



ASSC Submission to Scottish Borders Council Short-Term Let Licensing Consultation

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 Scottish Borders 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.

ASSC Response to SBC Questions

1. Are there any parts of the draft policy statement that you wish to make comment on?

Yes

No

If Yes, please provide details (including section number)

STL Consultation Process

We understand that a number of councils have faced difficulties in establishing their short-term let licensing scheme by the required deadline of 1st October 2022. [The ASSC had called for a delay in the licencing regulations](#), both as a means of supporting businesses during the cost crisis and assisting resource-stretched local authorities, but unfortunately our proposals were rejected by the Scottish Government. However, it is far from ideal that this consultation from Scottish Borders Council comes after the requirement for local authorities to have established their short-term let licensing scheme on 1st October 2022.

Licence duration and renewal

At 8.3, the draft policy statement highlights that Scottish Borders Council will provide licenses for three-years. We would highlight that North Ayrshire Council plans to grant ten-year licenses and we would therefore encourage Scottish Borders Council to follow this approach to reduce the regulatory burden for operators.

Temporary exemptions

At 10.1, we support the Council's policy not to grant temporary exemptions but to also keep this under review. If temporary exemptions are taken forward at a later date, then any additional conditions in place should apply to all types of short-term let in the region, including those with temporary exemptions.

2. Do you agree with the proposed additional conditions set out by Scottish Borders Council?

Yes

No

Don't Know

If No, please detail reasons.

We believe that many of the additional conditions are unenforceable and will merely burden the licencing authority. If Scottish Borders Council cannot enforce these, it is incompetent and leaves the Council open to legal challenge. 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 would also highlight that multiple local authorities have redesigned their additional conditions based on meaningful consultation with the ASSC and would respectfully advise that Scottish Borders Council follow this approach.

Overall, the ASSC believe many of the additional conditions set out by Scottish Borders Council are 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 set out our specific concerns relating to the additional conditions proposed by Scottish Borders Council 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).

The language attached to the additional conditions 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 SBC 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?

Privacy and security

The Council also repeat the same language 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.

Noise control in flatted premises

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](#)). 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.

Applying a condition that the licence holder must ensure that bedrooms, living room and hallway fit and maintain carpets 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.

While we note that the Council state that “reasonable steps” 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.

On amplified music, Scottish Borders 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.

Littering and waste disposal

While operators can advise guests of matters including refuse collection day, they cannot compel them to comply. On a more practical point, we are dealing with individuals in the area 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 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?

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 Scottish Borders 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, 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.

Guest Safety Additional Conditions

A short-term let relates to the provision of accommodation to a guests. Accommodation means any building or structure, or any part of that building or structure, that is being let out to visitors. Both mandatory and additional conditions should concern matters directly pertaining to short-term lets. Many of the proposed additional conditions, especially in regard to those for guest safety, clearly do not relate to the provision of accommodation.

Legionella risk assessment – spa pools/hot tubs

There is already existing legislation in relation to hot tubs and spa pools which renders this condition unnecessary.

Guest safety – swimming pools and ponds

This is not an activity pertaining to the provision of accommodation.

Risk of Carbon monoxide – barbecue huts

This should be covered by fire safety regulations so another unnecessary duplication which can be removed.

Guest safety – provision and use of watercraft

If any short-term let operator in the Scottish Borders provides watercrafts to guests, this would be covered by such matters as public liability insurance so does not need to be included in additional conditions. The provision and the use of watercraft is an entirely different activity to short-term letting. We note the reference to advice and guidance from MCA, RoSPA and the Scottish Canoe Association which underlines this point.

Guest safety – provision of bicycles

Short-term letting concerns the provision of accommodation to guests so this proposed additional condition should be removed.

Guest safety – outdoor play equipment

Short-term letting concerns the provision of accommodation to guests so this proposed additional condition should be removed.

3. Do you think the fee structure is fair

Yes

No

Don't Know

Any comments about the Fee structure?

We would answer with a 'caveated yes' to this question. While the figures appear reasonable as they fall broadly in line with the BRIA range estimates provided by the Scottish Government, the cost for a licence should be the same for all types of short-term let, whether homesharing/homeletting or secondary letting, considering that the same checks will be carried out at these properties. If not, we would request an explanation as to why a distinction has been made between the two and the reasons for this.

Going forward, 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 Scottish Borders Council.

4. Do you have any final thoughts about Short Term Lets in the Scottish Borders.

Self-catering properties have been a longstanding presence in communities for generations, especially in rural communities like we have in the Scottish Borders, providing an economic boost for local areas and enhance Scotland's tourist accommodation offering.

For context, it should be remembered that 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 – and locally, self-catering is worth £30 to the Scottish Borders.**

With the importance of ensuring a sustainable recovery following Covid, and the significance of this measure for the livelihoods of our members in this region, we would encourage Scottish Borders Council to work as closely as possible with the sector with these regulations. We need to work together to minimise the regulatory burden on small business, especially due to the cost crisis affecting families and businesses throughout the country.

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