

SCHEDULE

Letting Agent Code of Practice

SECTION 4

Lettings

Marketing and advertising

38. Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading.

39. You must get the landlord's permission for advertising and marketing a property, including the erection of a lettings board.

40. You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.

41. You must comply with relevant legislation on the marketing and advertising of properties for rent. For example, you must include a landlord's registration number (or clearly state 'landlord registration pending') and the energy performance indicator from the property's energy performance certificate (EPC) in your property advertisements and remove lettings boards within 14 days of the property being let.

42. You must not advertise in a way that unlawfully discriminates on the basis of a person's age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation.

Giving correct information to prospective tenants

43. You must give prospective tenants all relevant information about renting the property – for example, the length and type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset.

44. You must also inform prospective tenants how to apply and, where appropriate, the arrangements for viewing the property.

45. You must make prospective tenants aware of the Code and give them a copy on request, this may be provided electronically.

46. You must not knowingly omit relevant information or evade questions from prospective tenants relating to the letting of the property in line with consumer protection legislation.

Charging fees

47. You must comply with all relevant legislation on the charging of fees and premiums or making loans to tenants and prospective tenants in the private rented sector.

48. In particular you must comply with section 82 of the Rent (Scotland) Act 1984⁽¹⁾, which prohibits any person, as a condition of the grant, renewal or continuance of an assured or short assured tenancy, from requiring a tenant or prospective tenant to pay any charges except rent and a refundable deposit of no more than two months' rent.

49. You must not, as a condition of granting the tenancy, require tenants to use a third-party service that charges them a fee.

(1) 1984 c.58; section 82 was amended by section 32(1) of the Private Rented Housing (Scotland) Act 2011 (asp 14).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Viewings

50. You must agree with the landlord how prospective tenants will view their property and who will conduct the viewings.

51. In deciding how you will conduct viewings on the landlord's behalf, you should make sure you do not unlawfully discriminate against a person protected by the Equality Act 2010(2) (also see paragraph 22).

52. If you are to conduct viewings on the landlord's behalf, you must ensure the keys to the property are kept secure and maintain detailed records of their use by staff – for instance, the date the keys were issued, who to and when they were returned. You must take all reasonable steps to ensure the property is left secure after viewings.

53. If a tenant lives at the property, you must give them reasonable notice of appointments (at least 24 hours in line with your statutory requirements), unless other arrangements for viewings have been agreed with them. You must ensure the tenant is present, unless otherwise agreed (see also paragraphs 80 to 84 on property access).

Applications

54. You must agree with the landlord the criteria and process for managing and approving tenancy applications from prospective tenants.

55. You must inform the landlord in writing of all applications made on the property as soon as possible, unless agreed otherwise with the landlord, along with all relevant information about the offer and the applicant.

56. Applicants must be informed as soon as possible about the outcome of their application.

References and checks

57. You must agree with the landlord what references you will take and checks you will make on their behalf.

58. If you are to check references and make other checks, you must explain to the applicant and any guarantor what information you will check and who will do the checking, and get their written permission.

59. If you have contracted a third party to check references, or require prospective tenants to use a specific third party, the third party referencing service must not charge the tenant a fee (see also paragraphs 47 to 49 on charging fees).

60. You must ensure you handle all private information sensitively and in line with legal requirements such as the law relating to data protection.

61. You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord.

Tenancy agreement

62. If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or name and address of the letting agent and the identity of the landlord; type; length of tenancy where it is a short assured tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house in multiple occupation; as well as any other responsibilities on

(2) 2010 c.15.

taking care of the property, such as upkeep of communal areas and the cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.

63. If you arrange for the tenancy agreement to be signed, you must give prospective tenants enough time to familiarise themselves with the agreement; give them the opportunity to raise any questions about their rights and obligations under the agreement; give them the opportunity and time to seek independent advice; and give them any other formal documents required before they sign the agreement.

64. At the start of the tenancy, you must give the tenant a signed copy of the tenancy agreement along with any other relevant statutory documents.

Tenancy deposits

65. You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011(3).

66. If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation.

Moving in (inventory/check-in)

67. If there is delay in handing over the property to the tenant on the agreed date, you must inform them of this and explain why as soon as possible.

68. If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.

69. If the tenant is not present for the making of the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.

70. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

71. You must provide the tenant with a signed copy of the inventory for their records.

72. If the tenant asks in writing for the landlord's name and address, you must tell them free of charge within 21 days.