



Licensing or Registration for Short-Term Lets in Scotland

August 2020



Association of
Scotland's Self-Caterers

Supporting self-catering in Scotland

Overview

- The Association of Scotland's Self-Caterers (ASSC) welcomes the constructive and collaborative approach being taken by the Scottish Government's Short-Term Let Delivery Group. This engagement provides an opportunity to properly assess and refine the detail of the proposed short-term let regulations to ensure that there is an appropriate balance between the needs of local communities and Scotland's important tourist economy.
 - We believe that a licensing system is a blunt tool to fix a perceived and localised problem of amateur operators in Edinburgh, rather than being a solution that is appropriate for the whole of the Scotland, nor is it one that makes a necessary distinction between different types of visitor accommodation providers.
 - The ASSC remains concerned that little differentiation is made between different types of operator in what is a diverse short-term letting landscape, with potentially dire unintended consequences to the professional self-catering sector that contributes £723m to Scotland.
 - The ASSC also believe that, due to the impact of Covid-19, the potential pitfalls and shortcomings of licensing come into sharper focus in two main respects: (a) the impact for resource stretched local authorities having to deal with an influx of tens of thousands of licensing applications; and (b) the impact any disproportionate licensing system could have on the recovery of Scottish tourism.
 - The ASSC have already developed a comprehensive and robust set of policy recommendations, as set out in our Forward Together paper, which should be read in conjunction with this document.¹ This provides a proportionate, evidence-based and future-proofed solution for national and local government in Scotland in terms of short-term regulation.
 - Overall, the ASSC wish to work with policymakers to make the regulations work for communities and the tourism industry, recognising the Scottish Government's strength of intent to regulate, but also to ensure that anything taken forward is not disproportionate and which would threaten the fragile recovery of Scottish tourism in these challenging times.
-

¹ ASSC, Forward Together: A Collaborative Approach to Short-Term Letting (2020).
Url: <https://www.assc.co.uk/wp-content/uploads/2020/02/Forward-Together.pdf>

Main Recommendations

In place of a disproportionate and blanket licensing regime in Scotland, the ASSC propose a more targeted and bespoke response as set out below:

- The introduction of a registration scheme, with mandatory health and safety criteria, rather than licensing, as the most proportionate and achievable for local authorities in Scotland.
 - This approach recognises the Scottish Government's intention to regulate short-term lets but achieves the same policy objectives in a more proportionate and cost-effective manner.
 - Registration for letting agents and private landlords is an established and evidence-based system that encourages best practice and offers a legal framework for enforcement.
 - The Isle of Man's registration system for short-term lets also provides a useful benchmark and case study for consideration.
 - A registration scheme can also provide the data required by local authorities who may wish to consider introducing a short-term let control zone within their locality.
-

What this paper provides

1. A discussion of the intended policy objectives from short-term let regulation
2. An outline of the existing thresholds and definitions for short-term lets
3. An explanation of the diversity of short-term letting
4. A discussion of short-term let licensing if applied through the 1982 Civic Government (Scotland) Act
5. A discussion of short-term let registration, using a case study from the Isle of Man regulatory regime, as well as similar registration schemes for letting agents and landlords in Scotland.

Short-Term Lets: What are the Regulations Trying to Achieve?

In July 2020, the Scottish Government announced that they were resuming their plans first unveiled back in January 2020 for the introduction of a licensing system, planning control areas and a review of the tax treatment of short-term lets. It is critical to understand what the intended policy outcomes are from this and how they interrelate:

- **If the proposed licencing scheme is to deliver mandatory health and safety standards**, ASSC would state that professional operators are already heavily regulated with regard to H&S, with dedicated Fire Regulations, Anti-Social Behaviour legislation etc. These are covered as part of the ASSC's Code of Conduct.² We would be supportive of amateurs having to reach the same standards for the safety of guests to ensure a level playing field. However, we maintain that a licensing scheme is a disproportionate and heavy-handed approach.
 - Quality in Tourism (QIT) already deliver a Safe Clean and Legal accreditation scheme. They are adding a Covid overlay informed by the cleaning protocols developed for the UK wide self-catering sector by the ASSC. This could easily be mandatory and would be underpinned by a registration scheme that QIT can deliver. This would take the financial and administrative burden away from local authorities or licensing bodies and offer an independent professional accreditation body to deliver the scheme. The online registration system would be available for both Local Authorities and potential guests to check a properties compliance.
- **If the aim is to control the number of short-term lets due to pressure on housing stock**, the ASSC maintain that this has to be properly evidenced using robust data and not rely on anecdote or unreliable 'scrapings' of data using third-party websites. The ASSC have previously argued that there is a lack of data showing an empirical link between short-term lets and housing shortages and that a more holistic approach needs to be taken to the issue. Housing challenges are multifaceted and the growth of short-term lets should not be used as a convenient scapegoat. Indeed, it is worth noting that there are 5 times more empty homes than self-catering units in Scotland.³
 - The ASSC would suggest that a registration scheme would provide the data required to establish if there is a problem with short-term lets negatively impacting upon housing stock. **In order to bring in a licensing scheme, there has to be an evidenced problem (not an anecdotal one).**
 - If empirical data illustrates a negative impact on housing stock, we support the introduction of short-term let control areas under powers in the Planning (Scotland) Act 2019. Indeed, we suggested that approach ⁴.

In regard to the review of taxation, the ASSC affirms that professional self-catering operators already fall within a strict regulatory framework in terms of taxation, paying business rates (with a 63% across Scotland average increase in business rates at the last revaluation, the highest increase in the hospitality sector), income tax, VAT etc. The fact that we fall within Furnished Holiday Let taxation has evidenced that the income derived from STL has led to the technical exclusion of self-caterers from the Self-Employed Income Support Scheme during Covid-19. Naturally, we believe anyone benefiting from an income from their property should follow the same existing regulatory framework. **Reviewing taxation should not be seen as part of a licensing scheme but very much a matter for both HMRC and Scottish Government to ensure is appropriate.**

Short-Term Lets: Definitions and Thresholds

The Importance of a Definition of Short-Term Let

First and foremost, the Scottish Government need to define what is meant by a short-term let. An appropriate definition of a short-term let is necessary before any discussion of how short-lets can be regulated – this applies to both licensing and planning aspects of the Scottish Government's proposals. Moreover, a clear distinction needs to be made between professional and non-professional activity.

Some of the existing thresholds and definition of self-catering accommodation outlined below can help inform the discussion.

² <https://www.assc.co.uk/policy/code-of-conduct/>

³ <https://www.assc.co.uk/policy/short-term-letting-and-the-housing-crisis/>

⁴ <https://www.assc.co.uk/policy/policy-paper-the-long-term-future-for-short-term-letting/>

Self-Catering Accommodation is defined as⁵:

Any lands and heritages –

a) which are not the sole or main residence of any person; and b) which either

i) are made available by a relevant person for letting, on a commercial basis and with a view to the realisation of profit, as self-catering accommodation for short periods amounting in the aggregate to 140 days or more in the financial year; or

ii) if they have not been made so available for letting in that year, are intended by a relevant person to be made so available for letting in that year and the interest of the relevant person in the lands and heritages is such as to enable him to let them for such periods.”

Non-Domestic Rates

If the property is Available for let for under 140 days, it means the property is in the Council Tax system; if it is available for let for over 140 days, it places the property in the non-domestic rates system (Business Rates). The business applies to the Scottish Assessors Association as a Self-Catering Unit (SCU) and is given a rateable value.

Furnished Holiday Lets

If you let your property for over 105 days, and are available for 210 days, then you are considered by HMRC to be a Furnished Holiday Let (FHL) and your income is taxed on a business basis, rather than investment income (as long term lets are). If you let a property out for 5x31 days continuously (155 days), that excludes you from FHL. FHL income is like any other business with income minus expenditure producing profit, or loss. FHL income is not submitted on your tax return as self-employed income, which had a significant impact on owners who found them ineligible for Self-Employed Income Support during Covid-19.

HMRC

Lets of over 35 days have different VAT treatment (for VAT registered businesses).

Short-Term Letting: A Diverse Sector

The short-term let and holiday let sector has a long history in Scotland and should not be considered to be the same as the emerging collaborative economy model of short-term lets that is perceived by some to be causing problems in city centres and a few localised rural areas.

Moreover, the current debate how to regulate short-term lets often focuses on the prevalence of 'Airbnbs' in certain parts of Edinburgh. 'Airbnb' is unhelpfully used as a shorthand and catch-all term for the entire short-term let and holiday let market. Airbnb as a company does not own or manage any properties, but merely allows individuals to share their space and market their properties to visitors.

Indeed, many misconceptions surrounding short-term lets have appeared as a direct result of the exponential growth of online platforms such as Airbnb. However, the lines can be blurred with many traditional operators now using the collaborative model as part of their route to market. The ASSC's report, Far More Than Just Houses: The Benefits of the Short-Term Rental Sector to Scotland, goes into detail⁶.

The Four Models of Short-Term Lets

Overall, there are four different models of short-term letting operation, running alongside each other:



1. Traditional self-catering short-term letting (non-serviced accommodation)
2. Collaborative Economy STL via online platforms (Airbnb, Booking.com, HomeAway, HouseTrip etc) (largely non-serviced accommodation)
3. Serviced apartments (a type of furnished apartment available for short-term or long-term stays, which provide amenities along the same lines as a traditional hotel) (serviced accommodation)
4. Apart hotels (serviced accommodation).

It is also critical to understand the difference between professional, full time operators of short-term lets and the amateur or peer-to-peer, part-time players when assessing this diverse sector. Moreover, traditional short-term lets often have 7-day minimum stay with same day turnovers (though this has become more flexible due to market demand) and collaborative economy hosts often accept 2- or 3-night minimum stays.

⁵ <https://www.legislation.gov.uk/ukxi/1992/2955/schedule/2/made>

⁶ <https://www.assc.co.uk/policy/the-benefits-of-short-term-rental-in-scotland/>

Short-Term Let Licensing

Background

- The ASSC understands that the Scottish Government's preferred means of introducing short-term let licensing is via the Civic Government (Scotland) Act 1982 ⁷.
- As announced in January 2020, the proposed licensing scheme will incorporate a compulsory element, underpinning safety standards for short-term lets, and additional, optional, powers for local authorities to impose further conditions or requirements where that is appropriate for their areas.
- Precise details on the licensing scheme are still to be provided by the Scottish Government.
- When the licensing scheme proposals were first announced by the Scottish Government, they were criticised by one of the country's leading licensing law experts, Stephen McGowan, who claimed that it would lead to a flood of applications that could overwhelm local authorities ⁸. McGowan has also drawn a useful comparison with changes in the liquor licensing regime that changed in 2009 – and subsequently lead to a huge strain on council resources – and we should take cognisance of such warnings given the pressure already faced by local authorities in Scotland.

The 1982 Act – and how could it apply to short-term lets?

- The Civic Government (Scotland) Act 1982 introduced a uniform code of law and procedure to regulate the issuing of licences by Scottish local authorities. The licensing scheme for short-term lets could therefore be another form of civic licence under the 1982 Act, and will therefore sit alongside licence variants from taxis, private hire and street traders to late hours catering, tattoo parlours amongst other things.
- The scheme of the 1982 Act is that the licensable activities are either optional or mandatory – for example, for some licence types, it is up to the local authority to decide whether a licence is needed for that activity or not.
- On the face of the Scottish Government proposals from January 2020, the safety element of the licence will be mandatory – and will be something akin to the sort of safety checks that local councils deal with HMO applications.
- However, the licence process may be the 1982 Act process – that is, requiring public site notices, consultation with police and other responsible authorities, potential objections and hearings.
- Using the 1982 Act template, there would be a holder of a license which would be subject to renewal processes and suspension processes. The licensing authority could be able to attach conditions to these licences and would be able to refuse them on grounds like suitability of location as well as a 'fit and proper person' test.
- There could be an appeal process by way of summary application to the relevant sheriff court. The renewal process would require public consultation, a site notice, the possibility of objection and a hearing.
- Once in place, the licence holder would be subject to a number of processes such as intimation of change of details, convictions and so on. A number of licensing offences would apply including, unlicensed use, which would become a criminal offence.

The resource and financial implications of introducing licensing are therefore stark. Stephen McGowan, partner and head of licensing in Scotland at UK law firm TLT, has outlined the potential issues with the introduction of a licensing scheme in terms of processing applications:

*"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."*⁹

Registration: How Does It Work in Related Sectors in Scotland?

As previously stated, the ASSC believe that a registration scheme would be preferable to short-term let licensing. Letting agents registration and the Scottish Landlords Register are two example registration schemes from the housing sector that could be used as a template for registration of short-term let operators.

Letting Agents Registration

The Scottish Government introduced a framework for the regulation of letting agents through Part 4 of the Housing (Scotland) Act 2014¹⁰ to help improve service and professionalism within the industry. This framework includes:

- Mandatory registration of letting agents¹¹: applicants will be required to be assessed as 'fit and proper' to undertake letting agency work and meet minimum training standards to be admitted to the letting agent register.

⁷ <http://www.legislation.gov.uk/ukpga/1982/45/contents>

⁸ <https://www.tltsolicitors.com/insights-and-events/news/tlt-partner-warns-of-flood-of-short-term-let-licences-in-scotland/>

⁹ <https://www.scottishlegal.com/article/licensing-expert-warns-of-flood-of-short-term-let-licences-1>

¹⁰ <https://www.legislation.gov.uk/asp/2014/14/part/4>

¹¹ <https://www.mygov.scot/letting-agent-registration/>

- A statutory letting agent code of practice¹² which came into force on 31 January 2018. It sets out the service standards that letting agents must meet and will give tenants and landlords the ability to challenge poor practice.
- A new means of redress to the First-tier Tribunal for Scotland (Housing and Property Chamber) . Landlords, tenants and Scottish Ministers will be able to go to the tribunal where there has been a breach of the code of practice. Where an agent has failed to comply with the code, the tribunal must issue an enforcement order setting out the steps the letting agent must take to rectify the problem.
- Powers for Scottish Ministers to obtain information and of inspection, to monitor compliance and support enforcement.

Letting agents must undertake mandatory training and professional membership is required. These measures give landlords and tenants confidence in the standard of service they should expect from a letting agent and give them the means to challenge poor practice where this arises.

Scottish Landlords Register

The Scottish Landlords Register is the official register of landlords of private rental properties in Scotland. It is a registration portal for all 32 local authorities in Scotland.

Private landlords are required to apply for registration with their local authority under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.¹⁴ Operating as an unregistered landlord is a criminal offence which may be subject to a penalty on conviction of up to £50k and a ban on letting properties of up to 5 years. Enforcement of landlords can also be achieved via Fire (Scotland) Act 2005, Planning (Scotland) Act 2019, etc.

Registering before you rent out your property makes sure you meet the minimum legal requirements. Local authorities are responsible for enforcing landlord registration. All private landlords must display a current landlord registration number on any adverts to rent a property. A registration number shows that a landlord is approved by the local authority to let property. Where an application for registration has been submitted but not yet approved landlords must include the words "landlord registration pending". If you own or manage a property you are required to renew your application every 3 years.

The Scottish Landlord Register is fully accessible. It allows:

- the public to search the public register of registered landlords in Scotland
- private landlords (or anyone managing rental property on their behalf) to apply for, manage and renew their registration in one place
- Scotland's 32 local authorities to maintain the register in their area

To complete your application or renew your registration you will need information about:

- Any criminal convictions and court or tribunal judgements
- Any licences or registrations you hold, or have had refused or revoked, relating to letting or managing property
- Any accreditations you hold or have had refused or revoked, relating to letting or managing property
- Repairing standards enforcements orders (RSEOs), issued to you or your tenants
- Your addresses for the past 5 years
- Addresses of all your rental properties
- Details managing your property on your behalf
- Phone number
- Email address
- Details of all owners, including their contact details and landlord registration numbers
- Gas safety certificate
- Electrical installation condition report or a current electrical installation certificate
- Electrical appliance test details
- Fire, smoke and heat detection details
- Carbon monoxide
- Public water supply
- Energy performance certificate
- Legionella risk assessment
- Rental property insurance
- Common repairs
- Tenancy deposit

¹² <https://www.legislation.gov.uk/ssi/2016/133/contents/made>

¹³ <https://www.housingandpropertychamber.scot>

¹⁴ <https://www.legislation.gov.uk/asp/2004/8/contents>

You can Search the landlord register for a rental property registration by postcode to find out:

- who owns the property
- if anyone manages the property on their behalf
- which local authority the property is in
- contact address for that property
- if the landlord has a valid registration
- who that registration number belongs to
- which local authority the landlord is registered with

There are three types of landlord registration fee:

- Principal Fee: £65, increasing to £66 from 1 April 2020
- Property Fee: £15 (per let property)
- Late Application Fee: £130, increasing to £132 from 1 April 2020.

It remains to be seen why it is appropriate for letting agents and landlords to be subject to a registration scheme, while professional self-catering operators would have to adhere to a stricter and more onerous form of regulation through licensing. There are numerous examples of short-term let registration schemes globally but the ASSC has chosen to highlight the case study of the Isle of Man.

Case Study: Isle of Man Registration System

The Isle of Man has a well-functioning system of short-term let regulation that should be considered as part of the Scottish Government's regulatory approach. The Isle of Man Tourist Act 1975¹⁵ states the compulsory Registration & Grading of all tourism accommodation.

How it Works

Registration Certificate: Once the property has met all of the pre-requisites (Public Liability Insurance, Accessibility Statement and Fire Risk Assessment) and from other Government agencies including planning, building control, fire safety, and environmental health, the property can be officially registered with the Enterprise Department. An operator can then start trading and will be issued a registration certificate which should be displayed in the property at all times.

There are two types of visitor accommodation registrations:

1. Permanent Visitor Accommodation: operating anytime across 12 months of the year
2. Homestay Visitor Accommodation: operating TT and MGP and Classic TT only.

Operating Homestay Visitor Accommodation entails registering with MiQuando¹⁶ who will then come and visit a property to ensure quality and fire safety, they will then confirm registration and you will be permitted to operate for those festival periods.

If an operator wishes to operate permanent visitor accommodation, then a registration process must be followed. The registration process ensures that all legal, health and safety and accommodation quality standards have been adhered to so that the safety and wellbeing of visitors is ensured during their stay. The process differs slightly for each type of accommodation but typically requires permission is sought from Planning, Building Control, Fire Safety and Environmental Health. An operator will then be asked to complete a Fire Risk Assessment and ensure Public Liability Insurance is in place to protect visitors staying in the accommodation. Finally, an operator will be required to create an 'Accessibility Statement'. This is a clear description of how visitors are to get in and around the accommodation so that they can decide if it meets their requirements.

When the registration process is complete, the Visit Isle of Man team will send a link leading to an online form to register visitor accommodation and the operator will be required to submit the registration payment. Under the Tourist Act 1975, it is a legal requirement for all types of visitor accommodation to be registered with the Department for Enterprise. Operators are required to complete the form and submit the payment annually. Registering accommodation with the Department authorises an individual to operate 12 months of the year. It also applies to

¹⁵ <https://www.visitisleofman.com/trade/business-resources/legislation/tourist-act>

¹⁶ <http://www.miquando.com>

individuals looking to list rooms or properties on websites such as Airbnb and Hotels.com etc.

The Registration Process:

The following information is taken from the Visit Isle of Man website.

- Visit Isle of Man Advisory Visit – the team will take an initial look at your property or development and provide guidance.
- Planning Permission to be sought to use your property for ‘tourist use’
- Building Control – regulation application to authorise the property to operate as a tourist premises
- Fire Safety Advice – to be followed, please see the link below in the Useful Links and Documents
- Fire Risk Assessment – to be completed
- Insurance – prior to registration confirmation of public liability insurance is required (minimum £2 million)
- Access Statement – to be created
- Complete the Registration Form and submit along with the Registration Fee
- Display the Registration Certificate provided in the accommodation
- Create your accommodation profile on visitisleofman.com
- Advertise your property and welcome your first visitors!
- Your details will be passed to an independent assessment team to organise your Star Rating Assessment visit.

There is a registration fee of £50 for an individual Self-Catering property and £100 if you wish to register more than one self-Catering property in the same location. If you wish to register more than one property in separate locations the cost will be £50 per property. You are required to complete a registration form and submit payment for your accommodation every year, by February.

Once the accommodation is registered and you have received your certificate which is to be displayed in the accommodation for visitors to see, you can advertise your property on your choice of platforms (Booking.com, Expedia, Airbnb, websites, social media, magazines). You will receive a log in for the official tourism website visitisleofman.com to advertise your accommodation free of charge. This is the ‘shop window’ to the Isle of Man and we would encourage you to create your profile. Please remember to use high quality images and include all of the information you can to showcase your accommodation.

The Visit Isle of Man team sends a list of all registered accommodation to the independent accommodation assessors (a company Quality in Tourism (QIT)). The assessors will contact you to arrange a visit to your accommodation and will provide you with a star rating. You will also receive a report from the assessors. This visit will be repeated every 2 years to ensure the quality levels and standard of the accommodation is operating at the correct star level ¹⁷. **A step by step guide to the registration scheme can be downloaded from the Visit Isle of Man website ¹⁸, as can quality standards for self-catering properties ¹⁹.**

Conclusion

Overall, there are three crucial points from this paper:

-
- 1. That the Scottish Government needs to provide a legal definition of a short-term let and distinguish between professional and non-professional activity. This underpins the entire regulatory discussion.**
 - 2. To consider what we – industry, communities and government – wish to achieve through the regulations and to strike an appropriate and proportionate balance between all parties, especially in the context of the impact of Covid-19.**
 - 3. To consider whether the policy objectives of the Scottish Government can be secured through short-term let registration rather than a licensing regime.**
-

¹⁷ <https://www.visitisleofman.com/trade/getting-started/accommodation/self-catering>

¹⁸ https://www.visitisleofman.com/dbimngs/Self%20Catering_ProcessMap_141119.pdf

¹⁹ https://www.visitisleofman.com/dbimngs/Common%20Standards%20Self%20Catering_311019.pdf