to hold a licence, including whether they have had issues with antisocial behaviour. Local authorities will have the power to use the scheme appropriately to meet the needs of their area.

Local authorities could also include proactive conditions so that, for example, if people in a big holiday house have been annoying the neighbours by drinking all day and all night, they could include a condition that alcohol cannot be consumed on the property after a certain time. They could do that proactively rather than having to deal with the consequences of antisocial behaviour. It is about giving local authorities the appropriate powers.

Licensing authorities might also wish to include a condition requiring the licence holder to manage their premises in a reasonably practicable way to prevent antisocial behaviour; I have just given an example of how. The draft guidance that was published in June includes a template for additional conditions relating to antisocial behaviour. We expect local authorities to impose proportionate additional conditions only when they are necessary, but if a property has been causing concern, the local authority might want to consider that.

Willie Coffey: Could you or your legal colleague clarify a matter for me, should the scheme comes into use? If a person is refused a licence or loses their licence, would it be a criminal offence for them to continue to operate a short-term let? I know of some cases in which complaints were made to City of Edinburgh Council about antisocial behaviour but nothing prevented the operator from continuing to operate under those circumstances. Is there a legal advantage to the licensing scheme that would assist us if such problems arose?

Shona Robison: I will ask Rachel Nicholson to come in to outline some of the penalties for offences.

Rachel Nicholson (Scottish Government): Yes, that is correct. With regard to bringing short-

term lets into the scope of the 1982 act powers, section 7 of that act sets out that it is an offence to operate short-term lets without a licence. If a person was refused a licence or if, for whatever reason, they lost a licence that they had been granted, it would be a statutory criminal offence for them to continue to operate. There are level 4 penalties on the standard scale for continuing to operate without a licence. As I understand it, there is also the option for a sheriff to convict and imprison a person.

Willie Coffey: I will follow that up briefly. Under the registration scheme, would it similarly be an offence to continue to operate if complaints about antisocial behaviour had been raised and proven to be correct?

Rachel Nicholson: The registration scheme, as proposed by stakeholders, would operate under the terms of the Development of Tourism Act 1969. With regard to compliance or otherwise with the registration scheme, I believe that there is a power to fine operators. However, the fine would be lower and, as I think that other witnesses have pointed out, it is a self-regulated scheme. There is not an oversight body or any independent oversight of compliance or otherwise with the registration scheme.

Fergus Ewing (Inverness and Nairn) (SNP): Good morning. You have discussed the desirability of the licensing scheme. One reason that you have given for that is that it would enable the fit and proper person test to be incorporated so that police concerns can be addressed. That is a fair point. Are you suggesting that the fit and proper person test cannot be part of a registration scheme?

Shona Robison: A basket of measures would come together in the licensing scheme. As Rachel Nicholson just outlined, a self-regulated registration scheme would not require people to comply with the measures in the same way. The powers that we will give to local authorities, which go beyond the core elements of the licensing scheme, are also important. The licensing scheme strikes the right balance in ensuring that where practice does not adhere to basic safety standards or there is potentially criminal behaviour—people behaving at that extreme end of the scale—a proportionate response can be deployed. I do not believe that such situations could be dealt with in the same way under a self-regulated registration scheme.

All in all, it is a proportionate and balanced approach. I have met people from the sector who think otherwise. We have tried to work with them to compromise in relation to some of their concerns; we have done that on many of their concerns. What we have landed is a proportionate and balanced approach.

Fergus Ewing: I am interested by that reply, because I got the impression from your evidence earlier that your argument was that a mandatory registration scheme, which is what is being proposed—a statutory scheme could be incorporated, of course—could not enable the fit and proper person test to be introduced. I am looking on the Scottish Government website at “Landlord Registration in Scotland: Statutory Guidance for Local Authorities”, which was published in 2017. Under heading 4—“The ‘Fit and Proper Person’ Test”—the guidance states:

“Local authorities must refuse an application for registration if not satisfied that the applicant is a fit and proper person to let houses.”

Therefore, the fit and proper person test applies already to the existing landlord registration process—and rightly so.

As Mr Fraser does, I let a property long-term; I recall the form, which I believe requires people to submit information on whether they have had problems with the police, for example. It seems to me that a fit and proper person test is already part of the registration scheme that applies to long lets, so there is therefore absolutely no reason why it should not be applied to a registration scheme for short lets, is there?

11:00

Shona Robison: As I have said, the basket of measures should be seen as proportionate in responding to the very real issues that have been raised by communities. I guess you could turn that on its head and ask the sector why, if all those things are things that it wants, it opposes the licensing scheme? What is it about the licensing scheme that it is so opposed to, if a registration scheme would do exactly the same thing?

I suggest that the registration scheme was not going to do exactly the same thing; that we need local authorities to have powers to refuse a licence, if someone is not operating in a way that is safe or responsible; and that authorities should be able to use their additional powers to deal with the very real issues that residents and communities have raised. I believe that a licensing scheme would do that in a way that a registration scheme would not.

Fergus Ewing: The fundamental difference between a licensing scheme and a notification scheme is very simple: Scotland’s local authorities will have the power to refuse a licence, which means that business will be terminated. That is not part of a notification scheme. Therefore, the difference is inherent and draconian.

There are 17,794 self-catering properties in Scotland, which contribute £867 million to the economy, and there are 23,979 full-time

equivalent jobs. I think that it is estimated that there are about 30,000 Airbnb properties. The owners of all those tens of thousands of properties will now have fear that their business might be confiscated or terminated. That is the difference between the two types of scheme.

Since the cabinet secretary has raised the issues of antisocial behaviour and safety standards, I wish to probe her answers to colleagues' helpful questioning on a couple of aspects. The law on fire and electrical safety standards already exists. When you wrote to the committee on 7 October, you made it absolutely clear that the provisions will not enhance or change the existing law, which already—quite rightly—applies to all properties. You wrote:

“We are reviewing the fire safety and electrical safety requirements to ensure that they do not go further than existing law.”

If the rules will not enhance or increase the standards, the only way that the protection that the cabinet secretary referred to would be conferred by the provisions and could apply would be if every single property were inspected regularly. I read the revised business and regulatory impact assessment yesterday; it makes it absolutely clear that inspections are by no means required; it specifically says that they are not a requirement. If there will be no mandatory inspections—I am not arguing that there should be—and if the law will remain exactly as it is, how can you justify the assertion that the provisions, if passed, would provide additional protection?

Shona Robison: On your first point about the ability to refuse a licence, you are right in one sense; the vast majority of people in the sector are law abiding and good providers. I absolutely agree that they provide a very important element of the tourism economy.

Is it not right, however, that people who do not abide by the law and are not providing safe spaces where people can stay should be refused a licence? Why should they be able to operate when another person down the road is doing everything that they can do to ensure that their short-term-let property is a safe place? Why should the person who is not doing that not face consequences?

The ability to refuse a licence is important; that is an important difference between the licensing scheme and a registration scheme. In many ways, Fergus Ewing has made the point for me—it is the whole point—that when someone does not comply it is unfair and there is no level playing field, so they should have a licence refused. However, people who abide by the rules have nothing to fear from the licensing system.

As Fergus Ewing will know, “Practical Fire Safety Guidance for Existing Premises with Sleeping Accommodation” was published in June 2018. Part 3 of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 set out fire safety duties in respect of the majority of non-domestic premises in Scotland. Obviously, not all short-term lets are businesses, so it is important that we have a mandatory licence condition that gives protection to people who use any type of short-term let. The licensing order puts in place some basic requirements for safety measures for all short-term lets. Andrew Mott or Rachel Nicholson might want to come in on that. Perhaps Rachel will offer the legal point of view.

Rachel Nicholson: Before I do that, I will just quickly clarify the evidence that I gave in response to Mr Coffey's question. The penalty for continuing to operate a short-term let without a licence would be a fine not exceeding level 4 on the standard scale, and not imprisonment. I apologise for having given incorrect information.

On safety conditions, I clarify that although the statutory duties already exist, the purpose of making them a requirement—first, in obtaining a licence and, thereafter, in remaining licensed—is to ensure compliance. Nothing in the mandatory conditions contradicts anything that was already in place in fire safety legislation for non-domestic properties.

Fergus Ewing: Thank you for those answers.

As Rachel Nicholson has just confirmed, the duties apply to everybody anyway. Obviously, we all want the law to be applied and observed by everybody. I make the point that neither hotels nor long-term lets are subject to licensing requirements. Therefore, if consistency is meant to be the sine qua non—the essential element—it ain't there, because various types of premises do not have to follow that licensing requirement. The requirement carries with it the risk that people will lose their business. As they come out of the pandemic, that is a pretty serious threat to hang above them like a sword of Damocles, over the next few years.

I turn to antisocial behaviour because—contrary to what seems to have been said previously—specific legislation deals with antisocial behaviour in holiday lets: namely, the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011. That legislation exists; local authorities have powers to deal with antisocial behaviour that occurs in short lets. Why is it necessary to introduce a licensing requirement, given that local authorities already have the powers that are required to deal with antisocial behaviour, should it occur in short-term let properties?

Shona Robison: I recognise what Fergus Ewing has said. However, in looking at the issues in detail earlier, I spoke about local authorities' ability proactively to put in place requirements for preventing antisocial behaviour. The proposal is about bringing all that together so that, in looking at short-term lets, local authorities can look at issues through the lens of the licensing scheme as well as using existing powers, if they so wish. I gave the example of people drinking for hours. If a holiday let becomes a place where that causes significant concern to neighbours, local authorities could proactively put in place requirements and conditions.

Fergus Ewing spoke about the concern that is felt. I absolutely recognise that the pandemic has had an impact on the tourism sector, but there have certainly been signals over the past few months that the self-catering and short-term let sector in Scotland has been recovering pretty well, with burgeoning numbers of staycations. We will, obviously, have to keep an eye on that.

The Government has recognised the impact of the pandemic on the tourism sector, not least through the 100 per cent non-domestic rates relief for hospitality premises. That relief will continue at 50 per cent next year, as was announced in the budget. There are also all the supports that are given to businesses to consider, including the small business bonus, so it is not a fair accusation to say that the Government has not supported businesses, including in the hospitality sector.

The proposed set of requirements is not onerous. I think that the sector will see that, once the scheme is up and running. A lot has been said that might cause concern: people might think that they will have to pay thousands of pounds for a licence, but they will not. The scheme will be proportionate. Small operators will pay less than big operators and local authorities will be given strong guidance to make sure that the scheme is based on a risk-based inspection regime that is not onerous and should not drive up costs. I reassure the sector of those things and will continue to try to reassure the sector over the next few months, as we introduce the measures.

Fergus Ewing: I hear what you say and I understand the sincerity behind those thoughts. I think that it is fair to say that larger lets in the self-catering sector in particular have hardly had any [*Inaudible.*] Covid rules, quite correctly, so they have had a tough time over the past wee while, and uncertainty remains for the whole sector.

My point is that registration is what the sector proposed. It denies that there was consultation in 2019. Incidentally, it also maintains that it proposed a fit and proper person test—I just place that on the record. I was able to attend the meeting two weeks ago, when what we heard was

that the whole short-term let sector is united in favour of a registration scheme. The sector has support from the Federation of Small Businesses, Scottish Land & Estates, Scottish Agritourism and the NFU Scotland, as well as all the short-term let organisations.

Several of those bodies left the short-term lets stakeholder working group because they felt that it was—I will not mince my words—a sham and that it was not addressing their concerns in any way. Recently, as the cabinet secretary will know, the Highland Council voted in favour of registration, not licensing.

I am grateful, convener, for the opportunity to ask these questions today, because it is essential for my constituency and the Highlands and Islands, in particular.

My last question for the cabinet secretary is this. When we will have such a draconian power of the state, via local authorities, to terminate businesses, is not it a serious failing of regulation that there are no set clear rules or criteria that govern how such crucial decisions should be taken? I have searched in vain among the regulations to see what criteria local authorities must follow; there are no criteria whatsoever.

Last week, someone who spoke on behalf of the Association of Local Authority Chief Housing Officers said in evidence that

“we need to simply select those”

businesses

“that can no longer operate”—[*Official Report, Local Government, Housing and Planning Committee, 14 December 2021; c 6.*].

To be told by a senior figure who was speaking on behalf of the local authority family that some businesses must be selected for closure before the regulations have even come into force must surely strike fear into the hearts of businesses.

There must be a judicial review on the grounds of irrationality, arbitrariness and the lack of a clear set of rules. It is not too late for the Scottish Government to reconsider a registration scheme that would deal with the fit and proper person test, as the registration scheme for longer-term letting of residential properties does. We have seen such reconsideration with one or two other schemes, including the named person scheme.

The public generally appreciates our accepting that we got it wrong. Surely, the licensing scheme is too draconian and unfair and there is no set of rules. There will now be a period of division, difficulty and anxiety among tens of thousands of law-abiding small businesses that have done nothing to deserve the threat that is now being held over them.

11:15

Shona Robison: I do not accept that the scheme is draconian, irrational or arbitrary. It is proportionate, and the guidance will require local authorities to act proportionately. As a former minister, Fergus Ewing will know that when the Government brings in change, there is often opposition to it, and that concerns about impacts do not always equate to the reality.

I have tried to set out that reality today. The regulations are not intended to pose a threat to businesses other than those that operate outwith the law and do not operate safe premises. I have set out that we want to ensure that the costs are kept proportionate to the size of the business.

Fergus Ewing mentioned the Highland Council; it was supportive of the measures when it responded to the consultation. I cannot speak for it with regard to the vote that it then took, but its response to the consultation was supportive, so that is something for the Highland Council to deal with.

I recognise that stakeholders left the working group. They perhaps felt, at that point, that they did not support a licensing scheme. That was their direction of travel and their decision.

However, I have had productive discussions with the key organisations to which Fergus Ewing referred. No meeting of minds will take place on the issue of a licensing scheme, but most organisations have said that they want to get back in a working-group environment to talk about implementation of the detail, which is a responsible attitude to take. I look forward to working with them to discuss the detail, and the issues that Fergus has raised, and to ensuring that the guidance is clear. Local authorities do not want to make a disproportionate response either, so let us ensure that the guidance is strong in order to give further assurance to the sector.

We have talked about a registration scheme versus a licensing scheme. I come back to the fundamental point that in circumstances in which an operator is potentially putting people at risk—because a business is not operating as they should, or criminality is happening, or antisocial behaviour that makes the lives of people around the place a misery—a local authority would surely be correct to consider refusal or removal of a licence.

Such circumstances would arise in a very small number of cases. We are not talking about the law-abiding good providers, who will go about their business with the licensing scheme in place as they did prior to that, and whom we will continue to support because we know that they are an important part of the Scottish economy. I will

continue to reassure the sector that it has nothing to fear from the licensing scheme.

The Convener: We have come to the end of the questions. I thank the cabinet secretary, Andrew Mott and Rachel Nicholson for their thorough evidence.

We move to agenda item 4, which is consideration of motion S6M-02265. I invite the cabinet secretary to speak to and move the motion.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 [draft] be approved.—[*Shona Robison*]

The Convener: I invite members who would like to speak to the motion to put an R in the chat. We will start with Miles Briggs.

Miles Briggs: Throughout the passage of the legislation, concerns have been raised. I have been taken by what industry experts and those who are on the front line, whose businesses will be impacted have said. They feel that the order will have unintended consequences and that it has the potential to impact negatively on a very fragile sector. Given the impact that the pandemic has had, we should be mindful of that.

I do not believe that the Scottish ministers have considered the alternatives in good faith. For example, a registration scheme has been suggested to the committee as an alternative to a licensing scheme. That would achieve the outcomes that ministers have set out.

I am concerned that what is proposed goes too far, which is the argument that the industry makes in its letter to the First Minister. The authors of the letter—the Association of Scotland's Self-Caterers, the Professional Association of Self Caterers UK, Scottish Agritourism, Scotland's Best B&Bs, the Scottish Bed & Breakfast Association and Scottish Land & Estates—say:

“Make no mistake, this onerous and costly licensing scheme will cause many traditional self-caterers and B&B operators to leave the sector—hitting the supply chain and local economies in the process—and reducing the diversity of accommodation available and Scotland's capacity to welcome visitors to our country.”

With all that in mind, and given the impact that the pandemic has had, I do not believe that the order should be approved. Therefore, I ask the committee to vote against the motion.

Elena Whitham: It is clear to me that local authorities must balance the needs and concerns of the communities that they serve with the needs of the wider tourism sector and owners of local short-term let accommodation. Although short-term lets are a flexible option for individuals, we

must balance that with the issue of overall safety, the loss of residential housing stock, the antisocial behaviour that we have seen and the potential for criminal activity to occur, while creating a level playing field across the sector.

On balance, I do not think that a licensing scheme would be overly onerous, and I propose that we agree to the motion.

Mark Griffin: I will be brief. I have been heavily influenced by the evidence that we have taken, particularly the evidence that was given by Police Scotland in our final evidence session on the need for a degree of licensing to be introduced.

I would have preferred it if the proposal had been trialled through a pilot project to see how a licensing scheme could be operated, as that would have given assurance to the sector. In addition, I am in favour of local authorities potentially being given the discretion to decide whether licensing would be suitable for their area, in consultation with their communities and Police Scotland.

However, in the absence of any alternative proposals, the committee is faced with a “Take it or leave it” decision on the proposed licensing scheme. I support the proposals in the knowledge that there will be a review in 2023, and in the light of what the cabinet secretary said about the industry’s desire to get back round the table to discuss implementation.

Paul McLennan: It is safe to say that we have all listened to the sector extensively over a period of time, both through the committee and outwith it. For me, with a local authority background, there are a few key factors. Cost recovery is incredibly important. We need to take a view of the cost in terms of where we are in the pandemic and recovering from it. The committee has taken evidence around the costs and I am convinced by what I heard about the costs that have been mentioned. I think that £464 was the average cost that was mentioned in the business and regulatory impact assessment, and that would be proportional to the size of the business. That works out at £9 per week. That is the key thing, for me.

Like Mark Griffin, I was persuaded by the evidence from Police Scotland about fit and responsible people. That is important. The key thing, addressing a point that Fergus Ewing made, is that responsible operators have nothing to fear from the proposed scheme, and the vast majority of operators do operate responsibly. However, there are issues around people who do not do so, and we need to make sure that we drive up the standards of the sector. Again like Mark Griffin, I am reassured by the fact that there will be a review in 2023. That is why I asked that question. I am convinced by what the cabinet secretary said

about the issue coming back in 2023, when this committee will have a look at it. Therefore, I will support the proposals that the cabinet secretary has put forward.

Fergus Ewing: I absolutely agree with the sentiments expressed by the cabinet secretary about the need to provide a system that protects the public, as far as we can. I will get to the nub of things, if I may, because I have made my remarks already, and I do not want to repeat them.

If we needed licensing simply because of the reasons that the police set out in their evidence to us, the regulations should have said that the licence will be granted unless there are good reasons not to grant it. One of those good reasons would have been that the applicant was not a fit and proper person on the basis of the police information. However, that is not what we are presented with. I made the point to the cabinet secretary that there are no criteria or rules; there is nothing to fetter the discretion of local authorities in their decision as to whether to grant or refuse a licence. I think that everyone would agree that, if a hoodlum, money launderer or drug dealer is laundering money through property—an issue that I think actually exists—there must be a means of dealing with that and he should not be given a licence to conduct such a business or any other businesses.

However, that is not what the regulations say. They do not delimit the discretion of local authorities to that particular issue. Moreover, I think that I have already proven, by reading out from the Scottish Government’s website, that the fit and proper person test does apply to a registration scheme. It applies to me, as a landlord, and rightly so. I am glad that it applies. Therefore, the case that we need a licensing scheme to deal with the police concerns seems to me not to have been made.

The second point that I want to make is this. Earlier, I alluded to concerns that, because the rules have not been specified and local authorities have unfettered discretion—paving the way for 31 different varieties of decision making, incidentally—businesses, many of which have operated for decades, may face the unilateral withdrawal and confiscation of their business by the decision of a local authority, which they cannot challenge on the basis of any clear rules.

Although I am no legal expert, I am aware of cases where the Scottish Government has failed because of breach of article 1 in the first protocol of the European Convention on Human Rights—namely, the provision that says that every natural person has the right to protection of their own possessions, except in the interest of public policy. If a clear public policy interest had been expressed in the regulations, that might have enabled the

Government to say that it had acted reasonably. However, because there is none, it appears to me—although I am a non-expert—that there is a risk of arbitrariness, and the Wednesbury test, which I believe applies, seems to me to be at serious risk of being at issue.

11:30

I do not make that argument enthusiastically or lightly, but because I am genuinely concerned. I also point out that, as the cabinet secretary knows, the Association of Scotland's Self-Caterers has already shared an opinion that it has had from an eminent firm of solicitors in Scotland. Although I have not seen the evidence myself, I have been informed that three other equally eminent firms of solicitors in Scotland have also opined on the issue. I stress that I have not seen whether it is their view that there is a prima facie breach and that judicial review might therefore be successful.

I put this to the cabinet secretary and to committee members as a matter of common sense. If there is a system in which someone's property can be taken away and their business terminated, there should surely be a very clear set of rules to govern in what circumstances that can happen. It is all very well to say that the fears that have been raised are alarmist or scaremongering, but what are people to think if there is no clear set of rules in the regulations? Moreover, if there is the possibility of a licence being withdrawn but the licensing system can take several years to operate, there will be a long period of uncertainty between the application for the licence and the determination. What happens to bookings and cancellations during that period? What happens to the business if the licence is refused? None of that has been answered.

There are many other arguments that I could put, but I think that I have said enough to indicate that I am not a fan of the order. I say to the cabinet secretary that it is never too late to look at this again. If the order is passed today, as I suspect it will be, I hope that the cabinet secretary will—as she has promised—engage with the sector before the order comes to a plenary session in order to look further at the real concerns and at the real, serious and sincere alternative proposals. Such proposals, including the exemplar from Portugal, operate in Europe and are favoured by the EU.

The Convener: Please wind up, Mr Ewing.

Fergus Ewing: My final sub-clause is to say that those proposals should provide a clear way forward.

Willie Coffey: The evidence that we heard from Police Scotland was pretty compelling. Members would do well to listen to that advice and also to what we heard last week from councils. We must

be able to deal effectively with some of the issues that are impacting local people. There should be no fear whatsoever from operators about complying with a licensing scheme.

The scheme will also help us to establish, drive up and maintain standards across the sector so that responsible operators are not disadvantaged by those who might prefer to operate in the absence of regulation. I support the proposal.

The Convener: I thank everyone for their contributions, and I thank the cabinet secretary for her thorough evidence in clearly setting out the Scottish Government's intentions for the legislation.

Short-term lets have been with us for about 10 years. Although they make an important contribution to the tourism sector and provide an income stream for those who operate them, it has taken us that time to see the impact that they have on neighbours and communities.

Unregulated short-term lets have inadvertently begun shaping and negatively impacting rural and urban communities. We have heard how local people, public sector workers such as teachers and doctors and even those who work in the tourism sector struggle to find affordable housing in areas where short-term lets proliferate.

We have learned of a range of problems with the licensing regulations, such as the example of a building that was once a small cottage being transformed by the addition of extensions into a party house, bringing noise and making no contribution to local services. We have heard about criminality and the need for the fit and proper person element of the licensing scheme, and we heard last week about the challenges faced by Police Scotland and local authorities, as other members indicated.

We heard from Ailsa Raeburn that short-term lets are big business. The data shows that almost 40 per cent of owners in Scotland have more than three properties that are used for short-term lets, while 8 per cent have more than 100 properties.

We heard concerns about the burden that the licensing system will place on the providers of short-term lets. However, as we have heard through evidence, the cost will be proportionate and I trust our local authorities to come up with a process that is efficient and easy to use for licensing application and renewal.

The licensing order and the control areas regulations will work together to help us to ensure that local people who want to continue to live in their community, or public service workers who come to live in that community to provide much-needed services, can find a home there. I thank the cabinet secretary for indicating that we will

have the opportunity in 2023 to review how the regulations and the order work and to revisit the possibility of overprovision regulations.

At a time when we recognise the importance of maintaining rural populations, focusing on place making and creating 20-minute neighbourhoods, we must use legislation to design a Scotland where people can live safely and be close to where they work. The Scottish statutory instruments that we are considering are part of the measures that we need to take to support our communities and to address the urgent need to provide local, affordable, adequate and accessible housing.

Shona Robison: The review is important. It will give us the opportunity to consider whether more needs to be done and examine the operation of the licensing system. As I said, I am happy to involve the committee in that.

I will respond to a couple of the points that members made.

As a Lothian member, Miles Briggs will be well aware of his constituents' concerns about short-term lets. Through Andrew Mitchell's evidence, the City of Edinburgh Council was supportive of the measures to help to deal with some of those concerns.

Elena Whitham talked about balancing the concerns of stakeholders and communities. That is absolutely right. We have tried to do that through the proposals. We have made a lot of changes to them in response to many of those concerns.

Mark Griffin talked about Police Scotland's evidence. It was important. I also recognise his point about the review in 2023.

Paul McLennan mentioned cost recovery and the fact that responsible operators have nothing to fear from the licensing scheme. That is absolutely the case.

I will not respond to all the points that Fergus Ewing made because it would take too long but I will respond to a couple of them. I will not repeat all that I have said but, as he knows, when the Government introduces legislation, it has gone through a series of legal tests.

Some of the points that Fergus Ewing made do not recognise the fact that much of the scheme is based on the 1982 act, under which applications are approved unless there are good reasons for refusal. Some of those reasons are set out in paragraph 5 of schedule 1 of the act. The legal position is that the scheme is compliant with the ECHR provisions on the right to possessions.

It is important to introduce regulation in a proportionate way that has been the subject of

careful scrutiny. The scheme is being introduced by way of an existing well-used statutory framework that is well understood by local authorities.

Local authorities will not set out to try to close local businesses down. What possible motivation would they have to do so? They will use the legislation proportionately to deal with the real issues that local communities are raising, support the good providers, who abide by the rules and the law, and create a level playing field to ensure that the behaviour of providers who do not abide by the law and the rules can be addressed through the licensing scheme.

The Convener: The question is, that motion S6M-02265, in the name of Shona Robison, be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Griffin, Mark (Central Scotland) (Lab)
McLennan, Paul (East Lothian) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Against

Briggs, Miles (Lothian) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Motion agreed to,

That the Local Government, Planning and Housing Committee recommends that the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 be approved.

The Convener: We move to agenda item 5, which is consideration of motion S6M-02264.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Town and Country Planning (Short-term Let Control Areas) (Scotland) Amendment Regulations 2022 be approved.—[*Shona Robison*]

The Convener: The question is, that motion S6M-02264 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Griffin, Mark (Central Scotland) (Lab)
McLennan, Paul (East Lothian) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)

Against

Briggs, Miles (Lothian) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)

11:44

Meeting continued in private until 12:19.

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Motion agreed to.

The Convener: We will set out the results and the outcome of the debate in the committee's report.

As agreed earlier, we will move into private to consider items 6, 7 and 8. I thank the cabinet secretary and her officials and close the public part of the meeting.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba