

EQUALITY IMPACT ASSESSMENT

Policy title	Rent (Scotland) Act 1984 (Premiums) Regulations 2012
Which national outcome(s) does the policy contribute to?	<p>We value and enjoy our built and natural environment and protect it and enhance it for future generations.</p> <p>We live our lives safe from crime, disorder and danger.</p> <p>We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.</p>
What is the purpose of the policy (or changes which are to be made to the policy)?	<p>Section 32 of the Private Rented Housing (Scotland) Act 2011 will assist the growth of a high quality private rented housing sector by clarifying the law in relation to the charging of premiums in the private rented sector.</p> <p>Evidence shows that there is confusion in relation to the definition of a premium. This has led to a wide variety of differing types and levels of charges being levied towards tenants, many of which are unjustifiably inflated.</p> <p>Therefore the aim of this policy is to clarify the law and to clearly identify what (if any) reasonable charges can be made to tenants.</p> <p>The Rent (Scotland) Act 1984 (Premiums) Regulations 2012 clarify that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a</p>

	refundable deposit (not exceeding two months' rent) and charges relating to the UK Government's 'Green Deal' are illegal.
Name of Branch or Division	Housing Options and Services Unit
Directorate or Agency	Housing, Regeneration, the Commonwealth Games and Sport
Lead EQIA official	Yvonne Gavan

STEP ONE - Describe the assessment process and its scope

Please describe the process that you plan to follow (or have followed) in order to complete your EQIA (e.g. holding workshops with equality stakeholders, consulting, conducting research, using existing evidence).

Identify the “pool of people” affected by the proposals and their characteristics.

Identify those groups of people affected positively and negatively.

This EQIA was carried out with input from housing policy colleagues, analytical services colleagues and is based on responses received to the consultation on the implementation of section 32 (premiums) of the Private Rented Housing (Scotland) Act 2011, which specifically sought views on equalities issues.

Furthermore, the Scottish Government’s 2009 *Review of the Private Rented Sector*¹ provided a detailed primary evidence base on the sector’s circumstances in Scotland, including information relating to the protected characteristics.

Private rented housing accounts for around 11% of housing in Scotland, equating to around 273,000 properties and it is expected that - due to current restraints in accessing owner-occupation and social rented housing – this number will continue to rise.

The 2009 review included a tenant survey amongst other sources. The review found that different groups of tenants have different needs and experiences and are represented in the sector in varying proportions. Here are some findings from the *Review* about the diversity of private tenants:

- characteristically, private tenants tend to be younger than the population as a whole. Almost 80% of licensed HMOs are occupied by students, 84% of whom are under 25 years old;
- about one in ten tenants have a disability or limiting long-term illness. This rate is higher in rural areas. These tenants are more likely to be dissatisfied with their home (21%);
- one in three non-white households live in the private rented sector, compared to one in fourteen white households;
- one in three non-white tenants experience problems accessing appropriate private rented housing, compared to one in five of

¹ <http://www.scotland.gov.uk/Publications/2009/03/23153136/0>

all tenants;

- migrant workers are highly likely to live in the private rented sector when they first arrive in Scotland. The *Review* quoted studies showing that there were problems of overcrowding among migrant workers and additionally that migrant workers had lower levels of awareness of key rights and responsibilities such as HMO licensing and the Private Rented Housing Panel;
- there are reports of migrant workers living in overcrowded, unsafe and sub-standard private rented housing, including multi-occupied, short term lets;
- one third of households identifying as Hindu, one in five Buddhist households and a similar proportion of Muslim households lived in the private rented sector in 2001; and
- although there is limited information on tenure for Lesbian, Gay, Bisexual and Transgender groups, one survey on housing for older LGBT people listed respondents as 64% owner occupiers, 24% social rented tenants and 8% as private rented tenants (2005).

A large majority of dwellings in the private rented sector are owned by individuals and couples. Only a small proportion is owned by full-time business landlords, although a large proportion of dwellings are owned for business and investment reasons. There is almost an exact male to female gender balance amongst individual and couple owners.

Landlords are predominately younger than retirement age with 35% of dwellings being owned by those under 45 and 65% are owned by those under 54. About 5% of PRS properties are owned by a landlord from non-white ethnic groups. In Glasgow, this percentage is higher with 14% of PRS properties being owned by members of non white ethnic groups.

The number of landlords and letting agents registered on the national database has also continued to increase. The most recent figures show that over 183,573 applications for registration has been approved, covering 264,672 properties.

Responses to the consultation on section 32 of the 2011 Act also provided further evidence on those affected by the policy changes, including:

- some respondents suggested that foreign nationals could be discriminated against in the current system due to a limited residential and credit history in the UK; and
- Citizens Advice Scotland provided evidence (based on a sample of 3,529 seeking advice on private rented housing) that they feel shows

private rented tenants *'have a number of characteristics that potentially make them more vulnerable to disproportionate charges'*. Their monitoring information showed that *'clients tend to be young, often female, are likely to have caring responsibilities, and live on their own'*.

STEP TWO – Gathering and Analysing the Evidence (with help from the Analytical Services Division)

You have now identified those affected by the proposal and the characteristics of this wider pool of people, identifying those people affected positively and negatively by the proposal. At Step 2 you will now gather relevant evidence of these impacts on persons who share relevant characteristics. Look at how these impacts differ to the wider pool of people for whom the policy is targeted.

The Specific Duties means that we **MUST** consider relevant evidence relating to people with the protected characteristics, including evidence and information received from people with those protected characteristics. This means that we must be able to demonstrate how we have gathered and considered relevant equality evidence in relation to our policy development and how it might impact – both positively and negatively on equality groups.

AGE

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of people in different age groups? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

Cultural changes have impacted on the sector, with more young people possibly choosing to put off 'settling down' until later in life. The proportion of households aged 16-34 in the private rented sector has expanded dramatically, from 13% in 1999 to 33% in 2010. While owner occupation remains the most important tenure for this age group, its share has decreased by 10% to 43% in 2010. Within the PRS, over half of the households (57%) are in the 16-34 age group, 36% are aged 35-64 and 6% are aged 65 and over.

Current projections suggest that there will be an increased demand on the private rented sector and this will be one of the key challenges facing the housing market. The Joseph Rowntree Foundation (Clapham et al, 2012) used trend-based projections to demonstrate that by 2020 there is likely to be a significant increase in the PRS population alongside a significant decrease in the owner occupation population. The analysis concludes that there will be increased demand by young people and the sector will house more than 37% of all young people by 2020.

Responses to the section 32 implementation consultation showed that the greatest equalities concern amongst respondents was about the impact in relation to age (29%), with concerns being raised about young people accessing the sector.

2) Effects / Impacts

Describe how your policy may affect people of different ages, and respond to their different needs. Describe any:

- a) positive effects and ways by which your policy helps respond to different needs, promote equality, and helps foster good relations²

² Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

- b) negative effects³ including, in relation to the first need, whether anyone is treated less favourably because of age or whether people who share an age group are put at a particular disadvantage compared to people who do not share that age group

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants (regardless of their age) are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people (particularly young people) in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact on people of different ages, as a result of the law being clarified in relation to premiums.

DISABILITY⁴

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of disabled people? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

The 2009 review showed that about one-in-ten private rented tenants is disabled or has a limiting long-term illness. The rate is higher in rural areas. These tenants are more likely to be dissatisfied with their home (21%).

The consultation on the implementation of section 32 (premiums) provided further evidence on the needs and experiences of disabled people in the PRS, including:

³ Refer to the EQIA guidance for more information on potential negative effects.

⁴ The definition of disability is broad and includes people with physical impairments, sensory impairments and mental impairments.

- housing for disabled people is already limited and premium charges could trap these consumers into poor quality substandard accommodation, especially if uncapped fees allowed agents to charge more for accessible housing (*Aberdeen Students' Accommodation*);

2) Effects / Impacts

Describe how your policy may affect disabled people, and respond to their different needs. Describe any:

- a) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations⁵
- b) negative effects⁶ including whether anyone is treated less favourably because of disability (or unfavourably because of something arising in consequence of that disability) and whether people who share a disability are put at a particular disadvantage compared to people who do not share that disability

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people (including disabled people) in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact on disabled people as a result of the law being clarified in relation to premiums.

⁵ Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

⁶ Refer to the EQIA guidance for more information on potential negative effects.

GENDER, INCLUDING PREGNANCY AND MATERNITY

1) Evidence

In relation to your policy, what does the evidence tell you about the different needs and experiences of women and men? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

The 2009 review of the Private Rented Sector found little difference between the experiences of male and female tenants using the sector.

However, evidence gathered during the section 32 (premiums) consultation provided the following information:

- evidence from Citizens Advice bureaux suggests that young people, women and those in single adult households – many of whom have caring responsibilities – are those most affected by problems in the private rented sector (*Citizens Advice Scotland*); and
- female single parents are commonly increasingly users of the PRS. They would benefit from the transparency and not having unlawful and unadvertised fees to find at each forced move (*Private Individual*).

2) Effects / Impacts

Describe how your policy may affect women and men and respond to their different needs. Describe any:

- c) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations⁷
- d) negative effects⁸ including whether anyone is treated less favourably because of gender (including pregnancy and maternity) and whether men or women are put at a particular disadvantage compared to the opposite sex

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable

⁷ Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

⁸ Refer to the EQIA guidance for more information on potential negative effects.

deposit and charges in relation to the UK Government's Green Deal) made to tenants are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact in relation to gender (including pregnancy and maternity), as a result of the law being clarified in relation to premiums.

GENDER REASSIGNMENT⁹

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of different people in respect of gender identity/transgender people? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

There is no evidence available in this area, at this time.

2) Effects / Impacts

Describe how your policy may affect different people in relation to gender identity and respond to their different needs. Describe any:

- a) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations¹⁰
- b) negative effects¹¹ including whether anyone is treated less favourably because of gender reassignment and whether transsexual people are put at a particular disadvantage compared to people who are not transsexual

⁹ The characteristic of gender reassignment applies to a person who proposes, starts or completes a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment. (Please refer to the EQIA Guidance for a further definition of these terms).

¹⁰ Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

¹¹ Refer to the EQIA guidance for more information on potential negative effects.

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants are illegal.

We do not consider that there will be any negative impact in relation to gender reassignment, as a result of the law being clarified in relation to premiums.

SEXUAL ORIENTATION

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of people in respect of sexual orientation (lesbian, gay, bisexual)? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

There is limited information on housing tenure for LGBT groups, however one survey on housing for older LGBT people listed respondents as 8% private rented tenants (2005).

Morrison and Mackay found that gay men in Edinburgh were more likely to rent their home privately and less likely to rent from a housing association (2003). The housing needs of LGBT people are not well documented, evidence suggests there are a range of issues in this field, including: being evicted from the family home or rented accommodation resulting in homelessness. This is a particular issue for young people.

2) Effects / Impacts

Describe how your policy may affect people on relation to their sexual orientation and respond to their different needs. Describe any:

- a) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations¹²

¹² Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

- b) negative effects¹³ including whether anyone is treated less favourably because of sexual orientation and whether people who are either gay or lesbian, heterosexual or bisexual are put at a particular disadvantage compared to people who do not have that particular sexual orientation

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact in relation to sexual orientation, as a result of the law being clarified in relation to premiums.

RACE¹⁴

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of people from different racial and ethnic groups?¹⁵ Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

The 2009 Review of the Private Rented Sector found that:

- ethnic minority people are more likely to be in private rented accommodation or owner occupiers;
- one in three non-white households live in the private rented sector, compared to one in fourteen white households;
- one in three non-white tenants experience problems accessing appropriate private rented housing, compared to one in five of all

¹³ Refer to the EQIA guidance for more information on potential negative effects.

¹⁴ The definition of race includes colour, nationality and ethnic or national origin.

¹⁵ This includes Gypsies/Travellers

tenants;

- migrant workers are highly likely to live in the private rented sector when they first arrive in Scotland, since they have difficulty in accessing social housing and owner occupation;
- there are reports of migrant workers living in overcrowded, unsafe and sub-standard private rented housing, including multiple short-term lets;
- the review found that households born outside the UK were more likely to have to pay an administration fee to obtain privately rented housing; and
- about 5% of PRS properties are owned by landlords from non-white ethnic groups.

The consultation on the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 provided further information and evidence in relation to race, with 26% of respondents citing this as their greatest concern. Responses included:

- the University of St Andrews welcomes students from around the world, 30% from overseas representing some 120 different nationalities. A consumer focused exercise should ensure that any of the above client groups should not be disadvantaged in the process, particularly where English is not their first language (*University of St Andrews Students' Association*).

2) Effects / Impacts

Describe how your policy may affect people of different races and ethnicities and respond to their different needs. Describe any:

- a) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations¹⁶
- b) negative effects¹⁷ including whether anyone is treated less favourably because of race and whether people who share a particular racial group are put at a particular disadvantage compared to people who are not of the same racial group

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal)

¹⁶ Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

¹⁷ Refer to the EQIA guidance for more information on potential negative effects.

made to tenants are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact in relation to race, as a result of the law being clarified in relation to premiums.

RELIGION AND BELIEF

1) Evidence

In relation to your policy, what does the evidence tell you about the needs and experiences of people in grouping respect of their religion and belief? Include:

- a) evidence from research & statistics
- b) evidence from consultation & engagement

Evidence in relation to religion and belief within the private rented sector is extremely limited. However, a 2001 study found that one third of households identifying as Hindu, one in five Buddhist households and a similar proportion of Muslim households lived in the private rented sector.

The consultation on the implementation of section 32 (premiums) did not provide any comments on issues relating to religion or belief.

2) Effects / Impacts

Describe how your policy may affect people in relation to their religion and belief, and respond to their different needs. Describe any:

- a) positive effects & ways by which your policy helps respond to different needs, promote equality, and foster good relations¹⁸

¹⁸ Refer to the EQIA guidance (Step two) for more information on positive effects and promoting equality (i.e: eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations).

b) negative effects¹⁹ including whether anyone is treated less favourably because of (or a lack of) religion or belief and whether people who share a particular religion or belief are put at a particular disadvantage compared to people who do not share it

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants (no matter what their religion or beliefs) are illegal.

We believe that clarification of the law on premiums may remove significant financial barriers for some people in accessing privately rented accommodation. The regulations will provide clarity that the only charges a tenant should be expected to pay during the grant, renewal or continuance of a tenancy are rent, a refundable deposit and any relevant 'Green Deal' charges that may be attached to a property.

We do not consider that there will be any negative impact on those of different religions or beliefs, as a result of the law being clarified in relation to premiums.

¹⁹ Refer to the EQIA guidance for more information on potential negative effects.

STEP THREE – Shape your policy as required to ensure that it fulfils the needs of the equality duty

a) Describe any additional action which has been/will be taken in response to the conclusions reached at step two of this EQIA. Here you need to demonstrate how the evidence you have gathered has helped shape and inform your policy. You should demonstrate how, in the development of the policy and in deciding whether to apply the policy, you have appropriately considered (had due regard to) the need to:

- eliminate discrimination, harassment, victimisation and other conduct that is prohibited under the Equality Act 2010,
- advance equality of opportunity between persons who share a relevant protected characteristic and those who don't share it,
- foster good relations between persons who share a relevant protected characteristic and those who don't share it.

In particular, where the conclusions reached at step two indicate that one or more groups of people who share a protected characteristic are put at a particular disadvantage, you must include an assessment of whether this is a proportionate means of achieving a legitimate aim.

The implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 has been informed by a range of information and evidence, including:

- the 2009 Review of the Scottish Private Rented Sector;
- the analysis of responses received to the Scottish Government's consultation on the charging of premiums in the private rented sector; and
- through engagement with a number of key stakeholders (including industry and consumer representatives and local authority representatives).

As part of the consultation, we sought views on a draft Equalities Impact Assessment and have paid due regard to the responses received.

The regulations clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants (no matter what their religion or beliefs) are illegal. Therefore we see this policy change as removing a number of financial barriers currently facing a wide number of people living within or

attempting to access the private rented sector. No detrimental effect has been identified in relation to the equality duty.

b) Describe any equality issues that you identified in Step 2, which you haven't addressed or mitigated against, and explain the reasons why.

None.

c) Explain whether your EQIA analysis had an impact on the size of your resource and/or the way you use resources.

None.

d) Explain whether there are implications on costs, and the focus of spend, arising from your EQIA analysis. Do you have the budget to cover your costs, and has the EQIA changed how you use your budget?

None.

STEP FOUR – Review and/or Monitoring

Describe how you will review and/or monitor and/or evaluate the effect of your policy and in particular the impact on equality.

Whilst there will be no formal monitoring arrangements put in place, the impact of the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 will be informally monitored following the 30 November 2012 commencement date.

Regular dialogue with industry and consumer representative bodies will enable officials to monitor the effect of the policy and also consider the impact on equality.

STEP FIVE – Prepare a Summary

Prepare a summary using the summary template at **Annex A** below.

This can also be added as an annex to any relevant Ministerial submissions, helping ensure that the Scottish Ministers, in the exercise of their functions, have had due regard to the needs mentioned in section 149(1) of the Equality Act 2010.

STEP SIX - Authorisation and Publication

Your EQIA will need to be signed off by your Deputy Director (or equivalent).

Before signing off the EQIA, a Deputy Director should ensure that she/he is satisfied that the equality impact assessment is robust, has addressed all the relevant equality issues and that appropriate actions have been taken. Opportunities to promote equality in respect of age, gender, disability, race, religion/belief, sexual orientation and gender identity/transgender people should have been considered.

By signing off the EQIA, the Deputy Director is confirming that the impact of applying the policy has been sufficiently assessed against the needs of the equality duty:

- eliminating conduct prohibited by the Equality Act 2010, including:
 - direct discrimination
 - indirect discrimination
 - harassment
 - victimisation
- advancing equality of opportunity, including by:
 - removing or minimising any barriers or disadvantages
 - taking steps which assist in promoting equality and meeting people's different needs
 - encouraging participation (e.g. in public life)
- fostering good relations, including by:
 - tackling prejudice
 - promoting understanding

The Specific Duties place a requirement on us to publish, within a reasonable period, the results of the equality impact assessment. Once completed the Summary template document should be sent to APS for conversion as a **fully accessible** document.

Once converted, please send the Summary to the Equality Unit for publication. The full assessment must be stored by the lead policy official on Objective as a corporate record and made available should any stakeholder or member of the public request it.

EQUALITY IMPACT ASSESSMENT SIGN OFF

Policy title	Rent (Scotland) Act 1984 (Premiums) Regulations 2012
Which national outcome(s) does the policy contribute to?	<p>We value and enjoy our built and natural environment and protect it and enhance it for future generations.</p> <p>We live our lives safe from crime, disorder and danger.</p> <p>We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.</p>
What is the purpose of the policy (or changes which are to be made to the policy)?	<p>Section 32 of the Private Rented Housing (Scotland) Act 2011 will assist the growth of a high quality private rented housing sector by clarifying the law in relation to the charging of premiums in the private rented sector.</p> <p>Evidence shows that there is considerable confusion in relation to the definition of a premium. This has led to a wide variety of differing types and levels of charges being levied towards tenants, many of which are unjustifiably inflated.</p> <p>Therefore the aim of this policy is to clarify the law and to clearly identify what (if any) reasonable charges can be made to tenants.</p> <p>The Rent (Scotland) Act 1984 (Premiums) Regulations 2012 clarify that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit (not exceeding</p>

	two months' rent) and charges relating to the UK Government's 'Green Deal') are illegal.
Name of Branch or Division	Housing Options and Services Unit
Directorate or Agency	Housing, Regeneration, the Commonwealth Games and Sport
Lead EQIA official	Yvonne Gavan

I confirm that the impact of applying the policy has been sufficiently assessed against the needs of the equality duty:

<i>Ann Nelson, Head of Housing Services and Regeneration Division</i>	<i>10 October 2012</i>
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Once signed off, you MUST file and store this EQIA on eRDM as a corporate record.

Annex A

EQUALITY IMPACT ASSESSMENT – SUMMARY

Directorate: Division: team	Housing, Regeneration, the Commonwealth Games and Sport Directorate Housing Options and Services Unit Private Rented Sector Team
Title of Policy	Rent (Scotland) Act 1984 (Premiums) Regulations 2012
Date of completion of EQIA	2 October 2012

Background

A range of stakeholders have voiced concern about the lack of clarity regarding charges made to tenants for setting up a tenancy by agents or landlords. Under section 82 of the Rent (Scotland) Act 1984 it is an offence to require any premium as a condition of the grant or continuance of a protected tenancy. The provisions in section 82, 83 and 86 to 90 of the 1984 Act are applied to assured tenancies with modifications, by section 27 of the Housing (Scotland) Act 1988. A 'premium' is defined by section 90 of the 1984 Act as including any fine or other like sum and 'any other pecuniary consideration' in addition to rent.

Although it should be clear that this legislation prevents the making of any charge apart from rent and refundable deposit (not exceeding two months' rent), there appears to be considerable confusion. Some letting agents interpret the law as meaning that it is illegal only for a letting agent to charge a fee specifically to grant the tenancy, whereas others take the view that any fee (other than rent or a refundable deposit) charged by an agent is illegal.

The overall objective is to clarify the law in relation to charges made to tenants by landlords and letting agents who act on their behalf.

This policy contributes to the Scottish Government's work on improving standards and quality within the Scottish private rented sector.

The objective fits with the Scottish Government's strategic 'Safer and Stronger Scotland' objective. This helps local communities to flourish,

becoming stronger, safer places to live, offering improved opportunities and better quality of life.

The EQIA is based on evidence and information gathered from:

- the Scottish Government's 2009 Review of the Private Rented Sector;
- engagement with a number of industry and consumer representative bodies; and
- the analysis of a consultation on the charging of premiums in the private rented sector.

Key Findings

The Rent (Scotland) Act 1984 (Premiums) Regulations 2012 clarify the existing law that all charges in relation to the grant, renewal or continuance of a tenancy (apart from rent, a refundable deposit and charges in relation to the UK Government's Green Deal) made to tenants (regardless of their age) are illegal.

We believe that clarification of the law on premiums will remove significant financial barriers for some people (across the equality strands) in accessing privately rented accommodation. The regulations will provide clarity and prevent tenants being charged a wide varying range of fees that currently act as a significant barrier when accessing privately rented accommodation.

We do not consider that there will be any negative impact in relation to the equality duty, as a result of the law being clarified in relation to premiums.

Conclusion

Through our engagement with a range of stakeholders (both face-to-face and through the consultation process) and our analysis of the evidence available, we have identified that no negative impacts in relation to the equalities duty exists.

Positive impacts have been identified in relation to the existing law on premiums being clarified through the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011. The law clarification will ensure that certain groups, in particular;

- young people;
- lone female parents; and
- ethnic minorities (including migrant workers)

Will no longer face substantial financial barriers when attempting to access privately rented accommodation.

The Scottish Government is fully aware of the need to clearly communicate this law clarification to as wide a range of groups as possible. Therefore we will continue to work with key stakeholders such as Equality Organisations, Citizens Advice Scotland etc. to help ensure that those with protected characteristics are more likely to know their rights in relation to premium charges within the private rented sector.

FINAL BUSINESS REGULATORY IMPACT ASSESSMENT

PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011: SECTION 32 (PREMIUMS)

Background

A range of stakeholders have voiced concern about the lack of clarity regarding charges made to tenants for setting up a tenancy by agents or landlords. Under the current legislation, section 82 of the Rent (Scotland) Act 1984 it is an offence to require any premium as a condition of the grant or continuance of a protected tenancy. The provisions in section 82, 83 and 86 to 90 of the 1984 Act are applied to assured tenancies with modifications, by section 27 of the Housing (Scotland) Act 1988. A 'premium' is defined by section 90 of the 1984 Act as including any fine or other like sum and 'any other pecuniary consideration' in addition to rent.

Although it should be clear that this legislation prevents the making of any charge apart from rent and refundable deposit (not exceeding two months' rent), there appears to be considerable confusion. Some letting agents interpret the law as meaning that it is illegal only for a letting agent to charge a fee specifically to grant the tenancy, whereas others take the view that any fee (other than rent or a refundable deposit) charged by an agent is illegal.

Many agents charge an administration fee to cover overheads, costs of background checks and references etc. Good practice published by the Association of Residential Letting Agents highlights that other administration charges must reflect actual costs incurred. However, recent research by [Shelter Scotland](#) and the [Resolution Foundation](#) suggests that some agents are charging tenants unjustifiably large administration fees.

When fully commenced, section 32 of the Private Rented Housing (Scotland) Act 2011 will amend the definition of premium in section 90 of the 1984 Act to make clear that it includes **any service or administration fee or charge**. In addition to this change to the definition of premium, section 32 also inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy.

The regulations will be able to specify categories of charges that are not to be treated as premiums in terms of section 82 and to set a maximum amount for any such charge.

Objective

The overall objective is to clarify the law in relation to charges made to tenants by landlords and letting agents who act on their behalf.

This policy contributes to the Scottish Government's work on improving standards and quality within the Scottish private rented sector.

The objective fits with the Scottish Government's strategic 'Safer and Stronger Scotland' objective. This helps local communities to flourish, becoming stronger,

safer places to live, offering improved opportunities and better quality of life.

Rationale for Government intervention

Evidence shows that there is considerable confusion in relation to the definition of a premium. This has led to a wide variety of differing levels of charges being levied towards tenants, many of which are unjustifiably inflated.

Consultation

Within Government

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

We have also been working with local Government colleagues through the Private Rented Housing (Scotland) Act 2011 Implementation Group, which comprises officials from COSLA, the Association of Local Authority Chief Housing Officers Group, City of Edinburgh Council and Glasgow City Council.

Public Consultation

Before making any regulations under the new section 89A of the 1984 Act, it was a requirement that Scottish Ministers consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.

In order to inform the development of a consultation document, informal stakeholder discussions took place with members of the Private Rented Housing (Scotland) Act 2011 Implementation Group, which comprises a range of private rented sector stakeholder organisations (including Shelter Scotland, Scottish Association of Landlords, and Consumer Focus Scotland etc).

A public consultation took place between 4 April and 28 May 2012. There were a total of 424 responses to the consultation, included two petitions. These included 300 responses which were submitted as a result of a publicity exercise by Shelter. Nearly two-thirds of responses came from private individuals and nearly one-fifth from letting agents. Less than 10% of the estimated 500 letting agents in Scotland responded, however, responses were received from two letting agent representative bodies. Other significant respondent groups included professional, representative or trade bodies (7%) and local authorities (4%).

Responses were analysed by ODS Consulting and an analysis report and responses received, were published on the Scottish Government website on 26 August 2012.

Business

Discussions have also taken place with:

- Association of Residential Letting Agents;
- Scottish Association of Landlords; and
- Shelter Scotland.

Options

Three options were presented in the consultation document:

Option 1: Embark on a consumer focused communications exercise to clarify that the definition of premium in section 90 of the 1984 Act (once amended as set out in paragraph 2.5) is clear that any fine, sum or other pecuniary consideration (and this includes any service or administration fee or charge), other than rent and a refundable deposit of not more than two months rent, **is a premium**.

Option 2: Develop secondary legislation under the new section 89A of the 1984 Act, specifying **categories of sums that are permitted** to be charged by letting agents when providing services to a tenant, **with maximum allowable amounts** set for each such charge.

Option 3: Develop secondary legislation under the new section 89A of the 1984 Act, specifying categories **of sums that are permitted** to be charged by letting agents when providing services to a tenant, without maximum allowable amounts set for each such charge.

A fourth option of taking no regulatory action in relation to premium charges within the private rented sector will also be examined within this Business Regulatory Impact Assessment.

OPTION ONE

Sectors and groups affected

Letting agent businesses, landlords and tenants.

Benefits

Implementing option one would promote and reinforce the existing law on premiums. We are already aware of a number of tenants who are undertaking court proceedings via the existing law on premiums, to reclaim charges that have been made to them illegally in relation to the grant, renewal or continuance of a tenancy and option one would help clarify existing law.

Consultation findings found that 73% of respondents expressed a preference for this proposal, with 65% naming it as their single preferred option. Most stakeholder groups broadly supported the option, with the exception of letting agents (none of whom put this forward as their single preferred option) and local authorities (whose response was more mixed than other stakeholder groups). Many private individuals chose this option as they felt it would ensure that charges they considered to be unfair would remain illegal. Many felt that the options explored in later questions would legalise what they consider to be poor practice, and this would lead to additional costs to tenants and prospective tenants.

There was particular concern about the frequency, level and application of fees relating to cleaning, inventories, assignation and credit reference checks. They often suggested that such costs should be passed onto the landlord, rather than the tenant.

Costs

Many letting agents currently charge tenants a range of upfront administration fees for a variety of services such as reference or credit checks. Option one would therefore impact on those letting agent businesses who adopt such a business model. However, we are aware from industry engagement, that many letting agents across Scotland currently operate on a business model which sees no charges made to tenants other than rent and a refundable deposit.

The majority of responses to the consultation in relation to option one suggested that it would have minimal impact on the sector as not all agents currently make such charges and therefore it was suggested that any costs incurred as a result of implementing this option would either be passed onto landlords (the client of the letting agent), or be absorbed. Some respondents suggested that passing such charges onto landlords may lead to an increase in rents and, therefore have a negative impact on the tenant, however organisations such as Shelter Scotland have highlighted that any subsequent impact on rent would still present a much more transparent process for tenants, than a range of upfront costs which can often act as a barrier to accessing privately rented accommodation.

OPTION TWO

Sectors and groups affected

Letting agent businesses, landlords and tenants.

Benefits

Implementation of option two would enable certain fees charged by letting agents to tenants, to not be treated as a premium and with those fees to have a maximum allowable amount set.

Many letting agents supporting option two argued that there are legitimate charges they require to make to tenants in order to deliver an effective and quality service. Some argued that this approach was more transparent than including these costs within rent on an ongoing basis. However, it was also suggested in consultation responses that setting maximum allowable amounts was not an appropriate task for government and could stifle competition.

Introducing secondary legislation that specifies categories of sums that letting agents are able to charge tenants (along with associated maximum amounts for those charges) would enable responsible agents to be in a better position to know what they can legally charge and force those agents who are 'over charging' to reduce their costs accordingly.

Costs

Option two would result in certain charges made by letting agents to tenants as being permissible, with a maximum associated cost set for each of these charges. This therefore would have a cost implication for those accessing privately rented accommodation.

The introduction of a maximum associated cost may also have an impact on letting

agents who currently charge above any maximum cost that is set. Such businesses would have to therefore reduce their charging structure accordingly.

Setting a maximum amount may also encourage any letting agents who currently charge below this amount, to increase to the maximum level, therefore impacting on tenants who access the services of that agent.

Implementing option two may result in those letting agents who operate to a business model whereby tenants are not charged, to begin charging.

There would be cost implications for the Scottish Government in making new regulations.

OPTION THREE

Sectors and groups affected

Letting agent businesses, landlords and tenants.

Benefits

Implementation of option three would enable certain fees charged by letting agents to tenants, to not be treated as a premium with no maximum allowable amounts set for each charge.

The vast majority (91%) of respondents opposed this proposal. 18 respondents selected it as their preferred option, 13 of whom were letting agents. Several letting agents said that they supported identifying permissible charges since it would increase clarity and stop unscrupulous letting agents charging unfair or excessive fees. Respondents felt that setting a maximum amount for each charge would be impractical due to legitimate variation in costs in the market.

Introducing secondary legislation that specifies categories of charges that letting agents will be able to charge a tenant would enable responsible agents to be in a better position to know what services they can legally charge a tenant for.

Costs

Option three would result in certain charges made by letting agents to tenants as being permissible, without a maximum associated cost set for each of these charges. This therefore would have a cost implication for those consumers accessing privately rented accommodation.

By not introducing a maximum amount for each charge, letting agents would be able to charge any amount, however it is expected that market competition would regulate an appropriate amount.

Implementing option three may result in those letting agents who operate to a business model whereby tenants are not charged, to begin charging.

There would be cost implications for the Scottish Government in making new regulations.

OPTION FOUR

Sectors and groups affected

Tenants.

Benefits

By taking no regulatory action in relation to premiums within the private rented sector, landlords who currently charge tenants in relation to the granting, renewal or continuance of a protected tenancy (along with letting agents who act on their behalf) would not be required to alter any of their business practices.

However, whilst this would appear to have an impact on tenants, case law now exists in relation to tenants who have successfully challenged illegal charges made by letting agents in relation to the existing law on premiums (Rent (Scotland) Act 1984).

Costs

Option four would not result in any costs for the Scottish Government as no regulatory action would be required.

Letting agents would not incur any costs as they potentially would not be required to alter their business models.

Tenants may incur costs in challenging any fees charged to them that they deem to be illegal as per the Rent (Scotland) Act 1984.

Scottish Firms Impact Test

As part of our pre-consultation discussions in December 2011 and January 2012, we had informal, face-to-face meetings with national tenant, landlord and letting agent representative groups.

We did not gather details of these discussions as organisational responses but used them to get an initial response from industry stakeholders and representative groups. This was to help us consider the likely impact of any legislative change and the benefits or difficulties they might pose. In relation to the proposals we asked:

- what are the current issues and challenges in relation to premiums within the private rented sector that we need to address?
- from your organisations perspective, what do you see as the best approach to dealing with these issues and challenges?
- would implementing particular approaches cause any difficulties for your organisation(s)?

The following information summarises the main points gathered during stakeholder discussions:

Letting Agent Representatives:

- A large number of letting agent businesses have concerns over how the Government will implement section 32 of the Private Rented Housing (Scotland)

Act 2011 – in relation to the impact it will have on their business.

- The scale of letting agents varies in Scotland – ranging from small scale operations to large scale national businesses.
- The scope of work that has to be done by agents on behalf of tenants was discussed. Tasks include: property marketing, visiting properties with tenants, inventory preparation, cleaning, processing transactions and referencing (which can often be lengthy). It was highlighted however, that some of these tasks would be the responsibility of a landlord to pay for (i.e. marketing of a property).
- It was suggested that inability to charge tenants fees would ultimately result in rent increases.
- The need for pre-tenancy deposits was discussed. It was suggested that such deposits are required to prevent a tenant reserving 4 or 5 properties and then withdrawing when they have settled on a final property to rent. This can result in missed rental opportunities.
- It was suggested that the total costs to a letting agent – in relation to providing a 'full service' to a tenant would be in the region of £250 per person.

Landlord Representative:

- A key concern was the risk of rent inflation if current premium charges were to be entirely directed to landlords.
- It was highlighted that landlords tend to use letting agents through necessity rather than choice – as circumstances often dictate the need.
- Letting agents charge landlords commission of c9% - 15% of a months rent – then additional fees (which vary depending on the letting agent being used) such as lease preparation fees, inventory production fees, advertising, repairs etc.
- Ultimately a landlord could increase rent if additional fees are charged to them.
- It was suggested that charges to a tenant should not be added to rent but should instead be advertised in an open and transparent way, to that consumers are fully aware of what they are and make comparisons. For example, the letting advert should show the fee for references, inventory (split 50-50 with landlord) etc. It was proposed that these charges should be capped.

Tenant Representative:

- It was made clear that the only charges that should be made to a tenant are rent and a refundable deposit (not exceeding two months rent).
- It was highlighted that there are many letting agents operating successfully in the market at the moment who do not charge tenants any fees.
- Some tenants have reported that many fees are hidden and not transparent, meaning that they enter into an agreement and are then charged high fees that they have to pay.
- There is the potential for double charging (i.e. fees to landlords and tenants are often in relation to the same thing).
- It was highlighted that rent increases as a consequence of all tenant charges being a premium was preferred – as this is not an upfront cost to the tenant and is instead a more manageable, monthly cost.
- It was stressed that letting agents business is with landlords and not tenants and therefore any charges should be made to the landlord who are often more business aware and able to make informed choices as to which letting agency to use.

Competition Assessment

Full consideration has been given to the Office of Fair Tradings Competition Assessment criteria in relation to the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011. As the policy change will result in a clarification of existing law, we do not envisage that the policy will result in:

- directly limiting the number or range of suppliers;
- indirectly limiting the number or range of suppliers;
- limit the ability of suppliers to compete; or
- reduce suppliers incentives to compete vigorously.

We are aware of a number of letting agencies who currently operate to a business model that does not charge tenants anything other than rent and a refundable deposit.

Whilst this policy change may require some letting agencies who charge tenants to alter their business model, we expect that the charges can be recovered by transferring the costs to the agents client (i.e. the landlord).

Test run of business forms

Implementation of any of the three options being presented does not create any new business forms.

Legal Aid Impact Test

It is not expected that the changes made as a result of the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 will result in any significant increase in expenditure on the legal aid fund.

Enforcement, sanctions and monitoring

Charging a premium in breach of section 82 of the Rent (Scotland) Act 1984 is a criminal and civil offence. The implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 will not change this. Enforcement action is consumer led.

No formal monitoring and reporting on section 32 will be established. However a variety of statistics in relation to letting agents are collected through a number of stakeholders including Scottish Government Analytical Services, local authorities (via the Landlord Registration database), the Association of Residential Letting Agents and Scottish Association of Landlords – therefore allowing for evidence to be gathered post-commencement of section 32 of the Private Rented Housing (Scotland) Act 2011.

Implementation and delivery plan

Section 32 of the Private Rented Housing (Scotland) Act 2011 will come into force on 30 November 2012.

Post-implementation review

No formal post-implementation review is expected to take place after commencement of section 32 of the Private Rented Housing (Scotland) Act 2011.

Summary and Recommendation

Section 32 of the Private Rented Housing (Scotland) Act 2011 comes into force on 30 November 2012.

It will amend the definition of a premium in the Rent (Scotland) Act 1984 to clarify that an illegal premium includes any fine or other sum and any other pecuniary consideration, in addition to rent and a refundable deposit, and includes any service or administration fee or charge. Section 32 of the 2011 Act will also insert a new section 89A into the 1984 Act which provides Ministers with the powers to outline in secondary legislation, charges that are permissible.

Based on evidence gathered during the recent consultation and on wider stakeholder engagement, the Scottish Government will take forward the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011, which would see all charges (other than rent, a refundable deposit and any charges in relation to the UK Government's Green Deal) are clarified as being illegal. Regulations are therefore required to specify that any payments under a Green Deal plan will not be treated as a premium for the purposes of the 1984 Act.

Part of the UK Government's Energy Act 2011, a 'Green Deal' can be put in place to improve the energy of a property, with the costs for such work being repaid through the utility bills for that property (which in many privately rented properties, will be paid for by the tenant). It is expected that 'Green Deal' plans will be available from 2013.

It is recommended that this approach be undertaken when implementing section 32 of the 2011 Act for the following reasons:

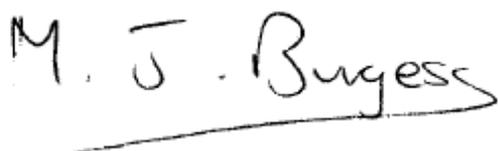
- until recently, there was no case law in relation to a tenant challenging fees that had been charged by a letting agent or landlord to them. However, over recent months, a large number of private rented tenants have begun legal action in relation to fees that may have been charged to them illegally. A number of tenants have been successful in their court action;
- by implementing section 32 to clarify that all charges (other than rent, a refundable deposit and charges in relation to a Green Deal) are illegal, this clarifies and reinforces the existing law on premiums; and
- we are aware that a number of letting agents currently successfully operate to a business model whereby no charges (other than rent and a refundable deposit) are made to tenants. Therefore whilst the law clarification will force a number of letting agents to alter their business models, it is believed that such costs should be levied towards the landlord, as the client of the letting agent or absorbed.

Summary Costs and Benefits

Options	Benefits	Costs
<p>Option One: Amend existing definition to clarify that all charges (other than rent and a refundable deposit) are illegal.</p>	<ul style="list-style-type: none"> • Promotes and reinforces existing law on premiums; • Possibility for letting agents to alter business models to recover costs; and • Removes significant financial barrier for individuals accessing privately rented accommodation. 	<p>Letting agents will be expected to transfer any costs (other than rent and a refundable deposit) currently charged to a tenant, to their client (the landlord).</p>
<p>Option Two: Amend existing definition and specify categories of sums that are permitted, along with a maximum associated cost.</p>	<ul style="list-style-type: none"> • Would clearly state which charges to tenants were permissible, along with an associated maximum cost; and • Provides potential transparency compared to including costs within rent. 	<p>For those charges deemed illegal, letting agents will be expected to transfer such costs to their client (the landlord).</p> <p>Any charges deemed permissible, along with an associated maximum amount, would be chargeable to the tenant.</p>
<p>Option Three: Amend existing definition and specify categories of sums that are permitted, without specifying a maximum cost.</p>	<ul style="list-style-type: none"> • Would clearly state which charges to tenants were permissible, along with an associated maximum cost; and • Provides potential transparency compared to including costs within rent. 	<p>For those charges deemed illegal, letting agents will be expected to transfer such costs to their client (the landlord).</p> <p>Any charges deemed permissible, would be chargeable to the tenant and such costs could vary dramatically.</p>
<p>Option Four: Take no action</p>	<ul style="list-style-type: none"> • Would result in many letting agencies continuing to operating as normal, without forcing any change to their current business models. 	<p>Many letting agencies would continue to charge tenants a range of costs, which vary dramatically.</p> <p>Where tenants perceive that those charges are illegal in terms of the Rent (Scotland) Act 1984, costs would be associated with a tenant taking legal action to recover those charges.</p>

Declaration and publication

I have read the 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:A handwritten signature in black ink that reads "M. J. Burgess". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Margaret Burgess MSP, Minister for Housing and Welfare

Date: 5 October 2012

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