RICS Scotland

1. A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,000 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.

2. Our members practise in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations.

3. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

4. RICS Scotland comprises many working professional group boards and forums relating to the aforementioned sectors, and recently initiated the member-based RICS Scotland PRS Forum.

5. This Call for Evidence was circulated to members of the forum for their assessment of the Bill’s provisions, and their views have been collated within this response.

6. RICS Scotland tenders this submission having recently provided oral evidence to the Scottish Parliament’s Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill’s provisions for letting agent registration.

RICS Regulation

7. This Call for Evidence was discussed, at length, with RICS Regulation.

8. RICS Regulation monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes.

9. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted.
10. RICS Regulation reports to a Regulatory Board which is at arms’ length from RICS. The Board has a mix of independent and RICS members, with an independent Chair, all appointed by an independent selection process.

11. The Regulatory Board is accountable to RICS Governing Council.

12. RICS Scotland and RICS Regulation welcomes the opportunity to comment on these Housing Bill proposals, and the comments below should be taken in the above context.

**Overview of the Bill**

13. RICS Scotland acknowledges that the provisions set forth in part 4 of the Housing (Scotland) Bill are a result of stakeholder consultation on the PRS Strategy: *A Place to Stay, A Place to Call Home*. In regard to letting agents, the strategy outlined three options:

- Option 1 - expand the existing landlord registration system to include all letting agents,
- Option 2 – mandatory registration of all agents, a code of practice and mechanism for resolving disputes
- Option 3 - introduce a legal obligation that all agents must be a member of a recognised professional or trade body.

14. Following consultation with relevant sector participants, including RICS, before publishing this bill, Scottish Government Ministers instructed officials to pursue ‘Option 2’.

15. RICS Scotland supported, and continues to pursue, the foundation of ‘Option 3’.

16. Whilst ‘Option 2’ falls short of the more consistent and targeted regulation of ‘Option 3’ that RICS Scotland supports, we recognise this development as a step in the right direction.

17. For option 2 to realise desired policy outcomes, in terms of raising professional standards and reducing consumer detriment, it is absolutely vital that there is a consistent and effective approach to enforcement of the proposed registration arrangements and associated code of practice.

18. This submission considers part 4 – Letting Agent Registration - of the Housing (Scotland) Bill only.

**Cost Implications of Letting Agent Registration**

19. RICS Scotland is of the impression that a fee for a letting agent registration, on an individual or business basis, may not be appropriate.
20. Registration for a property factor, as a result of the Property Factors (Scotland) Act - which this particular element of the Housing (Scotland) Bill is founded - is free; thus ensuring no one is inhibited from being a property factor.

21. If registration for letting agents is to progress, it should be as equal, open and accessible as the property factors’ registration.

22. “Paragraph 192 of the Financial Memorandum (FM) provides an illustration of a three-yearly fee level of £250 per letting agent business, with no fees initially prescribed in relation to requests to amend existing details on the register. The FM states that “the total estimated income to the Scottish Government would be approximately £180,000 in the first year”. This figure can therefore also be read as the cost to the letting agent sector in Scotland.” ¹

23. The illustrative text above indicates that a letting agent business would pay £250 for ‘inclusion’ in the register, generating approximately £180000 for the Scottish Government. However, this figure would have to be split over the three-year period, thus the income generation would stand at approximately £60000 per annum (though this figure does not take into account the monies obtained through new letting agent businesses).

24. RICS Scotland believes the exact figure of letting agent businesses is extremely hard to count, particularly as there are many individuals managing their own properties, or a few for friends, family, colleagues or associates that have been referred to who do it as a “favour”, side-line or a very small home run business. It is likely, from anecdotal experience provided by our members, that the number is much higher than this.

25. In order to obtain the exact number of letting agent businesses, a visible policing force – ensuring registration is undertaken by all practicing letting agents - and compressive guidance for tenants outlining, at least, the requirement of letting agent registration would be required.

26. Consideration of further comprehensive guidance for landlords should also be required in considering the possible high number of friends or family members who run accommodation as “favour”. This could add to the financial implications of the Bill’s provision.

Training Costs (relevant to question 8)

27. “The FM does, however, go on to note that the estimate “does not include any potential training costs or costs to alter business practices that a letting agent may have to undertake in order to comply with a code of practice”. It goes on to say, in relation to the estimate, that “Therefore, this may be subject to change”. (paragraph 219)²

¹ http://www.scottish.parliament.uk/S4_FinanceCommittee/Housing_Bill_call_for_evidence.pdf
² http://www.scottish.parliament.uk/S4_FinanceCommittee/Housing_Bill_call_for_evidence.pdf
28. RICS Scotland is of the belief that the Housing (Scotland) Bill provisions have been ‘designed’ to eliminate poor or mal practice and raise standards in the sector.

29. RICS Scotland believes that the raising of standards can only be achieved through ongoing training, or Continuous Professional Development (CPD), of market participants in order to ensure letting agent business staff are knowledgeable and compliant with any legislative changes.

30. If training of letting agent businesses staff is not undertaken, then standards will not necessarily be raised.

31. If training is necessary, as part of the code of practice, then as far as the costing estimates for letting agents business are concerned, the text “Therefore, this may be subject to change” is incorrect – the costing estimates will be subject to change, unless the Scottish Government is willing to remunerate the costs of training all letting agent business staff, which would likely eclipse the monies accumulated from the three-yearly £250 \textit{per business} registration fee.

32. RICS members in Scotland have to undertake 20 hours of CPD to ensure they are aware of new best practice methods and procedures and recent legislative changes. This is one reason why RICS Scotland, and other sector bodies, endorsed ‘Option 3’.

\textbf{Costs of Professional Body Membership}

33. RICS considers the current approach to regulation in residential property market in Scotland, England, Wales, and Northern Ireland is inconsistent, fragmented, confusing for consumers and burdensome on business.

34. RICS proposes that all Governments, at Westminster, Holyrood and in the devolved administrations, should take a joined up approach to regulation covering all aspects of the residential property market – new build; second hand sales, and lettings/block management, with principles based regulation targeted where the risks are greatest and having the following three distinct elements:

- legislation/standards;
- enforcement; and,
- redress.

35. Such an approach is merited in this market as it is about a basic human requirement – the provision of shelter.

36. RICS consumer surveys indicate that consumers want more consistent and targeted regulation of residential agents.

37. Others support this approach including NFOPP, Ombudsman Services, The Property Ombudsman, Which?, the Law Society, and Shelter.
38. Recent RICS impact assessment research shows there is a robust business case for such an approach. Published in February 2013, this Economic and Equality Impact Assessment outlines the costs and benefits of bringing all lettings agents in Scotland, England, Wales, and Northern Ireland within scope of the Estate Agents Act 1979 and enacting Section 22 of that Act (statutory minimum professional standards, which RICS considers should be NVQ level 3 or above for all agents).

39. The summary figures from this research in the table below indicate that the benefits (around £21m per annum) will outweigh the costs (initial costs of £46m, and ongoing costs of £0.64m per annum) in less than 2.5 years.

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<thead>
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<th>Benefits</th>
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<td>Total annual</td>
<td>£639,000</td>
<td>£21,073,000</td>
<td>£20,434,000</td>
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<tr>
<td>Payback period</td>
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40. These summary costs and benefits figures are based on a methodology, compliant with relevant Government guidance for impact assessment work, and included consultation with business practitioners and consumer organisations to test and further inform the initial desk research. A copy of the full report is available to download from: [www.rics.org/uk/knowledge/research/research-reports/regulation-of-sales-and-letting-agents-report/](http://www.rics.org/uk/knowledge/research/research-reports/regulation-of-sales-and-letting-agents-report/)

41. It should be noted that the summary costs and payback period outlined in this table above are for UK-wide regulation. Taking Scotland’s share of the population (approximately 8.3%[^3]), the cost figure would be considerably lower with a shorter payback period.

42. RICS stands ready to provide further detailed commentary on this research report if that would be helpful.

43. RICS' proposed approach to regulatory reform mirrors the now well established approach in the financial services market. The benefits of introducing clear, consistent, and targeted regulation covering all aspects of the UK residential property market will include:

- consolidated and reduced legislation/regulations;
- a simplified regulatory framework – easier for consumers and businesses to understand;
- reduced costs associated with business compliance; and

enhanced consumer protection.

44. RICS Regulation has considerable knowledge and experience of developing and enforcing standards for property professionals, including those operating in residential agency. RICS has developed a brief options paper outlining possible alternative ways in which RICS could undertake such a role and would be willing discuss these options further with the Committee and the Scottish Government.

45. RICS Scotland believes that should the Scottish Government progress letting agent registration, consideration of letting agents that are regulated by professional bodies, such as RICS, should be exempt from the payment of registration, as this will be another costing scheme of which they would have to sign up to.

**Redress Mechanism**

46. RICS Scotland agrees that a redress mechanism is required – but it will all come down to the details.

47. RICS Scotland would not have an issue with a nominal charge, £25 as an example, for dispute body applications. This could deter vexatious cases and “serial complainers”

48. The dispute body members would not only have experience in the sector, but also have to undertake regular training to ensure they fully understand new legislative provisions that affect the sector, and the possible impact of their decisions.