



Housing (Scotland) Act 2014

2014 asp 14

PART 4

LETTING AGENTS

Inclusion in the register

29 Register of letting agents

- (1) The Scottish Ministers must establish and maintain a register of letting agents (the “register”).
- (2) The register must contain an entry for each person entered in the register setting out—
 - (a) the name and address of the person entered in the register, and
 - (b) such information relating to that person as the Scottish Ministers may by regulations prescribe.
- (3) The Scottish Ministers must make the information contained in the register publicly available by such means as they consider appropriate.

30 Application for registration

- (1) A person may apply to the Scottish Ministers—
 - (a) to be entered in the register, or
 - (b) to renew that person’s existing entry in the register.
- (2) The application must—
 - (a) state the name and address of the applicant,
 - (b) state whether the applicant is—
 - (i) trading as a sole trader,
 - (ii) a partnership,
 - (iii) a company, or
 - (iv) a body with some other legal status,
 - (c) in the case where the applicant is a company registered under the Companies Act 2006 (c.46), state the company’s registered number,

- (d) in the case where the applicant is not a natural person, state the name and address of the individual who holds the most senior position within the management structure of the relevant partnership, company or body,
 - (e) state the name and address of any other person who—
 - (i) owns 25% or more of an applicant which is not a natural person, or
 - (ii) otherwise is (or is to be) directly concerned with the control or governance of the applicant’s letting agency work (whether or not the applicant is a natural person), and
 - (f) include such other information as the Scottish Ministers may by regulations prescribe.
- (3) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

31 Offence of providing false information in an application

- (1) It is an offence for a person, in an application under section 30, to—
- (a) provide information which the person knows is false in a material particular, or
 - (b) knowingly fail to specify information required by section 30(2).
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32 Decision on application

- (1) The Scottish Ministers must determine an application under section 30 in accordance with this section.
- (2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—
- (a) the applicant is a fit and proper person to carry out letting agency work,
 - (b) any other person who is required to be identified in an application by virtue of section 30 is a fit and proper person in relation to letting agency work, and
 - (c) the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.
- (3) Regulations under subsection (2)(c) may, in particular, prescribe—
- (a) the matters on which training must have been undertaken,
 - (b) the persons who must have undertaken training,
 - (c) qualifications which must be held by the applicant or other persons,
 - (d) the period within which training must have taken place.
- (4) An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.
- (5) The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).
- (6) Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—
- (a) they are considering refusing the application and their reasons for doing so, and

- (b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (7) In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (6)(b).
- (8) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—
 - (a) their decision,
 - (b) in the case of a decision to enter the applicant in the register, the date of entry in the register,
 - (c) in the case of a decision to renew an existing entry, the date of renewal, and
 - (d) in the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.
- (9) If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.
- (10) For the purposes of subsection (9) the date of final refusal is the date on which—
 - (a) the period mentioned in section 41(2) expires without an appeal being made,
 - (b) where such an appeal is made, the appeal is finally determined or abandoned.

33 Time limit for determining application

- (1) This section applies where a person (referred to in this section as the “applicant”) makes an application in accordance with section 30.
- (2) The Scottish Ministers must determine the application under section 32 within 12 months of receiving the application.
- (3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the Scottish Ministers, by such period as the Tribunal thinks fit.
- (4) The Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.
- (5) The applicant is entitled to be a party to any proceedings on an application under subsection (3).
- (6) The decision of the Tribunal on such an application is final.
- (7) If the Scottish Ministers do not determine the application within the period required by this section—
 - (a) on the day by which they were required to determine the application, they are to be treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and
 - (b) the applicant is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day unless—
 - (i) before the expiry of the period, the applicant made a subsequent application in accordance with section 30 to renew the applicant’s entry in the register, or
 - (ii) the applicant is otherwise removed from the register in accordance with this Part.

- (8) Where subsection (7) applies the Scottish Ministers must—
- (a) notify the applicant—
 - (i) that subsection (7) applies, and
 - (ii) of the day on which, in accordance with subsection (7)(a), they are treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and
 - (b) enter the name of the applicant in the register or, as the case may be, renew the applicant’s existing entry in the register.
- (9) Subject to the modifications in subsection (10), the applicant is for all purposes to be treated as a registered letting agent entered in the register or, as the case may be, whose entry has been renewed by virtue of section 32(2).
- (10) The modifications are—
- (a) section 38 does not apply,
 - (b) paragraphs (a) and (b) of section 39(1) are to be read as if for the words “no longer” there were substituted “not”, and
 - (c) subsections (1)(b) and (5)(b) of section 43 are to be read as if after the word “under” there were inserted “section 33(7)(b) or”.

34 Fit and proper person considerations

- (1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (4).
- (2) Material falls within this subsection if it shows that the person has—
- (a) been convicted of an offence—
 - (i) involving fraud or other dishonesty,
 - (ii) involving violence,
 - (iii) involving drugs,
 - (iv) involving firearms,
 - (v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),
 - (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),
 - (c) contravened any provision of—
 - (i) the law relating to housing,
 - (ii) landlord and tenant law,
 - (iii) the law relating to debt.
- (3) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).
- (4) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—
- (a) complied with any Letting Agent Code of Practice made under section 46,
 - (b) complied with any Letting Code issued under section 92A of the 2004 Act,

- (c) failed to comply with a duty applying to that person in accordance with section 36 to use a letting agent registration number,
 - (d) contravened any provision of any letting agent enforcement order issued under section 48,
 - (e) failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 48,
 - (f) failed to provide information in accordance with section 52 or 53(2)(d)(i),
 - (g) obstructed a person acting in the proper exercise of the persons' functions under sections 53 to 55,
 - (h) failed to comply with a requirement made by a person who is so acting.
- (5) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (4).

35 Fit and proper person: criminal record information

- (1) This section applies where the Scottish Ministers have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 34(2) is, or has become, inaccurate.
- (2) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers may have regard to the information which would be included in a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)) in relation to that person.