

SCHEDULE

Letting Agent Code of Practice

SECTION 1

Introduction

Background

1. This Letting Agent Code of Practice (the “Code”) sets out the standards expected of letting agents operating in Scotland in how they manage their business and provide their services.

2. Section 46 of the Housing (Scotland) Act 2014 (“the 2014 Act”) allows Scottish Ministers to set out a code of practice that all letting agents must comply with that covers:

- the standards of practice for those carrying out letting agency work;
- the handling of tenants’ and landlords’ money; and
- the professional indemnity arrangements to be kept in place.

3. The Code forms part of a broader regulatory framework for letting agents, which the 2014 Act also introduced. The framework’s main features are:

- a mandatory register for letting agents with an associated ‘fit and proper’ person test;
- powers for Scottish Ministers to set training requirements that must be met before an applicant can be accepted on to the register;
- a means of redress for breaches of the Code to the First-tier Tribunal for landlords and tenants; and
- powers for Scottish Ministers to obtain information, and powers of inspection to help them monitor compliance.

4. These measures strengthen regulation of the letting-agent industry in Scotland. Letting agents are important in ensuring the private rented sector is professional and well managed, and they help to provide the good-quality homes our communities need. The Code reflects much of the existing good practice in the industry. It will help raise standards (where this is needed), and help build a more effective private rented sector that meets the needs of tenants, landlords and letting agents.

Who does the Code apply to?

5. The Code applies to every person who carries out letting agency work in Scotland, which is defined in section 61(1) of the 2014 Act as:

“things done by a person in the course of that person’s business in response to relevant instructions which are—

- (a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy agreement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or
- (b) for the purposes of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).”

6. The Code will also help landlords and tenants understand the standards of practice they can expect from a letting agent; whether these standards have been met; and, where necessary, help to

resolve problems through the First-tier tribunal if they believe a letting agent has failed to comply with the Code.

What if a letting agent does not comply with the Code?

7. If a landlord or tenant (including former landlord or tenant) believes that a letting agent they have let a property through or from has failed to comply with the Code, they must notify the letting agent of this in writing (this includes electronic communications), so the letting agent can take action to resolve the issue. Some letting agents may also offer access to an independent alternative dispute resolution (ADR) service if they cannot resolve a complaint internally. If the landlord or tenant remains dissatisfied after raising their complaint with the agent, they can apply to the First-tier Tribunal (the “Tribunal”). In addition, Scottish Ministers may also apply to the Tribunal where they have concerns that a letting agent has failed to comply with the Code.

8. The 2014 Act enables the Tribunal to decide whether a letting agent has failed to comply with the Code. To help with this, the Tribunal will consider a variety of evidence from, for example, the letting agent, landlord, tenant, Scottish Ministers and other relevant organisations (such as trading standards). Depending on the nature of the complaint, the Tribunal may look at whether the agent’s own terms of business, policies and procedures comply with the Code and whether they have kept to them. A letting agent should therefore keep and maintain appropriate records to help demonstrate how they have complied with the Code.

9. If the Tribunal decides a letting agent has failed to comply with the Code, it must issue an enforcement order setting out the steps the letting agent must take to rectify the problem and by when. These steps may include issuing revised documents and making changes to previously agreed terms of business. An enforcement order may also require a letting agent to pay compensation.

10. If the Tribunal decides that a letting agent has failed to comply with the enforcement order, it must notify Scottish Ministers. Failure to comply with an enforcement order will be taken into account in considering whether a letting agent should be removed from the register. It is a criminal offence for a person who is not a registered letting agent to carry out letting agency work.

How do the requirements of professional bodies and other legislation relate to the Code?

11. There is a range of legislation that letting agents must comply with in how they do business. This includes Scottish, UK and European legislation and covers areas such as housing, consumer protection, financial services, consumer credit licences, contracts, title conditions, health and safety, data protection, immigration and equalities amongst others.

12. All letting agents must comply with the Code but some may also have specific commitments to meet the regulatory requirements of other bodies, such as the Financial Conduct Authority and Law Society of Scotland. In addition, letting agents may also have to comply with other codes if they belong to or are registered with other voluntary or industry bodies.

Using the Code

13. The Code has been structured to follow the lettings process – from taking instructions from a landlord, letting and managing the property to the ending of a tenancy (including any arrangements that follow).

14. Most letting agents offer a wide range of services to their customers. Where a letting agent provides a service set out in this Code they must ensure it is delivered in a way that meets these requirements and those of any other relevant legislation. This Code does not comprise legal advice to any party.

15. In the Code “you” means a letting agent.