

Letting Agent Register: Development of A Fee Structure

**Final Business and Regulatory
Impact Assessment (BRIA)**

January 2018



Scottish Government
Riaghaltas na h-Alba
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LETTING AGENT REGISTER: DEVELOPMENT OF A FEE STRUCTURE

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

Title of Proposal

1. The Housing (Scotland) Act 2014 (part four) sets out regulation of the letting agent industry in Scotland. Section 30(3) sets out that such an application to the register must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.
2. This BRIA examines the options that have been considered in relation to the development of a letting agent register fee structure and sets out the recommended approach based on industry engagement.

Purpose and intended effect

Background

3. The scale of the letting agent industry in Scotland has grown significantly in recent years, providing a range of property management services to landlords in the sector. The industry is a varied one including solicitors, estate agents, surveyors and accommodation agencies.
4. Whilst there is no definitive count on the number of letting agents operating in Scotland, there are several alternative data sources which the Scottish Government has used to arrive at an estimated figure of 1,693¹ letting agent businesses in Scotland, involved in around 150,000 lettings in Scotland per year².
5. 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.
6. Many letting agents in Scotland operate in a professional manner, complying with voluntary Codes of Practice; and are committed to undertaking professional training to ensure 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. Propertymark

¹ 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)

² A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland – Scottish Government (2013)

(formerly National Federation of Property Professionals, Landlord Accreditation Scotland, Chartered Institute of Housing (CIH) – amongst others – provide training on residential letting to those committed to improving their services and updating their knowledge and skills.

7. 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 letting agents.

8. This BRIA considers the business impact of a fee being charged to all agents joining the letting agent register. It builds upon the BRIA undertaken as part of the [Housing \(Scotland\) Bill 2013](#) and sits alongside the BRIAs undertaken on the [Letting Agent Code of Practice](#) and the [Registration Regulations](#).

Objective

9. Overall, the objective is to help increase - 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 and Property Chamber of the First-tier Tribunal.

10. 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, in order to support monitoring of compliance and enforcement.

11. Specifically, the letting agent register will help ensure those carrying out letting agency work are fit and proper persons to do so and have met a minimum standard of training.

12. This policy contributes to the Scottish Government’s work on improving standards and quality within the Scottish private rented sector. 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 a better quality of life.

Rationale for Government intervention

13. The 2014 Act set out that Scottish Ministers must establish and maintain a register of letting agents and that an application to join the register must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

14. The Financial Memorandum (FM) which accompanied the Housing (Scotland) Act 2014, set out that a letting agent registration database would be established and administered by the Scottish Government, similar to Landlord Registration and Property Factor Registration.

15. The FM went on to state that the ability to set a fee should result in the letting agent registration system being self-financing with neutral costs to the Scottish Government. Initial registration fee estimates of £250 per letting agent, for a 3 year period, were set out in the FM.

16. It has been estimated that the running costs for the letting agent register, over a three year period, are expected to be in the region of £1,293,322. A large proportion of these costs arise in relation to staff costs for the on-going management of the register and wider enforcement activities.

17. However, a recent ruling by the European Union Court of Justice, regarding the Provision of Services Regulations 2009 (S.I. 2009/2999), means that a fully self-financing system (as set out in the FM), is no longer possible. The ruling stated that *“under the Services Directive, applicants for a licence cannot be required to pay costs relating to the management and enforcement of the licensing regime when submitting their application”*. In practice, this means that only the costs relating to the application and determination process can be recovered through a fee charged to an applicant.

18. Taking this into account, it has been estimated that the costs the Scottish Government is able to recover through a fee, over a 3 year period, totals £873,994. This amounts to 67% cost recovery and results in a cost to the Scottish Government of around £419,328.

Consultation

Within Government

19. We have consulted with a number of relevant Scottish Government Directorates including: Housing, Communities Analytical and Legal colleagues, in order to inform the development of the letting agent registration fee structure.

Public Consultation

20. Whilst there is no statutory requirement to conduct a full public consultation on the development of a fee structure for the letting agent register, the Scottish Government considered it appropriate to engage directly with letting agent businesses and with groups and bodies that represent the interests of those who will

be directly affected by the implementation of a fee.

21. Discussions have taken place with:

- Shelter Scotland;
- Crisis;
- Living Rent; and
- Chartered Institute of Housing.

Business

22. The Scottish Government has continued to engage with a range of key industry stakeholders, as policy on the structure of a fee to accompany letting agent registration has developed.

23. Discussions have taken place with:

- ARLA Propertymark;
- Council of Letting Agents (CLA);
- Scottish Association of Landlords (SAL);
- Scottish Land and Estates (SLE);
- The Royal Institute of Chartered Surveyors (RICS);
- Let Scotland; and
- The Law Society.

24. As well as undertaking on-going discussions with key representative bodies, the Scottish Government has also sought the views of 5 small, individual letting agent businesses.

Options

25. Three options have been considered during the development of a letting agent fee structure:

- **Option One:** Introduce a tiered fee structure, with fees being determined by the size of a letting agents portfolio.
- **Option Two:** Introduce a flat rate registration fee, applicable to all letting agents irrespective of their size or scale.
- **Option Three:** Introduce a tiered fee structure, with fees being determined by the number of offices a letting agent operates from.

A fourth option of taking no action in relation to the development of a fee structure for the letting agent register will also be examined within this Business Regulatory Impact Assessment.

OPTION ONE

Introduce a tiered fee structure, with fees being determined by the size of a letting agents portfolio.

Overview

26. Option one would see a fee band approach adopted that would be based on the size of a letting agents portfolio of properties that they manage, as follows:

Fee Band	Estimated No of Agents	Portfolio Size	Fee Per Agent (3 yearly)
1	1,247	50 or less	£375
2	446	51 or more	£915

27. Of the 1693 letting agent businesses estimated to be currently operating, the majority (1247³) we believe operate with a small portfolio of 50 properties or less. This would mean that the registration fee costs for the majority of letting agent businesses (around 74%) would fall within the lower fee band.

28. However, portfolio size does not affect the costs of administering the application process and therefore is not considered to be feasible within the parameters of the EU Services Directive.

Sectors and groups affected

29. Letting agent businesses and landlords.

Benefits

30. During the development of the Housing (Scotland) Bill 2013, the then Minister for Housing and Welfare requested that careful consideration be given to ways in which the impact of letting agent regulation on small businesses, can be mitigated. Given that 74% of letting agent businesses would fall within the lower fee band, resulting in a 3 year payment of £375, this option was seen to effectively mitigate that wider impact.

31. Discussions with stakeholders suggested that we consider a fee approach based on an agent's portfolio size. It was felt that given the wider costs that small businesses will have to meet in order to be registered (for example, complying with training requirements, Continuous Professional Development costs, Professional Indemnity costs, Client Money Protection costs etc), that such an approach would enable the majority of agents to pay a lower fee level.

32. It was felt that larger scale letting agents are more likely to already adhere to the requirements set out in the legislation of letting agents and are therefore more able to pay a higher fee level.

³ Estimation based on data extracted from the Scottish Government's Landlord Registration Database

Costs

33. As around 74% of letting agents are expected to fall within the lower fee band of £375 for a 3 year period of registration, there was a general consensus from stakeholders that this was a manageable cost to small businesses. For example, an agent managing a portfolio of 15 properties would see a cost of £8.33 per property per year, which the agent could choose to pass on to landlords in the management fee that they charge.

34. For the remaining agents (26%) who fall within the higher fee band of £915 for a 3 year registration period, it is expected that such a fee will be manageable. For example, an agent managing a portfolio of 55 properties would see a cost of £5.54 per property per year.

OPTION TWO:

Introduce a flat rate registration fee, applicable to all letting agents irrespective of their size or scale.

Overview

35. Option two would see a flat rate fee of **£516** introduced for a 3 year period. Such an amount would be applicable to all letting agents.

36. In addition, where a letting agent fails to meet specified deadlines to register or re-register, it is intended that a late application fee of £270 will be charged on top of the £516. The £270 reflects the estimated costs of the additional checks that will be undertaken in determining an application submitted late. This fee is based on the additional work that the staff administering the register will have to undertake in order to ascertain why the application is late and to examine any wider concerns in relation to potential breaches of letting agent legislation:

Staff Resource	Time Required	Cost
Administrator	1 day	£94
Manager	0.5 days	£78
Senior Manager	0.5 days	£100

Sectors and groups affected

37. Letting agent businesses and landlords.

Benefits

38. Implementation of option two would result in the recoverable registration costs being spread evenly amongst those letting agent businesses applying to the register of letting agents.

Costs

39. Whilst initial industry feedback was that the proposed flat rate fee of £516 per agent was not unreasonable for a 3 year registration period, there was broad agreement that such a fee – combined with other costs associated with letting agent regulation – would be unfair to small businesses.

40. Some stakeholders raised concerns that some small agents may struggle with the additional costs of regulation and that it could also be a barrier to others considering entering the market. However, others indicated that costs associated with registration should be manageable within sustainable business models and are important in raising standards across the letting industry.

41. One of the businesses consulted as part of this impact assessment had a small portfolio of only 7 properties and indicated that a fee level of around £516 would be a 'just about manageable' cost, however should the fee be set any higher, than it would be difficult for the business to continue.

42. Applying the flat rate fee of £516 to agents with a portfolio size of 15 properties and 55 properties, the cost per property would be:

- Small agent (15 properties) = £11.46 per property per year.
- Larger agent (55 properties) = £3.12 per property per year.

43. As can be seen from the costs above, option two would have a disproportionate impact on small business.

OPTION THREE:

Introduce a tiered fee structure, with fees being determined by the number of offices a letting agent operates from.

Overview

44. Option three would see a fee band approach adopted that would be based on the number of offices a business operates from, where letting agency work is carried out.

45. Where a business operates from more than one office, we anticipate that additional registration work would be required in terms of:

- confirming training requirements are being met;
- the likelihood that more than one person will be subject to the Fit and Proper Person Test; and
- more than one office is likely to increase the number of persons who must be named in the application because they are directly concerned with the control or governance of the applicant's letting agency work – again an indicator of a more complex application to register.

46. An increased number of offices is likely to increase the amount of work processing an application, and thus the costs. It is therefore felt that this approach would be a fairer way of apportioning the costs.

47. Taking these factors into account the following fee structure is proposed:

Fee Band	Estimated No of Agents	Number of Offices	Fee Per Agent (3 yearly)
1	1439	1	£495
2	169	2-3	£595
3	85	4 or more	£700

48. In addition, where a letting agent fails to meet specified deadlines to register or re-register, it is intended that a late application fee of £270 will be charged on top of the normal application fee (£495, £595 or £700). The £270 reflects the estimated costs of the additional checks that will be undertaken in determining an application submitted late.

49. Whilst there is little data available on the number of offices each of the estimated 1693 agents operate from, we are able to estimate that the vast majority (85%⁴) operate from only one office.

Sectors and groups affected

50. Letting agents and landlords.

Benefits

51. Introducing a fee dependent upon the number of offices that a letting agent operates from, was seen by stakeholders as another approach that could effectively mitigate the wider impact of letting agent legislation on small businesses, given that an estimated 85% will fall within the lowest fee band.

52. The highest fee band applicable within this option (£700 for a 3 year period) is also lower than the higher fee band set out within option one.

Costs

53. As around 85% of letting agents are expected to fall within the lowest fee band of £495 for a 3 year period of registration, there was a general consensus from stakeholders that this was a manageable cost to small businesses. For example, an agent managing a small portfolio of 15 properties would see a cost of £11 per property per year, which the agent could choose to pass on to landlords in the management fee that they charge.

54. However, we expect the majority of agents with 1 office to be managing between 50 (£3.30 per property per year) and 250 (£0.66 per property per year) properties. [ARLA Propertymark's Private Rented Sector](#) report indicated that the

⁴ Based on data provided by The Property Ombudsman

number of properties managed per member branch was 192. Stock was highest in Scotland where agents managed 285 on average per branch. For the small minority (5%) of agents falling within the highest fee band of £700 for a 3 year registration period, it is expected that such a fee will be manageable. For example, an agent with 4 or more offices managing a portfolio of 250 properties would see a cost of £0.93 per property per year.

OPTION FOUR:

Introduce no fee structure in relation to letting agent registration.

Overview

55. Implementation of option four would result in no fee being charged to letting agents for joining the letting agent register.

Sectors and groups affected

56. Letting agents and landlords.

Benefits

57. Given the wider costs associated with regulation of the letting agent industry and the impact that this may have on some businesses who, until now, have not offered Client Money Protection, Professional Indemnity Insurance or undertaken any form of Continuous Professional Development – this option may be seen as the best approach to ensure that such agents do not go out of business.

Costs

58. The Financial Memorandum which accompanied the Housing (Scotland) Bill 2014, set out that the letting agent register should be self-financing and with neutral costs to the Scottish Government. Given the European Court ruling - which clarified that only the costs relating to the application and determination process can be recovered through a fee charged to an applicant – the other options outlined in this BRIA would only result in cost recovery of around 67%.

59. Should no fee be charged in relation to registration or renewal, then the Scottish Government would incur the full cost– an estimated cost to the public purse of around £1.2 million. This approach would not be in line with the Scottish Public Finance Manual.

Scottish Firms Impact Test

60. As part of our engagement with the letting agent industry, the Scottish Government conducted meetings with a number of key stakeholders. This enabled us to seek feedback on each of the fee options being considered and to understand the impact, benefits or difficulties each option could present to letting agent businesses in Scotland.

61. We asked:

- What will be the impact of the proposed registration fee to your business/businesses you represent?
- Given the background as to who the fee level was arrived at, do you perceive this to be a fair charge? If not, why not?
- What do you believe the impact will be on small scale letting agent businesses? How could this be mitigated?
- Under the 2014 Act, Scottish Ministers are permitted to charge a fee (as they determine) in certain circumstances (such as applying to register, informing of a change of information etc). Whilst it is intended, at this stage, that fees will only apply upon initial registration – what are your thoughts on the introduction of other fees, such as a late registration fee?
- What are your thoughts on proposals to undertake a review of all fees and charges?

We engaged with a total of 7 businesses and 7 letting agent industry representative bodies and their views helped inform the recommended fee approach that will be taken forward by the Scottish Government.

Competition Assessment

62. The introduction of a fee for letting agent registration will affect letting agent businesses and potentially private landlords. We do not expect that the changes will distort any competition in the affected markets. The wider policy intention of letting agent regulation 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.

63. Full consideration has been given to the Office of Fair Trading's Competition Assessment criteria in relation to the introduction of a letting agent registration fee.

64. The exact impact of the registration application fee will depend on the current business practices of a lettings business. Given that the registration fee for an agent managing a small portfolio of 15 properties would see a cost of £11 per property per year (91 pence per month per property) we think that this cost is manageable for those with a sustainable business model. In addition, the introduction of letting agent regulation will help to level the playing field for those operating in the industry ensuring that all business comply with their legal requirements and operate to a minimum standard. We therefore do not envisage that it will:

- directly limit the number or range of suppliers;
- indirectly limit the number or range of supplies;
- limit the ability of suppliers to compete; or
- reduce suppliers' incentives to compete vigorously.

Test run of business forms

65. 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

66. It is not expected that the introduction of a fee structure for letting agent registration will result in any increase in expenditure on the legal aid fund.

Enforcement, sanctions and monitoring

67. The Scottish Government will administer the register of letting agents and will be responsible for monitoring compliance and for certain aspects of enforcement. Section 31 of the Housing (Scotland) Act 2014 (*Offence of providing false information in an application*), makes it an offence 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 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 Housing and Property Chamber will be responsible for hearing appeals against Scottish Ministers decisions to refuse or revoke registration.

Implementation and delivery plan

68. The letting agent register is due to open for applications from 31 January 2018. Letting agents will have until 1 October 2018 to make an application for registration, providing sufficient time to meet the requirements of letting agent registration and to budget for the costs associated with it including the registration fee that will apply.

Post implementation review

69. The Scottish Government recognises that there is very limited data available on the letting agent industry at present. It is therefore proposed that a full review of the letting agent fee and charges, be undertaken after the register has been in operation for 18 months. This will enable sufficient time for data to be gathered on the scale of the industry in Scotland and allow Ministers to consider whether the fee level and charges set are appropriate.

Summary and recommendation

70. Based on evidence gathered during the stakeholder engagement exercise, the Scottish Government will introduce a letting agent fee structure based on the number of offices a letting agent business operates (option three):

Fee Band	Estimated No of Agents	Number of Offices	Fee Per Agent (3 yearly)
1	1439	1	£495
2	169	2-3	£595
3	85	4 or more	£700

71. For the purposes of the letting agent registration application fee, an 'office' is defined as premises where the administration associated with letting agency work is carried out. Where a letting agent business is internet based or a single letting agent operates a business from their home address, then this would count as one office. Where a new letting agency business registers, but has yet to begin trading, this would count as one office.

72. Engagement with the sector has indicated strong support amongst some key stakeholders for a fee structure based on the number of offices that a business operates from. It is seen as being the fairest approach and one which helps mitigate the wider impact of letting agent regulation on small businesses.

Summary of cost and benefits table

Option	Total benefit per annum:	Total costs per annum:
<p>Option One: Introduce a tiered fee structure, with fees being determined by the size of a letting agent's portfolio.</p> <p>In addition, where a letting agent fails to meet specified deadlines to register or re-register, it is intended that a late application fee of £270 will be charged on top of the £516.</p>	<p>-</p> <ul style="list-style-type: none"> • Small letting agent businesses would pay a smaller fee amount, helping to mitigate the financial impact of complying with letting agent regulation. • Such a fee structure would allow for 67% cost recovery to the public purse. 	<ul style="list-style-type: none"> • Letting agent businesses with a portfolio of 50 properties or less would be required to pay a fee of £375 for a 3 year registration period. It is expected that around 74% of agents would fall into this fee tier. • Letting agent businesses with a portfolio of 51 properties or more would be required to pay a fee of £915 for a 3 year registration period. • Developing a fee structure based on the size of an agent's portfolio is potentially in contravention of the Provision of Services Regulations 2009 (S.I. 2009/2999).
<p>Option Two: Introduce a flat rate registration fee, applicable to all letting agents irrespective of their size or scale.</p> <p>In addition, where a letting agent fails to meet specified deadlines to register or re-register, it is intended that a late application fee of £270 will be charged on top of the £516.</p>	<ul style="list-style-type: none"> • All letting agent businesses would pay the same fee. 	<ul style="list-style-type: none"> • All letting agent businesses would be required to pay a fee of £516 for a 3 year registration period. Such a fee structure is seen as being unfair to small businesses, who are unable to absorb the costs of regulation in a way that large scale letting agent businesses are. • The level of the late application fee reflects the estimated costs of the additional checks that will be undertaken in determining an application submitted late.

<p>Option Three: Introduce a tiered fee structure, with fees being determined by the number of offices a letting agent operates from.</p> <p>In addition, where a letting agent fails to meet specified deadlines to register or re-register, it is intended that a late application fee of £270 will be charged on top of the normal application fee (£495, £595 or £700).</p>	<ul style="list-style-type: none"> • Small letting agent businesses would pay a lower fee t, helping to mitigate the financial impact of complying with letting agent regulation. • Such a fee structure would allow for 67% cost recovery to the public purse. 	<ul style="list-style-type: none"> • Letting agent businesses operating from only one office would be required to pay a fee of £495 for a 3 year registration period. 85% of businesses are expected to fall into this lowest fee tier. • Letting agent businesses operating from between 2 and 3 offices would be required to pay a fee of £595 for a 3 year registration period. 10% of businesses are expected to fall into this middle fee tier. • Letting agent businesses operating from 4 or more offices would be required to pay a fee of £700 for a 3 year registration period. Only 5% of businesses are expected to fall into the highest fee bracket. • The level of the late application fee reflects the estimated costs of the additional checks that will be undertaken in determining an application submitted late.
<p>Option Four: Introduce no fee structure in relation to letting agent registration.</p>	<ul style="list-style-type: none"> • No further financial impact to letting agents in complying with this aspect of letting agent regulation. 	<ul style="list-style-type: none"> • This would result in no ability to recover the costs to the public purse in administering the letting agent register. • The Scottish Government would be required to fund an estimated £1.2m for the first 3 year registration period.

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:

Kevin Stewart MSP, Minister for Local Government and Housing

Date:

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