

POLICY NOTE

THE LETTING AGENT CODE OF PRACTICE (SCOTLAND) REGULATIONS 2016

SSI 2016/133

The above instrument was made in exercise of the powers conferred by section 46 of the Housing (Scotland) Act 2014 (the Act). The instrument is subject to the affirmative procedure.

Policy Objectives

The instrument sets out a code of practice for letting agents to be known as the Letting Agent Code of Practice (the Code) under section 46(3). The Code makes clear the standards of practice those carrying out letting agency work (as defined by section 61 of the Act) must meet.

The Code will help to make sure good standards of practice are consistently applied across the letting industry and will provide tenants, landlords and the Scottish Ministers with an effective way to challenge poor practice. It also includes a requirement for letting agents to hold professional indemnity insurance and to have client money protection insurance unless they have equivalent protection through another body or membership organisation. Client money protection is a distinct form of insurance that protects the money of landlords and tenants against theft or misappropriation by the owners of the letting agent whilst that money is in their custody or control.

Where a letting agent has failed to comply with the Code, has been notified of the breach, and has been given reasonable time to put things right, a tenant, landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination. If the Tribunal decides the letting agent has failed to comply with the Code, it must issue a letting agent enforcement order setting out the steps that the letting agent must take to put things right.

Consultation

The Code has been developed through engagement with key stakeholders including the Association of Residential Letting Agents (ARLA), Council of Letting Agents (CLA), CRISIS, Living Rent Edinburgh, Letscotland, The Law Society of Scotland, NUS Scotland, Royal Institution of Chartered Surveyors (RICS), Scottish Association of Landlords (SAL), Scottish Land and Estates (SLE), Chartered Institute of Housing (CIH) Scotland and Shelter Scotland.

In addition, the Scottish Government undertook a full public consultation on a draft code of practice from August to November 2015 in line with the requirements of section 46(3) of the Act. To raise awareness of the consultation and encourage responses, a number of consultation events were held for landlords, letting agents and tenants in conjunction with the SAL, CLA and Shelter Scotland.

A list of those who responded to the consultation, and who agreed to the release of this information, is available on the Scottish Government website. It includes: ARLA, CLA, Capability Scotland, CIH, Equality and Human Rights Commission, The Law Society of

Scotland, Letscotland, The Property Ombudsman, RICS, SAL, SLE, Scottish Property Federation, Shelter Scotland, UK Association of Letting Agents and National Landlord Association.

Responses to the consultation have been taken into account in the final drafting.

Impact Assessments

An equality impact assessment has been completed on the regulation of letting agents and will be published on the Scottish Government's website.

The Scottish Government's assessment of the likely impact of the regulation of letting agents upon those within the protected characteristics (age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation) has identified a number of potential positive impacts including opportunities to eliminate unlawful discrimination and advance equality of opportunity. It has not identified any negative impacts.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and will be published on the Scottish Government's website.

The impact of this policy on business will depend on the current business practices of individual letting agents. Much of the Code reflects existing industry practice and should therefore have limited impact upon the majority of letting agents who currently operate to these standards.

However, all letting agencies will need to ensure they familiarise themselves and their staff with the requirements of the code and review and, where necessary, update policies, procedures and terms of business. The Scottish Government considers that the costs of this will be minimal for those letting agents already signed-up to an existing voluntary code of practice through industry body or membership organisation.

The Code includes a new requirement for letting agents to hold client money protection insurance and professional indemnity insurance. For those letting agents businesses that do not currently hold client money protection and professional indemnity insurance there will be an additional cost to their business. The exact costs will depend on the level of cover required. The Scottish Government estimates that these costs will be around £160 per annum for professional indemnity insurance and £300 for client money protection resulting in an overall additional cost each year of £460 for those businesses that do not already hold these or have equivalent protection through another body or membership organisation. The Scottish Government expects that these additional costs should have a low impact and that the benefits of client money protection and professional indemnity insurance to landlords and tenants outweigh the costs.

Scottish Government
Housing, Regeneration and Welfare Directorate

18 January 2016