



ASSC Submission to The Highland Council Short-Term Let Licencing Consultation

The Association of Scotland's Self-Caterers (ASSC) welcomes the opportunity to respond to the Highland Council's consultation on short-term let licencing. Founded in 1978, the ASSC are the leading source of knowledge on short-term letting and holiday homes in Scotland and are the only trade body representing the interests of the traditional self-catering sector. We represent over 1,400 members, operating tens of thousands of self-catering properties throughout Scotland, from city centre apartments to rural cottages, to lodges and chalets, to castles. The ASSC commits its members to maintaining the principles of "quality, integrity, cleanliness, comfort, courtesy and efficiency" and to offering visitors to Scotland consistently high standards within their self-catering properties.

Questions

Have you read the draft policy and proposed additional conditions?

- Yes
 No

7. It will be a mandatory condition of a short term let licence that hosts and operators ensure they do not exceed the maximum number of guests for their premises.

The Council may choose to specify on a licence that guests may bring children under a specified age and these children would not count towards the occupancy of the premises. Scottish Government Guidance states that Licencing Authorities may wish to set the age limit as 'under 10 years'.

Should children under the age of 10 count towards the occupancy of a premises?

- Yes
 No

9. All short term lets which are granted a licence will be required to comply with a set of mandatory conditions which apply across all of Scotland. The Council has a discretionary power to impose additional conditions for short term let properties. The Council has proposed a number of the additional conditions which are set out in the policy statement.

Do you agree with the proposed additional conditions?

- Yes
 No

10. If No, please specify which conditions you do not agree with and provide your reasons:

The ASSC believe many of the additional conditions set out by Highland Council are wholly unnecessary. This is either due to a replication of mandatory conditions; that they do not relate to the provision of accommodation through short-term letting; or are not within the control of the

individual operator. We have set out our concerns with the following sections of Appendix 4 – Additional licence conditions:

2. Reporting of Certain Incidents

We would like to ascertain why the Highland Council believes this is a matter pertaining to licencing. Any incidents involving a gas leak or fire, for instance, relate to safety and the operator would engage the emergency services as they are directly relevant, not a council licencing official.

3. Anti-social behaviour

Incidents of anti-social behaviour in self-catering premises are rare. Last year, the ASSC submitted Freedom of Information requests to all thirty-two local authorities in Scotland and the results of this show that there is a mismatch between perception and reality: the number of ASB complaints against holiday lets in Scotland over the past five years is minimal.

Operators want harmonious relationships with neighbours and the local community – it is not in their interest to allow any anti-social behaviour in their business. This is part of the basic management of their property and there already is existing anti-social behaviour legislation that can be utilised by councils to respond when complaints arise. For instance, the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use. However, this needs to be enforced, as the Cabinet Secretary for Housing Shona Robison MSP stated: “We expect all relevant authorities to use the powers available to them to deal with antisocial behaviour” (Shona Robison MSP, in answer to Parliamentary Question S6W-03022, 01/10/21. Url: <https://archive2021.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S6W-03022&ResultsPerPage=10>).

Regarding item 3i and 3ii, the language attached to the additional conditions by Highland Council in the draft Policy Statement that the licence holder must “ensure” that no disturbance or nuisance arises within or from the premises, or indeed ensure vehicles belonging to guests are parked lawfully, is unreasonable. First, many operators will not always be on site at their property. Second, while operators can reasonably *ask* that their guests comply with the two aforementioned examples but they cannot *compel* them to do so. In addition, we are very concerned at the cost implications for Highland Council to enforce this – will the Council have officers patrolling near self-catering units to check that guest vehicles are parked in an appropriate fashion?

On 3 iii, that “the licence holder shall notify the Council...of the details of any incident of anti-social behaviour...”, this should be dealt with by existing anti-social behaviour legislation. Why are Highland Council duplicating regulatory regimes?

4. Privacy and security

Similarly, the Council repeat the same language on 4 ii that licence holders “must ensure” that guests know rules applying to shared doors and how to securely close them. Again, operators should *ask* their guests to comply with this request but cannot *compel* them to do so.

5. Noise

The ASSC believe that Highland Council should adopt additional conditions in relation to: (a) noise monitoring; and (b) community accreditation and mediation. However, on any additional conditions applying to noise, there has to be a causal link to issues from those premises. One example where such conditions have been shown to work is Barcelona, where this was introduced by local government, and further information is available in the ASSC's Forward Together paper (see ASSC, Forward Together: A Collaborative Approach to Short-Term Letting, Url: <https://www.assc.co.uk/policy/forward-together-a-collaborative-approach-to-short-term-letting/>).

Licensing authorities cannot be allowed to set restrictions on premises where there is a perception there may be an issue. Restrictions should not be put in place where there is potential or existing issues in the vicinity of the premises unless it can be shown the issues occurring in the vicinity originated specifically from the short term let premises.

5 i. Applying a condition that the licence holder must ensure that bedrooms, living room and hallway have suitable floor coverings is disproportionate and is yet another cost levied on businesses. This would not be asked of a private landlord renting out a property where noise complaints had been levelled by neighbours, so short-term lets operators should not be discriminated against in this manner. Furthermore, from both a commercial and equalities perspective, operators need to make their premises as accessible and inclusive for all of their guests. For instance, carpeting can trigger conditions such as asthma and other adverse effects.

5 ii We would welcome the use of noise monitoring equipment in short-term lets in tenemental properties and those that directly adjoin another property, where a causal link has been evidenced regarding noise from that premises. Noise monitoring devices can be a useful tool in evidencing any repeat offences and can underpin existing anti-social behaviour legislation.

5 iii While we note that the Council state that "reasonable exceptions" would apply to ensuring that guests arrive or leave during specific hours, it is again unfair to place the onus on operators on factors that are completely outwith their control, such as delayed transportation. At the present time, due to difficulties faced by airport operators, as well as industrial action on the railway network, many guests will arrive at their destination late due to no fault of their own. Why are Highland Council again using the language of "ensure" on factors that are not the preserve of operators?

5 iv Operators can ask guests not to use hot tubs after a certain timeframe but cannot compel them to do so. What evidence does Highland Council possess to suggest that this is a problem facing the short-term letting industry?

Furthermore, if the hot tub is located within a self-contained self-catering unit, why do Highland Council consider it necessary to apply what amounts to a hot tub curfew? Moreover, this raises the matter of enforceability: will the Council employ someone to ensure that guests are using hot tubs at appropriate hours? This appears to be another instance of short-term let businesses being discriminated against compared to other accommodation providers or types of property.

5 v On amplified music, Highland Council need to define what amplified music means as what is 'loud' to one individual compared to another is relative, as well as how this will be assessed. We again raise the issue of enforceability of this and would also like to see what evidence the Council holds that this is a problem within self-catering units in of itself and compared to other types of property.

6. Littering and Waste Disposal

The Council again state the licence holder “shall ensure” in respect of 6i and 6ii – while operators can advise guests of refuse collection day, they cannot compel them to comply. On a more practical point, we are dealing with individuals in the Highlands for a holiday and who will not wish to spend a large amount of time familiarising themselves with waste management and recycling issues.

Similarly, with 6iii, operators should of course provide the necessary materials and advice in regard to waste disposal but expecting every holidaymaker to follow this to the letter, especially when many may reside in areas with different policies for recycling etc, is unreasonable.

Once again, there is a presumption of bad practice by short-term let operators implicit in this document. There is no business incentive for self-caterers to rent out properties sprawling with rubbish. Self-caterers have provided well-maintained and clean environments for guests for decades and we would like to see what evidence the Council holds to show that littering and waste disposal is a specific problem of the self-catering industry compared to any other type of property. Finally, this additional condition also raises the question of enforceability: how will the Council monitor compliance?

7. Preventing damage to property

Prohibiting the use of keyboxes or other related devices is arbitrary. First, it should be recognised that keyboxes are used for a variety of different purposes, not just to facilitate entry to a short-term let – for example, they are readily utilised by carers. We would presume that Highland Council have no issue with keyboxes for this purpose but why should it be any different for short-term lets? It is the same device affixed to a door used to enable entry.

Securing the agreement of all owners within a property will be near impossible to achieve. Unanimity of agreement for any change to a property (e.g., repairs) is difficult to secure in other contexts but would be especially so for keyboxes used by short-term let operators. We therefore ask the following: will this become a general policy for all keyboxes within the local authority area, or do Highland Council intend to solely discriminate against their use by short-term let operators?

Furthermore, Highland Council need to take cognisance of how the pandemic has changed the way operators interact with guests. There has been shift in consumer behaviour away from traditional meet and greets between operator/guest towards information being shared electronically and via apps. Indeed, due to specific Covid-19 legislation, it wasn't always possible for the two parties from different households to meet in-person – this is why many therefore chose to use keyboxes to ensure guests could gain access to properties.

Generally, the ASSC would encourage its members to affix any keybox in a manner that is aesthetically appropriate as possible.

8. Prohibition of LPG room-heaters and storage of inflammable liquids etc.

This section replicates the mandatory conditions in relation to gas safety. We would also ask why the Highland Council think that self-caterers would be storing liquified petroleum gas in their premises and what evidence they hold that they do.

9. Maintenance of property

On 9i and ii, this is already covered by the mandatory conditions and existing legislation and guidance so Highland Council are unnecessarily replicating regulatory regimes.

10. Requirement to produce on demand any policy, certificate etc.

This is already part of compliance so does not need to be an additional condition imposed by the Council.

11. Should any of the proposed additional conditions only be applicable to certain types of short term let licences (i.e., secondary letting, home letting or home sharing) or certain types of properties (i.e., flats, semi-detached properties etc) other than already specified within the conditions?

- Yes
- No

13. The Council has the option to grant temporary exemptions to the requirement to have a licence for a period up to 6 weeks. This would need to be applied for.

This could be for a large influx of visitors over a short period for a particular event.

The Council is not proposing to use this approach given that the main reason the legislation is being brought in is to ensure that premises are safe to let.

Do you agree with the approach to not grant temporary exemptions?

- Yes
- No

The ASSC has generally been supportive of granting temporary exemptions in other local authority areas, for instance in City of Edinburgh Council, as there can be instances where it may be beneficial for the local tourist economy to provide these where there is a large influx of visitors, due to events such as the Festival and Fringe. Alternative forms of accommodation, such as short-term lets, are integral to housing all those involved – whether participants, organisers or visitors. The same could be said for Glasgow City Council as the city had the challenges of hosting COP26 last year.

At the current time, we do not believe there are events of equivalent scale in the Highlands which would compare in order to justify a temporary exemption. However, this policy should be kept under review in case circumstances change and to enable flexibility. Moreover, if Highland Council did decide to introduce a temporary exemption, we believe that all forms of short-term let should be covered by both the mandatory and additional conditions in order to ensure a level playing field and that the main objective of licencing – to ensure premises are safe to let – is met.

15. If temporary exemptions to a licence are introduced, should the additional local conditions apply?

- Yes
- No

17. The Council also has the ability to grant temporary short term let Licences. These can be granted for a duration of up to 6 weeks. Do you think that the Council should introduce temporary licences?

- Yes
- No

19.If temporary licences are introduced, should the additional local conditions apply?

- Yes
- No

21.Are there any types of property that you think would not be suitable as a short term Let?

- Yes
- No

23.Are there any other areas of the Draft Policy statement or the proposed additional conditions that you wish to make comments on?

- Yes
- No

24.If Yes, please provide your comments below:

We have some brief general points we wish to make on the Draft Policy statement and additional conditions, as well as a more substantive point on a key omission from the Draft Policy statement.

Throughout the Draft Policy statement and additional conditions, there is a presumption of bad practice against the short-term let industry, from issues such as anti-social behaviour to littering, which we find incredibly disheartening and disappointing given the immense economic opportunities the sector provides to the Highlands, as well as the fact that many businesses in the area have been a welcome part of the community for decades.

In our previous answers, we have highlighted that many of the additional conditions are unenforceable and will merely burden the licencing authority. If Highland Council cannot enforce these, it is incompetent and leaves the Council open to judicial review. Many of the additional conditions discussed earlier are part of the basic management of a property and could be instead be delivered by a clear and robust Code of Conduct, such as that devised by the ASSC (see: <https://www.assc.co.uk/policy/code-of-conduct/>).

We note the absence of any estimated fees from the Draft Policy statement, nor does the document go into any level of detail in terms of the criteria in the processing of determining the fees. Other local authorities, as part of their consultation process, have included estimated fees for stakeholders to comment on and the ASSC would argue that such figures, as well as an explanation behind the criteria used, are absolutely integral to this exercise. Our industry cannot be expected to have any confidence in the new system in their absence – how can we be expected to properly engage with this consultation if we do not know the expected costs imposed on business?

Overall, the fees attached to short-term let licencing are meant to be based on the principle of cost recovery – therefore, the ASSC believes that fees should not be set at a level greater than the amount necessary to recover establishment and running costs. If a fee structure with costly, disproportionately high fees was introduced, this will reduce accommodation capacity in the region and will damage the industry at a time when we need to work towards a sustainable recovery.

We would refer the Highland Council to Scottish Government guidance which highlights ways to keep costs down, including: (a) economies of scale; (b) integrating service delivery with other housing and licencing functions; (c) using online and digital verification where possible, for example through photo and video evidence instead of a visit; and (d) taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

It is imperative that any fees are kept as low as possible given the environment many small businesses find themselves in. In this regard, we wish to highlight our proposal which we believe could assist with an efficient and cost-effective way of securing compliance with the Licencing Order. The ASSC have worked in partnership with Quality in Tourism to promote a self-declaration model with risk-based inspections by the licencing authority. You can find attached a presentation from Quality in Tourism which provides more information.

Overall, this approach has four main advantages:

- It minimises the work required by the licencing authority to set the system up and renew licences;
- Allows the licencing authority to focus its inspection resources on a risk-based basis;
- Requires responsible behaviour and compliance by the operators; and
- Minimises the additional costs to operators (which will have to be absorbed as an additional business cost and/or passed on to the very visitors we want to visit your area to boost our economic recovery).

We understand that local authorities across the country are facing severe pressure on their resources and we believe this system can go some way to help with the administrative challenges associated with the licencing regulations. We would be delighted to meet with officials to discuss this in further detail to see whether it would be appropriate for Highland Council.

25. Are there any other areas in relation to the licensing of short-term letting that you wish to comment on?

- Yes
- No

26. If Yes, please provide your comments below:

As the main trade association for the self-catering sector in Scotland, the Association of Scotland's Self-Caterers hopes that our expertise and insight can help inform the approach taken by Highland Council. We have always strived to work collaboratively and proactively with both local and national government stakeholders to ensure a balanced and proportionate outcome for all. We wish to make clear that the ASSC is not averse to regulation; but we do challenge policies that are pursued while lacking a firm evidence base which will damage the livelihoods of our members.

Self-catering properties have been a longstanding presence in communities for generations, especially in rural communities, and provide an economic boost for local areas and enhance Scotland's tourist accommodation offering. Such self-catering properties are legitimate, bona fide businesses whose owners depend on the money generated for their livelihood – it is not a hobby or a way to supplement their income. This is entirely separate from the 'homesharing' concept, or those amateur operators who utilise online marketing platforms but are not subject to the same levels of existing regulation.

Given the competition to maintain standards, holiday let owners often spend money more frequently on additional property maintenance than they would on their own property. Their guests spend money in local food shops, cafes, gift shops, restaurants, tourist attractions etc – many of which would simply be unviable without visitor spending. Self-catering currently boosts the Highland and Western Isles economy by £211m per annum according to Frontline Consultants.

Given the importance of ensuring a sustainable recovery, and the significance of this measure for the livelihoods of our members in this region, we would respectfully encourage Highland Council to work as closely as possible with the sector and to minimise the regulatory burden on small business.

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