

POLICY NOTE

THE LETTING AGENT (REGISTRATION AND CODE OF PRACTICE) (SCOTLAND) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2017

SSI 2017/428

The above instrument was made in exercise of the powers conferred by section 29(2)(b), 30(2)(f), 46(1) and 101(1) of the Housing (Scotland) Act 2014 (2014 Act) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

This instrument amends the Letting Agent Registration (Scotland) Regulations 2016 and the Letting Agent Code of Practice (Scotland) Regulations 2016 to make provision for those carrying out letting agency work who do not hold or handle client money.

Section 8 of the Letting Agent Code of Practice, contained in the schedule to the Letting Agent Code of Practice (Scotland) Regulations 2016, sets out specific requirements for how client money (money which belongs to landlords and tenants) should be held and handled. Client money includes rent, tenancy deposits (for the period of time before they are lodged with one of the tenancy deposit schemes); and often a sum of money held on behalf of the landlord to cover repairs and maintenance.

The Letting Agent Registration (Scotland) Regulations 2016 sets out the additional information those applying to join the Register of Letting Agents must provide within an application for registration including information that enables Scottish Ministers to assess whether an applicant is complying with key matters required in the Code of Practice, including in relation to client money.

Through our engagement with stakeholders, it has become clear that not all those who carry out letting agency work, as defined by section 61 of the Housing (Scotland) Act 2014, hold or handle client money. This instrument therefore makes changes to take account of those operating in this way, to ensure those letting agents who do not hold client money are not subject to these aspects of the Code of Practice and are not required to provide confirmation in their application for registration.

The instrument also amends the Letting Agent Code of Practice (Scotland) Regulations 2016 to ensure that it works effectively for all types of tenancy, including the new private residential tenancy. It removes a reference to legislation in paragraph 82 of the Code of Practice, which deals with prior notice for access to the tenanted property, to address a point raised by the Delegated Powers and Law Reform Committee in relation to the Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017.

In addition, The Letting Agent Registration (Scotland) Regulations 2016 are amended to require applicants to the Register of Letting Agents to indicate in their application when their business began carrying out letting agency work.

This information will help those administering the Register to identify letting agents who are currently operating but failed to apply to join the register by 1 October 2018, and new

businesses who begin carrying out letting agency work before they have been admitted to the register. Applications from businesses in this position will be subject to greater scrutiny and will be charged a late application fee to cover the additional administration that will be necessary in those circumstances.

Consultation

Draft regulations were shared with a group of stakeholders for their input. This included the Association of Residential Letting Agents, Chartered Institute of Housing Scotland, Citizen Advice Scotland, Council of Letting Agents, CRISIS, Living Rent: Scotland's Tenants' Union, LetScotland, The Law Society of Scotland, National Union of Students Scotland, Royal Institution of Chartered Surveyors, Scottish Association of Landlords, Scottish Land and Estates and Shelter Scotland.

Impact Assessments

An Equality Impact Assessment, a Privacy Impact Assessment, and a Children's Rights and Welfare Impact Assessment screening have been undertaken in relation to the regulation of letting agents and are published on the Scottish Government's website.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed in relation to the Letting Agent Code of Practice and Registration requirements and is published on the Scottish Government's website.

A further BRIA has been undertaken in relation to the Registration Fee that those applying to join the Register of Letting Agents are required to pay. The BRIA will be published on the Scottish Government's website.

While there are no direct additional financial impacts as a result of this instrument, the additional information that will be gathered by amending the Letting Agent Registration (Scotland) Regulations 2016, will assist in identifying those applications requiring further scrutiny. Businesses who have failed to comply with their legislative requirements will be required to pay an additional £270 to cover the costs of this further work.

Scottish Government
Housing and Social Justice Directorate