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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 115**

**HOUSING**

**The Letting Agents (Notice Requiring Information) (Scotland) Regulations 2018**

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| <i>Made</i>                                | - - - - | <i>29th March 2018</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>4th April 2018</i>  |
| <i>Coming into force</i>                   | - -     | <i>26th May 2018</i>   |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 52(2) of the Housing (Scotland) Act 2014(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Letting Agents (Notice Requiring Information) (Scotland) Regulations 2018 and come into force on 26th May 2018.

**Notice requiring information**

2.—(1) A notice requiring information under section 52(1) of the Housing (Scotland) Act 2014 (power to obtain information) must be in one of the forms set out in the schedule.

(2) A notice to be sent to a person who is not a registered letting agent must be in the form set out in Part 1 of the schedule.

(3) A notice to be sent to a person who is a registered letting agent must be in the form set out in Part 2 of the schedule.

**Service of the notice**

3.—(1) A notice mentioned in regulation 2 may be served by being—

(a) delivered personally to the person;

(b) sent to the person's address by—

(i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000(2); or

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(1) 2014 asp 14.

(2) 2000 c.26.

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- (ii) a postal service which provides for the delivery of the notice to be recorded; or
  - (c) sent to the person's email address as provided in the person's application for registration as a letting agent.
- (2) Where a notice is served as mentioned in paragraph (1)(b) or (c), it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

**Time limit for providing information**

4.—(1) Subject to paragraph (2), where a person receives a notice mentioned in regulation 2, the person must provide the information specified in the notice within 28 days of receipt of the notice.

(2) Before that period of 28 days has expired, a person who receives a notice mentioned in regulation 2 may request Scottish Ministers to extend the time limit by another 28 days.

(3) The Scottish Ministers may only agree to the extension of the time limit where they are satisfied that there is good reason to do so.

St Andrew's House,  
Edinburgh  
29th March 2018

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

### PART 1

#### Notice Requiring Information

##### WHY WE HAVE SENT YOU THIS LETTER

If you carry out letting agency work in Scotland you are required by law<sup>(3)</sup> to comply with the Letting Agent Code of Practice and to join the Register of Letting Agents. From 1 October 2018, it is illegal to carry out letting agency work unless you are registered.

The Register of Letting Agents is a list set up and run by the Scottish Ministers that makes sure every letting agent is suitable to do the job and has met minimum training requirements covering essential aspects of letting agency work.

The Scottish Ministers have the power<sup>(4)</sup> to require information and documents from unregistered persons who appear to be letting agents. It has come to their attention that you appear to be carrying out letting agent work but are not currently registered to undertake this type of work. In order to help us establish whether you must register as a letting agent, **you must send us the information specified, and by the date set out, in Annex A.**

##### WHAT HAPPENS NEXT?

You must send us the information requested in Annex A and within the specified timescale. Failure or refusal to provide this information is a criminal offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale<sup>(5)</sup>.

It is also a criminal offence to do letting agency work if you are not on the register. If you are convicted, you could face a fine of up to £50,000, up to 6 months imprisonment or both.

If you do not send us the information requested in Annex A within the specified timescale or apply for registration by the same date, we may report you to Police Scotland.

##### APPLYING FOR REGISTRATION

You can apply to register at <https://lettingagentregistration.gov.scot>.

##### CONTACT US

If you are unsure about anything in this letter or whether you are a letting agent, and would like to discuss this further, please contact us on 0300 244 6439.

##### MORE INFORMATION

For more information on registering as a letting agent, you can read the following:

- Letting Agent Registration Guide: <https://www.mygov.scot/letting-agent-registration/> - this sets out who needs to register, what an applicant needs to do before they register, the training and qualifications required, the registration fees, and other relevant information.
- Agent Code of Practice: <http://www.gov.scot/lettingagentcodeofpractice> - this sets out the standards of practice that letting agents must meet in delivering their services.

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(3) Part 4 of the Housing (Scotland) Act 2014, which commenced on 1st January 2018.

(4) Under section 52 of the Housing (Scotland) Act 2014.

(5) Section 52 of the Housing (Scotland) Act 2014 – level 3 is currently £1,000.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Annex A: [Insert particulars of information required]

## PART 2

### Notice Requiring Information

#### **LETTING AGENT REGISTRATION NUMBER:**

#### **WHY WE HAVE SENT YOU THIS LETTER**

As a registered letting agent<sup>(6)</sup>, you must comply with the Letting Agent Code of Practice (Scotland) Regulations 2016<sup>(7)</sup> (as amended), which set out the standards of practice that letting agents must meet in delivering their services. You must also meet the requirements of the Letting Agent Registration (Scotland) Regulations 2016 (as amended).

The Scottish Ministers have the power<sup>(8)</sup> to require information and documents from registered letting agents to establish whether an agent is complying with the Code of Practice and your registration requirements. In order for us to monitor your compliance with these, **you must send us the information specified, and by the date set out, in Annex A.**

#### **WHAT HAPPENS NEXT?**

You must send us the information requested in Annex A and within the specified timescale. Failure or refusal to provide this information is a criminal offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale<sup>(9)</sup>.

Where a registered letting agent has failed to comply with the Letting Agent Code of Practice, has been notified of the breach, has been given reasonable time to put things right, and has not done so, the Scottish Ministers may apply to the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) for a determination.

If the Tribunal decides the letting agent has failed to comply with the Code of Practice, it must issue a letting agent enforcement order setting out the steps that the letting agent must take to put things right. Failure to comply with the enforcement order is a criminal offence, is liable on summary conviction to a fine not exceeding level 3 on the standard scale<sup>(10)</sup> and could result in removal from the letting agent register.

Where a registered letting agent is no longer considered to be a fit and proper person or does not meet prescribed training requirements, the Scottish Ministers may remove them from the register.

#### **CONTACT US**

If you would like to discuss anything contained in this letter please contact us on 0300 244 6439.

Annex A: [Insert particulars of information required]

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<sup>(6)</sup> Part 4 of the Housing (Scotland) Act 2014.

<sup>(7)</sup> <https://www.legislation.gov.uk/sdsi/2016/9780111030912>.

<sup>(8)</sup> Section 52 of the Housing (Scotland) Act 2014.

<sup>(9)</sup> Section 52 of the Housing (Scotland) Act 2014 – level 3 is currently £1,000.

<sup>(10)</sup> Section 51 of the Housing (Scotland) Act 2014 – level 3 is currently £1,000.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for a notice requiring information from a person who appears to be a letting agent for the purpose of monitoring compliance with Part 4 of the Housing (Scotland) Act 2014 (“the 2014 Act”).

Regulation 2 provides that a notice must be in one of the forms set out in the schedule, depending on whether the recipient is or is not a registered letting agent. Regulation 3 provides for the methods by which a notice may be served. Regulation 4 provides that there is a 28-day time limit for complying with the notice. This time limit may be extended by another 28 days if the Scottish Ministers are satisfied that there is good reason and the request to extend is made before the time limit expires. Failure to comply with the notice may be considered by the Scottish Ministers when deciding if a person is a fit and proper person to be registered as a letting agent under section 34(1) of the 2014 Act and is an offence under section 56(1) of the 2014 Act.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.