

POLICY NOTE

THE PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 6 AND SAVINGS PROVISIONS) ORDER 2013

SSI 2013/82 (C. 6)

1. The above Regulations are made in exercise of the powers conferred by Section 41(3) and (4) of the Private Rented Housing (Scotland) Act 2011. The instrument is laid in the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) makes provision for persons, generally private landlords to apply to the relevant local authority for entry on the landlord registration register. Registration is intended to ensure that only people who are fit and proper to act as private landlords can let out residential property and that any agents specified as acting for those landlords in relation to the property are also fit and proper persons for that purpose. The landlord must renew their registration every 3 years.

3. The Private Rented Housing (Scotland) Act 2011 (“the 2011 Act”) amends the 2004 Act and the Housing (Scotland) Act 2006 by including provisions to make the landlord registration regime more effective, help local authorities to identify unregistered landlords and provide additional protection for tenants. This instrument commences sections 3, 5, 6, 8, 9, 11, section 12 and the Schedule to the 2011 Act.

Section 3

4. Section 3 of the 2011 Act amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing. The amendment will require local authorities to provide landlords with their registration number when advising them that their registration has been completed.

Section 5

5. Each local authority must maintain a register of private landlords and their agents. The release of information from the register to members of the public is restricted. At present a member of the public can request certain specified information with respect to a particular property or person.

6. To help protect tenants the amendments made by section 5 of the 2011 Act will provide two additional categories of information to be made available to the public; whether a landlord has applied to be registered but the application has not been determined; and whether there is a note on the register that a person was refused entry to, or removed from the register as not being fit and proper, or because the person’s agent was found not to be fit and proper. The register must be noted of such instances once the appeal process has been exhausted and removed after 12 months or sooner if the person is subsequently registered.

Section 6

7. Section 6 of the 2011 Act inserts a new section 92B which requires all written adverts for properties to let to include the landlord registration number. This will help local authorities to identify unregistered landlords. Reusable 'To Let' boards are exempt from the duty due to the costs associated for landlords. In certain circumstances a landlord will be permitted to use the words "landlord registration pending" in lieu of a registration number.

8. This section will come into force on 1 June 2013 which is later than the other sections being commenced by this Order. The reason for this is to allow persons, particularly letting agents, time to make any required updates to advertising systems to allow for the inclusion of a registration number.

9. This section will have no effect in relation to any advert published on or after 1 June where arrangements have been made before 1 May 2013 for that publication. This is to recognise that certain adverts may have been placed with advertisers well before those adverts are due to appear because of press lead in times.

Section 8

10. To reflect the seriousness of the behaviour of some landlords, section 8 of the 2011 Act inserts section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. This brings landlord registration in to line with HMO Licensing and may apply in addition to a maximum fine of £50,000. A landlord does have the right of appeal.

11. Local authorities must also note the register for a period of time where a person has been removed or refused entry to the public register as a result of a court disqualification order, or if the local authority has made the decision to remove them for not including their registration number in adverts (once these separate provisions have also been commenced).

Section 9

12. The amendments made by section 9 will enhance local authority powers to enforce landlord registration by giving them the power to require various specified persons to provide information in relation to any house in the area, including the nature of their own or other people's interest in the house, and the name and address of the owner.

Section 11

13. To help identify unregistered landlords local authority, section 11 amends the 2006 to require the Private Rented Housing Panel to provide information about the landlord, property and agent to the local authority in the area in which the house concerned is located. The requirement arises where an application is received by the panel from a tenant for a determination that a landlord has failed to comply with the repairing standard.

Section 12

14. Section 12 brings the Schedule of the 2011 Act into force which includes minor modifications and modifications consequential on sections 6 and 8 of the 2011 Act.

Consultation

15. Public consultation took place on the proposals as part of the Bill for the 2011 Act. Further engagement has been undertaken with local authorities about the commencement of the specific provisions covered by this note.

Impact Assessments

16. The finalised EQIA for the 2011 Act is available on the Scottish Government website at <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch/PrivRentedHsg>.

Copies of the EQIA can be requested from The Private Rented Sector Policy Team, 1-H South, Victoria Quay, Edinburgh, EH6 6QQ.

Financial Effects

17. There will be a cost to the Scottish Government for upgrading the IT system to display the additional information that will be made available to the public. This cost will be met from the current landlord registration budget.

18. There may be minimal additional costs for local authorities in terms of updating the register to display the additional information to be displayed but not for providing registration numbers to landlords.

19. In some cases landlords may face a minimal increase in the cost of advertising due to the requirement to include their registration number. Some advertising agencies may also incur additional costs if their advertising systems require to be updated to allow for the inclusion of a registration number.

20. The Regulatory Impact Assessment for the 2011 Act is available on the Scottish Government website at <http://www.scotland.gov.uk/publications/2011/04/Impactassessment>.

Scottish Government

Housing, Regeneration, the Commonwealth Games and Sport Directorate

19 February 2013