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CMS Scotland Hotels Newsletter

Taking Stock and Looking Ahead

December 2020

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Hello

As the festive season approaches, we thought it would be useful to pause and take stock of the year just ending and look ahead to 2021.

“Staycation” was recently unveiled by Oxford Dictionaries as one of their “Words of an Unprecedented Year”. In this newsletter, my colleague Laura King takes a look back at **how Scots supported our hotels sector in 2020**.

In the property field, Lindsay Dougall takes a look at **how landlords and tenants dealt with the thorny issue of rents** this year, while Mark McMurray reports on intended new Scottish Government **controls on short-term lets**.

Just as rumours of Mark Twain’s death were greatly exaggerated, **furlough** was the scheme that had more comebacks than Elvis. Catriona Aldridge and Laura Rankin take a look back at employment law developments in 2020.

In October, we hosted a **Scottish Tourism Rebound & Remodel webinar**, with a panel that included Vicki Miller (Director of Marketing & Digital, VisitScotland) and Neil Robertson (author of the Travels With A Kilt blog). My colleague Jen Fusaro discusses some of the key points from the event.

And my colleague Cynthia Johnson looks forward to the rise of **hotel and hospitality apps** in a post-Covid world.

Last, but not least, around this time of year we would ordinarily be welcoming many of you to our annual Scottish Hotels & Leisure Charity Quiz in Edinburgh to raise funds for HIT Scotland.

While the virus has unfortunately put paid to those plans, we’re pleased to announce that we’ve **donated £1,000 to HIT Scotland** to help support them as they continue their valuable work.

We’re also delighted to publicise their **HIT The Rooms initiative**, which allows you to get some **special deals** at some **fantastic Scottish hotels** in the knowledge that each booking will help generate funds for HIT Scotland’s resilience scholarship programme. You can read more about HIT The Rooms in this newsletter.

The snowballing flurry of positive announcements about successful vaccines and their roll-out does feel like an **increasingly bright light** at the end of what has been a dark tunnel for our sector. We look forward to being with you on the journey into what we hope will be a more benign 2021. **If there’s anything we can do to help, please don’t hesitate to get in touch with me or your usual CMS contact.**



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Occupancy in Scotland:

Are staycations the path to recovery?

The stark impact of the Covid-19 pandemic on Scottish hotels is evident in recently-published occupancy statistics by PWC. The cancellation of the Edinburgh Festivals and the sharp decline in international tourism mean that Scotland's capital was particularly hard hit. Occupancy in Edinburgh was almost half that of the same period last year at 40.3%, with RevPAR (revenue per available room) falling from £77.37 in July 2019 to £28.32 in July 2020. This has led to a reduction in room rates, with the average daily rate dropping by approximately one third.

In Aberdeen, occupancy was 44.1% (down from 65.5% the previous year) and in Glasgow occupancy dropped to 42.5%, with RevPAR plummeting by 54.2% to £24.89. Glasgow was particularly hard hit by the postponement of COP 26, with 2020 having been anticipated to be a bumper year for the city.

PWC forecasts occupancy rates of 55% across the UK in 2021, with the regions expected to perform better overall at 59.2%. PWC predict that recovery to pre-Covid levels could take up to four years. Uncertainty around the future of large events, conferences and business travel mean that Edinburgh and London are predicted to have a particularly muted recovery.

In addition, a constantly-evolving landscape of restrictions, such as the recent introduction of

curfews, travel restrictions and curtailment of alcohol sales, mean that any longer-term predictions are very difficult.

This winter is anticipated to be hard for many hotels in Scotland, with well-known names such as Gleneagles and The Old Course Hotel in St Andrews choosing to temporarily close over the winter.

However, there is cause for cautious optimism. Since the PWC forecasts were published, the news of successful vaccine trials has provided a glimmer of light at the end of the tunnel and many will be looking to Spring and Summer 2021 with the hope that recovery will outperform predictions.

It is predicted that quarantine and testing requirements for overseas travel, coupled with ongoing uncertainty around "travel corridors", will continue to drive a strong demand for domestic tourism. Coastal and country destinations are currently favoured by consumers, with hotel occupancy in Inverness, Cornwall and the Lake District all above 80% for the month of September. Guests are seeking open spaces and attractive scenery: all of which Scotland can boast in abundance. The key will be to capitalise on these localisation trends and ensure that Scotland remains a first choice for consumers in the long term.



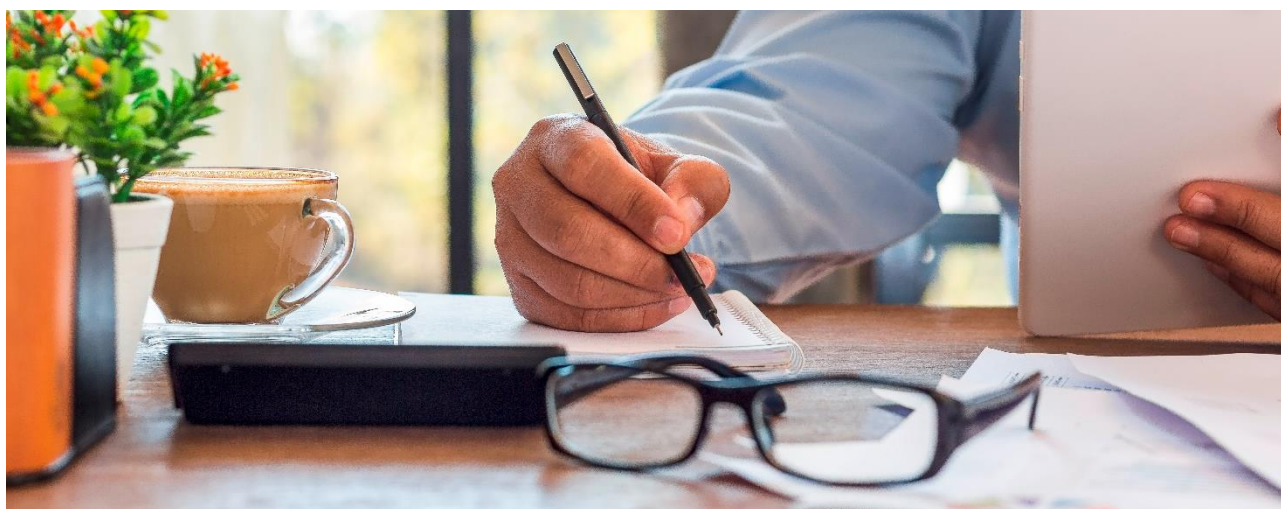
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COVID-19 Rent Concessions: Can't Pay... Won't Pay?



2020 has been a difficult year for the hotel sector. Many hotels were forced to close their doors entirely when the UK-wide lockdown took effect in March. And while some hotels, particularly in rural areas, reported a boost in income once restrictions were lifted as a result of the 2020 “staycation” trend, the recent lockdown in England and travel restrictions in Scotland have put a dampener on that.

Hotels often operate on tight margins, relying on supplemental income from restaurants and events and needing the income from the busy summer months to see them through the quieter winter. While it may be relatively straightforward to cut some operating costs, for those hotels which occupy their property under a lease, what about the obligation to pay rent? Rent is usually one of the largest fixed costs to the business (often along

with debt repayment) and continues to be payable irrespective of occupancy rates. It can soon become unsustainable when income takes a sharp dive or stops entirely.

Travelodge’s troubles this year are a well-publicised example, with some landlords taking legal action as a result of unpaid rent. Travelodge eventually entered a company voluntary arrangement (a procedure which, briefly put,

allows distressed companies to pay all or a proportion of debt over a fixed period, provided the requisite majority of creditors who vote agree).

Many hotel operators have approached their landlords to request rent concessions, like so many others in the leisure and retail sector. These concessions come in all shapes and sizes, such as switching from quarterly to monthly payments to help with cashflow, a deferral of rental payments until a future date or a period during which no rent is payable, sometimes in exchange for more favourable lease terms for the landlord, such as an extension of the lease duration.

From a landlord's perspective, while concessions might hit cashflow in the short term, it is easy to see the merit in supporting a tenant's otherwise viable business through this difficult period if it means they can avoid insolvency and as landlord you can avoid having to find a new tenant in the current environment.

Some tenants have been more aggressive than others, refusing to pay rent until a compromise is reached. Landlords, with their own loans to repay and pension holders to pay, are often sceptical and often rightly so. It can sometimes be difficult to spot the difference between tenants who are genuinely in financial distress and those who see an opportunity to save some money – particularly in the case of tenants who are loathe to open up their books to their landlords.

Some view those tenants who are acting opportunistically as short-sighted. Tenants who have continued to pay rent throughout the crisis, despite suffering losses, are likely to be remembered and may well be welcomed first to the table by developers and investors in future.

It is about balance. Very few in the hotel and leisure sector will come out of this unscathed, but hopefully most landlords and tenants alike can see that meaningful and transparent collaboration is the best way forward.



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Short-Term Letting Controls on the Horizon in Scotland



Background

Short-term holiday rentals, and platforms which provide them, have been a common feature of the overtourism debate in various locations around the world, with Edinburgh the principal focus of the debate around short-term holiday lets in Scotland. The debate gave rise to a call from various sources for controls on short-term letting and this was just one of the issues discussed during the passage of the Planning (Scotland) Bill, which has the dubious distinction of being the most amended Bill to pass through the Scottish Parliament.

This resulted in the Planning (Scotland) Act 2019 (the “2019 Act”) being enacted with provisions for regulating short-term lets. The provisions will enable planning authorities to designate all or part of its area as a short-term let control area, within which the use of a dwellinghouse for providing short-term lets will be deemed to be a material change of use requiring planning permission.

The reasoning for this approach was that what

might be suitable in Glasgow, for example, might not be suitable in Dornoch. Each planning authority will have flexibility to determine what parts of their area, if any, should be subject to controls on short-term letting.

The provisions introduced by the 2019 Act also enable the Scottish Ministers, following consultation, to make regulations setting out the procedure to be followed in designating control area as well as, crucially, what constitutes providing a short-term letting, the circumstances in which the controls will not apply and descriptions of dwellinghouses that will be excluded from the controls.

Draft regulations are anticipated in December 2020 but a consultation which closed in October 2020 gave an insight into the potential content of the regulations. The consultation, which was criticised by some as it was only open for a month and didn’t contain draft regulations, also covered a proposed licensing regime for short-term letting under the Civic Government (Scotland) Act 1982.

The Proposals

In summary, for the purpose of control areas and licensing, it is proposed that a short-term let will be a let allowing guests to reside at accommodation for commercial consideration, where the accommodation is not the guest's only or principal home. It is also proposed that a host who lets to a guest who is their immediate family will not constitute a short-term let.

It is also expected that a number of properties will be excluded from the short-term let controls, including hotels, care homes and hospitals. The planning controls on short-term lets also do not apply to private residential tenancies or tenancies of a dwellinghouse, in whole or part, where it is the only or principal home of the landlord or occupier.

Designation of a short-term let control area does not mean that short-term lets will not be permitted in these areas, just that they will require an application for planning permission. Outside of control areas, planning permission may still be required for short-term lets, with consideration of whether there is a material change of use on a case-by-case basis. It was also indicated that permitted development rights will be introduced to allow dwellinghouses to revert to residential use without planning permission.

One of the more controversial proposals in the consultation is to limit the time period for which planning permission is granted, following which the planning authority would have the power to revoke the permission. A default ten year period is suggested, with planning authorities able to specify a shorter or longer period.

At the moment, there are very few examples of planning policies to assess the acceptability, or otherwise, of short-term lets. With the introduction of control areas, we can expect to see such policies become more common in development plans.

In terms of licensing, it is proposed that all short-term lets in Scotland, whether or not they are in a control area, will require a licence. A licensing order will be made which will specify mandatory licence conditions covering a range of topics, including a requirement to meet the repairing standard, safety checks, smoke detectors and heat alarms, maximum occupancy and insurance. It is also proposed that local authorities will also have discretionary powers to add licence conditions, and it is suggested that they may wish to publish standard conditions which will apply to all short-term lets in their area.

The consultation document highlights a number of potential discretionary conditions, such as requirements to make modifications to properties to minimise noise impacts and a requirement for hosts to meet the principal guest in person on arrival. However, the Scottish Ministers intend to prohibit local authorities imposing a limit on the number of nights that the property can be used for short-term letting.

Hosts will also need to be a fit and proper person to secure a licence. Grace periods are also proposed to allow hosts to continue operating as they are until a decision is made on their licence, in recognition of the fact that some authorities will receive large volumes of applications which will take time to process and determine.

The licensing regime will come with a range of enforcement measures and sanctions, and the Scottish Government has proposed increasing the maximum level of fine for a range of offences. For example, it is proposed that the maximum fine for operating without a licence will be increased to £50,000.

It remains to be seen whether the draft control area regulations and licensing order reflect the terms of the consultation.

Comment

Draft regulations and a draft licensing order are due to be published in December 2020 and expected to come into force in April 2021. It is also intended that guidance documents will be published in spring 2021, one for local authorities and another for hosts and platforms.

While acknowledging that short-term lets have a range of potential problems, such as loss of residential housing and loss of amenity in a neighbourhood, the Scottish Government has recognised that short-term lets can play a significant role in supporting additional visitors to

Scotland and bringing economic benefits. This could become even more important as we recover from a challenging year for tourism and while it is inevitable that short-term let controls will be introduced, it will be important to ensure that measures to regulate short-term lets are proportionate.

Legislation is also only one piece of the jigsaw, and what might be just as important are the planning policies and any standard conditions published by individual authorities. We might have to wait a bit longer for those.



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Employment: The Year in Review

A look back at 2020

The Year of Furlough: The Coronavirus Job Retention Scheme (CJRS)

The CJRS, announced by the Chancellor on 20 March 2020, was an unprecedented move by the UK Government. Under the CJRS, employers were able to claim and employees were entitled to receive 80% of their usual salary, up to a maximum of £2,500 per month. The CJRS has helped to ease the burden for many employers in the hospitality sector, with over 70% of staff in

that industry furloughed at the height of lockdown. As restrictions began to ease over the summer, hotel and hospitality businesses benefitted from “flexible furlough” meaning they could bring employees back part-time where necessary, with the Government still paying 80% of salaries for hours not worked.

Restructuring and Redundancies

We have heard from many of our hotel contacts and clients that although restructuring workforces was already on the agenda due to Brexit, the COVID-19 pandemic has accelerated the process. Some have opted to merge or change employees’ job roles for example. Although this approach has worked for some, others have been forced to reduce their workforce through redundancy. Official statistics show a redundancy rate of 23.6

per 1,000 employees in the accommodation and food services sectors from July to September 2020, compared to an overall rate across all sectors of 11.3. With demand not expected to pick up until next year it is anticipated that the recent restrictions may result in further redundancies, with around 300,000 hospitality staff likely to be affected in the UK.



What lies ahead?



Extended CJRS

On 5 November 2020, the Chancellor announced that the CJRS would be extended until 31 March 2021. Under the extended CJRS, employers are able to claim and employees are entitled to receive 80% of their usual salary for hours not worked, up to maximum of £2,500 per month until at least 31 January 2021, when the level of support will be reviewed. Employers do not need to have used the CJRS previously and are able to claim regardless of whether their businesses are open or closed. More information on the extended CJRS together with links to government guidance can be found in our detailed [update](#).



Immigration

The new UK points-based system will take effect from 1 January 2021, once freedom of movement with the European Union ("EU") has ended. The new system will apply equally to all foreign nationals, including EU citizens. Employers who require to sponsor foreign nationals (whether from the European labour market or otherwise) should apply for a sponsor licence, if they do not already have one. In order to assist with the licence application process, the UKVI have published a handy one-page [guide](#) which provides a brief overview of what is involved. More information on the new points-based system can be found in our [update](#).



Increase in litigation

In October 2020, the Ministry of Justice reported an 18% increase in single Employment Tribunal claims compared to the same period in 2019. As businesses continue to grapple with the effects of the pandemic, more employees are made redundant and workforces remain under intense pressure it is anticipated that the number of claims over the next year will continue to increase.



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Scottish Tourism Rebound & Remodel Webinar



CMS hosted a Scottish Tourism Rebound & Remodel webinar on 27 October 2020. Emma Boffey, co-head of our Tourism in

Scotland group, was joined by three fantastic speakers: Vicki Miller (Director of Marketing & Digital at VisitScotland), Neil Robertson (author of the [Travels With a Kilt](#) blog) and our CMS Croatia colleague Gregor Famira who gave us a European insight into how Croatia – a country with a similar population to Scotland – has successfully managed a rapid expansion of its tourism sector over the last decade.

Discussion focused on the fact this past year has been a time for “surviving”, as opposed to “thriving”, for the tourism sector and how the industry could adapt going forward.

After engaging discussions on the highs and lows of 2020, the ways the industry innovated and collaborated to cope with closures and curfews, the 40% increase in enquiries for Scottish stycations and how the hospitality industry can

best capitalise on that trend, we asked Neil and Vicki what their one wish would be for 2021.

Neil’s response – which reflected a common theme throughout the webinar – was for Scotland to welcome international visitors back. He praised the enthusiasm they bring for our country and the way they help locals pause and realise the beautiful and plentiful attractions on their doorstep. Neil was also keen for Scots to continue enjoying exploring our country in a more sustainable way, acknowledging that there might be an education piece needed to help people better support the places they visit by behaving responsibly and supporting local businesses.

Vicki was keen to see businesses get the support they need to reach 2021 intact. She commented that, when travel is once more a normal thing, we will need our attractions and accommodation providers to have survived 2020 so they can be prosperous again and meet the inevitable surge in demand. Her vision of success for 2021 would be a great start to the Easter period with Scotland having a strong domestic tourism intent.



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The Rise of Hotel and Hospitality Apps in a post-Covid world



Ever since the Netherlands Hotel in NYC introduced the first in-room telephones in the 1890s, the hotel and hospitality sectors have been using “hip gadgets” to attract visitors and enhance user experience. Smart tech once considered the exclusive preserve of luxury hotels - like on-demand TV, in-room iPads and electronic key cards - are now de rigueur in hotels across the globe.

But visitors’ demands and expectations in a post-Covid world are changing; and with health and hygiene the current priorities, many hotel and hospitality operators must adapt and diversify if they wish to attract visitors back to their premises.

Enter 'new and improved' mobile apps and digital technology.

So What's New?

Although branded hotel and hospitality mobile apps have been around for years, the pandemic's impact has caused a seismic shift in their function and purpose. No longer just for convenience or to demonstrate a venue's hipster persona or technological astuteness, contactless mobile apps and digital solutions will play a key role in reducing touchpoints in venues, thereby helping visitors feel more comfortable indoors.

Scottish organisations like the recently launched TravelTech for Scotland hope to utilise technological advancements in areas like the following to aid the sectors' recovery:



Contact-free entry and Self-check-in / check-out. Mobile apps (and QR codes on apps) allow hands-free check-in, check-out, contact-free access and alerts that advise when rooms or tables are ready, or entry is permitted, thereby reducing the need for queuing and face to face contact.



Payments. Mobile apps can be designed to receive contactless payments through various methods such as Google Pay, Apple Pay and Bitcoin transfers (as recently launched at the Dolder Grand in Zurich), eliminating the need for money exchanges and security pin inputs.



Digital menus and ordering. Digital menu barcode scanning apps that allow customers to choose and order food, beverages and other services and make printed menus redundant will reduce some concerns with indoor dining.



Facilities bookings and availability. Mobile apps can link to booking platforms which tell guests when desired facilities (such as gyms or spas) are available.



Digital connectivity. Mobile apps can be designed to connect with digital devices to provide hands-free control of facilities, including:



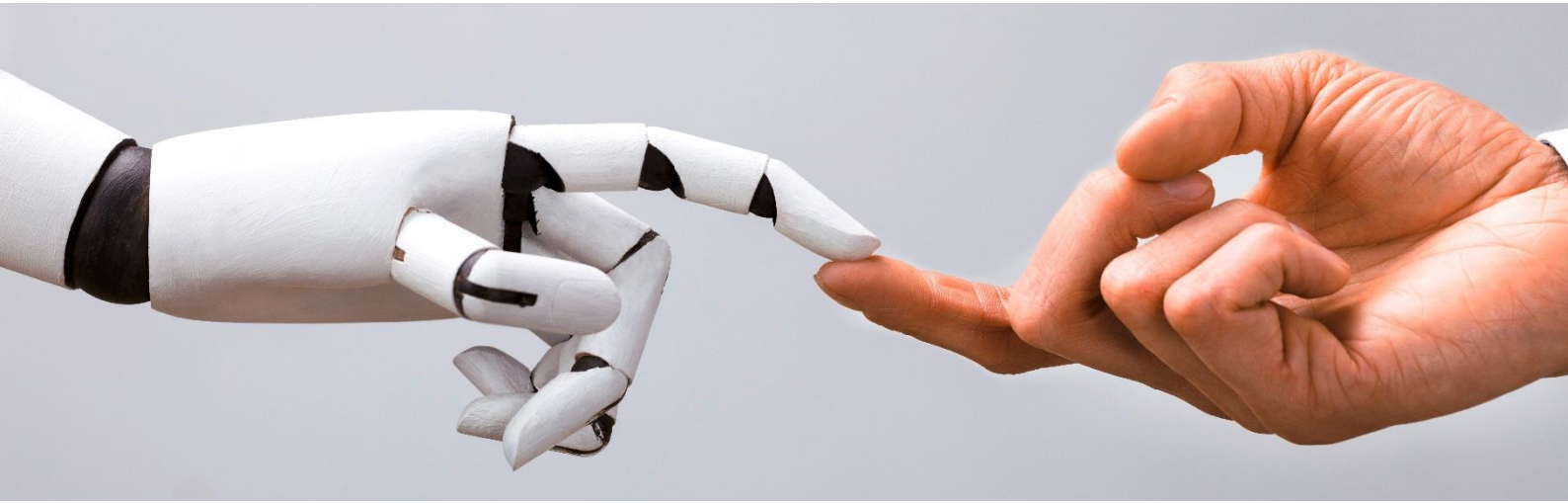
Smart rooms that allow guests to modify room temperature and TV channels via voice or mobile app activations, making TV remotes and similar "contact" equipment obsolete.



Digital scanning can activate touch-screens, offer digital tour guides and connect visitors' personal headsets to audio guides.



"Touch-free" personalised wake-up calls allow hotel guests to choose their preferred room lighting and music to wake up to without touching in-room devices or contacting reception.



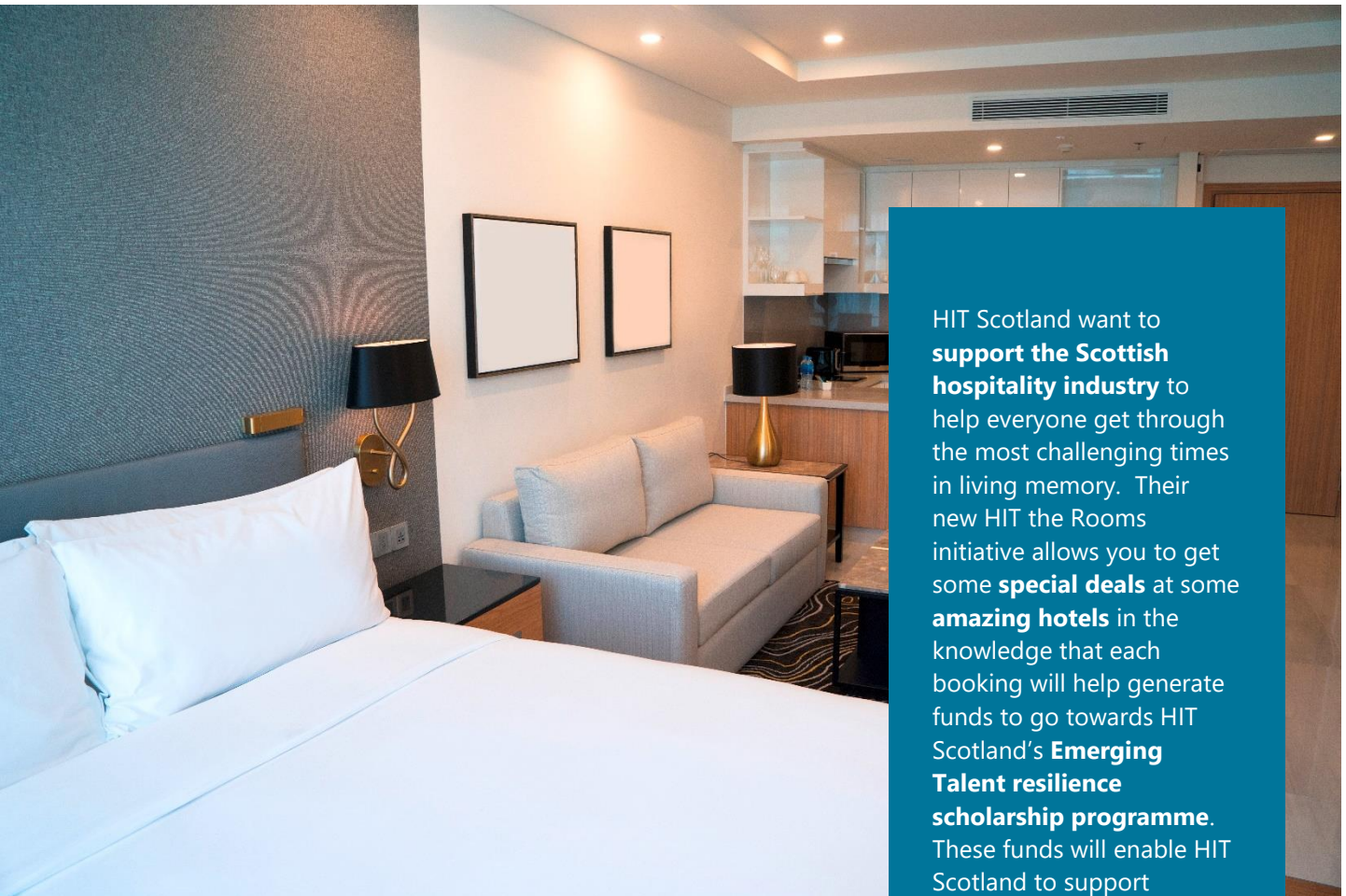
Well-designed and well-integrated mobile apps and digital technologies are likely to play a key role in aiding the industries' recovery from the impact of Covid-19 and preparing businesses for the new world order ahead.



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HIT the Rooms




HIT Scotland want to **support the Scottish hospitality industry** to help everyone get through the most challenging times in living memory. Their new HIT the Rooms initiative allows you to get some **special deals** at some **amazing hotels** in the knowledge that each booking will help generate funds to go towards HIT Scotland's **Emerging Talent resilience scholarship programme**. These funds will enable HIT Scotland to support individuals studying towards, and working in, the industry.

The participants include the **Crieff Hydro Family of Hotels, Apex Hotels, Novotel, The Airds Hotel & Restaurant, Dakota Hotels, Jupiter Hotels, Ibis Styles, Schloss Roxburghe, Village Hotels, Crerar Hotels, Glenapp Castle, DoubleTree by Hilton, Meldrum House and Hilton Garden Inn.**

Find out more on the **HIT The Rooms website**.

About HIT Scotland



Established by the industry leaders of the time in 1994, the charity has gone from strength to strength to support literally **tens of thousands of people** working and studying in the hospitality industry in Scotland to broaden their **skills and experience** by taking advantage of a tailored learning experience offered through the **HIT scholarship programme**.

These unique awards are made possible by extensive support from all sectors of the industry who primarily donate funding through attendance at events or through individual donations and corporate sponsorship.

What makes HIT Scotland so unique is the spirit of their brand which, in so many ways, reflects the **unique spirit** of the hospitality industry itself in Scotland. They are one of their kind as an **industry led collaboration** and attract many industry colleagues, at every level, to give their time and other resources in support and to “give back” to their industry.

Scottish Tourism Rebound & Remodel Podcast

Our Scottish Tourism Rebound & Remodel podcast brings together **legal and industry experts** to discuss the big issues impacting, innovating and disrupting the Scottish tourism sector.



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