LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

25th Meeting, 2018 (Session 5)

Wednesday 19 September 2018

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

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

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

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

4. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk  
LGC/S5/18/25/1

**Agenda item 4**

PRIVATE PAPER  
LGC/S5/18/25/2  
(P)
Local Government and Communities Committee
25th Meeting, 2018 (Session 5), Wednesday 19 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
Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

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
June 2018