

# **Regulation of Letting Agents Monitoring Compliance and Enforcement Framework**

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## Introduction

1. This document sets out the Scottish Ministers' approach to monitoring compliance and enforcement of those persons undertaking letting agency work. It makes clear the steps that Scottish Ministers will take to monitor the compliance:
  - of those required to apply to join the Register of Letting Agents;
  - when determining an application to join the Register; and
  - of registered letting agents.
2. It also sets out the action the Scottish Ministers may take if further action to enforce the requirements is necessary.
3. Effective monitoring of compliance and enforcement is an important aspect of the Scottish Government's Private Rented Sector Strategy and will help to achieve improved standards of practice and ensure that all letting agents comply with their responsibilities. This will enable letting agents to compete on a fair basis, improve the reputation of the industry and instil greater consumer confidence in using a letting agent.

## Principles and objectives

### *Principles*

4. Our approach to monitoring compliance and enforcement is founded upon the Scottish Government's five principles of Better Regulation. The principles state that any regulation should be:
  - **Transparent** - be open and keep regulations (and how they are implemented) simple and user-friendly.
  - **Accountable** – be able to justify decisions and be subject to public scrutiny.
  - **Proportionate** – only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
  - **Consistent** – rules and standards must be joined up and implemented fairly.
  - **Targeted** – regulation should be focused on the problem and minimise the side effects.

### *Objectives*

5. This document sets out a framework for monitoring the compliance of those businesses undertaking letting agency work. Our objectives are to:

- encourage and support compliance amongst those undertaking letting agency work;
- provide clear information to those undertaking letting agency work about how Scottish Ministers will assess their fit and proper status, monitor compliance and support the enforcement of regulation; and
- reduce duplication and minimise unnecessary burden upon registered letting agents by targeting compliance activity on those assessed as being at greater risk of non-compliance.

## Legal Framework

6. Part 4 of the Housing (Scotland) Act 2014 (the Act) introduces a framework for the regulation of those undertaking letting agency work in Scotland.

7. Letting agency work is defined under section 61 of the Act as:

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

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

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

8. Those who fall under this definition will be required to apply to join a mandatory register of letting agents and comply with a statutory [Letting Agent Code of Practice](#). To be admitted to the Register, an applicant will need to pass a fit and proper person test and meet specific training requirements set by the Scottish Ministers. An applicant can be an individual, company, partnership or a body with some other legal status.

### *Monitoring compliance*

9. In order to monitor compliance with the requirements of the Act, the Act also gives the Scottish Ministers powers to obtain information and of inspection.

10. Section 52 of the Act enables Ministers to obtain information. This will allow the Scottish Ministers to require a person who appears to be a letting agent to provide information specified by Ministers. This will allow Ministers to gather information to assess whether a business is complying with the requirement to register and, once registered, to assess their compliance with the Code of Practice.

11. Section 53 enables a person authorised by the Scottish Ministers to inspect premises (this includes any place, vehicle, vessel or moveable structure) which

appear to be being used for the purpose of carrying out letting agency work. This gives the authorised person the ability to:

- inspect any book, document, data or record and take copies of or extracts from it as well as taking possession of it for as long as is necessary; and
- require any person to give such information as is considered necessary and afford the authorised person such facilities and assistance considered necessary.

### *Enforcement and sanctions*

12. There are a number of ways to enforce the requirements in the Act with related sanctions. In summary these are:

- i. Letting Agent Code of Practice – Landlords, Tenants and the Scottish Ministers can apply to the First-tier Tribunal for Scotland (“the Tribunal”) for a determination on whether a letting agent has complied with the requirements of the Code of Practice. Where the Tribunal decides a letting agent has failed to comply, it must issue a letting agent enforcement order. This order sets out the steps the letting agent must take to rectify the failure. Failure to comply with an enforcement order is a criminal offence, liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000). The Tribunal is required to inform the Scottish Ministers of a letting agent’s failure to comply with an enforcement order and this may affect their status as a registered letting agent.
- ii. Registration – Refusing or revoking registration is one option open to the Scottish Ministers where a letting agent is not complying with the requirements of the Act or is no longer considered to be a fit and proper person. Undertaking letting agency work without registration is an offence under the Act liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding £50,000 or both. It is also an offence to use a letting agent registration number where there is no registration. A person found to have committed this offence is liable, on conviction, to a fine not exceeding level 3 on the standard scale (currently £1000). In addition, where a letting agent is refused registration or removed from the register, they will not be able to recover any costs or charges related to their letting agency work.
- iii. Information and inspection – It is a criminal offence to knowingly provide false information, or to fail to supply information that is required, in an application for registration. It is a criminal offence to obstruct a person in carrying out an inspection or fail to comply, without reasonable excuse, with any requirement made in relation to an inspection. A person convicted of doing so would be liable to a fine not exceeding level 3 on the standard scale (currently £1000).
- iv. Duty to inform: change of circumstances – A registered letting agent is required to inform those managing the Register of Letting Agents of a change in circumstances in relation to any of the information provided as part of the registration process. It is a criminal offence not to do so. A person who commits this offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000).

Where compliance cannot be achieved through alternative means and there is evidence indicating that a criminal offence has been committed, cases may be referred by the Police to the Crown Office and Procurator Fiscal Service (COPFS), to consider criminal proceedings.

## Key people involved in monitoring compliance

13. Monitoring the compliance of letting agents cannot be the responsibility of any one person or organisation. To be effective it requires collaboration between service users, letting agents, professional and industry membership bodies, housing rights organisations, voluntary redress schemes and relevant public bodies, such as local authorities, Police Scotland and the Scottish Ministers.

Scottish Ministers	Consumers	Partner Agencies	Other interested parties
<p>The Scottish Ministers are responsible for the operation of the register and will monitor the compliance of those applying to join the register and of registered letting agents.</p>	<p>Landlords and tenants play an important role in challenging non-compliance with the Letting Agent Code of Practice through the Tribunal. In addition, through use of the public register of letting agents, they will be in a good position to identify, and report, agents who are not complying with the requirement to register. While prospective tenants and landlords cannot take a case to the Tribunal, they will also be in a good position to provide Ministers with information to assist in targeting compliance monitoring.</p>	<p>Local authorities, for example in relation to their roles for landlord registration, HMO licensing and Trading Standards, as well as Police Scotland will be in a good position to help identify those who are not complying with the code of practice or with the registration requirements.</p>	<p>Professional and industry membership bodies, voluntary redress schemes, housing advice groups and letting agents themselves also have an important role to play in identifying those who are not complying with the code of practice or with the registration requirements.</p>

14. For this engagement and co-operation to work, the Scottish Ministers will look to develop a set of information sharing protocols and data sharing agreements with relevant organisations, for example Trading Standards, Local Authority Landlord

Registration Teams and the Police. These will set a framework for the sharing of information between the Scottish Ministers and relevant organisations to ensure that information is shared, processed and used appropriately and in line with Data Protection requirements.

15. We will also work with industry membership and professional bodies to encourage letting agents and those active within the industry to share information with the Scottish Ministers to help identify those who are not complying with the requirements.

## **Monitoring compliance**

16. The type and level of monitoring undertaken by Scottish Ministers will differ depending on whether assessing an applicant's compliance for admittance to the register, the continued compliance of a registered letting agent, or dealing with an unregistered business.

### Applicants (including those re-registering)

17. Section 32 of the 2014 Act requires the Scottish Ministers to admit an applicant to the register of letting agents where the applicant, and other relevant persons, is a fit and proper person to carry out letting agency work and has met such training requirements as the Scottish Ministers prescribe. The following sections aim to set out:

- the factors the Scottish Ministers will consider in determining whether a person is a fit and proper person to carry out letting agency work; and
- matters which might cause concern about a person's fit and proper status.

### *Fit and proper person test*

18. In determining whether an applicant, and any other relevant individuals, are fit and proper persons to be admitted to the Register of Letting Agents, the Scottish Ministers will take the following factors into account:

- i. unspent convictions relating to a variety of offences i.e. fraud, dishonesty, violence, drugs, firearms, sexual offences;
- ii. whether they have practiced unlawful discrimination on the grounds of any of the protected characteristics (Equality Act 2010);
- iii. contraventions of any law relating to housing, landlord and tenant law or debt; and
- iv. the extent to which they have complied with the Letting Agent Code of Practice or any requirement set out in Part 4 of the Act e.g. failed to comply with a letting agent enforcement order, unlawful use of registration number etc.

19. Information provided by third parties, such as trading standards, local authorities, the Tribunal or Police Scotland, will help to inform the assessment and in particular the extent to which the person being assessed has complied with the Code of Practice and the other requirements of the Act.

20. The Scottish Ministers may also consider information which would be included within a criminal conviction certificate where the Scottish Ministers have reasonable grounds to suspect that the information provided about any criminal convictions is inaccurate or has become so.
21. When determining whether an individual is a fit and proper person, the Scottish Ministers will take the full circumstances of the case into account, seeking further clarification from relevant parties to an application where required.
22. Matters that may cause serious concern about an individual's fit and proper status to undertake letting agency work include (this is not an exhaustive list):
- i. convictions of a serious nature or which call into question the honesty and integrity of the individual for example violence, sexual offences, fraud, money laundering, identity theft and tax-related offences;
  - ii. numerous letting agent enforcement orders or enforcement orders that relate to serious breaches of the Letting Agent Code of Practice, for example illegal eviction or mishandling of client money;
  - iii. non-compliance with a letting agent enforcement order without reasonable excuse, for example failure to pay compensation or undertake the steps required by the Tribunal;
  - iv. multiple or serious contraventions of any housing law, for example being found to have illegally evicted a tenant;
  - v. failure to disclose convictions or any other relevant matters; and
  - vi. adverse finding, or pending disciplinary hearing or investigation, or expulsion or unfulfilled sanctions/disciplinary action by another regulator professional body or voluntary redress scheme either in Scotland or in another jurisdiction.

#### *Training Requirements*

23. Applicants to the register of letting agents will be required to meet [training requirements](#) prescribed by the Scottish Ministers through [The Letting Agent Registration \(Scotland\) Regulations 2016](#). Applicants will be asked to provide information to evidence that these requirements have been met as part of the application process.

#### *Registered Agents*

24. In line with the principles of better regulation, the Scottish Ministers will target our monitoring and compliance activity on those who are assessed as being at a greater risk of non-compliance.

25. To do this, the Scottish Ministers will use the information gathered during initial registration to place registered letting agents into one of three monitoring compliance categories that relate to the level of compliance activity the Scottish Ministers will undertake for their lettings business.

	Category 1	Category 2	Category 3
Level of monitoring	Normal level of monitoring required.	Some additional monitoring required.	Enhanced level of monitoring required.

26. In determining the level of monitoring that will be undertaken in relation to a particular agent, the Scottish Ministers will take into account the following factors:

- i. information provided during the application process such as any adverse judgements, convictions or an enforcement order from the Tribunal;
- ii. membership of a professional or industry body;
- iii. information provided through a third party as part of our information sharing protocol arrangements; and
- iv. published information online and within property portals and adverts.

27. A registered agent's category can change during the registration period should the circumstances require – for example, if a letting agent enforcement order is issued and or credible information is received from a third party or if they join a professional body.

28. The Scottish Ministers will not usually take consumer complaints against a letting agent into account if they have not first followed the complaints process. Consumer complaints about a letting agent's compliance with the Code of Practice should be made in the first instance to the letting agent in question following their written complaints procedure. This will give the agent the opportunity to consider the complaint and rectify any breach. Where the complaint is not resolved, the landlord or tenants can seek a determination from the Tribunal. However, there may be circumstances, either because of the serious nature of the complaint or the significant number of complaints relating to a particular registered agent, that lead Ministers to investigate these issues further.

29. The Scottish Ministers anticipate that most letting agents will fall within the two lower categories, with only a minority of letting agents requiring an enhanced level of monitoring.

30. Some letting agents have voluntarily joined a relevant membership body, for example, Association of Residential Letting Agents (ARLA) or Royal Institution of Chartered Surveyors (RICS). To comply with the requirements of those organisations, they undergo annual monitoring of specific aspects of their activities including how they handle client money and an annual accounting report, demonstrating they hold client money protection and professional indemnity insurance. In recognition of this work, the lower risk the members of these organisations pose and to avoid unnecessary duplication, the Scottish Ministers will use this existing monitoring as assurance that these letting businesses continue to be fit and proper persons to undertake letting agency work unless there is evidence that suggests greater scrutiny is needed.



31. The Scottish Ministers will develop information sharing agreements with these organisations, and any other similar bodies, to ensure any concerns they identify about one of their members are brought to the attention of the Scottish Ministers, so they can be appropriately considered and, where necessary, addressed.

*Type of monitoring*

32. There is a variety of types of monitoring that can be undertaken to assess compliance with the Code and the requirements of Part 4 of the 2014 Act. These may include:

- i. reviewing published information, for example on their website or on property portals;
- ii. undertaking a mystery shopping exercise;
- iii. using the power to obtain information, for example by requesting specific policies and procedures; and
- iv. making use of the powers of inspection through compliance visits.

33. What monitoring methods are used will depend on the level of monitoring required, whether an agent is a member of a professional or industry body that undertakes annual monitoring and whether any specific concerns have been identified or brought to the attention of Scottish Ministers. For illustrative purposes the table below sets out examples of the type of activity that may be undertaken based on the level of monitoring required for those not members of a relevant industry/membership body (see also paragraph 30 and 31).

	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
<b>Level of monitoring</b>	Normal level of monitoring required.	Some additional monitoring required.	Enhanced level of monitoring required.
<b>Type of monitoring</b>	Random sampling of agents within this category. For example, reviewing published information and the power to obtain information in relation to thematic issues identified as areas of concern e.g. complaints, repairs, handling client money.	Specific monitoring of each agent within this category. For example, reviewing published information, tailored use of the power to obtain information (e.g. reviewing their terms of business, policies and procedures and client accounts) and mystery shopping.	For each agent within this category. Tailored use of power to obtain information and compliance visits (where necessary, these may be unannounced).

34. The person authorised by the Scottish Ministers to undertake an inspection will depend on the reason for the compliance visit. The Scottish Ministers may involve suitably qualified professionals or industry experts to undertake, or be a part of, any inspection. For example making use of a chartered accountant to inspect an agent's client accounts and accounting procedures. Depending on the

circumstances, the Scottish Ministers may also seek to involve any other relevant authorities, for example Trading Standards or Police Scotland.

### Unregistered businesses

35. The Scottish Ministers are keen to encourage compliance with the requirements of the 2014 Act. A key aspect of this will be identifying unregistered letting agents through:

- i. reviewing online portals where property is advertised;
- ii. public reporting; and
- iii. third party information, for example, from local authorities, trading standards or Police Scotland.

36. Where an unregistered business is identified, the Scottish Ministers will, where appropriate, work with other relevant authorities (for example the Local Authority and Trading Standards) to understand the full circumstances of the case.

37. Scottish Ministers will then write to the unregistered business to:

- i. inform them of the requirement for those persons undertaking letting agency work to register;
- ii. inform them that it is a criminal offence to operate without registration and that they should not be carrying out any such work until they are registered; and
- iii. encourage them to apply if the work they are undertaking falls within the scope of the Act.

38. Where no application is forthcoming, and depending on the individual circumstances, the Scottish Ministers may use their powers to obtain information and of inspection (see also paragraph 34) to gather further information and evidence about their business activities. This will help to form the foundation of any future enforcement action.

39. Unregistered businesses who undertake letting agency work will be subject on conviction to a fine of up to £50,000, up to 6 months imprisonment or both.

## **Persons involved in enforcement**

40. There are a variety of people and organisations involved in the enforcement of letting agent regulation. This includes:

- i. **Consumers (landlords and tenants)** – landlords and tenants can seek redress through the Tribunal where they believe a letting agent has failed to comply with the Letting Agent Code of Practice.
- ii. **The Tribunal** (Housing and Property Chamber)– This tribunal is the enforcement body for the Letting Agent Code of Practice and the appeal body for agents refused entry to or removed from the Register of Letting agents.

- iii. **Scottish Ministers** – Ministers have responsibility for administering the register of letting agents and can refuse or remove an agent who is not, or is no longer, a fit and proper person to undertake letting agency work.
- iv. **Police Scotland, Crown Office and Procurator Fiscal Service** – The Police have a role in investigating and reporting criminal offences under the 2014 Act. Where there is evidence indicating that a criminal offence has been committed cases may be referred to the Crown Office and Procurator Fiscal Service (COPFS), to consider criminal proceedings.
- v. **Local authorities, trading standards** – While local authorities and trading standards do not have a direct role in enforcing letting agent regulation, they do have an interest through their roles in relation to landlord registration, Houses of Multiple Occupation licensing and consumer protection.
- vi. **Professional and membership bodies** – In the same way as local authorities and trading standards have an interest in the enforcement of letting agent regulation, professional, membership bodies and redress schemes will also have an interest in any failure to comply of their members.

## Enforcement

41. The Scottish Ministers are committed to the effective enforcement of letting agent regulation. The action that will be taken by the Scottish Ministers, in conjunction with other relevant authorities, will depend on a number of factors:

- the individual circumstances of the case;
- whether the agent is a member of an accreditation body or redress scheme;
- who the responsible body is for enforcing the particular part of the 2014 Act;
- whether the letting agent is an applicant; a registered agent or an unregistered business, and
- the type of enforcement action available to the Scottish Ministers or the responsible authority (for example the Police or Trading Standards).

42. The main enforcement action open to the Scottish Ministers, is the refusal or removal of letting agent registration. The Scottish Ministers will take this action where the person in question is found not to be, or no longer is, a fit and proper person to undertake letting agency work. This will have serious consequences for any letting agency; preventing them from undertaking letting agency work in the future. Continuing to do so is a criminal offence, liable on conviction of up to a £50,000 fine, up to 6 months in prison or both.

43. In determining whether to refuse or remove registration, the Scottish Ministers will consider the proportionality of this action based on the seriousness and extent of the non-compliance. Where possible, the Scottish Ministers will seek to work with letting agents to support their compliance with the requirements of the Act. Refusal or removal of registration will be a last resort.

### Applicants

44. Where the Scottish Ministers identify concerns regarding an application to join the register of letting agents, they will in the first instance seek to engage with the applicant to, where possible, resolve these concerns.
45. Where this is not possible and the Scottish Ministers think that an applicant is not a fit and proper person to be admitted to the register, they will issue a notice to the applicant informing them that the Scottish Ministers are considering refusing their application and the reasons for doing so. The notice will also state that the applicant will have the opportunity to make written representations to the Scottish Ministers to support their case for being admitted to the Register and the timescale for doing so (at least 28 days after the date on which the notice is given). In making their final decision, the Scottish Ministers will consider the application alongside any written representations to determine whether or not to admit the applicant to the register.

### Registered Agents

46. Where compliance monitoring identifies that a registered letting agent is not complying with the Code of Practice, or has committed an offence, or contravened any housing, landlord and tenant or debt law which indicates they may no longer be a fit and proper person, the Scottish Ministers will look, where possible, to work with the letting agent to resolve the compliance issue. This may include requiring them to submit an improvement plan setting out the steps they intend to take to address the problems identified or setting out specific conditions for them to meet.
47. Where a registered agent refuses or unreasonably delays engaging with us on any of the issues, or does not take the required steps to rectify the problem identified, the Scottish Ministers may:
- i. make an application to the Tribunal in relation to non-compliance with the Code of Practice;
  - ii. take action to remove them from the Register of Letting Agents;
  - iii. report them to Police Scotland and any other relevant authorities.
48. Which of these actions the Scottish Ministers take will depend on the exact circumstances of the case and the seriousness of the breach.
49. The Tribunal will notify the Scottish Ministers of any failure to comply with an enforcement order. Failure to comply with an enforcement order without reasonable excuse:
- i. is a criminal offence. A letting agent who commits this offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000);
  - ii. may result in Scottish Ministers taking action to revoke a registered agent's letting agent registration.
50. Where a registered letting agent's registration is revoked, they will not be able to seek payment for work undertaken from the date the case is finally determined and

it is a criminal offence for them to continue to undertake letting agency work. If they continue to do so, they will be liable on conviction to a fine (up to £50,000), imprisonment (up to 6 months) or both.

51. Where an agent is removed from the register, the Scottish Ministers will seek to work with local authority landlord registration teams, and other relevant organisations, to inform landlords and their tenants of this fact (see also paragraph 62).

#### *Change of Circumstances*

52. Registered agents are required under the 2014 Act to inform the Scottish Ministers of any change of circumstances. For example, change in a member of staff who is required to be identified in the application.
53. Failure to do so is a criminal offence subject on conviction to a fine. It may also affect a registered agent's letting agent registration status.
54. Where a change of circumstance impacts upon the continued fit and proper status of a registered agent, the Scottish Ministers will in the first instance seek to engage with the registered agent to rectify any concerns. This may include requiring the agent to submit an improvement plan setting out the steps they intend to take to address the problems identified or setting out specific conditions for them to meet. For example, where staff changes mean an agent no longer meets the prescribed training requirements, the Scottish Ministers may allow a specific grace period for the agent to rectify this.
55. Where the Scottish Ministers become aware they have not been informed about a change of circumstance, we will investigate this further with the agent and any other relevant parties. The action taken in response will depend on the individual circumstances of the case.

#### *Unregistered Agents*

56. Where an unregistered agent is identified and subsequently submits an application to the Register of letting agents, a late application fee will apply. This will cover the additional administration costs incurred with the greater scrutiny that will be required assessing their compliance with the code.
57. Where an unregistered agent refuses or unreasonably delays engaging with us on any of the issues, or does not register, we will report them to Police Scotland, and any other relevant authorities, for appropriate action to be taken against them.
58. Undertaking letting agency work without being registered is a criminal offence, liable on conviction to a fine of up to £50,000, up to 6 months imprisonment or both.

## **Refusal or Removal of Registration**

59. Where the Scottish Ministers refuse (including refusing to renew a registration) or remove registration, that fact will be noted on the public register for 12 months.
60. In addition, the Scottish Ministers will, as soon as is practicable after the final determination to refuse or remove registration, publish a notice:
- i. of the refusal or removal,
  - ii. indicating, where appropriate, that no costs or charges incurred by the person in respect of letting agency work are recoverable after the relevant date; and
  - iii. the relevant date.
61. This information will be shared, in line with any information sharing agreements and in accordance with the Data Protection Act 1998, with relevant authorities. For example, Police Scotland, local authorities, voluntary redress schemes and the Law Society of Scotland. The Scottish Ministers will seek to work with local authority landlord registration teams to inform landlords and their tenants of this fact.
62. The Scottish Ministers will, as appropriate, also circulate this information through industry membership and professional bodies and housing rights organisations.
63. Scottish Ministers will not usually consider a new application from an applicant who has been refused registration or whose registration has been removed within 12 months of their final refusal/removal unless there has been a material change in the businesses circumstances relating to the reasons for refusal or removal. For example, a new application from a business refused/removed registration for failing to meet the qualification/training requirements for registration, will be considered where these requirements have now been met.

## **Appeals**

64. Applicants to the register and registered letting agents have a right to appeal against a decision by the Scottish Ministers to refuse or remove their registration to the Tribunal.
65. An appeal must be made within 21 days beginning with the date the applicant or registered agent is notified of the decision.
66. In determining an appeal, the tribunal may make an order requiring the Scottish Ministers to enter a person in the register.



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