

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Housing Scotland Act 2014: Implementation of regulations for Third Party Applications to the Private Rented Housing Panel (PRHP)

This BRIA relates to the implementation of regulations that make further provision about the making and determination of third party applications to the PRHP.

Purpose and intended effect

Background

The repairing standard, contained in Part 1 Chapter 4 of the Housing (Scotland) Act 2006 covers the legal and contractual obligations of private landlords to ensure that a property meets minimum physical standards.

A landlord's duty to repair and maintain a property in respect of the repairing standard applies at the start of the tenancy and at all times throughout the tenancy. Work should be carried out within a reasonable time of being notified by the tenant that the property does not meet the repairing standard, or the landlord otherwise becomes aware that the work is required.

A house meets the repairing standard if:

- the house is wind and water tight and reasonably fit for human habitation
- the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order
- installations for the supply of water, gas and electricity, sanitation, space heating and heating water are in a reasonable state of repair and proper working order
- fixtures, fittings and appliances provided under the tenancy are in a reasonable state of repair and proper working order
- any furnishings provided by the landlord are capable of being used safely for the purpose for which they are designed
- the house has satisfactory provision for detecting fires and giving warning in the event of a fire

From 1 December 2015, the repairing standard will be strengthened by requirements that a house must have satisfactory provision for detecting carbon monoxide and that regular electrical safety inspections are undertaken.

Currently, only a tenant may apply to the PRHP for a determination of whether the landlord has failed to meet the repairing standard.

Sections 25 to 27 of the Housing (Scotland) Act 2014 introduced amendments to the 2006 Act in relation to third party applications and appeals to the PRHP in connection with enforcement of the repairing standard. Section 25 also introduced a

new right of entry for third parties for the purposes of deciding whether to make an application to the panel. The Housing (Scotland) Act 2014 (Commencement No.3 and Transitional Provision) Order 2015 (SSI 2015/272) appointed 1 December 2015 as the date for those sections to come into force.

In relation to this assessment, the term “third party applicant” means a local authority.

Objective

The objective is to introduce discretionary powers to enable local authorities to make an application to enforce the repairing standard, helping them to tackle the problem of poor property condition in the private rented sector.

The policy covered by this BRIA will contribute to the National Outcomes:

- “we live in well-designed, sustainable places where we are able to access the amenities and services we need”; and
- “we have tackled the significant inequalities in Scottish society”

The policy also contributes to the Scottish Government’s vision that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs.

Rationale for Government intervention

The Scottish Government’s 2009 Review of the Private Rented Sector provided a detailed primary evidence base on the sector’s circumstances in Scotland. The Review identified that one of the main problems for tenants in private tenancies was getting repairs done. For landlords, there were problems and gaining access to do repairs. The Scottish House Condition Survey (SHCS) 2013 estimates that there are potentially around 18,000 properties in the PRS that are in a serious state of disrepair.

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

The Scottish Government’s Strategy for the Private Rented Sector sets out the vision of a sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment. A key action to help improve the quality of property management, condition and service is broadening access to the PRHP to drive greater compliance with the repairing standard.

Anecdotal evidence suggests that some tenants are not willing to take a case to the PRHP due to concerns that such action may have a negative impact on their relationship with the landlord or put the tenancy at risk.

The provisions for third party reporting will enable local authorities to make an application to the PRHP, as a means of tackling the problems associated with sub-

standard housing. The tenant may be party to a third party application, although local authorities may make an application to the PRHP without the tenant being party to the case, if they think it is appropriate to do so. A new power of entry for local authorities to inspect properties they suspect of failing to meet the repairing standard will enable them to gather the evidence needed to decide whether to make an application.

Consultation

Within Government

The Scottish Government consulted with a range of relevant Scottish Government Directorates including Housing, Justice, Better Regulation, Analytical Services, and Legal colleagues in order to inform the Business Regulatory Impact Assessment process.

Public

During 2009 the Scottish Government consulted publicly, and with the Private Rented Sector Strategy Group on PRS housing issues for inclusion in the Private Rented Housing (Scotland) Bill, including local authority powers to tackle disrepair in the sector.

During 2012, the Scottish Government consulted on the development of a draft Strategy for the Private Rented Sector in Scotland. As a result of the consultation the role of the PRHP was highlighted as any area where access to justice could be enhanced. A number of respondents called for its remit to be extended to include the introduction of powers to enable third party reporting to the panel.

Business

The independent evaluation of the operation of landlord registration, which sought views from local authorities and was published in July 2011, recommended that third party reporting rights should be introduced.

Following the public consultation in 2012, the Scottish Government engaged directly with key organisations and groups including the private landlord representatives on the Private Rented Sector Strategy Group (including Shelter Scotland, Chartered Institute of Housing, Association of Local Authority Chief Housing Officers and Scottish Land and Estates; the Scottish Association of Landlords; COSLA and individual local authorities. In addition, the Scottish Government met with the Association of Residential Letting Agents and Royal Institute of Chartered Surveyors, as part of consultation on the proposed PRS items for the Housing Bill.

Stakeholder meetings indicated general support to enable third party reporting, although some concerns were expressed about the security of tenure for tenants in cases where a landlord might seek to bring the tenancy to an end as a result of an application to the PRHP.

The introduction of third party applications to the PRHP was also an item for

discussion with stakeholders during workshops held as part of consultation on the Housing (Scotland) Bill. No significant concerns were raised by landlord representatives at the events regarding this Bill item, with stakeholders seeing potential for positive outcomes in respect of improved property condition and tackling the behaviour of landlords who do not comply with repairing standard duties.

Direct consultation with local authorities during the development of the regulations indicates widespread support for powers to enable third party applications to the PRHP. The discretionary nature of the powers will enable authorities to decide when and how the powers may be used in the light of local priorities. Access to the PRHP is seen as an additional tool for addressing problems of poor property condition for current and future tenants and in the wider public interest.

More recently consultation has taken place with the representative body the Scottish Association of Landlords and also individual landlords. Further information on these discussions is included in the Scottish Firms Impact assessment section of the BRIA.

Options

Option 1: Do nothing (no further regulation)

Option 2: Implement regulations making further provision about the making and determination of third party applications to the PRHP

Sectors and groups affected

The categories of people affected by these policies are:

- *Local authorities* – will be granted discretionary powers to apply to the PRHP to enforce the repairing standard. They will also have a new power of entry to inspect properties.
- *Private landlords* – landlords who do not comply with repairing standard duties may be subject notification by the relevant local authority of work that needs to be done to meet the repairing standard. Where work is not completed in good time an application to the PRHP may be made.
- *PRHP* – will deal with applications from a third party.
- *Tenants* – may be asked to grant access to a local authority in connection with the repairing standard. Property condition will be improved for current and future tenants, as well as the wider community.

Benefits

Option 1: Do nothing (no further regulation)

The benefits of Option 1 are the cost savings on Options 2. However, taking no action would not help to address the problems caused by poor property condition in the PRS.

Option 2: Implement regulations making further provision about the making and determination of third party applications to the PRHP

This option grants all local authorities discretionary third party rights to enable them to tackle the issue of sub-standard housing by making an application to the PRHP, where there is evidence that a landlord is not meeting the repairing standard. The tenant may choose to be a party to the application.

This option is intended to give local authorities increased flexibility to address substandard property condition either as a part of a strategic approach to tackling problem areas or individual properties. This is likely to reduce the risk of frivolous or vexatious applications and result in more comprehensive and better evidenced applications to the panel.

The Scottish Government anticipates that local authorities will obtain evidence in relation to the repairing standard from a number of sources: property inspections; evidence provided by the tenant; external inspection of the property; evidence provided by other parties such as such as neighbours, owners of property in communal buildings, or fire and rescue services, for example.

Where a single issue affects multiple properties and landlords, for example a leaking roof affecting several homes in a communal building, a local authority may submit applications that cover all the affected properties; the applications could be heard by a PRHC as a single hearing. Currently, this type of action relies on all the affected tenants making applications on the same issue. This is often difficult to achieve and in some cases the individual landlord of a tenant who does apply to the PRHP may be served with an RSEO requiring them to meet the cost of all communal repairs, regardless of whether other owners share responsibility for property condition.

Implementation of the policy will send out a clear message to private landlords that enforcement action can be taken where properties do not meet minimum standards, without the need to rely on the tenant taking action.

Costs

Option 1: Do nothing (no further regulation)

There are no direct costs to Option 1. However, there may be longer terms costs to landlords; local authorities and communities more generally where property condition deteriorates due to necessary repairs are not carried out.

Option 2: Implement regulations making further provision about the making and determination of third party applications to the PRHP

Costs for local authorities

It has been difficult to estimate the value of any costs or savings to local authorities. Feedback provided by a number of local authorities indicates that there may be some costs involved in gathering evidence on property condition, processing the

application, and where appropriate attending a committee hearing.

Conversely, some local authorities indicated that the policy may help to reduce costs, by avoiding duplication of effort to deal with a complaint about property condition across different local authority services, for example environmental health and housing services. Where information or resources can be shared it was felt there was potential for some efficiency savings to be achieved.

Some local authorities have expressed concern about the expectation tenants may have that the local authority has a legal obligation to enforce the repairing standard on their behalf, and that this could have a significant impact on resources. The policy intention is not to diminish tenant rights and responsibilities and so tenants will retain the right to make an application to the PRHP in their own right. The power to make third party applications is discretionary, allowing local authorities to take account of local priorities and resources when deciding whether to make an application to the PRHP.

Costs for Scottish Government

The cost of enabling third party applications will have a financial impact on the Scottish Government, which provides funding for the PRHP. The policy will be introduced on that basis that there is no charge for local authorities to make an application to the PRHP (as is currently the case for other types of application to PRHP).

The process of determining an application from a third party will be similar in most aspects to the process for dealing with applications from tenants but an increased caseload will require the PRHP to expand its operation.

Based on data from the Scottish House Condition Survey about the number of properties in disrepair across Scotland, the original BRIA estimated between 434 and 650 cases per year, about which a local authority might wish to take action. However, it has not been possible to establish exactly how many cases will result in an application to the PRHP. Feedback from some local authorities has indicated that they intend to use the powers in a targeted way, focussing on vulnerable tenants and fire/electrical safety issues, for example. In addition, the original estimate does not take into account of the likelihood that in many cases the landlord will complete the necessary repairs without the need for an application to be made at all (install a smoke alarm, for example). Taking all these factors into account, the potential caseload may be much lower than first estimated, although it remains difficult to quantify the exact caseload.

In order to mitigate the risk of a surge of applications from local authorities, the policy will be implemented in three phases in December 2015, April 2016 and June 2016.

Officials have worked with the Scottish Courts and Tribunals Service to estimate the initial set up set up costs during the first year of operation in the following areas. The broad indicative costs associated with these functions, based on the upper limit of 650 cases per year is estimated as being £791k for the year 2015/2016 This is broken down as follows:

Cost	Set up	On-going
Staff salaries	£134k	£110k
Project Manager	£27k	Nil
Accommodation	Nil	£46k
Office costs (including publicity)	£5k	£41k
Supplies and IT Services (including IT development)	£46k	£16k
Panel Member Training	£48k	Nil
Staff training/travel	Nil	£8k
Panel Member fees and expenses	£107k	£180k
Capital costs	£22k	Nil
Total	£389k	£401

These figures are still subject to review with SCTS as the project progresses. We anticipate that the actual costs will be lower than estimated. Key factors likely to reduce the costs once the regulations come into force are the phased implementation over a six month period and the likelihood that a percentage of landlords will make necessary repairs without the need for an application to be made.

Costs for Scottish Court Services

It is difficult to estimate the costs associated with any additional appeals to a sheriff as a result of third party reporting rights to the PRHP. Based on evidence in the PRHP annual report for 2013 from a caseload of 287 cases, only 4 were appealed. Based on this figure and the original estimated additional caseload of up to 650 cases, the maximum number of appeals may be around 10 per year. The Scottish Courts and Tribunals Service indicated that the average cost per summary application is £95, and that the estimated costs per year of £760 - £1,045 per year could be absorbed within the existing SCTS budget.

Scottish Firms Impact Test

Feedback from local authorities indicates that the policy may impact on resources differently in different areas. Whilst the policy might require additional resources to undertake inspections and make an application, this was not the case for all authorities. The extent to which various functions within an authority worked together on a common problem (e.g. housing; environmental health) also appeared to be a factor in the impact on resources. The discretionary nature of the powers was seen as being helpful, enabling local authorities to use the powers based on local priorities and need. In some cases, authorities indicated that use of the powers would be targeted, for example to tackle problems of poor property condition for vulnerable tenants; common repair issues; fire and electrical safety. Evidence of non-compliance with repairing standard duties as a result of a third party application was

seen as being relevant to the fit and proper test for landlord registration and licensing of Houses in Multiple Occupation.

Many private landlords are small businesses (although some do not function as businesses, e.g. letting out a family home while working abroad). The Landlord Survey carried out as part of the Scottish Government Review of the Private Rented Sector found that almost 95% of landlords are individuals, couples or families, with an average of 1.3 properties per landlord.

The proposed policy does not introduce any new duties on landlords. The Repairing Standard applies to all relevant landlords, regardless of the number of properties they let. Following discussions with individual landlords and representative bodies it is the Scottish Government's view that the proposals would not have a negative impact on responsible landlords who already meet their repairing standard duties. Any financial impact would be felt by those landlords who do not act responsibly to keep their properties up to standard, and who are then the subject of a third party application to the PRHP.

More recently, discussions with individual landlords with properties ranging from 2 properties to much larger portfolios did not identify any negative impacts of option 2 for responsible landlords. One landlord confirmed that they were not aware of the repairing standard duty, but that they did take steps to undertake property inspections after the first month of the tenancy and after the initial 6 month period of the tenancy. Repairs were undertaken as and when the tenant reported a problem, and to date there had never been any problems in accessing the property. The landlord was not aware of the action that they would need to take in the court to enforce their right of entry, but felt that the policy covered by this BRIA could be helpful in resolving any issues in the first instance. The landlord did confirm that information was received from the relevant local authority but that this tended not to be read. (This highlighted a difficulty in trying to raise awareness of rights and responsibilities amongst landlords and tenants.)

Competition Assessment

It is not anticipated that the ability of any particular group of landlords to compete in the market would be affected as the same duties to comply apply to all landlords of relevant tenancies. Broadening access to the PRHP to enable local authority enforcement of the repairing standard will help to address the unfair advantage that unscrupulous landlords have in the market place because they do not invest money in the upkeep of their properties. Option 2 would not place any direct restrictions upon the number of landlords that are allowed to operate in the market.

Smaller businesses would not be affected any more or less than larger businesses. The proposals are not likely to raise the costs of new landlords seeking to enter the market relative to existing businesses.

Test run of business forms

Changes will be required to the current application form to the PRHP and the notification forms issued by the PRHP to account for applications made by third

parties. The new forms will be tested prior to implementation.

Legal Aid Impact Test

The Scottish Legal Aid Board does not consider that the policy will have any material impact on rights of access to justice through availability of legal aid.

Enforcement, sanctions and monitoring

The PRHP will not be required to implement any new sanctions as a result of Option 2. Case management of applications will enable collection of data on third party applications and the outcome of any applications made. This information will be used to inform the publication of the annual PRHP report.

Implementation and delivery plan

Third party applications will be implemented in 3 phases:

- 1 December 2015 – Glasgow City Council; Dundee City Council; Dumfries and Galloway Council.
- 1 April 2016 - City of Edinburgh Council; Aberdeen City Council; Renfrewshire Council; Highland Council; North Lanarkshire Council; North Ayrshire Council; Aberdeenshire Council; West Lothian Council; East Dunbartonshire Council; Comhairle nan Eilean Siar; East Ayrshire Council; East Lothian Council; Moray Council; Orkney Islands Council; Shetland Islands Council.
- 1 June 2016 - Fife Council; South Lanarkshire Council; East Renfrewshire Council; Scottish Borders Council; Stirling Council; Angus Council; Argyll and Bute Council; South Ayrshire Council; Midlothian Council; Perth and Kinross Council; Clackmannanshire Council; Falkirk Council; Inverclyde Council; West Dunbartonshire Council.

The phased implementation will assist the PRHP in managing the additional caseload from the introduction of third party reporting powers effectively.

Post-implementation review

The impact of enabling third party applications to the PRHP will be monitored by the Scottish Government and PRHP as part of the annual reporting process of the Panel.

Summary and recommendation

Option 2 is recommended as it enhances local authority powers to take tougher action to address the problem of poor quality housing in the private rented sector.

Summary costs and benefits table

Options	Benefits	Costs
Option 1 Do nothing (no further regulation)	Cost savings for Scottish Government on Option 2 but no benefits in terms of improving property condition.	None
Option 2	Will give local authorities stronger	Scottish Government:

<p>Implement regulations making further provision about the making and determination of third party applications to the PRHP</p>	<p>powers to tackle the problems caused by poor quality housing in the private sector.</p> <p>Will send a message to landlords that action can be taken to enforce the repairing standard, even if the tenant is reluctant to take action.</p> <p>Will support responsible landlords by tackling the behaviour of those landlords who don't comply with their legal duties.</p> <p>Will improve property condition for tenants, (current and future) and the wider community.</p>	<p>One off set up costs: £389k</p> <p>On-going costs: £401k pa</p> <p>Scottish Court: Services £760 - £1k pa</p> <p>Local authorities: Any additional costs at local authority discretion</p> <p>Landlords/tenants: No additional costs</p>
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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:

Date:

Margaret Burgess MSP, Minister for Housing and Welfare

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