

# Briefing

# Regulating Letting Agents in Scotland

From the Shelter Scotland policy library

May 2013

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Shelter  
Scotland

## Summary

- **Scotland's private rented sector is changing.** The private rented sector is growing, nearly doubling in the last 10 years to 290,000 households. With the increasing numbers of tenants and changing profile of landlords, letting agents have an important role to play in this sector.
- **Professional responsible letting agents see little reward for playing by the rules.** A number of schemes and bodies in operation are available to promote best practice from letting agents; however agents are not required to follow them. There is no requirement for professional expertise or experience – anyone can currently set themselves up as a letting agent.
- **Landlords, as well as tenants, are exploited by unregulated letting agents.** Tenants and landlords currently using the letting agent sector are experiencing problems with the sector, including poor and unscrupulous practice from some letting agents, a current lack of financial protections for both tenants and landlords and no way of resolving complaints that may arise.
- **The property industry supports change.** A number of key stakeholders across the sector including the Property Ombudsman, the Association of Residential Letting Agents and the Royal Institution of Chartered Surveyors, believe we need regulation of letting agents to protect both tenants and landlords and to make the system fairer and more consistent.
- **Regulation should be proportionate and fair.** Shelter Scotland recognises that regulation will place a burden on the industry. We believe the key features of well regulated letting agent sector in Scotland would be as follows:
  - There should be an independent regulatory body grounded in Scottish Law.
  - There should be a formal, mandatory code of conduct for letting agents.
  - Any scheme should protect both landlords' and tenants' money.
  - Regulation should ensure that landlords can be confident that their property is well managed and legally covers their responsibilities as a landlord.
  - Regulation should be accessible and customer focused and should protect tenants who are unfamiliar with their rights.
  - There should be an independent redress scheme to deal with disputes that arise.
  - Duties carried out by letting agents should be proportionate and should ultimately ensure they contribute to a well run and efficient industry.

## Introduction

The number of households in the private rented sector across Scotland has doubled in the last ten years to 12%. This is set to increase further as individuals and families rely on the private rented sector for housing. With this growing demand for private rented sector accommodation, there is also an increasing need to ensure that tenants' experiences are fair, safe and secure.

Shelter Scotland is committed to improving the private rented sector, particularly for those households on a lower income who make up the majority of our clients. Letting agents are increasingly central to the way in which these households access and remain a part of this sector.

There is a growing need for a good quality professional letting agent sector. It is estimated that there are around 500 letting agent businesses in Scotland, involved in more than 150,000 private lettings a year<sup>1</sup> and the number is likely to rise as the profile of landlords changes. However, tenant dissatisfaction with letting agents is relatively high. Research shows a range of between 13%<sup>2</sup> and 20%<sup>3</sup> of tenants are dissatisfied with their letting agent. High, unfair costs and mistrust are both cited as reasons for this lack of satisfaction.

There is a growing consensus from across the housing sector that letting agents should be properly regulated. Some legislative changes affecting the way letting agents, and the private rented sector as a whole, operate have been put in place over the past year. These include: protecting and informing private rented sector tenants with the introduction of mandatory tenancy deposit protection schemes and the introduction of a tenants' information pack. While this shows some progress in formalising the sector, a wider regulatory framework is needed to ensure the sector is effective. This paper addresses why there is a need for regulation of letting agents in Scotland, sets out the options for how this could be done drawing on the experience of other regulatory schemes, and makes recommendations for how Shelter Scotland wants to see regulation taken forward.

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<sup>1</sup> Consultation on Strategy for the Private Rented Sector (2012)  
<http://www.scotland.gov.uk/Publications/2012/04/5779>

<sup>2</sup> Review of the Private Rented Sector: Scottish Government (2009)  
<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

<sup>3</sup> Which? Renting Roulette: Consumer experience of the lettings market, 2012

## The role of agents in Scotland

The number of people relying on the private rented sector is growing. In the last 10 years the number of households living in the PRS has nearly doubled to 290,000 and the number of households with children renting privately has gone from 5% to 13%. Due to rising house prices and the difficulty in securing mortgages, some of those who would have traditionally bought are unable to and are therefore renting. Private renting is becoming a long term option for many households.

The profile of landlords is also changing. Many landlords entering the sector in recent years are not professional landlords; often, they have just one property. The Scottish Government Private Rented Sector Review<sup>4</sup> in 2009 showed that 84% of PRS properties are owned by individuals and families with only 14% owned by organisations and businesses. The research also showed that only 8% of dwellings had a full time landlord, i.e. where the full time occupation of an individual or an organisation is being a landlord.

Since the downturn in the housing market, many people are choosing to let out property that is slow to sell, or while waiting for the market to pick up. With a large number of amateur landlords in the sector, there is the potential for a large gap in these landlords' knowledge, rights and responsibilities. These 'reluctant landlords' are therefore looking to managing agents to save them the time and hassle of directly managing their properties, and to ensure they are meeting their legal requirements. With this increasing number of private rented sector tenants and a sector dominated by amateur landlords, Scotland needs a good quality and professional letting agent sector. Presently anyone in Scotland can set themselves up as a letting agent. There is no requirement for professional expertise or experience, a regulated way of holding and managing clients' money, or a system of redress if something goes wrong.

## What are the current rules governing letting agents?

In Scotland letting agents can voluntarily opt to join a professional body which has a code of conduct. ARLA (the Association of Residential Letting Agents) is the voluntary self-regulating trade body for residential letting agents. A letting agent who chooses to be a member of ARLA would have their funds protected by a bonded scheme. In Scotland there are 155 registered ARLA agents and across the UK, there are currently around 6,000 individual members, representing 3,500 member offices. These letting agents are

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<sup>4</sup> Review of the Private Rented Sector: Scottish Government (2009)

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

also subject to a code of practice and at least one member of staff should have a suitable letting agent qualification.

There are a number of other bodies who operate a voluntary code of conduct:

- Royal Institute of Chartered Surveyors (RICS)
- the UK Association of Letting Agents
- The National Approved Letting Scheme (NALS)
- government backed National Landlords Association (NLA)
- The Property Ombudsman (TPO)

Letting agents can also apply to Landlord Accreditation Scotland (LAS)<sup>5</sup> once they have met the Scottish Core Standards for Accredited Landlords. This has the potential to be a useful tool, however, there is little recourse for redress. The accreditation process constitutes of a self-certification checklist to check the landlord or letting agent is meeting the standards. There is a complaints procedure and if a letting agent is found to be in breach of the core standards, they will be contacted and given time to rectify the problem. If they continue to be in breach of the standards, they may lose their accreditation status but there are no further sanctions. Letting agents can continue to operate, meaning tenants have little assurance that poor practice will be rectified.

All private landlords operating in Scotland must register themselves, and each of the properties they are renting, with the relevant local authority under the landlord registration scheme<sup>6</sup>. Part of this involves a 'fit and proper person' test, which extends to any agent appointed to manage the property. Details of the agent appointed to act on the landlord's behalf must be included in the landlord registration application. Failure by a landlord to register themselves, and any agents they use, can result in a fine. Although, not mandatory, the letting agents are encouraged to register in their own right. Over 210,000 applications for registration have been made since the inception of landlord registration in April 2006, with approximately 197,709 landlords and letting agents registered. 11 cases have been reported to the procurator fiscal in the last 2 years for breaches of the scheme, but it is unknown if any were prosecuted. Landlord registration is essentially a list of landlords and letting agents with very limited value in regulating the way letting agents operate, since the checks done to establish whether the letting agent or landlord is fit and proper are very limited.

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<sup>5</sup> <http://www.landlordaccreditationscotland.com/>

<sup>6</sup> <https://www.landlordregistrationscotland.gov.uk>

Despite the fact that good practice standards for the sector are available, letting agents are not required to follow them. Evidence suggests tenants are not discriminating in favour of agents who belong to such schemes; instead they make their choices based on the property offered. Less than one in five tenants have checked whether their agent is a member of professional body and nearly two-thirds do not know if their agent is a member<sup>7</sup>.

In short, while there are a number of bodies and schemes in operation, in reality adherence to these standards is voluntary and there is very weak enforcement and no recourse for redress under these schemes if something goes wrong.

## The case for regulating agents

Tenants and landlords are experiencing various problems with some letting agents in Scotland falling broadly into three categories; poor professional practice in general from some letting agents, a lack of financial protections for both tenants and landlords and no access to an effective way of resolving complaints that may arise.

Recent research by Which?<sup>8</sup>, looking at the experience of tenants and landlords in the letting agent market, showed the various negative experiences of using letting agents including:

- Poor customer service to tenants including missed appointments, aggressive sales methods and out of date and misleading sales adverts.
- Agents not putting deposits into a protection scheme and the landlord being liable.
- Agents not carrying out regular inspections of the property or thorough checks when tenants leave causing serious repair to go unnoticed.

Recent research carried out by Shelter Scotland of private rented sector tenants showed that a minority of tenants (39%) felt that their letting agent was fair in handling and allocating their property and only 33% of tenants agreed that their letting agent responds to repairs quickly and to a satisfactory standard. Citizen's Advice also have evidence of tenants who have problems contacting their letting agent, serious delays in getting repairs

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<sup>7</sup> Which?, Renting Roulette: Consumer experience of the lettings market, 2012

<sup>8</sup> Which?, Renting Roulette: Consumer experience of the lettings market, 2012

seen to and a lack of protection of client money<sup>9</sup>. Problems such as these arrive after a tenant has moved in when they are bound by a contract.

The letting market does not follow the same ‘rules’ as other consumer markets, as the tenant, landlord and letting agent are in a relationship which has competing interests. Landlords can actively shop around between agents, but tenants are primarily interested in securing the right property for their needs. Research by Which?<sup>10</sup> showed that 73% of tenants searched for a specific property rather than an agent – the tenant then becomes locked in to working with the agent appointed by the landlord. The current excess of demand in the private rented sector further weakens tenants’ poor negotiating position. Evidence<sup>11</sup> suggests both landlords and tenants are failing to actively discriminate in favour of accredited letting agents. This situation offers little incentive to agents who want to act fairly, within the law and to high professional standards. There are Letting Agents who operate in a highly professional way, but the way the market works gives them little advantage over other less scrupulous agents. This is a point recognised by the main industry bodies across Scotland and the UK who have called for better regulation of the sector.

The Property Ombudsman, the UK’s main property watchdog, has himself called for the regulation of letting agents. His most recent report<sup>12</sup> highlighted a 26% increase from 2010 in the number of complaints from tenants against letting agents, taking the total to 7,641 in 2011. Research recently carried out by Which?<sup>13</sup> found evidence of both tenants and landlords affected by the poor practice of letting agents. This included failing to pass on rent to landlords, aggressive sales tactics and poor customer service.

In addition, a recent report by the Office of Fair Trading<sup>14</sup> which looked at the current letting agent market in Scotland suggested that those using letting agent services (both landlords and tenants) should be better helped to be more empowered consumers. Analysis of complaints to Consumer Direct by the Office of Fair Trading found that “agents providing poor service” was the second most frequent cause of complaints. Problems

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<sup>9</sup> CAB Briefing, Let down: CAB evidence on letting agents and their charges, 2009  
[http://www.citizensadvice.org.uk/index/policy/policy\\_publications/let\\_down.htm](http://www.citizensadvice.org.uk/index/policy/policy_publications/let_down.htm)

<sup>10</sup> Which? Renting Roulette: Consumer experience of the lettings market, 2012

<sup>11</sup> Which? Renting Roulette: Consumer experience of the lettings market, 2012

<sup>12</sup> [http://www.tpos.co.uk/annual\\_reports.htm](http://www.tpos.co.uk/annual_reports.htm)

<sup>13</sup> <http://www.which.co.uk/news/2012/11/are-you-being-hit-by-unfair-letting-agent-charges-303241/>

<sup>14</sup> <http://www.offt.gov.uk/OFTwork/markets-work/othermarketwork/lettings/>

included agents not undertaking repairs, and receiving a management fee but providing no work or poor quality work on behalf of the landlord<sup>15</sup>.

ARLA, the Association of Letting Agents has also called for the regulation of letting agents<sup>16</sup> and the Royal Institution of Chartered Surveyors (RICS) has characterised the current system as 'ineffective, complicated, inconsistent and fragmented'<sup>17</sup>. The call for regulation of letting agents has also been echoed by the Resolution Foundation who recommend that letting agents are brought under the Estate Agents Act (1979) giving the Office of Fair Trading the power to ban agents who are acting improperly<sup>18</sup>. They argue that letting agents that go out of business one day can start up a business as an estate agent the next day.

### Shelter Scotland research

Shelter Scotland published evidence from 'mystery shopping' research into letting agents in 2011, and published the report 'Premiums in the Private Rented Sector'<sup>19</sup>. This report looked at the confusion around the legality of charges made to tenants and identified charges that were being made by letting agents to tenants, ranging from £17 to £180, for services such as credit checks, reference checks, general administration fees and renewal fees. In response to this evidence, the law was clarified by the Scottish Government around letting agents charging fees to tenants. They made it clear that any charges, in addition to one months' rent in advance and the deposit, are illegal.

Despite clarification of the law, there are some letting agents who are still flouting these rules by continuing to charge fees. Shelter Scotland has been contacted by many tenants who have been charged fees, even following the clarification. One letting agent stipulates that holding fees (non-refundable) are not illegal. One Shelter Scotland client was recently charged a £30 fee by their old letting agent to provide a reference to their new letting agent, in addition to having paid a reference check to the new letting agent. This exemplifies how the letting agent industry is currently failing to self regulate. The enforcement of this recently clarified legislation currently appears to fall in the gap between the remits of local authority registration teams, trading standards and the police. There is no overall regulatory body to hold these unscrupulous letting agents to account.

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<sup>15</sup> Office of Fair Trading, The Lettings Market – an OFT report, 2013

<sup>16</sup> [http://www.lettingagenttoday.co.uk/news\\_features/ARLAs-Potter-says-law-will-be-needed-for-full-control-of-letting-agents](http://www.lettingagenttoday.co.uk/news_features/ARLAs-Potter-says-law-will-be-needed-for-full-control-of-letting-agents)

<sup>17</sup> <http://www.property118.com/index.php/new-call-for-government-to-regulate-letting-agents/26971/>

<sup>18</sup> <http://www.resolutionfoundation.org/publications/renting-dark/>

<sup>19</sup> Shelter Scotland, 'Premiums in the Private Rented Sector', 2011  
[http://scotland.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/premiums\\_in\\_the\\_private\\_rented\\_sector](http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/premiums_in_the_private_rented_sector)



Consumers, both landlords and tenants, need to be protected from poor and illegal practice.

Overwhelming evidence shows that current systems to regulate letting agents are not effective and a number of key stakeholders across the sector believe that we need a better system to protect both tenants and landlords, and to make regulation more fair and consistent.

## What are the important features of a well regulated letting agent sector?

A strong regulatory framework is essential for an efficient and well run letting agent sector, however we recognise that regulation will place a burden on the industry. Any duties carried out by letting agents should be proportionate and should ultimately ensure they contribute to a well run and efficient industry. Whatever regulatory system is put into place, Shelter Scotland believes that:

- There should be an independent regulatory body grounded in Scottish Law.
- There should be a formal, mandatory code of conduct for letting agents.
- Any scheme should protect both landlords' and tenants' money.
- Regulation should ensure that landlords can be confident that their property is well managed and legally covers their responsibilities as a landlord.
- Regulation should be accessible and customer focused and should protect tenants who are unfamiliar with their rights.
- There should be an independent redress scheme to deal with disputes that arise.

## What are the options for regulating letting agents?

This section details the possible models for a letting agent regulatory system from light touch voluntary self regulation to full scale licensing, and highlights the pros and cons of all the options.

### **Voluntary self regulation**

→ This model would be quick to put in place, with minimum cost and burden to landlords

→ There is no incentive for letting agents to sign up and no recourse for redress

To a certain extent, this is essentially what is currently happening within the private property letting industry in Scotland and this could simply be encouraged to go further. Letting agents could be encouraged to join one of the existing schemes such as ARLA on a voluntary basis encouraging good practice.

This would be low cost and low burden for the letting agent but to have a chance of working effectively, a good marketing strategy would be required to ensure that potential tenants and landlords were aware that they should sign up to a letting agent who was part of an official body. The recent Which<sup>20</sup> report showed that only 37% of tenants currently check whether their letting agent is a member of a professional body. Awareness of these bodies amongst landlords and tenants would have to increase in order for such a scheme to be effective.

However, only letting agents who work legitimately would sign up - there would be no incentive for those who currently operate in an unscrupulous way. If self regulated there would be no regulatory oversight to ensure standards are met and no recourse for redress. If a tenant currently has a complaint against their letting agent and complains to the relevant regulatory body, there is little that this body can do to help them. A recent example<sup>21</sup> showed just this: a regulatory body investigating a complaint for a tenant was unable to solve the issue as they were unable to contact the letting agent. The tenant was therefore referred to Citizen's Advice. The letting agent had no obligation to respond to the regulatory body and the worst that could happen was that the letting agent would be struck off as a member of the regulatory body. Given that membership of such a body is not mandatory, this action is likely to have little effect in improving the letting agent's practice.

This form of regulation is unlikely to be rigorous enough to work effectively. The Rugg Review<sup>22</sup>, a detailed review of the private rented sector across the UK, highlights the current extensive dissatisfaction with the practices of letting agents, despite such voluntary schemes as NALS and ARLA. The voluntary nature of the schemes means there is ultimately no penalty system if letting agents act in an unfair way.

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<sup>20</sup> Which? Renting Roulette: Consumer experience of the lettings market, 2012

<sup>21</sup> <http://www.guardian.co.uk/housing-network/2013/feb/07/letting-agent-accreditation-window-sticker>

<sup>22</sup> Julie Rugg and David Rhodes. 'The Private Rented Sector: its contribution and potential', the University of York, 2008 <http://www.york.ac.uk/media/chp/documents/2008/prsreviewweb.pdf>

## Accreditation

→ For those letting agents currently operating in a fair, consistent and legal way, accreditation would help ensure they are chosen by landlords.

→ This will take some time to be established and even if a letting agent was struck off the accredited list, they would still be able to operate as an agent.

Letting agents could apply to be accredited and would effectively have a 'Quality Standard', where they have shown to work in a fair and consistent way. Tenants and landlords could therefore choose to work with letting agents who have this accreditation. On a practical level this would work as a searchable database. This already operates to a certain extent through the Landlord Accreditation Scheme (LAS). If a letting agent were to act outside the levels of standards required by the 'Quality Standard', the managing body would have the right to remove the accreditation.

This would rely on market forces to work well, although landlords are likely to have more consumer choice in this than tenants, as tenants are more likely to be driven by the property on offer rather than choosing the letting agent. As previously mentioned, the tenant/landlord/letting agent relationship does not work in the same way as most consumer markets.

Setting up an accreditation scheme specifically for letting agents is unlikely to add any additional value to the way letting agents operate than the current LAS accreditation scheme does.

Again, any accreditation system would need to be strongly marketed to make landlords and tenants aware of it. In addition, similar to voluntary regulation, there would ultimately be no recourse to redress, meaning letting agents who acted outside the accredited standard could continue operating as a letting agent.

## Enforced self regulation

→ A consistent, mandatory code of conduct, with a ban in practicing if letting agents fail to meet the standards.

→ Burden placed on letting agents and costs involve.

This would impose a legal requirement on landlords to join a professional body or accreditation scheme. There would be an independent central regulatory organisation which could be established to oversee good practice and to ensure appropriate measures

for redress are in place. This could either extend the resource of current Private Rented Sector Housing Panel or set up a similar panel body of letting agents.

A code of conduct would be put in place, drawing on the terms of conduct from that ARLA already set down for their members, requiring that letting agents as members operate in a certain way.

Another example of this is the way estate agents are currently regulated (See Box 1) with agents required to join an approved scheme for redress.

### **Box 1: Regulation of Estate Agents**

In Scotland estate agents need to be registered with the Office of Fair Trading (OFT) approved redress schemes. These are schemes run by The Property Ombudsman (TPOS) or the Surveyors Ombudsman Service. These schemes then allow property buyers and sellers a system for complaint if the estate agent has:

- Broken the code of practice which stipulates the way an estate agent should operate.
- Overcharged them
- Infringed their legal rights
- Treated them unfairly
- Acted inefficiently

Failure to become a member of one of these schemes would lead to a ban in operating as an estate agent. If this ban is ignored the estate agent could be prosecuted and fined.

Arguably the risks arising from bad practice amongst letting agents are higher than amongst estate agents due to the ongoing management function and involvement with more vulnerable households. The Rugg Review recommends they be regulated in the same way as estate agents arguing that this would protect the interests of both tenants and landlords, driving up standards. If letting agents were to come in line with estate agents scheme for redress, all agents would have to hold client money in a protection scheme and all agents would have to hold professional indemnity insurance. This could be achieved through primary legislation to amend the Consumers, Estate Agents and

Redress Act (CEARA) 2007 and/or The Estate Agents Act 1979. A Lords amendment to the Enterprise and Regulatory Reform Bill to make these changes was considered by Westminster on 16<sup>th</sup> April 2013. The amendment was rejected and the UK Government put forward an alternative amendment which would give them powers to require all letting agents and landlords to belong to an approved redress scheme. These powers are due to be consulted on and the detail of how they will operate is yet to be decided. Unlike the proposed extension of estate agency law, these powers will not affect Scotland.

Enforced regulation will be more effective than voluntary regulation as ultimately there would be a penalty for those letting agents who work outside a good standard of practice.

## Licensing

→ A consistent, mandatory code of conduct with a ban in practicing if letting agents fail to meet the standards required for a license.

→ Without a strong method of enforcement for those who break the code of conduct a licensing scheme could end up as a simple list of letting agents

One option would be for each letting agent to register with a licensing authority, in a similar way to the current HMO licencing scheme in Scotland.

This would provide a strong regulatory framework for letting agents to operate within, giving landlords and tenants assurance that they are working with a good letting agent and there is ultimate recourse to redress.

There would therefore need to be a strict code of conduct, similar to the recent standards for property factors set out by the Property Factors Act 2011 (see Box 2). This would need to be actively monitored, along with a body who could enforce any sanctions where the letting agent breached the code of conduct.

Another question in this model is who would be the licensing authority. There could be a central scheme run by the Scottish Government and administered by local authorities, similar to the landlord registration scheme. However, local authorities may not be willing to take on this extra administration. There may also be a difficulty where letting agents cross local authority borders.

## Box 2: Regulating of property factors

The recent Property Factors Act 2011 for Scotland that came into force on 1<sup>st</sup> October 2012 and provides minimum standards for property factors. There are three main parts to the legislation:

1. A compulsory register of all the property factors operating in Scotland
  - It is a criminal offence not to submit an application to operate as a property factor.
2. A code of conduct setting about minimum standards with which all registered property factors must comply. The code includes:
  - A requirement to provide a Written Statement of Services which sets out the terms and service delivery standards between the factor and the homeowner.
  - The need to provide good communication and consultation with the homeowner.
  - Financial obligations around the protection of homeowners' funds and clarity and transparency in all accounting procedures
  - Setting out debt recovery procedures and how any late payments from the homeowner are dealt with.
  - Details around any insurance procedures that are set out.
  - Information on carrying out repairs and maintenance.
  - Complying with any complaints resolution process (homeowner housing panel).
3. The Homeowner Housing Panel which homeowners will be able to apply to if they believe their factor has failed to comply with the code of conduct, or otherwise failed to carry out their duties.
  - This is an extension of the existing private rented housing panel.

The below is a matrix which looks at the possible models of regulation and marks them against Shelter Scotland criteria of what features a good regulatory model for letting agents should have.

Criteria \ Models	Voluntary Self Regulation	Accreditation	Enforced Self Regulation	Licensing
There should be an <b>independent regulatory body</b> grounded in Scottish Law.	✓	✗	✓	✓
There should be a formal, mandatory <b>code of conduct</b> for letting agents.	✗	✗	✓	✓
Any scheme should <b>protect both the landlords' and the tenants' money</b> .	✗	✗	✓	✓
Regulation should ensure that landlords can be confident that their property is <b>well managed</b> and <b>legally covers their responsibilities</b> as a <b>landlord</b> .	✗	✗	✓	✓
Regulation should be <b>accessible and customer focused</b> and should <b>protect tenants</b> who are unfamiliar with their rights.	✗	✗	✓	✓
There should be an <b>independent redress scheme</b> to deal with disputes that arise.	✗	✗	✓	✓

### The cost of regulation

With any possible option for regulation, the cost of setting up and maintaining a scheme will be a factor to consider it how successful it will be. Any scheme which faced a heavy financial burden on tenants and landlords would not be favourable. For letting agents, a small cost may be acceptable if it ensured that they were known to be offering a quality and reputable service.

Any self regulation is likely to have to be self financing. There is an argument that these costs would be taken by the letting agent, making it more difficult for smaller letting agents to practice making it harder to compete. Ultimately these charges would be passed to the landlord in the form of higher charges, and then perhaps the tenant in terms of higher rents.

If letting agents were to register with an official regulatory body or where a licence is required, a fee could be paid to cover administrative costs.

As an indicator, for the landlord registration scheme, a total of £5.2 million of grant funding was given out from the Scottish Government to local authorities across a two year period. The annual cost for running the landlord registration site, including online fee payments from landlords to local authorities, is £293,000. In terms of income, the current cost of registering for a landlord is £55 with an additional £11 for each property which they let. Since 2006 the total income from fees until the end of 2012 is £11.2million.

The issue of funding a regulatory scheme is something that would need further consideration. However, it is clear that any investment in a system would be beneficial in making and maintain a fairer private letting system.

## Conclusion

It is clear that there is a need for good quality, well regulated letting agent sector in Scotland. There is sector wide agreement, including from organisations who currently regulate the sector, that the current rules governing letting agents are not effective and that further regulation is the way forward.

Simply encouraging letting agents to sign up with existing membership bodies, such as ARLA, is unlikely to be effective as there is no incentive for letting agents to refrain from bad practice from being a member due to the lack of recourse for redress. Legislation is required to put in place an enforced system of good practice.

An ideal scheme would require letting agents to register and adhere to a code of conduct which promotes fair and honest practice to tenants and landlords. There then needs to be a formal way for complaints to be dealt with. Ultimately there needs to be a way of penalising those letting agents who fail to adhere to the code of conduct. This recourse to redress should act as a deterrent against bad practice amongst letting agents.

A regulation system will be beneficial for those letting agents acting in an honest and fair way, as by having a license or registering with an approved body, tenants and landlords will know that they are working with a good organisation. This will be all the more



effective if there is a strong penalty system, which ultimately puts those letting agents operating in an unscrupulous way out of business.

## Recommendations

In light of this report Shelter Scotland therefore recommends that:

- The Scottish Government pursues legislation which formalises the regulation of letting agents.
- Any regulation requires letting agents to sign up to a code of conduct on a mandatory basis.
- This regulation should include a way of penalising letting agents who operate unfairly.
- There should be an independent regulatory body overseeing a good quality, professional letting agent.
- There should be independent redress mechanism to deal with disputes.

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