



Forward Together: Covid Overlay

August 2020



Association of
Scotland's Self-Caterers

Supporting self-catering in Scotland

Overview

- Short-term letting has had a positive impact for locals and visitors alike but it is considered to require regulation and a collaborative approach between providers, government and affected stakeholders to mitigate any issues.
 - Following the recent consultation on establishing a regulatory framework for short-term lets, the Scottish Government has set out their preferred means to regulate: the introduction of a licensing system.
 - Building on previous policy recommendations and engagement with the Scottish Government, the Association of Scotland's Self-Caterers has set out a series of solutions to the main issues identified in the consultation process and which can assist the Scottish Government as they take forward the details of the scheme and help inform the regulations.
 - If adopted, it would address several of the concerns that have been raised about short-term lets by balancing the rights and interest of local communities with those of the short-term letting industry.
 - Covid-19 underlines the need for regulation of the short-term lets and the ASSC intend to replicate the responsible and industry-leading approach taken with sectoral reopening to the issue of regulation overall.
 - The ASSC developed a comprehensive and robust set of policy recommendations that was shared with the Scottish Government back in January 2020. These policy recommendations on licensing and planning control areas provide a proportionate, evidence-based and future-proofed solution for national and local government in Scotland.
 - Furthermore, due to Covid-19, this takes on even more relevance due to the economic consequences for cash-strapped local authorities – who will have to take on the burden of licensing – and the impact any disproportionate system could have on the recovery of the Scottish tourism. The ASSC therefore wish to work with policymakers to make the regulations work for communities and the tourism industry.
 - It is the aspiration of the Scottish Government to lay the regulations in December 2020 in order that they can become law by Spring 2021; and prior to that, there will be a short period of stakeholder engagement commencing in Autumn 2020.
 - **This engagement provides an opportunity to properly assess and refine the detail of the regulations to ensure that there is an appropriate balance between the needs of local communities and Scotland's important tourist economy.**
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Introduction

Contrary to the current media narrative, short-term lets are not a new phenomenon. Given that the ASSC has acted as the trusted voice of the self-catering sector for over forty years, we are well aware that short-term lets have always formed a crucial supportive part of Scotland's rich tourism offering.

Today, the self-catering sector brings around £723m of economic activity to Scotland each year.¹ With such figures in mind, it is little wonder that the Scottish Government has welcomed the economic benefits of our sector, as well as the development of new models of short-term letting to Scotland.

Nonetheless, despite the success of short-term lets in Scotland, we cannot be complacent and nor can we ignore those who remain concerned about the impact of the sector on some communities in Scotland. The ASSC has always worked in an open and constructive manner with local and national stakeholders and has provided recommendations for the Scottish Government as they have taken forward their work to establish a regulatory framework in Scotland.

We remain committed to working with policymakers to ensure the sustainability of the self-catering sector and the responsible growth of the market in Scotland, while also protecting local communities in which our dedicated and hardworking members operate. In addition to our evidence supplied to the Scottish Government's consultation on short-term lets, as well as our policy recommendations on establishing short-term let control areas, we have provided some additional solutions in this paper for the Scottish Government and local authorities to support best practice and embed partnership working.

To this end, the ASSC is delighted to be working in collaboration with the UK Short-Term Accommodation Association (STAA), Roomonitor and Quality in Tourism to deliver robust initiatives to respond to problems highlighted by local communities in Scotland.

The ASSC has worked hard to engage with those concerned about the impact of short-term lets across Scotland, listening to the concerns raised regarding housing pressure and anti-social behaviour. As a result, the ASSC:

- Commissioned an evidence-based report, produced by Frontline, to investigate and address these concerns, entitled *Far More Than Just Houses*.
- Introduced a Code of Conduct in 2017 for all its members, aimed at improving standards in the industry and encouraging best practice.
- Unveiled a policy paper on holiday let regulation that would see short-term rental properties come under a mandatory registration scheme in order to provide local authorities with as much information as possible. The paper also outlines the ASSC's support for the introduction of rent-pressure zones which would allow local councils to limit the number of holiday lets in areas that meet certain

This paper seeks to support the Scottish Government's commitment to regulate the short-term rental sector in Scotland. Overall, it aims to:

- Ensure the responsible growth and sustainability of the self-catering industry
 - Strike an appropriate balance for the tourist economy, visitors and local residents
 - Provide a proportionate, evidence-based and future proofed solution for national and local government
 - Provide consumer protection for visitors using short-term lets in Scotland.
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¹ ASSC., *Self-Catering in Scotland: The Economic Impact of Short-term Letting on the Scottish Economy*. Url: http://assc.co.uk/wp-content/uploads/2017/09/ASSC_Economic_Impact_Assessment_of_Short_Term_Lettings_on_the_Scottish_Economy_-_Final_Report_v1.2.pdf

Policy Background

In January 2020, the Minister for Local Government, Housing and Planning, Kevin Stewart MSP provided a Ministerial Statement to parliament setting out the Scottish Government's response to their consultation on establishing a regulatory framework for short-term lets. This consultation was preceded by the work and recommendations of the Scottish Expert Advisory Panel on the Collaborative Economy.

The Minister announced that the Scottish Government would take action in the following three areas:

- Establish a licensing scheme for short-term lets in Scotland under the 1982 Civic Government Act Scotland. This will include a mandatory element for all short-term let properties on health and safety requirements but local authorities will have a discretionary power to introduce other conditions to the licensing regime on issues such as anti-social behaviour and littering.

Impact of Licensing

The Minister's recent statement outlined that licensing of short-term lets would enable local authorities to monitor and enforce safety requirements, as well as impose additional conditions on licences to tackle issues like over-crowding and littering. Details on the licensing scheme are still to be provided, but it is likely to share similarities with the HMO licensing regime, commonly used to control the use and operation of properties as student accommodation. HMO licence requirements often require landlords to make significant internal alterations to properties in order to raise them to the required standard (e.g. installing fire-proof doors). Compliance with licence conditions has cost implications for owners.

The ASSC remain committed to working with the Scottish Government as they take forward their plans but we do hold profound concerns as to the impact of licensing for our members, the wider tourism economy and for already resource-stretched local authorities.

Scottish legal experts have already cautioned that licensing could lead to an inundation of short-term let licenses across Scotland, perhaps reaching into tens of thousands. Stephen McGowan, partner and head of licensing in Scotland at UK law firm TLT, explained the costs involved:

"The government has made it clear that safety will be a mandatory consideration, which I take to mean that the properties will have to undergo a HMO style inspection. This means costs for landlords in ensuring their properties meet these regulations as well as the costs associated with compliance."

² Scottish Legal News, 'Licensing expert warns of 'flood' of short-term let licenses', Scottish Legal News, 10/01/19. Url: <https://www.scottishlegal.com/article/licensing-expert-warns-of-flood-of-short-term-let-licenses-1>

³ Ibid.

⁴ Law Society of Scotland, 'Feedback from pilot scheme essential for new short-term lets licensing', 10/01/19. Url: <https://www.lawscot.org.uk/news-and-events/law-society-news/feedback-from-pilot-scheme-essential-for-new-short-term-lets-licensing/>

⁵ Law Society of Scotland, Consultation Response: Short-Term Lets. Url: <https://www.lawscot.org.uk/media/363183/19-07-19-plan-lic-short-term-lets.pdf>

- Empower local authorities to introduce short-term let control areas to tackle short-term letting "hotspots", under the 2019 Planning (Scotland) Act.
- Review the tax treatment of short-term lets. This will complement the approach taken with the forthcoming TVL Bill, albeit this process has been put on hold in light of Covid-19.

Despite pausing work on the regulations due to Covid-19 back in Easter 2020, and then resuming in July 2020, the Scottish Government are working to their original timescale of having a licensing scheme in place by Spring 2021, albeit with a truncated and accelerated stakeholder engagement process over Autumn 2020. Spring 2021 was an ambitious target when the proposals were unveiled earlier this year, notwithstanding the pause to the regulations.

*"Beyond that, there are no "grandfather rights" proposed and each new application will go through the same process as other civic licences. This means possible objections, hearings for all applications, and the ability to refuse applications not just on the fitness of the property but also the person who wishes to hold the licence, such as having regard to convictions."*²

McGowan, who is an authority on the Civic Government (Scotland) Act 1982 under which the new licensing schemes will be adopted, then highlighted the real and pressing consequences for local authorities:

*"Provision will need to be made to deal with the impact of such a magnitude of applications on local authority resources. A massive rush of applications of this order could bring licensing administration to a halt, and have a knock-on effect on reporting obligations with Police Scotland and other authorities such as Fire and Building Standards, who will likely have to comment on each application. This could impact on processing times for other types of civic licence."*³

Due to the real step change in regulation, other stakeholders such the Law Society of Scotland has emphasised the importance of piloting the new licensing scheme ahead of implementation.⁴ The Society's consultation response had also warned that increased regulation would place additional burdens on local authority planning and licensing teams to manage the requirements of a new scheme.⁵

The ASSC's Response

Common with legal experts, the ASSC hold severe reservations about the need for a licensing system in Scotland but await the policy detail. Nonetheless, building on our previous research, policy recommendations and engagement, the ASSC has provided a robust and cost-effective package of solutions to address the main issues of concern that were highlighted in the Scottish Government's consultation document, as well as the independent analysis of responses, which will minimise the administrative burden.

Taken together, the ASSC's support for a registration scheme for all short-term let accommodation providers, our backing for short-term let control zones, as well as continuing our robust self-regulation provides a truly holistic approach to address the following:

- Concerns that the growth of short-term lets are impacting on local housing markets.
 - Enhance consumer protection and health and safety in all STRs.
 - That all STR operators across the sector follow the ASSC's lead to ensure best practice and a regulatory level-playing field.
 - Responds to resident concerns regarding noise and anti-social behaviour.
 - Respond to community concerns over loss of residential amenity.
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(i) Concerns that the growth of short-term lets are impacting on local housing markets.

Solution: A data and evidence-based planning policy

The truth is that the short-term rental market actually accounts for a tiny percentage of housing stock. The ASSC published a report (Far More Than Just Houses) which shows that there are five times as many empty properties in Scotland than there are self-catering properties. There are only 16,692 professional STR units across Scotland, a wholly insignificant number in housing stock terms compared to 37,000 empty homes according to the Scottish Government.⁶

As noted in the recent Ministerial Statement, the Scottish Government will prioritise the devolution of powers to local authorities to introduce short-term let control areas contained in the Planning (Scotland) Act 2019. In these designated areas, use of a dwelling for short-term lets would constitute a 'material change of use', thereby meaning that planning permission would always be required. City of Edinburgh Council has

already announced its intention to designate all or part of Edinburgh as a short term let control area once these powers come into fruition.

The introduction of Short-Term Let Control Zones, in areas of housing stock pressure, is in line with the **ASSC's Long-Term Approach to Short-Term Letting Policy**, published in February 2019.⁷ This gives local authorities the ability to use data derived from a registration scheme to establish in real time what properties are being used for across certain localities. If there is a demonstrable link between short-term lets and loss of housing stock, a Short-Term Let Control Zone could be introduced and planning restrictions enforced for properties operating for over 140 days, limiting the number of short-term lets in specific localities. A registration scheme is vital in order to gather accurate data, and will be required should a tourist tax be introduced.

The ASSC maintain that planning restrictions or a licensing scheme should only be implemented where empirical data indicates a demonstrated link between short-term letting and loss of housing stock.

(ii) Enhance consumer protection and health and safety in all short-term rentals.

Solution: Quality in Tourism Accreditation

Health and safety requirements will form the basis of the mandatory licensing aspect of the Scottish Government's plans. The ASSC has always believed that

the health and safety of visitors and guests in short-term let accommodation is paramount and our members in the traditional self-catering sector are already subject

⁶ ASSC., Far More Than Just Houses: The Benefits of the Short-Term Rental Sector to Scotland. Url: <https://www.assc.co.uk/wp-content/uploads/2018/06/MoreThanJustHouses.pdf>

⁷ ASSC., The Long-Term Approach to Short-Term Letting. Url: <https://www.assc.co.uk/wp-content/uploads/2019/02/ASSC-Policy-Paper.pdf>

to regulation. Nonetheless, the ASSC support the introduction of registration scheme for short-term lets which could achieve the same policy goals but without the costs typically associated with licensing schemes elsewhere.

A registration scheme will provide local authorities with real time data as to what properties are being used for what purpose in the local area. As a primary authority, Quality in Tourism has the technological infrastructure to implement a registration scheme for all accommodation models in Scotland if required; and this could underpin a tourist levy, as well as any short-term let regulation. Quality in Tourism has offered over 15 years of delivery hospitality accreditation across the UK and the world. A dedicated team with over 200 years hospitality experience both operationally and in assessments provides unrivalled market knowledge across accreditation and is supported by effective relationships with industry.

Using this registration system, consumers could check if any accommodation is properly covered by the accreditation scheme. If any accommodation is not covered, a local authority could prohibit the operator from continuing. Quality in Tourism provide Safe, Clean & Legal Accreditation and his is focused on consumer

confidence, including:

- Fire Risk Assessments
- Gas certification
- Appropriate carbon monoxide detectors
- Cleanliness
- Transparency of description
- Health & Safety compliance
- Environmental compliance.

This accreditation ensures consumer protection as well as best practice. Quality in Tourism is a Primary Authority in Tourism in conjunction with the Department of Business Energy and Industrial Strategy. They revolutionised the hospitality accreditation market with new fit for purpose schemes offering innovation and unique solutions to modern questions. They offer 'Safe, Clean and Legal' for entry level accreditation: a transparent and trustworthy scheme supporting owners and consumers. They can also offer star ratings, agency accreditation, and 'Responsible, Ethical, Sustainable Tourism (REST) accreditation.

(iii) That all STR operators across the sector follow the ASSC's lead to ensure best practice and ensure a regulatory level playing field

Solution: The wider adoption of the ASSC Code of Conduct and signposting to it from national and local government

The Association of Scotland's Self-Caterers launched its Code of Conduct in 2017, aimed at improving standards in the industry and encouraging best practice and we would strongly recommend a wider adoption of this Code of Conduct by short-term letting agencies, owners, managers and online platforms.⁸

All ASSC members abide by the Code of Conduct, which signposts to legal compliance as well as best practice. It is a self-regulatory code in the same sense that the Highway Code is a self-regulatory framework for road users. The ASSC's Code of Conduct was developed alongside a Scottish Government study into the collaborative economy and comes with a Policy Recommendation

Paper, which sets out how the vital self-catering sector in Scotland can be improved for customers, hosts, and all others involved.⁹

ASSC launched its Code of Conduct in association with the Short-Term Accommodation Association (STAA), which has also developed a policy paper looking into improving working life for platform hosts. During the process of drafting both the policy document and the Code of Conduct, ASSC and STAA worked together in close collaboration, in association with key collaborative economy platforms such as Airbnb, for the benefit of all parts of the industry.

(iv) Responds to resident concerns regarding noise and anti-social behaviour

Solution: Noise management services to support existing anti-social behaviour legislation

There are technological solutions which can help underpin the Scottish Government's proposed short-term let regulations, including in relation to tackling anti-social behaviour. At the present time, some short-term letting owners do not have the resources to effectively deal with night-time incidents. Potential problems, if

left unattended, can quickly escalate. A number of noise management solutions are available – and one accommodation platform, Airbnb, has recently provided a three-month trial of a noise detection system, Minut, in Edinburgh properties.

⁸ ASSC., Code of Conduct. Url: <https://www.assc.co.uk/wp-content/uploads/2017/04/ASSC-Code-of-Conduct.docx>

⁹ ASSC., Policy Paper. Url: <https://www.assc.co.uk/wp-content/uploads/2017/04/POLICY-PAPER-Scotland.docx>

While there are a number of providers in the market, the ASSC has worked with Roomonitor.¹⁰ They offer a solution to noise monitoring in short-term rental properties with real time noise control. It allows operators to be aware of the noise levels in short-term let properties all day, every day, thus avoiding any problems with neighbours or other tenants. Their inclusion in this paper should not be taken as an endorsement but merely as an example of one of the companies available who could provide noise management solutions in Scotland.

Roomonitor provides the NoiseAlarm, which monitors the sound pressure of an apartment in real time, providing daily reports for the owner. If noise goes beyond a reasonable level, an SMS will be sent to the guest, and a call placed, to notify the guests of the noise to avoid inconvenience in the community or nuisance to neighbours. The device does not record audio, ensuring privacy of the guests is protected. This alarm can be either by night only, or 24 hours a day.

How does their system work?

- The noise alert goes off in the property
- HelpDesk receives the alert, checks the information, makes necessary calls to guests or neighbours and swiftly solves the problem before it escalates

(v) Respond to community concerns over loss of residential amenity

Solution: Certification and mediation services

Certification and mediation are two tools to combat concerns over loss of residential amenity. The object of the certification is to minimise and/or eliminate the negative impact on residential amenity, ensuring the sustainability of the operation in a residential setting.

One provider, **WeRespect**, provides certification of owner's operating procedures and business practices.¹¹ The ASSC has held discussions with WeRespect but they are only one provider of certification and mediation services and their inclusion is to illustrate how the system could work in tandem with the proposed regulatory regime in Scotland.

WeRespect provides certification of an owners' operating procedures and business practices. The object of the certification is to minimise and / or eliminate the negative impact on residential amenity, ensuring the sustainability of the operation in a residential setting. The WeRespect 'Seal' illustrates that a property is committed to the co-existence and sustainability of the short-term let sector.

WeRespect objectives include:

- Improvement of coexistence between neighbours and users of short-term lets
- Improvement in communication between neighbours and short-term lets owners / property managers
- Mediation agreements where required, in order to restore coexistence

- If the noise persists, an agent will go to the property to solve the problem
- The following day, the property manager/owner receives a report detailing everything that has happened the previous night. This daily report offers greater control of the situation

Owners, who are not able to be available 24 hours a day, can be reassured that someone is looking after the best interests of their property, their guests, and neighbours 24 hours a day. For communities, it illustrates a proactive approach, and ensures neighbours have a 24-hour contact number for the night agent.

This will provide an evidence base **to support existing anti-social behaviour legislation**, enabling enforcement of existing powers available to local authorities. This includes Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004, which enables local authorities to serve an Antisocial Behaviour Notice on a private landlord when an occupant or visitor engages in antisocial behavior at, or in the locality, of the property. The Scottish Government introduced the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 that granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use.

- Gives visibility to operators who invest in the sustainability of their business
- Improvement of image of tourism in the local economy
- Improvement of the coexistence of tourism with communities
- Self-regulation of the sector with measures in favour of neighbourhood coexistence.

How does it work?

- Creation of a seal as the mark of a responsible property owner
- Certification
- Publication of the property in WeRespect
- Annual renewal.

WeRespect provides a mediation service to assist with disputes between neighbours and short-term let owners or property managers. Through mediation, you could have an independent consultant, endorsed by the local authority, offering a mediation service to solve conflicts between the owners or property managers and neighbours. This service could improve the relationship between the owner and the neighbour, helping them to achieve solutions to underpin coexistence.

This solution is proven, cost-effective and simple. In fact, this technique has been implemented in Barcelona

¹⁰ Url: <https://roomonitor.com/>

¹¹ Url: <https://www.werespect.net/>

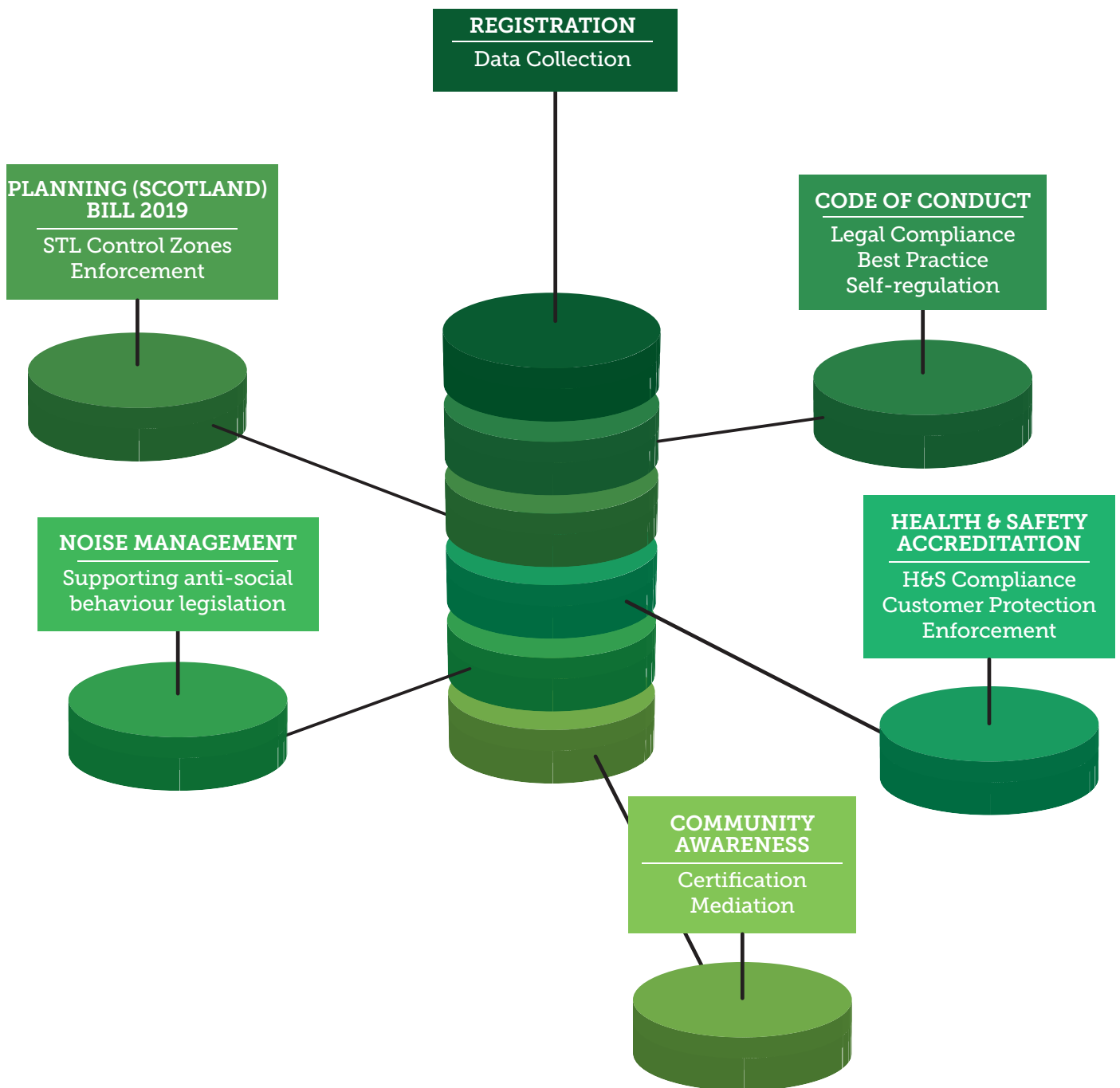
for the last year and has proved extremely successful:

- 20% of Barcelona’s short-term lets are certified by WeRespect, following 2018 launch.
- 700 applications for mediation in the first year, with the majority being resolved with intervention, information and advice
- Proven success rate and increased coexistence between short-term lets and neighbours
- Barcelona Council, the civil society and the tourism sector has responded positively.

damage or misuse of common areas, incidents resulting from alcohol/drugs, no response by owner or property manager – solutions adopted by owners / property managers include:

- Improved communication between owners and neighbours
- Noise and party control measures
- Adoption of short-term let regulations
- Control over hours of the short term let – check in / check out / cleaning
- Clear communication regarding entry.

In response to typical problems – be it noise, parties,



Conclusion

Over the past three years, from the work of the Expert Panel right through to the Scottish Government's consultation process, the ASSC has been proactive in terms of its engagement and policy recommendations to government. We remain absolutely committed to constructively seeking solutions to ensure the responsible growth of our sector.

In order to support Scottish tourism, whilst protecting communities, visitor and local authorities, the ASSC has developed proposals to ensure the sustainability of the sector and one which balances stakeholder needs. Having assessed the main issues associated with short-term lets, we have identified solutions – and we believe that the package of measures provided is proportionate, evidence-based, fair and achievable, and limits the administrative and financial burden to local authorities.

We look forward to entering into a discussion with Scottish Government and local authorities on delivering this solution to ensure a sustainable future for visitors, communities and businesses.