

Consultation on a draft statutory code of practice and training requirements for letting agents in Scotland: analysis of consultation responses



PEOPLE, COMMUNITIES AND PLACES

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Executive Summary

About this Report

This report provides an analysis of written responses to the Scottish Government consultation on a draft statutory Code of practice and training requirement for letting agents in Scotland. Eighty-one respondents gave permission for their response to be published and can be viewed at: <https://consult.scotland.gov.uk/better-homes-division/lettingagentconsultation>

Overview of Responses

A total of 92 responses were received to the consultation. This included 26 individual respondents and 66 organisational respondents. Responses were split into six broad respondent categories: letting agents (29%), members of the public (22%), professional or representative bodies (15%), others (13%), local authorities (12%) and tenant/ community groups (9%).

Part 1 – Draft Code of Practice

Introduction

Seventy-two percent of respondents said that the introduction was comprehensive enough. Many said that it was ‘clear’, ‘thorough’ and ‘easy to understand’, and provided sufficient information about the wider regulatory framework. In contrast, twenty-three percent of respondents didn’t agree with this. One of the main reasons was that it was not clear who the Code applied to. Many of these respondents felt that the Code should apply to all people involved in letting agency work, regardless of the size of the portfolio that they managed, or whether this was on a formal or informal basis.

Overarching standards

Overall, eighty-eight percent of respondents agreed with the proposed overarching standards. Many said that they were ‘transparent’, ‘reasonable’, ‘clear’ and ‘appropriate’. Some respondents noted that the proposed standards covered the standards that some letting agents already adhered to. Whereas, eleven percent of respondents did not agree with the overarching standards, as they were too ‘vague’ and ‘non-specific’. Respondents also provided suggestions of other overarching standards that the Code could include, for example, in relation to:

- Handling client money;
- Staff recruitment and training;
- Record keeping; and
- Repairs standard.

Engaging landlords

Over three quarters of respondents (76%) agreed that the standards of practice proposed for engaging landlords were appropriate. Many of these felt that the standards were ‘reasonable’ and ‘clearly defined’. Others felt that it would help

enhance current standards, and also promote greater consistency in terms of practice and procedures. For those who disagreed, one respondent highlighted that there might be conflicts of interest where solicitors were acting as letting agents, and another proposed that standards needed to comply with all relevant housing legislation. Respondents also provided suggestions of other standards that this section of the Code could include, for example, in relation to:

- Terms of business;
- Conflicts of interest;
- Handling client money; and
- Dispute resolution.

Lettings

Seventy-two percent of respondents were in agreement with the proposed standards of practice on lettings. Many of these stated that the standards were 'clear' and 'comprehensive', providing an excellent basis for developing letting agents' procedures. Respondents also provided suggestions of other standards that this section of the Code could include, for example, in relation to:

- References and checks to reflect upcoming legislation on immigration;
- Tenant information;
- Handling rent payments and deposits; and
- Moving out standard.

Management and maintenance

Overall, three quarters (75%) of respondents agreed that the proposed standards of practice for management and maintenance reflected what should be expected of letting agents. Some respondents highlighted particular issues of concern, for example, dealing with houses in multiple occupation (HMO) properties; the 'bureaucracy' likely to be associated with new standards, and the impact on timescales and costs. One respondent felt that this section of the Code was over specific, and this could create loopholes. Respondents also provided suggestions of other standards that this section of the Code could include, for example, in relation to:

- dealing with urgent repairs and common repairs; and
- public liability checks.

Ending the tenancy

Eighty-two percent of respondents agreed with the proposed standards of practice for ending the tenancy. Although some suggested that clear guidance should be provided to ensure consistency of practice across Scotland. Respondents also provided suggestions of other standards that this section of the Code could include, for example, in relation to:

- tenancy termination; and
- dealing with tenancy deposits, including dispute resolution.

Communications and complaints

Seventy-six percent of respondents agreed with the proposed standards of practice for communications and complaints. Respondents also provided suggestions relating to this section of the Code which could include, for example:

- Complaints handling procedures;
- Clear signposting for different types of dispute resolution;
- Encouraging membership of professional bodies; and
- Impact on smaller businesses.

Money and insurance

Seventy-four percent of respondents were content with the standards of practice for handling money. Although some respondents queried how the standards would relate to existing codes and regulations that letting agents already comply with, and whether some form of 'passporting' should be considered for these organisations.

Similarly, seventy-four percent of respondents agreed with the proposed standards of practice for insurance. Although some respondents felt that the proposals were excessive, and would increase letting agents' costs.

Seventy-seven percent of respondents agreed with the proposal that letting agents should be required to have client money protection (CMP) insurance. Some respondents said that they already had this type of insurance, whereas others said that they were not clear on the benefits of this type of insurance.

General comments

In addition to the specific comments made about the individual sections of the Code, respondents also made a number of general suggestions, as summarised below:

- Active promotion of the Code once finalised;
- Need for supporting guidance to ensure consistency in application;
- Consider developing an accreditation scheme for letting agents;
- Consideration of automatic 'passporting' for some professional organisations;
- More information on monitoring arrangements; and
- Consider the impact on smaller letting agents.

Part 2 – Training Requirement

Proposal 1: Matters on which training must be undertaken

Seventy-three percent of respondents were in agreement with Proposal 1 and the proposed training matters. Some said that they were already doing this through industry approved bodies. It was also suggested that the training matters would need to be reviewed regularly.

Proposal 2: Persons who must have undertaken the training

Sixty-two percent of respondents agreed with the suggestions outlined in Proposal 2 regarding who should be trained. Although some suggested that there should be

exemptions for people who already held qualifications, or who were already members of relevant professional bodies. Others who disagreed with the proposal said that it would be important for the training requirement to be extended to all front-line staff.

In addition, sixty-four percent of respondents agreed that there should be at least one person trained per office. Some felt this would provide cover for holidays and sick leave, and would also help to ensure consistency in implementing the Code. Some of those who disagreed with the proposal said that consideration would need to be given to the size and organisation of individual businesses.

Proposal 3: Qualifications which must be held by the applicant or other persons

Seventy-one percent of respondents agreed that there should be a mandatory qualification. Many felt that this was reasonable, and it made sense to have a minimum standard. A number of concerns were expressed by those who disagreed with the proposal including: the need to recognise experience in addition to any formal qualifications, and the costs of meeting the training requirement.

Just over half (52%) of respondents agreed with proposed three-year timeframe for introducing the mandatory qualification. There was consensus across many respondents – who agreed and disagreed - that the timeframe was too long, and many of these suggested that it should be two years.

Fifty-six percent of respondents agreed that the mandatory qualification should be set at Scottish Credit and Qualifications Framework (SCQF) Level 6. However, just over one third (34%) said that they didn't know, and that they needed more information before they could decide.

Proposal 4: Period within which the training must have taken place

Fifty-seven percent of respondents agreed with the proposal that the required period for training for those with an existing relevant qualification (more than three years old) should be 20 hours in the past three years. Many felt that this was in line with the continuous professional development (CPD) requirements of other professional bodies, others suggested that the timescale was too generous. Some who disagreed said that 20 hours was too much, with a few suggesting that 10 hours should be sufficient.

Just over half (51%) of respondents agreed that during the transition period prior to the introduction of the mandatory qualification, those without a qualification should be required to undertake 30 hours of training in the previous three years. In addition, almost two thirds (65%) of respondents agreed that the three-year period was appropriate. There was consensus across a significant number of respondents (who said they agreed and disagreed) that the timeframe should be shorter, say up to two years.

Equality and business impact

Nineteen percent of respondents provided comments on the partial Equality Impact Assessment (EqIA), many of these said that the approach would have 'generally

positive impact' on protected groups. A few noted that the EqIA could be developed further, and that more statistical data was required.

Thirty-four percent of respondents commented on the partial Business and Regulatory Impact Assessment (BRIA), many of these provided evidence of training and staff qualifications. Some expressed concerns about the cost of training, and the fact that this could lead to more landlords self-managing. In contrast, some letting agents felt that fears of the costs of additional training were exaggerated, and were clear that the benefits would far outweigh the costs.

1. Introduction

About this report

- 1.1 This report provides an analysis of written responses to the Scottish Government consultation on a draft statutory code of practice and training requirements for letting agents in Scotland.

Background

- 1.2 Scotland's private rented sector has grown substantially in recent years. Between 2001 and 2013, the sector almost doubled to 290,000 households (12%)¹. This increase has continued: recent statistics demonstrate that there has continued to be an increase in the number of households renting privately or living rent free, increasing from ten percent in 2004 to fifteen percent by 2014². This trend seems set to continue, partly due to rising house prices, the economic downturn and the challenges of securing mortgages.
- 1.3 Letting agents have a significant role to play in the private rented sector. Although there are voluntary schemes promoting best practice, for example through ARLA (the Association of Residential Letting Agents) and Landlord Accreditation Scotland, currently there is no statutory regulation of letting agents in Scotland. Anyone can operate as a letting agent, regardless of qualifications or experience. This can result in variable service levels for both tenants and landlords, including general bad practice, lack of financial protection and no effective way to resolve complaints against letting agents.
- 1.4 Key stakeholders across the property industry, such as ARLA, Chartered Institute of Housing (CIH) Scotland, Council of Letting Agents, Letscotland, the Property Ombudsman, the Royal Institution of Chartered Surveyors (RICS), Scottish Association of Landlords (SAL), Scottish Land and Estates and Shelter Scotland, have highlighted the need to regulate letting agents to better protect tenants and landlords and to create a fairer and more consistent system.
- 1.5 The Housing (Scotland) Act 2014 introduced a framework for the regulation of letting agents in Scotland, and the foundation for a mandatory letting agent register. The Act provides for a statutory Letting Agent Code of Practice to be adhered to by all letting agents, and a training requirement that must be met to ensure acceptance onto the mandatory register of letting agents. Successful registration indicates that an applicant is 'a fit and proper person' to carry out letting agency work. It will be a criminal offence for any letting agent who is not on the register to operate.

¹ Shelter Scotland, 2013, 'Briefing: Regulating Letting Agents in Scotland'

² Housing Statistics for Scotland 2015: Key Trends Summary, Scottish Government, 2015

- 1.6 The Act also introduces a new route of redress for tenants and landlords to the First-tier Tribunal (FTT). This will enable tenants and landlords to resolve complaints against letting agents, for breaching the new statutory code of practice. Through these measures, the Scottish Government wants to ensure a private rented sector that provides good quality housing and high management standards.
- 1.7 The Scottish Government therefore undertook a consultation (between 24 August and 15 November 2015) to gather stakeholder views on the draft Letting Agent Code of Practice and proposed training requirement for letting agents. This included proposals around standards of practice; handling tenants' and landlords' money; professional indemnity arrangements; and training requirements and qualifications.

Analysis methodology

- 1.8 The Scottish Government received and organised all consultation responses – either through the online consultation platform, by email or post. All responses were transferred securely to us (Research Scotland) for analysis.
- 1.9 We ensured that all responses were input into the online consultation platform, and downloaded these to Excel - in order to analyse quantitative (yes/no/don't know) responses and qualitative (open-ended) responses. A small number of non-standard responses were received, which did not follow the consultation structure. These responses were carefully read and comments, whether quantitative and/ or qualitative, were input against the relevant consultation questions.
- 1.10 We agreed respondent categories with the Scottish Government, so that we could analyse trends and differences between different types of respondent.
- 1.11 We undertook quantitative analysis using Excel in order to produce a table for each quantitative question, highlighting overall responses and a breakdown by respondent category.
- 1.12 We analysed qualitative responses using a process of manual thematic coding. This involves reviewing the open responses and manually coding the themes identified by each respondent. The qualitative analysis process pulled out the main themes from each question which allowed the range of views to be presented across all responses and trends among respondent groups to be highlighted.
- 1.13 In the course of our qualitative analysis, it became clear that there was often a fine line between respondents who said that they agreed with a particular proposal, and those who said they disagreed. For example, a respondent might have said that they were content with the basis of a particular proposal, but said that they disagreed with it for a specific reason. Where relevant, we have sought to highlight this within the report.

1.14 A number of respondents made very specific comments, which were important but technical in nature. We have included a list of these detailed points as Annex One.

2. Overview of Responses

Introduction

- 2.1 This chapter explores the profile of respondents to the consultation. It also explains the respondent categories used for analysis.

Profile of respondents

- 2.2 A total of 92 responses were received to the consultation. This included 26 individual respondents and 66 organisational respondents. There were no campaign responses.
- 2.3 Working with the Scottish Government, we agreed six broad respondent categories. On the Respondent Information Form (RIF), respondents had identified as either individuals or organisations, and provided their contact details. Respondents were not asked to identify with a particular respondent category on the RIF.
- 2.4 The Scottish Government wished to see both individual and organisational respondents categorised based on their broad area of interest. Organisations were allocated to the appropriate respondent category, based on the nature of their organisation. Most individuals (20) were treated as members of the public, as it was not possible to identify a definitive area of interest from their response. However, a small number of individual respondents (six) were categorised as letting agents as they indicated that this was their profession within their response. Within the qualitative analysis, where relevant, we have sought to draw out any differences in views between letting agent organisations, and individual letting agents.

Respondent category	Number	Percentage
Letting agents	27	29%
Member of the public	20	22%
Professional or representative body	14	15%
Other	12	13%
Local authority	11	12%
Tenant/community group	8	9%
Total	92	100%

- 2.5 The 'other' group includes estates, academics, equality organisations and national housing schemes and panels.
- 2.6 Of the 92 responses, 81 gave permission for their response to be published by the Scottish Government. These full responses can also be viewed here: <https://consult.scotland.gov.uk/better-homes-division/lettingagentconsultation>. Annex 2 of this report is a list of organisational respondents that gave permission for their response to be published.

3. Part 1: Draft code of practice

3.1 This section analyses responses to Part 1 of the consultation which concerns the draft letting agent code of practice. More specifically this covers:

- Section 1 – Introduction
- Section 2 – Overarching standards of practice
- Section 3 – Engaging with landlords
- Section 4 – Lettings
- Section 5 – Management and maintenance
- Section 6 – Ending the tenancy
- Section 7 – Communications and resolving complaints
- Section 8 – Handling landlords’ and tenants’ money, and insurance arrangements.

Section 1: Introduction

Q1a: Does the introduction tell you enough about the broader regulatory background?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	18	69%	5	19%	3	12%	26	1
Member of public	14	74%	3	16%	2	10%	19	1
Professional/representative	10	71%	4	29%	-	-	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	8	80%	2	20%	-	-	10	2
Tenant/community	4	50%	4	50%	-	-	8	-
Total	63	71%	20	23%	5	6%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

3.2 Of the 92 respondents, 88 chose to answer the question about the introduction to the letting agent code of practice. Of those, seventy-one percent agreed that it was comprehensive enough, twenty-three percent disagreed, and six percent said that they ‘didn’t know’.

3.3 Respondents who were content that the introduction was adequate provided a range of comments to support their views.

- 3.4 Many respondents (13) said that the introduction was 'clear', 'thorough' and 'easy to understand'. Some of these commented that it provided sufficient information in relation to the wider regulatory framework.
- 3.5 Respondents provided a range of suggestions for developing the introduction. For example, one housing association proposed that a 'softer' more informative approach might be required for organisations that were new to letting.
- 3.6 Another local authority respondent suggested that there should be more information in relation to the 'crossover' between landlord registration and letting agent registration. It was felt that more information should be provided to councils on how to deal with this, in view of the volume of queries that their Private Sector Housing Unit had to deal with.
- 3.7 Whereas, a respondent from the 'other' group proposed that Scottish Government should encourage lettings agents to become members of the National Approved Letting Scheme (NALS) or a similar professional body, to ensure widespread compliance with the Code.
- 3.8 Finally, the Property Ombudsman Scotland (TPOS) highlighted that their code, the Property Ombudsman (TPO) Code of Practice for Residential Lettings Agents, had been in place for many years, and that many lettings agents were already working to the standards contained within this code. It was therefore suggested that if the TPO Code were to be adopted as the mandatory code, this would ensure greater consistency in how disputes were considered and judged by the Alternative Dispute Resolution (ADR) bodies and the First-tier Tribunal (FTT). Linked to this, another respondent from the 'other' group pointed out that introducing yet another code could lead to ambiguity and potentially encourage further differing approaches across devolved administrations. This respondent underlined the importance of encouraging consistency in approaches across all administrations.
- 3.9 A significant number of respondents (20) – mainly letting agent organisations, tenant/ community groups and professional or representative bodies - said that they did not think that the introduction was adequate.
- 3.10 One of the main reasons given for this was that it was not clear in Section 1.5 who the Code applied to. Some respondents (4) queried whether this would cover both formal, and informal letting arrangements. In particular, some respondents gave examples of situations where properties might be managed informally by a friend, member of the family, or even a neighbour. One local authority also highlighted the situation where Registered Social Landlords (RSLs) might be managing properties on behalf of a third party, for example,

those operating as part of the National Housing Trust programme. It was suggested that Scottish Government should do more work to define the scope of who the Code was intended to apply to.

- 3.11 There was a general consensus among these respondents that the Code should apply to all people who were involved in letting agency work, regardless of the size of the portfolio that they managed, or whether this was on a formal or informal basis.
- 3.12 Although accepting that the introduction was clear and understandable, a few respondents said that more detail should be provided in the introduction about complying with all relevant legislation.
- 3.13 In particular, Capability Scotland expressed concern that disabled people could sometimes be prevented from renting privately because of a failure by Letting Agents to make reasonable adjustments. It was therefore recommended that the introduction should make clear the requirement for letting agents to comply with all aspects of the Equality Act 2010 as it relates to private lettings.
- 3.14 In addition, an individual letting agent highlighted that the introduction should make reference to UK wide Consumer Protection legislation and related guidance that all letting agents are required to comply with.
- 3.15 A few respondents (3) who said that they 'didn't know', felt that the introduction to the Code of practice was too broad, and that more detail should be provided, for example, in relation to Ministerial powers and also the wider regulatory framework.

Q1b: Please specify any more information about the regulatory background we should include?

- 3.16 Respondents were also invited to specify any additional information about the regulatory framework that should be included in the introduction. A wide range of suggestions were provided.

Greater clarity on who the Code applies to

- 3.17 Many respondents (14) from across respondent groups called for greater clarity on who the Code would apply to. Some of these (8) felt that the Code should apply to any individual or business involved in the letting or management of private rented property in Scotland, irrespective of where the individual or business was based. A few respondents commented that those involved in letting properties on an informal basis for friends or family, no matter how small the portfolio was, should also have to comply with the Code.

- 3.18 In contrast, two respondents called for certain individuals or organisations to be exempt from the Code and related training requirements, for example, solicitors involved in letting agency work, and those involved in managing properties on behalf of friends or family members.
- 3.19 Others sought clarification on how RSLs that manage market rent properties should be treated, given that they are already regulated by the Scottish Housing Regulator. It was suggested that they should be given automatic registration to the proposed register. Another respondent from the ‘other’ group sought clarification on whether the Code would apply to universities.
- 3.20 A member of the public queried whether an agent that was solely involved in marketing a property, finding a tenant and setting up the tenancy would require to be fully registered. Another member of the public and an independent letting agent suggested that it would be good to provide examples of the different types of letting agent that would be covered by the Code.
- 3.21 Finally, some respondents (4) called for the Code to cover online-only providers of letting agency services.

Links to other relevant legislation and codes of practice

- 3.22 Some respondents (4) – mainly from the lettings agents and professional or representative bodies groups – made reference to the existing voluntary Private Rented Sector Code (July 2015)³ for England and related guidance, and recommended that Scottish Government should make cross references to this code in its proposed Code of Practice. Some of these respondents also suggested that all businesses and individuals that were already regulated by RICS and ARLA should get automatic registration in the proposed register in Scotland.
- 3.23 A few respondents (3) highlighted the importance of the introduction to the Code identifying all legislation that might be relevant to the private housing sector, including legislation relating to the maintenance of common property.

Dispute resolution

- 3.24 One respondent from the ‘other’ group proposed that there should be a requirement in Section 1.7 to inform consumers about access to ADR, particularly if Scottish Government was keen to ‘declutter’ the FTT system of ‘minor service’ issues. It was suggested that consideration should be given to making ADR a mandatory step, prior to FTT. The respondent suggested that this would have the double benefit of reducing costs to Scottish Government, and also encouraging more consumers to pursue complaints through this less ‘formal’ dispute resolution route. It was also suggested that more information

³ The RICS Private Rented Sector Code (July 2015) is intended for use by landlords and letting and management agents in England. The code is voluntary and promotes best practice in the letting and management of private rented housing.

should be provided about ADR approved independent redress providers that operate in this sector.

- 3.25 In addition, an individual letting agent said that the regulation background should be clear on the broad timescale for the Tribunal to address complaints. It was suggested that a flow chart would help to clarify the process and related timelines.
- 3.26 Finally, a local authority noted that it would be helpful to give an upper limit to the level of compensation that may be awarded.

Assessment of 'fit and proper'

- 3.27 A few respondents (2) suggested that more detail should be provided on what was meant by a 'fit and proper' person, and the criteria that would be used to determine this. One letting agent organisation suggested that reference should be made to the requirements set out in Section 34 of the Housing (Scotland) Act 2014. Clarity was also sought on who would be responsible for carrying out the appropriate tests i.e. whether this would be the responsibility of local or national government.

Clear terms of business

- 3.28 A few respondents (3) noted the importance of letting agents having clear terms of business, particularly in view of the dual and sometimes complex role that they have in terms of managing the expectations of landlords, and at the same time fulfilling their responsibilities to tenants. It was felt that more guidance and support should be provided to lettings agents to ensure that their terms of business were clear and transparent.

Underlying drivers for change

- 3.29 A few respondents (2) stated that it would be useful to have more background information about the problems that the Code was seeking to address.

Section 2: Overarching standards of practice

Q2a: Do the overarching standards we have listed reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	23	88%	2	8%	1	4%	26	1
Member of public	14	74%	1	5%	4	21%	19	1
Professional/representative	10	71%	4	29%	-	-	14	-
Local authority	10	91%	1	9%	-	-	11	-
Other	9	90%	1	10%	-	-	10	2
Tenant/community	6	74%	1	13%	1	13%	8	-
Total	72	82%	10	11%	6	7%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.30 Of the 92 respondents, 88 chose to answer the question about the overarching standards listed in the consultation paper. Of those, eighty-two percent agreed with the proposed overarching standards, eleven percent disagreed, and seven percent said that they 'didn't know'.
- 3.31 There was broad agreement across most respondent groups that the proposed overarching standards for lettings agents were 'transparent', 'reasonable', 'clear and concise' and 'appropriate'. Some noted that the standards listed covered the standards that many lettings agents already adhered to.
- 3.32 In addition, one local authority noted that the Code reflected the need to communicate early, to respond to complaints in writing, and to inform landlords and tenants of important issues such as repairs. It was also recognised that the standards should help to prevent disputes arising between lettings agents, landlords and tenants, and this might help to prevent homelessness. TPOS highlighted that in general the standards reflected those set out within the TPO Code of Practice, with the exception of the overarching standard to comply with all relevant legislation.

Issues raised

- 3.33 Although the majority of respondents from the professional or representative bodies category were in agreement with the proposal, a higher number of them (4) disagreed, compared to other respondent categories. The main concern expressed by some of these respondents was that the proposed standards were 'vague' and non-specific', and some of the terms used within the individual standards were 'undefined'. Particular reference was made to

the use of the term 'reasonable' in a number of the standards, it was felt that lack of definition meant that the term was open to interpretation. Respondents therefore called for clearer definition to avoid ambiguity.

3.34 Capability Scotland re-iterated its view that it was essential that there was explicit reference to the duty of lettings agents to comply with all aspects of the Equality Act 2010, as it relates to private lettings. It was felt that this should be a central pillar of letting agent regulation in Scotland. Similarly, Shelter called for explicit reference to be made to the duty of letting agents to comply with all aspects of housing law, as it relates to private lettings.

3.35 In addition, another member of the public expressed concern that the proposed standards might result in the balance of the service being provided by the letting agent to the landlord, being skewed too far in favour of the tenant. This seemed unfair since the landlord was paying for the service from the letting agent.

Q2b: Please specify any other overarching standards the Code should include

3.36 Respondents were also asked to specify any other overarching standards that the Code should include. Respondents from across respondent categories provided a range of suggestions. These are summarised below, in order of prevalence:

- Compliance with relevant legislation (5)
 - There should be specific reference within the standards that letting agents must ensure compliance with all relevant legislation, for example, housing and equalities related legislation.
- Handling client money (4)
 - There should be a standard for handling client money i.e. deposits, rent payments.
- Recruitment and training of staff (3)
 - There should be a standard that covered the recruitment of staff ensuring that they were 'fit and proper', and also a commitment to the development and training of staff, linked to Continuous Professional Development (CPD) and wider training through professional bodies.
- Repairing standard (3)
 - There should be a clear standard, with clear timescales, relating to repairs, similar to the repairing standard used in the social housing sector.
- Record keeping (1)
 - There should be a minimum standard for record keeping.

3.37 In addition to this, respondents made a number of other individual general points, as follows:

- Letting agents should be encouraged to become members of representative bodies.

- Lettings agents should be required to use their registration number in all correspondence on advertising materials (this is covered later in the Code and in our analysis).
- Letting agents should publicise which independent redress providers they use.
- A model or template 'written agreement' should be developed for letting agents to use – RICS offered to help draft this template.
- Scottish Government should provide clear guidance on key elements of the standards.
- More should be done to actively promote best practice across the letting agents sector, for example, tapping into the experience and expertise of key professional and representative bodies, and also through the use of relevant case studies.

Section 3: Engaging landlords

Q3a: Do the standards of practice proposed in the section on engaging landlords reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	23	88%	2	8%	1	4%	26	1
Member of public	13	68%	4	21%	2	11%	19	1
Professional/representative	9	64%	4	29%	1	7%	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	7	70%	2	20%	1	10%	10	2
Tenant/community	6	75%	2	25%	-	-	8	-
Total	67	76%	16	18%	5	6%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.38 Of the 92 respondents, 88 chose to answer the question about the proposed standards relating to engaging landlords. Of those, seventy-six percent agreed that the proposal was appropriate, eighteen percent disagreed with this, and a small number (6%) said that they 'didn't know'.
- 3.39 There was strong agreement across most respondent groups that the proposed standards were reasonable and clearly defined. Many felt that they provided a good framework for developing a landlord's agency agreement, as well safeguarding the interests of both tenants and landlords.
- 3.40 Some of these respondents felt that the proposed standards would help to enhance current standards of service provided by letting agents, and also encourage greater consistency in terms of practice and procedures across Scotland.
- 3.41 However, one letting agent organisation suggested that Scottish Government should enforce letting agents to be more transparent about fees in their terms and conditions/ written agreements.
- 3.42 Although the majority of respondents from the member of the public category and the professional or representative bodies category were in agreement with the proposed standards, a higher number of these respondents (members of the public (4) and professional or representative bodies (4)) disagreed, compared to other respondent categories.
- 3.43 However, some of these respondents provided suggestions on how the standards could be developed or strengthened. Shelter Scotland and

Capability Scotland proposed that the standards should emphasise the importance of complying with housing law in all circumstances, and not just in relation to meeting appropriate letting standards. Whereas one respondent from the tenant/ community group category said that the standards should be expanded to cover tenemental property.

3.44 On the other hand, the Law Society of Scotland expressed some particular concerns relating to the proposed standards, where solicitors might be acting as letting agents, as detailed below:

- **Section 3.1f** relating to potential conflict of interest – this would require more detailed consideration, as it may conflict with existing Practice Rules for solicitors.
- **Section 3.3** relating to reporting a landlord that is not meeting their obligations - this could result in breaches of client confidentiality.
- **Section 3.4m** relating to indemnity insurance – it was considered that the Law Society of Scotland’s master professional indemnity policy should already provide sufficient cover for solicitors.
- **Section 3.4n** relating to holding client’s funds - there are already strict rules in place for all Scottish solicitors relating to this, they should therefore be exempt from any new provisions in the Code.

Q3b: Please specify any other standards the Code should include on engaging landlords

3.45 Respondents were also asked to specify any other standards that the Code should include on engaging landlords. Their suggestions are summarised below, in order of prevalence:

- Terms of business (4)
 - The fee structure should be clear from the outset, there should be no ‘drip-pricing’ of fees.
 - There should be clear definitions of the types of service available, for example, full management service, lettings only service.
 - The written agreement should also make clear what the letting agent will not be doing.
- Conflicts of interest (3)
 - Where there is a conflict of interest between the landlord and letting agent, written confirmation should be obtained confirming that the landlord is content for the agent to act on their behalf.
 - There should be mandatory disclosure if there is a close relationship between the agent and landlord, or if they are one and the same.
- Handling client money (2)
 - Letting agents should provide landlords with monthly statements of income and expenditure.
- Dispute resolution process (2)

- Where there is a requirement for ADR referral, it should be made clear to the landlord that this does not compromise referral to the FTT.
- Duty of Care (1)
 - Letting agents should have the right to enforce safety standards on their landlords, and charge the landlords accordingly.

3.46 In addition to this, respondents made a number of other individual general points, as follows:

- The Code of Practice should be made accessible to landlords and tenants.
- Letting agents have a key role to play in the provision of advice to landlords; for example, in relation to any changes in legal and safety requirements.
- Letting agents should publicise if they are members of any professional or representative bodies; links should be made to other related codes of practice, for example, where a solicitor is acting as a letting agent, to ensure compliance.

Section 4: Lettings

Q4a: Do the standards of practice proposed in the section on lettings reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	19	73%	5	19%	2	8%	26	1
Member of public	13	72%	3	17%	2	11%	18	2
Professional/representative	8	57%	6	43%	-	-	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	8	80%	2	20%	-	-	10	2
Tenant/community	6	74%	1	13%	1	13%	8	-
Total	63	72%	19	22%	5	6%	87	5

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

3.47 Of the 92 respondents, 87 chose to answer the question about the proposed standards relating to letting. Of those, seventy-two percent said that they were in agreement with what was proposed, twenty-two percent disagreed, and a small number (6%) said that they 'didn't know'. Although the majority of respondents from the professional or representative bodies and lettings agents categories were in agreement with the proposed standards, a higher number of these respondents (professional or representative bodies (6) and letting agents (5)) disagreed, compared to other respondent categories.

3.48 Some respondents (8) who were content with the proposed standards said that they were clear and comprehensive and provided an excellent basis for developing letting agents' procedures.

3.49 Although some of these respondents suggested areas where the standards could be strengthened further. One local authority highlighted that the section on 'references and checks' would need to be changed to reflect provisions in upcoming legislation on immigration. Another local authority called for more information on how to deal with anti-social behaviour, and communal repairs.

Q4b: Please specify any other standards the Code should include in the section on lettings

3.50 Respondents were also asked to specify any other standards that the Code should include in the lettings section. Their suggestions are summarised below, in order of prevalence:

- Terminology (5)
 - Some respondents suggested that the term 'applicants' was confusing and should be replaced with 'prospective tenants'.
- Tenant information (3)
 - The letting agent should provide a tenant welcome pack including information about the property (gas/electric meter readings), tenancy agreement, a copy of the letting agent's phone number, and an out of hours contact number.
- Handling deposits and rent payments (2)
 - The Code should be clear on the treatment of 'holding deposits', as these are often kept by letting agents, when a tenant is no longer able to move into the property. Clarity was also sought regarding the 'rent in advance' practice used by some letting agents, as this is not covered by the tenant deposit scheme.
- Moving out standard (1)
 - There was a suggestion that there should also be a defined standard for moving out, covering check-out procedures, move-out inventories and the return of keys.
- 'Right to Rent' (1)
 - Clarification was sought on the Scottish position regarding provisions contained within the current Immigration Bill where landlords will be required to check whether prospective tenants have the right to live in the UK, as this could lead to increased discrimination.
- Complaints handling procedures (1)
 - A section should be added covering the complaints handling procedures for both clients and tenants.
- Consumer protection regulations (1)
 - Section 4.8 should more accurately reflect the letting agent's obligations under the Consumer Protection and Unfair Trading Regulations 2008 i.e. letting agents are required to divulge information that they either know, should know, or become aware of.

Section 5: Management and Maintenance

Q5a: Do the standards of practice proposed in the management and maintenance services reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	20	77%	4	15%	2	8%	26	1
Member of public	12	63%	5	26%	2	11%	19	1
Professional/representative	10	72%	2	14%	2	14%	14	-
Local authority	7	64%	4	36%	-	-	11	-
Other	10	91%	1	9%	-	-	11	1
Tenant/community	7	100%	-	-	-	-	7	1
Total	66	75%	16	18%	6	7%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.51 Of the 92 respondents, 88 chose to answer the question about the proposed standards relating to management and maintenance services. Of those, three quarters (75%) agreed with the proposed standards, eighteen percent disagreed, and a small number of respondents (7%) said that they 'didn't know'. Although the majority of respondents from the member of the public, letting agents and local authority categories were in agreement with the proposed standards, a higher number of these respondents (members of the public (5), letting agents (4) and local authorities (4)) disagreed, compared to other respondent categories.
- 3.52 Some respondents (8) who said that they were content with the proposed standards said that they were comprehensive, robust and clear. They were seen to be a fair reflection of what should be expected of letting agents. A few (3) said that they were in line with current practice.
- 3.53 Others provided suggestions on how the standards could be developed. One tenant/ community group proposed that the standards should also cover common repairs, and the need for effective consultation. Another tenant/ community group suggested that all contractors or third parties should be registered.
- 3.54 One letting agent organisation flagged up a particular issue in relation to gaining access to HMO properties to undertake mandatory weekly smoke and heat alarm tests. The respondent was concerned that if the letting agent is unable to gain access to these properties, they might be required to seek 52 court orders a year.

- 3.55 A few respondents who disagreed with the proposed standards outlined their reasons for this.
- 3.56 The Law Society of Scotland was of the view that this section of the Code was over specific, and this could create loopholes. The Law Society also felt that the provisions might result in delays in getting work done, and also increasing costs. This might have the effect of putting off 'good' letting agents from getting involved in this type of work, and driving business into the hands of less professional letting agents.
- 3.57 One letting agent organisation noted that the standards were similar to what was required in the social housing sector, but that few letting agents would have the resources to deal with the 'bureaucracy' associated with the proposed standards.
- 3.58 In addition, one local authority commented that the standards should make reference to other owners in a property having a right to the name and address of the landlord. This would assist with dealing with cases where there was anti-social behaviour, and also managing common repairs.

Q5b: Please specify any other standards the Code should include management and maintenance services

- 3.59 Respondents were also asked to specify any other standards relating to management and maintenance that the Code should include. Their suggestions are summarised below, in order of prevalence:
- Repairing standard (3)
 - Letting agents must ensure that landlords are updated on any changes to the repairing standard. Letting agents should also direct landlords to Scottish Government related advice and guidance on the Private Rented Housing Panel website.
 - Financial accountability (2)
 - The Code should emphasise the importance of transferring rental money to landlords in a timely manner.
 - Letting agents should have robust accounting procedures in place for handling tax deductions from rental income, for non-resident or overseas landlords.
 - Public liability checks (2)
 - Letting agents must ensure contractors' or third parties' public liability insurance policies are up to date, and cover the types of work being undertaken.
 - Communal/ shared repairs (2)
 - Letting agents should be required to pass on any information about common or shared repair obligations to landlords. The letting agent should have to provide contact details for the landlord to other owners. The letting agent should engage, on the landlord's behalf, with property factors, owners' associations, and other owners in relation to common repairs and maintenance issues.

- Dealing with urgent repairs (2)
 - A section should be included to cover the instruction of urgent repairs when the landlord cannot be contacted.
- Good practice (1)
 - More should be done to promote good practice across the private rented sector, this will help to raise the quality of the sector.

Section 6: Ending the tenancy

Q6a: Do the standards of practice proposed in the section on ending the tenancy reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	24	92%	1	4%	1	4%	26	1
Member of public	13	68%	3	16%	3	16%	19	1
Professional/representative	10	72%	3	21%	1	7%	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	10	100%	-	-	-	-	10	2
Tenant/community	6	74%	1	13%	1	13%	8	-
Total	72	82%	10	11%	6	7%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.60 Of the 92 respondents, 88 chose to answer the question about the proposed standards relating ending the tenancy. Of those, eighty-two percent said that they agreed with the proposed standards, eleven percent disagreed and a small number (7%) said that they 'didn't know'.
- 3.61 Some respondents (8) who were content with the proposed standards said that they were clear and concise, and consistent with current practice, and consistent with existing voluntary codes of practice. A few (2) said that they were a fair reflection of what should be implemented in Scotland.
- 3.62 One local authority proposed that the standards, should be supported by be clear guidance to ensure consistency of practice across Scotland.
- 3.63 One representative body that 'didn't know', felt that this section of the Code seemed vague in comparison to other sections, and suggested that it would be useful to provide a clearer framework on expected standards in relation to possession procedures.

Q6b: Please specify any other standards the Code should include in the section on ending the tenancy

3.64 Respondents were also asked to specify any other standards relating to ending tenancies that the Code should include. Their suggestions are summarised below, in order of prevalence:

- Tenancy termination (4)
 - The terms of business agreement must be clear on the notice period required from a landlord wishing to end a tenancy. In addition, the Code should make reference to the procedure that agents must follow, when a tenant serves Notice of Termination.
 - In any communication relating to ending tenancies, letting agents and landlords should encourage tenants to seek independent advice from a local Citizens Advice Bureau (CAB), or local authority.
- Tenancy deposits (2)
 - The Code should make clear that a letting agent must act in accordance with a landlord's instructions in relation to the Tenant Deposit Scheme (TDS) adjudication process, if a deposit dispute is escalated to this level.
 - The Code should include greater detail about what letting agents should do if a dispute occurs. It should also be made clear that a letting agent will be required to co-operate with any investigations by an independent body.
- Complaints handling procedures (1)
 - Reference should be made in this section of the Code to complaints handling and access to independent redress. The termination of a tenancy is a time when complaints are likely to be raised.

Section 7: Communications and resolving complaints

Q7a: Do the standards of practice proposed in the section on communications and resolving complaints reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	21	78%	4	15%	2	7%	27	-
Member of public	14	74%	2	10%	3	16%	19	1
Professional/representative	10	77%	1	8%	2	15%	13	1
Local authority	9	82%	2	18%	-	-	11	-
Other	7	70%	3	30%	-	-	10	2
Tenant/community	6	75%	2	25%	-	-	8	-
Total	67	76%	14	16%	7	8%	88	4

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.65 Of the 92 respondents, 88 chose to answer the question about the proposed standards relating communications and resolving complaints. Of those seventy-six percent agreed with the proposed standards, sixteen percent disagreed with this, and a small number (8%) said that they 'didn't know'.
- 3.66 Many respondents (10) who agreed with the proposed standards said that they were reasonable and clear, and provided a good basis for developing comprehensive procedures for letting agents.
- 3.67 One housing association noted that English law now requires all letting agents to be members of redress schemes, and this has to be displayed on all correspondence. It was also highlighted that this requirement had been in place for many years, as part of the regulation by RICS, ARLA, and NALS. On the other hand, a letting agent organisation suggested that it would be good to have one overarching complaints handling procedure for Scotland, rather than having lots of different ones.
- 3.68 A few respondents underlined the importance of ensuring that all communication was concise, clear and timely, and also suggested that the Code should be available online through letting agents' websites.

Q7b: Please specify any other standards the Code should include in the section on communications and resolving complaints

3.69 Respondents also provided a range of specific individual comments on the proposed standards for communications and resolving complaints, as follows:

- Complaints handling procedures (6)
 - Tenants may face barriers when trying to use the Tribunal service, therefore the service should be accessible and free. Support should also be available to tenants, particularly when letting agents will have access to their own legal support.
 - It is not clear how the Tribunal's role in ensuring adherence to the Code, might fit with any claims of discrimination made under the Equality Act 2010. Currently, these claims can only be heard in a Sheriff Court. More clarification will be required on this.
 - There should be reference to complaints handling and independent redress in the other sections of the Code.
 - RICS regulated firms already have to have a comprehensive complaints handling procedure, and belong to an approved redress scheme.
 - There should be a duty to respond to verbal or written communications from owners, and the letting agent should be obliged to provide owners with a copy of the letting agent's complaints resolution policy and procedure, particularly owners in tenemental properties.
 - Signposting for dispute resolution - It would be helpful for this section to highlight the different types of complaint, for example:
 - **a regulatory complaint** about the letting agent not complying with the Code, the appropriate place for those complaints is the FTT;
 - **a service related complaint** with the complainant seeking redress. This complaint would go to the independent redress provider; or
 - **a complaint about the deposit**, this complaint would go to the relevant tenancy deposit scheme.
- Clear accessible information (3)
 - The Code should be clear and accessible, and there should be access to translation/ interpretation services if required.
- Membership of professional bodies (1)
 - Letting agents should be encouraged to become members of relevant industry and professional bodies. This will help to ensure that they have robust internal complaints procedures in place, and will also reduce the burden on both alternative and statutory dispute resolution procedures.
- Impact on smaller businesses (1)
 - Will specific provisions be made for smaller companies, and individual landlords?

Section 8: Handling landlords' and tenants' money, and insurance

Q8a: Do the standards of practice proposed in the section on handling landlord's and tenant's money reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	19	73%	5	19%	2	8%	26	1
Member of public	11	61%	5	28%	2	11%	18	2
Professional/representative	7	50%	6	43%	1	7%	14	-
Local authority	11	100%	-	-	-	-	11	-
Other	9	90%	1	10%	-	-	10	2
Tenant/community	7	88%	1	12%	-	-	8	-
Total	64	73%	18	21%	5	6%	87	5

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.70 Of the 92 respondents, 87 chose to answer the question about the proposed standards relating to handling landlords' and tenants' money. Of those, seventy-three percent said that they agreed with the proposed standards, twenty-one percent disagreed with this, and a small number (6%) said that they didn't 'know'. Although overall the majority of respondents from the professional or representative bodies, member of the public and letting agents categories were in agreement with the proposed standards, a higher number of these respondents (professional or representative bodies (6), members of the public (5) and letting agents (5)) disagreed, compared to other respondent categories.
- 3.71 Many respondents (9) who agreed with the proposed standards said that they were comprehensive and easy to understand, and reflected the standards that should be expected of letting agents operating in Scotland. In addition, one local authority noted that it was good to require letting agents to set out written procedures for handling clients' money and debt recovery. The NALS welcomed the fact that letting agents have to be members of a CMP scheme.
- 3.72 However, a few respondents (3) suggested that more detailed guidance would be required.

Issues raised

- 3.73 The Law of Society of Scotland expressed particular concern in relation to solicitors, who carry out letting agent work, as the proposed arrangements for client accounts may conflict with the Society's own rules relating to client accounts. It was suggested that Scottish solicitors should therefore be exempt from the proposals in this section of the Code.
- 3.74 An individual letting agent was of the view that membership of a CMP scheme and having a dedicated account for handling clients' money should be adequate, whereas others highlighted the importance of having robust accounting procedures in place for handing deposits and rent payments. A few tenant/ community organisations called for accounts to be audited or examined every financial year, and these accounts should be made available to landlords and tenants.
- 3.75 One respondent from the 'other' category called for more training, particularly in relation to universal credit and the likely impact on rent collection.
- 3.76 Finally, one member of the public expressed concern that the terminology was confusing, in previous sections of the Code, 'clients' had referred to landlords, now it was also being used in the context of tenants.

Q8b: Do the standards of practice proposed on the insurance arrangements reasonably reflect the standards that should be expected of letting agents operating in Scotland?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	16	67%	7	29%	1	4%	24	3
Member of public	11	69%	2	12%	3	19%	16	4
Professional/representative	8	66%	2	17%	2	17%	12	2
Local authority	10	91%	1	9%	-	-	11	-
Other	8	100%	-	-	-	-	12	4
Tenant/community	5	71%	1	14%	1	14%	7	1
Total	58	74%	13	17%	7	9%	78	14

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 3.77 Of the 92 respondents, 78 chose to answer the question about the proposed standards relating to insurance. Of those, seventy-four percent said that they agreed with the proposed standards, seventeen percent disagreed with this, and a small number (9%) said that they 'didn't know'.

- 3.78 Many respondents (9) who agreed with the proposed standards said that they were clear, fair and comprehensive, and provided an excellent basis for developing procedures and standards for letting agents.
- 3.79 One letting agent organisation noted that RICS already had strict regulations regarding conducting insurance business, and this should be adequate for letting agents. The NLA and UK Association of Letting Agents noted that the majority of letting agents in the market place already belonged to a regulation scheme that required CMP insurance. It was felt that this should be mandatory for all letting agents.
- 3.80 Although the majority of respondents from the letting agent category were in agreement with the proposed standards for insurance, a higher number of these respondents (7) disagreed, compared to other respondent categories. Some of these respondents felt that the proposals were excessive, and would increase letting agents' costs considerably. A few letting agent organisations (2) commented that the section on professional indemnity insurance should be more specific, and also suggested that this insurance should apply 'retroactively'. In addition, the Law Society of Scotland sought more clarification on what was being proposed in relation to professional indemnity insurance, so that it could be compared with their own professional indemnity insurance cover.
- 3.81 A member of the public, who said that they 'didn't know', argued that this section did not go far enough, and that the standards should make clear that a landlord or tenant are not obliged to purchase insurance products from the letting agent, and they have the right to source their own insurance supplier.

Q8c: The draft Code includes a requirement that you have client money protection insurance. This is a distinct type of insurance that protects the money of landlords and tenants against theft or misuse by the letting agency while it is in their control.

Should the Code require letting agents to have client money protection insurance?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	20	76%	3	12%	3	12%	26	1
Member of public	11	61%	2	11%	5	28%	18	2
Professional/representative	12	86%	1	7%	1	7%	14	-
Local authority	9	82%	-	-	2	18%	11	-
Other	8	89%	-	-	1	11%	9	3
Tenant/community	6	75%	-	-	2	25%	8	-
Total	66	77%	6	7%	14	16%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

3.82 Of the 92 respondents, 86 chose to answer the question about the requirement for money protection insurance. Of those, seventy-seven percent agreed that this should be a requirement within the Code, a small number of respondents (7%) disagreed with this, and sixteen percent said that they 'didn't know'.

3.83 A significant number of respondents (20) – particularly letting agents and local authorities - who agreed that there should be a requirement within the Code regarding client money protection insurance said that this was essential and should be standard practice for all letting agents operating in Scotland. One letting agent organisation highlighted that the costs were not significant and could easily be built into the business plan.

3.84 Some (8) said that they already had this type of insurance in place through membership of professional or representative bodies, for example, RICS, ARLA, and TPOS.

3.85 Some local authorities (4) commented that the requirement to have CMP insurance would offer enhanced and equal protection for both landlords and the tenants, and help to increase confidence in the private rented sector. Although one of these respondents added that tenants and landlords should not have to pay an additional surcharge to cover the CMP insurance premium.

3.86 One individual letting agent who did not agree with the proposal commented that this was just adding to bureaucracy, and increasing costs. In addition, the

Council of Letting Agents (CLA) said that the majority of their members did not believe that CMP insurance should be mandatory, and many were not clear on what the benefits of CMP insurance would be to them or their clients.

Q8d: Please specify any other standards of practice the Code should include on the handling of landlords' and tenants' money and on insurance arrangements

3.87 Respondents were also asked to specify any other standards relating to handling of landlords' and tenants' money, and insurance arrangements that the Code should include. Their suggestions are summarised below, in order of prevalence:

- Transparent systems (4)
 - All letting agents must have transparent systems and processes in place for handling client money, for example, ring fenced 'client accounts', clear timescales for banking monies received.
- Clear and accessible information (2)
 - Information on any products offered to clients should be written in clear and plain English.
 - Copies of the client money protection insurance premium should be appended to the tenancy agreement or terms of agreement.
- Payment methods (1)
 - More clarity required on the use of different merchant services, for example credit/ debit cards, cheques, BACS transfers, and whether charges associated with these payment methods are eligible.
- Membership of professional bodies (1)
 - Letting agents should be encouraged to become members of one of the recognised representative bodies, for example, NALS, to help ensure that client money is secure.

Q9: Do you have any other comments about our proposed draft Letting Agent Code of Practice?

3.88 Respondents were invited to provide any other comments about the proposed draft Letting Agent Code of Practice, their suggestions are summarised below, in order of prevalence:

- Clear, accessible and usable (4)
 - The Code should be written in plain English, and available in a variety of languages and formats.
 - It should also be supported with clear guidance to ensure consistency in application across Scotland.
- Automatic registration/ 'passporting'(4)
 - It was suggested that letting agents who were already covered by existing regulation schemes, operated through a range of professional or representative bodies, for example RICS and

ARLA, should be automatically 'passported' through the registration process.

- Promotion of the Code (2)
 - It was suggested that once finalised, the Code should be publicised widely, using the media and local networks.
 - It should also be made available to landlords and tenants, as part of the letting agents' terms of business and tenancy agreements.
- Monitoring arrangements (2)
 - More information is required on how Scottish Government intends to monitor compliance with the Code.
 - Consideration should be given to developing an accreditation scheme for letting agents, similar to the Tenant Participation Advisory Service (TPAS) scheme for landlords.
- Impact on certain letting agents (2)
 - Concern was expressed at the likely adverse impact of the Code on smaller letting agents, and the need for a more proportionate and tailored approach for smaller organisations.
 - Clarification was also sought on whether the Code would apply to universities.

3.89 One letting agent organisation suggested that it would be more appropriate to name the Code the Private Rented Sector Code.

3.90 Finally, although not directly related to the Code, one housing association noted that more needed to be done to tackle the problem of 'hidden landlords'. There was a call for action by Scottish Government to identify these landlords, to protect tenants, and also to protect the reputation of the private rented sector more generally.

4. Part 2 – Training Requirement

4.1 This section of the report analyses responses to Part 2 of the consultation relating to the training requirement which covers:

- Proposal 1 – Matters on which training must have been undertaken
- Proposal 2 – Persons who must have undertaken training
- Proposal 3 – Qualifications which must be held by the applicant or other persons
- Proposal 4 – Period within which training must have taken place

Proposal 1: Matters on which training must have been undertaken

Q10a: Does Proposal 1 appropriately reflect the matters on which staff should undertake training on?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	19	73%	5	19%	2	8%	26	1
Member of public	8	44%	5	28%	5	28%	18	2
Professional/representative	13	93%	1	7%	-	-	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	8	89%	1	11%	-	-	9	3
Tenant/community	6	74%	1	13%	1	13%	8	-
Total	63	73%	15	18%	8	9%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

4.2 Of the 92 respondents, 86 chose to answer the question about whether Proposal 1 adequately reflected the matters where staff training was required. Of those, seventy-three percent were in agreement with this, eighteen percent disagreed, and a small number (9%) said that they 'didn't know'.

4.3 A significant number of respondents (16) who were in agreement said that the outlined training requirements seemed logical and appropriate, and would help ensure consistency in practice across Scotland, and also compliance with the Code. Some said that many letting agents regulated by other industry approved bodies were already doing this.

4.4 One local authority noted that not only was it good practice for letting agents to be appropriately trained, having highly trained staff would also be good for

business. Related to this, another local authority suggested that this training should be extended to all staff.

- 4.5 Capability Scotland welcomed the specific reference to training for letting agents on equality issues, and suggested that it would be useful to develop a range of case studies as part of this, to help raise awareness of key issues for disabled people, for example, in relation to responsibilities regarding adaptations, and waiving the 'no pets' policy for people who use 'assistance dogs'.
- 4.6 Others suggested that training for letting agents should also cover repair and maintenance services to ensure that landlords were meeting their legal obligations. In addition, the CIH recommended that the training requirements outlined in Proposal 1 be reviewed, once the new regulations had had time to settle.
- 4.7 Although not in agreement with Proposal 1, one letting agent organisation suggested that training should cover a wider range of matters, and there should be flexibility in how training was delivered, for example, online, e-workshops, in-house training. It was felt that this would be particularly beneficial for organisations based in the Highlands, and other remote areas, where access to training was sometimes limited.
- 4.8 Whereas, one member of the public commented that the training proposals did not go far enough, and that higher expectations needed to be built into the training requirement, linked to some kind of accreditation scheme for letting agents.

Q10b: Please specify any other training matters we should include in regulations

- 4.9 Respondents were also invited to specify any other training matters that should be included in the regulations. Their individual suggestions for additional training are summarised below:
 - professional ethics and service excellence;
 - awareness of equalities legislation, and how to prevent discrimination;
 - awareness of consumer protection legislation, and how to protect the rights of landlords and tenants;
 - awareness of tenancy law, and the practical application of this in relation to the extension, renewal or termination of tenancies;
 - awareness of legislation relating to HMO, and how to manage HMO properties;
 - dealing with properties in common ownership, and the practical application of this in relation to dealing with common repairs; and
 - practical training on a range issues, including: financial compliance; gas and electrical safety; referencing procedures, including dealing with potential 'Right to Rent' applications, and dealing with prospective tenants.

Proposal 2: Persons who must have undertaken training

Q11a: Proposal 2 suggests placing a training requirement on:

- **The most senior person in the applicant’s organisation, unless they have no input to the letting agency’s day-to-day running; and**
- **All persons directly concerned with managing and supervising the letting agency’s work.**

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	15	58%	7	27%	4	15%	26	1
Member of public	11	61%	3	17%	4	22%	18	2
Professional/representative	8	57%	4	29%	2	14%	14	-
Local authority	7	64%	3	27%	1	9%	11	-
Other	6	67%	2	22%	1	11%	9	3
Tenant/community	6	75%	-	-	2	25%	8	-
Total	53	62%	19	22%	14	16%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.10 Of the 92 respondents, 86 chose to answer the question about who should be required to undertake training. Of those, sixty-two percent agreed with Proposal 2, twenty-two percent disagreed, and sixteen percent said that they 'didn't know'.
- 4.11 A significant number of respondents (16) who were in agreement said that it was important for anyone working in letting and property management to have a minimum level of training. One of these respondents added that this would help to improve the image of the sector, and increase the quality of the service provided.
- 4.12 A few (2) stated that it was important that the most senior person in the agency should be the one that was trained, and therefore should not be exempt from training if they are not involved in the day-to-day running of the business.
- 4.13 Although, others (2) proposed that some staff might be exempt from the training requirements, for example, some administration staff, temporary staff or part time staff or sub-contractors. Another local authority commented that there should always be someone in the office that was 'accredited', to provide cover for holiday periods, staff illness etc.

- 4.14 In addition, a few respondents (2) proposed that staff, who already held relevant qualifications, should be exempt from the training requirement, for example, staff who were members of RICS, or the CIH.

Issues Raised

- 4.15 Although the majority of respondents from the letting agent category were in agreement with the proposal, a higher number of these respondents (7) disagreed, compared to other respondent categories. Respondents provided a number of reasons to back up their views.
- 4.16 Some respondents (5) that disagreed with the proposal said that it was important that the training requirement applied to staff at all levels, and should therefore be extended to all front-line staff, as they were more likely to be dealing with clients on a day-to-day basis. This view was also shared by a few respondents (2) who agreed with the proposal.
- 4.17 RICS referred to the training and CPD requirements that their members were expected to meet, reiterating the point that their members should be 'passported' through the registration process. A couple of respondents also suggested that the training requirement should also be placed on the landlords.
- 4.18 One respondent that said that they 'didn't know', made the point that organisations were best placed to decide the most appropriate person/people to undertake the required training to comply with the Code. It was suggested that the Code be amended to state that at least one person in any organisation should be trained to the agreed standard.

Q11b: Who else, if anyone, should have to comply with the training requirement?

- 4.19 Respondents were also invited to provide comments on who else should have to comply with the training requirement. Their suggestions are summarised below, in order of prevalence:
- Tailored training should be provided for all front-line staff, who deal directly with the public, tenants and landlords, including contractors and sub-contractors, and maintenance staff (11).
 - The most senior person in the organisation should be trained, as the 'buck stops with them' if there are any complaints, or breaches of the Code (5).
 - Different levels of training for staff depending on their positions, for example, letting assistants, letting officers and letting managers (1).
 - Consideration should be given to different methods of delivering training, for example, use of online training modules (1).
 - Training should be mandatory for all non-clerical staff, this will help to raise standards in the sector (1).
 - Dates should be set to evaluate the training requirement, to ensure that it is up to date (1).

- The training requirements should apply to ‘on-line only’ agencies and portals that facilitate lettings (1).

Q11c: Should we include another requirement that there must be at least one person trained per office?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	16	62%	6	23%	4	15%	26	1
Member of public	10	56%	4	22%	4	22%	18	2
Professional/representative	9	64%	4	29%	1	7%	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	5	56%	3	33%	1	11%	9	3
Tenant/community	6	75%	2	25%	-	-	8	-
Total	55	64%	21	24%	10	12%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.20 Of the 92 respondents, 86 chose to answer the question about whether there should be another requirement that there must be at least one trained person per office. Of those, sixty-four percent agreed with this proposal, twenty-four percent disagreed, and twelve percent said that they ‘didn't know’.
- 4.21 A significant number of respondents (19) who were in agreement with the proposal said that this should be a minimum standard, otherwise the training requirement would be undermined.
- 4.22 A few (3) of these respondents noted that having at least one trained member of staff in each office would ensure that decisions, policies and procedures were dealt with consistently, and that the requirements of the Code were met. Whereas another letting agent organisation said that there should be at least two people who were trained, to cover holidays and sick leave.
- 4.23 In contrast, some other respondents (6) stated that all staff should undergo training, but timescales for undertaking training would be critical to ensure compliance with the Code. ARLA also suggested that consideration be given to the size of individual firms, and implementation should work to timescales that were workable for the number of offices a firm had.
- 4.24 The NLA and UK Association of Letting Agents noted that in the first instance, focusing on ensuring that an individual with oversight, regardless of physical location, was a logical approach. At a future date, it was recommended that a review of compliance with the standards of the Code should be undertaken by Scottish Government to determine whether further requirements were necessary.

- 4.25 Finally, a few respondents (2) proposed that qualified staff, for example, chartered surveyors should be exempt from the training requirement. In addition, RICS offered its support to help develop the proposals on training in more detail.
- 4.26 Although the majority of respondents from the letting agent category were in agreement with the proposal, a higher number of these respondents (6) disagreed, compared to other respondent categories. A letting agent organisation commented that evidence of competence, whether gained through experience, or in-house training, should be sufficient.
- 4.27 One respondent from the 'other' category that said that they 'didn't know', commented that although 'one person per office' seemed reasonable, this would depend on the size of the office, and the scale of the portfolio within the office, for example, one office could manage thousands of properties.

Proposal 3: Qualifications which must be held by the applicant or other persons

Q12a: Proposal 3 suggests the phased introduction of a mandatory qualification. Do you think we should introduce a mandatory qualification?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	16	61%	9	35%	1	4%	26	1
Member of public	12	67%	2	11%	4	22%	18	2
Professional/representative	9	64%	3	21%	2	14%	14	-
Local authority	10	91%	1	9%	-	-	11	-
Other	7	78%	1	11%	1	11%	9	3
Tenant/community	7	88%	-	-	1	12%	8	-
Total	61	71%	16	19%	9	10%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.28 Of the 92 respondents, 86 chose to answer the question about the introduction of a mandatory qualification. Of those, seventy-one percent agreed with the proposal, nineteen percent disagreed and ten percent said that they 'didn't know'. Although the majority of respondents from the letting agent category were in agreement with the proposal, a higher number of these respondents (9) disagreed compared to other respondent categories.
- 4.29 A significant number of respondents (29), who were in agreement with the proposal, said that it was reasonable, and it made sense to have a mandatory minimum standard. Many of these felt that this would ensure that staff were professionally trained to an agreed standard, and this would lead to greater consistency across the sector. Some of these respondents also believed that it would help to raise quality and standards in the sector as a whole.
- 4.30 One letting agent organisation commented that by developing a suite of qualifications for the private rented sector, this would open up career pathways within this growing sector. Related to this, one member of the public suggested that there should only be one accredited training provider. In addition, TPOS proposed that following consultation, the syllabus for the proposed qualification should be set by Scottish Government.

Issues raised

- 4.31 There was a degree of common ground across some (8) respondents, whether they agreed or disagreed with the proposal to introduce a mandatory qualification, that there should be varied and flexible ways of meeting the

requirements of the proposed mandatory qualification, especially for those who have significant experience in the industry, or those who already have relevant professional qualifications. For example, the Ombudsman Services highlighted that it would be important to recognise the qualifications, training and CPD that many people working in the sector already had or were required to undertake, as part of their membership of professional bodies or trade associations. In many cases, it was likely that this would be at a higher level than the proposed mandatory qualification.

- 4.32 Some of these respondents also suggested that evidence of competence, whether gained through experience, in-house training, relevant professional qualification or development, should also be taken into account, and where relevant, exemptions should be granted. One respondent also sought clarification on how the qualification would be obtained, for example, through online resources, or time out of the office at specific locations to sit an exam.
- 4.33 In addition, one local authority expressed concern that although the proposal was a good idea, it might have the effect of driving 'unscrupulous' landlords 'underground'. Others who disagreed with the proposal expressed concern at the likely costs attached to this. Meanwhile, one letting agent organisation qualified their response by stating that the requirement should be that 'at least one member of staff' should hold the mandatory qualification.
- 4.34 Finally, the Law Society of Scotland suggested that it should be the responsibility of the senior person to ensure that all staff are working to the required standard. In addition, it was felt that formalised qualifications might deter potential employees.

Q12b: If we decide to introduce a mandatory qualification, we propose this would come into force three years from the date of the Letting Agent Register comes into force. Do you think this is an appropriate timeframe for a mandatory qualification's introduction?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	12	46%	11	42%	3	12%	26	1
Member of public	7	39%	6	33%	5	28%	18	2
Professional/representative	8	57%	4	29%	2	14%	14	-
Local authority	9	82%	2	18%	-	-	11	-
Other	7	78%	2	22%	-	-	9	3
Tenant/community	2	25%	4	50%	2	25%	8	-
Total	45	52%	29	34%	12	14%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.35 Of the 92 respondents, 86 chose to answer the question about whether the mandatory qualification should come into force three years from the date of the Letting Agent Register coming into force. Of those, fifty-two percent agreed with the proposal, thirty-four percent disagreed, and fourteen percent said that they 'didn't know'. In particular, letting agents and members of the public were fairly evenly split in terms of their views on the proposal.
- 4.36 A significant number of respondents (16), who were in agreement with the proposal, said that the timeframe was appropriate and reasonable, and would allow adequate time for training providers to put training in place, and for staff to be trained.
- 4.37 In addition, one letting agent organisation noted that it would be important that training was available nationally, locally and online.

Issues raised

- 4.38 There was consensus across a significant number (19) of respondents, who said they agreed or disagreed with the proposal, that the three-year timescale was too long, and that the qualification could be achieved in a shorter time period, say within two years of the register being set up. Although some (2) commented that this would be dependent on the appropriate training infrastructure being in place across Scotland.
- 4.39 Others who disagreed with the proposal suggested that existing relevant professional qualifications should be recognised and provide exemption from the training qualification. Whereas, an individual letting agent was of the view

that it was not appropriate to introduce a mandatory qualification that did not recognise experience.

- 4.40 One respondent who said that they didn't know, noted that the qualification would only be achievable if the training requirements and expectations were flexible, affordable and relevant. A few others (2) stated that it would depend on the level of the qualification. One member of the public called for smaller letting agents to be exempt from having to achieve the mandatory qualification.

Q12c: We propose to set the mandatory qualification at Scottish Credit and Qualifications Framework level 6. Do you think this is the right level?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	15	58%	1	4%	10	38%	26	1
Member of public	10	56%	3	17%	5	28%	18	2
Professional/representative	9	69%	1	8%	3	23%	13	1
Local authority	6	60%	-	-	4	40%	10	1
Other	3	33%	1	11%	5	56%	9	3
Tenant/community	4	50%	2	25%	2	25%	8	-
Total	47	56%	8	9%	29	35%	84	8

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.41 Of the 92 respondents, 84 chose to answer the question about the level the qualification should be set at. Of these, fifty-six percent agreed with the proposal, ten percent disagreed, and one third (34%) said that they 'didn't know'.
- 4.42 A significant number of respondents (20), who were in agreement with the proposal, said that this was adequate as an entry level qualification. However, a few of these respondents (2) suggested that there should be encouragement to progress to a higher level.

Issues raised

- 4.43 A significant number (37) of respondents said that they either disagreed with the proposal (8), or 'didn't know' (29). The main issues highlighted by some of these respondents are summarised below.
- 4.44 A few respondents (3) who disagreed with the proposal suggested that the qualification should be set at a higher level, for example SCQF Level 7 or 9; college level (HNC or HND), or even at university degree level. The CIH also suggested that the regulations should make clear that only accredited or

regulated qualifications would satisfy the requirement within the Code. Similarly, one letting agent organisation who agreed with the proposal, noted that the qualification needed to carry some 'weight' to be recognised nationally, otherwise this would defeat the purpose of gaining the qualification.

- 4.45 One member of the public proposed that there should be greater flexibility in the type of qualification required, to reflect the role of the individual within the organisation. Whereas, one individual letting agent said that experience should be just as relevant as obtaining a formal qualification.
- 4.46 Some respondents (4) said that they needed more information on the course design and content, to be able to comment on whether level 6 was appropriate. A few others (2) called for 'credits' to be given for previous training or relevant qualifications.
- 4.47 One local authority stated that, in the first instance, it would be important to identify who would be responsible for setting the curriculum, and which higher or further education disciplines would provide the training.
- 4.48 The Scottish Property Federation recommended that, based on feedback from their members, existing qualifications and/or industry memberships, should be reviewed to determine their framework level, both as a means of benchmarking, and also as a means of determining what training gaps may exist.

Q12d: Those applying to the Letting Agent Register will need to have met the requirement to be admitted.

What type of evidence should applicants provide to show they have met the requirement?

- 4.49 Respondents were also invited to comment on the type of evidence that applicants to the Letting Agent Register should provide to show that they have made the requirement. Their suggestions are summarised below:
- Relevant qualification certificates from awarding bodies, for example, higher or further education institutions, Scottish Qualifications Authority (SQA), CIH (25).
 - Confirmation of relevant training undertaken through an accredited training provider, for example, individual training logs, proof of attendance, training certificates (hard or electronic copies) (13).
 - CPD records (hard or electronic copies) (9).
 - Evidence of membership of accredited industry representative or professional bodies, for example, RICS, ARLA, NALS (8).

Q12e: When would you want this evidence to be provided – for example, with every application or on request from the Scottish Government when it appears an applicant or registered letting agent is not complying?

4.50 Respondents were also invited to comment on when this evidence should be provided. Their suggestions are summarised below, in order of prevalence:

- at the point of application (55).
- information should only be provided on request, particularly if a letting agent is suspected of non-compliance, or in the transition period (5).
- information should be resubmitted at re-registration (4).
- information be updated and resubmitted annually (3).
- at the end of the three-year period after registration (3).

Proposal 4: Period within which the training must have taken place

Q13a: Proposal 4 says that if we were to introduce a mandatory qualification requirement, those with an existing relevant qualification more than three years old would also need to have undertaken at least 20 hours of training in the previous three years.

Do you think 20 hours of training is appropriate to enable a relevant agent to keep their knowledge and skills up to date?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	12	44%	10	37%	5	19%	27	-
Member of public	9	50%	4	22%	5	28%	18	2
Professional/representative	7	50%	2	14%	5	36%	14	-
Local authority	8	80%	-	-	2	20%	10	1
Other	6	67%	-	-	3	33%	9	3
Tenant/community	7	88%	-	-	1	12%	8	-
Total	49	57%	16	19%	21	24%	86	6

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.51 Of the 92 respondents, 86 chose to answer the question about whether 20 hours of training was a reasonable time for people, with existing relevant qualifications to complete additional training. Of those, fifty-seven percent agreed with the proposal, nineteen percent disagreed, and almost one quarter (24%) said that they 'didn't know'.
- 4.52 Many respondents (10), who were in agreement with the proposal, said that this was reasonable. A few (2) suggested that it would be important that training be provided by an accredited trainer. Others (3) noted that it was essential that letting agents keep up to date with changes in legislation and best practice.
- 4.53 A few respondents (3) also noted that 20 hours of training was consistent with RICS requirements in relation to CPD. Whereas, ARLA highlighted that their members were required to carry out 12 hours of CPD per annum.
- 4.54 Respondents from the letting agents category were fairly ambivalent towards the proposal, and a higher number of these respondents (10) disagreed, compared to other respondent categories. Some of these respondents (7) felt that 20 hours of training was too much, and a few of these proposed that 10 hours would be sufficient. One letting agent organisation suggested that

evidence of attainment should be more important than evidence of attendance.

4.55 Some respondents (4) who said they ‘didn’t know’, commented that this would depend very much on an individual’s knowledge, experience and qualifications, and therefore it would be difficult to quantify a precise number of hours.

Q13b: Do you think three years is a reasonable time for people to complete this additional training?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	13	50%	5	19%	8	31%	26	1
Member of public	8	47%	5	29%	4	24%	17	3
Professional/representative	10	77%	2	15%	1	8%	13	1
Local authority	8	80%	1	10%	1	10%	10	1
Other	7	78%	-	-	2	22%	9	3
Tenant/community	3	38%	3	38%	2	24%	8	-
Total	49	59%	16	19%	18	22%	83	9

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

4.56 Of the 92 respondents, 83 chose to answer the question about whether three years was a reasonable time for people to complete this additional training. Of those, fifty-nine percent agreed with the proposal, nineteen percent disagreed, and twenty-two percent said that they ‘didn’t know’. A higher number of letting agents (5) and members of the public (5) disagreed with the proposal compared to the other respondent categories.

4.57 Although in agreement with the proposal, many respondents (11) commented that this seemed generous, and could perhaps be achieved within a shorter time period. A number of respondents stated that if the training infrastructure was in place, the training could be done within two years. A few (2) commented that a time limit should be set once an individual starts the training, to ensure that it is completed as quickly as possible, and not spread out over the three years.

4.58 Although not expressing a view either way, Edinburgh University noted that this would allow enough time for training to be planned and completed, although it was recognised that smaller businesses might struggle with the proposed timeframe.

4.59 In addition, one tenant/ community group said that achieving the timescale would depend very much on the training resources that were available.

Transitional arrangements

Q14a: Before the qualification comes into force we propose that those subject to the requirement, who have not obtained the mandatory qualification, would need to have undertaken at least 30 hours of training, covering all the matters prescribed by Ministers, in the previous three years. This would be to ensure that all letting agents admitted to the register had undertaken relevant training on all the areas identified as essential to the effective management of a letting agency.

Does our proposal ensure that those subject to the requirement will have had sufficient training in this initial period before the mandatory qualification is introduced?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	7	29%	5	21%	12	50%	24	3
Member of public	9	48%	5	26%	5	26%	19	1
Professional/representative	8	67%	1	8%	3	25%	12	2
Local authority	7	70%	2	20%	1	10%	10	1
Other	7	78%	-	-	2	22%	9	3
Tenant/community	3	43%	3	43%	1	14%	7	1
Total	41	51%	16	20%	24	29%	81	11

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.60 Of the 92 respondents, 81 chose to answer the question regarding transitional arrangements for training. Of those, fifty-one percent agreed with the proposal, twenty percent disagreed, and twenty-nine percent said that they 'didn't know'.
- 4.61 Many respondents (10) who were in agreement with the proposal said that this was adequate and satisfactory, and would ensure that all letting agents on the register were trained to an adequate standard. However, some of these respondents said that it would be important that training was delivered by qualified and accredited organisations, to ensure the quality and consistency of training being delivered.
- 4.62 Although in agreement with the proposal, the NLA and UK Association of Letting Agents expressed concern that 'well-meaning' and professional agents who had chosen not to affiliate to a professional body offering accredited training programmes, would be disadvantaged by the need to demonstrate 'retroactive' compliance with the Code, regardless of the training that they might have undertaken.

- 4.63 A higher number of respondents from the letting agents (5) and member of the public (5) categories disagreed with the proposal. These respondents presented a range of views, some expressed concern about the 30-hour training requirement, others felt that it was not sufficient, whereas a few said that it would be sufficient as an introductory course, but would need to be backed up with more detailed training. A member of the public highlighted that a likely consequence of this type of requirement, would be to drive small scale letting agents out of the sector.
- 4.64 One letting agent organisation felt that the proposed transitional arrangements were unnecessary and over-complicated. One housing association that did not express a view either way, commented that the 30-hour training requirement did not take account of the skills and experience of staff in letting agents.
- 4.65 The CIH sought clarification on whether only formal training, as opposed to other forms of learning, would be considered relevant in meeting the requirement in the transitional period. It was noted that it would also be critical, when training had been undertaken in the previous three years, and how much had changed since the individual had undertaken training or CPD.
- 4.66 A few respondents queried how this would be monitored or checked, pointing out that staff may not have kept records of the training that they have undertaken over the last three years. Another respondent from the 'other' category expressed concern at the time and cost implications of staff having to undertake 30 hours of training a year.

Q14b: Is it appropriate that those subject to the requirement must have undertaken training on all of the matters (see Proposal 1) set by Ministers?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	15	60%	3	12%	7	28%	25	2
Member of public	13	72%	2	11%	3	17%	18	2
Professional/representative	13	92%	-	-	1	8%	14	-
Local authority	9	90%	-	-	1	10%	10	1
Other	8	89%	-	-	1	11%	9	3
Tenant/community	6	86%	-	-	1	14%	7	1
Total	64	77%	5	6%	14	17%	83	9

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.67 Of the 92 respondents, 83 chose to answer the question on whether it was appropriate that training should cover all matters as set out in Proposal 1. Of those, seventy-seven percent agreed with the proposal, a small number of

respondents (6%) disagreed, and seventeen percent said that they 'didn't know'.

- 4.68 Many respondents (11) who were in agreement with the proposal said that this was essential and it seemed appropriate. A few of these respondents (3) commented that this would ensure consistency, and also help to raise standards and professionalism across the sector.
- 4.69 One member of the public felt that the proposals were too onerous for agents with small portfolios, whereas another respondent suggested that the proposal should only relate to training on 'legal obligations'.
- 4.70 One letting agent organisation proposed that firms regulated by an approved professional body would already be compliant with the Code, and would not require additional training. A few (2) commented that as part of this, there should be a refresher course and related CPD training options available.
- 4.71 One letting agent organisation that did not express a view either way, commented that it would depend on what was meant by 'training', for example, would CPD relating to updates in relevant legislation, and current best practice be sufficient?

Q14c: Do you think 30 hours of training is appropriate?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	12	48%	4	16%	9	36%	25	2
Member of public	9	48%	5	26%	5	26%	19	1
Professional/representative	9	75%	2	17%	1	8%	12	2
Local authority	7	70%	1	10%	2	20%	10	1
Other	5	56%	-	-	4	44%	9	3
Tenant/community	3	43%	3	43%	1	14%	7	1
Total	45	55%	15	18%	22	27%	82	10

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.72 Of the 92 respondents, 82 chose to answer the question about whether 30 hours training was appropriate. Of those, fifty-five percent agreed with this, eighteen percent disagreed, and twenty-seven percent said that they 'didn't know'.
- 4.73 Many (11) who were in agreement with the proposal said that the proposal was reasonable and appropriate, although some (4) said that this should be achieved in a shorter timescale. It was noted that letting agents that were

already registered with an approved industry body should already be compliant with what was proposed in the Code.

- 4.74 One member of the public questioned whether this transitional training would lead to a formal qualification. A few tenant/ community groups said that for new employees coming into the sector, there should be a higher level of qualification, and that 30 hours training was not enough.
- 4.75 The Central Association of Agricultural Valuers called for the development of a broader framework embracing existing higher qualifications, this would cater for a wider range of training needs depending on whether staff were qualified or unqualified.

Issues raised

- 4.76 Some of the respondents (4) who disagreed with the proposal thought that 30 hours of training was too high, and proposed that 20 hours would be more achievable. Another respondent said that this was not enough for staff without a qualification.
- 4.77 Some respondents (4) who did not express a view either way, commented that this would depend on type of training, the availability of suitably qualified trainers and the quality of the training to be provided. A few (2) expressed concern at the potential impact of the additional training requirements on the sector, particularly on smaller letting agents.

Q14d: Do you think three years is a reasonable timeframe for relevant training to count towards meeting the requirement?

	Yes		No		Don't Know		Total Answered*	Not Answered
Letting agents	15	60%	6	24%	4	16%	25	2
Member of public	9	50%	6	33%	3	17%	18	2
Professional/representative	9	75%	3	25%	-	-	12	2
Local authority	9	90%	-	-	1	10%	10	1
Other	8	89%	-	-	1	11%	9	3
Tenant/community	3	43%	3	43%	1	14%	7	1
Total	53	66%	18	22%	10	12%	81	11

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 4.78 Of the 92 respondents, 81 chose to answer the question on the proposed timescale for training to count towards meeting the requirement. Of those sixty-six percent agreed with the proposal, twenty-two percent disagreed and twelve percent said that they 'didn't know'. Although overall the majority of

respondents from the letting agent and member of the public categories were in agreement with the proposal, a higher number of these respondents (letting agents (6) and members of the public (6)) disagreed, compared to their respondent categories.

- 4.79 Many respondents (9) who were in agreement with the proposal said that three years was reasonable and adequate.

Issues raised

- 4.80 There was consensus across a significant number (16) of respondents, who both agreed and disagreed with the proposal, that the timeframe should be shorter, say up to two years. Whereas, a local authority commented that it would not be beneficial to spread the 30 hours of training over the three year period, calling for a clear time limit to be set for completing the training once it had been started. However, a few respondents who disagreed with the proposal, expressed concern at the time and cost implications of the training requirement, particularly for smaller letting agents.
- 4.81 One member of the public that said they 'didn't know', suggested that this would depend on whether it was envisaged that the final approach would be a 'one size fits all' qualification, or one that was modular, and could be supplemented with different modules.
- 4.82 One local authority noted that it would very much depend on the experience and track record of the letting agent, some had been operating for years, whereas others had only been in existence for a short period of time. More time may be required for the newer letting agents to obtain some sort of acceptable qualification and training prior to registration.

5. Equality and Business Impact

Q15: Do you have any comments on the partial Equality Impact Assessment?

5.1 Respondents were asked to comment on the partial EqIA. Just under one fifth of respondents (18%) provided feedback (17).

Strengthen the sector

5.2 Some (6) of these respondents, said that they agreed with the conclusions of the partial EqIA, and felt that the approach would have a generally positive impact on protected groups. Although concern was raised about the proposed 'right to rent' checks in the forthcoming Immigration Bill, as this might negatively impact on vulnerable groups. Others were of the view that the Code of Practice and Training Requirement would have a positive effect on the sector by improving standards of professionalism, and would also help to strengthen the position of tenants who have protected characteristics. In particular, Capability Scotland said that the regulation of letting agents had the potential to strengthen the rights of disabled tenants and prospective tenants, and would help to challenge discriminatory practice.

Insufficient data

5.3 A few respondents felt that the EqIA required more statistical data, and that more use should be made of census data. It was suggested the statistical data should be developed over time, and this would benefit the sector.

Public awareness

5.4 A few respondents highlighted the importance of increasing public awareness of the Code of Practice, suggesting that it should be included within Tenant Information Packs, the Renting Scotland website, and as an appendix to agency agreements with clients.

Poor practice

5.5 A few respondents expressed concern that the EqIA misrepresented the scale of poor practice in the letting sector. It was felt that only a minority of agents actually provided a bad service (this was often based on anecdotal evidence), therefore more emphasis should be placed on promoting a positive image of the sector, highlighting that the majority of letting agents provided a professional service.

Additional comments

- 5.6 One respondent suggested that letting agents should be able to decline tenants, who they considered to be too young to rent certain categories of property, and this should not be seen as discriminatory.
- 5.7 Another respondent raised concern that letting agents do not have the same lobbying or influencing powers as social housing organisations, therefore it was felt that less attention was paid to the 'voice' of letting agents by Scottish Government. This respondent also stated that allowing the private rented sector to flourish would be the fastest way to encourage the growth of affordable housing.
- 5.8 Finally, a tenant/community group organisation said that the EqIA should give enough consideration to the impact on co-owners of buildings. It was also suggested that the EqIA could reference the Glasgow Factoring Commission's report.

Draft partial business and regulatory impact assessment

Q16a: To assist us in determining the impact of the training requirement we are interested in the current level of training by those we are proposing covering by the training requirement.

Please provide us with any information or comments you have that could help to inform this.

- 5.9 Respondents were asked to give details on the current level of training they provide. A third of respondents (33%) provided comments.

Training is welcomed

- 5.10 A few respondents made broad statements supporting the introduction of mandatory training. It was felt that training would improve standards, provide higher quality service to clients, and would be of overall benefit to the letting sector. In addition, staff members would benefit from improving their knowledge and skills.

Details of training

- 5.11 Many respondents (9) provided details of their organisation's training procedures, along with examples of structured training courses that staff had completed. The formal qualifications gained from such training included: the NFoPP and ARLA management certificates; SCQF level 5 and 6 in Property Management Practice; and apprenticeship routes to MRICS certification.
- 5.12 Many (8) respondents also provided information on the frequency and length of training which their staff members undertake. This ranged from two and half hours per month to 20 hours per annum. A few of these respondents also

said that their staff attended courses run by LAS. In addition, one local authority said that it partnered with LAS to offer monthly training for local letting agents.

- 5.13 The CLA submitted information summarising its letting agent survey, this demonstrated that forty percent of letting agency staff hold an SCQF level 6 qualification; eighty-eight percent undertake yearly training; and thirty-nine percent of staff complete at least ten hours of training per year.
- 5.14 One respondent commented that RICS members should be exempt from the mandatory training requirement, as they are already required to undertake 20 hours of professional development each year.

Delivery of training

- 5.15 Many respondents, provided comments on how the training should be delivered, in-house training was preferred by some respondents, online training and web seminars, were also seen as good training methods.
- 5.16 A few respondents commented that the Code of Practice lacked detail on how training would be delivered. Clarification was sought on whether training would take the form of distance learning, seminars, courses, or events, and whether proof of attendance would be in the form of certificates or a central database.

Cost

- 5.17 Many respondents expressed concern about the likely cost of training, and the impact of this on letting agents. One respondent feared that these costs might be reclaimed by increasing the management costs of each property.
- 5.18 On the other hand, some respondents thought that the 'fears' of additional training costs were exaggerated, as training costs were already an expenditure for some letting businesses, particularly those who are associated with professional or trade bodies.

Recommendations

- 5.19 A few respondents provided recommendations in relation to training. One recommended a 10-hour minimum training requirement per annum. Another highlighted that the lettings qualification offered by the National Federation of Property Professionals (NFoPP) was a good place to start.

Other comments

- 5.20 A tenant/community group organisation stated that, in their experience, the level of training and knowledge among a "substantial minority" of letting agents was poor.

- 5.21 In addition, another respondent from a representative body, highlighted that the majority of its members were employees of property owners, and those employees had a mix of skills and experience, from chartered surveyors, lawyers and individuals without formal qualifications on letting agency work.

Q16b: Do you have any comments on the partial Business and Regulatory Impact Assessment?

- 5.22 Respondents were asked if they had any further comments to make on the partial BRIA. Just over one fifth (21%) of respondents provided a response.

Regulation is welcomed

- 5.23 A few respondents stated that regulation would help the letting agents sector move in the right direction, and would help to improve overall standards within the sector.

Costs

- 5.24 Many respondents provided comments in relation to the cost of introducing the Code of Practice and mandatory training requirement. Some commented that business costs can be offset as a tax liability, others felt that public awareness, and enforcement of the new legislation would be important considerations. Another respondent felt that the overall benefits to the sector would far outweigh the costs.
- 5.25 Many organisations raised concerns about the cost of training. Some felt that the increased costs associated with regulation might make agencies less attractive to landlords, as this might increase landlords' fees. This might result in more landlords self-managing to avoid these extra costs.
- 5.26 Another respondent felt that the cost of training had been significantly underestimated and suggested that £200 per day of training rather than £66 per day proposed in the consultation paper was a more realistic figure. Other areas that might result in increased costs were also identified including: administration time for staff to familiarise themselves with the new Code of Practice; amending their landlord contracts and written procedures; and distributing the new contracts to be signed by all clients.

Competition Assessment

- 5.27 One respondent disagreed with the conclusions of the Competition Assessment section of the BRIA, as it was felt that the proposal would both directly and indirectly limit the range of suppliers and their ability to compete in the market.

Other comments

- 5.28 One respondent noted that Purpose and Intended Effect section of the BRIA did not include reference to TPOs code of practice. It was felt that this presented an unbalanced view, as the codes of ARLA and RICS were mentioned, and TPOs code already places more obligation on organisations than exists in the proposed mandatory Code of Practice.
- 5.29 Another respondent drew attention to Option C2 in the Mandatory Qualification section of the BRIA (p.66). This organisation stated that it was the NFOPP, and not ARLA that offered the current qualification on which costs should be based.
- 5.30 Finally, a tenant/community group organisation made a brief comment that the scheme should incorporate the same rules and criteria that RSLs have to meet.

Annex One: Additional detailed comments

Respondents from across all respondent groups made specific comments in relation to individual sections within the letting agent Code of practice and training requirement as detailed below:

Section 1.3

- Clarification sought on who would be responsible for assessing whether a person was 'fit and proper', and what background checks would need to be carried out to prove this.

Sections 1.7 to 1.10

- Suggestion that these sections of the Code would be better presented in steps, or in a flow diagram.
- Comment that local authorities should be able to report to the Tribunal.

Section 1.7

- Change the wording in the first sentence to: 'If a landlord or tenant (including former landlords and tenants)...
- Clarification required on whether Ministers would be required to raise the matter first with the letting agent.
- Clarification required on who would staff the First-tier Tribunal, and on the type of qualifications that would be required by staff.

Section 1.8

- Clarification required on how compensation would be measured?

Section 1.9

- It would be useful for Scottish Government to issue a specimen Terms of Business as guidance for lettings agents.

Sections 1.11 to 1.12

- Noted that there was no reference to maintenance of common property and related legislation, for example, Title Conditions (Scotland) Act 2003, Tenements (Scotland) Act 2004, Anti-Social Behaviour (Scotland) Act, 2004, Housing (Scotland) Act 2006, Private Rented Housing (Scotland) and Property Factors (Scotland) Acts, 2011.
- There should be a requirement to comply with the Equality Act 2010, as it relates to private lettings.
- The language used in the introduction was confusing. Rather than referring to 'you' and 'your' in Sections 1.1 to 1.14, this should be replaced with 'letting agent'.

Section 2: Overarching standards of Practice

Standard 2.1

- It is difficult to prove 'honest', therefore the wording should be changed to 'You must be honest, open, transparent and fair in your dealings...'
- This should also include other agents, contractors, members of the public and third party complainants. In the case of communal owned property, 'other owners' should also be included.

Standard 2.2

- Replace the word 'way' with 'format'.
- Provide examples of how letting agents could provide clear information.

Standard 2.6

- This is a difficult area to evidence and enforce.
- Age discrimination is not unlawful in the letting and management of properties, and should therefore be removed.
- Specific reference should be made to the Equality Act 2010.

Standard 2.8

- More guidance required on what type of records would be acceptable, and how long these records need to be kept for.

Standard 2.9

- Reference should be made to specific requirements, for example, relevant Data Protection legislation.

Standard 2.10

- Clarification required on what is a 'reasonable' timescale.

Standard 2.11

- Define or remove 'Important issues'.
- Add "such as a repair to the landlord's property, an enforcement notice, obligations for the common property and its curtilage, including garden area and buildings in common ownership".
- This is overly specific and might fit better in another part of the Code.

Standard 2.12

- Define the terms 'abusive', 'intimidating' and 'threatening'.
- Add 'other owners or their tenants (tenemental or shared property)'.

Additional Standard

- The following section should be added to the standards of practice: "In your role as an agent for a private landlord, you must comply with all aspects of the Equality Act 2010, as it relates to private lettings".

Section 3: Engaging landlords: Specific Comments

Before taking instructions

Section 3.1

Sub-section c)

- Change 'get' to 'provide' to reinforce that this is a requirement.

Sub-section d)

- This could be amended to read '...or you suspect that the landlord has breached housing law in relation to lettings, inform the landlord of this.' What happens if the agent informs the landlord, but no action is taken to address issues relating to the standard of the property?
- Add '...in writing...'

Sub-section e)

- Clarify that letting agents cannot work for landlords who are not registered, and registration is required before a tenancy agreement can be granted.

Sub-section f)

- Add '...and seek their agreement in writing to act...'
- As worded, there is already a 'conflict of interest', as the agent is acting on behalf of both the landlord and tenant, this needs to be made clear when discussing any 'conflicts of interest'.

Sub-section g)

- There should be an explanation of 'reasonability', absolute proof of ownership and right to let is critical, and should also assist with landlord registration.

Written Agreement

Section 3.3

- More guidance required on this provision – currently this places letting agents in a difficult position as they are being expected to inform the authorities about landlord's behaviour. The Code needs to be very specific so that letting agents do not exceed their duties.
- Query - if it would be sufficient for a letting agent to say that they cannot act on a landlords' behalf if they are not meeting their legal obligations, rather than expecting them to act as 'whistle blowers'?
- Greater clarity required on which body is responsible for enforcement, so that the letting agent can inform the tenant.
- Letting agents should notify the tenant, if they are informing the authorities about the landlord not meeting their obligations.

Section 3.4

Sub-section b)

- This should also include the date of commencement of the agreement, and also make reference to any 'cooling off' period.

Sub-section f)

- Fee setting must be clear and transparent, with explicit reference to renewals, and any relevant renewal commissions due at a later date.

Sub-section i)

- This should also include other owners, in the case of a tenement building.
- Specific timescales should be included, along with a requirement to fully investigate issues; complaint handling procedures should also include the requirement for referral to the appropriate ADR.

Sub-section j)

- Consideration should be given to a model complaint handling procedure for all letting agents which is linked to the Code.
- For the sake of clarity, the following words should be added at the end of the section “or if you do not process the complaint within reasonable timescales through the staged complaint handling process”.

Sub-section k)

- Useful to refer to the independent redress element of the complaints handling process, clarifying that landlords can pursue this route for breaches of service, but can go to the FTT in relation to breaches of the statutory code.

Sub-section n)

- CMP insurance should be mandatory for all letting agents.
- Further education by the Government on CMP at all levels is necessary and will reinforce that it is not just insurance, rather it is a properly audited process.
- Might be merit in developing a Scottish Safe Agent brand to provide greater reassurance to prospective clients.
- It should be a mandatory requirement that CMP control, using designated client accounts is mandatory, and a cost the agent builds into their business model.

Section 3.6

- Clarification required on what is meant by ‘in most cases’, this is vague and open to interpretation.

Section 3.7

- Clarification required on what is meant by the term ‘work’, does this relate to repairs or any aspect of work undertaken on the landlord’s behalf – having to provide a written agreement every time seems excessive.

Section 3.8

- This is not always possible, and puts letting agents in a difficult position, any subsequent changes to the written agreement should be put in writing and/ or email (particularly for overseas landlords) with responses required within 30 days.

Section 3.9

- How can this be evidenced by the letting agent? Need more detail on types of evidence that would be acceptable to the FTT, and also types of evidence that would be acceptable from landlords and tenants.

Ending the Agreement

Section 3.10

Sub-section a)

- Letting agents should inform the local authority that they are no longer managing the property to allow registration information to be updated.

Sub-section b)

- Examples should be given of the types of changes that might affect tenants.

Section 4: Lettings: Specific Comments

Marketing and advertising

Section 4.1

- Add in a requirement that any charges for advertising and marketing should be clearly stated.

Section 4.3

- Remove ‘...take all reasonable steps to...’, and replace the word ‘or’ with ‘and’; add in the word ‘written’ before ‘communications’, and add in after the word ‘communications’ (including emails).

Section 4.4

- Letting agents should not advertise properties where landlord registration is ‘pending’.
- There may be reasons when this is not possible, for example, if the tenant goes on holiday after signing for the property, and the letting agent can’t access the property.
- Clarification sought on whether the list of requirements is exhaustive, or simply guidance.

Section 4.5

- Reword this section to read: ‘You must not advertise in a way that unlawfully discriminates on the basis of a person’s age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation’. This is in line with the wording of section 33 of the Equality Act 2010.
- Age discrimination is not unlawful in the letting/management of properties, and should therefore be omitted.
- The section should be expanded to prevent letting agents indirectly discriminating against international tenants, some landlords request that tenants have a UK guarantor – this is impossible for some international

tenants, who sometimes have to pay months of rent in advance to secure the tenancy.

Giving correct advice and applicants

Section 4.6

- Clarification sought on whether this is this outwith the signed tenancy agreement.

Section 4.8

- For clarity add the wording 'relating to the property' should be included after the word 'tenants'.
- Add 'if asked a question by a prospective tenant and you are not in possession of the information, you should attempt to obtain this information from your client, the landlord'.

Charging fees

Section 4.9

- Query regarding the relevance of 'making loans' in this section?

Section 4.10

- It was suggested that this section was incorrect, as the legislation only prohibits charges to tenants which are 'as a condition of the grant, renewal or continuance of a protected tenancy'. It was proposed that the section should be amended to reflect the types of charges that are illegal.
- This section should be more explicit in stating that tenants cannot be charged for reference checks by a third party, as a condition of securing a property.

Section 4.11

- This is very vague, amend to read '... to use a third party service specified or associated with the agent'.
- Suggest re-wording to: "you must not financially benefit from charges levied on a tenant by a third party referencing service".

Viewings

Section 4.12

- This might not be practical as staffing and business requirements may require changes at short notice.
- Viewing arrangements should be specified in the letting agent's terms of business.

Section 4.13

- Not clear which 'particular groups' this section refers to. It is unlawful to discriminate against the protected characteristics as defined in the Equality Act 2010. However, for other groups whose characteristics are outwith the 2010 Act, the rights of the landlord to freedom to contract should be protected, for example, they may not wish to rent their property to smokers or people with pets.
- The reference to section 2.7 is incorrect, it should be section 2.6.

Section 4.14

- Replace 'should' with 'must'; also add 'When agents are first issued with keys, they must be carefully logged, and labelled in such a way to link to the property but not identify the address to an unconnected party.'

Section 4.15

- Add in, 'the viewings should take place within reasonable hours.'
- Provisions need to be balanced against the interests of the landlord and the agent, where the tenant is being difficult, or cannot reasonably be contacted.

Offers

Sections 4.16 to 4.18

- The terminology used in this section is misleading. It would be more appropriate and clearer to replace 'offers' with 'tenancy applications'. These sections should also clarify the treatment afforded to notes of interest.

Section 4.16

- Acceptance criteria should be covered in the letting agent's terms and conditions.

Section 4.18

- Add in a requirement that any offers/ applications for a property which are not to be processed further / are unsuccessful, must be destroyed.

References and checks

Section 4.23

- Some landlords may not want the letting agent to check the references as part of their service, in this instance the landlord should confirm in writing if they are happy to proceed without the letting agent carrying out the referencing checks.
- Reword the section to read '...If you are to check references and make other checks, you must take all reasonable steps...'
- Section should be expanded to take account of the regulations coming into force with the Immigration Bill, in relation to 'right to rent' checks.

Tenancy agreement

Section 4.26

- A slight amendment to clarify the position of the letting agent as distinct from the landlord '...such as the name and address of the landlord or the name and address of the letting agent and the identity of the landlord; type and length of tenancy....'.

Section 4.27

- This may create a conflict of interest for the letting agent, the landlord's agent should be under no duty to answer questions about the tenancy agreement, except where instructed by the landlord. The tenant should be advised to seek independent advice if they have any queries about the tenancy agreement.
- A timeframe should be set for this, so that tenants are not pressurised into signing a tenancy agreement too quickly.

Section 4.28

- This should include text suggesting that a tenant information pack, and all relevant certification (in line with repairing standard), is included so it is clear what information should be supplied to the tenant.

Tenancy deposits

Section 4.30

- Specific reference should be made to the Tenancy Deposits Schemes (Scotland) Regulations 2011.
- The terms and Conditions of Business should state clearly who will be responsible for lodging the deposit, and whoever is responsible, must comply with the tenancy deposit schemes legislation and inform the tenants accordingly.
- Reword: 'Your Terms of Business with your client must make it clear who will lodge the deposit and issue the Prescribed Information - the landlord, or the agent (on his/her behalf)'.
- This section should also make clear that if an agent is aware that a landlord has not lodged a tenancy deposit, they must report this to the local authority.

Moving in (inventory/ check-in)

Section 4.33

- This duplicates section 4.36, one of the sections should be removed.
- It should be clear that the letting agent is signing on behalf of the landlord.

Section 4.34

- A timescale should be added for agreeing the inventory, 7 days from signing the tenancy is reasonable.

Section 4.35

- Advice should be provided on what is 'reasonable', as many tenants ignore calls, emails or texts. It would be better to set a deadline of 3-5 days.

Section 4.37

- This is already covered in section 327 of the 1987 Act.
- This obligation is at odds with a Scottish solicitor's duty of confidentiality. Landlords are registered on a publicly held register, so disclosure of an address should be unnecessary. All communications with the landlord should be made by the tenant through the letting agent. More explanation required of the intention and reason behind the provision.
- If another owner of property in the building/tenement asks for the contact details of the landlord, the letting agent must also tell them within 21 days.

Section 5: Management and Maintenance

Rent Collection

Section 5.3

- This section should be expanded to include that receipts must be issued as standard practice when payment is made (either in paper form or email/text), and that a statement should be issued as mandatory at least every 6 months.
- The tenant's right to refer their rent to the Private Rented Housing Panel for a rent determination should also be referenced.

Property access and visits

Section 5.10

- There should be other ways to deal with this that does not require a court order. Often entry is required to undertake mandatory or statutory works, and access could be gained by a simpler procedure through the housing tribunal system.
- This section should make reference to the landlord's new power to apply to the Private Rented Housing Panel for assistance to enter the property to inspect or carry out works to bring the property up to the repairing standard.

Section 5.12

- Clarification sought - if a letting agent is aware that a tenant has damaged the property, or is not looking after it properly, despite being told how to, does this allow the agent to take appropriate action on the tenant's behalf and bill them for the associated costs?
- A written copy of whatever has been discussed/proposed at the time of these visits should be provided to both landlord and tenant.

Carrying out repairs and maintenance

Section 5.13

- There should be a specific requirement for written procedures on handling communal repairs, in accordance with title deeds and Tenements (Scotland) Act 2004, or other legislation where applicable.

Section 5.16

- The first sentence states the letting agent must give clear information about who is responsible for repairs. It is not clear as to what is meant by this. The landlord will usually be responsible, as the landlord cannot contract out of the repairing standard duty. Is the intention that the tenant be given clear information about the identity of the contractor who will carry out the repairs?

Section 5.17

- No timescale provided in this section, which will make it difficult to enforce this provision. Suggested amendment to line 1, 'you must as soon as reasonably practicable carry out the following: inform the landlord in writing....'.
- This is not practicable in relation to small repairs. Delete: 'confirm enough funds are available from the landlord' and replace with 'have sufficient monies in the Client Account to be able to instruct the repair'.

- This is too prescriptive, arrangements for dealing with repairs management up to a certain expenditure level should be set out in the terms of business agreement.

Section 5.18

- This is out of sync with 5.17 where it is stated that the landlord must be informed in writing and quotes obtained etc.

Section 5.19

- This should be expanded to mention that any information on any action being taken to remedy any repairs, should be noted in writing, in addition to any other methods of communication.

Section 5.20

- Text missing after words “reasonable notice”. “Reasonable notice” of what? Should it be reasonable notice of the requirement for access.

Contractors and third parties

Section 5.24 + 5.25

- This should be in line with the FCA, who do not require up front disclosure of commission unless the client especially asks. This should be made clear in terms of business agreement.
- It is not clear why this has been included. There does not appear to be a systemic problem with undisclosed commissions. It would be difficult to enforce the provision, and it would be out of proportion with any purported benefits.

Contingency arrangements

Section 5.26

- It is essential that a 'Disaster Risk Assessment' be carried out to ensure continuity of service to landlords and tenants.
- Complying with this clause will be difficult for many letting agents, particularly those who operate as a sole trader without any staff. If retained as a mandatory requirement, further guidance will be required.

Section 6: Ending the tenancy

Bringing the tenancy to an end

Section 6.1

- When negotiating on behalf of a client, the power of the acting agent to make agreement is dependent on the mandate supplied by their client, the landlord. In such cases the ability to be reasonable will be subject to that mandate.
- This section should make clear that letting agents must inform a landlord in writing, and as soon as possible after a tenant decides to end the tenancy.

Section 6.2

- The procedures should be in easy to understand language, free from jargon or hard to understand phrases. This will ensure tenants understand this process.
- After 'you intend to end the tenancy', reference to 'on the landlord's behalf' should be made, given that the letting agent will be doing so in their capacity as an agent for the landlord. The sub-section implies that a letting agent could make the decision to end the tenancy themselves. It is important that situations in which a letting agent would seek to terminate a tenancy agreement are clearly set out in the agreement between landlord and letting agent, for example, where a tenant has breached the terms of their tenancy agreement.
- Suggest that this would better sit in section 2. 'abandoned tenancies'.

Section 6.3

- This is not clear, does this mean pre or post a single event, or events as they unfold. Is it aimed at the landlord, the tenant or both?

Section 6.5

- This requires that the letting agent follow the correct legal process for ending the tenancy. We would suggest that this duplicates that stated in section 6.1.

Inventory/ check-out

Section 6.6

- Offering clients, the opportunity to be present at the check-out visits should not be mandatory. Letting agents have a duty to protect themselves and their staff against difficult tenants and /or landlords, as there may be some circumstances where is not advisable for staff to attend check-outs, or where additional staff need to be present.
- A pre check-out visit, a week before the tenant leaves, might give more time to address issues.

Section 6.7

- Should say 'preferably in daylight hours' after 'ensure it is conducted thoroughly.'

Section 6.8

- Any offer made to the tenant giving them the opportunity to be present at the check-out visit should be in writing, so that all parties have proof of such an offer.
- This section mentions 'reasonable time, the tenant and letting agents understanding of this is likely to differ, therefore, a minimum time period would be useful. This would allow a tenant to make any necessary arrangements re work, childcare etc., so that they can be present at the check-out visit.

Tenancy deposits

Section 6.10

- It is important to make clear that an agent may have this role only where they have lodged the deposit and are managing the tenancy.
- Clarification is required here, as it is assumed that a landlord could only apply for access to the tenancy deposit scheme if there was damage to the property.

Section 7: Communications and resolving complaints

Communications

Section 7.1

- This could be strengthened to say that letting agents 'must' include their registration number in all relevant documents. It is not clear what a 'relevant document' is. Does this mean that the letting agent's registration number should be listed on every letter, email and text message sent by the company? It will not be practical to include this in text messages.
 - Remove 'take all reasonable steps'.

Section 7.2

- More guidance required on what would be a 'reasonable' timescale to respond to enquiries and complaints. Scottish Government should specify a clear timeframe, for example, within 28 days this would create a level playing field for agents, tenants and landlords alike.
- The timescale for responses should either be defined, or stated as a 'no later than' rather than 'within a reasonable timescale', as letting agents will have differing definitions of reasonableness, and it would therefore be better if all parties were working to roughly the same timescales.
- It is not satisfactory to expect a quick response to continuous 'unreasonable complaints'. This may become an issue if the proposed grounds for possession in the new model tenancy do not cater for such circumstances.
- Responses should be made in writing, as often agents will ignore emails, and will only speak to tenants on the phone. This means that there is no accurate record of what has been discussed, and the tenant cannot evidence that they have met their responsibilities and the agent has not met theirs. This type of evidence would be essential for any complaint to the Tribunal.

Section 7.4

- The Code should be much more widely available in order that all can see what is covered, and should not just be made available on request.
- Suggest landlords and tenants are made aware of the purpose of the Code - they may then be interested in the content. The Code should be included in the Tenant Information Pack (TIP) and be included as an appendix in an agency's Terms of Business, and also be displayed on the Agent's website,

as well made available to the public on the Renting Scotland website.

Complaints resolution

Section 7.6

- 'Landlord and tenant' should be 'landlord or tenant'. Otherwise this could be interpreted as applications need to come from both landlords and tenants, if they are to be considered by the tribunal.
- More detail required on the 'ADR services'. What will be the interplay between this and the 'FTT'? Is it the intention to actively promote ADR services, as a way of preventing calls on the statutory tribunal?
- This section needs to be clearer about the role of ADR schemes as the logical second step (the first being the agent) in dispute resolution, and the fact that does not compromise further referral to the FTT, being the third step.
- Scottish solicitors are subject to the Scottish Legal Complaints Commission (SLCC). Will the Code accept the SLCC as a FTT?
- There is no mention of a potential landlord or a prospective tenant here - do they not have a right of redress? There will be prospective tenants who have been charged administration or referencing fees, and have been unsuccessful in their application - how do they take forward a complaint?
- There should be reference to TPOS.

Section 7.7

- It is not clear why the correspondence needs to be kept for six years, as claims prescribe in Scotland after five years.

Section 8: Handling landlords' and tenants' money, and insurance

Client accounts

Section 8.2

- A letting agent will be receiving money from a tenant which is either a deposit (tenant's money) or rent (landlord's money), and as such it must be lodged in separate bank accounts. The wording of this clause is misleading, and maybe the clause itself is unnecessary if 8.3 is properly worded.

Section 8.3

- The Scottish Government should ensure that these types of account are readily available, reasonably priced and have conditions which letting agents will be able to comply with before making them a mandatory requirement of the Code.

Section 8.5

- It would be useful to state how frequently client accounts should be reconciled, monthly would be reasonable - frequent reconciliations enable errors to be identified quickly, and remedial action to be taken.

Section 8.6

- This section should mention that money will be made available once deductions are made for invoices already allocated to the statement.
- Control and release of client funds should be as agreed in the agency contract. It is common practice for a float to be held, or other means to discharge landlords' commitments to payment of accounts.
- Reword this section to read: 'You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing'.

Section 8.7

- Interest cannot be accrued on a proper client account.
- Remove 'if feasible', interest should be paid on any money held.
- This is very onerous for letting agents. The administrative burden far outweighs any benefit from interest earned. The Estate Agency Act 1977 seemed to deal with this more pragmatically.

Section 8.8

- Clarify the meaning of a clients' money protection scheme. If this is required, agents should be obliged to inform potential clients of a relevant insurance policy under section 3.
- There is no reason why this cannot be displayed in an office and included in the Terms of Business etc.

Debt recovery

Section 8.10

- Does this refer to late or unpaid rent? The terms 'unreasonable' and 'excessive' are subjective, and therefore unclear.

Money laundering

Section 8.12

- This section should say 'that if your organisation carries out any of the roles (letting agent selling to tenant in situ, letting agent selling landlords property to other landlords or anyone else, letting agent acting on behalf of a landlord to source property for buy to let, investment etc.) or duties caught under the definition of estate agency then it must register with HM Revenue & Customs'.
- Currently letting agents are not subject to money laundering legislation, this only applies to estate agents and solicitors, and therefore it should not be included within this section of the Code.

Section 8.13

- Police Scotland should be the first point of contact, rather than National Crime Agency, in relation to suspected criminal activity.

Section 8: Handling landlords' and tenants' insurance

Professional indemnity arrangements

Section 8.14

- The wording should be clearer: 'Written confirmation of the following should be obtained from the banks at which client accounts are held:
 1. All money standing to the credit of that account is clients' money.
 2. The bank or building society is not entitled to combine the account with any other account or to exercise any right to set-off or counter claim against money in that account in respect of any sum owed to it on any other account of the agent or his/her firm.
 3. Any charges or interest levied in respect of the account should not be debited to it'.

Section 8.15

- This requirement is too weak, a letter detailing their insurance provisions should be provided with the application to be on the register.
- Professional Indemnity Insurance cover must be 'retroactive', in order to fully protect landlords and tenants. This could be achieved by removing 'if feasible' from clause 8.15 and replacing 'should' with 'must'.

Provision of insurance products

Section 8.16

- This may be more relevant to the FCA regulations. If agents are advising on cover, obtaining information, collecting money etc. then they need to be registered in some form, either direct with FCA, or as an Appointed Rep of a FCA registered Broker.
- A section needs to be added to ensure that the landlord has adequate buildings insurance, including where relevant, communal insurance. Tenants should be given proof that the landlord has buildings insurance in place, and there should be a copy of this appended to the tenancy agreement.
- Clarification required on the meaning of 'lawfully authorised'. Does this mean that the letting agent must be accredited as an Independent Financial Adviser or insurance agent?

Section 8.17

- There may be cases where an agent arranged insurance for the letting agent, and there is a commission sharing arrangement. This is the practice for factors who arrange buildings insurance through a third party agent, rather than direct with the insurance company providing cover. Therefore, the wording of this section should be changed to read 'or agent arranging the insurance cover', after the words 'providing insurance cover and after 'insurance provider'.

Part 2 – Training Requirement

Proposal 1: Matters on which training must have been undertaken

Sub section 9.1a

Legal Obligations

- Health and safety standards need to be more explicit - suggest more prescriptive wording, such as 'compliance with all current health & safety requirements, including gas, electrical, water and fire prevention regulations'.
- Awareness of responsibilities under the Equality Act 2010 regarding protection against discrimination.
- Implications of Universal Credit need to be covered.
- An understanding of the implications of all relevant housing law on private letting.
- An understanding responsibilities relating to cyclical maintenance of property in common ownership.

Proposal 2: Persons who must have undertaken training

Respondents also suggested additional areas that might be covered in Proposal 2, as follows:

- A number of organisations proposed that the second bullet point should be expanded to include frontline staff, and suggested the wording be changed to: 'managing, supervising or undertaking the letting agency's operations.'

Annex Two: List of Respondents

Eighty-one respondents gave permission for their response to be published by the Scottish Government. These full responses can be viewed using this link:

<https://consult.scotland.gov.uk/better-homes-division/lettingagentconsultation>

Of the eighty-one respondents, fifty-five were organisations and these are detailed below.

Organisations that gave permission to be published:

Aberdeenshire Council
Allsop Letting and Management
Angus Council
Aspect Residential
Association of Residential Letting Agents
Belvoir (Edinburgh)
Belvoir Lettings (Dundee)
Borders Edinburgh East Lothian and Mid Lothian Regional Network (BEEM) Region 5
Breton & Corentin Courts' Residents' Association BACCRA
Broughton Property Management
Capability Scotland
Central Association of Agricultural Valuers
Chartered Institute of Housing (CIH)
City of Edinburgh Council
Click-let Ltd
Dowanhill, Hyndland and Kelvinside Community Council
Dumfries & Galloway Council
Dumfries and Galloway Federation of Tenants and Residents Associations
Dunecht Estates
Edinburgh University Students' Association
Electrical Safety First
Equality & Human Rights Commission (EHRC)
Glasgow City Council
Glasgow Lets Ltd
Hillhead Community Council
Langstane Housing Association
Law Society of Scotland
Letscotland
Lowther Homes
National Approved Lettings Scheme (NALS)
National Landlords Association & UK Association of Letting Agents
North Ayrshire Council
Ombudsman Services
Places for People Group
Policy Scotland, University of Glasgow
Red Box Property Ltd
Regional Networks – Regions 4,8 and 9

RICS
Scottish Association of Landlords (SALs)
Scottish Borders Council
Scottish Land & Estates
Scottish Property Federation
Shelter Scotland
Simply Let
South Ayrshire Council Housing Policy and Strategy Team
South West Scotland Regional Network (Region 6)
Sustainable Communities Scotland (SUSCOMS)
The Buccleuch Estates Limited
The Council of Letting Agents (CLA)
The Property Ombudsman Scotland (TPOS)
The University of Edinburgh
Umega Lettings
Wardhaugh Property
Weslo Property Management
West Lothian Council

How to access background or source data

The data collected for this social research publication:

are available via https://consult.scotland.gov.uk/better-homes-division/lettingagentconsultation/consultation/published_select_respondent



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