

Business and Regulatory Impact Assessment

**Statutory Guidance for
Local Authorities on
Landlord Registration**

August 2017

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Statutory Guidance for Local Authorities on Landlord Registration

Purpose and intended effect

Background

Landlord registration was introduced by the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”). The legislation places a duty on each local authority to prepare and maintain a register of certain private landlords. Only those landlords who have been assessed by the local authority as being a fit and proper person to let houses should be entered on the register.

Scottish Government guidance was developed on the administration of landlord registration when the legislation came into force in April 2006. The guidance promoted a light touch approach, recognising the need for an initial drive to get landlords on to the register. The guidance recognised that the majority of landlords let their properties responsibly. The guidance was, and has remained, very prescriptive in terms of the process that it recommended local authorities should adopt in implementing the new regime.

The Private Rented Housing (Scotland) Act 2011 introduced provisions that require local authorities to have regard to any guidance issued by the Scottish Ministers in relation to the discharge of landlord registration functions.

The new guidance is intended to help local authorities deliver effective regulation. It highlights, through case studies, how some local authorities are using their landlord registration powers to deliver improvements in the sector. It also highlights successful working with the police and other agencies to check that registration requirements are met and to support effective enforcement action.

Objective

The policy covered by this BRIA will contribute to the National Outcomes:

- “we live in well-designed, sustainable places where we are able to access the amenities and services we need”; and
- “we have tackled the significant inequalities in Scottish society”

The policy also contributes to the Scottish Government’s vision that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs.

Rationale for Government intervention

The landlord registration system is designed to address particular market failures in the Private Rented Sector (PRS) that can have a negative impact on tenants and wider society. While the current landlord registration system and enforcement goes some way to tackle these market failures, we believe that improved guidance for local authorities will help to further improve outcomes.

When choosing a rental property tenants may have little information available to them in order to determine their prospective landlord's suitability to perform as a reliable landlord. In contrast, local authorities have access to a range of information which can allow them to assess whether a person is fit to act as a landlord. The system of landlord registration can therefore mitigate the impact of the tenant's imperfect information, by allowing the tenant to rely on the judgement of their local authority, who is better placed to form a view as to whether a landlord is a fit and proper person to rent property. The register also offers increased efficiency in these searches for information because a number of tenants may wish to determine the suitability of one landlord, in which case the local authority carrying out one information search is more efficient than if each tenant were to conduct their own search. By issuing new guidance to help local authorities improve and broaden their assessment of landlords, more tenants will be able to benefit from a more effective assessment of a prospective landlord.

New guidance for local authorities will also result in greater equality between tenants, since more effective enforcement of the requirements of landlord registration should act to reduce the inequality of outcomes between tenants who have good landlords and those whose current landlord may not be a fit and proper person to rent property. These equity considerations are further strengthened by the fact that it is likely to be vulnerable tenants who are at most risk from bad landlords.

Furthermore, poorly performing landlords not only have an impact on tenants but can have wider costs to society through, for example, allowing anti-social behaviour or through owning unsafe properties which may pose a health risk to the occupants of neighbouring properties. Therefore, improved enforcement of the landlord registration requirements will not only help to improve outcomes for tenants, but will help to reduce the negative impacts which poor landlords can have on the wider community.

Following from the above considerations, the Scottish Government's Strategy for the Private Rented Sector in Scotland, published in May 2013, set out that the purpose of landlord registration is:

- providing a register of all private landlords for public inspection, with the added assurance that the local authority has conducted a fit and proper test;
- providing a regularly updated register that can be used to assist dialogue between local authorities and landlords, to disseminate best practice information;
- ensuring that enforcement action is targeted at the worst landlords in the sector, whether that involves dealing with concentrations of such landlords in

vulnerable communities, or challenging the practices of individual landlords in more rural or sparsely populated areas.

While landlord registration can help deliver benefits to tenants and wider society, it is also important that, for the majority of landlords who do operate in a responsible way, registration should not be burdensome. The principles of better regulation, as set in the Scottish Regulators' Strategic Code of Practice, include that regulatory functions should be exercised in a way that is transparent, accountable, proportionate, consistent and targeted only where necessary. For those that flout the law, effective enforcement action should be taken, including prosecution for the worst offenders.

The Scottish Government's Strategy for the Private Rented Sector therefore also set out the Scottish Government's commitment to work with COSLA, individual local authorities and landlords to refine the landlord registration regime to identify new means of targeting tougher enforcement action against the worst landlords in the sector. The introduction of this statutory guidance forms part of this work stream, and should also help local authorities to deliver their regulatory functions in line with the Scottish Regulators' Strategic Code of Practice.

Consultation

Within Government

The Scottish Government consulted with relevant Scottish Government Directorates including Housing, Local Government, Economic and Legal advisors in order to inform the Business Regulatory Impact Assessment process.

Public

This guidance was not subject to formal public consultation. However, it has been subject to two separate periods of targeted consultation with key stakeholders, including Shelter; Association of Local Authority Chief Housing Officers; Convention of Scottish Local Authorities; and Police Scotland

Business

Other stakeholders involved in the development of this guidance include the Scottish Association of Landlords; local authorities and individual landlords. Further information on these discussions is included in the Scottish Firms Impact assessment section of the BRIA.

Options

- Option 1: Do nothing
- Option 2: Use existing powers to introduce statutory guidance for local authorities

Sectors and groups affected

The categories of people affected by these policies are:

- *Local authorities* – the guidance will highlight the powers and duties that local authorities have in relation to the administration and enforcement of landlord registration. The greatest impact will be in local authority areas where there is little current enforcement.
- *Private landlords* – there should be no negative effects for responsible landlords. The intention is that local authorities will use the guidance to take tougher targeted enforcement against non-compliant landlords.
- *Tenants and wider communities* – will benefit from improved standards of property management and condition in the private rented sector.

Benefits

Option 1: Do nothing

The 2009 non-statutory guidance advises that landlord registration should be delivered with as light a regulatory touch as possible, with a focus on finding unregistered landlords. It does not reflect the revised purpose of landlord registration as set out in the Scottish Government's Strategy for the Private Rented Sector. Nor does it take account of the legislative changes relating to landlord registration since 2009. Doing nothing would mean that local authorities rely on outdated guidance.

Option 2: Use existing powers to introduce statutory guidance for local authorities

This option allows the guidance to be updated to reflect the Scottish Government's Strategy for the Private Rented Sector, which places much greater emphasis on tougher enforcement against landlords who operate outside the law. Issuing new statutory guidance means that local authorities must have regard to it.

The intention is that this will lead to better compliance; more consistent enforcement; a level playing field for responsible landlords who meet their legal duties; improved standards of property management and property condition in the sector; and better outcomes for tenants and wider communities that suffer the negative impacts of poor quality privately rented housing.

Costs

Option 1: Do nothing

There are no direct costs to Option 1. However, there may be longer terms costs in terms of the impact on legitimate landlord businesses if non-compliant landlords continue to be allowed to operate outside the law without fear of effective enforcement action being taken against them.

Option 2: Use existing powers to introduce statutory guidance for local authorities

Costs for local authorities

The guidance does not impose any new duties on local authorities. It highlights how they can use existing powers to delivery current regulatory functions.

It is not clear the guidance will result in any additional costs for local authorities. However, if as a result of introducing the guidance, there is evidence that additional funds are required to support work required to deal with applications for registration this could be considered as part of a review of the current fees structure. Any such review of fees would need to consider that fees must be set at a level that is proportionate to the cost of the process dealt with and that enforcement costs should not be assimilated with the application fee.

Costs for Scottish Government

There is will be minimal cost to the Scottish Government for the costs of publishing the guidance.

Costs for Landlords

There should be no new costs for landlords who comply with landlord registration requirements.

Scottish Firms Impact Test

Many private landlords are small businesses (although some do not function as businesses, e.g. letting out a family home while working abroad). Most landlords are individuals, couples or families, with 1 or 2 properties per landlord.

The proposed policy does not introduce any new duties on landlords. Any negative business impacts would be felt by those landlords who do not act responsibly and who are then the subject of enforcement action by the local authority. For example, where an additional fee for a late application or rent penalty notice is applied by a local authority, or where a landlord is prosecuted or disqualified from operating as a landlord.

There was general consensus amongst landlord representatives and individual landlords (of single and multiple properties) who took part in this assessment that the guidance should have a positive impact on both small and larger businesses by encouraging local authorities to take action against landlords who do not meet their legal requirements. Responsible landlords wanted to see those who do not provide good quality housing to be dealt with more effectively.

Competition Assessment

Full consideration has been given to the Competition and Markets Authority Competition Assessment criteria. The Scottish Government is satisfied that there is

no competition aspect to these proposals. The results from the Competition filter questions below confirm these assumptions.

Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes? No

Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers? No

Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in? No

Will the proposal reduce suppliers' incentives to compete vigorously? No

The legal duty to comply with registration requirements applies to all landlords of relevant tenancies and so it is not anticipated that the ability of any particular group of landlords to compete in the market would be adversely affected. Better enforcement of registration requirements would help to address the unfair advantage that unscrupulous landlords have in the market place by operating outside the law.

Test run of business forms

The options examined in this BRIA do not create any new business forms.

Legal Aid Impact Test

During 2016, there were 627 decisions about which a landlord may appeal. According to data provided by local authorities no appeals were received. The Scottish Legal Aid Board advised that unless the numbers of appeals that are likely to be eligible for assistance is high following introduction of the guidance then this should not be problematic in terms of expenditure.

Enforcement, sanctions and monitoring

The options covered by this BRIA do not introduce any new offences or sanctions. Evidence of increased compliance and enforcement activity will be monitored via the collection of statistics from local authorities.

Implementation and delivery plan

The provisions requiring local authorities to have regard to any guidance issued by local authorities on the discharge of landlord registration functions are already in force. New guidance will be issued by Summer 2017.

Post-implementation review

The impact of new guidance will be monitored by the Scottish Government as part of the on-going performance monitoring process.

Summary and recommendation

Option 1 means that local authorities would continue to be advised by outdated guidance that does not reflect the purpose of landlord registration. This approach is not recommended.

Option 2 is recommended as we believe that improved guidance for local authorities will help to further improve outcomes for those that live and work in the PRS, as well as the wider community. The guidance has a greater focus on how local authorities can make more effective use of the powers available to them, to tackle instances of poor landlord practice.

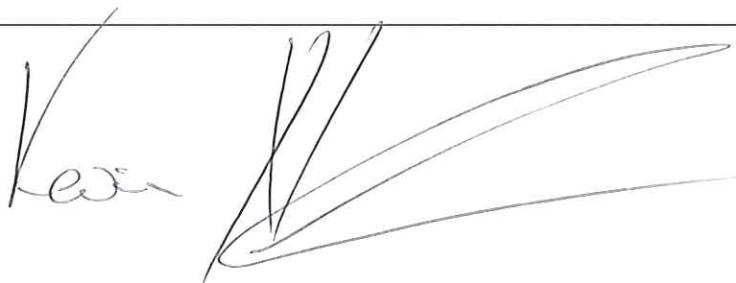
Summary costs and benefits table

Options	Benefits	Costs
Option 1 Do nothing	There are no clear benefits from implementation of this option	No direct costs Longer term negative impacts for compliant landlords
Option 2 Use existing powers to introduce statutory guidance for local authorities	Local authorities will be required to have regard to the guidance which will emphasise local authority powers and duties in relation to landlord registration. The guidance will promote good practice; drive increased consistency in terms of compliance and enforcement activity; and lead to improved standards in the private rented sector. The policy will support responsible landlords by helping local authorities to tackle the behaviour of those landlords who do not comply with their legal duties.	Scottish Government: Minimal one off publication costs. Local authorities: Any additional costs in connection with an application could be considered by a review of landlord registration fees. Landlords: No additional costs for compliant landlords

Declaration and publication

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

Signed:

A handwritten signature consisting of several slanted, curved lines forming a stylized name, likely "Kevin".

Date:

A handwritten date in the format DD/MM/YY, reading "9/8/17".

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Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-187-2 (web only)

Published by The Scottish Government, August 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS290126 (08/17)