

Partial
Business and Regulatory Impact Assessment

<p>Title of Proposal The Private Landlord Registration (Modification) (Scotland) Order 2022</p>
<p>Purpose and intended effect</p> <p>Background The conflict in Ukraine has created a large number of displaced people seeking shelter across the continent and numbers of people likely to come to Scotland could be in the thousands. It is therefore vital that all options for available housing are explored and identified as we seek to support people fleeing from the war zone.</p> <p>Currently Landlord Registration is required for everyone who is the owner of a residential property which is subject to a lease or occupancy agreement and is not specifically excluded. An occupancy agreement includes any agreement for someone to live in your property, which you do not also live in, including verbal agreements. This means anyone offering a second home under the Homes for Ukraine scheme should be required to register as a landlord as the law currently stands.</p> <p>It is possible that both the cost of registration and the hassle of having to undergo the additional checks could put people off offering their homes (most likely second homes and holiday lets) and it is precisely these types of homes that are most attractive to the scheme as they provide a whole property solution without putting further pressure on the private rented sector housing market. In addition, people offering their homes for free (the £350 government payment is a 'gift' and not classed as rent) will want a straight forward process with as little risk as possible and confirmation that they are complying with the law.</p> <p>Objectives</p> <p>The overarching policy objectives are to reduce the administrative and cost burden to people seeking to offer their homes for free under the Homes for Ukraine Sponsorship Scheme. This will provide legal clarity and prevent people who are not seeking to be landlords in normal circumstances from having to register. The Order exempts occupancy arrangements only, and should any commercial arrangement subsequently be entered into, for example the guests and host agree to a longer term stay where rent is payed, the owner would then have to register as normal. The regulations should not, therefore, provide any loopholes or threat for professional landlords.</p> <p>The SSI will:</p> <ul style="list-style-type: none">▪ Exempt people offering their second properties under the Homes for Ukraine Sponsorship Scheme for free from having to register as a landlord. Should they begin charging rent they will need to ensure they follow all legal requirements for landlords. <p>Rationale for Government intervention Landlord Registration aims to ensure that a landlord is a fit and proper person to rent out their property. The exclusion of hosts under the Homes for Ukraine Sponsorship scheme, where they are not already landlords and are offering their property for free, from the requirement to register as a landlord is justified on grounds that:</p>

- the legitimate aim being met is to provide adequate housing, quickly and for large numbers of Ukrainians displaced people;
- the relaxation of landlord registration rules is a proportionate means of achieving this aim, as there are significant numbers of individuals entering the country and requiring accommodation due to the gravity and proximity of the conflict and the Scottish Ministers need to provide housing quickly to those individuals in circumstances where there are already constraints on housing stock.
- Additionally, the robust checking process that hosts must go through in order to be able to offer their homes as part of the Homes for Ukraine Sponsorship Scheme provides a safeguard against any reduction in regulation brought about by the relaxation of landlord registration rules.

Consultation

Government

The following government agencies and departments have been consulted in the preparation of this Business and Regulatory Impact Assessment (BRIA):

- Better Regulation and Industry Engagement Branch, Scottish Government has provided advice on the preparation of this BRIA
- Scottish Government Legal Directorate has provide advice on the legal issues raised
- Private Rented Sector policy leads have contributed to the design.

Public

Due to the speed at which this is having to be delivered it has not been possible to undertake a formal or informal public consultation.

Business

The Scottish Government has spoken to the Scottish Association of Landlords.

Options

Option 1 – Do nothing

This option would require hosts under the Homes for Ukraine Scheme to register as a landlord. An application would be required by the host. This application would include all of the information required in section 83 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“2004 Act”) and all the further information required by the Private Landlord Registration (Information) (Scotland) Regulations 2019 (SSI 2019/195). A fee would be payable in accordance with section 83 and the Private Landlord Registration (Fees) (Scotland) Regulations 2019 (SSI 2019/160). To be entered on the landlord register, an applicant must pass the “fit and proper person” test set out in sections 84 and 85 of the 2004 Act. Any host under the Homes for Ukraine Sponsorship Scheme who opted not to apply for registration in these circumstances could be committing an offence.

Option 2 – Proposed SSI

Create new regulations to exclude hosts under the Homes for Ukraine Sponsorship Scheme from the requirement to register as a landlord. This would require an amendment to section 83(6) of the 2004 Act through an affirmative SSI.

Sectors and groups affected – The SSI affects the law on registration of landlords. The

main groups affected, would include:

- Second home owners, and
- Those entering the UK under the Homes for Ukraine Sponsorship Scheme.

We have concluded that the SSI will not adversely impact upon any person by virtue of their particular religion, belief, age, sexual orientation, gender, race or ethnicity.

Benefits

Option 1

An application would require to be made by the host, and the local authority would require to carry out an assessment of the host's fit and proper status to act as a landlord. Whilst this provides some additional checks, all hosts under the Homes for Ukraine Sponsorship Scheme in Scotland will already be subject to disclosure checks by virtue of being part of the Scheme. Requiring registration for those offering homes for free will place an administrative burden on the host and the Local Authority and may put people off offering their property and so restrict the number of available properties.

Option 2

The SSI would ensure that anyone offering a whole property (second home where the owner does not reside) for free to support individuals entering Scotland under the Homes for Ukraine Sponsorship Scheme, would be exempt from the requirement to register as a landlord. The advantage of taking this action is that it will provide legal clarity and prevent people who are not seeking to be landlords in normal circumstances from having to register. The regulations would only exempt occupancy arrangements. Should any commercial arrangement subsequently be entered into, for example the guests and host agree that rent should be paid for the occupation of the house, the owner would be required to register as a landlord under the 2004 Act. The regulations should not, therefore, provide any loopholes or disadvantages for professional landlords.

Costs

Option 1

There would be additional costs of £60 per registration to individuals who have to register to be landlords despite receiving no rent for the property. In addition there may be some costs for local authorities and Scottish Government should large numbers of people start registering as a result of the Homes for Ukraine Sponsorship Scheme.

Option 2

There are no immediately foreseeable cost implications of Option 2. The *status quo* for individuals who are not seeking to be landlords or gain financially from their property would be preserved, and there would be neither an increase nor decrease in costs.

Scottish Firms Impact Test

There should be no direct costs to business from any of the proposals contained in the SSI. This will only provide exemptions to people who are not currently landlords and who do not intend to charge rent. If they were to charge rent then they would need to register to ensure there is no unfair disadvantages to other landlords and businesses.

Introducing Forms

No business forms will be involved in the implementation of the proposed legislation.

Competition Assessment

The Bill will not have an impact on competition for the reason set out above.

- *Will the proposal directly limit the number or range of suppliers? No, but it will increase the ease for people to offer their properties to support Ukrainian people.*
- *Will the proposal indirectly limit the number or range of suppliers? No, by making it easier for those with second homes to volunteer their properties should support the overall provision of homes across Scotland.*
- *Will the proposal limit the ability of suppliers to compete? No, business will not be affected by the proposals.*
- *Will the proposal reduce suppliers' incentives to compete vigorously? No*

Legal Aid Impact Test

No legal aid costs or access to justice issues envisaged.

Enforcement, sanctions and monitoring

This SSI seeks to exclude certain properties from landlord registration so no enforcement or sanctions will be required. The SSI will no longer be relevant following the end of the Homes for Ukraine Sponsorship Scheme.

Implementation and delivery plan

No implementation required as this will simply exempt second home owners offering their properties for free under the Homes for Ukraine Scheme. Scottish Government officials will engage with relevant stakeholders to monitor impacts.

Summary and recommendation

The clear benefit on the basis of the evidence above is to proceed with Option 2.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Shona Robison

Date: 5 May 2022

Minister's name: Shona Robison

Minister's title: Cabinet Secretary For Social Justice, Housing and Local Government

Scottish Government Contact point: Amanda Callaghan