

# **Regulation Of Letting Agents:**

## **Registration Regulations**

**December 2016**

# Regulation Of Letting Agents: Registration Regulations

## Final Business and Regulatory Impact Assessment (BRIA)

### Title of Proposal

1. This BRIA relates to implementation of section 29, 30 and 32 of the Housing (Scotland) Act 2014 which enables Scottish Ministers to prescribe additional information to be included within an entry to the Register of Letting Agents; additional information those applying to be admitted to the Register must provide; and the training requirements applicants 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 including of solicitors, estate agents, surveyors and accommodation agencies.
3. Currently, there is no definitive count of the number of letting agents operating in Scotland. There are several alternative data sources with which to make an estimate and the Scottish Government has undertaken to do this. Taking into account the pros and cons of each data source, there are an estimated 1,700<sup>1</sup> 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.<sup>2</sup>
4. In a sector with a large number of small scale landlords, the letting agent industry plays an important role in providing a wide range of services and assisting the delivery of good 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, are committed to undertaking professional training ensuring good quality levels of service for the landlords and tenants they assist. Professional organisations such as the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS) and The Property Ombudsman 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. National Federation of Property Professionals, Landlord Accreditation Scotland, Chartered Institute of

<sup>1</sup> Estimate is based on letting agent members of the UK Property Ombudsman, Ombudsman Services UK, the Property Redress Scheme (2015) and Scotland's Landlord Registration Database (2015).

<sup>2</sup> A Place to Stay, A Place to Call Home A Strategy for the Private Rented Sector in Scotland - Scottish Government (2013)

Housing (CIH) Scotland, amongst others, provide training on residential letting to those committed to improving their services and updating their knowledge and skills.

6. Such good practice is not shared by all however, and evidence gathered from stakeholders and ministerial correspondence suggests that landlords and tenants can be subject to poor standards of service and, in some cases, illegal practices by some letting agents.
7. In response to these issues, the Scottish Government legislated in the Housing (Scotland) Act 2014 (the 2014 Act) 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;
  - powers for Scottish Ministers to prescribe training requirements 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 the new specialist First-tier Tribunal for Scotland Housing and Property Chamber (Housing Tribunal); and
  - powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance and enforcement.
8. As part of implementing letting agent registration Scottish Ministers are taking forward regulations that will prescribe additional information that must be included in an application to, and an entry of, the Register of Letting Agents and training requirements that must be met to be admitted to the Register.
9. The 2014 Act sets out that the regulations in relation to the training requirement may in particular prescribe:
  - the matters on which training must have been undertaken;
  - the persons who must have undertaken training;
  - qualifications which must be held by the applicant and other persons; and
  - the period within which training must have taken place.
10. This BRIA considers the business impact of regulations prescribing:
  - additional information that applicants to the register of letting agents will need to provide;
  - additional information to be included in an entry on the publically available register of letting agents; and
  - the training requirements applicants must have met to be admitted..
11. It builds upon the [BRIA](#) undertaken as part of the Housing (Scotland) Bill 2013 process on letting agents regulation and sits alongside the [BRIA](#) undertaken on the [Letting Agent Code of Practice](#).

## Objective

12. 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 way to resolve complaints against letting agents for breaches of the statutory Code of Practice through the Housing Tribunal.
13. This policy contributes to the Scottish Government's work on improving standards and quality within the Scottish private rented sector.
14. 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

15. From April to June 2012, the Scottish Government held a consultation 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.
16. 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.
17. 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.
18. 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 2014 Act.
19. As part of the implementation of the provisions within the 2014 Act, Scottish Ministers made regulations setting out a [Letting Agent Code of Practice](#) in February 2016 and will be taking forward two further Scottish Statutory Instruments that will:
  - set out the **additional information and training requirements** for administration of the registration process; and
  - the form of notice to be used by Scottish Ministers when exercising their **power to obtain information**.
20. A BRIA was prepared for the Code of Practice and one will also be prepared for the registration fee those applying to the Register will be required to pay.

## Consultation

- **Within Government**

We have engaged with a number of different areas within the Scottish Government to support and inform implementation as a whole, 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 relation to the additional information to be gathered and on the training requirement including with the Association of Residential Letting Agents (ARLA), Chartered Institute of Housing (CIH) Scotland, Citizens Advice Scotland (CAS), Council of Letting Agents (CLA), Landlord Accreditation Scotland, Law Society of Scotland, LetScotland, Living Rent: Scotland's Tenants' Union, National Federation of Property Professionals, National Union of Students (NUS) Scotland, Royal Institution of Chartered Surveyors (RICS), Scottish Association of Landlords (SAL), Scottish Land and Estates, Scottish Credit and Qualification Framework Partnership and Shelter Scotland.

### *Training requirement public consultation*

A formal public consultation was undertaken between August and November 2015 on a draft statutory code of practice and training requirement proposals. As part of raising awareness of the consultation and encouraging responses from letting agents, landlords and tenants we worked with the Council of Letting Agents, Scottish Association of Landlords and Shelter Scotland to hold a number of focussed events in a variety of locations across Scotland. 92 responses were received and analysed in total of which:

- 27 were from letting agents;
- 20 were from members of the public;
- 14 were from professional or membership bodies;
- 11 were from a local authority;
- 8 were from tenant/community groups; and
- 12 were from other groups, (including estates, academics, equality organisations).

[Independent analysis](#) by Research Scotland revealed that the majority of respondents agreed with our overall proposed approach to training for letting agents with:

- 73% agreeing with the proposed matters that those subject to the regulations would be required to have undertaken training on;
- 62% of respondents agreeing with proposal 2 on who should be required to undertake training;
- 71% agreeing that there should be a mandatory qualification introduced.

There was less agreement on the proposed timescales for introducing the

qualification, however, there was consensus amongst many respondents – who agreed and disagreed – that the proposed timeframe for introduction was too long.

Similarly, there was less agreement in relation to the proposed continuous training requirement of 20 hours over three years for those holding a qualification attained more than three years ago. Some respondents thought the timescale was too generous with others suggesting the number of hours proposed was too onerous.

- **Business**

The consultation also sought views on the impact of the proposed training requirement on businesses. We received 21 separate comments in relation to our partial business and regulatory impact assessment. We also approached 12 letting agency businesses across Scotland directly to seek their views on the impact of the implementation of regulation on their business. Two agents took up the offer to meet with them.

Comments included:

- some organisations welcomed the introduction of letting agent regulation and highlighted the benefits it would bring;
- a few respondents to the consultation made broad statements welcoming mandatory training and felt it would improve standards, provide higher quality service to clients, and would be of overall benefit to the lettings sector;
- a number of respondents provided evidence of training, staff qualifications and costs associated with training;
- the Council of Letting Agents submitted information summarising its letting agent survey, this demonstrated that forty eight percent of letting agency staff hold an SCQF level 6 qualification; eighty-eight percent undertake yearly training; and thirty-nine percent of staff complete at least ten hours of training per year;
- one respondent suggested the partial BRIA had underestimated the costs of a day of formal training;
- a number raised concerns regarding the cost of training, particularly in relation to the impact on small businesses;
- a few agents highlighted additional costs of meeting regulation may lead to landlords deciding to self-manage instead of using agents; and
- some consultation respondents felt that fears of the costs of additional training were exaggerated, as training costs were already an expenditure for some letting businesses;
- some commented that business costs can be offset as a tax liability and another respondent felt the overall benefits to the sector outweigh the costs.

These views have been taken into account in this assessment.

## Options

### **Additional Information – Registration Application and Entry**

#### **Option 1 – Do nothing**

##### Application

Those applying to join the Register of Letting Agents would only be required to provide the information set out in Section 30 of the 2014 Act. However, this approach would not allow us to gather sufficient information to properly and robustly administer the register.

##### Register entry

The register entry for those admitted to the Register of Letting Agents would only include the information provided for in Section 29 of the 2014 Act. Not including further information may reduce the effectiveness of the register for users. For example, the name of the agent listed may not be their trading name, which may make it more difficult for those searching the public register to check whether an agent is registered or not.

#### **Option 2 – Make use of regulation making powers**

##### Application

Making use of regulation making powers to gather a variety of administrative information and compliance information. For example:

- telephone number and e-mail address;
- membership of professional or trade bodies;
- information about any disciplinary action taken against the applicant or those named within the application;
- details of their Client Money Protection and Professional Indemnity Insurance providers; and
- more sensitive personal information for example dates of birth, other names by which the applicant or other named persons are known and the home addresses of certain individuals included within the application.

This will allow Scottish Ministers to gather sufficient information to administer the Register of Letting Agents and to monitor an applicant's compliance with the requirements of the 2014 Act. Further information will also assist in determining whether they are a fit and proper person to be admitted to the Register.

##### Register entry

Introducing regulations to include additional details in an entry on the public register of letting agents to help those searching the public register. For example, by including the trading name of those accepted on to the public register and the letting agent registration number. This would assist those making use of the public Register to easily find out whether a letting agent is registered or not.

## **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:

- legal obligations relating to letting agency work;
- the rights and responsibilities of landlords and tenants;
- handling of tenants' and landlords' money;
- arranging, managing and ending a tenancy;
- managing repairs to and maintenance of a property; 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 within the applicants organisation unless they have no input into the letting agency's day to day running.

**Option B2** – placing the training requirement on all persons directly concerned with managing and supervising the applicant's letting agency work.

**Option B3** – taking forward both option B1 and B2 and requiring at least one person to be trained per office, where letting agency work is being carried out in that office.

#### **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 not have to hold a qualification, but instead 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.



**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 – Do nothing**

Those required to undertake training would not be subject to any criteria in relation to when the training must have been undertaken.

**Option D2 - Prescribe the period in which a relevant qualification must have been obtained and, for those with an existing qualification, the additional training that must be undertaken.**

For the two approaches considered this would mean:

Phased mandatory qualification

- that 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; and
- for those with an existing qualification (SCQF 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 within the last 3 years.

or

Qualification on first registration

- those subject to the training requirement would be required to have attained a mandatory qualification in advance of first registration; and
- for those with an existing qualification (SCQF 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 within the last 3 years.

### **Option D3 – Prescribe a period within which training must have been undertaken to create an on-going training requirement.**

This option would create 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. This would aim to ensure that those who have undertaken the qualification continue to update and refresh their knowledge and skills.

#### **Sectors and groups affected**

The main sectors affected are:

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

Those groups directly affected are:

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

#### **Costs and Benefits**

#### **Additional information – application and entry**

##### **Option 1 – Do nothing**

There would be no additional costs or benefits related to this option. This approach would not allow us to gather sufficient information to properly and robustly administer the register.

##### **Option 2 - Make use of regulation making powers**

We anticipate any costs related to requiring letting agents to provide additional information in the application form and including further information in an entry to the Register to be minimal and form part of the more general development of the application form and IT registration system. A separate BRIA is being prepared in relation to the registration fee, which will consider the impact of recovering the cost of registration process as a whole.

The benefits of making use of the regulation making power is that it will give Scottish Ministers sufficient information to effectively and robustly administer the Register of Letting Agents including:

- assisting in determining whether an applicant, and any other relevant person,

- is fit and proper to be admitted to the Register; and
- monitoring an applicant's compliance with the requirements of the 2014 Act, the Code of Practice and prescribed training requirements.

### **Training Requirement**

#### **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 the options for prescribing a training requirement are considered 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 enables 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. This should result in improved standards of service applied consistently across the industry and better services for landlords and tenants delivered by more knowledgeable staff.

#### **B - The persons who must have undertaken training**

##### **Option B1 – placing the requirement on the most senior person within the organisation unless they have no input into the letting agency's day to day running of the business.**

The exact costs of this option are difficult to quantify as they will depend on whether the most senior person needs to undertake any additional training and the training provider they choose. The costs related to the various types of training currently available are considered in C1 to C3 and D3.

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

**Option B2 – place the requirement on all persons directly concerned with managing and supervising the applicant’s 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 covered by this description and what additional training, if any, is required. The costs related to the various types of training currently available are considered in C1 to C3 and D3.

The benefit of this option is the assurance that all those who are involved in overseeing 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 service landlords and tenants receive. This may particularly benefit larger organisations with higher numbers of staff.

**Option B3 – taking forward option B1 and B2 and requiring at least one person to be trained per office, where letting agency work is being carried out in that office.**

The exact cost of this option is difficult to quantify because they depend on the management and business structure of individual letting agents and the existing level of training already undertaken. However, we expect that for most letting agents the requirement to have one person trained per office will be met by option B1 or B2 and therefore no additional costs will be incurred in relation to this option. A minority of letting agents may be required to have an additional member of staff trained. Costs will be in line with those outlined in C1 to C3 and D3 below.

Given the range of business models in operation in the lettings industry, this option aims to ensure that all offices, where letting agency work is undertaken, would have a member of staff who has been trained on all the essential aspects of letting agency work. This will assist in improving consistency in the standards and service landlords and tenants receive.

**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 full days of formal training (not leading to a qualification) to meet the requirement to undertake training on the matters set out in option A, the cost of this would be approximately £486 per agent and a total cost to the industry of £826,200 based on 1,700 agents.

1 course = £81 (based on existing half day course costs not leading to a qualification).

3 full days of formal training based on existing half day course costs = £486

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 are difficult to quantify as they will depend on the current level of training or experience of those subject to the new requirement and on the type of training they choose e.g. self-study or taught courses. For those who have not yet undertaken a relevant qualification, this would be an additional one off cost.

However, assuming that one person required to undertake training per letting agency business, the total cost to each agent would range from £125 to £1470 and a total cost to the industry of between £212,500 to £2,499,000, based on 1,700 letting agents operating in Scotland and the costs of existing qualifications detailed below.

#### *Costs of existing qualification –*

We are aware of two current qualifications on letting agency work at SCQF level 6 that cover the matters proposed in option A those subject to the training requirement could choose from. These are:

- LETWELL the Chartered Institute of Housing (CIH) Level 3 (equivalent to SCQF 6) certificate in letting and managing residential property; and
- National Federation of Property Professionals (NFoPP) SCQF level 6 Technical Award in Residential Letting and Property Management

The costs of these qualifications depend on whether you are a member of a relevant membership organisation. Costs are detailed below.

LETWELL – CIH level 3 (SCQF 6) certificate in letting and managing residential property (comprising 5 training days + assessment)

LAS Member £660 (inclusive of VAT) + £300 qualification assessment = £960

SAL/CLA member £720 (inclusive of VAT) + £300 qualification assessment = £1,020

Non-member £1170 (inclusive of VAT) + £300 qualification assessment = £1470

NFOPP SCQF level 6 Technical Award in Residential Letting and Property Management

ARLA member workbook and assessment = £340

Non-member workbook and assessment = £440

Assessment only = £200

Assessment only (4 assessments on same day) = £125

Landlords and tenants - There are no direct costs for tenants and landlords related to the introduction of these registration regulations. However, some agents may decide to pass on some or all of their additional costs in complying with the training requirement to landlords through their fees, which in turn could be passed on to tenants through their rents.

As the letting sector is a varied one we have based our assessment of the impact on two property portfolio sizes – 50 properties and 250 properties (the average number of properties of a respondent to the CLA survey in September 2015 was 256 properties and UK wide ARLA data from March 2016 shows that the average number of rental properties on their members letting agents books was 176).

The cost per property for an agent managing **50 properties** would be:

Cost per agent = between £125 and £1470

Potential cost per property managed = between £2.50 and £29.40

The cost per property for an agent managing **250 properties** would be:

Cost per agent = between £125 and £1470

Potential cost per property managed = between £0.50 and £5.88

The benefit of this approach is that it would demonstrate an applicant has been independently assessed as having attained a certain level of knowledge and understanding of the essential aspects of letting agency work. This will help to give some quality assurance to those agencies being admitted to the register. A qualification would provide clear evidence the requirement had been met to those administering the register.

### **Option C3 – Phased mandatory qualification**

Costs of this option would be in line with C2 or C1 and C2 depending on the route chosen to meet the requirement. 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. 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.

There was disagreement amongst consultation respondents about the timescale for introducing a mandatory qualification with some indicating that the timescale was too long and others suggesting it wasn't long enough. Engagement with stakeholders has also shown confusion with the transitional arrangement proposed prior to a mandatory qualification being introduced.

## **D - The period within which training must have taken place**

### **Option D1 - Do nothing**

We do not consider there to be any benefits to this option. Without setting a period within which training must have been undertaken, letting agents would not be required to keep their knowledge and skills up dated. For those not committed to regular training, this could lead to some agents not being compliant with changes to the law and not only provide landlords and tenants with a poor service, but may put tenants at risk.

### **Option D2 – Prescribe the period in which a relevant qualification must have been achieved and, for those with an existing qualification, the additional training that must be 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 as follows:

Phased mandatory qualification - Costs of a phased approach will be in line with C2 and potentially C1 depending on their particular circumstances. For example, a person who undertakes regular training, may not need to take further training prior to first registration and therefore only incur costs for the qualification.

Additional costs for those with an existing qualification will again depend on the current level of training undertaken, however, for those who currently undertake no regular training, assuming they take 1 days formal training per year, the additional annual cost would be around £160 per year per agent (see also D3).

Qualification on first registration – Costs of requiring those subject to the training requirement to have achieved this prior to registration will be in line with those set out in C2.

Additional costs for those with an existing qualification will again depend on the current level of training undertaken, however, for those who currently undertake no regular training, assuming they take 1 days formal training per year, the additional annual cost would be around £160 per year per agent (see also D3).

### **Option D3 - Prescribe a period within which training for those with an existing qualification must have been undertaken to create an on-going training requirement.**

This proposals suggests requiring on-going training of 20 hours (15 hours formal and 5 hours informal) 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.

There are a range of formal and informal training and learning opportunities available. These include free information sessions/courses, conferences and more formal half-day and full day training. Costs will therefore depend on the type and level of training those required to take training choose to do.

However, for those who currently undertake no regular training, assuming they take 1 days formal training per year, the additional annual cost would be around £160 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 understand their legal obligations alongside those of their clients and continue to provide a good service to landlords and tenants.

### **Scottish Firms Impact Test**

We used the consultation on the draft code and proposals for the training requirements to gather views on the impact of the introduction of the Code and the proposed training requirement on businesses. We received 21 separate comments in relation to our partial business and regulatory impact assessment. We also approached 12 letting agency businesses across Scotland directly to seek their views on the impact of the implementation of regulation on their business and to offer to meet them. Two agents took up the offer to meet with them.

### **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 intention is to create a level playing field where all agents comply with their legal requirements and provide a good standard of service to their customers.

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.

- 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**

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 support the administration of the register and to demonstrate that the training requirement has been met. This will be tested with letting agents to ensure the form and the process is easy to understand and use.

### **Legal Aid Impact Test**

We do not anticipate any impact on the Legal Aid Fund from these regulations.



## **Enforcement, sanctions and monitoring**

The Scottish Government intends to hold and administer the Register of Letting Agents and will be responsible for monitoring compliance and for certain aspects of enforcement.

### **Additional Information – Registration Application and Entry**

It is an offence under section 31 of the Housing (Scotland) Act 2014 for applicants to knowingly provide false information or fail to provide required information. A person who does so is liable on summary conviction to a fine not exceeding level 3 (currently a £1,000) on the standard scale.

Knowingly providing false information or failing to provide required information may result in a letting agent being refused registration, re-registration or having their registration revoked.

The First-tier Tribunal for Scotland (Housing and Property Chamber) will be responsible for hearing appeals against Scottish Ministers decision to refuse or revoke registration.

### **Training requirement**

Ultimately, the sanction for failure to meet the training requirement provided for within these regulations, is that 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.

Scottish Ministers have powers under section 52 and 53 of 2014 Act to obtain information and of inspection. This will assist in monitoring letting agents compliance with the requirements of the Act and support enforcement.

## **Implementation and delivery plan**

Legislation setting out the registration requirements that applicants to the register of letting agents must meet is expected to be laid in the Scottish Parliament in Winter 2016.

We expect the Register of Letting Agents to begin accepting applications in early 2018, once the First-tier Tribunal for Scotland (Housing and Property Chamber) is ready to accept appeals. We propose providing letting agents with at least a year from the details of the training requirement are 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 regulation of letting agents.

## **Summary and recommendation**

Based on evidence gathered during the public consultation held in 2015 and on wider stakeholder engagement, the Scottish Government is bringing forward regulations that will:

- require applicants to the Register to provide additional information as part of the application process;
- include additional information in an entry to the public Register of Letting Agents; and
- prescribe training requirements as set out in option A, B3, C2 and D3.

## **Additional information – application and entry**

Making use of the regulation making powers available to Scottish Ministers in relation to both the application and the entry will support:

- the effective administration of letting agent registration;
- Scottish Ministers to assess whether an applicant is a fit and proper person to be admitted to the Register;
- the monitoring of letting agents' compliance with the requirements of the Register and the Letting Agent Code of Practice; as well as
- landlords, tenants and members of the public to search the Register.

We anticipate any additional costs related to the inclusion of this additional information within an application and an entry to the Register to be minimal. Without making use of these additional powers Scottish Ministers would not be able to robustly administer letting agent registration and their ability to monitor compliance and support enforcement would be limited.

## **Training Requirement**

The exact cost of implementing the proposed training requirements are difficult to quantify because they depend on the management and business structure of individual letting agents and the existing level of training already undertaken by those subject to the requirement.

For those applicants who have already attained a relevant qualification and who undertake regular training, additional costs from forthcoming training regulations are likely to be nil or minimal.

For those subject to the requirements who have not undertaken a relevant qualification and or regular training, there will be an additional one off costs associated with attaining the qualification and an on-going cost for the regular training required once the qualification is more than 3 years old. However, the exact cost of this will depend on the qualification and training they choose to undertake. There are a number of options for completing the qualification and a variety of training courses and learning opportunities available that will allow them to choose a route that suits their training requirements and their budget.

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

The introduction of a robust training requirement will assist in improving standards and practice within the letting industry; ensuring these standards are applied more consistently and help to provide landlords and tenants with a better service by more knowledgeable staff.

- **Summary costs and benefits tables**

Option	Benefits	Costs
Additional Information – Do nothing	We do not see any benefits to this option.	There are no additional costs associated with this option.
Additional information - Make use of regulation making powers	Using the regulation making power will allow Scottish Ministers to gather sufficient information to administer the Register of Letting Agents and to monitor an applicant's compliance with the requirements of the 2014 Act. It will also allow us to make it easier to search the Register to determine whether a letting agent is registered or not.	Any additional costs related to requiring further information as part of the application process and in an entry to the Register are likely to be minimal.
Training requirement - Do nothing	Letting agents would determine the level of training required.	There are no associated additional costs to this option.
Training requirement - 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 and to ensure good standards are met consistently across the industry.</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>	Whether the introduction of a training requirement is an additional cost to applicants to the Register of Letting Agents will depend on existing level of training of those subject to the requirement. The likely costs associated with 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.

<b>A - The matters on which training must have been undertaken</b>		
Option	Benefits	Costs
Option A1 - Introduce regulations setting out matters on which training must have been undertaken	The benefit of this option is that those admitted to the register of letting agents will have undertaken training on all the essential aspects of letting agency work. This will result in improved standards of service applied consistently across the industry and better services for landlords and tenants delivered by more knowledgeable staff.	We anticipate that there may be some time and cost to training providers in checking that their existing provision covers the proposed matters and making any necessary changes. However, as providers already have procedures in place to take account of changes to legislation and policy as a matter of course we assess any additional cost is likely to be nil or minimal.

<b>B - The persons who must have undertaken training</b>		
Option	Benefits	Costs
Option B1 – placing the requirement on the most senior person within the management structure.	The benefits of this option is assurance that the person ultimately in charge of running the business is suitably qualified, so they understand and meet their numerous operational and legislative requirements. This will help to ensure 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. For those who do need to undertake additional training, costs will be in line with option C2 and D3.
Option B2 - the person, or persons, directly concerned with the management 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	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. For those who

	landlords and tenants receive. This may particularly benefit larger organisations with higher numbers of staff.	do need to undertake additional training, costs will be in line with option C2 and D3.
Option B3 - taking forward both option B1 and B2 and requiring at least one person to be trained per office, where relevant work is being carried out in that office.	<p>This option would ensure that all key people in charge of overseeing letting agency work have undergone relevant training. This will assist in improving consistency in the standards and service landlords and tenants receive.</p> <p>Given the range of business models in operation in the lettings industry, requiring there to be at least one person trained per office would help to ensure that all offices, where letting agency work is undertaken, would have a member of staff who has been trained on all the essential aspects of letting agency work.</p>	The exact cost of this option is difficult to quantify because they depend on the management and business structure of individual letting agents and the existing level of training already undertaken. However, we expect that for most letting agents therefore no additional costs will be incurred by this option. A minority of letting agents may be required to have an additional member of staff trained. Costs will be in line with option C2 and D3.

**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 have a greater impact.	Additional costs to agents will depend on the current level of training undertaken by those subject to the requirement. However, assuming one person per agency needs to undertake 3 days of training (not leading to a qualification) the cost of this would be approximately £486 per agent and a total cost to the industry of £826,200.
Option C2 – Mandatory qualification	The introduction of a mandatory qualification would demonstrate those admitted to the Register of Letting Agents have attained a minimum level of	Additional costs of introducing a mandatory qualification will depend on the current level of training held by those subject to the new

	<p>knowledge and understanding giving some quality assurance to those agents admitted. This approach would also provide clear evidence the requirement had been met for registration purposes.</p>	<p>requirement. However, assuming that one person is required to undertake training per letting agency business, the total cost to each agent would range from £125 to £1470 and a total cost to the industry of between £212,500 and £2,499,000.</p>
<p>Option C3 – Phased mandatory qualification</p>	<p>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.</p>	<p>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 between £125 and £1470 and a total cost to the industry of between £212,500 and £2,499,000.</p> <p>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 (approx. £486) in addition to the mandatory qualification costs.</p>
<p><b>D - The period within which training must have taken place</b></p>		
<p>Option</p>	<p>Benefits</p>	<p>Costs</p>
<p>Option D1 – Do nothing</p>	<p>The benefit of this option to the industry would be that any training undertaken on the matters set by Ministers</p>	<p>There would be no additional costs to this option.</p>

	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 a qualification must have been achieved and, for those with an existing qualification, the additional training must have been undertaken.	The benefit of this option is that it 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.	<p>The exact additional costs will depend on the type of training undertaken. For the majority of letting agents who already do regular training, we expect these on-going costs will be nil/minimal.</p> <p><b>Phased mandatory qualification</b> – Costs will be in line with C2 and potentially C1. For those with an existing qualification who currently do no regular training, assuming those subject to the requirement undertake 1 day of formal training per year, the additional annual cost would be around £160 per year per person being trained.</p> <p><b>Qualification on first registration</b> – Costs will be in line with C2 and D3.</p>
Option D3 - Prescribe a period within which training must have been undertaken to create an on-going training requirement.	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.	<p>The exact additional costs will depend on the type of training undertaken. For the majority of agents who already do regular training we expect these on-going costs will be nil/minimal</p> <p>For those who currently do no regular training, assuming those subject to the requirement undertake 1 day of formal training per year, the additional</p>

		annual cost would be around £160 per year per person being trained.
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**Declaration and publication**

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

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

**Signed:**



**Date:** 15/12/16

**Minister's name:** Kevin Stewart

**Minister's title:** Minister for Local Government and Housing

**Scottish Government Contact point:**

**Charlotte McHaffie**

**Better Homes Division**

[lettingagentregulation@gov.scot](mailto:lettingagentregulation@gov.scot)





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