



ASSC Submission to Moray Council's STL Licensing Policy Considerations

The Association of Scotland's Self-Caterers (ASSC) welcomes the opportunity to make suggestions to Moray Council's short-term let licencing polciy. 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.

Draft Licensing Policy

- Unfortunately, there is a presumption of bad practice amongst self-term let operators throughout the various Draft Policy statements that we have read so far, which are driving proposed additional conditions, from issues such as anti-social behaviour to littering. We find this incredibly disheartening and disappointing given the immense economic opportunities the sector provides to local economies, as well as the fact that many businesses in the area have been a welcome part of the community for decades.
- In the absence of a consultation, or indication of any proposed additional conditions and an absence of any estimated fees, it is difficult to comment in any detail. 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?
- Our submission highlights that many of the proposed additional conditions suggested by other local authorities are unenforceable and will merely burden the licencing authority. If the local authority 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 draw upon other consultations to frame this submission.

Occupancy levels and children

It is 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 an individual 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 Licensing 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

Please state your reasons

There is a clear difference between a child and an adult and that should be reflected in maximum occupancy requirements.

Additional conditions

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 covering a number of specific areas. These are attached in the Appendix to the consultation. Do you agree with the proposed additional conditions?

	Agree	Disagree
Antisocial behaviour	Antisocial behaviour - Agree <input type="radio"/>	Antisocial behaviour - Disagree <input checked="" type="radio"/>
Noise	Noise - Agree <input type="radio"/>	Noise - Disagree <input checked="" type="radio"/>
Waste collection/disposal	Waste collection/disposal - Agree <input type="radio"/>	Waste collection/disposal - Disagree <input checked="" type="radio"/>
Failure to maintain common areas	Failure to maintain common areas - Agree <input type="radio"/>	Failure to maintain common areas - Disagree <input checked="" type="radio"/>
Guest safety (bicycles/boat safety/hot tubs/barbeque huts/outdoor play equipment etc)	Guest safety (bicycles/boat safety/hot tubs/barbeque huts/outdoor play equipment etc) - Agree <input type="radio"/>	Guest safety (bicycles/boat safety/hot tubs/barbeque huts/outdoor play equipment etc) - Disagree <input checked="" type="radio"/>

If you disagree with any of the above points please state your reasons

The ASSC believe many of the additional conditions set out by many councils 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 Appendix 4 – Additional licence conditions below.

Antisocial 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 used in many draft policies 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 Councils 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.

One example where conditions on noise monitoring and 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/>).

Privacy and security

Similarly, the language in draft policies frequently 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 control in flatted premises

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.

Many Councils 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 Councils again using the language of “ensure” on factors that are not the preserve of operators?

Where amplified music is mentioned, Councils 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.

Waste collection / disposal

Many draft policies 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 many of the draft policies that we have seen and encourage Moray Council against this. 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 Moray 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 Councils intend to solely discriminate against their use by short-term let operators?

Furthermore, Councils 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.

Should other areas/issues be covered by additional controls?

- Yes
- No

Should any of the proposed additional conditions be applicable to certain types of short-term let licences (i.e. secondary letting, home letting or home sharing or certain types of properties?

- Yes
- No

(i.e. flats, semi-detached properties etc.)

Please provide details and reasons

Any additional conditions introduced should be applied to all types of short-term let property to ensure the central principle of licensing – health and safety – is upheld and also to provide a level playing field and fairness between different types of short-term let.

Note:

Secondary letting – this means a short-term let involving the letting of property where you do not normally live

Home letting - this means using all or part of your home for short-term lets whilst you are absent.

Home sharing – this means using all or part of your own home for short-term lets whilst you are there

Temporary exemptions

The Council has the option to grant temporary exemptions to the requirement to have a licence for a period up to 6 weeks which would need to be applied for. This could be to allow a large influx of visitors over a short period for a particular event.

Should Moray Council grant temporary exemptions?

- Yes
- No

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

- Yes
- No

Please provide reasons for your answer

The same mandatory and additional conditions should apply to all types of short-term let property. This is to ensure that the principle of licensing – health and safety – is adhered to and to provide a level playing field.

Temporary licences

The Council has the ability to grant temporary short-term let licences for a period up to 6 weeks, or longer if an application has been made for full licence. Please note that in applying for a temporary licence full compliance with mandatory licence conditions is necessary.

Do you think that the Council should introduce temporary licences?

- Yes
- No

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

- Yes
- No

Please provide reasons for your answer

The additional conditions should apply to all types of short-term let property to ensure the principle of licensing – health and safety – is adhered to and to provide a level playing field.

Fees and charges

Licensing authorities can take account of the size of premises, number of guests and type of premises in setting a banding structure for its fees.

1. There will be a lower fee for home sharing and home letting licences (e.g. B&B etc.) rather than secondary licences (holiday homes, etc.). This reflects the position that the owner lives within the properties for home lets or shares and has a greater level of control.

Do you agree with this position?

- Yes
- No

Please detail your reasons

Given that the authorities will be checking the same mandatory and additional conditions in every type of property, there is no justification for a lower fee for homesharing over secondary letting. This will introduce an inequity in the system when the Council will be carrying out the same activity across all types of short-term let.

There is no explanation in many of the policy statements of why Councils propose to proceed with a weighted banded structure. Councils need to explain the criteria in the process of determining the fees. The council needs to urgently publish their proposals, providing explanation, clarity and precision.

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 Councils 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 Argyll and Bute Council.

Please detail any other comments you have on the short-term let licensing regime

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 Moray 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.

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 Moray Council to work as closely as possible with the sector and to minimise the regulatory burden on small business.

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