

POLICY NOTE

THE LETTING AGENT REGISTRATION (SCOTLAND) REGULATIONS 2016

SSI 2016/432

The above instrument was made in exercise of the powers conferred by section 29(2)(b), 30(2)(f) and 32(2)(c) of the Housing (Scotland) Act 2014 (2014 Act). The instrument is subject to negative procedure.

Policy Objectives

This instrument makes use of Scottish Ministers' regulation making powers to prescribe:

- additional information that is to be included within an entry to the public register of letting agents;
- additional information that must be provided in an application for registration; and
- training requirements that must be met by the applicant to be admitted to the register.

Regulation 3 sets out the additional information to be included within an entry to the publically available register of letting agents that Scottish Ministers are required to establish and maintain under section 29 of the 2014 Act. As an example, information published within an entry will include the trading name of a business, if different from their legal entity, and the letting agent registration number. This additional information will help those using the public register to identify whether a particular agent is registered.

Regulation 4 makes provision for additional information to be included within an application for registration. This will give Scottish Ministers sufficient information to administer the register of letting agents; enabling them to assess whether applicants are fit and proper persons; establish if applicants are complying with key requirements in the Letting Agent Code of Practice, such as holding client money protection; and have met the prescribed training requirements.

Regulations 5, 6 and 7 set out the minimum training requirements those seeking to join the register of letting agents must have met to be admitted and who they apply to. These requirements will mean that:

- certain key individuals within a letting agency will be required to hold a relevant qualification covering essential matters relating to letting agency work; and
- where this qualification was undertaken more than 3 years ago, they must have undertaken 20 hours of additional training on letting agency work within the last 3 years to keep their knowledge and skills up to date.

The policy intention is for people who direct, or are in charge of, an organisation's letting agency work to have undertaken the prescribed training for an applicant to be admitted to the register of letting agents. These people have the necessary influence to ensure the business complies with their legal obligations. The regulations therefore require training to have been undertaken by the most senior person within the organisation, unless they are not involved in operational procedures and processes day to day; as well as by those who oversee the business's letting agency work i.e. they are in charge of managing and supervising letting agency work.

While placing the requirement on these individuals will generally mean there is one person trained in each relevant office, the Scottish Government does not consider that this will be the case for some large organisations. The regulations therefore also prescribe for there to be at least one person to be suitably qualified / trained per office, where letting agency work is undertaken.

Ensuring all those admitted to the register have staff who have undertaken training on the areas essential to the effective and proper management of letting agency work will result in improved standards of service applied consistently across the industry and better services for landlords and tenants delivered by more knowledgeable staff.

Regulation 8 enables Scottish Ministers in certain circumstances to require a person, who is part of an application for registration, to provide them with a criminal conviction certificate (commonly known as a basic disclosure) under section 112 of the Police Act 1997. A basic disclosure contains details of any unspent convictions that a person has. In deciding whether or not an applicant is a fit and proper person to be a letting agent, Scottish Ministers must have regard to information about any unspent criminal convictions for an offence of the types set out in section 34(2) of the 2014 Act.

Section 35 of the 2014 Act provides that, where Ministers have reasonable grounds to believe that the information given to them by the applicant about unspent convictions is, or has become inaccurate, Ministers may have regard to the information which would be contained within a basic disclosure. However, section 35 does not allow Ministers to access this criminal record information unless a separate application is made to Disclosure Scotland for a basic disclosure.

Regulation 8 therefore provides that on a case-by-case basis, Ministers can require the applicant to provide them with a basic disclosure which has been issued to the applicant by Disclosure Scotland. That will then allow Ministers to verify the accuracy of the criminal record information in question and to take that information into account in their consideration of the letting agent's application.

Consultation

To inform our implementation of Part 4 of the Housing (Scotland) Act 2014 the Scottish Government followed an agreed iterative process with a group of key stakeholders. This included the Association of Residential Letting Agents (ARLA), Chartered Institute of Housing (CIH) Scotland, Citizen Advice Scotland, Council of Letting Agents (CLA), CRISIS, Edinburgh Tenants Action Group (EPTAG)/Living Rent: Scotland's Tenants' Union, LetScotland, The Law Society of Scotland, National Union of Students (NUS) Scotland, Royal Institution of Chartered Surveyors (RICS), Scottish Association of Landlords (SAL), Scottish Land and Estates (SLE) and Shelter Scotland.

Additional information – Entry and Application

The Scottish Government issued proposals to the group in March 2015 in relation to the additional information it would be helpful to publish within an entry to the register and to gather as part of an application to the register. The paper set out the existing legal requirements and considered what further information Scottish Ministers might wish to

include and sought views from the key stakeholders on these. 11 responses were received from the group.

Training requirement

The Scottish Government undertook a public consultation on proposals in August to November 2015. 92 responses were received and were analysed by independent researchers, Research Scotland. To raise awareness of the consultation and encourage responses, a number of consultation events were held for landlords, letting agents and tenants in conjunction with the Scottish Association of Landlords (SAL), Council of Letting Agents (CLA) and Shelter Scotland.

Analysis of responses¹ found that, overall, respondents were supportive of our proposed approach in relation to the training requirement with:

- 71% of respondents agreeing there should be a mandatory qualification;
- 62% of respondents agreeing with our proposal on who within an agency should be trained;
- 56% of respondents agreed that the mandatory qualification should be set at Scottish Credit and Qualifications Framework (SCQF) Level 6, with 34% indicating they didn't know;
- 64% of respondents agreed that there should be at least one person trained per office;

A list of those who responded to the consultation, and who agreed to the release of this information, is available on the Scottish Government website. It includes: ARLA, CLA, Capability Scotland, CIH Scotland, Equality and Human Rights Commission, The Law Society of Scotland, LetScotland, The Property Ombudsman, RICS, SAL, SLE, Scottish Property Federation, Shelter Scotland, UK Association of Letting Agents and National Landlord Association.

Draft regulations were shared with key stakeholders for their input. Responses to the consultation and comments on the draft regulations have been taken into account in the final drafting.

Impact Assessments

An Equality Impact Assessment, a Privacy Impact Assessment, and a Children's Rights and Welfare Impact Assessment (CRWIA) screening have been undertaken in relation to the regulation of letting agents.

Equality Impact Assessment

The Scottish Government's assessment of the likely impact of the regulation of letting agents upon those within the protected characteristics (age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation) has identified a number of potential positive impacts including opportunities to eliminate unlawful discrimination and advance equality of opportunity. It has not identified any negative impacts. The equality impact has been published on the Scottish Government's website.

¹ Consultation on a draft statutory code of practice and training requirements for letting agents in Scotland: analysis of consultation responses, Research Scotland, January 2016 - <http://www.gov.scot/Publications/2016/01/6999>

Privacy Impact Assessment

The privacy impact assessment on letting agent registration has identified a number of potential risks involved with handling of data as part of administering registration and actions will be taken forward as part of implementation to mitigate these. For example, the development of a controller-processor contract and information sharing protocols with relevant authorities. The privacy impact assessment will be published on the Scottish Government's website.

Children's Rights and Welfare Impact Assessment (CRWIA) Screening

CRWIA screening has been undertaken. Based on this screening the Scottish Government does not consider this policy requires a full CRWIA at this stage. No issues have been raised during the development of the legislation, or its implementation to date, that suggest any negative impact from the introduction of letting agent regulation. The Scottish Government anticipates that any impact from the implementation of this policy on children and young people is likely to be positive or neutral. However, should any negative impacts be identified, we will review whether a full CRWIA would be required.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and will be published on the Scottish Government's website.

The impact of these regulations on business will depend on the current business practices of individual letting agents.

Entry and application - additional information

The Scottish Government anticipates any additional costs related to the inclusion of this additional information within an application and an entry to the Register to be minimal. Without making use of these additional powers Scottish Ministers would not be able to robustly administer letting agent registration and their ability to monitor compliance and support enforcement would be limited.

Training requirement

The exact cost of implementing the proposed training requirements are difficult to quantify because they depend on the management and business structure of individual letting agents and the existing level of training already undertaken by those subject to the requirement.

For those applicants who have already attained a relevant qualification and who undertake regular training, additional costs from these regulations are likely to be nil or minimal.

For those subject to the requirements who have not undertaken a relevant qualification and or regular training, there will be an additional one off cost associated with attaining the qualification and an on-going cost for the regular training required once the qualification is more than 3 years old. However, the exact cost of this will depend on the qualification and training they choose to undertake. There are currently two training providers offering relevant qualifications and a variety of training courses and learning opportunities available that will allow them to choose a route that suits their training requirements and their budget.

Scottish Government
Housing and Social Justice Directorate