



## **ASSC Submission to South Ayrshire Council STL Licensing Consultation**

The Association of Scotland's Self-Caterers (ASSC) welcomes the opportunity to respond to South Ayrshire 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.

### **3. Do you have any comments regarding Section 3 - Definitions**

None.

### **4. Do you have any comments regarding Section 4 - Planning Considerations Prior to Application for STL**

We see no need to comment at this time due to the absence of a control area(s) within the local area. More generally, we would encourage South Ayrshire Council to take an evidence-led approach to control areas and also take cognisance of the increased regulatory burden faced by the short-term let sector, as well as the need to protect the valuable economic contribution self-catering makes to local communities and also to ensure a sustainable recovery for the sector.

### **5. Do you have any comments regarding Section 5 - Handling Applications and Notifications**

We require clarification in respect of the "intelligence risk-based" approach by the Council as what is proposed does not seem to constitute a risk-based approach and goes beyond the standard requirement. Therefore, we pose the following two questions: (a) will this comprise a digital submission of photos and videos as well as documentation?; (b) What might merit video or photographs?

Furthermore, why would visits be mandated where a "higher number of Short Term Let" are present? It is not explained why this would make them anymore of a risk given that the Civic Government Act 1982 pertains to the safety of an activity, not the number of units. In addition, what "intelligence" would result in further scrutiny regarding the suitability of the property as this is not explained either.

### **6. Do you have any comments regarding Section 6 - Objections and Representation**

We agree with South Ayrshire Council in that anonymous objections or representations should not be permitted and also that any objection/representation must be in writing, going into detail about the nature of the objection/representation, and include the name/address of the individual(s) making the submission. Moreover, we also concur with point 6.6 as many operators fear vexatious or spurious claims being made about their business. We do not believe that late submissions should be considered.

## **7. Do you have any comments regarding Section 7 - Determining a STL Application**

7.2.1 We require further details in terms of: (a) what would constitute a requirement for “further scrutiny”; and (b) when is an objection deemed to be vexatious or spurious?

7.2.2 We welcome transparency regarding an objector having to appear at a Regulatory Panel meeting. However, would the operator then be allowed to respond to the objection made at this meeting?

7.2.3 We believe that the statement “the premises is not suitable or convenient” is subjective. To whom would this be the case? When is the character of a premises not suitable? This requires clear, unchallengeable guidance and guidelines from the Council. In terms of “the possibility of undue public nuisance” or “public order or public safety”, there has to be a direct, proven causal link and not anecdote, perception or “the possibility” of continued anti-social behaviour or nuisance emanating from the short-term let.

7.2.5 We believe that not being able to reapply within a year is unworkable as, in the case of secondary letting, this directly concerns a person’s business and livelihood.

## **8. Do you have any comments regarding Section 8 - Right of Appeal**

None.

## **9. Do you have any comments regarding Section 9 Licence Duration and Renewal**

None.

## **10. Do you have any comments regarding Section 10 - Mandatory and Additional Licence Conditions**

We have set out our comments in the later questions on Appendix 1 and Appendix 2 in relation to mandatory and additional conditions respectively.

## **11. Do you have any comments regarding Section 11 - Temporary Licences**

We agree with 11.3 that hosts and operators granted a temporary licence should be expected to adhere to all mandatory and additional conditions.

## **12. Do you have any comments regarding Section 12 - Temporary Exemptions**

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 South Ayrshire Council which would compare in order to justify a temporary exemption. However, in relation to point 12.1, we think that this policy should be kept under review in case circumstances change to merit using exemptions.

Moreover, if South Ayrshire 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 licensing – to ensure premises are safe to let – is met.

**13. Do you have any comments regarding Section 13 - Enforcement and Continued Compliance**

None.

**14. Do you have any comments regarding Section 14 - Suspension or Revocation of Licence**

In terms of 14.2, “the short-term let is causing or is likely to cause undue public nuisance or a threat to public order or public safety”, we would argue that this is impossible to quantify and enforce as (a) what is “causing or likely to cause” is purely subjective?; (b) what do the Council mean by “undue”?; and (c) what constitutes a “threat to public order or public safety” and how can it be proved that it is contributable to the short-term let?

**15. Do you have any comments regarding Section 15 - Variation of Licence**

None.

**16. Do you have any comments regarding Section 16 - Equality**

None.

**17. Do you have any comments regarding Section 17 – Fees**

We believe more explanation is required as to the discrepancy between fees charged against those engaged in secondary letting and those who are homesharers, for both new and renewal licences. For instance, why is it more expensive for secondary letting compared to other types of short-term let when the Council will be checking for the same mandatory conditions? In addition, the ASSC would request that the Council sets out the numbers of short-term lets within each category.

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 South Ayrshire 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 alternative 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.

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 South Ayrshire Council.

#### **18. Do you have any comments regarding Appendix 1 Mandatory Conditions**

None.

#### **19. Do you have any comments regarding Appendix 2 Additional Conditions**

Unfortunately, there is a presumption of bad practice amongst self-term let operators throughout the Draft Policy statement and the proposed additional conditions, from issues such as anti-social behaviour to littering. We find incredibly disheartening and disappointing given the immense economic opportunities the sector provides to the area, as well as the fact that many businesses in the area have been a welcome part of the community for decades.

Our response highlights that many of the additional conditions are unenforceable and will merely burden the licencing authority. If South Ayrshire 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 have set out our comments below in relation to Appendix 2.

#### **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> ).

The language attached to the additional conditions by South Ayrshire Council 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 South Ayrshire 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 any additional conditions applying to noise and anti-social behaviour, there has to be a causal link to issues from those premises. Licencing 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.

### **Privacy and Security**

Similarly, the language in this section states that the licence holder “must ensure”. While operators can and will inform guests about rules applying to shared entrances/areas/doors, they cannot compel them to comply.

### **Noise**

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.

On noise monitoring, there has to be a causal link to issues from those premises. One example where conditions on noise monitoring, as well as community mediation/accreditation, 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/>).

While we note that South Ayrshire provide a “reasonable steps” caveat in terms of ensuring that guests arrive or leave during specific hours, but 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 the Council again using the language of “ensure” on factors that are not the preserve of operators?

### **Littering and Waste Disposal**

The Council again state the licence holder shall “ensure” – 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 region for a holiday and who will not wish to spend a large amount of time familiarising themselves with waste management and recycling issues.

Similarly, 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.

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 strewn 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?

### **Damage to Property**

Prohibiting the use of keyboxes or other related devices would be an arbitrary approach. 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 South Ayrshire 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 South Ayrshire Council intend to solely discriminate against their use by short-term let operators?

Furthermore, the 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.

### **Maintenance of Property**

In terms of both solid fuel appliances and hot tubs, this is covered by existing legislation and compliance obligations so should not be applied as additional conditions.

## **20. Do you have any other general comments regarding the Short Term Let Licencing Scheme**

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 South Ayrshire 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 Ayrshire economy by £32m 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 South Ayrshire Council to work as closely as possible with the sector and to minimise the regulatory burden on small business.

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