

Institute of Licensing submission: Statutory licensing scheme for all visitor accommodation providers in Wales

Consultation response

The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK with 12 regions including Wales, Scotland, Northern Ireland and 9 regions in England. IoL membership is broad with just under 5,000 members across public regulatory, private and industry practices, and our objectives are to raise the professionalism of licensing in all sectors across all public regulatory licensing regimes.

We have relied on our members in Wales to compile this response, which supports the views presented by the Wales Licensing Expert Panel which is part of the Directors of Public Protection Wales (DPPW).

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Deadline 17th March 2023

Consultation response form

Question 1. Do you agree or disagree with establishing a licensing scheme as described for all visitor accommodation in Wales?

Agree

What are the reasons for your answers? What impact, positive or negative, do you think a statutory licensing scheme for all visitor accommodation will have?

The IoL would support establishing a statutory scheme for all visitor accommodation in Wales. This will introduce a level playing field across the sector by introducing consistent enforceable safety standards.

The IoL would welcome further engagement on the merits of a licensing scheme rather than a registration scheme.

Question 2. If you disagree with the proposal to establish a licensing scheme, do you agree with the creation of a registration scheme for all visitor accommodation in Wales?

✓ Neither agree or disagree

What are the reasons for your answers? What impact, positive or negative, do you think a registration scheme for all visitor accommodation will have?

IoL supports the DPPW recommendation that WG establish a licensing scheme for all visitor accommodation in Wales and not a registration scheme.

Question 3. Do you agree or disagree that introducing a statutory licensing scheme as described will ensure a level playing field for all accommodation providers operating in Wales?

✓ Agree

What are the reasons for your answers?

IoL would support establishing a statutory scheme for all visitor accommodation in Wales. This will introduce a level playing field across the sector by introducing consistent enforceable safety standards.

Question 4. Do you agree or disagree that the Welsh Government needs a register of accommodation providers in Wales to know who is operating in the industry?

✓ Agree

What are the reasons for your answers?

We would agree with the proposals to establish a register of accommodation providers in Wales.

A register would provide clear information about accommodation providers, and could enhance intelligence and improve communication to the sector.

A licensing scheme, with publicly accessible information would be the preferred option.

We recommend engagement to discuss how such register would work in practice and to enable licensing authorities time to implement procedures and processes to maintain the register with all required information and data controls.

Question 4a. Do you agree or disagree that local authorities need a register of visitor accommodation providers in Wales to know who is operating in the industry?

✓ Agree

What are the reasons for your answers?

See above answer to Question 4

Question 5. Do you agree or disagree that introducing a statutory licensing scheme will ensure an effective platform for communication between the Welsh Government and local authorities and providers of visitor accommodation in Wales?

✓ Agree

What are the reasons for your answers?

A statutory licensing scheme across Wales will ensure that all industry operators are licensed and subject to the relevant requirements, providing consistent standards.

A licensing scheme will enable effective communications between licensing authorities and the Welsh Government in relation to licensed visitor accommodation providers, and applications which have been refused or revoked.

Consideration will need to be given to the practical and resource implications for licensing authorities amid diminishing Local Authority resource.

Question 6. Do you agree or disagree that introducing a statutory licensing scheme will ensure enhanced confidence in the visitor accommodation and accommodation providers in Wales?

✓ Agree

What are the reasons for your answers?

A statutory licensing scheme will ensure consistent standards across visitor accommodation providers which in turn will enhance confidence in the visitor economy. This has been seen in other areas such as in food safety through the mandatory Food Hygiene Rating system.

A public register of visitor accommodation, made freely available online and in apps, combined with public awareness campaigns would enable the public to check the register before booking accommodation. This is demonstrated by similar schemes such as the Food Hygiene Rating Scheme.

Question 7. It is our view that a statutory scheme should be delivered on a hybrid basis, taking a national approach to core elements such as registering providers and processing applications, with enforcement to be undertaken by local authorities as required. Do you agree or disagree with this?

✓ Agree

What are the reasons for your answers?

IoL support the DPPW response that a statutory scheme should be delivered on a hybrid basis with a national approach to registering providers and processing application.

If a single licensing authority is set up, joint enforcement with the national body would be the preferred approach to reduce any overwhelming enforcement burdens on LAs. This joint enforcement would enable local intelligence and circumstances to be taken into account. A joint enforcement approach has worked well in the private rented sector between Rent Smart Wales and LAs where LAs undertake any visits/inspections as required.

DPPW also suggest WG consider where within the different LA Department there are the strongest synergies with this enforcement, namely Tourism, Licensing or Housing Teams. The implications on planning enforcement would also need to be considered if this statutory licensing scheme is introduced. It should also be noted that there are existing legislation frameworks that cover holiday accommodation, such as the Health and Safety at Work etc. Act and fire safety legislation; hence any new licensing scheme would need to complement the existing legislative provisions.

DPPW state that significant additional resources would be needed for LA to undertake these additional enquiries and enforcement role. In addition, currently LAs across the UK have been experiencing recruitment challenges so if the enforcement is passed to LA even with sufficient additional financial resources, there may still be a resource shortage within LA workforces, particularly in relation to relevant skills and suitable qualifications and/or experience to fulfil enforcement roles.

Training will be essential and will require funding for LAs.

Question 8. It is proposed that all visitor accommodation is considered within the scope of a statutory scheme. Do you agree or disagree with this?

✓ Agree

What are the reasons for your answers?

If the intention of a statutory scheme is to achieve consistent standards across the sector, then the starting point should be to include all visitor accommodation with clearly defined terms. See further comments in answer to Question 9

Question 9. Can you identify any visitor accommodation that should be exempt from a statutory scheme and what are the reasons for your answer (e.g. accommodation that is used solely for education purposes or vulnerable groups)?

There may be some visitor accommodation that could be considered for exemption from any licensing scheme, but consideration should be given to ensuring minimum safety standards regardless. Any exemptions should be clearly defined and we would welcome further discussion and engagement if it is proposed to include exemptions or exceptions.

DPPW point out that the implementation of a statutory scheme should not undermine the proposals in the recent consultation on the discretionary visitor levy for local authorities, for example if some visitor accommodation is excluded from a licensing but within the scope of a visitor levy scheme.

There is however a crossover between holiday accommodation and the regular PRS that would also require consideration by WG. LAs have experienced anecdotally that some landlords appear to be masquerading as Air BnB owners (or other bookings website such as booking.com) and taking regular tenants on a nightly rate in order to avoid existing housing legislation. In addition DPPW are also aware of property owners claiming that tenants are on licence/lodgers and they live at the property, keeping one room empty, when they have never occupied it. These scenarios would need to be addressed by any new licensing scheme.

We support the recommendation from DPPW for excluding visitor accommodation providers from being able to obtain a licence where the premises forms part of a house in multiple occupation (HMO) so this would exclude a flat in a converted building (Housing Act 2004 s257), a bedsit or a room in a shared house. Not only may this present unsatisfactory visitor accommodation, but it would also complicate the existing enforcement processes around HMOs.

WG may also want to consider including house-swapping schemes where no financial transactions occur.

DPPW would suggest that consideration be given to existing enforcement activities for accommodation providers and the remit of the HSE in this area.

Additional information should be provided to clarify the links with the existing quality grading schemes and verification scheme for visitor accommodation operated by Visit Wales.

Question 10. We are proposing that whoever is responsible for the letting of the accommodation for holiday purposes on caravan and/or camping sites (i.e. the park owner or individual owner) should be required to obtain a licence. Do you agree or

✓ Agree

What are the reasons for your answers?

A fundamental element of most licensing schemes is a fit and proper test for licence holders. This helps to ensure consistent standards of licence holder and should assist in increasing confidence in the visitor economy. More fundamentally, it is important to ensure that those individuals in control of visitor accommodation are safe and suitable individuals.

Question 10a. Do you have any other comments relating to a statutory scheme and the caravan and camping sector?

We support the DPPW comments that in some areas in the UK including in parts of Wales Aire sites are becoming more common and would ask WG how they propose to consider these where the site owner offer limited infrastructure, such as hook- up connections in car parks.

There are no details in the consultation document on touring caravan sites. Certain sites allow recreational organisations to camp or caravan on land without a site licence or the need to apply for planning permission. In addition campsites can operate for 28 days per calendar year under permitted development rights. We would welcome clarification on the implications for these sites.

Wild camping has also increased in popularity especially in tourist hotspot areas and WG should consider the implications of introducing a statutory scheme so as not to cause displacement from licensed accommodation providers to encourage wild camping.

Question 11. We are proposing that a licence is required even if the visitor accommodation is operating infrequently (including one night per year). Do you agree or disagree with this proposal?

✓ Agree

What are the reasons for your answers?

While it is the case that some licensing schemes offer exemption based on occasional infrequent use, we support the DPPW in agreeing that a statutory scheme should apply to all operators even if the accommodation is operating infrequently as safety standards should still be maintained. This will need to be carefully considered to avoid the requirements becoming cost prohibitive for small scale accommodation providers.

DPPW also note that “winter let” is a legitimate use of holiday accommodation and should be permitted, but the new scheme should ensure that long term occupiers, however defined, should gain proper protection.

There should be a penalty for housing long term tenants without the benefit of these proper controls. Where a property becomes the “only of main residence” for the occupiers (Housing Act 2004, s254 and s259) it should fall outside the scope of visitor accommodation licensing, or there should be a need to notify the licensing body including proof that RSW and other schemes have been satisfied.

Question 12. Do you agree with the need for a limited licence for one-off or annual events?

✓ Agree

What are the reasons for your answers?

We support the DPPW view that there may be merit in this to meet demands for special

occasions or events which may occur. Available accommodation can be a limiting factor for some large events and have an impact on public transport provisions during the event.

Any two-tier scheme must be backed up with clear definitions of each licence to avoid ambiguity and there would be a need to ensure adequate time for applications to be properly processed.

There are similar provisions within other licensing frameworks, for example the provision for Temporary Event Notices (TENs) under the Licensing Act 2003. This will have resource and administrative implications for licensing authorities.

Question 13. We are proposing that a provider of visitor accommodation should supply the information / documentation below and be required to provide evidence / confirmation that they comply with the requirements as detailed below:

Scheme requirements

The initial view from stakeholders was that any application process for a licence should be online whereby visitor accommodation providers uploaded certain documents in addition to basic contact/property information. There was a general agreement that at the very least this should include confirmation of insurance, fire risk assessment and gas safety certificate.

Further evidence could include confirmation of appropriate planning permission being in place, proof of electrical safety, proof of water safety, (if private supply) and/or Food Hygiene rating (if serving food)). However, there was a recognition that there was a balance to be struck between ensuring safety and avoiding a process which is disproportionately onerous.

It is proposed that the licensing scheme will require visitor accommodation providers to provide certain details and upload evidence to demonstrate they comply with set requirements. It is proposed this information will include:

- name and contact address of owner
- phone, email and language preferences
- name of establishment
- address and postcode of visitor accommodation
- local authority area
- type of visitor accommodation (hotel, B&B, self-catering etc.)
- size of property/accommodation units
- maximum number of guests
- quality accreditations e.g., Visit Wales/AA grading (if provider has joined the scheme)
- confirmation of planning status (permissions including interaction with the new planning use classes, primary home, second home and short-term holiday let and any local controls introduced through amendments to the planning system)
- proof of insurance for visitor accommodation
- evidence of fire risk assessment
- proof of gas safety certificate
- proof of electrical safety (PAT testing)
- proof of water safety (if private supply)
- food hygiene rating (if serving food).

Do you agree or disagree with this proposal?

✓ Agree

What are the reasons for your answers?

We agree with the above proposal, although note that an EICR electrical certificate is a more robust standard of electrical testing than PAT testing, as it is an assessment of a property's fixed wiring and is a legal requirement for landlords. It may be that EICR is the appropriate standard for visitor accommodation generally, but that PAT testing is more appropriate for occasional or one off licences.

DPPW suggest that in addition, safety certification on fitting a solid fuel appliances and its annual required maintenance, such as sweeping of chimney flues, etc should also be included.

DPPW also ask for evidence of a Legionella risk assessment, evidence of the operation of hot tubs, evidence of reduced zoonosis risks, such as 21 day clearance of animals off camping fields, confirmation of any other activities present on the site, such as petting farms, etc., and confirmation of appropriate waste management arrangements, such as

storage arrangements and collection contracts should be included.

Question 14. We are proposing that inspections are carried out on a 1:50 ratio using a risk-based approach and additional inspections in response to customer complaints or other concerns brought to the attention of the licensing authority. Do you agree or disagree with this proposal?

✓ Disagree

What are the reasons for your answers?

IoL supports the DPPW response on this question:

DPPW would endorse using a risk-based approach for an inspection regime as priority should always be given to higher public and safety risk premises.

However, we feel that this approach would need be proportionate and may be more effectively directed only in response to customer complaints or other concerns raised. This would be similar to the current legislative framework in place for the private rented sector in Wales.

To be truly intelligence led, all relevant LA departments and external agencies (Fire Service, HSE etc) would need to feedback information to the Licensing Authority. DPPW feel it would be difficult to specify an inspection ratio without full evaluation of the evidence base. If WG were minded to introduce an inspection ratio DPPW would recommend a specific risk assessment and frequency of inspection rating be considered, for example as in place under food safety and H&S legislation.

DPPW would agree with the need to avoid duplication with any other type of statutory inspection which may take place and to ensure that 'inspectors' for any statutory scheme are suitably trained, qualified and have the authority to enforce compliance if required.

DPPW would strongly recommend that if any additional enforcement or inspection regime has implications for local authority's that this comes with sufficient resources, as there is no current capacity for local authority's to take on additional responsibilities.

Question 15. Do you agree with the principle that visitor accommodation providers that do not comply should be subject to enforcement measures?

✓ Agree

What are the reasons for your answers?

Any licensing regime requires compliance and enforcement measures to be truly effective. In most cases a range of sanctions and enforcement tools are available to regulators. This could include the ability to review a licence and then where the evidence supports it, to vary a licence (to include conditions or restrictions), suspend (to while improvements are made), or to revoke the licence.

DPPW reports concerns from a noise, waste management and anti-social behaviour (ASB) point of view, particularly around use of holiday accommodation as “party houses”. LAs routinely receive complaints about noise and ASB from holiday accommodation which is difficult to address under the current legislative framework due to the transient nature of the holiday visitors and unsocial hours arrival times. DPPW would recommend WG addressing these concerns as part of the licensing scheme.

Question 16. Do you agree that a fit and proper person test or similar should be included as part of the scheme requirements for all visitor accommodation providers?

✓ Agree

What are the reasons for your answer? What matters do you think should or should not be considered by the licensing authority when deciding if a person is fit and proper to be granted a licence?

Safeguarding should be an integrated part of any licensing scheme and the inclusion of a fit and proper person test or a similar requirement would normally be evident as part of the process.

Examples of other licensing schemes which operate a Fit and Proper Persons test include taxi and private hire drivers and we would recommend WG consider the IoL’s “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades” or similar as the criteria: [guidance-on-suitability-online-pdf-2.pdf \(instituteoflicensing.org\)](https://www.instituteoflicensing.org/guidance-on-suitability-online-pdf-2.pdf)

The latter fit and proper person test may be more appropriate for this scheme, particularly where accommodation is available as part of someone’s main dwelling with shared facilities; hence safeguarding would be imperative where the visitor and accommodation provider were in close proximity and under the same roof. This test is carried out via an enhanced DBS check and would entail additional costs for the accommodation providers, although a basic DBS check may be sufficient. Consideration would need to be given to the existing capacity to undertake and administer DBS checks.

Whatever fit and proper person test is implemented as part of the scheme we would recommend clear guidance specifying the relevant offences that would need to be considered by the Licensing Authority. In addition, if the Licensing Authority intends to refuse a licence WG will need to specify the applicant’s route to make representation on this decision and any subsequent appeal processes.

Question 17. We would like your views on whether all visitor accommodation providers should pay the same standard fee or should the fees be scaled (i.e. based on the type and size of the visitor accommodation)?

Consideration could be given to a scaled fees schedule based on the non-domestic rateable value of the premises as with other licensing regimes (e.g. the Licensing Act 2003). The fees should be set to cover LA costs for administering and enforcing the regime.

We support the DPPW recommendation that the fees are statutory with a mandatory review set in the legislation every few years to take account of changing costs. If the licences are to last indefinitely or for several years at a time, consideration should be given to an annual fee, payable on the anniversary of the licence issue date.

We would welcome the opportunity to discuss fees, and to understand how the application fee would be distributed between the single licensing authority and local authorities tasked with enforcement (if that is the preferred model).

Question 17a. Do you agree that all visitor accommodation providers should pay the same fee?

✓ Neither Agree or Disagree

What are the reasons for your answers?

See answer to Question 17. We would welcome the opportunity to engage with WG on the matter of fees.

Question 17b. Do you agree that fees should be scaled based on the size of the visitor accommodation?

✓ Agree

What are the reasons for your answers?

See answer to Question 17. We would welcome the opportunity to engage with WG on the matter of fees.

Question 18. In Question 12 we asked about Limited licences for one-off or annual events. Do you agree or disagree that providers could apply for a one-off licence at a reduced cost?

✓ Agree

What are the reasons for your answer?

IoL supports the proposal to offer a one-off licence at a reduced cost, however introducing limited licences would have additional administrative burdens and each licence type would need to be clearly defined.

Question 19. How often should a visitor accommodation provider be required to renew their license?

✓ Every 5 years

What are the reasons for your answer?

We support the response from DPPW who state that this frequency is in line with other similar licensing regimes, such as the Rent Smart Wales scheme. DPPW would also suggest there is a requirement included in the scheme for accommodation providers to ensure their details are kept up-to-date and to notify any changes, such as selling the accommodation or convictions.

We recommend that WG should also consider a licence 'for the life of the business' as provided within the Licensing Act 2003. In this case, applications can be made for the licence, either for set dates or on a permanent basis. This is balanced by the provisions which enable licences to be called in for review where the premises operation is causing concern. Additionally, this model provides funding through an annual fee payable on the anniversary of the licence issue.

Question 20. If the frequency of renewal is less often than annual, do you agree or disagree that visitor accommodation providers be required to do an annual review i.e. upload up-to-date evidence/confirmation that they comply with their licence requirements?

✓ Neither agree or disagree

What are the reasons for your answer?

We support DPPW who suggest that at the determined renewal time all document evidence is uploaded. It should also be specified that any changes to circumstances such as convictions should be notified at the time and not wait until renewal or review.

The scheme should also make it clear that any safety checks or insurance cover should be maintained for the duration of the licence period.

Question 21. We are proposing that as part of the licence application process, accommodation providers are asked to give their consent to the information they supply being shared between key authorities and partners for the purposes of communication, safety, compliance, enforcement and implementation of a visitor levy. Do you agree or disagree with this proposal?

✓ Agree

What are the reasons for your answer?

We agree with this proposal which is essential if the hybrid model is implemented with

joint enforcement between a national agency and local authorities.

Question 22. Do you agree or disagree with the proposal that all visitor accommodation providers should be required to display their licence number on all advertising/marketing materials and at their visitor accommodation and be subject to penalties if they do not comply?

✓ Agree

What are the reasons for your answer?

We agree with this proposal which is in line with other licensing regimes and provides immediate confirmation to visitors and to inspecting officers that the premises are licensed.

Question 23. Do you agree or disagree with the proposal that all online travel agents (OTAs), travel trade organisations, other booking and social media channels, marketing platforms and self-catering agencies SHOULD BE REQUIRED to display the licence number of the visitor accommodation they are promoting on their listings and/or adverts and be subject to sanctions if they deliberately or negligently advertise unlicensed visitor accommodation?

✓ Agree. Which sanctions do you think should be imposed in these circumstances?

What are the reasons for your answer?

We agree with this proposal. Furthermore, it would be useful if agents could also provide links to public registers for visitor accommodation providers.

Question 24. We would like to know your views on the effects that a statutory licensing scheme for all visitor accommodation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there may be? How could positive effects be increased, or negative effects be mitigated?

No Comment

Question 25. Do you have any insight or evidence on the impact of any different type of schemes that are already running, or approaches taken elsewhere in the world that you think the Welsh Government could learn from or implement?

We would refer you to the short term let licence scheme operating in Scotland. The

IoL would be happy to discuss this with you in more detail, and would include our expert licensing practitioners in Scotland to enable a thorough discussion about this scheme: <https://www.mygov.scot/short-term-let-licences/accommodation-needing-short-term-let-licences#:~:text=All%20short%2Dterm%20let%20accommodation,accommodation%20as%20their%20main%20home>

Question 26. Do you have any other comments on a proposed statutory licensing scheme for all visitor accommodation not covered in your answers to answers to any of the above questions?

We note that there is no published Regulatory Impact Assessment with the consultation and we would welcome sight of this to ensure any new burdens on the Council and businesses are considered.

Question 27. Is there anything else you wish to say which you think would help the Welsh Government proceed with their proposals?

IoL would welcome the opportunity to work with the Welsh Government in taking forward proposals and it determining the detail of any future licensing regime for visitor accommodation.

Which of the following best describes you. Please choose all that apply:

Professional body for licensing practitioners across the UK

Size of business (based on number of employees)

You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name

Sue Nelson

Organisation (if

Institute of Licensing

applicable)

If you want to receive a receipt of your response, please provide an email address.

Email address sue@instituteoflicensing.org

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