

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

August 2015

HOW WE WOULD LIKE YOU TO HELP

This consultation paper sets out a draft statutory Letting Agent Code of Practice and proposals for a training requirement that those applying to the Letting Agent Register must have met to be admitted.

Please read it and give us your views on the proposed statutory Letting Agent Code of Practice and training requirement. Please do this by completing the consultation answer form.

Your answers will help us to develop a mandatory set of standards and level of training that letting agencies must meet.

RESPONDING TO THIS CONSULTATION PAPER

We are inviting written responses to this consultation paper by 15 November 2015.

You can respond to the consultation online by going to:

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

or you can send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

lettingagentregulation@scotland.gsi.gov.uk

or

Private Rented Sector Regulation Team
Better Homes Division
Scottish Government
1-H South
Victoria Quay
EH6 6QQ

If you have any queries please contact Bethany Wilson using the above contact details.

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.gov.scot/consultations/current>

The Scottish Government (SG) has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new

consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

HANDLING YOUR RESPONSE

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

NEXT STEPS IN THE PROCESS

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages within 25 days of the consultation closing. Copies of responses can be viewed by visiting the library or can also be provided by post. Charges for photocopies are made on a cost-recovery basis. To request copies by post and enquire about charges or make an appointment to view responses at the library, contact the Library on 0131 244 4565.

WHAT HAPPENS NEXT?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us produce a final draft letting agent code of practice and to determine the training requirements that will apply to those accepted on to the mandatory register of letting agents currently being established.

We aim to issue a report on this consultation process by Winter 2015.

COMMENTS AND COMPLAINTS

If you have any comments about how this consultation exercise has been conducted, please send them to Charlotte McHaffie using the contact details above.

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Consultation on a draft Statutory Code of Practice and training requirements for Letting Agents in Scotland



RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode	Phone	Email
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3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response,
name and address all
available

or

Yes, make my response
available, but not my
name and address

or

Yes, make my response
and name available, but
not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

CONSULTATION ANSWER FORM

Consultation On A Draft Statutory Code Of Practice And Training Requirements For Letting Agents In Scotland

Part 1 – Draft letting agent code of practice

Question 1a: Does the introduction tell you enough about the broader regulatory background?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 1b: Please specify any more information about the regulatory background we should include.

Comments

Question 2a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 2b: Please specify any other overarching standards of practice the Code should include.

Comments

Question 3a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 3b: Please specify any other standards the Code should include on engaging landlords.

Comments

Question 4a: Do the standards of practice proposed in the section on letting reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 4b: Please specify any other standards the Code should include in the section on lettings.

Comments

Question 5a: Do the standards of practice proposed on management and maintenance services reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 5b: Please specify any other standards the Code should include on management and maintenance services.

Comments

Question 6a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 6b: Please specify any other standards the Code should include in the section on ending the tenancy.

Comments

Question 7a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 7b: Please specify any other standards the Code should include on communications and resolving complaints.

Comments

Question 8a: Do the standards of practice proposed in the section on handling landlords' and tenants' money reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 8b: Do the standards of practice proposed on insurance arrangements reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Comments

Question 8c: 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

Please explain your answer.

Comments

Question 8d: Please specify any other standards of practice the Code should include on the handling of landlords' and tenants' money and on insurance arrangements.

Comments

Question 9: Do you have any other comments about our proposed draft Letting Agent Code of Practice?

Comments

Part 2 – Training requirement

Question 10a: Does Proposal 1 appropriately reflect the matters on which staff should undertake training on?

Yes No Don't know

Please explain your answer.

Comments

Question 10b: Please specify any other training matters we should include in regulations.

Comments

Question 11a: 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.

Do you think these are the relevant people?

Yes No Don't know

Please explain your answer.

Comments

Question 11b: Who else, if anyone, should have to comply with the training requirement?

Please explain your answer.

Comments

Question 11c: Should we include another requirement that there must be at least one person trained per office?

Yes No Don't know

Please explain your answer.

Comments

Question 12a: Proposal 3 suggests the phased introduction of a mandatory qualification. Do you think we should introduce a mandatory qualification?

Yes No Don't know

Please explain your answer.

Comments

Question 12b: If we decide to introduce a mandatory qualification, we propose this would come into force three years from the date 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

Please explain your answer.

Comments

Question 12c: 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

Please explain your answer.

Comments

Question 12d: 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?

Comments

Question 12e: 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?

Comments

Question 13a: 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

Please explain your answer.

Comments

Question 13b: Do you think three years is a reasonable time for people to complete this additional training?

Yes No Don't know

Please explain your answer.

Comments

Training requirements transitional arrangements

Question 14a: 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

Please explain your answer.

Comments

Question 14b: 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

Please explain your answer.

Comments

Question 14c: Do you think 30 hours of training is appropriate?

Yes No Don't know

Please explain your answer.

Comments

Question 14d: Do you think three years is a reasonable timeframe for relevant training to count towards meeting the requirement?

Yes No Don't know

Please explain your answer.

Comments

Draft partial equality impact assessment

Question 15: Do you have any comments on the partial Equality Impact Assessment?

Comments

Draft partial business and regulatory impact assessment

Question 16a: 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.

Comments

Question 16b: Do you have any comments on the partial Business and Regulatory Impact Assessment?

Comments

PURPOSE OF THIS CONSULTATION

The [Housing \(Scotland\) Act 2014](#) introduces a framework for the regulation of letting agents in Scotland. This includes:

- a mandatory register of letting agents with an associated ‘fit and proper’ person test;
- a training requirement that must be met to be admitted to the register;
- a statutory code of practice all letting agents must follow;
- a way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory Code of Practice through a new specialist First-tier Tribunal; and
- powers for Scottish Ministers to obtain information and to inspect to monitor compliance and enforce regulatory requirements.

Once implemented, these will help increase the overall standards of service and professionalism within the letting industry and provide customers with an effective way to resolve complaints.

Part 1 of this consultation seeks your views on a draft Letting Agent Code of Practice and, Part 2, on our proposal for the training requirement that applicants must have met to be accepted onto the Letting Agents Register.

We have included our partial business and regulatory impact assessment (BRIA) and equality impact assessment (EQIA) in the consultation and welcome your comments on these. These will help us to understand the impact of the Code and training requirements upon business and equality groups.

We will use responses to this consultation to assist us in finalising a draft Code and to inform our approach to the introduction of a training requirement.

PART 1 - DRAFT LETTING AGENT CODE OF PRACTICE

Introduction

The Scottish Government's strategy for the private rented sector in Scotland, *A Place to Stay, A Place to Call Home*, sets out our vision for:

“a private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.”

Letting agents have a vital role to play in helping to achieve this vision for the sector and the new regulatory framework for letting agents will support the industry to improve standards, provide good services to landlords and tenants, empower consumers and increase consumer confidence.

The statutory Letting Agents Code of Practice will be fundamental to the effectiveness of the new regulatory framework. Legislation (Section 46 of the 2014 Act) sets out those areas Scottish Ministers can consider in the Code. These are:

- the standards of practice;
- the handling of tenants' and landlords' money; and
- the professional indemnity arrangements to be kept in place.

The following draft Code draws on existing industry codes of practice, that many letting agents have voluntarily signed up to, and aims to clearly set out the standards of practice that tenants and landlords should expect.

The Code will be vital to the effective regulation of letting agents as landlords and tenants can raise complaints (through the new First-tier Tribunal) if a letting agent fails to comply with the Code.

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LETTING AGENT CODE OF PRACTICE

Section 1: Introduction

Background

- 1.1 This Letting Agent Code of Practice (the “Code”) sets out the standards expected of letting agents operating in Scotland in how they manage their business and provide their services.
- 1.2 Section 46 of the [Housing \(Scotland\) Act 2014](#) allows Scottish Ministers to set out a code of practice all letting agents must comply with that covers:
 - the standards of practice for those carrying out letting agency work;
 - the handling of tenants’ and landlords’ money; and
 - the professional indemnity arrangements to be kept in place.
- 1.3 The Code forms part of a broader regulatory framework for letting agents, which the 2014 Act also introduced. The framework’s main features are:
 - a mandatory register for letting agents with an associated ‘fit and proper’ person test;
 - powers for Scottish Ministers to set training requirements that must be met before an applicant can be accepted on to the register;
 - a means of redress for breaches of the Code to the First-tier Tribunal for landlords and tenants; and
 - powers for Scottish Ministers to obtain information, and powers of inspection to help them monitor compliance and enforcement.
- 1.4 These measures strengthen regulation of the letting-agent industry in Scotland. Letting agents are important in ensuring the private rented sector is professional and well managed, and they help to provide the good-quality homes our communities need. The Code reflects much of the existing good practice in the industry. It will help raise standards (where this is needed), and help build a more effective private rented sector that meets the needs of tenants, landlords and letting agents.

Who does the Code apply to?

- 1.5 The Code applies to every person who carries out letting agency work, which is defined in section 61 (1) of the 2014 Act as:

“things done by a person in the course of that person’s business in response to relevant instructions which are –

- a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy agreement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or

b) for the purposes of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).”

1.6 The Code will also help landlords and tenants understand the standards of practice they can expect from a letting agent; whether these standards have been met; and, where necessary, help to resolve problems if they believe a letting agent has failed to comply with the Code.

What if a letting agent does not comply with the Code?

1.7 If a current or former landlord or tenant believes that a letting agent they have let a property through or from has failed to comply with the Code, they must notify the letting agent of this in writing (this includes electronic communications), so the letting agent can take action to resolve the issue. Some letting agents may also offer access to an independent alternative dispute resolution (ADR) service if they cannot resolve a complaint internally. If the landlord or tenant remains dissatisfied after raising their complaint with the agent, they can apply to the First-tier Tribunal (the “Tribunal”). In addition, Scottish Ministers may also apply to the Tribunal where they have concerns that a letting agent has failed to comply with the Code.

1.8 The Housing (Scotland) Act 2014 enables the Tribunal to decide whether a letting agent has failed to comply with the Code. To help with this, the Tribunal will gather a variety of evidence from, for example, the letting agent, landlord, tenant, Scottish Ministers and other relevant organisations (such as trading standards). The Tribunal will look at whether the agent’s own written agreements, policies and procedures comply with the Code and whether they have kept to them. You (the letting agent) should therefore keep and maintain appropriate records to help demonstrate how you have complied with the Code.

1.9 If the Tribunal decides you have failed to comply with the Code, it must issue an enforcement order setting out the steps you must take to rectify the problem and by when. These steps may include issuing revised documents and changing your written agreements. An enforcement order may also require you to pay compensation.

1.10 If the Tribunal decides you have failed to comply with the enforcement order, it must notify Scottish Ministers. Failure to comply with an enforcement order will be taken into account in considering your continued registration status. It is an offence for a person who is not a registered letting agent to carry out letting agency work.

How do the requirements of professional bodies and other legislation relate to the Code?

1.11 You must ensure you conduct your business in a way that complies with all relevant legislation including the Housing (Scotland) Act 2014 and legislation on consumer protection, financial services, consumer credit licences, title conditions, health and safety, data protection and equalities.

1.12 All letting agents must comply with the Code but some may also have specific commitments to meet the regulatory requirements of other bodies, such as the Financial Conduct Authority and Law Society of Scotland. You may also have to comply with other codes if you belong to or are registered with other bodies.

Using the Code

1.13 The Code has been structured to follow the lettings process – from taking instructions from a landlord, letting and managing the property to the ending of a tenancy (including any arrangements that follow).

1.14 Most letting agents offer a wide range of services to their customers. You must ensure your services meet the Code’s requirements.

1.15 In the Code, “you” means a relevant letting agent.

Consultation questions

Question 1a: Does the introduction tell you enough about the broader regulatory background?

Yes No Don’t know

Please explain your answer, referring to the sub-section your comments apply to.

Question 1b: Please specify any more information about the regulatory background we should include.

Section 2: Overarching standards of practice

- 2.1 You must be honest and fair in your dealings with landlords, tenants and applicants.
- 2.2 You must provide information in a clear and easily accessible way.
- 2.3 You must not provide information that is deliberately or negligently misleading or false.
- 2.4 You must apply your policies and procedures consistently and reasonably.
- 2.5 You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.
- 2.6 You must not unlawfully discriminate against a landlord, tenant or applicant on the basis of their age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.
- 2.7 You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.
- 2.8 You must maintain appropriate records of your dealings with landlords, tenants and applicants. This is particularly important if you need to demonstrate how you have met the Code's requirements.
- 2.9 You must ensure you handle all private information sensitively and in line with legal requirements.
- 2.10 You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.
- 2.11 You must inform the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.
- 2.12 You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.

Some of these points are expanded in the later sections of the Code.

Consultation questions

Question 2a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Question 2b: Please specify any other overarching standards of practice the Code should include.

Section 3: Engaging landlords

Before taking instructions

3.1 In your dealings with potential landlord clients you must:

Services provided and fee charges

- a) provide clear and up-to-date written information about the services you provide and the charges for them;

Advice

- b) offer accurate and unbiased advice on the rental valuation and appraisal of the property. You must not knowingly misrepresent the potential rental valuation;
- c) inform the landlord that they need to get consent or delegated authority from all owners, mortgage lenders or other relevant parties before letting the property and the need to ensure relevant insurance cover is in place;
- d) if you become aware a property does not meet appropriate letting standards (e.g. Repairing Standard, Houses of Multiple Occupation and Health and Safety requirements), inform the landlord of this;
- e) if a landlord is not already registered, inform them of the landlord registration requirements under the Antisocial Behaviour (Scotland) Act 2004 and, where necessary, the requirements of the Houses of Multiple Occupation (HMO) Licensing under the Housing (Scotland) Act 2006;

Conflict of interest

- f) if you act for clients who have competing interests or your personal interests conflict, or could potentially conflict, with those of the landlord or tenant, then you must inform the clients as soon as you become aware of it;

Identity checks

- g) take reasonable steps to check the identity of each client to ensure they are who they say they are and that they are the legal owners of the property or have permission from the owner or power of attorney – for instance, asking for an official form of identification; proof of address; proof of ownership and, where applicable, landlord registration number or company registration number.

Written agreement

3.2 You must agree with the landlord what services you will provide and any other specific terms of engagement. This should include the minimum service standards they can expect and the target times for taking action in response to requests from them and their tenants.

3.3 If you know that a client is not meeting their legal obligations as a landlord and is refusing to comply with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.

3.4 Your agreement must be written in plain language and must clearly set out:

Core services

- a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

Duration

- b) the duration of the agreement;

Authority to act

- c) a statement about the basis of your authority to act on the landlord's behalf;
- d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods;
- e) situations in which you may act without checking with the landlord first;

Fees, charges and financial arrangements

- f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;
- g) how you will collect payment including timescales and methods and any charges for late payment;
- h) a declaration of any financial interest in providing third-party services (for example, commission for using certain companies, products or services);

Communication and complaints

- i) how you will communicate (including the use of electronic communication¹) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;
- j) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you will respond;
- k) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process;

Conflict of interest

- l) a declaration of any conflict of interest;

Professional indemnity insurance

- m) confirmation that you hold professional indemnity insurance and that further details (such as the name of your provider and your policy number) are available on request;

Handling client money

- n) how you handle clients' money; confirmation you have client money protection insurance and that further details are available on request;

¹ See section 7 and 15 of the Electronic Communications Act 2000

How to end the agreement

- o) clear information on how to change or end the agreement and any fees or charges that may apply and in what circumstances. Termination charges and related terms must not be unreasonable or excessive.
- 3.5 You and the landlord must both sign and date the written agreement and you must give your client a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature.²
- 3.6 In line with the Consumer Contracts Regulations (Information, Cancellation and Additional Charges) Regulations 2013, in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises.
- 3.7 You must give a landlord a written copy of the agreement before doing work on their behalf.
- 3.8 Any subsequent changes to your written agreement should be agreed by both parties and confirmed in writing by you and your client.
- 3.9 **If a landlord or tenant applies to the Tribunal because they think you have failed to meet your Code obligations, the Tribunal will expect you to show how your actions live up to your written agreement as part of complying with the Code.**

Ending the agreement

- 3.10 When either party ends the agreement, you must:
- a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord; any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents;
 - b) if tenants are still living in the managed property or properties, inform the tenants you will no longer be acting as an agent for the landlord and inform them of the landlord's name and contact details if these have not already been provided, or where relevant, those of any new agent. You must also inform the tenants of any resulting changes that affect them.

² See section 7 and 15 of the Electronic Communications Act 2000

Consultation questions

Question 3a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Question 3b: Please specify any other standards the Code should include on engaging landlords.

Section 4: Lettings

Marketing and advertising

- 4.1 Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading.
- 4.2 You must get your client's permission for advertising and marketing a property, including the erection of a lettings board.
- 4.3 You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.
- 4.4 You must comply with relevant legislation on the marketing and advertising of properties for rent. For example, you must include a landlord's registration number (or clearly state 'landlord registration pending') and the energy performance indicator from the property's energy performance certificate (EPC) in your property advertisements and remove lettings boards within 14 days after conclusion of the letting.
- 4.5 You must avoid advertising in a way that may unlawfully discriminate 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.

Giving correct advice to applicants

- 4.6 You must give applicants all relevant information about renting the property – for example, the length and type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required.
- 4.7 You must also inform applicants how to apply and, where appropriate, the arrangements for viewing the property.
- 4.8 You must not knowingly omit relevant information or evade questions from prospective tenants.

Charging fees

- 4.9 You must comply with all relevant legislation on the charging of fees and premiums or making loans to tenants and prospective tenants in the private rented sector.
- 4.10 The Rent (Scotland) Act 1984, as amended by section 32 of the Private Rented Housing (Scotland) Act 2011, prohibits all charges to tenants except rent and a refundable deposit of no more than two months' rent.

4.11 You must not require tenants, as a condition of granting the tenancy, to use a third-party service that charges them a fee.

Viewings

4.12 You must agree with the landlord how applicants will view their property and who will conduct the viewing for you.

4.13 In deciding how you will conduct viewings on the landlord's behalf, you should make sure you do not unlawfully discriminate against a particular group (also see section 2.7).

4.14 If you are to conduct viewings on the landlord's behalf, you must ensure the keys to the property are kept secure and maintain detailed records of their use by staff – for instance, the date the keys were issued, who to and when they were returned. You should take all reasonable steps to ensure the property is left secure after viewings.

4.15 If a tenant lives at the property, you must give them reasonable notice of appointments (at least 24 hours in line with your statutory requirements), unless other arrangements for viewings have been agreed with them. You must ensure the tenant is present, unless otherwise agreed (see also sections 5.7 to 5.12 on property access).

Offers

4.16 You must agree with the landlord the criteria and process for managing and accepting offers.

4.17 You must inform the landlord in writing of all offers made on the property as soon as possible, unless agreed otherwise, along with all relevant information about the offer and the applicant.

4.18 Applicants must be informed as soon as possible about the outcome of their offer. If successful, this must be confirmed in writing.

References and checks

4.19 You must agree with the landlord what references you will take and checks you will make on their behalf.

4.20 If you are to check references and make other checks, you must explain to the applicant and any guarantor what information you will check and who will do the checking, and get their written permission.

4.21 If you use a third party to check references, you must not charge the tenant a fee for it (see also sections 4.9 to 4.11 on charging fees).

4.22 You must ensure you handle all private information sensitively and in line with legal requirements.

- 4.23 You must take all reasonable steps to confirm the applicant's identity and to verify references.
- 4.24 If you consider it prudent to decline an applicant you should inform the landlord in writing of this, clearly stating your reasons.
- 4.25 If you recommend declining an applicant based on the references and checks but the landlord wishes to let the property to that person, you should seek the landlord's written confirmation.

Tenancy agreement

- 4.26 If you prepare a tenancy agreement on the landlord's behalf, you must ensure it meets all relevant legal requirements and includes all relevant information (such as the name and address of the landlord or letting agent; type and length of tenancy; amount of rent and deposit and how and when they will be paid; whether it is a house of multiple occupation; as well as any other responsibilities on taking care of the property, such as cleaning required at the end of the tenancy); and any specifically negotiated clauses (for instance whether there will be landlord or agent inspections/visits) agreed between the landlord and the prospective tenant. The agreement must also include the landlord's registration number.
- 4.27 If you arrange for the tenancy agreement to be signed, you must explain the agreement in plain language to the prospective tenant; give them enough time to familiarise themselves with the agreement; give them the opportunity to raise any questions to ensure they understand their rights and obligations; and give them any other formal documents required before they sign the agreement.
- 4.28 At the start of the tenancy, you must give the tenant a signed copy of the tenancy agreement along with any other relevant statutory documents.

Tenancy deposits

- 4.29 You must inform landlords of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 4.30 If you lodge tenancy deposits on a landlord's behalf, you must comply with the legislation.

Moving in (inventory/check-in)

- 4.31 If there is delay in handing over the property to the tenant on the agreed date, you must inform them of this and explain why as soon as possible.
- 4.32 If you are responsible for managing the check-in process, you must arrange to make an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example walls, carpets other fixtures) unless otherwise agreed in writing by the landlord.

- 4.33 You and the tenant must both sign the inventory confirming it is correct. You must provide the tenant with a copy for their records.
- 4.34 If the tenant is not present for the inventory, you should ask them to check it and to raise, in writing, any changes or additions within a specific reasonable timescale. Once agreed, the inventory should be signed and returned.
- 4.35 You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will therefore regard it as correct.
- 4.36 You must give the tenant a copy of the inventory for their records.
- 4.37 If the tenant asks in writing for the landlord's name and address, you must tell them free of charge within 21 days.

Consultation question

Question 4a: Do the standards of practice proposed in the section on letting reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Question 4b: Please specify any other standards the Code should include in the section on lettings.

Section 5: Management and maintenance

- 5.1 If you have said in your written agreement with a landlord that you will manage the property on their behalf, you must do so in line with relevant legal obligations and the relevant tenancy agreement.

Rent collection

- 5.2 You must have appropriate written procedures and processes in place for collecting and handling rent on the landlord's behalf including on late payment of rent and the legal requirements on non-resident or overseas landlords. This should outline the steps you will follow and be clearly, consistently and reasonably applied.
- 5.3 If you collect rent on the landlord's behalf, you must, as a minimum, give the tenant a statement of their rent account on request.
- 5.4 You should inform the landlord in writing of the late payment of rent, in line with your written procedures or agreement with the landlord.
- 5.5 In managing any rent arrears, you must be able to demonstrate you have taken all reasonable steps to recover any unpaid rent owed to the landlord (see also section 8).
- 5.6 You must be aware of the legal requirements regarding rent increases for assured tenancies and regulated tenancies and inform landlords appropriately.

Property access and visits

- 5.7 If you hold keys on the landlord's behalf, you must ensure they are kept secure and maintain detailed records of their use by staff and authorised third parties – for instance, by keeping keys separate from property information and holding a record of the date the keys were used, who they were issued to and when they were returned.
- 5.8 You must take reasonable steps to ensure keys are only given to suitably authorised people.
- 5.9 You must give the tenant reasonable written notice (at least 24 hours in line with your statutory requirements) of your intention to enter the property and the reason for this. You must ensure the tenant is present when entering the property and visit at normal times of the day, unless otherwise agreed or in emergencies such as immediate risk to property or life.
- 5.10 If the tenant refuses access, you have no right to enter the property without a court order.

- 5.11 If you are unable to accompany any third party, you must make this clear to the tenant or occupier beforehand. If the tenant objects, you must ensure the third party is accompanied.
- 5.12 If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate. If repair or maintenance is required, you should identify and take the appropriate action within reasonable timescales.

Carrying out repairs and maintenance

- 5.13 If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.
- 5.14 You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance required, if you provide this service on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.
- 5.15 If emergency arrangements are part of your service, you must have in place procedures for dealing with emergencies (including dealing with out-of-hours incidents, if that is part of the service) and for giving contractors access to properties for emergency repairs.
- 5.16 You must give the tenant clear information about who is responsible for any repairs or maintenance, as agreed with the landlord. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies.
- 5.17 When notified by a tenant of any repairs needing attention, you must inform the landlord in writing of the work required; provide details of repair quotes/ estimates; confirm enough funds are available from the landlord; and, if necessary, seek the landlord's written approval to instruct repairs unless you already have the landlord's delegated authority to proceed (see also section 3.4(c)).
- 5.18 Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.
- 5.19 You must inform the tenant of the action you intend to take on the repair and its likely timescale.
- 5.20 If a tenant lives at the property, you must give them reasonable notice (at least 24 hours in line with your statutory requirements), unless other arrangements have been agreed with them or in genuine emergencies such as immediate risk to property or life.

5.21 If there is any delay in repair and maintenance work, you must inform landlords and tenants about this along with the reason for it as soon as possible.

5.22 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

Contractors and third parties

5.23 If you use a contractor or a third party, you must take reasonable steps to ensure they hold appropriate professional qualifications and the necessary public and professional liability insurance. You should hold copies of all relevant documents.

5.24 You must disclose to landlords, in writing, any commission, fee or other payment or benefit you receive from a contractor/third party you appoint.

5.25 You must disclose to landlords, in writing, any financial or other interest you have with a contractor/third party you appoint.

Contingency arrangements

5.26 If you are your agency's sole principal (i.e. a sole practitioner or director), you should have in place appropriate arrangements in the event of your extended absence, incapacity or death.

Consultation questions

Question 5a: Do the standards of practice proposed on management and maintenance services reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Question 5b: Please specify any other standards the Code should include on management and maintenance services.

Section 6: Ending the tenancy

Bringing the tenancy to an end

- 6.1 The correct procedure for ending a tenancy depends on such factors as the type of tenancy and the reason it is ending. But in all circumstances you must comply with relevant tenancy law and ensure you follow appropriate legal procedures when seeking to end a tenancy.
- 6.2 You must have clear written procedures in place for managing the ending of the tenancy including those for informing the landlord and tenant that you intend to end the tenancy; serving appropriate legal notices; and giving the landlord and tenant all relevant information.
- 6.3 You must also have a written policy and procedures on managing cases where the tenant does not leave and what you will do about this.
- 6.4 You must apply your policy and procedures consistently and reasonably.
- 6.5 You must not try to persuade or force the tenant to leave without following the correct legal process.

Inventory/check-out

- 6.6 Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit.
- 6.7 If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition prepared before the tenancy began.
- 6.8 If the tenant wishes to be present during the check-out visit, you must give them reasonable notice of the arrangements.
- 6.9 You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs.

Tenancy deposits

- 6.10 Where a landlord wishes to retain part or all of the tenancy deposit, you must, where negotiating on their behalf, take reasonable steps to come to an agreement with the tenant. Where this is not possible, you must make a claim to the relevant Tenancy Deposit Scheme in line with its rules.

Consultation questions

Question 6a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Question 6b: Please specify any other standards the Code should include in the section on ending the tenancy.

Section 7: Communications and resolving complaints

Communications

- 7.1 You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents including any document sent to a landlord, tenant, prospective landlord or prospective tenant.
- 7.2 You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible. You should keep landlords and tenants informed if you need more time to respond.
- 7.3 You must provide landlords and tenants with your contact details including a current telephone number.
- 7.4 You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.
- 7.5 You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening (apart from reasonable indication that you may take legal action).

Complaints resolution

- 7.6 You must have a clear written complaints procedure that states how to complain to your business. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your written agreement with your client. The procedure must also set out how you will handle complaints against contractors and third parties; whether you provide access to alternative dispute resolution services; and how a landlord and tenant may apply to the First-tier Tribunal if they are dissatisfied.
- 7.7 You must retain (in electronic or paper form) all correspondence about a landlord's or tenant's complaint for six years as the Tribunal may need this information.
- 7.8 You must comply with any Tribunal request to provide information about an application made to it from a landlord or tenant.

Consultation questions

Question 7a: 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

Please explain your answer, referring to the sub-section your comments apply to.

Question 7b: Please specify any other standards the Code should include on communications and resolving complaints.

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

Client accounts

- 8.1 You must have robust and transparent written procedures for handling clients' (landlords' and tenants') money.
- 8.2 If you hold money on a client's behalf, you must record it appropriately in your accounts however it is held.
- 8.3 You must ensure you hold client money in one or more separate and dedicated client bank accounts with a bank or building society authorised by the Financial Conduct Authority, which are separate from your main business or private accounts.
- 8.4 You must have written confirmation from your bank or building society that your client account conditions include:
 - a) that all money held is client money; and
 - b) that the bank or building society cannot combine an account with any other account or use it as set-off or counterclaim against money in an account for any sum owed to the bank or building society on any other of your accounts it holds.
- 8.5 You must regularly record, monitor and reconcile all transactions.
- 8.6 You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties.
- 8.7 Unless agreed in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.
- 8.8 You must be a member of a clients' money protection scheme. You must give the name and policy number of your client money protection insurance provider on request.

Debt recovery

- 8.9 You must have a clear written procedure for debt recovery that lists a series of steps you will follow unless there is good reason not to. This should include setting out at what point you will contact any guarantor. The procedure must be clearly, consistently and reasonably applied. It must set out how you will deal with disputed debts.
- 8.10 Any charges you impose on late payment must not be unreasonable or excessive.

8.11 When you contact landlords, tenants or guarantors who owe you money, you or any third party acting on your behalf must not act intimidatingly or threateningly (apart from reasonable indication that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.

Money laundering regulations

8.12 You must establish and maintain proportionate and effective processes and procedures to counter the risk of your services being used to facilitate money laundering.

8.13 If you suspect criminal activity, you must notify the appropriate authorities, such as the National Crime Agency.

Professional indemnity arrangements

8.14 You must have, and maintain, adequate professional indemnity insurance that is appropriate for your level of income and type of work. If feasible, this should include indemnity against any claims arising out of all work done since the business began trading.

8.15 You must provide the name and policy number of your insurance provider on request.

Provision of insurance products

8.16 If you are lawfully authorised to offer insurance products to landlords and tenants as part of your services, these must be clearly explained and itemised on all relevant documents.

8.17 You must disclose to landlords and tenants, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest you have with the insurance provider before they enter into an agreement. You must also disclose any other charge you make for providing the insurance.

8.18 If applicable, you must have a procedure in place for making insurance claims on a landlord's behalf and for liaising with the insurer to check that claims are dealt with promptly and correctly. If landlords are responsible for submitting claims on their own behalf, you must supply all information they reasonably need to do so.

8.19 You must keep the insurance claimant informed of the progress of their claim or give them enough information to allow them to pursue the matter themselves.

Consultation questions

Question 8a: Do the standards of practice proposed in the section on handling landlords' and tenants' money reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Question 8b: Do the standards of practice proposed on insurance arrangements reasonably reflect the standards that should be expected of letting agents operating in Scotland?

Yes No Don't know

Please explain your answer, referring to the sub-section your comments apply to.

Question 8c: 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

Please explain your answer.

Question 8d: Please specify any other standards of practice the Code should include on the handling of landlords' and tenants' money and on insurance arrangements.

Question 9: Do you have any other comments about our proposed draft Letting Agent Code of Practice?

PART 2 – TRAINING REQUIREMENT

Introduction

Industry stakeholders identified the need for a training requirement during stage 1 evidence for the Housing (Scotland) Bill 2013, now the Housing (Scotland) Act 2014. They said that ensuring letting agents had achieved a certain standard of training would tackle many of the bad practices that exist in parts of the industry. In addition, the training requirement would introduce an element of quality assurance to the assessment of those accepted on to the register.

Further dialogue with the sector led to the Housing Bill being amended to include a training requirement, linked to acceptance for registration, or renewal of registration, in the Register of Letting Agents.

Section 32(2) of the Housing (Scotland) Act 2014 requires applicants to the mandatory register to meet specific training requirements prescribed through regulations. Section 32(3) sets out particular aspects of the requirements that Scottish Ministers may include in the regulations. These are:

- a) the matters on which training must have been undertaken;
- b) the persons who must have undertaken training;
- c) qualifications which must be held by the applicant and other persons; and
- d) the period within which training must have taken place.

Our initial discussions with stakeholders showed broad support for the Scottish Government to use the regulation-making powers to prescribe training requirements. We have therefore developed four proposals, set out below, which address each of the particular aspects above. In developing these proposals we have considered the need to balance our desire to improve standards with the likely impact on the sector.

We are seeking your views on these proposals including whether you think they will be effective in improving standards and, if not, what you would prefer.

Proposal 1: Matters on which training must have been undertaken

We propose that the matters on which training must have been undertaken on should be:

- **Legal obligations on letting agency work and landlords' and tenants' rights and responsibilities;**
- **Handling of tenants' and landlords' money;**
- **Arranging and managing a tenancy;**
- **Managing repairs and maintenance; and**
- **Customer communications, complaint handling and equality issues.**

9.1 When we discussed with stakeholders what matters should form the basis of the training, there was broad support for focusing on areas essential to the effective and proper management of letting agency work. This is why we are suggesting that relevant staff must have been trained on the following:

- Legal obligations** – There are significant legal requirements and obligations linked to operating in the letting industry. For example, client and tenancy agreements, health and safety requirements, eviction, tenancy deposits, and antisocial behaviour. So it is vital that letting agents have a good understanding of and are able to meet their legal obligations (under Scottish, UK and European legislation) on:
 - letting agency work; and
 - the rights and responsibilities of tenants and landlords.
- Handling of tenants' and landlords' money** – Many letting agents will take deposits and collect rent on behalf of landlords, so they often handle large sums of client money. Letting agents must understand how to put in place processes and procedures that ensure they handle this money correctly and protect it appropriately.
- Arranging and managing a tenancy** – Effective management of the tenancy is another essential aspect of most letting agencies' work. It is an area where there is evidence of poor practice among some letting agents. Training should include pre-letting procedures, management and ending of the tenancy.
- Managing repairs and maintenance** – Landlords are ultimately responsible for repairs and maintenance, but many letting agents arrange this work on their behalf. Research by Shelter Scotland among private rented sector tenants showed that only a minority agreed that their letting agent responded to repairs quickly and to a satisfactory standard.³ So a thorough understanding of these requirements and responsibilities would help to raise standards.

³ *Briefing Regulating Letting Agents in Scotland*, Shelter Scotland, May 2013

- e) **Customer communications, complaints handling and equality issues** – We suggest training should also cover communications and complaints handling with landlords and tenants. Appropriate handling of complaints will form a key part of the first stage of resolving complaints through the Tribunal on breaches of the Code. The training requirement also provides an opportunity to encourage and promote equality of opportunity. The private rented sector continues to grow and plays a greater role in meeting a diverse range of housing needs in Scotland. Therefore we consider it would also be beneficial for letting agents to receive training on equality issues and how they apply to their business.

Consultation questions

Question 10a: Does Proposal 1 appropriately reflect the matters on which staff should undertake training on?

Yes No Don't know

Please explain your answer.

Question 10b: Please specify any other training matters we should include in regulations.

Proposal 2 – Persons who must have undertaken training

We are proposing that those who must have undertaken training are:

- **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 applicant’s letting agency work.**

10.1 A key reason for introducing compulsory training is the industry’s desire to improve standards of practice and service to landlords and tenants. However, in framing the requirement, we also need to strike the right balance between improving standards and ensuring there is not a disproportionate impact on the industry, particularly on smaller businesses.

10.2 So, while the Scottish Government supports appropriate training for all staff involved in letting agency work, we do not think it would be proportionate to make this a requirement at this time. Extending the training requirement to all staff involved in letting agency work could take place in future if we think it necessary to improve standards of practice.

10.3 We think it is important that the people who receive the training should be those who have the necessary influence in the agency to make any changes needed to relevant policies and procedures.

10.4 We have therefore considered whether to place the requirement on the most senior person in the management structure or the person(s) responsible for managing the letting agency’s work. Depending on the nature of the organisation applying to the register, the most senior person in its management structure may have little direct input on how the letting agency is managed. If so, placing the requirement on only the most senior staff member may have little effect in ensuring Code-compliant practice and standards.

10.5 Those in charge of the letting agency’s overall management and who make decisions about its day-to-day policies and procedures must have the right knowledge and skills to ensure they do so in line with their legal requirements and must provide a professionally and well-managed service to landlords and tenants. Making the training mandatory for the individual who oversees the letting agency work may for many businesses be more effective in improving standards.

10.6 So we propose that those who must have undertaken training on the matters indicated in Proposal 1 would be:

- 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 applicant's letting agency work.

10.7 By framing the requirement in this way, we think small organisations may only need one person to meet the training requirement, while large organisations with multiple offices would need more than one. In some cases, where they have input to the day-to-day running, this would be the most senior person in their organisation.

10.8 So, for example, a sole trader who is the only manager of their business would have to comply with the training requirement. Large organisations with multiple offices may have more than one person needing to be trained. In these circumstances, it would be the most senior person (if they have input to the day-to-day running) and the manager of each branch/office who may be in charge of more than one office.

10.9 Ultimately, the people who must undertake training will depend on how each organisation is structured and carries out its business. We therefore anticipate that when applying for registration, letting agents would have to identify the staff members who would need the training and confirm that they have received it.

10.10 We are interested in your views on whether we should go further than our current proposal. For example, should we require at least one person per office to have met the requirement?

Consultation questions

Question 11a: 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.

Do you think these are the relevant people?

Yes No Don't know

Please explain your answer.

Question 11b: Who else, if anyone, should have to comply with the training requirement?

Please explain your answer.

Question 11c: Should we include another requirement that there must be at least one person trained per office?

Yes No Don't know

Please explain your answer.

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

We propose the phased introduction of a mandatory qualification at SCQF level 6 or above. This means those subject to the requirement would:

- **need to have obtained a relevant qualification by the end of three years from the date the Letting Agent Register comes into force in order to be admitted to the register or to renew their registration.**

11.1 Legislation allows the Scottish Government to introduce a mandatory qualification or qualifications. We have therefore considered the implications for the industry of this approach.

11.2 In our discussions with stakeholders, some strongly supported introducing a mandatory qualification but others expressed concerns.

11.3 A qualification for letting agents would provide clear evidence that the training requirement had been met for registration purposes. Qualifications are a good way for a person to demonstrate they have the relevant knowledge and understanding in a certain area. They also provide quality assurance that the person receiving the training has met certain standards. However, only a few training providers offer a qualification in Scotland. While we expect others to enter the market, it is not clear if this would happen before the Letting Agent Register comes into force.

11.4 Supporters of a mandatory qualification have said that as property is one of the largest investments a person can make, a landlord wants to know their investment is in safe hands and that they and their tenant are dealing with a competent and reliable professional. A mandatory qualification, as part of a broader regulatory framework, would help to raise and maintain standards and give landlords and tenants more confidence to use letting agents.

11.5 Our discussions with stakeholders suggest that if a mandatory qualification is required, it should be set at level 6 on the Scottish Credit and Qualifications Framework (SCQF) in the first instance. Highers are an example of qualifications at this level in Scotland.

11.6 Stakeholders who oppose a mandatory qualification have raised such concerns as:

- the cost and time needed to achieve the qualification;
- the limited opportunities for achieving a qualification in Scotland both in terms of level and type of courses available; and

- the limited benefit of a formal qualification to those who already have significant experience in the industry or those who have already received significant professional training.

11.7 One option would be to introduce a qualification requirement as part of a phased approach. Phasing the introduction of a mandatory qualification would have several benefits. It would give more time for people who must comply with the requirements but lack a relevant qualification to do so and, where necessary, spread the cost. It would give more time to training providers to respond to the needs and the increased demand for qualifications. As previously indicated, we expect that several training providers would seek to offer their own qualification, helping to give letting agents more choice. This would be particularly helpful for small organisations as well as those where several staff would have to meet the requirement.

Alternative approach

11.8 An alternative approach would be to allow agents who must receive training to decide on its type and level. It would have to cover the matters set out in Proposal 1. In these circumstances, the Scottish Government would set out the evidence required from an applicant to demonstrate that they/their organisation had met the requirement as part of the letting agent registration process. For example, we could ask every applicant to submit documents showing that training had been received. Alternatively we could request such documents only when information suggests that an applicant or registered letting agent may not be complying with the training requirements.

11.9 By not having a mandatory qualification or qualifications, we would give those subject to the training requirement the flexibility to decide what type of training to take. Existing qualifications and training would also be recognised, subject to the timescales set (see Proposal 4) in the regulations. Allowing this flexibility would help the industry manage the introduction of the training requirement. This would be particularly helpful to smaller agencies where costs and time implications are likely to have a greater impact. However, this approach would not provide the assurance that those receiving the training had reached an acceptable level of knowledge and understanding.

Preferred approach

11.10 Based on our discussions with the industry, the Scottish Government's preferred approach is to phase in the introduction of a mandatory qualification at SCQF level 6 or above (the equivalent of Highers) within three years of the date the Letting Agent Register comes into force.

11.11 We consider this a proportionate approach. It recognises that a qualification would improve standards across the industry, but it takes account of reasonable concerns about the impact in terms of time, cost and the availability of suitable qualifications in Scotland.

Consultation questions

Question 12a: Proposal 3 suggests the phased introduction of a mandatory qualification. Do you think we should introduce a mandatory qualification?

Yes No Don't know

Please explain your answer.

Question 12b: If we decide to introduce a mandatory qualification, we propose this would come into force three years from the date 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

Please explain your answer.

Question 12c: 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

Please explain your answer.

Question 12d: 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?

Question 12e: 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?

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

We propose that:

- **applicants for registration, or for renewal of registration, will need to demonstrate that those subject to the training requirement have obtained the mandatory qualification;**
- **applicants for registration, or for renewal of registration, will also need to demonstrate that anyone subject to the training requirement who has obtained the mandatory qualification more than three years previously, has undertaken at least 20 hours of training over the previous three years on the matters set (see Proposal 1) by Scottish Ministers.**

Transition

- **in the initial three years before the mandatory qualification requirement comes into force, applicants for registration will need to demonstrate that those subject to the training requirement who have not obtained the mandatory qualification, have undertaken at least 30 hours of training over the previous three years covering all the matters prescribed by Ministers.**

12.1 Prescribing in regulations the period in which training must have taken place is an important way of ensuring that training is relevant to the current policy and legal context.

12.2 Many in the profession have a longstanding commitment to training and obtained a professional qualification some years ago. We recognise that their qualifications could contribute to meeting the requirement, but it is important that in these circumstances they receive further and more recent training to ensure their knowledge and skills have been updated and cover the matters set out in Proposal 1. In recent years, the law on landlords and tenants has changed significantly. It is important that those with existing qualifications can demonstrate they have kept up to date.

12.3 In addition to this, our discussions with stakeholders have shown broad support for regular training to be included in the training requirement. This would be similar to the requirements of other professions to undergo Continued Professional Development (CPD). We are therefore exploring how this might be done.

12.4 We propose to prescribe a mandatory qualification (at least at SCQF level 6). Those who obtained that qualification more than three years previously would also be required to have undertaken at least 20 hours of training in the previous three years on any of the matters (see Proposal 1) set by Scottish Ministers. The person subject to the requirement would be able to choose what training

they needed to undertake. Applicants to register, or to renew registration, would have to demonstrate that those subject to the training requirement held the qualification and, where necessary, had undertaken the training in the three years immediately before their application.

12.5 This would ensure that once agents gained the qualification, they continued to update and refresh their knowledge and skills.

Transitional arrangements

12.6 If the Scottish Government were to introduce a mandatory qualification as detailed in Proposal 3, we would need to put in place some transitional arrangements to allow time for its implementation. This would ensure that those admitted to the register would have undertaken other relevant training to allow them time to complete the mandatory qualification. We propose that the transitional period would be the first three years from the date the Register of Letting Agents comes into force.

12.7 We therefore propose that during the transitional period, those applying to register who lack the mandatory qualification would need to have undertaken at least 30 hours of training in the previous three years on all the matters prescribed by Ministers. During that time letting agents would be able to decide the type and level of training they take to meet that requirement. Our intention would be to recognise training already undertaken in the three years before an applicant's registration. This would limit the amount of additional training those in these circumstances would need to take to meet the requirement.

12.8 This approach would ensure that all those admitted to the register had undertaken relevant recent training on all of the areas identified as essential for effectively managing letting agency work.

Consultation questions

Question 13a: 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

Please explain your answer.

Question 13b: Do you think three years is a reasonable time for people to complete this additional training?

Yes No Don't know

Please explain your answer.

Transitional arrangements

Question 14a: 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

Please explain your answer.

Question 14b: 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

Please explain your answer.

Question 14c: Do you think 30 hours of training is appropriate?

Yes No Don't know

Please explain your answer.

Question 14d: Do you think three years is a reasonable timeframe for relevant training to count towards meeting the requirement?

Yes No Don't know

Please explain your answer.

PARTIAL EQUALITY IMPACT ASSESSMENT

Title of Policy	Regulation of Letting Agents
Summary of aims and desired outcomes of Policy	<p>Implementation of part 4 of the Housing (Scotland) Act 2014 to introduce a framework for regulating letting agents. This will include mandatory registration of letting agents with an associated ‘fit and proper’ person test and training requirement; a statutory code of practice; a new way for tenants and landlords to resolve complaints against letting agents through a new specialist First-tier Tribunal; and powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance and enforcement.</p> <p>The policy is intended to result in improved standards of service applied consistently across the industry; better services for landlords and tenants delivered by more knowledgeable staff; more effective dispute resolution; and the sector’s reputation is improved giving tenants and landlord more confidence in using letting agents.</p>
Directorate: Division: team	Housing, Regeneration and Welfare: Better Homes Division: Private Rented Sector Regulation and Housing Strategy Team

Executive summary

The Scottish Government is introducing a new framework for the regulation of letting agents to improve standards of service and professionalism within the sector and support landlords and tenants challenge poor and illegal practices by providing a new way of resolving disputes through the First-tier Tribunal.

Available evidence and our engagement with stakeholders has not indicated any negative impacts for those within the protected characteristics in relation to the implementation of regulation of letting agents.

However, it has revealed the potential for implementation to have a positive impact in eliminating unlawful discrimination and advancing

equality of opportunity through the inclusion of equality standards within the Code of Practice and including equality as one of the matters applicants to the register of letting agents must have undertaken training on.

The EQIA process has also highlighted the need to continue to improve the evidence base available on the Scottish private rented sector, both at a high level and in relation to those with protected characteristics residing in the sector and using the services of the letting agent industry.

Background

The scale of the letting agent industry in Scotland has grown in recent years and it now provides a range of property management services to landlords in the private rented sector. The letting agent industry is a varied one, comprising of solicitors, estate agents and accommodation agencies.

It is estimated there are around 700 letting agent businesses in Scotland, accounting for around 50% of all annual lettings. The businesses are involved in around 150,000 lettings per year.

Many letting agents in Scotland operate in a professional manner, complying with voluntary codes of practice and ensuring high quality levels of service for the landlords and tenants they assist. Such good practice is not shared by all however, and evidence gathered from stakeholders and Ministerial correspondence suggests that landlords and tenants are often subject to poor standards of service and, in some cases, illegal practices by letting agents.

Stakeholder concerns about lack of regulation within the letting agent sector led to calls for the Scottish Government to examine potential legislative solutions to address poor and often illegal practice in the sector.

'A Place to Stay, A Place to Call Home', the Scottish Government's Strategy for the private rented sector, outlined a commitment to work with all partners and stakeholders to identify the most effective form for further regulation of the letting agent industry in Scotland, considering legislative change where required.

As a direct result of this, the Scottish Government legislated in Part 4 of the Housing (Scotland) Act 2014 for a framework for the regulation of letting agents in Scotland. This framework includes:

- a mandatory register of letting agents with an associated ‘fit and proper’ person test;
- training requirement, to be set by Scottish Ministers through regulations, that must be met to be admitted to the register;
- a statutory code of practice all letting agents must follow;
- a way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory Code of Practice through a new specialist First-tier Tribunal; and
- powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance and enforcement.

Once implemented, these provisions will facilitate an increase in standards of service and professionalism within the sector. This will help to ensure that the small minority of letting agents who continue to break the law or provide poor quality service to both landlords and tenants are challenged, helping to create a more ‘level playing field’ for all agents operating within the industry. It will also deliver an easily accessible dispute resolution mechanism for landlords and tenants, where disputes arise.

It is proposed that the Scottish Government will undertake responsibility for the administration and management of the letting agent registration system, similar to the current approach to managing the Property Factors Registration System.

The Scope of the EQIA

This EQIA builds on and updates a previous EQIA undertaken as part of the development of the Housing (Scotland) Bill 2013, subsequently the Housing (Scotland) Act 2014. The original EQIA was carried out with input from housing policy colleagues and analytical colleagues and is based on responses received to the following public consultations:

- Consultation on a Strategy for the private Rented Sector: and
- Consultation on the Charging of Premiums in the Private rented Sector
- Consultation on Better Disputes Resolution in Housing:
Consultation on Introduction of a New Housing Panel for Scotland

Furthermore, the Scottish Government's 2009 Review of the Private Rented Sector provided a detailed primary evidence base on the sector's circumstances in Scotland, including information relating to equality groups.

The Scottish Government will use this public consultation on the Code of Practice and Training Requirement to seek further views on the likely impact of Draft Code of Practice and Training Requirement in relation to those in the protected characteristics.

Key Findings

Our assessment of the likely impact of the regulation of letting agents upon those within the protected characteristics (age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief) has identified a number of potential positive impacts including opportunities to eliminate unlawful discrimination and advance equality of opportunity. We have not identified any negative impacts.

The Scottish Government is proposing including equality as one of the matters on which training must have been undertaken to be admitted to the Letting Agent Register. This will assist in raising awareness of equality requirements amongst letting agents potentially leading to changes in business practices that help to eliminate unlawful discrimination and advance equality of opportunity.

The Code of Practice will also set out the standards of practice that letting agents must meet. We are proposing including reference to ensuring letting agents meet their legal requirements in relation to equality, which should also help advance equality of opportunity.

Regulation will also offer a more effective, efficient and easily accessible route to legal redress for tenants and landlords who find themselves in a dispute with their letting agent benefitting all (including those with protected characteristics). This may be particularly helpful to some people within the protected characteristics who have previously been reluctant or unable to challenge poor or illegal standards of service.

Stakeholder awareness will be extremely important and careful consideration will need to be given to how information and advice is conveyed to take account of equalities and diversity principles.

We recognise that the data available does not allow a complete picture of the needs of people with protected characteristics, however, arrangements for on-going monitoring will allow us to gather more information.

Recommendations and Conclusion

The Scottish Government has found that none of the proposals is discriminatory and that there are no significant issues that will negatively affect the various groups. However, the proposals do have the potential to positively impact on equality groups through increased awareness and understanding of the issues that affect them and more easily accessible redress where disputes about the services provided occur.

As the EQIA process was started at an early stage of the Bill process, it has ensured that equality considerations have informed policy development.

We will use responses in relation to the equality impact of our implementation proposals to continue to inform our approach.

We recognise that the data available does not allow a complete picture of the needs of those with protected characteristics. However, the EQIA has given the opportunity to consider these needs fully, and we will continue to do so as the proposals move forward.

Consultation question

Question 15: Do you have any comments on the partial Equality Impact Assessment?

Letting Agent Regulation: Code of Practice and Training Requirement Partial Business and Regulatory Impact Assessment

Title of Proposal

1. This partial Business and Regulatory Impact Assessment (BRIA) relates to section 46 of the Housing (Scotland) Act 2014 which provides Scottish Ministers with the powers to introduce a Letting Agent Code of Practice and section 32 of the same Act which enables Scottish Ministers to prescribe training requirements applicants to the Register of Letting Agents must have met to be admitted.

Purpose and intended effect

Background

2. The scale of the letting agent industry in Scotland has grown in recent years, providing a range of property management services to landlords in the sector. The letting agent sector is a varied one comprising of solicitors, estate agents and accommodation agencies.
3. It was estimated in the financial memorandum for the Housing (Scotland) Bill 2013 that there are around 719⁴ letting agent businesses in Scotland, accounting for around 50% of all annual lettings. The businesses are involved in around 150,000 lettings in Scotland per year.
4. In a sector with such a large number of small scale landlords, the letting agent industry already plays an important role in providing a wide range of services and assisting the delivery of high quality services to tenants and prospective tenants. Such services can help ensure that a landlord meets their regulatory responsibilities and also enable effective management and maintenance of privately rented properties.
5. Many letting agents in Scotland operate in a professional manner, complying with voluntary Codes of Practice and ensuring high quality levels of service for the landlords and tenants they assist. Professional organisations such as the Association of Residential Letting Agents (ARLA) and the Royal Institution of Chartered Surveyors (RICS), provide members with a Code of Practice and Rules of Conduct to adhere to, encouraging responsible business practice and providing a route of redress for landlords and tenants, should any dispute arise.
6. Such good practice is not shared by all however, and evidence gathered from stakeholders and ministerial correspondence suggests that landlords and tenants are often subject to poor standards of service and, in some cases, illegal practices by some letting agents.

⁴ Work is underway to update this figure.

7. In response to these issues, the Scottish Government legislated in the Housing (Scotland) Act 2014 for a framework for the regulation of letting agents in Scotland including:
 - a mandatory register of letting agents with an associated ‘fit and proper’ person test;
 - a training requirement that must be met to be admitted to the register;
 - a statutory code of practice all letting agents must follow;
 - a way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory Code of Practice through a new specialist First-tier Tribunal; and
 - powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance and enforcement.
8. Once implemented, these will help increase the overall standards of service and professionalism within the letting industry and provide customers with an effective way to resolve complaints.
9. This BRIA considers the business impact of implementation of the statutory Code of Practice and the training requirement. It builds upon the BRIA undertaken as part of the policy development process on letting agent regulation for the Housing (Scotland) Bill 2013.

Objective

10. The objective is to help increase overall standards of service and professionalism within the letting agent industry, whilst providing customers of letting agents with an effective course of redress.
11. This policy contributes to the Scottish Government’s work on improving standards and quality within the Scottish private rented sector.
12. The objective fits with the Scottish Government’s strategic ‘Safer and Stronger Scotland’ objective. This helps local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and better quality of life.

Rationale for Government intervention

13. From April to June 2012, the Scottish Government consulted on a draft Strategy for the private rented sector. As part of this, views were sought from stakeholders on whether further regulation of the letting agent industry was required and, if so, what form that further regulation should take.
14. Three potential options were presented to stakeholders:
 1. Expand the existing landlord registration system to include all letting agents;

2. Create a separate system for agents, similar to that in place for property factors; and/or
3. Introduce a legal obligation that all agents must be a member of a recognised professional trade body.

15. Analysis of consultation responses showed broad support from across the sector, including from within the letting agent industry, for some form of further regulation of letting agents.

16. Following detailed consideration, Scottish Ministers took forward option 2 – create a separate system for agents, similar to that in place for property factors. A framework for this was introduced under the Housing (Scotland) Act 2014.

17. As part of the implementation of the provisions within the 2014 Act, Scottish Ministers will be taking forward a number of Scottish Statutory Instruments in order to implement regulations that will:

- set out additional information requirements for administration of the registration process;
- set out a Code of Practice which makes provision on standards of practice of those carrying out letting agency work; the handling of tenants' and landlords' money; and the professional indemnity arrangements to be kept by letting agents;
- set out the training requirement those applying to the register of Letting Agents must have met to be admitted; and
- the form of notice to be used by Scottish Ministers when exercising their power to obtain information.

18. Individual BRIAs are also being prepared in relation to the additional information requirements, and in relation to the fee that will apply to those undertaking registration.

Consultation

- **Within Government**

We have engaged with a number of different areas within the Scottish Government to support and inform the development of the Code of Practice and advice on the wider overall implementation, including Scottish Government Legal Directorate, Landlord Registration colleagues, Housing Tribunal colleagues, Property Factors Team, and local authority Landlord Registration Teams.

- **Public Consultation**

We have undertaken informal consultation with a number of stakeholders in developing the draft Code of Practice including the Association of Residential Letting Agents (ARLA), Royal Institution of Chartered Surveyors (RICS), Council of Letting Agents (CLA), Let Scotland, Citizen Advice Scotland, National Union of Students (NUS) Scotland, Law Society of Scotland, Chartered Institute of Housing (CIH) Scotland, Landlord Accreditation Scotland; Scottish Association of Landlords (SAL) and Capability Scotland.

We will use the results from our broader public consultation to inform the finalisation of the Draft Code of Practice and training requirements which will be subject to further scrutiny when laid in the Scottish Parliament.

- **Business**

We intend to use the public consultation on the Code of Practice and training requirement to undertake focussed engagement with businesses affected by the proposals to understand the impact on small, medium and large businesses of our implementation plans.

Options

Code of Practice

Option 1 – Do nothing

Doing nothing is not an option in this instance. Introducing a Code of Practice is a vital element of the regulatory framework introduced by Scottish Ministers under the Housing (Scotland) Act 2014. Under this Act, Ministers are legally required to lay before the Scottish Parliament regulations containing a draft Code of Practice within 18 months of Royal Assent (1 August 2014). The Code of Practice is also a fundamental part of the new avenue of redress for landlords and tenants to the First-tier Tribunal. Without the Code of Practice, landlords and tenants would not be able to access this means of dispute resolution. Alongside this, compliance with the Code is one of the factors Scottish Ministers will be able to take into account in determining whether a letting agent is a fit and proper person to be admitted to the Letting Agent Register. Without a Code, this aspect of the process would be weakened.

Option 2 – Introduction of a statutory Letting Agent Code of Practice

Development of a statutory Code of Practice for those carrying out letting agency work which covers those aspects provided for by the 2014 Act. These are: the standard of practice; the handling of tenants' and landlords' money; and the professional indemnity arrangements to be kept. The Code of Practice is a vital component of the overarching regulatory framework, once in force, it will be the mechanism for landlords and tenants to seek redress through the new First-tier Tribunal where they believe a letting agent has failed to meet the requirements of the Code. It will also be one of the factors Scottish Ministers will be able to take into account in determining whether a letting agent is a fit and proper person to be admitted to the Letting Agent Register.

Training Requirement

Option 1 – Do nothing

Letting Agents would not be required to have undertaken any industry specific training before admittance to the Register of Letting Agents. Maintaining the status quo would not address the need for training raised by the industry during the legislative process for the Housing (Scotland) Bill 2013.

Option 2 – Introduce a training requirement applicants to the Register of Letting Agents must have met to be admitted.

If a training requirement is introduced there are a number of options in relation to each of the elements that Scottish Ministers are able to prescribe in the regulations. The options considered in relation to these are set out below.

A - The matters on which training must have been undertaken

Option A – Introduce regulations setting out matters on which training must have been undertaken. We propose covering the following matters:

- relevant legal obligations;
- handling of tenants' and landlords' money;
- arranging and managing a tenancy;
- managing repairs and maintenance; and
- customer communications, complaint handling and equality issues.

B - The persons who must have undertaken training

Option B1 – placing the requirement on the most senior person(s) within the management structure.

Option B2 – placing the training requirement on the person, or persons, directly concerned with the management of the applicants letting agency work.

C - Qualifications which must be held by the applicant and other persons

Option C1 – Do nothing.

This would mean those subject to the requirement would be able to choose what type of training to undertake on the matters set out in the regulations. In this instance, Ministers would decide how this would be delivered administratively. For example whether to require applicants to submit evidence training had been undertaken with every application or to only request such documentation when things don't look quite right.

This option would allow those subject to the requirement a range of ways to meet it as well as the recognition of existing qualifications and training. It would also support the industry in managing the change; particularly smaller agencies where costs and time implications are likely to have a greater impact.

Option C2 – requiring those subject to the requirement to hold a mandatory qualification at Scottish Credit and Qualification Framework (SCQF) level 6 or above.

This would mean applicants to the register of letting agents would need to show in their application that they/those subject to the requirement have attained a relevant qualification that covered the matter prescribed by Scottish Ministers

Option C3 – Phased mandatory qualification

This would mean those subject to the requirement would, in the first instance, have to demonstrate they had met the requirement in the same way as in option C1, but would be required to have attained a relevant qualification by a specific date at some defined point in the future.

D - The period within which training must have taken place

Option D1 – Prescribe the period in which training must have been undertaken.

We are proposing:

- prior to a mandatory qualification coming into force, relevant training must have been undertaken within the last 3 years for those without a relevant qualification;
- for those with an existing qualification (Scottish Credit and Qualification Framework level 6 or above) undertaken more than 3 years ago, we would seek to recognise this as meeting the requirement only where an individual could demonstrate they had undertaken at least 20 hours of training on the matters set by Scottish Ministers (see proposal 1) within the last 3 years; and
- to ensure those who have undertaken the qualification continue to update and refresh their knowledge and skills, we would look to include an on-going requirement for those who have attained the mandatory qualification to undertake at least 20 hours of training on matters relating to letting agency work within the last 3 years.

Sectors and groups affected

The main sectors affected are:

- the letting agent industry;
- private rented sector; and
- training providers.

Those groups directly affected are:

- letting agency businesses;
- solicitors providing letting agency services;
- individual letting agents,
- private landlords;
- private tenants; and
- training providers.

Code of Practice - Cost and Benefits

Option 1 – Do nothing

There are no direct costs associated with this option and we do not consider there are any benefits to this option.

Option 2 - Introduction of a statutory Letting Agent Code of Practice

There are no direct costs for tenants and landlords related to the introduction of a statutory Code of Practice for letting agents.

The exact costs for letting agents will depend on the current practices of each organisation and the content of the draft Code. However, we expect the costs to be minimal for those already signed up to an existing voluntary code of practice through a membership organisation.

The Code will provide a mechanism for enabling consumers and Scottish Ministers to challenge poor practice and service. It will assist in raising standards, where this is needed, to help build a more effective private rented sector that meets the needs of tenants, landlords and letting agents. This should help to improve the reputation of the sector and contribute to achieving the Scottish Government’s vision for “a private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.”

Training Requirement – Costs and Benefits

Option 1 – Do nothing

There would be no additional costs or savings related to this option. Maintaining the status quo would not help us to realise the outcomes sought by Scottish Ministers or the industry.

Option 2 – Introduce a training requirement applicants to the Register of Letting Agents must have met to be admitted.

The costs and benefits of this option are detailed below

A - The matters on which training must have been undertaken

Option A – Introduce regulations setting out matters on which training must have been undertaken.

We anticipate that there may be some time and cost to training providers in adapting existing provision, although we don’t believe this will be significant as existing provision already covers the majority of those matters Ministers’ propose prescribing. In addition, providers already take account of changes to legislation and policy as a matter of course.

Setting out the matters those subject to the requirement must have undertaken enable Scottish Ministers to ensure all those accepted on the Register of Letting Agents have undertaken training on the key aspects of being a letting agent.

B - The persons who must have undertaken training

Option B1 – placing the requirement on the most senior person(s) within the management structure unless they have no input into the day to day running of the business.

The costs of this option are difficult to quantify as they will depend on whether senior managers are required to undertake any additional training. However, a number of our key industry stakeholders have indicated the benefits of training out-weigh the costs to individual agents.

The benefits of this option is assurance that the person ultimately in charge of the running of the business is suitably qualified, meeting the numerous operational and legislative requirements, to landlords and tenants receive a professional and well managed service.

Option B2 - the person, or persons, directly concerned with the management and supervision of the applicants letting agency work.

Exact costs are difficult to quantify as they will depend on the size and structure of each organisation and the existing level of training of those captured by this description and what additional training, if any, is required. However, as previously indicated, the benefits to the organisation and industry as a whole out-weigh the training costs to individual agents.

The benefit of this option is the assurance that all those who are involved in managing and supervising letting agency work will have undertaken training on all essential aspects of letting agency work. This will assist in improving consistency in the standards and practice landlords and tenants receive. This may particularly benefit larger organisations with higher numbers of staff.

C - Qualifications which must be held by the applicant and other persons

Option C1 – Do nothing

Additional costs to letting agents will depend on the level of training currently undertaken by those subject to the requirement. However, assuming one person per letting agent requires to undertake 3 courses (not leading to a qualification) the cost of this would be approximately £200 per agent and a total cost to the industry based on 719 letting agents of £143,800.

1 course = £66 (based on existing course costs not leading to a qualification).

Some agents may decide to undertake training leading to a qualification. See costs estimates for individual agents of undertaking a qualification in Option C2.

This option would allow those subject to the requirement a range of ways to meet it as well as the recognition of existing qualifications and training. It would also support the industry manage the change; particularly smaller agencies where costs and time implications are likely to have a greater impact.

Option C2 - Mandatory qualification

Additional costs of introducing a mandatory qualification will depend on the current level of training held by those subject to the new requirement. However, assuming that one person required to undertake training per letting agency business, the total cost to each agent would be £440 and a total cost to the industry of approximately £316,360.

The approximate costs of attaining qualification is based on existing qualification attained through ARLA on a non-member basis.

Costs of existing qualification - Assumption of 1 person to undertake training per organisation e.g. estimated number of letting agents in Scotland x cost of existing qualification.

In some circumstances letting agents may seek to recover these costs through their fees to landlords. 150,000 properties managed by 719 agents = average 209 properties per agent.

Cost per agent = £440

Potential cost per property managed = £2

Cost to industry as a whole (cost per agent x number of letting agents) = £316,360

The benefit of this approach is that a qualification would provide clear evidence the requirement had been met for registration purposes. It would demonstrate they have attained the relevant knowledge and understanding in a certain area and give some quality assurance that the person undertaking the training has met certain standards.

Option C3 – Phased mandatory qualification

As above, however, for those who have undertaken no relevant training, proposed transitional arrangements will require them to have undertaken training on all of the matters prescribed by Scottish Ministers. This may mean some agents would incur costs in line with Option C1 in addition to mandatory qualification costs.

Phasing the introduction of a qualification would have a number of benefits. It would provide those subject to the requirements who do not currently hold a relevant qualification additional time within which to meet the requirement and, where necessary, spread the learning time and costs. This would be particularly helpful for small organisations and those where a number of staff are required to meet the requirement. In addition, a phased approach would allow greater time for training providers to respond to the requirements and the increased demand for qualifications. This would give those subject to the requirements greater choice in they qualification undertaken.

D - The period within which training must have taken place

Option D1 – Do nothing

There would be no additional costs to this option.

The benefit of this option to the industry would be that any training undertaken on the matters set by Ministers would help to meet the requirement. However, this would not help to improve standards or ensure those admitted to the register continued to maintain and update their knowledge and skills.

Option D2 – Prescribe the period in which training must have been undertaken.

The cost implication of this aspect of the proposals are difficult to quantify because they depend on the training record of those subject to the requirement. For those who have undertaken a qualification or recent relevant training within the proposed timescales, additional costs should be nil or minimal. Those who have not achieved a relevant qualification or undertaken training on the required matters within the proposed timescales will incur costs in line with C2 and potentially C1 depending on their particular circumstances.

The proposals also suggest requiring on-going training of 20 hours within the last 3 years. The exact additional costs will depend on the type of training undertaken, however, we anticipate these on-going costs will be nil/minimal for the majority of letting agents who already undertake regular training. For those who currently undertake no regular training, assuming those subject to the requirement undertake 1 days training per year, the additional annual cost would be around £66 per year per agent.

These proposals will help to ensure that training used to meet the requirement is recent and letting agents maintain and update their knowledge to ensure they continue to provide a good service to landlords and tenants.

Scottish Firms Impact Test

We intend to carry out face-to-face meetings with businesses during our public consultation exercise. This may be done through stakeholder events or individual meetings.

Competition Assessment

The changes will affect private landlords, letting agents, private tenants. But given our answers to the four questions below, we do not expect the changes will distort any competition in the affected markets.

The 4 Competition and Markets Authority (CMA) competition assessment questions given below should be used as an initial assessment of competition. If you answer 3 or more of the questions with a 'no' then it is unlikely your proposals will have an impact on competition. You should include the questions and your answers within your BRIA to provide evidence that your proposals do not have any impact on competition.

Will the proposal directly limit the number or range of suppliers? **No**

Will the proposal indirectly limit the number or range of suppliers? **No**
Will the proposal limit the ability of suppliers to compete? **No**
Will the proposal reduce suppliers' incentives to compete vigorously? **No**

Test run of business forms

No new forms will be issued as part of the introduction of the Code of Practice.

Letting Agents wishing to apply to the Letting Agent Register will be asked to complete an application form as part of the registration process. This will provide information to demonstrate that the training requirement has been met amongst other things. This will be tested with letting agents to ensure the form is/process is easy to understand and use.

Legal Aid Impact Test

Code of Practice

The introduction of the Code of Practice will enable landlords and tenants to take cases to the First-tier Tribunal. The Financial Memorandum for the Housing (Scotland) Bill 2013 estimated the likely caseload in relation to letting agents as 481 cases per year.

While we anticipate some of those taking cases may be eligible to access Advice and Assistance before they go to the tribunal, we think the impact on legal aid spending will be minimal due to the low number of cases expected. In addition, the new tribunal system is designed to be easily accessible and simple to use, which should also limit the numbers requiring legal assistance.

It is not intended that legal aid will be available for representation for letting agent cases. This is in line with current policy in relation to cases referred to the Homeowner Housing Panel.

Appeals against decisions by the First-tier Tribunal will be heard by the Upper Tribunal. Operational details are still under consideration, however, should access to Legal Aid be required we anticipate only 1 or 2 cases a year resulting in minimal impact.

Training Requirement

We do not anticipate any impact on the Legal Aid Fund from the introduction of a training requirement that applicants to the Register of Letting Agents must have met.

Enforcement, sanctions and monitoring

Code of Practice

Enforcement of the Code of Practice will be through the new First-tier Tribunal (FtT). Under section 48 of the 2014 Act, where the FtT identify a letting agent has failed to meet the requirements of the Code, they can make an enforcement order requiring the letting agent to take such steps as the tribunal considers necessary to rectify the failure.

Where the Tribunal finds that a letting agent has failed to comply with an enforcement order the letting agent is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The FtT must also inform Scottish Ministers of a letting agent's failure to comply. Ministers can then take this into account in considering their registration status. If necessary, Ministers can seek to remove an agent from the register, preventing them from practicing.

Scottish Ministers also have powers to obtain information and of inspection to facilitate the monitoring of compliance and enforcement.

Training Requirement

The Scottish Government will hold and administer the Register of Letting Agents and will be responsible for monitoring compliance and for enforcement. Ultimately, the sanction for failure to meet the training requirement, is applicants' can be refused registration, re-registration, or have their registration revoked. Carrying out letting agency work without being registered is a criminal offence and subject, on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding £50,000, or to both.

Implementation and delivery plan

Code of Practice

The Scottish Government is required under the Housing (Scotland) Act 2014 to lay regulations for a draft Code of Practice within 18 months of Royal Assent. We anticipate the Code coming into force alongside the establishment of the relevant jurisdiction of the First-Tier Tribunal, currently planned for December 2016. This will provide letting agents with reasonable notice of the standards of practice set out in the Code and undertake, where necessary, any changes needed prior to the Code coming into force.

Training Requirement

Legislation setting out the details of the training requirement that applicants to the register of letting agents must meet is expected to be laid in the Scottish Parliament before March 2016. We propose providing letting agents with approximately a year from the details of the training required being known to the requirement to have made an application for registration. This will provide letting agents with sufficient time to undertake the necessary training.

Post-implementation review

It is expected that a post-implementation review will take place within 10 years of the legislation introducing a statutory Code of Practice and training requirement.

Summary and recommendation

Code of Practice

Option 2, introduction of a statutory Letting Agent Code of Practice, is recommended.

The Code will provide a mechanism for enabling consumers and Scottish Ministers to challenge poor practice and service. It will assist in raising standards, where this is needed, to help build a more effective private rented sector that meets the needs of tenants, landlords and letting agents. This should help to improve the reputation of the sector and contribute to achieving the Scottish Government’s vision for the private rented sector.

Summary of broad costs and benefits

Option	Benefits	Costs
Do nothing	We do not consider there are any benefits to this option.	There are no associated additional costs to this option.
Introduction of a statutory Letting Agent Code of Practice	A statutory Code of practice will ensure letting agents understand the standards that are expected of them; provide a mechanism for enabling consumers and Scottish Ministers to challenge poor practice and service; and assist in raising standards across the sector.	It is not possible to quantify the additional costs for letting agents on the introduction of a statutory Code of Practice. These will depend on the current practices of each organisation and the content of the draft Code. However, we expect the costs to be minimal for the majority of letting agents; particularly for those already signed up to an existing voluntary code of practice through industry body or membership organisation.

Training requirement

Option 2, introduce a training requirement applicants to the Register of Letting Agents must have met to be admitted, is recommended. As part of implementing this option we propose taking forward option A1, B1, B2, C3 and D1.

The introduction of a robust training requirement will assist in improving standards and practice within the letting industry; helping to provide landlords and tenants with a better service by more knowledgeable staff. It will also introduce an element of quality assurance into

Engagement with the sector has indicated support strong support amongst some key stakeholders for the introduction of a mandatory qualification and indicated the likely associated costs are proportionate and should not cause undue problems for the industry as a whole.

- **Summary costs and benefits tables**

Option	Benefits	Costs
Do nothing	Letting agents would determine the level of training required.	There are no associated additional costs to this option.
Introduce a training requirement applicants to the Register of Letting Agents must have met to be admitted.	<p>The introduction of a training requirement will help to raise standards and practice within the residential lettings industry as well as creating a level playing field for agencies.</p> <p>The introduction of a training requirement also opens up greater opportunities for additional training providers to enter the current residential training market in Scotland, which is currently relatively limited in nature.</p>	The introduction of a training requirement will have a direct cost for applicants to the letting industry. The costs of the various options for the requirement are summarised in the tables below.

The following tables summarise each of the options considered in relation to the four elements Scottish Ministers can prescribe in setting out a training requirement.

<i>A - The matters on which training must have been undertaken</i>		
Option	Benefits	Costs
Option A1 - Introduce regulations setting out matters on which training must have been undertaken		We anticipate that there may be some time and cost to training providers in adapting existing provision, although we don't believe this will be significant as existing provision already covers the majority of those matters Ministers' propose

		prescribing. In addition, providers already take account of changes to legislation and policy as a matter of course.
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B - The persons who must have undertaken training

Option	Benefits	Costs
Option B1 – placing the requirement on the most senior person within the management structure unless they have no input into the day to day running of the business.	The benefits of this option is assurance that the person ultimately in charge of the running of the business is suitably qualified, meeting the numerous operational and legislative requirements, to landlords and tenants receive a professional and well managed service.	The costs of this option are difficult to quantify as they will depend on whether senior managers are required to undertake any additional training.
Option B2 – all those directly concerned with the management and supervision of the applicants letting agency work.	The benefit of this option is the assurance that all those who are involved in managing and supervising letting agency work will have undertaken training on all essential aspects of letting agency work. This will assist in improving consistency in the standards and practice landlords and tenants receive. This may particularly benefit larger organisations with higher numbers of staff.	Exact costs are difficult to quantify as they will depend on the size and structure of each organisation and the existing level of training of those captured by this description and what additional training, if any, is required.

C - Qualifications which must be held by the applicant and other persons

Option	Benefits	Costs
Option C1 – Do nothing	This option would allow those subject to the requirement a range of ways to meet it as well as the recognition of existing qualifications and training. It would also support the industry manage the change; particularly smaller agencies where costs and time implications are likely to	Additional costs to letting agents will depend on the level of training currently undertaken by those subject to the requirement. However, assuming one person per letting agent requires to undertake 3 courses (not leading to a qualification) the cost of

	have a greater impact.	this would be approximately £200 per agent and a total cost to the industry of £143,800.
Option C2 – Mandatory qualification	The benefit of this approach is that a qualification would provide clear evidence the requirement had been met for registration purposes. It would demonstrate they have attained the relevant knowledge and understanding in a certain area and give some quality assurance that the person undertaking the training has met certain standards.	Additional costs of introducing a mandatory qualification will depend on the current level of training held by those subject to the new requirement. However, assuming that one person required to undertake training per letting agency business, the total cost to each agent would be £440 and a total cost to the industry of approximately £316.360.
Option C3 – Phased mandatory qualification	Phasing the introduction of a qualification would have a number of benefits. It would provide those subject to the requirements who do not currently hold a relevant qualification additional time within which to meet the requirement and, where necessary, spread the learning time and cost.	Additional costs of introducing a mandatory qualification will depend on the current level of training held by those subject to the new requirement. However, assuming that one person required to undertake training per letting agency business, the total cost to each agent would be £440 and a total cost to the industry of approximately £316,360. In addition, for those who have undertaken no relevant training, proposed transitional arrangements will require them to have undertaken training on all of the matters prescribed by Scottish Ministers. This may mean some agents would incur costs in line with Option C1 in addition to mandatory qualification costs.

<i>D - The period within which training must have taken place</i>		
Option	Benefits	Costs
D1 – Do nothing	The benefit of this option to the industry would be that any training undertaken on the matters set by Ministers would help to meet the requirement. However, this would not help to improve standards or ensure those admitted to the register continued to maintain and update their knowledge and skills.	There would be no additional costs to this option.
Option D2 - Prescribe the period in which training must have been undertaken.	These proposals will help to ensure that training used to meet the requirement is recent and letting agents maintain and update their knowledge to ensure they continue to provide a good service to landlords and tenants.	The exact additional costs will depend on the type of training undertaken, however, we anticipate these on-going costs will be nil/minimal for the majority of letting agents who already undertake regular training. For those who currently undertake no regular training, assuming those subject to the requirement undertake 1 days training per year, the additional annual cost would be around £66 per year per agent.

Consultation questions

Question 16a: 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.

Question 16b: Do you have any comments on the partial Business and Regulatory Impact Assessment?



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