

Final Business and Regulatory Impact Assessment

Title of Proposal

The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2012

Purpose and intended effect

Background

The system of landlord registration was established by Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Registration is designed to protect tenants by ensuring that only people who are fit and proper to let out residential property can operate legally as private landlords. The operation of landlord registration is the responsibility of local authorities. In addition to increasing the penalties for landlords acting unlawfully, the measures in the Private Rented Housing (Scotland) Act 2011 will support local authorities by enabling them to improve on the functions and mechanisms in operating and managing enforcement of the regime effectively.

Under Section 84 of the 2004 Act a local authority must decide whether the applicant is a fit and proper person to let property before including them on the register. This also applies to any person that the landlord appoints to act for them.

Section 85 of the 2004 Act also outlines that the local authority should have regard to whether the person has committed any offence involving fraud or other dishonesty; violence; or drugs. They are also required to consider whether the person has practiced unlawful discrimination; or contravened any provision of the law relating to housing; or landlord and tenant law; or breached the letting code under section 92A.

Section 85 of the 2004 Act also allows local authorities to take in to consideration actions or failures to act in relation to antisocial behaviour affecting a house let by the applicant or for which the applicant was an agent. At present a local authority may seek other information from the applicant in regard to other offences, although it has no power to require this information.

In a drive to improve standards across the sector and taking in to account increasing concerns of stakeholders, measures were included in the Private Rented Housing (Scotland) Act 2011 to make amendments to the 2004 Act.

This business and regulatory impact assessment relates to provisions in the 2011 Act to improve landlord registration by clarifying what should be taken into account in applying the fit and proper person test and allowing a local authority to charge fees for certain agents.

Objective

The Private Rented Housing (Scotland) Act will strengthen the regulation of the Scottish private rented sector to address problems caused by rogue landlords and support responsible landlords by making improvements to the systems of landlord registration.

Rationale for Government intervention

The consultation on the Private Rented Housing Bill was formed from the recommendations of the Scottish PRS Strategy Group. Additionally, during Stage 1 evidence of the Housing (Scotland) Bill, stakeholders and MSPs pointed to the continued problems with unregistered and rogue landlords and called for further action to be taken to deal with them.

The Scottish Government has made clear that it recognises the importance of the private rented sector in the housing market. It wants to support the sector and its many good landlords to continue to provide good quality accommodation to meet a range of housing needs. As part of this, there must be sufficient safeguards for tenants, which is why landlord registration was put in place. The provisions covered by this assessment will improve the effectiveness of the landlord registration system.

Landlord registration contributes to the outcome that *we have a well functioning housing system*. It is included in the HARCOG Delivery Plan 'implement provisions in the Private Rented Housing Act including - improvement of landlord registration'.

Consultation

Public Consultation

A consultation on private sector housing issues for possible inclusion in the Housing (Scotland) Bill took place between 6 July and 27 September 2009. The consultation paper was published on the Scottish Government website, with links sent to more than 200 stakeholders, including local authorities, professional and representative bodies and voluntary organisations. The consultation paper included questions relating to landlord registration. The Government received 117 responses from individuals as well as a range of organisations. There was a majority (large for many questions) in favour of all the proposals. A detailed report¹ on the consultation responses has been published on the Scottish Government website.

A further public consultation on the proposals recommended by the PRS Strategy Group was carried out between 8 March and 19 April 2010. A total of 85 consultation responses were received, 73 of which were submitted by groups or organisations and the remaining 12 by individual members of the public.

The Scottish Government canvassed the views of the PRS Strategy Group on the deliverability of the options; how effective they were likely to be; what the cost implications are likely to be; and, whether there were any unintended consequences for good landlords. The Group's comments and suggestions helped shape the final provisions in the Bill.

Within Government

Other Directorates had an opportunity to respond as part of this exercise.

Business

The PRS Strategy Group who considered the proposals included representation from CoSLA, local authorities, Scottish Association of Landlords, Scottish Land & Estates, Chartered Institute of Housing, and Shelter Scotland.

We also consulted all 32 local authorities, who were given the opportunity to discuss the changes in the SSI and how the provisions should be implemented in practice. Of those who

¹Private Sector Housing Issues: Housing (Scotland) Bill: An Analysis of Consultation Responses December 2009 - <http://www.scotland.gov.uk/Publications/2009/12/02095414/0>

responded, the vast majority agreed to the proposed changes to agent fees and the landlord registration application form.

We also held a seminar in August 2011 to discuss the implementation of the provisions, which was attended by the majority of local authorities. Feedback received from that event influenced the proposed SSIs. Due to the wide ranging nature of our discussions we felt it was not proportionate to carry out further face-to-face discussions with individual landlords.

Options

Option 1: Do nothing

Whilst agents are not required to be registered in their own right, landlords must notify their local authority of any agent acting on their behalf. Local authorities are required to carry out a fit and proper person test on all notified agents, which incurs expense. Local authorities can charge a fee when an agent is nominated as part of the original registration application or when an agent voluntarily registers, but they cannot charge a fee when a landlord who is already registered subsequently nominates an agent who is not registered. Local authorities have pointed out this loophole.

Local authorities are required to form a judgement on whether a landlord is a fit and proper person. Regulations require an applicant to declare spent or unspent convictions for a variety of offences, and court or tribunal judgements under discrimination legislation. There are concerns that current legislation does not include declarations in relation to firearms or sexual offences.

Doing nothing would mean that these issues were not addressed, so that the registration system would not be operating as effectively as it could. Given this, and the fact that there are no benefits identified in relation to this option, it is rejected.

Option 2: Amend the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005

To improve protection for tenants the 2011 Act makes provision to expand the list of offences which can be taken into account when assessing a landlord as fit and proper. Specifically the amendment specifies that a local authority should consider whether a landlord, or tenant residing at any of their properties, have been served with an antisocial behaviour order, or if an antisocial behaviour notice has been served on the landlord or any of their properties.

The 2011 Act also makes provision for a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent.

A landlord must include any agent in an application for registration and a fee is paid for this. Where a landlord has been registered and then subsequently adds an agent, there is currently no power for the local authority to charge a fee for this addition. This does not matter if the agent is already registered, which many professional agents are, but, if the landlord nominates an unregistered agent, the agent will have to be assessed as fit and proper, which will involve expense for the local authority.

Sectors and groups affected

The categories of people affected will be:

- local authorities, who administer and enforce the systems of landlord registration

- private landlords, who are subject to registration
- agents of landlords, who are also subject to the fit and proper person test
- tenants, who will be better protected against unfit landlords.

Benefits

Expanding the list of offences to be declared by an applicant for landlord registration

The addition of offences, as listed at section 4.2, to the categories of offence mentioned at section 85(2) of the 2004 Act, would make sure that local authorities knew about convictions for these offences when considering whether a potential landlord is fit and proper. Applicants would be under a duty to declare them. The new declarations highlight the importance of not over-emphasising convictions in determining whether someone is a fit and proper person to be a landlord and that other factors should also be taken into consideration in forming part of the registration process.

These wider elements for consideration will significantly improve the ability of local authorities to consider whether a potential landlord is fit and proper, thus greatly improving protection for private tenants across a broader remit.

Enabling a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent

Local authorities would be able to cover the costs of undertaking a fit and proper test on agents notified by a landlord after the original registration.

Costs

Expanding the list of offences to be declared by an applicant for landlord registration

There will be no additional costs for landlords and a negligible cost impact on local authorities in relation to increased administrative enforcement activity.

Allowing a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent

At the moment there is no charge for a landlord who adds an unregistered agent to the registration (unless the agent then registers, in which case the fee of £55 has to be paid by the agent), although the local authority has to carry out the fit and proper test. In this situation, where the agent declines to register, the landlord would have to pay a fee, which might also be £55.

Based on information from a sample of local authorities, we estimate that there may be about 100 cases per annum nationally in which a registered landlord nominates an unregistered agent. In many of these cases, the agent will register voluntarily, so the local authority will already receive the £55 fee. All of the local authorities that supplied us with information said that all such agents did register, but this may not be the case everywhere. Assuming that the maximum percentage of cases across Scotland in which the agent does not choose to register is 10%, there would be up to about 10 cases annually in which a local authority will be able to apply the new charge to a registered landlord for adding an unregistered agent to a registration. This suggests the total additional annual cost to landlords would be nil or negligible.

We have applied the same discounts and exemptions to the further agent fee as currently exist for the agent fee (that paid at registration). This is to make the system fairer and means

landlords who notify they are using an agent at registration, now pay the same fee as those who notify later.

Scottish Firms Impact Test

The landlord survey undertaken as part of the *Review* indicates that the average size of portfolio of all landlords in Scotland is 12 dwellings, although most landlords owned between 1 and 4 properties. Very few portfolios were in excess of 20 properties. Agents are reported to be involved in management of 50% of all dwellings. We know that as at 30 April 2012, 183,120 landlord registration applications had been approved, covering 265,298 properties.

The proposed amendments do not make any distinction between businesses of different sizes, in terms of offences to be declared or fees to be paid.

Local authorities at our seminar had highlighted that there may be implications for the allocation of fees between local authorities where agents are active in more than one local authority area. However, we proposed that the fees be split as the way they are currently (a 50% discount where the agent is operating for the landlord in more than one local authority area) and asked local authorities for their feedback on this. All of the local authorities who responded agreed that this was the preferred approach.

Some local authorities advised they already charged for this, despite their being no current powers which allow it.

As outlined in the Business Consultation section we consulted widely with local authorities, Scottish Association of Landlords, Scottish Land & Estates, Chartered Institute of Housing, Shelter and CoSLA amongst others. We felt that due to the wide ranging discussion we already had and the dispersal of private landlords it would be disproportionate to carry out further face-to-face discussions with individual landlords.

Competition Assessment

Under the proposed changes to landlord registration legislation the same requirements will be placed upon all landlords to whom the regulations will apply and so it is not expected that any of the Options would limit the ability of landlords and letting agents to compete in the market.

None of the Options would place any direct restrictions upon the number of landlords or letting agents that are allowed to operate in the market.

None of the Options indirectly limit the number or type of landlords or letting agents. Smaller businesses would not be affected any more or less than larger businesses. The proposals are not likely to significantly raise the costs of new landlords or letting agents seeking to enter the market relative to existing businesses, as both new tenancies and existing relevant tenancies will be covered by the regulations.

Test run of business forms

The current application form will require to be adapted to include the information required by the 2011 Act. All 32 local authorities have been consulted on the content and layout of the new form. We are also liaising with the landlord registration IT subgroup (made up of local authority members) as to how the form will appear online and how the new information will

be collected and reported on. User testing is planned to ensure the form is fit for purpose.

Legal Aid Impact Test

It is not considered that there will be any effect on individual's right of access to justice through availability of legal aid.

Enforcement, sanctions and monitoring

Option 1: Do nothing

There are no implications for enforcement and monitoring.

Option 2: Amend the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005

The changes are to the existing landlord registration system which is administered and monitored by local authorities. There are no implications for enforcement.

Implementation and delivery plan

We anticipate that the amendments will come into force on 1 July 2012. The Scottish Government will be reviewing the existing landlord registration guidance for local authorities, and will consider whether statutory guidance is required.

Post-implementation review

The amendments to landlord registration will be monitored as part of periodic reviews by the Scottish Government.

Summary and recommendation

Option 2 is recommended as it best meets our objectives in relation to improving the administration and operation of the landlord registration system.

Summary costs and benefits table

Option	Benefits	Costs
1	None	None
2	Will bring all landlords under a fairer system where the fee is the same regardless of whether they notify of use of the agent at registration or afterwards. It will also benefit local authorities who can now charge a fee to carry out the fit and proper person investigations on the unregistered agent.	An additional fee of £55 will be payable by the landlord when they notify they are using an unregistered agent after the point of registration. A discounted rate of £27.50 will apply where the agent is operating for the landlord across multiple local authorities. Local authorities estimated there are approximately 10 cases annually where the new fee will be payable.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:****Minister's name, title etc*****Scottish Government Contact point:**