

**DTRVA 24**

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Senedd Cymru | Welsh Parliament

**Pwyllgor yr Economi, Masnach a Materion Gwledig |  
Economy, Trade, and Rural Affairs Committee**

**Bil Datblygu Twristiaeth a Rheoleiddio Llety Ymwelwyr (Cymru) |  
Development of Tourism and Regulation of Visitor Accommodation (Wales)  
Bill**

Ymateb gan: Cymdeithas Hunanddarparwyr yr Alban a Cynghair Twristiaeth yr Alban

Evidence from: Association of Scotland's Self-Caterers and Scottish Tourism Alliance

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## Development of Tourism and Regulation of Visitor Accommodation (Wales) Bill

### Evidence from the Association of Scotland's Self-Caterers (ASSC) and the Scottish Tourism Alliance (STA), 5<sup>th</sup> November 2025

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#### 1. Introduction & Position

We welcome the opportunity to give evidence to the Committee. Evidence is presented jointly by the **Association of Scotland's Self-Caterers** and the **Scottish Tourism Alliance**, both of whom gave formal evidence throughout the Scottish legislative process.

We fully support regulation that protects guests, communities and responsible businesses. The sector is not arguing against oversight. Our concern is with regulation that:

- has no clear policy objective
- is not informed by reliable data
- creates commercial uncertainty
- restricts legitimate supply and harms rural economies
- delivers **no** demonstrable benefit to housing or safety

Scotland now provides a live case study of these risks. The intention was safety and housing. The outcome has been business closures, empty properties, higher prices for visitors, and the growth of an unregulated underground black market.

The ASSC provided extensive written submissions, impact assessments, economic analysis and legal evidence throughout the Scottish legislative process. We warned of the consequences that are now visible in practice. Wales has the opportunity to learn those lessons and avoid repeating them.

## **2. What is the Policy Objective?**

Before any Bill proceeds, one essential question must be answered:

**What is the policy objective?**

**What 'mischief' is the Bill trying to address?**

Three different objectives are referenced:

- Health and Safety
- Housing
- Data

Each requires a different tool. Without clarity, Wales risks regulating the wrong thing and damaging the wrong people.

## **3. Unclear Use of Licensing – The Wrong Tool**

If the aim is data, a registration scheme is already in development and can provide empirical data, if policy makers work collaboratively with the sector to ensure it is structured correctly.

Licensing without purpose is bad policy. Scotland introduced blanket licensing and achieved none of its intended outcomes. Time would be much better spent ensuring that the development of the registration scheme achieves its purpose, rather than rushing through a further piece of regulation without the data to underpin the public interest.

## **4. Health & Safety – Spare Rooms Excluded**

If this Bill is about guest safety, it fails at its first test.

Spare-room hosts are excluded. These operators are:

- least aware of H&S law,
- least likely to hold mandatory certificates,
- most difficult to monitor,
- and often the highest-risk category.

A professional cottage must comply with mandatory H&S rules: fire, gas, electrical, legionella, insurance and tax. A spare room on a platform may comply with none.

Because platforms do not visit properties, hosts can easily claim "I live here" while handing guests full, exclusive use of the home.

Leaving this to be "added later by regulations" avoids Senedd scrutiny. If safety is the aim, **spare rooms must be included** from day one.

## **5. Housing – Licensing Does Not Create Homes**

If the intention is housing, licensing is the wrong tool.

Wales already has lawful housing controls:

- planning,
- change of use,
- empty homes powers.

Scotland proves licensing has:

- not freed up any housing stock,
- not ameliorated the housing crisis,
- pushed businesses out of existence,
- left properties empty as second homes,
- negatively impacted the supply chain, attractions and the hospitality industry ,
- damaged rural economies,
- and created a thriving underground black market.

#### **Legal reality: Muirhead vs City of Edinburgh Council**

The Court ruled that planning controls cannot be applied **retrospectively**.

Planning may restrict **new** operators, but councils **cannot** force lawful existing operators to close.

Doing so breaches **A1P1** property rights.

This is critical for Wales.

If the Bill attempts to extinguish lawful existing businesses, it is legally challengeable and risks the exact same litigation Scotland is now facing. This is why we would suggest it is essential that, once a business has a licence, it should be automatically re-granted a renewal provided (i) it has not breached any conditions of the licence and (ii) it has presented updated documents and paid a nominal fee. Businesses need certainty that they can continue to trade if they are operating within the health and safety requirements.

In short:

- Licensing has not created housing,
- it cannot legally be used to shut existing lawful operators,
- and it has produced the opposite of its intended outcome.

#### **6. Data – Registration Exists, Use It Properly**

If the objective is data, Wales already has the right mechanism: national **registration**.

Registration can:

- capture all accommodation types (including spare rooms),
- identify genuine stock,
- support safety compliance,
- produce reliable evidence for future policy.

Our concern is that registration is being designed simply to maximise levy collection, not to create a true dataset - and that it is being rushed. We understand there are a number of concerns that have been raised about the data accuracy and coverage of the registration scheme, particularly in relation to capturing the numbers of each unit type of short-term let and whether they are a primary home or not (both are essential for understanding any housing impact). Further concerns are whether the register will be updated regularly and whether properties that cease to trade will actually de-register in practice, if there is no registration fee, both of which are essential to ensure the numbers are not inflated with properties that have ceased to trade.

Bad data leads to bad regulation.

Scotland believed Edinburgh had 12–14,000 short-term lets.

Reality: **around 2,000** legitimate self-catering units - now being closed.

The same error must not be repeated.

## 7. Operator Demographics – Who Will Be Harmed

This is not a corporate sector. It is personal, local and vulnerable. In Scotland:

- **70% of operators are women**
- **80% are aged over 55**
- **55% manage only one property**

We expect the same will be true in Wales. Self-catering is far more than a side-line or lifestyle business. It supports a spectrum of operators and provides multiple forms of economic value:

Self-catering is far more than a side-line or lifestyle business. It supports a spectrum of operators and provides multiple forms of economic value:

- employment in remote and rural areas where few alternatives exist
- successful small and medium-sized enterprises, many of which export Wales worldwide through premium hospitality brands
- retirement income for older adults
- flexible work for carers and parents
- employment for people returning to work or balancing health conditions
- local jobs in cleaning, maintenance, trades, laundry and catering
- rural and coastal supply chains that rely on visitor spend

These people cannot absorb 18 months of uncertainty, legal complexity or unaffordable compliance.

When they leave, they do not return.

## **8. Economic Contribution of Self-Catering**

Self-catering is an economic driver, not a marginal activity.

Independent analysis by BiGGAR Economics shows:

- Scotland's short-term let and self-catering sector contributes **£864 million** a year to the Scottish economy
- Supporting over **23,000 jobs** across tourism, hospitality, trades and rural supply chains

A single self-catering unit generates **three to four times more local economic value** than a standard dwelling. It brings new money into communities that would not otherwise be spent there.

Every booking supports:

- shops and local food producers
- pubs, cafés and restaurants
- tradespeople, plumbers, electricians and decorators
- cleaners, laundry and linen suppliers
- attractions, events and heritage sites
- taxis, local transport and tour guides

In many rural and coastal parts of Wales, self-catering is the **only** visitor accommodation available. When those beds disappear, so does the spend that keeps villages alive.

**What Scotland has already seen:**

- tour operators unable to place guests in rural areas

- inbound business diverted to other parts of the UK and overseas
- local shops and hospitality reporting reduced revenue
- festivals and events losing footfall
- communities losing year-round economic activity

When legitimate accommodation supply is removed, rural economies **contract**.

### **9. Business Consequences of “Apply and Wait”**

In Scotland, existing operators were instructed to apply for a licence and continue trading while local authorities processed applications. In practice, this created prolonged uncertainty.

Many operators:

- waited more than **18 months** for a decision
- were unable to invest, renovate or plan ahead
- could not secure finance or insurance due to regulatory ambiguity
- lost future bookings because they could not confirm their legal status

Some businesses are **still** waiting for determinations.

Others closed permanently because they could not operate under open-ended uncertainty.

For tourism businesses that rely on advance bookings and long lead times, a system that does not guarantee continuity is commercially unworkable. No credible business model – whether a single rural cottage or a professional multi-property operator – can function without clarity on whether it may legally operate.

A regulatory regime must support certainty.

Scotland’s experience shows that “apply and wait” achieves the opposite.

### **10. The Black Market in Scotland**

Where regulation becomes overly restrictive or uncertain, lawful operators leave the market but demand does not disappear. It moves underground. In Scotland, this has already happened, and it is not marginal. It is organised, visible and illustrates wilful non-compliance.

Evidence of unregulated supply includes:

- a large Facebook group, “[Edinburgh Fringe Accommodation](#)”, with over 14,600 members, where very few advertised properties hold a licence and hosts openly promote cash-only bookings and private messaging to avoid scrutiny. This has grown exponentially since licensing was introduced.
- listings on informal platforms such as Gumtree
- private booking channels and word-of-mouth networks designed to bypass transparency and enforcement

Operators who have left the formal market are still trading, but now without safety checks, insurance verification, tax compliance, planning oversight, or any local authority regulation. Visitors unfamiliar with the system often do not realise they are booking unregulated accommodation.

The unintended consequence is the opposite of the policy intention:

- compliant, safety-checked operators are forced out of the market
- unregulated and unsafe supply fills the gap
- transparency, consumer protection and tax compliance decline

This poses real risks to guests and reputational risks to Scotland's visitor economy. It demonstrates that regulation must be practical, proportionate and enforceable. Otherwise, it drives activity out of sight rather than ensuring it meets the standards expected. Wales would face precisely the same outcome if regulation becomes commercially unworkable or impossible to enforce in practice.

### **11. Higher Prices & Reduced Choice**

When lawful accommodation supply shrinks and demand remains, prices rise. This is basic supply and demand economics and has been evident in Scotland.

With fewer licenced operators, visitors face:

- higher nightly rates for both self-catering and hotels
- reduced availability in rural and island areas
- last-minute shortages for events and festivals

As a result, many visitors simply go elsewhere.

Tour operators and UK Inbound confirmed they have diverted business away from Scotland because they cannot secure beds.

The consequences were felt immediately:

- local shops, pubs and cafés saw reduced footfall
- attractions and events lost revenue
- seasonal and hospitality jobs were affected

A policy that reduces tourism income **without** increasing housing supply is not a success. It is a **double cost** - lower economic activity and no corresponding community benefit.

### **12. Ownership Transfer – Catastrophic Flaw**

In Scotland, short-term let licences do **not** automatically transfer when a business or property is sold. Indeed, the regulations had to be amended in 2024 to allow transferability. Each new owner must apply for a fresh licence and wait for approval before trading.

In practice, this had severe and immediate consequences:

- businesses that were viable and profitable became **unsellable**
- lenders would not finance properties without certainty of a continuing licence
- property values dropped because the commercial use was no longer guaranteed
- many units now sit **empty**, generating no housing benefit and no tourism income

This was one of the most damaging elements of the Scottish system. It undermined business continuity, destroyed retirement plans for small operators, and froze investment.

If Wales does not design **automatic transferability** of licences on sale, assignment or inheritance, the same outcomes are inevitable. A licence should attach to the property (subject to continued compliance), not the individual. Without this, commercial planning becomes impossible and the sector becomes financially unstable overnight.

### **13. Licence Fees – £75 is Not Credible**

The Welsh Impact Assessment assumes an annual licence cost of **£75**. There is no credible evidence to support that figure.

### Comparative evidence:

- **Rent Smart Wales:** £234–£254 (self-certification only)
- **Scottish BRIA:** £214–£436
- **Scottish Government Ministerial guidance:** fees should be “risk-based, proportional” and within this range

### Real-world Scottish fees across multiple local authorities:

- Glasgow: **£250–£400**
- Dumfries & Galloway: **£275–£386**
- Aberdeen: **£650–£750**
- Perth & Kinross: **up to £1,600**
- South Lanarkshire: **up to £923**
- East Dunbartonshire: **£650 + £50 per bedroom**
- Moray: **£515 + £210 inspections**
- Edinburgh: **up to £5,982**

This is not an Edinburgh issue.  
It is a national issue.

### What the FOI analysis revealed

Freedom of Information requests (July 2025) across Scottish councils show:

- Some authorities **cannot** provide cost-recovery data at all
- Others admitted **surpluses**
  - Aberdeen: surplus carried forward
  - Dundee: surplus of **£48,319**
- Cost justification and pricing methodology varies wildly
- Several councils produced **no STL-specific costing** for fee-setting

This creates a **postcode lottery**, where an operator in one council pays hundreds while another pays thousands, with no legal justification or cost transparency.

### Legal context

Lord Braid’s judgment in **Averbuch v City of Edinburgh Council** confirmed:

- Licensing fees must be **cost-recovery only**
- Disproportionate or unjustified fees breach the **Provision of Services Regulations 2009**
- Lack of transparency on cost calculation risks fees being **ultra vires** under the Civic Government (Scotland) Act 1982

### Why £75 is not credible for Wales

If Scotland could not deliver proportionate fees under a cost-recovery model, even with much higher starting assumptions, there is **no basis** to believe a full licence regime in Wales can be run for £75.

Wales faces only three realistic outcomes:

1. Fees rise sharply once the scheme begins
2. Enforcement becomes impossible because it cannot be funded
3. Taxpayers subsidise the system

None of these are acceptable.

#### **14. Overburdened Local Authorities**

The ASSC warned the Scottish Government in various **consultation responses** that local authorities did not have the capacity to deliver a national licensing regime. That warning has proved accurate.

In Scotland:

- councils have been **overwhelmed** by application volumes and legal complexity
- waiting times stretched from months to **well over a year**
- decisions have been **inconsistent** between and within local authority areas
- enforcement is largely **absent**, because authorities lack the staff and budget to monitor compliance
- many councils admitted through FOI that they **do not track** STL-specific costs or enforcement activity
- some councils report **zero enforcement actions**, despite operating a scheme for over a year

Licensing created a system that authorities could not realistically operate. A national framework did not solve the capacity issue because every local authority still had to individually assess, verify, inspect, enforce and review each property.

The result has been legal uncertainty, administrative backlog, and operators driven out not by safety failures, but by bureaucracy.

By contrast, **registration is manageable (if structured correctly)**:

- it provides accurate data,
- enables mandatory upload of H&S compliance documents,
- and allows targeted enforcement only where issues arise.

Licensing, without substantial and sustained resource, is not.

Wales must ensure it does not legislate for a system that it cannot deliver in practice and should focus on ensuring the registration scheme is structured appropriately to provide reliable accurate data from which further policy decisions can be made.

#### **15. Legal Risks**

This Bill carries significant and avoidable legal risk.

The ASSC warned the Scottish Government in its **2021 consultation response** that universal licensing would be:

- **unlawful**
- **disproportionate**
- in breach of the **Provision of Services Regulations 2009** (which require necessity, proportionality, and non-discrimination)
- in breach of **A1P1** of the European Convention on Human Rights (the right to peaceful enjoyment of possessions)

Those warnings were ignored.

## What has happened since:

- In **Averbuch v City of Edinburgh Council**, the Court held that the licensing framework unlawfully discriminated against short-term let operators, was irrational, and failed to meet the legal tests of proportionality and necessity.
- In **Muirhead v City of Edinburgh Council**, the Court ruled that using planning control to retrospectively extinguish lawful existing operators breached property rights under **A1P1**, as well as basic principles of fairness, consistency and legal certainty.
- A **third judicial review** is being considered on the lawfulness of the wider national scheme and the rights of existing operators.

## Implications for Wales

If Wales introduces:

- universal annual licensing,
- non-transferable licences,
- or barriers that prevent businesses continuing to trade,

then the Welsh Government risks the same challenges:

- **Provision of Services challenge** (disproportionate, not evidence-based, discriminatory)
- **A1P1 challenge** (loss of livelihood, destruction of goodwill, devaluation of property)
- **Judicial review** of decisions that are inconsistent or arbitrary

These are not hypothetical risks.

Scotland is already in the courts - repeatedly - and losing.

Once A1P1 is breached, compensation and damages become a real possibility.

Wales should not legislate its way into avoidable litigation.

The lawful alternative exists:

- **registration,**
- **mandatory H&S compliance,**
- **targeted enforcement where evidence shows a genuine problem.**

A detailed summary of the Scottish judicial reviews, senior counsel opinion, and the legal vulnerability of the current model is provided in **Annex A: Legal Risks**, as requested by the Committee. The annex sets out the rulings already made by the courts, the emerging litigation now considered viable, and the implications for Wales if a similar framework is adopted.

## 16. The Clear Ask

We respectfully ask the Committee to recommend:

1. **Pause** the Bill until a clear policy objective is stated.
2. **Complete national registration first**, working with the sector to ensure it will gather reliable data.
3. **Apply mandatory H&S consistently** across all accommodation types, including spare rooms.
4. **Do not use licensing as a housing tool.** Licensing cannot increase housing supply. If housing is the objective, there are already planning tools that can be used – and planning **cannot** be applied retrospectively to close lawful operators without breaching A1P1. Wales must not conflate safety regulation with housing policy, as Scotland has done.

5. **Ensure licence transferability** on sale of a business, to protect commercial viability and investment.
6. **Require a credible cost-recovery model** – £75 is not deliverable under any real-world scenario and the impact assessment should be redone.
7. **Commit to partnership policymaking with industry**, rather than designing policy in isolation.

## **17. Closing Message**

Scotland demonstrates what happens when unclear objectives, weak evidence and disproportionate licensing collide:

- Responsible operators shut
- Properties lie empty
- Black market thrives
- Prices rise
- Visitors go elsewhere
- Rural economies suffer
- Housing stock does not improve

We warned the Scottish Government this would happen.

It is written explicitly in **Annex E** of the 2020 BRIA and in our **2021 consultation response** warning of breaches of EU service law and A1P1.

The ASSC submitted repeated policy recommendations since 2019, and proposed registration with mandatory H&S long before licensing was introduced.

Every opportunity to avoid these consequences was ignored.

Wales does not need to repeat Scotland's experience.

We stand ready to help design regulation that is:

- proportionate,
- lawful,
- evidence-based,
- enforceable,
- and in the public interest.

This is an opportunity for Wales to be an exemplar. Not a warning.

**Fiona Campbell MBE, CEO, Association of Scotland's Self-Caterers**

**Marc Crothall MBE, CEO, Scottish Tourism Alliance**

**5<sup>th</sup> November 2025**

## **Annex A: Legal Risks – Proven, Pending, and Emerging Challenges**

We consider it important to set out concisely the legal position that has already unfolded in Scotland. These risks are not theoretical. They have materialised in court and have direct relevance to Wales if a similar licensing model is pursued.

### **1. Judicial Reviews Already Succeeded in Scotland**

#### **Averbuch v City of Edinburgh Council**

The Court found key elements of Edinburgh’s licensing policy unlawful and irrational. In particular, a “rebuttable presumption” against secondary letting in tenements breached the Provision of Services Regulations 2009 because the policy was unclear, dissuasive and disproportionate. Conditions such as compulsory carpeting regardless of property type were criticised as irrational and “oppressive”, since they imposed significant expense without a justified safety purpose.

The Court also ruled licensing must regulate safety and nuisance, not block lawful commercial use through blanket exclusion.

#### **Muirhead & Dickins v City of Edinburgh Council**

In a separate case, Lord Braid held that the Council’s approach to planning control was “unfair” and “illogical”. The requirement for retrospective planning permission was declared unlawful. The Court criticised an application process that actively deterred lawful operators from applying, and confirmed the relevance of Article 1, Protocol 1 (A1P1) rights.

The judgment has consequences across Scotland, weakening proposed Control Areas in multiple regions and forcing councils to change guidance and policy.

### **2. Senior Counsel Confirms A1P1 Liability and Damages Exposure**

Senior Counsel’s written opinion (October 2025) confirms that short-term let businesses and their licences fall within the scope of A1P1. Both the physical property and the economic interest – including goodwill, established clientele and business reputation – qualify as possessions for Convention purposes.

The opinion concludes that:

- interference with possessions is clearly established
- the State will face difficulty proving proportionality
- operators are being required to bear a “disproportionate and excessive burden”

The advice states that, now businesses have demonstrably closed, an A1P1 damages action is not only viable but likely to succeed.

### **3. Breaches of the Provision of Services Regulations 2009**

Counsel also identifies robust grounds under the retained EU-derived Provision of Services Regulations 2009, which prohibit authorisation schemes that are unclear, discriminatory, unjustified or disproportionate.

These provisions remain directly enforceable in UK law. They can underpin both judicial review and compensation claims.

### **4. Dual Litigation Is Now Credible**

The Association of Scotland’s Self-Caterers holds clear senior counsel advice supporting dual legal action against:

1. **Scottish Ministers** – for creating a statutory scheme that is systemically incompatible with A1P1 and the Provision of Services Regulations
2. **City of Edinburgh Council** – for implementation practices that have effectively extinguished lawful businesses

If pursued, consequences include:

- judicial declaration of incompatibility under the Human Rights Act
- substantial compensation for destroyed business value and loss of goodwill
- public expenditure liabilities and reputational harm to the wider regulatory environment

## **5. Lessons for Wales**

If Wales introduces a universal licensing regime that:

- applies retrospectively
- makes continuation of lawful businesses uncertain
- creates barriers to renewal or transfer
- imposes disproportionate or unclear conditions

it will face identical vulnerability:

- A1P1 challenges
- Provision of Services litigation
- domestic judicial review
- potential damages for economic loss

Scotland demonstrates the real-world outcome. The risks are proven in court, not hypothetical.

## **6. The Lawful Alternative**

There is a clear, lower-risk route:

- national registration to obtain accurate data (provided it is structured correctly)
- mandatory health and safety compliance for *all* types of accommodation
- targeted enforcement where evidence supports it
- full transferability of authorisation to protect business continuity
- planning used prospectively, not retrospectively, where housing is a concern

This approach achieves safety and transparency without exposing government to avoidable legal challenge or damages.