

## BUSINESS AND REGULATORY IMPACT ASSESSMENT

### Title of Proposal

#### **The Private Rented Housing Panel (Landlord Applications)(Scotland) Regulations 2015**

This BRIA relates to regulations about the making and processing of applications made by landlords to the Private Rented Housing Panel ("PRHP") for assistance in exercising their right of entry to a property in connection with the repairing standard.

### Purpose and intended effect

#### **Background**

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

A landlord's duty to repair and maintain a property in respect of the repairing standard applies to the landlord in a tenancy, at the start and at all times throughout the tenancy.

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.

Section 181(4) of the 2006 Act gives landlords the right of entry to a property for the purposes of checking that the house meets the repairing standard, or for carrying out work needed to comply with the repairing standard duty or a Repairing Standard Enforcement Order (RSEO).

The Private Rented Housing (Scotland) Act 2011 (Commencement No.7) Order 2015 comes into force on 22 September, commencing provisions in section 35 of the

2011 Act. The Order commences regulation making powers for the Scottish Ministers to make further provision about the making and determination of landlord applications to the PRHP.

### **Objective**

The measures in the 2011 Act are intended to support responsible landlords who have not been able to access to a property for purposes relating to the repairing standard.

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 recognises that the private rented sector plays an important role in meeting the housing need of a diverse range of tenants. However, there is evidence that disrepair in privately let houses is a problem. The Scottish Government’s 2009 Review of the Private Rented Sector provided a detailed primary evidence base on the sector’s circumstances in Scotland. Findings from the Review showed that, in terms of tenants surveyed, around one fifth had experienced problems with disrepair in a previous tenancy, and minor or major repairs were a key problem where there was dissatisfaction with the current home. One of the key problems for tenants was the time taken by landlords to undertake repairs.

Despite having a statutory right of entry in relation to the repairing standard, landlords have expressed concern about difficulties in obtaining entry to their properties in order to carry out inspections and repairs. This may be due to a variety of reasons. For example, the tenant may not have been available to grant access, or the tenant may have refused access. Landlords may apply to the courts to enforce their legal right of entry but anecdotal evidence indicates that this can be time consuming.

Section 35 of the 2011 Act introduced provisions giving landlords the right to apply to the PRHP for assistance in exercising their right of entry. If a panel member decides to assist the landlord, the panel member will liaise with the tenant and landlord to agree a date and time for the landlord to be given access. By enabling an independent third party to mediate in this way it is anticipated that most applications will result in the landlord being allowed into the property without the need for legal action.

### **Consultation**

## **Within Government**

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

## **Public**

A public consultation on the proposals for the provisions for inclusion in the Housing (Scotland) Bill, as recommended by the Private Rented Sector Strategy Group, was carried out between 8 March and 19 April 2010. This included proposals that a landlord should have the right to apply to the PRHP when in dispute with a tenant about gaining access to the property in relation to the Repairing Standard. A member of the PRHP could accompany the landlord to the property, if necessary, to ensure that the necessary work was carried out. The tenant could have the right to ask for a member of the PRHP to accompany the landlord. There was support from the majority of respondents for the proposals.

## **Business**

A number of businesses and representative bodies responded to the consultation including the Association of Residential Letting Agents; Belvoir Lettings; Chartered Institute of Housing; Countrywide Residential Lettings; Harper Macleod; Homes for Scotland; National Federation of Property Professionals; Orchard & Shipman; Rettie & Co; and Scottish Association of Landlords.

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**

### **Option 2: Implement The Private Rented Housing Panel (Landlord Applications)(Scotland) Regulations 2015**

### **Sectors and groups affected**

The categories of people affected by these policies are:

- *Private landlords* – will be able to apply to the PRHP for assistance in exercising their legal right of entry to a property in connection with the repairing standard.
- *PRHP* – will be responsible for dealing with applications from landlords and local authorities.
- *Tenants* – may be asked to grant access to a local authority or landlord in connection with the repairing standard.

- *Communities* – will benefit more generally from improvements in property condition in the private rented sector.

## **Benefits**

### **Option 1: Do nothing (no further regulation)**

There are no benefits to option 1. Taking no action could leave landlords in the unsatisfactory position of not being able to meet their legal obligations when a tenant refuses entry to the property.

### **Option 2: Implement The Private Rented Housing Panel (Landlord Applications)(Scotland) Regulations 2015**

The benefit of implementing the regulations is that the majority of disputes over access will be resolved without the need to resort to legal action to enforce entry. This will make it quicker and easier for responsible landlords to be able to undertake house inspections and make any repairs needed. It will also make it easier for landlords to meet any legal obligations, other than the repairing standard, that they may have in respect of a property.

An additional benefit for landlords will be the avoidance of a negative impact on property value or saleability due to lack of maintenance and repairs. It may also help to reduce the amount of time a property has to be left vacant between tenancies whilst repairs are undertaken.

Existing and future tenants and the wider community will ultimately benefit from the improvements in property condition that will follow on from this policy.

## **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 because necessary repairs are not carried out.

### **Option 2: Implement The Private Rented Housing Panel (Landlord Applications)(Scotland) Regulations 2015**

The Scottish Government does not anticipate any additional costs to landlords as a result of this policy.

The cost of enabling landlord applications to the PRHP will have a financial impact on the Scottish Government. This policy is being implemented on the basis that there will be no charge for landlords to make an application to the PRHP. Although the costs will need to be met through public funding, this is consistent with the approach taken to provide access to justice to tenants, who do not pay a fee to make an application to the PRHP.

Having consulted with the PRHP, the Scottish Government estimate that there would be about 150 applications for assistance per year. Officials have worked with the Scottish Courts and Tribunals Service (“SCTS”) to estimate the initial set up costs during the first year of operation in the following areas:

- Staff salaries (for those involved in the set up)
- Training of panel members and new staff
- Accommodation
- New IT workflow development
- President fees/expenses (incurred during the set up)
- In-house convenor (to assist the President with delegated functions)
- Staff travel and subsistence
- General office expenses
- Supplies and services
- Project Manager

We also anticipate that additional resources will be required in relation to the following fixed costs:

- Staff wages and expenses
- Training
- Computer charges/website
- Marketing and Publicity

The broad indicative costs associated with these functions are estimated as follows:

Transitional costs (k)	On-going costs (k)	<b>Total 2015/16 (k)</b>	<b>2016/17 (k)</b>	<b>2017/18 (k)</b>	<b>2018/19 (k)</b>	<b>2019/20 (k)</b>
68.6	55.6	<b>124.2</b>	<b>153.5</b>	<b>160.3</b>	<b>166.9</b>	<b>168.2</b>

The estimated costs are attributable to the introduction of this policy. However, in planning for operational implementation it has also been necessary to consider the future expansion of the PRHP. For example, between 1 December 2015 and the end of 2016, PRHP functions will be expanded to include third party applications in respect of the repairing standard and disputes in relation to the regulation of letting agents. Private rented sector cases are also due to transfer across from the court service once the PRHP transfers into the new First Tier Tribunal structure, towards the end of 2016. Therefore the indicative costs ensure that there is adequate provision for recruitment of staff, securing suitable premises and office space, and provision of an assistant for the President to safeguard the Panel’s capacity to help absorb the additional PRHP functions as they come on line.

There may be a very small number of cases where the panel member applies for a warrant to exercise their new right of entry in connection with assisting the landlord but these are expected to attract minimal cost.

Individual costs falling within the high level assumptions continue to be subject to review by both policy officials and SCTS as implementation progresses. The budget

will be formally base lined ahead of its transfer from Housing Regeneration and Welfare Directorate to SCTS once all parties agree that the business activity has reached steady state and are content with the level of budget required at that stage.

### **Scottish Firms Impact Test**

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 Scottish Government consulted on a draft impact assessment as part of the Bill consultation. Responses were received from a number of individuals (the majority were from private landlords) and 2 landlord representatives along with 6 agents and 27 local authorities including COSLA. In addition, members of the Private Rented Sector Strategy Group (including landlord and tenant representatives) were consulted throughout the preparation of the Bill.

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 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.)

For other landlords, there was an awareness of the repairing standard. Whilst problems with accessing properties did sometimes arise, this was not always due to the tenant refusing access. In some cases, despite having agreed access, the tenant was not present to let the landlord in. In other cases the contractor did not turn up at the agreed time, or was not able to specify a time for doing work (e.g. gas suppliers). Lack of communication between tenant/landlord and sometimes contractor could contribute to problems getting into a property.

There was general support for option 2 which was seen as being a helpful route for landlords who had not been able to secure access to a property. There was a sense that the policy may be used for accessing a property to carry out gas safety and electrical inspections as well as to carry out repairs.

### **Competition Assessment**

The Scottish Government does not anticipate that the ability of any particular group of landlords to compete in the market would be affected by this policy as the same

duties to comply with the repairing standard apply to all landlords of relevant tenancies. 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. All businesses are expected to benefit from the policy.

### **Test run of business forms**

Changes will be required to the current PRHP application and notification forms to account for applications made by landlords. New business 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**

Section 35 of the 2011 Act introduces a new right of entry for a PRHP member to enter any house in respect of which a decision has been made to assist the landlord exercise their right of entry. If the tenant refuses the panel members access, the panel member may apply to a sheriff or justice of the peace for a warrant authorising entry.

The policy will require the PRHP to provide specified information about landlord applications for assistance in its annual report. Enhancements to the existing case management system will enable collection of the required data.

### **Implementation and delivery plan**

Landlords will be able to apply to the PRHP for assistance from 1 December 2015.

### **Post-implementation review**

The impact of enabling landlord 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 improves access to redress for landlords and will help responsible landlords to meet their duties under the repairing standard. Option 1 (do nothing) is not acceptable.

### **Summary costs and benefits table**

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>
<b>Option 1</b>	Cost savings for Scottish	None

Do nothing (no further regulation)	Government on Option 2 but no benefits in terms of improving property condition.	
<p><b>Option 2</b> Implement The Private Rented Housing Panel (Processing of Landlord Applications) (Scotland) Regulations 2015</p>	<p>Will support responsible landlords by helping them to gain access to a property to carry out inspections and repairs.</p> <p>Will improve property condition for tenants, (current and future) and the wider community.</p> <p>Will also make it easier for landlords to meet legal obligations, other than the repairing standard, that they may have in respect of a property.</p> <p>Will help landlords to avoid the negative impact on property value or saleability due to lack of maintenance and repairs.</p>	<p>Scottish Government</p> <p>2015/16 Transitional costs 68.6k Ongoing costs 55.6k Total 124.2k</p> <p>2016/17 = 153.5k 2017/18 = 160.3k 2018/19 = 166.9k 2019/20 = 168.2</p> <p>No costs to Landlords/tenants</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:****Date:****Margaret Burgess MSP, Minister for Housing and Welfare****Scottish Government Contact point:**

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