

HOUSING (SCOTLAND) ACT 2014 AS IT AFFECTS PRIVATE LANDLORDS

The Housing (Scotland) Act 2014 was passed into law by the Scottish Parliament on 1st August 2014. Unlike the Private Rented Housing (Scotland) Act 2011, the 2014 Act covers a broad range of housing providers and is not confined simply to the regulation of the private rented sector. Certain clauses in the Act will impact on the way private landlords operate. Some changes have already taken effect and some will be introduced during the term of the Parliament. The following articles summarise the intention behind the changes and how you as a private landlord may be affected. Where relevant, the articles will identify what role the City Council and other government agencies may play in approving, monitoring or in some cases enforcing these changes.

Those parts of the Act which will affect private landlords are:

- Part 3 Private Rented Housing
- Part 4 Letting Agents
- Part 6 Private Housing Conditions
- Part 8 Supplementary and Final Provisions

The legislation can be accessed via the following [link](#).

Part 3 Private Rented Housing

1) The Repairing Standard

There are several important requirements associated with the Repairing Standard. The organisation which currently adjudicates on complaints of breaches to the Repairing Standard is the Private Rented Housing Panel (PRHP). The PRHP has recently updated its information pack for private landlords and you are urged to revisit this [web page](#) to read about the Repairing Standard and the changes associated with it particularly in respect of fire, gas and electrical safety checks.

Changes to Fire, Gas and Electrical Safety Requirements Electrical Safety Requirements

Changes on electrical safety will come into effect from 1st December 2015. The 2014 Housing Act amends the Housing (Scotland) Act 2006 Section 13(4A) and 19B(4). In February 2015, guidance was updated with respect to electrical safety requirements which includes regular safety inspections of supply installation (the wiring of the property) and all electrical fixtures, fittings and appliances (including the number of plugs loaded onto wall sockets).

It is now mandatory that at the start of EACH new tenancy (where an electrical check has not been carried out in the previous 5 years), and **at least once every five years during the course of the Tenancy**, an Electrical Installation Condition Report (EICR) Certificate and a Portable Appliance Test (PAT) Certificate be obtained and that these tests must be carried out and the certificates signed by a qualified and accredited electrician. Specific guidance can be found using the following [link](#).

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In addition, private landlords have a duty to ensure safety of common electrical supply which includes obtaining assurance on compliance with regulations associated with the supply of electricity as it affects common stair lighting and controlled entry electrical supply.

Gas safety (Carbon Monoxide Detectors)

Over and above existing gas safety regulations, the new Act prescribes that there must be “satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health”. This means that it is now MANDATORY for private landlords to install CO detectors where there is a gas boiler or other gas appliance within the rented out property. This applies right across the United Kingdom and equivalent legislation has been passed by the Westminster Government.

Fire safety (Smoke Alarms)

Revised guidance makes it mandatory that one fire and smoke detector & alarm to be fitted:

- In the room which is most frequently used by the occupant(s) for general daytime living purposes
- In every circulation space (halls and landings)
- On each floor where there is more than one floor, and
- In every kitchen
- All alarms must be integrated

Introduction of Third Party Applications to the Private Rented Housing Panel (PRHP)

Under the 2006 legislation, tenants were granted the right to report a breach or alleged breach of any of the elements which make up the Repairing Standard. The new legislation allows for a suspected breach of the Repairing Standard to be reported to the PRHP by a third party. The third party is defined as the local authority – any officer with a specific responsibility to investigate and to act on behalf of the tenant, regardless of whether or not the tenant has requested such an intervention.

The new legislation amends Schedule 2 of the Housing (Scotland) Act 2006, so that the procedures to be adopted by a PRHP committee in determining an application to the Panel in relation to a landlord’s alleged failure to comply with any aspect of the Repairing Standard (in terms of Section 14 (1) (b) of the Housing (Scotland) Act 2006) may take account of an application made by a third party. The landlord continues to have right of appeal.

The detailed regulations associated with the procedures and the date of the commencement order are currently being determined by the Scottish Government. It is anticipated that these provisions will come into effect from 1st December 2015.

New “Housing Tribunal” to replace Private Rented Housing Panel (PRHP)

The existing system which allows tenants to make complaints about their landlords will not be replaced until late 2016, when the PRHP is in effect merged with the Home Owner Housing Panel (HOHP). The idea is to make the process of taking evidence and making adjudications more user friendly for tenants and landlords and avoiding the need for the case to go to a formal court setting.

2. Landlord Registration

Time limit imposed of local authority determination of application to be registered as a private landlord

If, after a period of 12 months, an applicant has not received a positive or negative response on their application to be entered on the local authority register of private landlords, the local authority is required to include the applicant on the Register which allows the applicant to be legally permitted to act as a landlord. The proviso is that the applicant must submit a fresh application as soon as the 12 months have elapsed.

3. New powers for local authorities to deal with concentrations of poor living standards and anti-social behaviour

Application by the Local authority to designate an Enhanced Enforcement Area

The 2014 Housing Act introduced a new approach to dealing with common and specific nuisance through the designation of Enhanced Enforcement Areas (EEAs). Local authorities can seek designation where there are concentrations of private rented accommodation within their area which are giving cause for concern. The granting of EEA status is dependent on the Minister being satisfied that a number of criteria have been met and local authorities will have the power to enter any private rented property for the purposes of inspection and be able to take action to tackle property condition, overcrowding, and anti-social behaviour.

Private landlords within the EEA will require to raise standards for their tenants. EEA designation also affects any owner occupiers within the designated area. If EEA designation status is granted, the local authority will have the right to apply powers under previous and current legislation, including the de-registration of a private landlord, deemed no longer to be a fit and proper person.

Part 4 Letting Agents

1. Registration of Letting Agents and compliance with Code of Practice Compulsory Registration of Letting Agents

One of the most significant parts of the new Act is the mandatory national registration for all letting agents operating in Scotland. Any business which provides services involving the management of property or tenants on behalf of a private landlord must seek registration with the Scottish Government. In addition, registered agents must pass a fit and proper person test and comply with a Code of Practice.

Landlords will still be required to provide details of any letting agent used to manage property on their behalf. Any letting agent used by a landlord must be deemed 'fit and proper' to allow the landlord to continue to use their services.

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The primary legislation sets out the detailed requirements of registration and compliance for letting agents regardless if they are also property owners or landlords in their own right, including

- The process for consideration of an application by the Scottish Government (Inclusion on the Register)
- Duties of registered letting agents
- Circumstances under which a person or persons might be removed from the Register
- Appeals process to the First Tier Tribunal in relation to the refusal of an application
- Consequences of removal from the Register
- Offences where letting agency services have been found to have been provided without formal registration (Offences where no registration)
- The establishment of a Code of Practice
- Letting Agent Enforcement Orders
- Monitoring of compliance

The process of setting out the Code of Conduct and laying orders with respect to enforcement is ongoing and there will be consultation with the industry and stakeholders on Code of Practice and any specific Orders in relation to implementing the clauses in this part of the Act over the course of 2015/16. The introduction of this part of the 2014 Act relies on the formation of the new Tribunal system and is not expected to come into effect prior to December 2016.

Explanatory Notes to this part of the legislation can be found using the following [link](#) (pages 6 and 7)

Part 6 Private Housing Conditions

1. Missing Shares in common property repair works

Local authority right to intervene to cover the cost of a missing share

The 2014 Act updates the Tenement (Scotland) Act 2004 Schedule on the Tenement Management Scheme giving the local authority power to intervene and make a payment where an owner is unable or unwilling to contribute to their share of a common repair cost.

2. Work Notices and Maintenance Orders

The local authority will now have the power to serve a work notice for improving the security or safety of any house and serve a maintenance order on a property which has been the subject of a work notice.

Part 8/...

Part 8 Supplementary and Final Provisions

These new provisions permit certain matters previously referred to the Sheriff Court to be considered by a new First Tier Tribunal

1. Schedule 1 Part 1 Transfer of Jurisdiction to new “First Tier Tribunal”

Amendments have been made to the Rent (Scotland) Act 1984 to transfer jurisdiction on civil matters relating to private sector tenancies to a new First Tier Tribunal (FTT)

The new FTT will have the power to adjudicate on any civil matter relating to a tenancy previously referred to a Sheriff.

2. Schedule 1 Part 2 Transfer of Jurisdiction to new “First Tier Tribunal” in respect of the Repairing Standard

First Tier Tribunal to adjudicate on breaches of the Repairing Standard.

3. Schedule 1 Part 3 Right to Adapt Rented Houses

Refusal of a request to adapt a private rented house referred to First Tier Tribunal

This was previously referred to the Sheriff Court. The Act transfers that authority to the new FTT

4. Schedule 1 Part 4 Landlord Registration denial/rescinded appeals

Right of appeal against a local authority which has denied landlord registration or removed landlord from the Register as a result of a breach of the Antisocial Behaviour etc (Scotland) Act 2004 will be referred to First Tier Tribunal

Appeals will, from late 2016, be heard by the First Tier Tribunal.