

SHORT-TERM LETS WORKING GROUP: MEETING 2

PAPER 6: ASSC PAPER ON DEFINITIONS

The Scottish Government is circulating this paper provided by, and at the request of, the ASSC.
The views expressed in this paper are those of the ASSC.

Bed & Breakfast: A Definition

A bed and breakfast is a small lodging establishment that offers overnight accommodation and breakfast. Bed and breakfasts are often private family homes and typically have between four and eleven rooms, with six being the average. In addition, a B&B usually has the hosts living in the house¹.

Guesthouses and bed & breakfasts offer:

- Accommodation in a private house, usually run by the owner. With lots of personalised touches, great service and a warm welcome, make sure you make the most of your host and ask for their insider tips on places to visit, things to do, and walks in the area.
- A traditional Scottish breakfast (haggis optional) or full continental, which will include cold meats, cheese, fresh fruit, and bakery items.²

A B&B is a regulated small inn subject to state or local lodging laws³.

A true B&B is typically independently owned, and the owner lives on property or nearby, provides daily breakfast and housekeeping. Conversely, when you rent a home rented online through Airbnb, you might have to cook and clean for yourself, and you might never see your host.

It should be noted that the majority of B&Bs (76%) are classed as private/residential properties (Use Class Order 9). Some B&Bs will be registered as Use Class Order 7 (i.e. Guest House), and would have applied for change of use planning permission to do so.

The Town and Country Planning (Use Classes) (Scotland) Order 1997

Class 7. Hotels and hostels

Use as a hotel, boarding house, guest house, or hostel where no significant element of care is provided, other than premises licensed for the sale of alcoholic liquor to persons other than residents or to persons other than persons consuming meals on the premises and other than a use within class 9 (houses).

Class 9. Houses

Use—

(a) as a house, other than a flat, whether or not as a sole or main residence, by—

(i) a single person or by people living together as a family, or

¹ https://en.wikipedia.org/wiki/Bed_and_breakfast

² <https://www.visitscotland.com/accommodation/bandbs-guesthouses/>

³ <https://eu.usatoday.com/story/travel/hotels/2020/01/24/airbnb-vs-b-b-whats-difference-and-which-is-better-for-you/4552257002/>

(ii) not more than 5 residents living together including a household where care is provided for residents;

(b) as a bed and breakfast establishment or guesthouse, where at any one time not more than 2 bedrooms are, or in the case of premises having less than 4 bedrooms 1 bedroom is, used for that purpose.⁴

Self-Catering: A Definition

A self-catering holiday home or cottage in Scotland can be defined as a self-contained property offering furnished accommodation for visitors who are also provided with the means to prepare and cook their own meals⁵. Self-catering offers different styles of accommodation from one-bedroom studio apartments and flats in bustling city centres to a country estate house with 5 or 10 bedrooms. Self-catering accommodation is regulated in terms of fire, health and safety.

Self-Catering Accommodation is defined as:

2. Any lands and heritages –

a) which are not the sole or main residence of any person; and b) which either –

i) are made available by a relevant person for letting, on a commercial basis and with a view to the realisation of profit, as self-catering accommodation for short periods amounting in the aggregate to 140 days or more in the financial year; or

ii) if they have not been made so available for letting in that year, are intended by a relevant person to be made so available for letting in that year and the interest of the relevant person in the lands and heritages is such as to enable him to let them for such periods.”⁶

If a property is available for let for under 140 days means the property is in the Council Tax system; available for let for over 140 days places the property in business rates.

To qualify as trading businesses under the Furnished Holiday Let (FHL) tax rules, a property must be available for let for 210 days and actually let for 105 days.

Self-catering properties fall under Use Class Order 9, or in the case of a flat, Sui Generis.

Airbnb: A Definition

Airbnb provides a platform for hosts to accommodate guests with short-term lodging and tourism-related activities⁷. Airbnb is a shortened version of its original name, AirBedandBreakfast.com.

Airbnb is a lightly regulated home-sharing site that lets almost anyone list accommodation for rent.

The second "B" in B&B (as in "breakfast") is the biggest distinguishing feature. A traditional B&B provides breakfast as standard, while typically an Airbnb does not, instead providing facilities for guests to make breakfast.

⁴ <https://www.legislation.gov.uk/uksi/1997/3061/schedule/made>

⁵ <https://www.embracescotland.co.uk/holiday-cottages/self-catering/>

⁶ https://www.saa.gov.uk/wp-content/uploads/2017/04/Self-Catering-Units_R2017_CPC17.pdf

⁷ <https://www.thestreet.com/lifestyle/travel/how-does-airbnb-work-14714337>

Airbnb is technically an online travel agency. Many professionally run B&Bs and self-caterers market their businesses through Airbnb.

William Audland QC of 12 King's Bench Walk Chambers, one of the UK's top specialists in personal injury and package travel law, has highlighted the fact that Airbnb's small print avoids any responsibility for the safety - and even the legal compliance - of the accommodation it offers. "Airbnb's position starkly contrasts with more traditional holiday letting businesses which must comply with coronavirus regulations as well as other more general health and safety regulations... Airbnb... circumvents this by virtue of its stated position as a 'platform' offering short term lets, disavowing itself of any responsibility for the listings..... By contrast to more traditional... holiday letting contracts, which are subject to both mandatory regulatory compliance and a far easier liability regime, consumers appear to be in a substantially riskier position in booking accommodation through Airbnb"⁸

REGULATIONS AND GUIDANCE ASSOCIATED WITH 'TRADITIONAL' SELF-CATERING AND B&B ACCOMMODATION IN SCOTLAND

The following table (**overleaf**) sets out the key requirements in place for self-catering and B&B accommodation in Scotland and identifies whether this is a legal requirement or guidance for each.

VisitScotland operate a Quality Assurance scheme which asks businesses to confirm they comply with their statutory obligations; health & safety/ fire regulations etc. However, they do not list the specifics nor check everything is in place (though the business owner/manager does sign up in commitment to having these in place and if any legitimate concerns regarding lack of compliance were raised they would be omitted from the scheme.

Members of the ASSC are required to make an annual declaration confirming their Commitment to Quality, the ASSC's Quality Assurance scheme. This is enshrined in the Members Operating Agreement, along with the Code of Practice which signposts members to legal compliance and best practice. This is a self-regulatory scheme, which comes at no additional cost to members.

⁸ <http://www.bandbassociation.org/QC-report-Airbnb-Dec20.htm?fbclid=IwAR2xXQDBLa2JTQ6SonDD5EC5Q116dR-tlvH8Cv4UYVxarGd6WWxyHTSoFvE>

PAPER FROM ASSOCIATION OF SCOTLAND'S SELF-CATERERS

Requirement	Legal or Guidance	Self-catering	B&B	Additional Comments	Short-term Lets Mandatory conditions
Property Evaluation – General risk assessment to create a safe environment	G	Y	Y	Identify potential Hazards for guests and employees and precautions to ensure safety	
Gas Safety Certificate	L	Y	N	Landlords are required to ensure gas appliances are safe and have a gas safety check by a Gas Safe Engineer. Certificate must be renewed annually.	
Fire Safety and Mains Wired Smoke Alarms	L	Y	Y	The Fire (Scotland) Act 2005 ('the 2005 Act'): Requires all commercial premises to conduct a fire risk assessment and put in place appropriate mitigations. It is all accommodation providers' legal obligation to comply, regardless of whether they are amateur or professional hosts. The Scottish Fire and Rescue Service ('SFRS') is the enforcing authority. ⁹ There is different compliance for B&Bs and self-catering, and indeed different sizes of properties, proportionately reflecting the different accommodation models.	
Carbon Monoxide Alarms	L	Y	Y	CO detectors must comply with BS EN 50291-1+A1:2002 Hard-wired or wireless installations - applicable European directives.	
Food safety hygiene	L	N/A	Y	Businesses serving food (including breakfasts) must comply with <u>food safety legislation</u>	

⁹ <https://www.gov.scot/publications/practical-fire-safety-guidance-existing-premises-sleeping-accommodation/>

PAPER FROM ASSOCIATION OF SCOTLAND'S SELF-CATERERS

Requirement	Legal or Guidance	Self-catering	B&B	Additional Comments	Short-term Lets Mandatory conditions
Electrical safety	L	Y	N	From December 2015 Scottish landlords need an Electrical Installation Condition Report (EICR) for new tenancies: a check of the fixed wiring in the property (which lasts 5 years). Holiday home owners have a legal obligation to ensure that electrical appliances are in safe condition for the use of guests. The Electricity at Work Regulations 1989 recommends that every electrical installation is subjected to periodic inspection and testing ¹⁰ .	
Portable Appliance testing (PAT Testing)	G	Y	N	Landlords are legally required to have PAT testing carried out on any electrical appliances provided in a property (including ovens, fridge freezers and other white goods). There is no legal requirement for holiday home owners, but annual PAT testing is best practice and recommended by the ASSC.	
Leigonella risk assessment	G	Y	N	As a provider of self-catering accommodation, you must ensure that the risk from exposure to legionella in your premises is properly controlled. To that end it is advised that you identify and assess the risk from exposure to legionella to your own staff, guests and customers, and any other people working in your premises, and introduce appropriate measures to control any risk. It is also advised that you review your legionella risk assessment annually. Spa pools and hot tubs pose a significant risk of legionella and owners of properties with a spa pool or hot tub must carry out a legionella risk assessment and implement safety measures ¹¹ .	

¹⁰ <https://www.hse.gov.uk/pubns/indg231.pdf>

¹¹ www.hse.gov.uk/legionnaires/spa-pools.htm

PAPER FROM ASSOCIATION OF SCOTLAND'S SELF-CATERERS

Requirement	Legal or Guidance	Self-catering	B&B	Additional Comments	Short-term Lets Mandatory conditions
Furniture and furnishings	L	Y	Y	The Furniture and Furnishings (Fire) (Safety) Regulations 1988 apply to all self-catering properties: holiday home owners must ensure that furniture supplied in the property is safe. Boshers Ltd have a useful blog post on Fire Safety of Furniture and Furnishings in your Holiday Home .	
Covid-19 Cleaning Guidelines	G	Y	Y	Self-Catering and B&B accommodation have protocols in place to ensure hygiene and minimise risk ¹² , endorsed by the Scottish Government.	
Control of substances hazardous to health	G	Y	N	If you provide cleaning products such as bleach and oven-cleaner in the house, or store chemicals for the swimming pool or hot tub on site, it's good practice to complete a COSHH (Control of Substances Hazardous to Health) assessment.	
Certification and Assessment Schemes	G	Y	Y	There are Quality Assurance schemes that operators can sign up to, such as Quality in Tourism, (Safe, Clean and Legal scheme) ¹³ . ASSC recommends that members sign up to this scheme to ensure compliance.	
Accessibility and non-discrimination	L	Y	Y	These requirements apply under the Equality Act 2010 (for example, this requires businesses to accept any lawful enquiry that can pay)	

¹² <https://www.assc.co.uk/policy/cleaning-protocols-for-self-catering-properties-in-the-context-of-covid-19/>

¹³ <https://www.qualityintourism.com/quality-assessment/safe-clean-and-legal>

PAPER FROM ASSOCIATION OF SCOTLAND'S SELF-CATERERS

Requirement	Legal or Guidance	Self-catering	B&B	Additional Comments	Short-term Lets Mandatory conditions
Code of Conduct for Short-Term Letting Operators and/or their Agents	G	Y	N	The ASSC Code of Conduct ¹⁴ was developed alongside the Scottish Government Expert Panel on the Collaborative Economy. It comes with a Policy Recommendation Paper, which sets out how the vital self-catering sector in Scotland can be improved for customers, hosts, and all others involved. Members of the Short-Term Accommodation Association (STAA) also sign up to an equivalent Code of Conduct ¹⁵ . These members include online platforms.	
Energy Performance Certificate (EPC-12)	L	Y	N	Self-catering properties must have an EPC ¹⁶ . An EPC is not required where only a room within a building (such as a B&B).	
Repairing Standard	L	N	N	The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019: holiday lets were formally exempted from this legislation, after much discussion with the Scottish Government. B&Bs are also exempt.	

¹⁴ <https://www.assc.co.uk/policy/code-of-conduct/>

¹⁵ <https://static1.squarespace.com/static/592576e4b8a79b7c470261cb/t/5e7b83e9223c2f20ac35c9d8/1585153001941/STAA+code+of+conduct+-+June+2019.pdf>

¹⁶ <https://www.gov.scot/publications/energy-performance-certificates-for-holiday-lets-guidance/>

PAPER FROM ASSOCIATION OF SCOTLAND'S SELF-CATERERS

Requirement	Legal or Guidance	Self-catering	B&B	Additional Comments	Short-term Lets Mandatory conditions
Private Water Supplies	L	Y	Y	Private Water Supplies (Regulations) 2006: You must notify Environmental Health when letting a property on a self-catering basis so that they can test the water to check that it is safe for guests. You must display the Drinking Water Supply Important Information Poster which can be obtained from your local Environmental Health office. You must provide details of the supply in publicity information or correspondence which is accurate and does not mislead guests.	
Insurance	G	Y	Y	Holiday let insurance is specialist insurance that covers holiday homes that are let to paying guests as well as friends and family on a short-term basis. Policies typically cover public liability, accidental damage, loss of rent as well as periods when the property is unoccupied. A standard home insurance policy is not sufficient to cover a holiday let.	
Anti-social Behaviour	L	Y	N	Existing powers are available to local authorities. This includes Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004. The Scottish Government introduced the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 that granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use.	

Fiona Campbell
ASSC

March 2021