

**ASSC Submission to Dundee City Council’s Consultation on Short-Term Lets Licensing**

Founded in 1978, the Association of Scotland’s Self-Caterers (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.

**Introduction**

The Association of Scotland’s Self-Caterers (ASSC) welcomes the opportunity to respond to Dundee City Council’s consultation on short-term let licencing. As the main trade association for the self-catering sector in Scotland, the ASSC hopes that our expertise and insight can help inform the approach taken by the 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.

With 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 Scottish economy by more than £867m per annum according to Frontline Consultants. With 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 Dundee City Council to work as closely as possible with the sector and to minimise the regulatory burden on small business.

**Overview**

We have set out our response along the headings that correspond to paragraphs within the Draft Policy Statement. However, prior to setting out our views on these matters, the ASSC wish to highlight **two key areas of concern** from the outset:

1. Firstly, the standards for short-term lets contained in the Draft Policy Statement appears to have been originally devised for Houses of Multiple Occupation (HMO). This is clearly inappropriate for short-term letting which relates to tourist accommodation. This consultation, and the guidance and standards associated with it, should be bespoke to the sector. Short-term lets such as self-catering are fundamentally different to HMOs and should be treated accordingly.
2. Secondly, we wish to comment on the timeline associated with this public consultation. The deadline for submissions is 28 September, three days prior to the deadline set by the Scottish Government for the requirement for councils to establish their short-term let licensing scheme. It is, therefore, deeply unrealistic to expect the Council to have undertaken an analysis of the responses, and made any changes to their licensing regime to take into account stakeholder views, within this timeframe.
3. **Application & Fees**

The ASSC notes that Dundee City Council propose a 3 yearly renewal of a short-term let licence. We would point out that other local councils, such as North Ayrshire (10 years), are proposing a longer timeframe and we would encourage the Council to follow suit in order to reduce the regulatory burden on businesses.

While we support applying the same level of fee towards all type of short-term let – whether it is homesharing or secondary letting – the proposed fees are extortionate (going beyond those estimated by the Scottish Government’s BRIA), especially for those properties with a guest capacity of 7 upwards, but particularly so for those with 12-20+ at £3,100. This is one of the highest figures we have seen produced by a Scottish local authority. Moreover, the Council has set out figures for 9-12 guest capacity and 12-20+ - we therefore seek clarification for those accommodating 12 guests, would they pay £1860 (9-12) or £3100 (12-20+).

The Council state that the proposed fees include a number of services, outlined at 4 (a, b, c, and d) but this is much higher than other councils. The ASSC seek further clarification on how these figures were calculated and how they relate to the principle of cost recovery. Indeed, we believe 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 Dundee City 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.

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 Dundee City Council.

In addition to the costly fees proposed by Dundee City Council, we note that a “plan of the premises to a suitable metric scale (preferably 1:50)” will be required. The level of detail required for this will necessitate an expensive piece of work by a contractor which will be another cost on legitimate small businesses operating without issue for decades. This will be in addition to the cost of a licence fee, compliance with existing regulations, the mandatory and additional conditions, not to mention other factors such as rising energy costs. Further, there is no need for scaled drawings with detail re escape routes / fire safety equipment. The plans are to help evidence maximum occupancy. They are not to evidence compliance with fire regualtions. They should not require the same detail as liquor licensing (2005 Act), as this pertains to entirely different legislation. Many liceinsgin authorties have withdrawn the requirement for plans (Perth and Kinross and Angus for example)

1. **Application Proces**
2. **Short-Term Let Control Areas**

This is a consultation pertaining to short-term let licensing, which is to do with the safety of an activity. Licensing and planning are two entirely different concepts and the latter should not form part of this consultation.

1. **Temporary Licence**

If temporary licences are introduced by Dundee City Council, then any additional conditions which have been introduced should also apply to those properties. Temporary licences are essential for new operators to enable them to start trading prior to receiving a full licence.

1. **Temporary Exemptions**

If temporary exemptions are introduced by Dundee City Council, then any additional conditions which have been introduced should also apply to those properties.

1. **Standards for Short-Term Let Accommodation**

We have numerous concerns relating to these standards, namely as the document appears to have taken information intended for HMOs rather than devising something appropriate for the short-term letting sector.

1. **Kitchens**

This has been drafted for another form of accommodation (HMOs) and is not suitable for short-term lets such as self-catering. For instance, i) “where meals are being provided for residents, they must comply with the Food Safety Act 1990 and any regulations thereunder” is not applicable to the activity of self-catering.

We also share this view in regard to the standards proposed for **sanitary facilities**, as well as **space heating**.

1. **Lighting and Ventilation**

Again, the standards set out in this section appear to be tailored towards non-tourist related accommodation.

1. **Water Supply**

This is outwith the legislation. Private Water Supply legislation is covered in the mandatory conditions.

1. **Electrical Safety**

**Electrical safety is covered in the mandatory conditions.**

49 and 50 appear to be aimed at the HMO sector again?

51. 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 Dundee City 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 the Council intend to solely discriminate against their use by short-term let operators?

Furthermore, Dundee City 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.

1. **Insurance**

Insurance is covered in mandatory conditions.

1. **Additional Licensing Conditions**

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, as well as the fact that businesses in the area have been a welcome part of the community for decades. We believe that many of the additional conditions are unenforceable and will merely burden the licencing authority. If Dundee City Council cannot enforce these, it is incompetent and leaves the Council open to judicial review. Indeed, many of the additional conditions 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 concerns on the proposed additional concerns below.

**“54. Premises should comply with the relevant Scottish Building Standards”**

**“55. The host/operator shall comply with the “Health and Safety at Work Act 1974” and any regulations thereunder, if applicable.”**

**“56. The licence holder shall notify the council immediately of any material change of circumstances affecting the licences premises or the licence holder (or agent appointed by them to manage part or all of the licenced activity), including details of any criminal convictions incurred by such persons since the granting or renewal of the licence.”**

**“57. The licence holder must take reasonable steps to manage the premises in such a way as to seek to prevent and deal effectively with any antisocial behaviour by guests to anyone else in the STL and in the locality. The licence holder must take reasonable steps to:**

1. **Ensure that no disturbance or nuisance arises within or from the premises, for example by ensuring guests are aware of the house rules;**

While operators can request guests that follow house rules, they cannot compel them to the Council should not use language like ‘ensure’.

**b) Ensure, where the premises are flatted or uses a shared entrance, that guests do not first arrive or finally depart from the premises between the hours of 11pm to 7am.**

This is unreasonable. It is 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.

**c) Take reasonable steps to ensure that guests do not use hot tubs after 10pm or play amplified music within the garden or external areas after 11pm**

Operators can ask guests not to use hot tubs after a certain timeframe but cannot compel them to do so. What evidence does Dundee City 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 does the 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.

On amplified music, the 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.

**d) Deal effectively with any disturbance or nuisance arising within or from the premises as soon as reasonably practicable after the licence holder is made aware of it; and**

**e) Ensure any vehicles belonging to guests are parked lawfully and in compliance of any local restrictions, for example explaining where any designated parking spaces are to be found and highlighting any restrictions.”**

The language attached to the additional conditions 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 Dundee City 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?

**“58. The licence holder shall notify the Council as soon as reasonably practicable, of the details of any incident of antisocial behaviour affecting or emanating from the premises which has necessitated police involvement.**”

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> ).

**“59. Every stair for a change in level of more than 600 mm should have a handrail on at least one side, fixed at a height of at least 840 mm and not more than one metre above the pitch line of a flight or surface of a landing**.”

We believe this to be an absurd additional condition which should be removed by the Council. This does not have any relevance for tourist accommodation.

**“60. Adequate and suitable facilities must be provided for the storage, recycling and disposal of refuse. Where bins are provided to terraced and tenemental property, they must be clearly identified by flat or property address. The host/operator must ensure that the guests utilise the bins provided and ensure that refuse or bins are placed out on collection day and bins are returned to the bin storage area following collection (where applicable).”**

The Council 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 city for a holiday and who will not wish to spend a large amount of time familiarising themselves with waste management and recycling issues.

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?

**“61. The building should be maintained in a reasonable state of repair, having regard to its age, type and location and be compliant with the Repairing Standard and Tolerable Standard. Garden and environmental areas should be adequately maintained. Where an STL is in a shared building, the host/operator must co-operate and participate in the general repair and maintenance of the building and the cleaning of common parts.”**

**“62. Fitted carpets with suitable underlay will require to be fitted to reduce sound transmission between flats. Where an existing STL, operated by an existing host/operator, has exposed wooden floor boards, laminate, hard wood flooring or tiled floor finishes and substantiated complaints are received regarding excessive noise, the host/operator will be required to provide fitted carpets and underlay or other acceptable finish to minimise sound transmission.**”

Applying a condition that the licence holder must have fitted carpets with suitable underlay 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. 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.

**“63. The interior of the premises should be maintained in a satisfactory state of repair and decoration.**”

This should not be an additional condition. Small businesses like self-catering have an obvious business incentive to keep their accommodation in a *more* than satisfactory state of repair and decoration, otherwise no guests would choose to stay in the premises.

**“64. The use of the licensed premises must comply with the terms of any planning permission issued by Dundee City Council’s Development Management Committee.”**

This is a consultation relating to short-term let licensing, not planning.

1. **Annex A: Occupancy and Space Standards**

Again, this appears to be something of far greater relevance to HMOs rather than tourist accommodation.

1. **Any other comments on any other items**

**Planning Permission**

At point 15 on p6, it notes: “Applicants must ensure that, where necessary, the relevant planning permission has been obtained prior to submitting an application or evidence that a current planning application has been submitted. Outside a control area, planning will consider whether any change of use of a house is material and requires planning permission on a case-by-case basis… Where the necessary planning permission has not been obtained and is required, any application for a licence will be the subject of a Preliminary Refusal pending verification that the necessary permission has been obtained (see para 9).”

**Energy Performance Certificate**

“26. Every short-term let property must have an Energy Performance Certificate (EPC), a copy of which must be available in the property.”

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