

# HOUSING (SCOTLAND) ACT 2014

---

## EXPLANATORY NOTES

### THE STRUCTURE AND A SUMMARY OF THE ACT

#### Part Four – Letting Agents

##### Inclusion in the register

91. [Section 29](#) requires the Scottish Ministers to create and maintain a national register, containing an entry for each letting agent. This will include the name and address of each person entered in the register, and any other information relating to that person the Scottish Ministers may specify in regulations. The register will be available to the public.
92. [Section 30](#) provides that a letting agent may apply to be entered on the register, sets out the information that must be supplied as part of such an application, and makes provision for an application fee to be charged and gives the Scottish Ministers a power to determine this fee. The section should be read alongside section 44 which makes it an offence to operate as a letting agent without being entered on the register.
93. Subsection (2)(a) to (f) of section 30 sets out the information that an application must contain. These provide for what information is required depending on whether an applicant is a sole trader, a partnership, a company or a body with some other legal status. Where the applicant is not a natural person, subsection (2)(d) and (e) require certain details also to be supplied in relation to individual persons within the organisation who hold a senior or controlling position. When determining (under section 32) whether the applicant is a fit and proper person to be a registered letting agent, the Scottish Ministers may take into account information relating to these named individuals. Subsection (2)(a) to (f) should be read alongside section 31, which makes it an offence to knowingly provide false information or fail to supply the required information.
94. [Section 32](#) provides that the Scottish Ministers must determine an application which is made under section 30 and sets out aspects of the process they must follow. If they determine that the applicant, and any other person required to be identified in an application by virtue of section 30, is a fit and proper person to carry out letting agency work, and that the applicant meets any training requirements prescribed by the Scottish Ministers in regulations subject to the negative procedure, subsection (2) provides that they must enter the applicant on the register. Subsection (3) provides that the regulations about training may prescribe further details of the training requirement - such as who should obtain it and when. If the Scottish Ministers determine that the applicant is not a fit and proper person then subsection (5) provides that they must refuse to enter the applicant in the register. These provisions should be read alongside section 34 which sets out the matters that must be considered in determining if a person is a fit and proper person to carry out letting agency work. Subsection (6) provides that where the Scottish Ministers are considering refusal of an application, they must give notice of this to the applicant, including providing reasons, and allow the applicant to make representations.

*These notes relate to the Housing (Scotland) Act 2014  
(asp 14) which received Royal Assent on 1 August 2014*

Subsection (8)(d) requires the Scottish Ministers to provide reasons for a decision to refuse an application or a renewal of an existing provision.

95. **Section 33** provides a time limit by which the Scottish Ministers must make a decision on applications of 12 months from receipt of the application for registration or renewal. The Scottish Ministers will have the power to apply to the First-tier Tribunal (FTT), before the expiry of the 12 months, for a decision to extend this period. The length of the extension period will be at the discretion of the FTT. There will be tacit approval to the letting agent register if the Scottish Ministers have not made a decision within 12 months of an application being made (or longer period if the Tribunal has extended the period). The effect of tacit approval is that an applicant is treated for all purposes as a registered letting agent (subject to the modifications in subsection (10)). Letting agents registered in these circumstances will have a registration period of 12 months before being required to reapply.
96. **Section 34** sets out the material that the Scottish Ministers must take into account when deciding if a person is fit and proper to be entered on the register, which includes the Scottish Ministers having regard to all of the circumstances of the case. Subsection (2) relates to particular criminal convictions and contraventions of the law that must be considered. Subsection (3) excludes material relating to spent convictions from the material to be considered. Subsection (4) lists matters to be considered that are related to compliance with the letting agent code of practice and any associated enforcement orders. Subsection (5) provides a power for the Scottish Ministers to modify the list of convictions and contraventions at subsections (2) and (4) by order subject to the affirmative procedure.
97. **Section 35** provides that the Scottish Ministers may have regard to information which would be included in a criminal conviction certificate within the meaning of section 112 of the Police Act 1997 where they have reasonable grounds to suspect that the information already provided to them under section 34(2) of the Act is false or has become inaccurate.