

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

Introduction of a Tenant Information Pack in the Private Rented Sector

## **Purpose and intended effect**

### **Background**

The Review of the Private Rented Sector, published in March 2009, identified pre-tenancy arrangements as an area in which tenants' knowledge of their rights and responsibilities could be promoted.

Evidence shows that, although there is generally good communication between tenants and landlords on tenant rights, there is still work to be done to make sure tenants understand their rights fully.

The Scottish Government subsequently set up a stakeholder strategy group to look at these findings and they agreed that pre-tenancy arrangements and tenants' knowledge of their rights and responsibilities were key areas to improve. Finally, in 2010 the Scottish Government consulted on a new Housing Bill, and as part of that consultation asked for views on introducing an information pack for tenants. Most of those who responded wanted to see this being introduced.

Therefore, to improve knowledge of the rights and responsibilities among many tenants and landlords in the Private Rented Sector, section 33 of the [Private Rented Housing \(Scotland\) Act 2011](#) places a duty on private landlords to provide new tenants with a Tenant Information Pack.

Under this new duty, Scottish Ministers can make regulations to specify the documents that must be provided to the tenant under an assured tenancy. The regulations may make further provision about the form of the documents and the information to be included.

### **Objective**

The overall objective is to put in place a framework that ensures tenants are more informed of their rights and responsibilities and are able to use the knowledge and information available to them to make appropriate decisions, to challenge bad practice and to avoid difficult experiences in the first place.

This policy contributes to the Scottish Government's work on improving standards and quality within the private rented sector, which has often been viewed as a tenure that provides poor quality and badly managed housing. Increasingly constrained access to owner occupation and social housing has meant that demand for privately rented housing has grown rapidly over recent years. Therefore, the Scottish Government is committed to improving standards, quality and management within the sector in order to meet this demand.

### **Rationale for Government intervention**

The Tenant Information Pack will support and enable tenants (and prospective tenants) to develop a better understanding of their rights and responsibilities within the private rented sector and therefore will help them make better informed choices within the sector.

## **Consultation**

### **Within Government**

We have worked closely with colleagues in the Directorate for Legal Services (Solicitors to the Scottish Government) to establish regulations under section 33 of the Private Rented Housing (Scotland) Act 2011. We have also consulted with colleagues in a range of relevant Scottish Government departments to develop the consultation, including Communities Analytical Services.

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

### **Public Consultation**

Before making any regulations, Scottish Ministers are required to consult with such persons and bodies as they consider representative of the interests of tenants, private sector landlords, persons who act as agents for some landlords and such other persons as they see fit.

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

Also, as part of the consultation process, Communities Analytical Services have commissioned consultants to run focus groups with tenants and small landlords and interviews with large landlords and letting agents.

The public consultation was published on 27 February 2012 and ran until 21 May 2012. The purpose of the consultation was to seek views on what information should be contained within a pack, what the pack should look like and how it would work in practice. The analysis of consultation responses, focus groups and interviews will be published on the Scottish Government website in July 2012.

### **Business**

In addition to the various organisations represented on the Implementation Working Group, we will be engaging with a number of businesses/ individuals to try and gain an understanding of the business impact of commencing the duty under section 33. These businesses/ individuals will include -

- Private landlords
- Private tenants
- Letting Agents

## **Options**

### **Option 1: Do nothing**

Do not implement section 33 of the Private Rented Housing (Scotland) Act 2011, which places a duty on private landlords to provide new tenants with a Tenant Information Pack.

### **Option 1: Benefits**

- No additional administration necessary on landlords (or letting agents working on their behalf).

### **Option 1: Costs**

- Doing nothing would mean that tenants would not benefit from the provision of more accessible information and the resulting increase in consumer awareness.
- Tenants will make less informed choices with regard to choice of accommodation.
- Possible reputational cost to the Scottish Government due to a failure to act on the recommendations of previous research and stakeholder advice. The 2009 review of the private rented sector highlighted that an area where improvements could be made was that of promoting tenants' knowledge of their rights and responsibilities. The Scottish Government subsequently set up a stakeholder strategy group to look at these findings and they agreed that pre-tenancy arrangements and tenants' knowledge of their rights and responsibilities were key areas to improve. Finally, in 2010 the Scottish Government consulted on a new Housing Bill, and as part of that consultation asked for views on introducing an information pack for tenants. Most of those who responded wanted to see this being introduced.

### **Option 2: Introduce a Tenant Information Pack**

When commenced, Section 33 of the Private Rented Housing (Scotland) Act 2011, will place a statutory duty on private landlords (and agents acting on their behalf) to provide certain information to a tenant no later than the date the assured tenancy commences.

Under this duty, Scottish Ministers can specify the documents to be provided which may include information about –

- the tenancy;
- the house;
- the person who is to be the landlord; and
- the rights and responsibilities of tenants and landlords.

The regulations may make further provision about the form of the documents and the information to be included.

### **Sectors and groups affected**

Private landlords, tenants and letting agents acting on behalf of landlords.

## **Option 2: Benefits**

- The Tenant Information Pack would improve knowledge of rights and responsibilities among tenants and landlords (the 2009 Review of the Private Rented Sector found low awareness of rights and responsibilities among both groups), since it would provide a compendium of relevant facts and forms. The main objective in bringing forward these regulations is to ensure that consumers are more informed and are able to use the knowledge and information available to them to make appropriate decisions, to challenge bad practice and to avoid difficult experiences in the first place.
- The Tenant Information Pack will contribute towards an improvement in the reputation of the private rented sector as the Tenant Information Pack will allow tenants to make more informed decisions.
- Introduction of a Tenant Information Pack will have tenant support.
- The introduction of a Tenant Information Pack will reward landlord good practice (i.e. tenants will seek out properties belonging to law-abiding landlords who provide a better service).

## **Option 2: Costs**

- There will be cost implications in designing the information pack, making it available to landlords and agents (possibly online), and updating it. These costs will fall on the Scottish Government.
- In establishing the financial memorandum for the Private Rented Housing (Scotland) Act 2011, the Scottish Government estimated that initial set-up costs would be less than £20,000. In addition, there would be minimal costs (less than £5,000) for updating, which would occur on an infrequent basis.
- It is envisaged that local authorities would have a role in bringing the requirement to issue the tenant information pack to the attention of landlords. However, this should involve minimal costs since it should be part of the normal process of communicating with landlords registered in each local authority's area.
- Landlords and agents will be able to obtain the Tenant Information Pack for free from the Scottish Government. However, there may be a small additional cost of provision of this material to tenants, but this will be minimal given that landlords and agents already have to provide certain information already, such as the tenancy agreement and the Repairing Standard letter.
- The Scottish Government asked the Scottish PRS Strategy Group for more information on the costs associated with this provision. Group members, which included Scottish Associations of Landlords, did not highlight any costs beyond the minimal time required to bring together the relevant information.

We will be seeking more detailed views on the costs and impact of commencing section 33 when speaking with organisations/ individuals.

## **Scottish Firms Impact Test**

As highlighted earlier in the BRIA, business groups have been involved in the policy development process. Members of the Private Rented Housing (Scotland) Act 2011 Implementation Group (including Shelter Scotland, Scottish Association of Landlords, National Union of Students, Consumer Focus Scotland and the Poverty Alliance) helped inform the content of the consultation document.

Feedback from a focus group on the Tenant Information Pack with **small landlords** (i.e. 1-4 properties) suggested that the length and presentation of the example pack included in the consultation document was acceptable. There was a consensus that the pack had struck a good balance between providing useful, robust information whilst not overburdening landlords.

Telephone interviews also took place with the following stakeholders:

- **Letting agents** (Cullen Property, Letting Direct, Spiers Gumley, Fineholm Letting, Cullen Kilshaw)
- **Large landlords** (Crown Estate, Dormont Estate, Ziggurat, Link Housing)

Their views on the draft tenant information pack are summarised below:

- Letting agents and landlords already produce much of the information which would be required by the Tenant Information Pack.
- Most perceived the pack to strike a good balance between providing robust information yet not overburdening landlords.
- A few landlords and letting agents remarked that on first sight they thought the pack was too long, but on reading it they felt nothing could be removed.

### **Competition Assessment**

The tenant information pack will have no effect on competition. This proposal would increase the knowledge and consumer awareness of tenants and also of some landlords. This should have a beneficial effect on competition since it would make it more likely that tenants would seek out properties belonging to law-abiding landlords who provide a better service. In turn, this should lead to higher standards overall.

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

An example Tenant Information Pack was included in the consultation document (which a range of businesses have responded to), and this example pack was also used during the consultation focus groups with tenants and small landlords and interviews with letting agents and large landlords.

Feedback on the example pack will inform the content and structure of the finalised Tenant Information Pack.

### **Legal Aid Impact Test**

The Scottish Government's Legal Aid Team does not foresee any impact of legal aid expenditure with the introduction of the Tenant Information Pack.

### **Enforcement, sanctions and monitoring**

When commenced, any non-compliance of section 33 of the Private Rented Housing (Scotland) Act 2011 (without reasonable excuse) will be an offence attracting a fine not exceeding level 2 (i.e., £500).

No formal monitoring and reporting on section 33 will be established.

### **Implementation and delivery plan**

We are taking a three stage approach to developing this important policy area:

- The first stage involved a 12 week consultation period, where we sought views on what information should be including in a Tenant Information Pack, what the pack should look like and how it will work in practice.
- The second stage in the process involves drafting regulations, in light of the responses to the consultation and the outcome of stakeholder focus groups and interviews.
- The third stage involves submitting the regulations for approval by the Scottish Parliament directly after summer recess.

It is expected that secondary legislation will come into force by the end of 2012.

### **Post-implementation review**

The consultation document commits to ensuring that the information included in the Tenant Information Pack is accurate and up to date, and the Scottish Government will ensure that any changes within the sector are reflected in the pack.

There is no commitment to formally evaluate the Tenant Information Pack.

### **Summary and recommendation**

In summary, the introduction of a mandatory Tenant Information Pack will improve the accessibility of information available to tenants in the private rented sector. Its introduction will contribute towards ensuring that the private rented sector provides good quality and well managed accommodation – where both landlords and tenants understand their respective rights and responsibilities.

We now wish to introduce regulation to enact Section 33 of the Private Rented Housing (Scotland) Act 2011, which places a duty on private landlords to provide new tenants with a Tenant Information Pack. In our view, this introduction will not unduly overburden landlords, and any additional costs of providing this information to tenants will be minimal. Furthermore, the Tenant Information Pack would have no effect on competition.

**Therefore, it is recommended that Option 2 is introduced under Section 33 of the Private Rented Housing (Scotland) Act 2011.**

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

<b>Option</b>	<b>Benefits</b>	<b>Costs</b>
<b>1 – No nothing</b>	<ul style="list-style-type: none"><li>• No additional administration necessary on landlords.</li></ul>	<ul style="list-style-type: none"><li>• Tenants denied access to accessible information.</li><li>• Tenants make less informed choices.</li><li>• Reputation cost to Scottish Government (i.e. failure to act on</li></ul>

		previous research and stakeholder advice).
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**2 – Introduce a Tenant Information Pack (TIP)**

	<ul style="list-style-type: none"> <li>• Improve tenant and landlord understanding of rights and responsibilities.</li> <li>• TIP has tenant support.</li> <li>• Will reward good landlord practice.</li> <li>• Will contribute towards an improvement in the reputation of the private rented sector.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimal costs for Scottish Government (TIP design and promotion) and landlords (TIP distribution to tenants).</li> </ul>
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**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.

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Minister for Housing and Transport  
July 2012

**Contact**

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