

Final Business and Regulatory Impact Assessment

Title of Proposal

Housing (Scotland) Act 2014
Section 28: Private Rented Housing: Enhanced Enforcement Areas

Purpose and intended effect

- **Background**

1.1 In May 2013, the Scottish Government published its first strategy for the private rented sector in Scotland, "*A Place to Stay, A Place to Call Home*". The Strategy sets out an ambitious agenda, aimed at improving management standards and quality of service for tenants and prospective tenants, as well as enabling growth and investment in existing and new private rented stock.

To ensure standards continue to rise in the sector, the Scottish Government is determined to support the development of a more targeted and effective regulatory framework. It wants to work with good, professional landlords to help them prosper, but is determined to tackle the practices of landlords who fail their tenants, harm the communities where they operate and undermine the reputation of the sector as a whole.

The Strategy sets out 10 key actions that the Scottish Government will take forward with its partners and stakeholders. One of those is to work with COSLA, individual local authorities and landlords to refine the landlord registration regime, to identify new means of targeting tougher enforcement action on the worst landlords in the sector.

The Scottish Government undertook to examine how the powers available to local authorities might be enhanced, enabling them to take stronger, targeted enforcement action in the most vulnerable communities.

As part of that commitment, the Scottish Government included provisions in the Housing (Scotland) Act 2014, to give local authorities a range of new discretionary powers. These supplement existing powers associated with landlord registration and enforcement of the repairing standard, and place new requirements on landlords themselves.

They include:

Powers for local authorities to:

- make a third party application to the Private Rented Housing Panel (PRHP) for the Panel to determine whether a landlord has failed to comply with the Repairing Standard;
- enter a property to enable the local authority to decide whether to make a

third party application to the Panel;

- pay an owners share of Tenement Management Scheme costs, where the owner is either unable or unwilling to do so, or can't be identified or found; and
- recover payments made by the local authority in relation to the Tenement Management Scheme.

Duties on landlords to:

- install carbon monoxide detectors in properties that have a carbon emitting appliance; and
- carry out electrical safety inspections every five years.

The Scottish Government considers that these powers give local authorities the ability to deal with all but the most exceptional cases of poor conditions in the private sector. Where such exceptional cases arise, section 28 of the Housing (Scotland) Act 2014, enables local authorities to apply for further powers by having an affected area designated as an **Enhanced Enforcement Area (EEA)**.

Section 28(1) of the Housing (Scotland) Act 2014, places a duty on Ministers to lay regulations for a scheme enabling local authorities to apply for enforcement powers to deal with an area suffering from high levels of poor conditions in the private rented sector. 28(2) specifies the characteristics that an area must exhibit if it is to be designed as an EEA. They are:

- I. an overprovision or a concentration of private rented housing that appears to the local authority to be:
 - of a poor environmental standard;
 - overcrowded; and
- II. a prevalence of antisocial behaviour, as defined by section 81(4) of the Antisocial Behaviour etc. (Scotland) Act 2004

Very few areas will exhibit this exceptional combination of characteristics. Those that do will probably be small and have been subject to persistent and severe problems that have resisted a number of attempts to solve them, through the use of existing powers.

Before designating an EEA, the Government must have clear evidence that the area to be designated displays each of the characteristics. It will be for any local authority applying for a designation to satisfy itself that it has evidenced the criteria.

Section 28(2) also sets out that the regulations must provide:

“(a) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to-

- I. the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004

II. authority to inspect dwellings let by a landlord who is entered on that register.”

The discretionary powers would add to the tools that local authorities already have and would be targeted only at those areas characterised by a set of exceptional circumstances. The concentration of those issues would justify a response that would not be proportionate or reasonable elsewhere.

The discretionary powers are:

- providing for an additional check to evidence that the landlord is a Fit and Proper Person by giving local authorities the power to require landlords with properties in an EEA, to submit an enhanced criminal record check, as part of the landlord registration process;
- a power to require landlords or their agents to produce the following documents or evidence for inspection :- current insurance certificates, evidence that the tenant has been provided with a Tenant Information Pack, evidence that the landlord has provided their tenant with a copy of the Energy Performance Certificate, and the gas safety and maintenance record for a property with a gas appliance; and
- a power to enter rented properties in the EEA to ensure that the accommodation is safe, well managed and of good quality.

The Regulations prescribe the purposes for which the additional discretionary powers detailed above can be used. These are:

- for the enhanced criminal record check to decide for the purpose of section 84(3) or (4) of the 2004 Act whether the relevant person is a fit and proper person
- for the provision of documents or evidence to
 - enable and assist the local authority to exercise any function under Part 8 of the Antisocial Behaviour (Scotland) Act 2004 (landlord registration)
 - ensure the safety and upkeep of the house
 - ensure that information is available to tenants and
- enable or assist the local authority to decide whether the house and the building of which it forms part are safe, well managed and of good quality.

- **Objective**

The overall objective is to introduce discretionary powers that will support local authorities to tackle some of the worst levels of private rented sector property condition and management standards, within areas suffering from poor environmental standards, overcrowding and a prevalence of anti-social behaviour. This contributes to the Scottish Government’s work on improving standards and quality within the private rented sector.

The objective fits with the Scottish Government’s strategic ‘Safer and Stronger Scotland’ objective. This helps local communities to flourish, becoming stronger, safer places to live and offering improved opportunities and better quality of life.

- **Rationale for Government intervention**

The Scottish Government's 2009 Review of the Private Rented Sector¹ provided a detailed primary evidence base on the sector's circumstances in Scotland and the Scottish House Condition Survey (SHCS)² estimates that there are potentially around 13,000 properties in the PRS that are in a serious state of disrepair.

Evidence has also been highlighted to the Scottish Government by local authorities, highlighting areas where high levels of poor quality PRS properties are causing environmental and antisocial behaviour issues

Consultation

- **Within Government**

We have consulted with a range of relevant Scottish Government Directorates including Housing, Better Regulation and Legal colleagues in order to inform the development of this draft Business Regulatory Impact Assessment.

We have also been working with local Government colleagues on an on-going basis, including local authority representatives, COSLA and the Association of Local Authority Chief Housing Officers.

- **Public Consultation**

A public consultation on section 28 of the Housing (Scotland) Act 2014 between 14 October 2014 and 12 December 2014.

On 29 October and 27 November 2014, two Enhanced Enforcement Area public consultation events were held in Glasgow and Edinburgh respectively. Attendees included local authority colleagues, legal representatives, housing advice agency staff, landlord/letting agent representatives, community groups, tenant support organisations and housing representatives.

33 written responses to the consultation were received: 13 from local authorities, 2 from bodies representing local authorities, 2 individuals, and the Chartered Institute of Housing (CIH Scotland), Glasgow and West of Scotland Forum (GWSF), the Salvation Army, Hillhead Community Council, Shelter Scotland and Scottish Fire and Rescue.

- **Business**

¹ [Review of the Private Rented Sector: Volume 1: Key Findings and Policy Implications](#)

² <http://www.scotland.gov.uk/topics/statistics/shcs>

General discussions have taken place with:

- Glasgow City Council
- Scottish Association of Landlords;
- Chartered Institute of Housing; and
- British Property Federation.

Specific discussions for the purposes of the BRIA took place with:

- Homes for Good (Susan Aktamel), a letting agent with properties in Glasgow and the West of Scotland.
- Big Property (Raj Joshi), a letting agent with properties throughout Glasgow

- Town And Gown (Michael Foote), a letting agent in St Andrews

The majority of consultation respondents were broadly supportive of the approach set out in the consultation paper. Some concerns were raised about local authorities' capacity and resources to use these discretionary powers. Three respondents suggested that the powers should include the ability to fine poor landlords in EEAs and require them to meet the costs of disclosure checks. Two respondents felt that it was unfair to increase landlord registration fees for landlords with properties within an EEA (although it should be noted that the consultation did not propose that this would be the policy).

Options

3.1 The consultation paper considered 2 main options for change. Separately, the option of making no changes was also considered.

- **Option One:** Do Nothing (no further regulatory action);
- **Option Two:** Implementation of regulations to meet the requirements of creating an Enhanced Enforcement Area **without** powers for recovery of costs and/or issuing of fines; or
- **Option Three:** Implementation of regulations to meet the requirements of creating an Enhanced Enforcement Area **including** powers to require landlords to meet the costs of enhanced disclosure checks.

OPTION ONE

Do Nothing (no further regulatory action)

Sectors and groups affected

Local authorities, landlords and tenants.

Benefits

Taking no further regulatory action would result in the statutory detail of Enhanced Enforcement Areas not being developed in secondary legislation. This would result in the status quo being taken forward and potentially the opportunity to 'wait and see' if existing legislation or other new legislation being introduced through the Housing (Scotland) Act 2014, helps to address specific geographical areas suffering from high levels of poor quality PRS housing and management standards.

However, Parliament agreed to the introduction of Enhanced Enforcement Areas in primary legislation, and that legislation requires Scottish Ministers to lay regulations in Parliament by 1 April 2015, Therefore, the option of 'do nothing' is not feasible and cannot be considered by the Scottish Government.

Costs

This option would not result in any further costs for the Scottish Government, as no further regulatory action would be required.

As EEAs would not be developed further in legislation, should this option be taken forward, no costs would be incurred by local authorities, landlords or tenants.

OPTION TWO

*Implementation of regulations to meet the requirements of creating an Enhanced Enforcement Area **without** powers for recovery of costs and/or issuing of fines.*

Sectors and groups affected

Local authorities, landlords and tenants.

Benefits

Implementation of option two would see the creation of Enhanced Enforcement Areas, which sets out the types of discretionary powers that local authorities would be able to implement. Section 28(2) sets out that the Scottish Ministers will specify in Regulations, the additional discretionary powers and the purposes for which these can be used. The powers that the Regulations provide are:

- providing for an additional check to evidence that the landlord is a Fit and Proper person by giving local authorities the power to require landlords with properties in the EEA to submit an enhanced criminal record check as part of the landlord registration process;
- a power to require existing registered landlords to produce documents for inspection (to include enhanced disclosure checks, current insurance certificates, evidence that the tenant has been provided with a Tenant Information Pack, evidence that the landlord has provided their tenant with a copy of the Energy Performance Certificate, and the gas safety certificates and maintenance record for a property with a gas appliance)); and/or

- a power to enter properties in the EEA to ensure that the accommodation is safe, well managed and of good quality.

Such additional powers would add to the tools that local authorities already have to tackle concentrations of PRS housing of poor standard. A local authority taking steps to designate an area as being of EEA status, demonstrates a willingness and commitment to raise property condition and management standards in an area.

It places additional requirements on landlords to demonstrate their compliance with the law, something that should not pose any difficulties for professional landlords operating within the area.

Consultation analysis shows broad support for these powers, although some doubt was expressed that the criteria to be met were too strict and that overcrowding may be hard to evidence. However these are the criteria that are specified in the Housing (Scotland) Act 2014. A number of respondents recognised that applications for EEA status should form part of a wider local authority strategy to tackle poor management and poor conditions in the PRS, and this was echoed in discussions with Glasgow City Council, who have a strategy in place in the Govanhill area of the city.

There are clear benefits for PRS tenants living within any area designated as being of an EEA status, with local authorities able to take additional action against poor quality landlords and inspect properties where it is expected that the tenants are residing in unacceptable living conditions but who, perhaps, are unwilling or unable to report such conditions.

Costs

Designation of an area as being of EEA status would have clear cost implications for the local authority area concerned. There would be a resource requirement in relation to preparing the evidence and submitting an application to Scottish Ministers in order to designate a geographical area as being of EEA status. Furthermore, appropriate financial and staffing resources would also be required in order to make use of the additional powers made available to the local authority, should an area within their locality receive such designation. However the Scottish Government would expect that this additional resource would help the local authority to save money in the longer term as the need for it to respond reactively to resolving continuing problems arising from poor standards in the sector should reduce over time. It is for local authorities to decide whether or not they wish to take forward such an application. There is no mandatory requirement for them to do so.

EEA discretionary powers would add to the tools that local authorities already have to tackle poor conditions and would be targeted only at those areas characterised by a set of exceptional circumstances and therefore it is not expected that local authorities will seek to make multiple applications for such area designation.

There should be very few cost implications for professional landlords operating within an EEA designated area. For example, such landlords should already have all relevant documents such as gas safety and maintenance records (where their property contains a gas appliance) and therefore be able to produce them easily, if required to do so by a local authority using the discretionary EEA powers. Costs

may arise if a landlord is required to produce an enhanced criminal record check, however such costs are expected to be minimal.

There will be no cost implications to PRS tenants living within an area designated as an EEA.

OPTION THREE

*Implementation of regulations to meet the requirements of creating an Enhanced Enforcement Area **including** powers to issue fines for non-compliance with the local authority's powers.*

Sectors and groups affected

Local authorities, landlords and tenants.

Benefits

The Scottish Government explored the implementation of option three which would see the same benefits provided as outlined in option 2. The intention was that in this option an additional power allowing the courts to fine a landlord in an area designated as an EEA who fails to comply with existing legislation or a request from a local authority in exercise of its enhanced powers. Examples of this could be a fine levied to a landlord who fails to provide a requested enhanced disclosure check or produce safety certificates that have been requested by a local authority.

Costs

Option 3 would see additional cost implications placed on landlords. However, such issuing of fines would only be levied against those landlords who are not complying with the law or are providing poor quality/unsafe living conditions to their tenants and therefore are not expected to impact on those landlords who provide good quality accommodation and management.

Section 28 of the Housing (Act) 2014 does not contain provision which would allow the creation of offences or permit the issue of fines. So these measures cannot be included in the Regulations and this option has been rejected.

4. Scottish Firms Impact Test

The consultation events held on 29 October and 27 November 2014 broadly raised the same issues that were identified in the consultation responses. Discussions centred more on the extent of the provisions, whether or not existing powers were being used effectively by local authorities and the relatively high bar of evidence set by the Housing (Scotland) Act 2014. The financial impact of the proposals did not form a major part of the discussions.

- i) The Scottish Government worked closely with the Scottish Association of Landlords to identify firms who would be interested in contributing to a discussion for the purposes of this BRIA, but very few firms

responded to the request. This supports the Scottish Government's view that the proposals would have very little impact on responsible landlords. The consultation responses and discussion at the consultation events have confirmed our view that designation of an area as an EEA would be used to tackle only the most difficult and extreme circumstances.

Any financial impact would be felt by unregulated landlords, and, as they are not part of any representative bodies, and difficult to identify, they could not be reached. Scottish Government officials were able to speak to the following:

- **Homes for Good** - could see little or no impact on their business from these proposals. Their properties are properly regulated and already have all the certificates required.
- **Big Property** - also could see no impact on properly regulated landlords. felt strongly that landlords who were at fault should have to bear the costs.
- **Town and Gown** – this letting agent in St Andrews deals mainly with Houses in Multiple Occupation (HMOs) which are not affected by this legislation, so there would be no financial issues for them.

We have had no representations to suggest that there would be any significant financial impact from the proposed legislation.

Competition Assessment

Full consideration has been given to the Competition and Markets Authority Competition Assessment criteria. The Scottish Government is satisfied that there is no competition aspect to these proposals. The results from the Competition filter questions below confirm these assumptions.

Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No

Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers?

No

Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in?

No

Will the proposal reduce suppliers' incentives to compete vigorously?

No

Test run of business forms

Implementation of the options examined in this Business Regulatory Impact Assessment for the Enhanced Enforcement Area Regulations does not create any new business forms.

5. Legal Aid Impact Test

It is not expected that implementation of section 28 of the Housing (Scotland) Act 2014 will result in any increase in expenditure on the legal aid fund.

Enforcement, Sanctions and Monitoring

The Scottish Government considers that it would be reasonable for a local authority to submit a report detailing use of the additional powers made available to them through granting of EEA status. Such a report would detail the powers used and the progress made in tackling the problems initially identified in the local authority's application for an area to be designated as an EEA. The Regulations provide the Scottish Ministers with flexibility to determine the frequency of the report.

Implementation and delivery plan

Draft regulations in relation to section 28 of the Housing (Scotland) Act 2014 must be laid in Parliament by 1 April 2015. It is expected that regulations relating to Enhanced Enforcement Areas will come into force immediately after the Regulations have been passed by the Scottish Parliament. The Scottish Government intends to work with local authorities to develop supplementary guidance to support them in making an application for EEA status.

Post-implementation review

No formal post-implementation review is expected to take place after commencement of section 28 of the Housing (Scotland) Act 2014.

Summary and Recommendation

Based on evidence gathered during the Section 28 (Private Rented Housing: Enhanced Enforcement Areas) consultation on regulations and on wider stakeholder engagement, the Scottish Government will take forward the implementation of section 28 in accordance with option 2. It considers this approach is the most appropriate, because option 1 (do nothing) is not acceptable. Option 3 is not feasible, because the primary legislation does not allow regulations to include powers for landlords to be fined for non-compliance.

Summary Costs and Benefits

Options	Benefits	Costs
<p>Option One: Do Nothing (no further regulatory action)</p>	<p>There are no clear benefits from implementation of this option.</p>	<p>No additional costs would arise as a result of undertaking this option.</p>
<p>Option Two: Implementation of regulations to meet the requirements of creating an Enhanced Enforcement Area without powers for recovery of costs and/or issuing of fines.</p>	<p>Enables local authorities to add to their existing tools in order to tackle high concentrations of poor quality PRS housing and management standards.</p> <p>Sends out a clear message to rogue landlords, that such poor practice will be challenged.</p> <p>Enables local authorities to inspect properties and take action to make safe any PRS properties they suspect are of unacceptable living standards.</p>	<p>Administration of an EEA would require the local authority to dedicate staffing and financial resources to tackle problems in an area.</p> <p>Some landlords may encounter additional costs, such as obtaining an enhanced criminal record certificate or to produce gas safety and maintenance records.</p> <p>However, it is expected that if a landlord is complying with existing legislation, then they would already have copies of such certificates and therefore additional costs are expected to be minimal.</p>
<p>Option Three: Implementation of regulations to meet the requirements of creating an Enhanced</p>	<p>Option 3 also provides the benefits, as outlined within option 2.</p> <p>In addition, the power to</p>	<p>As with option 2, option 3 would see a local authority incur resource and financial costs in order to administer an</p>

<p>Enforcement Area including powers for recovery of costs and/or issuing of fines.</p>	<p>fine a landlord in an EEA for non-compliance would have a clear financial impact on those who continue to break the law. It would also send a clear message that poor practice would not be tolerated.</p>	<p>EEA. Option 3 could place new costs on landlords. However, any such fines would only be issued to those landlords who are failing to comply with existing or EEA legislation. The primary legislation does not enable fines to be levied so these powers cannot be included in the Regulations.</p>
<p>Declaration and publication I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland. Signed by Margaret Burgess MSP, Minister for Housing and Welfare</p> <p>Date: 31 March 2015</p> <p>Scottish Government Contact Point:</p> <p>Linda Leslie, ext. 45167 Ross Wilson, ext. 25496</p>		