LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

24th Meeting, 2018 (Session 5)

Wednesday 12 September 2018

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Declaration of interests:** James Dornan and Annabelle Ewing will be invited to declare any relevant interests.

2. **Choice of Convener:** The Committee will choose a Convener.

3. **Decision on taking business in private:** The Committee will decide whether to take items 8 and 9 in private.

4. **Subordinate legislation:** The Committee will take evidence on the Regulation of Social Housing (Influence of Local Authorities) (Scotland) Regulations 2018 [draft] from—

   Kevin Stewart, Minister for Local Government, Housing and Planning, Yvonne Gavan, Housing Services Policy Unit, and Kirsten Simonnet-Lefevre, Solicitor, Scottish Government.

5. **Subordinate legislation:** Kevin Stewart (Minister for Local Government, Housing and Planning) to move—

   S5M-13767—That the Local Government and Communities Committee recommends that the Regulation of Social Housing (Influence of Local Authorities) (Scotland) Regulations 2018 [draft] be approved.

6. **Planning (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

7. **Subordinate legislation:** The Committee will consider the following negative instrument—

   The Letting Agent Registration (Scotland) Amendment Regulations 2018 (SSI 2018/196).
8. **Work programme**: The Committee will consider its work programme.

9. **Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill**: The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

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The papers for this meeting are as follows—

**Agenda item 4**
Note by the Clerk  
LGC/S5/18/24/1

**Agenda item 7**
Note by the Clerk  
LGC/S5/18/24/2

**Agenda item 8**
PRIVATE PAPER  
LGC/S5/18/24/3 (P)

**Agenda item 9**
PRIVATE PAPER  
LGC/S5/18/24/4 (P)
Local Government and Communities Committee

24th Meeting, 2018 (Session 5), Wednesday 12 September 2018

Subordinate Legislation

Overview of instruments

1. The following instrument, subject to affirmative procedure, is being considered at today’s meeting:

   • The Regulation of Social Housing (Influence of Local Authorities) (Scotland) Regulations 2018 (SSI 2018/draft)

Background

2. These Regulations make provision to reduce the amount of local authority influence over registered social landlords (RSLs). These powers are made under Section 9 of the Housing (Amendment) (Scotland) Act 2018, on which the Committee was responsible for scrutiny. Its report was published on 1 February 2018. The policy note for the instrument is attached at Annexe A.

3. The Committee needs to report by 22 October 2018.

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee (DPLRC) considered this instrument at its meeting on 4 September 2018 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure

5. Under Rule 10.6.1 (a), the instrument is subject to affirmative resolution before it can be made. It is for the Local Government and Communities Committee to recommend to the Parliament whether these draft instruments should be approved.

6. The Minister for Local Government, Housing and Planning has, by motion S5M-13767 (set out in the agenda) proposed that the Committee should recommend the approval of this statutory instrument. The Minister will attend in order to speak to and move the motion. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask questions of the Minister and his officials on the background to and purpose of this instrument.

7. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.
ANNEXE A

POLICY NOTE

THE REGULATION OF SOCIAL HOUSING (INFLUENCE OF LOCAL AUTHORITIES) (SCOTLAND) REGULATIONS 2018

SSI 2018/XXX

The above instrument was made in exercise of the powers conferred by section 9 of the Housing (Amendment) (Scotland) Act 2018. The instrument is subject to affirmative procedure.

In September 2016, the Office for National Statistics (ONS) announced that it had reviewed how registered social landlords (RSLs) were classified in the United Kingdom national accounts and had concluded that they should be classified as public sector bodies (until that point they had been classified as private sector bodies). This conclusion was based on an analysis of some of the powers that the Scottish Housing Regulator (the Regulator) and local authorities were able to exercise over RSLs.

If RSLs were to remain classified as public sector bodies all new net borrowing by them – at present £300 million a year – would count against the Scottish Government’s borrowing limits. That would create a significant, permanent burden on the Scottish Government’s finances. In view of that, the Scottish Government undertook to introduce legislation with the objective of ensuring that the powers the Regulator and local authorities can exercise over RSLs are compatible with RSLs being classified as private sector bodies.

The Housing (Amendment) (Scotland) Act 2018 is intended to achieve that objective. Sections 1 to 7 of the Act do so in respect of the Regulator by reducing various of the powers that the Regulator can exercise over RSLs. Section 9 provides for the objective to be achieved in respect of local authorities by conferring powers on the Scottish Ministers to make regulations reducing the ability of the authorities to influence RSLs.

These regulations are made under section 9. They reduce the ability of local authorities to exercise influence over RSLs in three ways: they limit to 24% the proportion of officers that local authorities can appoint to the board, or other governing body, of a RSL; they remove from local authorities any voting rights they may hold as a result of being a member of a RSL; and they provide that a local authority cannot exercise a power of veto over any decisions to be taken by the board or other governing body of a RSL.
The ONS will review the classification of RSLs when the commencement regulations and these regulations have been made.

Scottish Government
Housing and Social Justice Directorate

August 2018
Local Government and Communities Committee

24th Meeting, 2018 (Session 5), Wednesday 12 September 2018

Subordinate Legislation

Overview of instruments

1. The following instrument, subject to negative procedure, is being considered at today’s meeting:

   - The Letting Agent Registration (Scotland) Amendment Regulations 2018 (SSI 2018/196)

Background

2. These Regulations make amendments to the Letting Agent Registration (Scotland) Regulations 2016.

3. Regulation 2 makes amendments to the information required in an application for registration as a letting agent pertaining to client accounts or client money protection insurance. The amendment has the effect that there is no longer a requirement for registration to have a dedicated client bank account but instead to provide information as to whether or not the applicant has such an account. The policy note for the instrument is attached at Annexe A.

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


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

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee (DPLRC) considered this instrument at its meeting on 4 September 2018 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

7. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2018/196 is 27 September 2018.

Procedure

8. 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
9. 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.

10. 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.

11. 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.

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

The Letting Agent Registration (Scotland) Amendment Regulations 2018
SSI 2018/196

The above instrument was made in exercise of the powers conferred by section 30(2)(f) of the Housing (Scotland) Act 2014 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Background

The Letting Agent Registration (Scotland) Regulations 2016 (as amended) require those applying to join the Scottish Letting Agent Register (the Register) to confirm in their application that, if they hold client money, this is held in one or more separate and dedicated client bank accounts and that they have client money protection insurance (CMPI).

The deadline for making an application to join the Register is 1 October 2018; after this date it is a criminal offence for a person to carry out letting agency work without having made an application to join the Register.

Policy Objectives

These regulations are in response to difficulties being experienced by some letting agents in opening a suitable client bank account following changes to the UK money laundering regulations (MLR).

Under the MLR, banks are required to carry out certain due diligence steps on the identity of their customer (in this case the letting agent) and the underlying clients (in this case the landlords and tenants) of the customer. Where a customer of the bank is subject to the MLR a simplified due diligence process can be used, which enables access to an undesignated (pooled) client account. As many letting agents are not subject to the MLR, this has caused problems for them in accessing this type of client bank account.

Agents unable to open a client bank account and obtain CMPI are currently prevented by the requirements of the Letting Agent Registration (Scotland) Regulations 2016 from making an application to join the Register.

These amendment regulations will ensure letting agents who have been unable to open a client bank account and obtain client money protection insurance through no fault of their own, are not prevented from making an application to the Register by 1 October 2018 deadline.

Consultation

The Scottish Government has engaged extensively with representatives from the letting agent industry, landlords’ and tenants’ groups in the implementation of letting
agent regulation. Draft regulations were also shared with the Scottish Government’s letting agent regulation stakeholder group for their views.

**Impact Assessments**

An equality impact assessment has been completed on the regulation of letting agents and has been published on the Scottish Government’s website.

The Scottish Government’s assessment of the likely impact of the regulation of letting agents upon those within the protected characteristics (age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation) has identified a number of potential positive impacts including opportunities to eliminate unlawful discrimination and advance equality of opportunity. It has not identified any negative impacts.

**Financial Effects**

Business and Regulatory Impact Assessments (BRIA) have been completed in relation to the Letting Agent Code of Practice /Registration requirements and the Application Fee for registration and are published on the Scottish Government’s website.

Scottish Government
Housing and Social Justice Directorate
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