The Scottish Parliament
Pàrlamaid na h-Alba

# LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

## AGENDA

## 12th Meeting, 2021 (Session 5)

## Wednesday 17 March 2021

The Committee will meet at 9.00 am in a virtual meeting which will be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Committee will decide whether to take items 5 and 6 in private. The Committee will also decide whether to take the Annual report and Legacy paper in private at subsequent meetings.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 (2021/99);
   The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 (2021/100); and
   The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 (2021/142).

3. **Public petitions:** The Committee will consider the following petitions—

   PE1743: Amend the law to protect the rights of pre-1989 Scottish Secure Tenants;
   PE1778: Review the Scottish Landlords Register scheme.

4. **Travelling Funfairs (Licensing) (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

5. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 12 May 2020 to 5 May 2021.

6. **Legacy paper:** The Committee will consider a draft legacy paper.

**LGC/S5/21/12/A**

Peter McGrath
Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

**Agenda item 2**

| | |
|---|---|
| Note by the Clerk | LGC/S5/21/12/1 |

**Agenda item 3**

| | |
|---|---|
| Note by the Clerk | LGC/S5/21/12/2 |

**Agenda item 4**

| | |
|---|---|
| PRIVATE PAPER | LGC/S5/21/12/3 (P) |

**Agenda item 5**

| | |
|---|---|
| PRIVATE PAPER | LGC/S5/21/12/4 (P) |

**Agenda item 6**

| | |
|---|---|
| PRIVATE PAPER | LGC/S5/21/12/5 (P) |

# Local Government and Communities Committee

## 12th Meeting, 2021 (Session 5), Wednesday 17 March 2021

## Subordinate Legislation

### Overview of instrument

1. The following instruments, subject to negative procedure, are being considered at today's meeting:

- The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 (SSI 2021/99)
- The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 (2021/100)

### The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021 (SSI 2021/99)

### Background

2. The policy note for the instrument (attached at **Annexe A,** which includes further detail and the policy objectives) explains that these Regulations amend the existing detailed statutory requirements for pre-application consultation (PAC) which apply to major and national developments. They also specify criteria for exemptions from PAC requirements, made under powers introduced by the Planning (Scotland) Act 2019. They also make transitional arrangements for the coming into force of the new provisions.

3. The policy note explains that the changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust. The proposals for changes to PAC come from, in part, the report by the independent panel assigned to review the Scottish Planning system: 'Empowering Planning to Deliver Great Places' (May 2016).

4. The instrument was laid before the parliament on 24 February 2021 and comes into force on 1 October 2021. It is subject to the negative procedure.

5. An electronic copy of the instrument is available at:

   https://www.legislation.gov.uk/ssi/2021/99/contents/made

6. No motion to annul this instrument has been lodged.

### Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on 9 March 2021 and determined that it did not need to

draw the attention of the Parliament to the instrument on any grounds within its remit.

**Committee Consideration**

8. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 29 March 2021.

**The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 (2021/100)**

**Background**

9. The policy note (attached at **Annexe B,** which includes further detail and the policy objectives) explains that the Coronavirus (Scotland) Act 2020 includes provisions to extend the duration of planning permission and the Coronavirus (Scotland) (No.2) Act 2020 includes provisions to extend the duration of listed building consent and conservation area consent. Those permissions or consents which are due to lapse during the defined "emergency period" would under the provisions lapse at the end of "extended period" if works have not been begun. These Regulations amend the expiry of the "emergency period" to 30 September 2021 and the "extended period" to 31 March 2022.

10. The policy note states that when planning permission, listed building consent or conservation area consent is granted, applicants have a period of 3 years to commence development (authorities can provide for a longer period). If development is not commenced, then that permission or consent lapses and a new application is required. Planning permission in principle also requires the approval of conditions before development can proceed. It adds that restrictions on movement and of social distancing and self-isolation has meant that applicants have been unable to satisfy the conditions attached to their planning permission or to commence development due to the shutdown of non-essential construction. This also means that a backlog of development has occurred.

11. The policy note goes on to say that extending the provisions will support the construction sector in its recovery from the Covid-19 restrictions, reduce the burden on authorities needing to reconsider applications and provide consistency to businesses operating across the UK.

12. The instrument was laid before the parliament on 24 February 2021 and comes into force on 30 March 2021. It is subject to the negative procedure.

13. An electronic copy of the instrument is available at:

https://www.legislation.gov.uk/ssi/2021/100/contents/made

14. No motion to annul this instrument has been lodged.

**Delegated Powers and Law Reform Committee consideration**

15. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on 9 March 2021 and agreed to draw this instrument to the attention of the Parliament under the general reporting ground in respect of the following drafting errors:

    1. In regulation 4(2)(b):

    a. the reference to section 58(3A) of the Town and Country Planning (Scotland) Act 1997 should be to section 59(8) of that Act; and

    b. the reference to subsections (8A) and (8B) of section 59 of the 1997 Act should be extended to include subsection (8C).

    2. Regulation 5(1) of the instrument should refer to "the relevant date" rather than "that date".

16. In drawing the Parliament's attention to these drafting errors, it welcomed the Scottish Government's commitment to bring forward an amending instrument to correct the errors before the instrument comes into force on 30 March 2021.

**Committee Consideration**

17. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 29 March 2021.

**Procedure**

18. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

19. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

20. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

21. Each negative instrument appears on the Local Government and Communities Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the

following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

22. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

**ANNEXE A**

# POLICY NOTE

## The Town and Country Planning (Pre-Application Consultations) (Scotland) Amendment Regulations 2021 (SSI 2021/99)

The Scottish Ministers make the above Regulations in exercise of the powers conferred by sections 32, 35A, 35B, 35C and 275 of the Town and Country Planning (Scotland) Act 1997, and all other powers enabling them to do so. Town and Country Planning is a devolved matter. The instrument is subject to the negative procedure.

## Purpose of the instrument

The Town and Country Planning (Pre-Application Consultations) (Scotland) Regulations 2021 (the Regulations) amend the existing detailed statutory requirements for pre-application consultation (PAC) which apply to major and national developments 1[1]. They also specify criteria for exemptions from PAC requirements, made under powers introduced by the Planning (Scotland) Act 2019.

## Policy Objectives

## PAC and current requirements

The aim of PAC is that local communities are made aware of proposals at an early stage and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made.

The PAC requirements are currently that the prospective applicant must:

- Serve a proposal of application notice (PAN) on the planning authority describing the proposal and location and indicating what consultation they intend carrying out as part of PAC.
- Consult the community councils in whose area the proposal site is located or whose area adjoins the proposal site.
- Hold a public event (suspended during COVID-19 pandemic, and Scottish Government guidance published on using online alternatives).
- Publish a notice in a local newspaper indicating: where information on the proposal can be obtained; how to make views known to the prospective applicant; and the details of the public event (the notice must be published at least 7 days prior to the public event).

[1] The hierarchy of developments has national developments , specified in the National Planning Framework, and major developments, specified in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, with developments not so specified as national or major being local developments.

- Carry out any further PAC measures required by the planning authority (the authority has 21 days from the receipt of the PAN to make such requirements).

The resulting planning application cannot be made until at least 12 weeks have passed from the service of the PAN on the planning authority. When an application is submitted, it must be accompanied by a report on the PAC. Currently the content of such reports is the subject of guidance.

The PAC process does not remove the right or need for local communities or individuals to engage with the eventual planning application, which is where the planning authority will consider any representations before deciding whether to grant planning permission (with or without conditions) or refuse it.

**PAC – Proposed Changes to Consultation Requirements**

The Regulations amend the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the DMR). They also make transitional arrangements for the coming into force of the new provisions.

The changes to PAC are the first part of a wider package of measures on improving community engagement in planning matters and building public trust. The proposals for changes to PAC come from, in part, the report by the independent panel assigned to review the Scottish Planning system: 'Empowering Planning to Deliver Great Places' [2] (May 2016).

The Regulations amend the above requirements so that:

- a minimum of two physical public events are held (Regulation 6(a));
- newspaper notice to be published in advance of the first and second (or final [3]) event (Regulation 6(b));
- the information which the public can obtain is available electronically as well as in physical format. Regulation 6(c) reiterates the current list of content of a newspaper notice, but will require ((2A)(b)) that prospective applicants must indicate how (including by electronic means) information can be obtained on the proposals;
- a minimum of 14 days between the first and final event (Regulation 6(d)), and
- feedback on comments received must be provided at the final event (Regulation 6(e)).

Regulation 5 amends the content of a PAN to clarify that it allows information on who will be consulted, when and how, rather than necessarily precise dates or persons. For example, with an additional event at which feedback is provided, it may not be clear at the outset exactly when this might happen.

The PAC report will be subject to statutory requirements on content (Regulation 7). The role of the report is to demonstrate compliance with PAC requirements. The

[2] Empowering planning to deliver great places: independent review report - gov.scot (www.gov.scot).
[3] A Planning authority can require or a prospective applicant volunteer additional events as part of PAC.

planning authority must refuse to deal with an application where PAC applies but the requirements are not complied with. These new information requirements go beyond that in an effort to improve transparency and consistency of process and encourage prospective applicants to improve their PAC. These requirements do not change the basis on which a planning authority may have to refuse to deal with an application to which PAC applies.

**Exemptions from PAC requirements**

Since the introduction of PAC requirements (2009) there have been some concerns about requirements for PAC again where a further application was to be made for essentially the same development. For example, where an application was withdrawn or refused permission, the proposal amended and another application made.

The Planning (Scotland) Act 2019 introduced powers to specify the circumstances in which such exemptions would apply. Regulation 3 introduces those circumstances. An application is exempt from PAC where the development is similar to, or part of, a development for which an earlier application, which was subject to PAC, was made. The legislation contains criteria in this regard linking the development in the latest application to that in the earlier application and in the PAN for the PAC previously carried out.

To be exempt the subsequent application must also be made to the planning authority within 18 months from when the earlier application was made. An exemption would not apply where the planning authority had refused to deal with the earlier application – either because it was a repeat application with no prospect of a different decision being reached, or had itself not complied with PAC requirements.

Regulation 4 makes amendments to the legislation on prospective applicants obtaining screening opinions from the planning authority as to whether PAC requirements apply to their proposal. The provisions here cover information required to make screening decisions in relation to the new exemptions.

Regulations 8 and 9 make consequential changes to the DMR on content of applications for, respectively, planning permission and planning permission in principle. They provide that a PAC report is not required to be submitted where PAC is not required because an exemption from PAC applies.

**Transitional Arrangements**

The changes made to regulation 7 of the DMR and the new requirements of regulation 7B of the DMR introduced by regulation 8 will only apply to cases where the PAN is served on or after 1 October 2021 (the coming into force date of the Regulations). Where a PAN was served prior to that date, the earlier PAC requirements will continue to apply.

## Consultation

A consultation paper on our proposals was issued on 13 August 2020, with responses requested by 6 November. This paper was the subject to an e-mail alert to those signed up to that, social media announcement and was circulated to community council liaison officers, for onward transmission to community councils, planning authorities, and to the Scottish Government Planning and Architecture Division's Development Management and Community Engagement Working Groups.

In October 2020, we also held three online events for community councils and other stakeholders and conducted phone call interviews with a number of developer representatives to discuss the consultation paper. Around 22 representatives were involved in these online and phone discussions, and the issues raised were similar to those in the consultation responses. Consultation responses – in line with respondents' preferences - have been published on the Scottish Government's Citizen Space web site.

There were 109 responses to the 2020 consultation

| Group | Number | % |
|---|---|---|
| Community Bodies | 3 | 2.8 |
| Community Councils | 30 | 27.5 |
| Developers | 16 | 14.7 |
| Individuals | 22 | 20.2 |
| Planning Authorities | 17 | 15.6 |
| Planning/Other Consultants | 6 | 5.5 |
| Public and representative Bodies | 15 | 3.8 |
| **TOTAL** | **109** | **100** |

The majority of respondents were supportive of the proposed changes, although there was a lot of nuance in and qualification of responses. In broad terms, there was a split between the public and developers. The public sought more detailed requirements and quality control, with some calls for more planning authority involvement and evaluation of PAC. Businesses were concerned about more statutory requirements and wanted more flexibility of process (requirements dependent of proposals and circumstances). There were calls for greater use of online/ digital mechanisms, instead of physical events, information and publicity (newspaper notices), with concerns too about a change to such approaches.

We have made some minor changes to the PAC procedures in light of the consultation responses. PAC reports are to have information on numbers attending events and making written representations and on any additional consultation

requirements made by the planning authority. We have increased the minimum period between the two required events – from 7 to 14 days.

We have not been able to address the calls for more quality control and scrutiny of how prospective applicants carry out PAC, or allow for more flexibility in approach depending on the emerging circumstances of the case (e.g. levels of interest at first events affecting the need for a second event). This would need a more involved system, with a party like the planning authority acting as monitor and decision maker throughout each PAC. The Planning review did not recommend such an overhaul, and we did not pursue such changes through the Planning (Scotland) Act 2019.

Simply leaving options open to prospective applicants would lead to uncertainty of process, not to mention concern amongst those who already have issues with how some prospective applicants conduct PAC.

Whilst responses to the consultation indicated a number of positive experiences regarding working online and conducting PAC online during COVID-19, there were a number of concerns too. The consultation was based on the idea of physical public events, and the undertaking we have given that the suspension of requirements for physical public events during the COVID-19 pandemic is temporary. Also, we have yet to systematically assess the implications of moving PAC even further online.

Guidance will accompany the coming into force of the new provisions and may help to guide the process and indicate what PAC is intended to achieve, and what considerations and approaches can help make it a more effective process.

On PAC exemptions, there were some concerns amongst the public about the principle of exemptions and complexity, while developers were concerned about complexity and the scope of exemptions and suggested specific relaxations.

In response to the consultation we have allowed for exemptions to apply to part of a development that was previously subject to PAC and an earlier application – it being disproportionate and illogical to allow an application for the whole development to be exempt but not one for part of that development.

We removed the proposed criterion that exemption apply only to the same applicant, planning being concerned with development and land not with who is the applicant.

The PAC exemptions involve a degree of judgement as to how developments in new applications relate to those in an earlier application and to the PAN for PAC. There is, therefore, an element of seeing how the legislation seeking to define such judgements operates in practice.

**Assessments**

As well as a Business and Regulatory Impact Assessment (BRIA), covered in the next section, we have also carried out an Equalities Impact Assessment (EQIA) and Child Rights and Wellbeing Impact Assessment (CRWIA). Copies of the results accompany this note.

The EQIA indicated the desire across various groups with protected characteristics to engage in planning generally, but facing various challenges. The CRWIA did not identify any negative impacts from the proposals. In both cases it is difficult to form a complete picture.

The proposed changes represent an increase in engagement activity where PAC applies. Whilst they will not in themselves address all of the potential concerns identified, guidance will accompany the changes, and this can address the challenges and the approaches to achieving broader engagement at PAC.

PAC is intended as a light touch procedure which occurs at the outset of the development of proposals, where the options for change are potentially greater than at the application stage. PAC exemptions relate to cases where a PAC on the same basic development has occurred already and an application has been made, but an amended version of that proposal is the subject of another application. It is about being proportionate and recognising what PAC can realistically achieve, and that it is not a replacement for the planning application process.

We issued a screening paper with our consultation as regards an Island Communities Impact Assessment (ICIA). Our conclusion was that the changes to procedures do not have significantly different effects in island communities compared to other communities in Scotland. The PAC requirements already allow for the planning authority to add additional consultation requirements to PAC, which island authorities could use to address specific issues. Again guidance can help indicate approaches to consultation in different circumstances. A copy of out ICIA screening document accompanies this note.

We have screened out of the Fairer Scotland Duty Assessment, as the changes are amendments to existing procedures rather than strategic policy. A Data Protection Impact Assessment is not considered relevant to the changes.

**Financial Effects**

There will be additional costs to business from the additional requirements for events and publicity for these. We would not anticipate significant costs from statutory requirements on PAC reports, as similar information should already be being provided in such reports, in line with existing guidance.

There may be some savings for business where PAC exemptions apply. The aforementioned costs and these benefits are difficult to calculate, as predicting case numbers is an issue, the number of potential PAC exemptions and also given the wide range of costs developers incur in carrying out PAC.

Through the Business and Regulatory Impact Assessment (BRIA) process we estimated a net additional cost to business of £3.5 Million per year. The consultation responses did not indicate a different figure or order or magnitude in this regard. The final BRIA accompanies this policy note.

**ANNEXE B**

**Policy Note**

**The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/100)**

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 58(3D), 59(8D) and 275 of the Town and Country Planning (Scotland) Act 1997[4], section 16(7) of the Planning (Listed Buildings and Conservation Areas) (Scotland) 1997[5], section 12(9) of the Coronavirus (Scotland) Act 2020( ), section 9(9) of the Coronavirus (Scotland) (No. 2) Act 2020 and all other powers enabling them to do so. The instrument is subject to negative procedure.

**Purpose of the instrument**

- The Coronavirus (Scotland) Act 2020 includes provisions to extend the duration of planning permission and the Coronavirus (Scotland) (No.2) Act 2020 includes provisions to extend the duration of listed building consent and conservation area consent. Those permissions or consents which are due to lapse during the defined "emergency period" would under the provisions lapse at the end of "extended period" if works have not been begun.
- The "emergency period" was defined by both Acts, as the period from the day the respective Act was commenced and expiring 6 months later. For planning permissions this period is from 7 April 2020 to 6 October 2020 and for listed building and conservation area consent it is from 27 May 2020 to 6 October 2020.
- The "extended period" was defined by both Acts, as the period from the day the respective Act was commenced and expiring 12 months later. For planning permissions this period was from 7 April 2020 to 6 April 2021 and for listed building and conservation area consent it was from 27 May 2020 to 6 April 2021
- The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 amended the expiry of the "emergency period" to 31 March 2021 and the "extended period" to 30 September 2021. • The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 amend the expiry of the "emergency period" to 30 September 2021 and the "extended period" to 31 March 2022.
- The regulations include savings provisions as the Coronavirus Acts are due to expire on 30 September, however, the "extended" period is to be extended to 31 March 2022.

[4] c.8. Sections 58(3D) and 59(8D) have effect by virtue of paragraphs 8 to 10 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7).
[5] c.9. Section 16(7) has effect by virtue of paragraph 2 of schedule 4 of the Coronavirus (Scotland) Act 2020 (asp 7).

## Policy Objectives

1. The coronavirus outbreak has affected the ability of both planning authorities and applicants to deal with planning permissions, listed building consents and conservation area consents which are due to expire.

2. When planning permission, listed building consent or conservation area consent is granted, applicants have a period of 3 years to commence development (authorities can provide for a longer period). If development is not commenced then that permission or consent lapses and a new application is required. Planning permission in principle also requires the approval of conditions before development can proceed.

3. The restrictions on movement and of social distancing and self-isolation has meant that applicants have been be unable to satisfy the conditions attached to their planning permission or to commence development due to the shutdown of non-essential construction. This also means that a backlog of development has occurred.

4. The aim of these provisions is to ensure that where a full planning permission, planning permission in principle, listed building consent or conservation area consent would expire before the end of September 2021 then that permission or consent should not lapse until 31 March 2022. The permission would only lapse if development has not commenced after that time.

5. In relation to applications for approval of conditions, if the last date for making an application for an approval is within the emergency period (up to 30 September 2021) then the time limit for making such an application is to 31 March 2022.

6. The UK Business and Planning Act 2020 came into effect on 22nd July which includes similar provisions to extend the duration of planning permission and Listed Building Consent with the emergency period designated up to 31st December 2020 and the Extended Period up to 1st May 2021.

7. Extending the Coronavirus Act provisions to extend the duration of planning permission, Listed Building Consent and Conservation Area Consent will support the construction sector in its recovery from the Covid-19 restrictions, reduce the burden on authorities needing to reconsider applications and provide consistency to businesses operating across the UK.

## Consultation

As this is an emergency measure, and intended to be temporary, no formal public consultation was undertaken for the provisions in the Act. In deciding whether to extend the duration of these provisions we sought feedback from Heads of Planning Scotland (HOPS), Scottish Property Federation (SPF) and Homes for Scotland

(HfS). As the construction sector has recently been subjected to further restrictions and with no insight into when work will be restarted we believe that it will take some time to get back to pre-COVID work levels and to work through any backlog of development.

**SPF**

"The SPF believes it is vitally important that the emergency provisions for extending planning permissions are continued. Without this flexibility, we fear several major development projects may fail to be delivered due to being timed out of permissions, potentially risking both the projects and the businesses investing in those projects. The real estate sector is a key catalyst for jobs, investment and creating places and the SPF is therefore firmly of the view that extending this provision in the Coronavirus (Scotland Act) 2020 could assist with the recovery from COVID-19, and contribute to rebuilding the economy".

"Planning related knock-on effects of the development industry having been locked down, and working under the COVID restrictions, will last far longer than just the emergency period. Development delays could be so extensive that they are not factored into the measures brought forward to deal with planning permissions/deadlines. Given the current uncertainty and restricted council services, while offices are still closed, our members are concerned about permissions that are due to expire in the near future. They have suggested extending the provision to cover all permissions expiring in 2021 at the very least. More specifically they have suggested adding 12 months to each expiring consent".

**Homes for Scotland**

"Homes for Scotland supports the further extension of the emergency provision extending the duration of planning consents. This will ensure sustainable, supported housing delivery opportunities are not lost during the ongoing pandemic. Home builders and planning authorities are working to ensure services function and homes continue to be delivered. The duration of consents provision helps ensure housing delivery is not compromised simply because additional time may currently be needed to complete and then act upon a consent".

**Heads of Planning Scotland**

HOPS commented that it would be sensible to extend the provisions.

**Financial Effects**

There will be no financial costs imposed on business or Local Authorities as a result of these changes. In fact there should be a saving for both in that applications will not need to submitted and reconsidered, meaning that authorities can continue to focus on responding to Covid-19 and determining new applications to ensure there is a pipeline of developments for developers to progress.

**Assessments**

8. The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.

9. The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Coronavirus Act avoids planning permission (full planning permission or a planning permission in principle), Listed Building Consent or Conservation Area Consent from lapsing because developers are not able to get on site to begin development. It also extends the period within which applications can be made for approvals required by conditions. This is to avoid time limits expiring, and so permission in effect expiring as they can no longer be implemented, just because there is a delay in being able to make applications due to the current situation. Any changes to the way that planning legislation currently may interfere with property rights by regulating development is by way of a relaxation of the current provisions and it is considered that the provisions are compatible with the ECHR.

10. The Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities. The Scottish Government has assessed the potential impact of the proposed measure on island communities and has determined it will have no significantly different impact on island communities. No detrimental effects are anticipated.

11. The Scottish Government has assessed the potential impact of the proposed measure on local government and has determined that extending the duration of planning permission for does not raise any impacts other than those highlighted in the policy memorandum which indicates that this will potentially allow developers and applicants to progress developments swiftly once current restrictions are reduced and lifted entirely. There may be a saving for local government in reducing the number of applications which are submitted seeking to extend the duration of planning permission.

12. The Scottish Government has assessed the potential impact of the proposed measure on sustainable development and no detrimental effects are anticipated.

DLGC: Planning Division
Scottish Government
February 2021

**Local Government and Communities Committee**

**12th Meeting, 2021 (Session 5), Wednesday 17 March 2021**

**Subordinate Legislation (supplementary paper)**

## Background

1. The Committee is due to consider the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/100) at this meeting. The Regulations are due to come into force on 30 March 2021.

2. As members will note from paper LGC/S5/21/12/1, during its consideration of the instrument the DPLR Committee identified a number of drafting errors with SSI 2021/100. The Scottish Government undertook to correct these in an amendment instrument.

3. The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 (SSI 2021/142) were laid on 15 March 2021 and aim to correct these drafting errors.

4. Members will note that this amending instrument (SSI 2021/142) will breach the 28-day laying requirement – this is because these Regulations will come into force on 29 March 2021 – one day before the first set of Regulations come into force on 30 March 2021.

5. The policy note for the amending instrument is attached at **Annexe A**. The letter to the Presiding Officer relating to the breach of the 28-day laying requirement is attached at **Annexe B**.

6. The DPLR Committee is due to consider the instrument at its meeting on 23 March but the clerks have agreed that this Committee will look at it in advance.

7. The Committee is invited to consider the instrument.

**Annexe A**

**POLICY NOTE**

**THE TOWN AND COUNTRY PLANNING (EMERGENCY PERIOD AND EXTENDED PERIOD) (CORONAVIRUS) (SCOTLAND) AMENDMENT REGULATIONS 2021 (SSI 2021/142)**

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 12 of the Coronavirus (Scotland) Act 2020 and section 9 of the Coronavirus (Scotland) (No. 2) Act 2020 and all other powers enabling them to do so. The instrument is subject to negative procedure.

This instrument amends the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021. The Regulations amend the saving provisions in respect of certain permissions and consents and ensures that these extend to conservation area consents and that references to permissions and consents are defined.

**Policy Objectives**

On 26th February 2021 the Delegated Powers and Law Reform Committee wrote to the Scottish Government to highlight a number of errors with regards to the savings provisions within the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021. We responded on 2nd March confirming that regulations to correct these errors would be brought forward before SSI 2021/100 comes into force on 30 March. Further consideration of the Regulations following from the points raised by the Committee has identified that the Regulations would benefit from additional changes.

These ensure that the saving arrangements extend to conservation area consent and that references to permissions and consents are defined.

For further information please see the policy note for the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021

Scottish Government
Local Government and Communities Directorate
March 2021

**Annexe B**

**Letter from the Scottish Government to the Presiding Officer, dated 15 March 2021**

**The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021**

On 24th February 2021 the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 were laid in the Scottish Parliament. The Regulations amend the definitions of "emergency period" and "extended period" in sections
58(3C) and 59(8C) of the Town and Country Planning (Scotland) Act 1997 ("the Act"). Those provisions are applied and inserted by provisions of the Coronavirus (Scotland) Acts and relate to the duration of planning permission, planning permission in principle, listed building consent and conservation area consent. The Regulations also make saving provisions in respect of certain permissions and consents and following consideration of the Regulations by the Delegated Powers and Law Reform Committee it has been denied that certain changes require to be made.

On 26th February the Delegated Powers and Law Reform Committee wrote to the Scottish Government to highlight a number of errors with regards to the savings provisions within those regulations. We responded on 2nd March confirming that regulations to correct these errors would be brought forward before SSI 2021/100 comes into force on 30 March. Further consideration of the Regulations following from the points raised by the Committee has identified that the Regulations would benefit from additional changes. These ensure that the saving arrangements extend to conservation area consent and that references to permissions and consents are defined.

Given that SSI 2021/100 is due to come into force on 30 March 2021, the Scottish Government's view is that it is necessary to breach the 28 day laying requirement to ensure that the errors identified by the DPLRC are rectified and other changes are made to the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021, before the Regulations come into force.

The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 has today been laid to make the changes including the correction of those errors highlighted by the DPLRC.

Yours sincerely
Helen Wood
Assistant Chief Planner

Local Government and Communities Committee

12 Meeting, 2021 (Session 5), Wednesday 17 March 2021

Current petitions before the Committee

Note by the Clerk

1. This paper invites the Committee to consider its two current ongoing petitions petition 1743 and petition 1778.

## Petition 1743

**Petition summary** Calls on the Parliament to urge the Scottish Government to amend the Rent (Scotland) Act 1984 to prevent disproportionate rent increases being set for Scottish Secure Tenants.

**Petitioner** John Foster (on behalf of Govan Community Council)

**Webpage**
http://www.parliament.scot/gettinginvolved/petitions/scottishsecuretenants

### Prior consideration of petition 1743

2. This petition was lodged on 16 September 2019. On 10 October, the Public Petitions Committee considered the petition for the first time and agreed to write to the Scottish Government, Cosla and the First-tier Tribunal for Scotland, seeking views on issues the petition raised. Responses can be found via this link.[1] On 19 March 2020, it agreed to refer the petition to this Committee, noting that this Committee was at the time considering what impact a new judicial body: the First-tier Housing Tribunal, had had on the consideration of cases involving private landlords and tenants.

3. This Committee took evidence on the Tribunal on 11 March 2020 before the petition was formally referred. Issues relevant to this petition were raised but did not form a significant part of the discussion.[2]

### Issues raised in petition 1743

4. The petitioner belongs to a category of longstanding social housing tenants whose rights under a prior legislative regime on tenancies have been partly retained.[3] As of November 2019, the Scottish Government stated that there were around 970

[1] The request to the Tribunal led to a response from the Judicial Office for Scotland, which sits within the overall Scottish Courts and Tribunal Service
[2] Comments of Pauline McNeill MSP, Official Report, col 27
[3] These are tenants who were secure tenants of a housing association whose tenancy was converted to a Scottish secure tenancy in September 2002. To have been a secure tenant with a housing association the tenancy must have started before 1989.

such tenancies remaining. Tenants in this category have their rent reviewed by a Rent Officer and may appeal a rent decision, formerly to the Rent Assessment Committee, now the First-tier Housing Tribunal.

5. The petitioner's views are found in his initial submission to the Parliament and in a follow-up submission responding to correspondence solicited by the Public Petitions Committee. He contends that a 2016 rent affecting a number of tenants in this category in the Govan area of Glasgow was unfair. He says it led to large rent increases that caused real hardship to a group of mainly elderly people. The petitioner said that when the Rent Assessment Committee was asked to review the decisions, it used as comparators private rented housing across Glasgow rather than nearby comparable social housing, again leading to rent rises that were higher than they ought to have been.

6. One affected tenant appealed the decision to the Inner House of the Court of Session (the "Wright" case") [4] In August 2017, the court ruled that the methodology used to arrive at the revised rent was "erroneous in law" and "fundamentally flawed" and remitted the case to the Committee. However, the petitioner contends that the Committee then declined to review the other decisions affecting the Govan tenants. The petitioner further states that these decisions are now being used to benchmark fair rents for other tenants in this category, as rents come up for revision, leading to the unfairness of the earlier decisions being amplified.

7. The petitioner's original submission concludes:

> "We believe the legal basis on which the determinations were made is flawed and tenants are being prejudiced as a result. This was rectified for one tenant following the court of session appeal but not for others. The injustice therefore continues.
>
> We propose that the wording in Section 48 subsection (1) [ie of the Rent (Scotland) Act 1984] be amended from "rents of comparable property in the area" to 'rents of comparable social housing in the immediate area'.
>
> We also believe that the small number of tenants whose rents were determined by the method condemned as 'erroneous in law' should be given the right to re-assessment"

**Consideration so far of petition 1743 by this Committee**

8. This Committee's first formal consideration of the petition was on 21 August 2020. The Committee agreed to write:

- to the Scottish Government: to seek an update on ongoing work on good practice in rent reviews, and to ask it to clarify its response to the petitioner's view that legislative amendment was needed;
- to the Scottish Courts and Tribunal Service, seeking relevant statistical information as well as any response it could offer to the petitioner's view that

[4] https://www.scotcourts.gov.uk/search-judgments/judgment?id=65873aa7-8980-69d2-b500-ff0000d74aa7

the decision in the Inner House case had not had the subsequent effect on rent review decisions that it should have;
- to two bodies representing housing associations and a group campaigning for lower rents, for their views on issues raised in the petitions.

9. These Committee's letters can be found on the Committee's webpage for the petition, as can all responses received.[5] In summary:

- The Scottish Government's response indicated that issues raised in the petition had not thus far been identified as a major priority in discussions on good practice in rent reviews with representatives of housing associations but these might be taken up in future discussions. The Scottish Government did not see any need to make any legislative amendment along the lines proposed by the petitioner;
- Data provided by the SCTS indicates (amongst other things) that a majority of cases of "fair rent" cases under section 48 of the 1984 that are determined judicially result in a rent being set that was higher than that determined by the rent officer. Since the Wright case, the proportion of cases decided in this way appears to have decreased, although the numbers are relatively low, with just 9 of these involving a housing association. The SCTS did not consider it appropriate to offer a view on what it perceived as a question about judicial decision-making;
- Living Rent supported the petitioner's viewpoint, saying that loopholes in current legislation made it unfair to tenants;
- The Glasgow and West of Scotland Forum of Housing Associations also expressed sympathy with the petitioner's views on the legislation, describing it as "cumbersome". It agreed that fair rents which are appealed should be compared with rents in the social rented and not private rented sectors.

10. The petitioner wrote to the Committee following receipt of these responses. The response stated:

"a) The body responsible for housing provision for a majority of the tenancies concerned, the Glasgow and West of Scotland Forum of Housing Associations, is in agreement with 'the content of proposed amendment' and that the present situation is 'far from ideal' and that the tenancies concerned 'are likely to continue for many years to come'.

b) The organisation that has been responsible for defending tenants' rights across Scotland in recent years, Living Rent, is strongly supportive of the amendment as remedying a manifest injustice that has caused hardship to a significant number of households.

c) The response from the Scottish Courts and Tribunal Service supplies useful information on the incidence and outcomes of appeals without comment on the proposed amendment itself

d) The letter from the Minister of Local Government Planning does not, in our opinion, show a full appreciation of the problems faced by individual tenants - as

[5] At the time of preparing this paper, no reply has been received from the SFHA.

perceived both by the Housing Associations as landlords and by organisations representing tenants.

We therefore hope that the Committee will support the Petition."

11. The Committee considered the petition at its meeting on 18 November, taking into account all recent correspondence in connection with the petition. Following the meeting, the Committee wrote to the Scottish Government, indicating agreement with the tenant that this matter should be addressed as a matter of fairness, by legislative amendment if necessary.

12. The Minister for Local Government, Housing and Planning responded to the Committee on 21 January. He confirmed that the Scottish Government remains of the view that it is not necessary to amend the Rent (Scotland) Act 1984. He stated, however, that following the Committees request and the additional evidence provided, the Scottish Government will examine further the extent of the issue and the implications of changing the law for both tenants and landlords. Following this, if a decision to amend the legislation is required they will seek to make these changes at an appropriate time in the parliamentary timetable. He was unable to provide a timescale as to when this work would be taken forward, due to the ongoing response to coronavirus.

**Decision on petition 1743**

13. Under Standing Orders, the Committee may take such action as it considers appropriate in relation to any petition. This may include—

    (a) referring the petition to the Scottish Ministers, any other committee of the Parliament or any other person or body for them to take such action as they consider appropriate;

    (b) reporting to the Parliamentary Bureau or to the Parliament;

    (c) taking any other action which the Committee considers appropriate; or

    (d) closing the petition. If a petition is closed, the petitioner must be notified of the reasons for this. It is good practice for the Committee to agree in its public discussion of any petition it intends to close, the reason(s) why it is being closed.

14. Members should note that if a referred petition is not closed before the end of a parliamentary session, it will revert to the next session of Parliament for consideration. If the Committee agrees to keep the Petition open, then it may wish to consider what specific action it believes should be taken when Session 6 commences.

15. **The Committee is invited to consider its next steps in relation to the petition.**

## Petition 1778

**Petition summary:** Calls on the Scottish Parliament to urge the Scottish Government to review the effectiveness of the Scottish Landlords Register scheme.

**Petitioner:** David Findleton

Webpage: http://external.parliament.scot/gettinginvolved/petitions/PE01778

### Prior consideration of petition 1778

16. The petition was lodged on 12 December 2019. On 20 February 2020, the Public Petitions Committee considered it for the first time and agreed to write to the Scottish Government, the Scottish Association of Landlords and COSLA. The Scottish Government's response summarised the petition as raising three main areas of concern:

- *Lack of scrutiny and investigation of individuals in determining whether they are a 'fit and proper' person to hold landlord registration;* the Scottish Government's response was that this was a matter for each local authority to carry out, but it was of the view that the relevant statutory provisions applied an appropriate test and gave local authorities the powers they needed;
- *No checks are carried out by any relevant authority in relation to a landlord's compliance with their legal responsibilities and obligations;* the Scottish Government said checks are carried out and that the requirements imposed on landlords have recently been strengthened;
- *The emphasis of Scottish Government guidance for local authorities on a 'light touch' approach to implementing landlord registration*: the Scottish Government suggested that this view was outdated and that Scottish Government guidance to local authorities on applying the test now provided a "robust steer".

17. Overall, the Scottish Government did not agree with the petitioner that there was any need for a review of the policy.

18. Cosla and the Scottish Association of Landlords did not reply.

19. In his response to these comments sent to the Public Petitions Committee, the petitioner indicated that he found them very disappointing as they did not, in his experience, conform to reality. He said it was his only personal experience that his own council barely policed the "fit and proper person" test and that they had effectively acknowledged this in correspondence with him.

20. On 8 October 2020, the Public Petitions Committee agreed to refer the petition to this Committee. It was suggested that this Committee may wish to examine concerns that there was a "confidence issue" that the register was not being enforced, and that the rules were being effectively applied to meet local needs. A SPICe briefing on the relevant law and policy on landlord registration prepared for the Public Petitions Committee is set out in the annexe to this paper.

**Consideration so far of petition 1743 by this Committee**

21. The effectiveness of landlord registration was discussed briefly at the Committee's 11 March 2020 evidence session on the First-tier Tribunal. The Shelter representative told the Committee—

> "The whole system [of landlord registration], when it was envisaged, was grounded in a great deal of good will and an understanding that there would be positive consequences for people who played by the rules. For a good landlord, there should be a market benefit for complying with the rules. …. that is just not happening, and for a number of reasons.
>
> One issue is that landlord registration in most local authorities is done by one or two people. In some authorities they sit within the licensing team and in others they sit in the housing department. There is no consistency in how landlord registration is administered or dealt with. Also, it is, largely, just a register—there are no checks, enforcement or active regulation."[6]

22. This Committee considered the petition at its meeting on 18 November. During consideration, it took into account the views and evidence received in connection with the petition and also a report by the UK Collaborative Centre for Housing Evidence which notes views that in Scotland the relevant legislation had been "hastily assembled" and that "National systems of registration or licensing require greater clarity of purpose, both on a national level and in their enforcement by local authorities." The main report states (at page 45) that: "Scottish authorities also reported a lack of clear guidelines to inform enforcement decisions, particularly in relation to the application of the "fit and proper person" test."

23. The Committee agreed that the petition raised some questions about the process of landlord registration, it therefore wrote to the Scottish Association of Landlords, COSLA and the Scottish Government to seek views on issues raised in the petition.

24. In their response to the Committee's letter, the Scottish Association of Landlords said that they believe that the landlord registration system is fit for purpose. They state that it was always intended that a risk-based approach be taken to the scrutiny of applications and where a local authority was concerned about an application based on the fit and proper person test, further scrutiny can be applied, including on rare occasions, property inspections. They say that recent changes to the legislation have strengthened the process and that they do not consider it necessary or proportionate for property inspections to take place before granting an application for registration unless the local authority has concerns about compliance.

25. The Scottish Association of Landlords did express some concerns about whether councils are adequately resourced to properly scrutinise applications and enforce the landlord registration requirements, particularly against unregistered landlords. They would also like to see greater use of the landlord registration database to proactively disseminate information to landlords on changes to legislation, share best practice and alert them to training opportunities. They also call for more

[6] Official Report, 11 March 2020, col. 15

sharing of enforcement statistics to encourage people to report instances of non-compliance.

26. COSLA said that the "legislation and guidance is sufficient, and has been part of efforts in the professionalisation of the Private Rented Sector, which is happening slowly over time". They were of the view that tenants were best placed to identify concerns with landlord or properties once they had been registered, and that the landlord registration scheme is a regulatory function which relies on those using the service to report issues. They said it "is additional and complimentary to the protection provided by the Private Residential Tenancy and the First Tier Tribunal."

27. In response to whether councils have the resources they need, including access to relevant sources of information, to make informed judgments about admitting or excluding people from the register, COSLA refer the Committee to its recent publication setting out pressures and challenges in respect of budgets and funding.

28. In his response, the Minister for Local Government and Housing states that local authorities are responsible for the administration and enforcement of landlord registration and are the data controllers of the information on the landlord registration IT system for landlords in their area. The Scottish Government has access to numerical information to monitor the private rented sector across Scotland and to distribute the applications fees to the relevant local authorities. It has also used the landlord registration system data, with agreement from local authorities, to directly contact Scottish landlords and tenants with important information relating to covid-19.

29. The Minister reiterates that the Scottish Government does not agree with the views of the petitioner that a full review of the policy is required. He states that the Government carried out stakeholder engagement with local authorities during the development of the Private Landlord registration (Information) (Scotland) Regulations 2019, and prior to the covid-19 outbreak, it established a number of working groups with local authority stakeholders as part of implementing and monitoring these changes. It intends to return to this work this year and will work with local authorities in the coming months, to assess the effectiveness of the current statutory guidance and update it.

**Decision on petition 1778**

30. Under Standing Orders, the Committee may take such action as it considers appropriate in relation to any petition. This may include—

    (a) referring the petition to the Scottish Ministers, any other committee of the Parliament or any other person or body for them to take such action as they consider appropriate;

    (b) reporting to the Parliamentary Bureau or to the Parliament;

    (c) taking any other action which the Committee considers appropriate; or

(d) closing the petition. If a petition is closed, the petitioner must be notified of the reasons for this. It is good practice for the Committee to agree in its public discussion of any petition it intends to close, the reason(s) why it is being closed.

31. Members should note that if a referred petition is not closed before the end of a parliamentary session, it will revert to the next session of Parliament for consideration. If the Committee agrees to keep the Petition open, then it may wish to consider what specific action it believes should be taken when Session 6 commences.

32. **The Committee is invited to consider its next steps in relation to the petition.**

**Annexe: SPICe briefing for Public Petitions Committee on amendment 1778**

**Briefing for the Public Petitions Committee**

Petition Number: PE1778

Main Petitioner: David Findleton

Subject: Review the Landlords' Register Scheme

Calls on the Parliament to urge the Scottish Government to review the effectiveness of the Scottish Landlords' Register Scheme.

**Background**

Since 2006, there has been a requirement for all private sector landlords to be registered. Information about this can be found at Landlord Registration Scotland. Additionally, the Letting Agent Registration (Scotland) Regulations 2016 provide information about criteria needing to be met to be on the letting agent register. Registration is therefore a legal requirement for landlords.

**Legislation**

Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 states that private landlords need to register themselves and their properties with the local authority in which a property is situated. Local authorities must ensure that each landlord is a "fit and proper person" before they are approved.

Local authorities must take account of the information prescribed in section 85 of the 2004 Act when carrying out the fit and proper person test. Shelter Scotland advise that local authorities should look for:

- Information showing that the landlord has committed fraud, or violent or drug related offences. •
- Evidence of discrimination in any business activity. •
- Information showing that they have broken any other laws in relation to housing.
- Information showing that they are a bad landlord, or that they have been a bad landlord in the past.
- Antisocial behaviour problems in any properties the landlord rents out or is responsible for. •
- If the landlord has an agreement with a letting agent (or anyone else who's acting on their behalf in letting the property), that the terms of that agreement are adequate. •
- Anything else which is relevant.

A criminal conviction doesn't necessarily mean that a landlord won't pass the test. The council looks at every case individually. It may consider: • what the conviction was for • how long ago it was • whether or not it will affect the person's ability to be a good landlord • the risk of the same thing happening again and whether that would affect the person's duties as a landlord. Section 85(4) allows local authorities to consider material other than

a conviction or tribunal decision to assess whether or not an applicant is fit and proper to be approved for registration A landlord can be de-registered if they do not meet the fit and proper person test. Local authorities consider whether a landlord is ignorant of the legislation or whether they are failing to comply. However, there may be an issue in getting the evidence to prove failure to comply. Existing local authority powers include: • If a local authority becomes aware of poor standards in private letting management they can, and do, draw up Action Plans for private landlords to get properties to reach the required standard. • Rent Penalty Notices (RPNs). Local authorities use these to encourage landlords to make improvements while applying a firm penalty to cases where improvements or actions were not made within an acceptable time-frame.

There may be variable practice amongst local authorities about how they deal with landlord registration applications, and once an applicant is registered, how they evidence landlords' poor practice. Some may have a more "light touch" approach than others. Consequently, Landlord Registration is sometimes criticised as being ineffective. However, the principal aim is to improve standards within the Private Rented Sector rather than punishing poorly performing landlords.

Part 1 of The Private Rented Housing (Scotland) 2011 Act (2011 Act) made several amendments to these provisions with the intention of improving the operation of the scheme. The following summarises the main aspects of the scheme.

• A strengthened 'fit and proper person' test

• The requirement for 'property to let' adverts to include the landlord's registration number

• Powers for local authorities to obtain information about private landlords

• An increase in the maximum fine for landlord registration offences from £5,000 to £50,000

The 2011 Act also gave local authorities new powers to obtain information for the purposes of registration activity and to help identify unregistered landlords.

A local authority can serve a notice on specified persons requiring them to provide: • information on the nature of their interest in the house; • specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and • such other information about the house or such a person as can be reasonably requested. The Housing (Scotland) Act 2006 identified the Repairing Standard, which governs the condition of properties. Part 3 of the Housing (Scotland) Act 2014 increases the things landlords have to do, including ensuring properties have carbon monoxide detectors and carry out regular electrical safety inspections. The Scottish Government, in 2017, published guidance which requires local authorities to enforce landlord registration criteria. Any failure to comply with the repairing standard should result in action being taken by the local authority under the Environmental Protection Act 1990. Local authorities have enforcement notices that they can service on substandard properties to ensure landlords bring them up to standard. Statutory notices can also be issued under the Building (Scotland) Act 2003.

**Scottish Government Action**

The Scottish Government published an evaluation of the Landlord Registration Scheme in 2011. The evaluation consisted of: an analysis of the financial and administrative information provided by the Scottish Government by local authorities; an online survey of local authorities and case study analyses. The results suggested that there were more than 175,000 landlords registered, though the report indicated that it was not possible to get an accurate picture of how many landlords had not registered.

The research indicated that the Scheme had gone some way to achieving its goal of raising standards, stating that, "there is evidence that the sector is more aware of its obligations… and there have been some improvements in landlord behaviour."

Deciding on the effectiveness of the legislation to ensure that only "fit and proper" persons become registered landlords is more difficult. The number of landlords that are refused entry to the register and the reasons they failed to meet the criteria for registration could be useful (if the data were made available). However, this does not identify if people are passed as wrongly identified as "fit and proper". The level of the scrutiny and the numbers needed to be processed may mean that some landlords are registered when they perhaps should not be. How robust the process for assessing fit and proper person status is, is unclear.

Consultation with different landlords and landlord groups suggest that landlords support the idea of registration but feel little is done to identify those that operate outside the register or who are registered but should no longer be. The view being that those are the rogue landlords and that they should be prevented from operating outside the legal system.

The Private Landlord Registration (Information) (Scotland) Regulations 2019 amended the regulations from 16 September 2019. This amends the information that needs to be provided by the landlord when they are applying for registration.

**Scottish Parliamentary Action**

The most recent parliamentary discussion regarding landlord registration was in 2015.

> Question S4W-27427: Alex Johnstone, North East Scotland, Scottish Conservative and Unionist Party, Date Lodged: 10/09/2015
>
> To ask the Scottish Government how many landlords have been (a) convicted and (b) sanctioned under the Landlord Registration Scheme.

Answered by Margaret Burgess (18/09/2015):

Responsibility for administration of the Landlord Registration Scheme rests with local authorities and Information on the number of prosecutions is not held by the Scottish Government. The Scottish Government does monitor local authority Landlord registration enforcement activity. Since January 2011, 25 cases have been reported to the procurator fiscal, prior to this time this figure was not collated centrally.

With reference to other sanctions under Landlord registration legislation, local authorities undertake a range of work to pro-actively enforce Landlord registration and improve standards. For example, since April 2008, there have been 36,637 late application fees applied, and 8,590 rent penalty notices served, 321 action or improvement plans were

instigated, 86 landlords have been deemed to be not “fit and proper” and 139 landlords have been refused registration or had their registration revoked.

Alex Marks

Senior Research SPICe

17 December 2019