

# Consultation response

## Office of Fair Trading: Guidance for lettings professionals

From the Shelter Scotland policy library

December 2013

[www.shelterscotland.org](http://www.shelterscotland.org)

© 2013 Shelter Scotland. All rights reserved. This document is only for your personal, non-commercial use. You may not copy, reproduce, republish, post, distribute, transmit or modify it in any way. This document contains information and policies that were correct at the time of publication.

**Shelter**  
Scotland

## Summary

- Shelter Scotland welcomes the Office of Fair Trading's (OFT) publication of draft guidance for lettings professionals. Once finalised this, alongside the forthcoming regulation of letting agents in Scotland and other recent legislative developments, is a step in the right direction for Scotland's private rented sector.
- Due to significant differences between Scottish housing law and housing law in the rest of the UK – e.g. the ban on tenant fees in Scotland – separate guidance for individual jurisdictions should be created. This would ensure the guidance is easily understood and engaged with by lettings professionals.
- The guidance would benefit from being broken down into short sections with an emphasis on key points. Any further details could be included in an appendix. This would help ensure the guidance is used by as many lettings professionals as possible, which is particularly important given the elements of poor practice in the lettings industry uncovered by Shelter Scotland.
- The final guidance should be circulated widely – to landlords, tenants, local authorities, trading standards officers as well as letting agents. Information and training sessions would also be extremely beneficial to ensure that the guidance is used and complied with long-term.
- The OFT should also pay special attention to the forthcoming regulation of letting agents in Scotland. This may have implications for some of the specific recommendations the OFT makes throughout this guidance.

## Introduction

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness – and we campaign to prevent it in the first place. We're here so no one has to fight bad housing or homelessness on their own.

We offer housing advice on private rented sector (PRS) issues – including those which relate to letting agents – through our helpline and website. As such Shelter Scotland welcomes the OFT's intention to publish guidance for the lettings industry, and the opportunity to respond to the draft guidance at this stage.

## Background

Over the past ten years the private rented sector in Scotland has doubled in size – it now holds 305,000 households representing 12% of all households in Scotland.<sup>1</sup> This increase shows no sign of abating and underlines the need for the sector to offer households a safe, secure and affordable place to live. Shelter Scotland believes that lettings professionals play an important role in the functioning of the PRS; they find tenants for landlords and help ensure that all relevant legislation covering the PRS is complied with.

However, Shelter Scotland is aware of some elements of poor practice within Scotland's lettings industry. Issues include the charging of unlawful pre-tenancy fees and problems around the repayment of tenants' deposits. Over the past few years we've seen a legislative clarification over agents' fees, the introduction of mandatory tenancy deposit schemes, and tenant information packs to be supplied at the outset of a tenancy. The lettings industry will also soon be subject to regulation, as set out in the current Housing Bill.<sup>2</sup> Also within the Bill is the intention to take all private rented disputes out of the sheriff court, transferring them into a specialised private rented sector tribunal.

In this context of growth and change we welcome the additional clarity that the OFT's guidance should provide for the lettings industry in Scotland. We hope this – alongside other recent and forthcoming reforms in the PRS – will ensure that letting agents are clear about their role in the private renting journey, for both landlords and tenants. Ensuring a well-functioning PRS which delivers for both tenants and landlords.

---

<sup>1</sup> Housing Statistics for Scotland - Key Information and Summary Tables' published 26 August 2013

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/KeyInfoTables>

<sup>2</sup> Housing (Scotland) Bill, introduced to the Scottish Parliament on 21 November 2013,

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70102.aspx>

Responses to consultation questions

**A.1 Overall, is the draft guidance sufficiently clear and helpful?**

The draft guidance provides a very detailed and thorough examination of the various consumer issues which arise in the lettings industry, both from the perspective of landlords and tenants. The various laws covering the private renting and lettings industry in Scotland and the rest of the UK are also covered.

Shelter Scotland is particularly pleased to see the Scottish Government's recent clarification of the law in relation to letting agents' fees to tenants coming through strongly in the guidance. The reference to 'refundable' deposits which are not actually refundable (para. 6.28 and 6.32) is also very welcome.

The level of detail in the guidance is useful and makes for an excellent reference guide for the lettings industry. However, at over 100 pages long, the guidance is very long and is not easily accessible. Given Shelter Scotland's recent experience of some of the poorer elements of practice which exist in the private lettings market, we feel that it is important that the guidance be clear and accessible to ensure the guidance reaches every agent letting property in Scotland.

To ensure that this guidance is as clear and helpful as possible separate guidance notes should be made for Scotland and the rest of the UK. The guidance should also be broken down into easy to digest chunks which focus on specific issues, using 'key points' and summaries.

**A.2 Does the draft guidance have any significant omissions? If so, what's missing?**

There are no significant omissions from the guidance.

**A.3 Do any parts of the draft guidance need clarification and, if so, in what respect?**

**The relationship between letting agents and tenants**

More clarity should be given to the relationship between all parties in the lettings process, particularly in terms of the way tenants are defined as 'consumers' (para. 2.6). We feel it is important to emphasise that it is the landlord who is the consumer of the letting agent, and the tenant who is the consumer of the landlord. In this scenario the letting agent is the

representative of the landlord only. Consequently, the services that a tenant receives from the letting agent are on behalf of the landlord. This is relevant because in some situations – for example the creation of a tenancy – agents may give tenants the impression that they are in some way offering them a service themselves. This is not the case: the agent's professional loyalty lies with the landlord, their customer. While agents do have a duty of care towards tenants on behalf of landlords, they themselves do not offer tenants a 'service', per se. If this was the case there would be a clear conflict of interest between agents, tenants and landlords. Due to these factors it is important that tenants understand the relationship that agents have with landlords – and this should be expressed at the outset.

#### **A.4 Are any parts of the draft guidance unnecessary?**

The guidance is very comprehensive, however it would benefit from being streamlined down to ensure as many lettings professionals as possible engage with it.

#### **References to regulations which don't cover Scotland**

From Scotland's point of view, the legislation which is relevant to the rest of the UK only is unnecessary and could make the guidance less effective than it otherwise could be. For example, the references to fees peppered throughout the guidance, along with the illustrative examples, may add to confusion over the topic of agents' fees to tenants in Scotland. The section which covers inventories makes reference to a tenant paying for a fee for the creation of the document – this is unlawful in Scotland. A solution to this would be to create region-specific guidance.

#### **Explanation of the OFT's power to intervene**

While it is important to explain why the OFT has the power to intervene in the lettings market (para. 2.3 to 2.4), this detailed explanation would be better as an appendix rather than being set out at the beginning of the document. The same applies to the explanation of who are the traders and who are the consumers in the lettings scenario (para. 2.5 to 2.12). Instead the 'Key point' from this section on p.11 could be stated with a reference to the appendix, which fully explains why the parties are defined in the way they are. This would ensure that the guidance is as accessible as possible for lettings professionals.

***A.5 Are the illustrative examples useful? Are there better ones that we should use instead or as well?***

In general we find the illustrative examples useful, however many of them are not applicable to the Scottish lettings market.

***A.6 Are the practical steps we recommend lettings professionals take reasonable? What changes would you suggest?***

The practical steps laid out in the guidance are comprehensive and useful. The one thing that may hold back the guidance from being widely used and effective however is its length and presentation. The summaries at the end of each section are very useful and should be given greater prominence – perhaps appearing at the beginning of each section, rather than the end. This would make the guidance more effective and accessible for lettings professionals.

***A.7 Are there any parts where you disagree with our understanding of the law? If so, please state which and give your reasons.***

The guidance states (para. 5.20) that payments under a Green Deal plan are prohibited by premiums legislation in Scotland, this is not the case. The Rent (Scotland) Act 1984 (Premiums) Regulations 2012<sup>3</sup> exclude Green Deal payments from the ban on letting agents' fees.

The guidance states (para. 6.7) that 'In Scotland, charges to tenants are heavily restricted'. Rather than being 'restricted' any fees required by landlords or agents for the granting or renewal of a tenancy, over and above rent and a deposit are banned.

---

<sup>3</sup> The Rent (Scotland) Act 1984 (Premiums) Regulations 2012  
<http://www.legislation.gov.uk/sdsi/2012/9780111018026/regulation/2>

***A.8 Does this document provide sufficient guidance in relation to professionals' treatment of vulnerable consumers, and in particular those covered by Equalities and Anti-discrimination legislation?***

Yes. However, special attention should be paid to the proposal to require private landlords to carry out immigration checks on potential tenants given the risk of discrimination against prospective tenants.<sup>4</sup>

***A.9 Is the draft guidance in the right format and length for the intended audience?***

Shelter Scotland has concerns that the guidance may be too long and complex for some in the lettings industry. As we have previously stated we have uncovered elements of poor practice in the lettings industry, much of this is to do with the various complicated statutes which cover the private rented sector. To ensure that as many lettings professionals engage with the guidance as possible, we feel that it could be simplified. More should be made of the 'key points' sections and summary sections; any in-depth consideration of the issues related to the lettings industry could be appended to the guidance. As mentioned in our answer to A.4 we feel that the guidance would also benefit for being separated to make it more region-specific. Read in isolation some sections of this guidance may give lettings professionals in Scotland the impression that they are able to charge fees to tenants so long as they are clear about what these are.

***A.10 Is the draft guidance sufficiently user friendly for the intended audience?***

As outlined in our answer to A.9 we feel that the guidance should be made easier to understand, with an emphasis on key points and summaries. This would also have the effect of making the guidance more accessible to tenants, who will be able to have some input into any enforcement which may result from the guidance.

---

<sup>4</sup> See Shelter's consultation response, 'Tackling illegal immigration in privately rented accommodation', August 2013  
[http://england.shelter.org.uk/professional\\_resources/policy\\_and\\_research/policy\\_library/policy\\_library\\_folder/response\\_-\\_home\\_office\\_consultation\\_tackling\\_illegal\\_immigration\\_in\\_privately\\_rented\\_accommodation](http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/response_-_home_office_consultation_tackling_illegal_immigration_in_privately_rented_accommodation)

**A.11 What suggestions do you have on ways to improve the guidance?**

In summary we feel that the guidance would benefit from being made shorter, with emphasis being placed on practical 'key points' and summaries. Additional detail could be included in the appendix.

**A.12 Do you agree with the proposal to put this guidance for lettings professionals to the CMA Board for adoption by the CMA?**

Yes.

**A.13 What do you suggest will be the best ways to disseminate the final guidance to those who need to see it?**

Shelter Scotland would be happy to assist the OFT in the dissemination of the final guidance and we suggest that, as a starting point, the following actions could be taken to circulate the final guidance:

- The guidance should be circulated amongst the relevant letting agent and landlord professional bodies, e.g. the Scottish Association of Landlords, the Council of Letting Agents, the National Landlords Association etc. Some of these bodies hold regular private landlord forums, this may present an opportunity to circulate the guidance and discuss it in a face-to-face context.
- The Scottish Government funded website [www.rentingscotland.org](http://www.rentingscotland.org) should also carry a link to the guidance.
- Local authorities could also play a role in circulating the guidance through the register of private landlords, which also contains details of agents. Some local authorities also hold private landlord forums where the guidance could be circulated and discussed.
- Training sessions for Trading Standards officers would also be beneficial as this focus on the lettings industry is a relatively new one.
- Private tenants should also be made aware of the publication of the guidance. It is likely that Shelter Scotland would link to the guidance from its advice pages.



- The forthcoming regulation of letting agents by the Scottish Government – currently contained in the Housing (Scotland) Bill – may present another opportunity to circulate the guidance at a later date. It is likely that the regulation of agents will include mandatory registration and a statutory code of practice.

**A.14 Are there any further comments you wish to make?**

The OFT should pay special attention to the forthcoming regulation of letting agents by the Scottish Government contained in the Housing (Scotland) Bill.<sup>5</sup> This may have implications for some of the specifics mentioned by the guidance, for example the suggested timescales for transferring rent from an agent to a landlord (para. 4.34) may be set out by the Scottish Government in further regulation.

## Conclusion

Shelter Scotland welcomes the opportunity to respond to the draft guidance for the lettings industry, and is looking forward to the publication of the final version. We hope that this guidance becomes an integral part of the regulatory framework covering the lettings market. We believe that this can be achieved if the guidance is broken down into region-specific sections with an emphasis on summaries and key points, with further details appended. Also key to the success of this guidance is its promotion. The guidance should be circulated widely – amongst letting agents, landlords, local authorities and Trading Standards officers – and training should be given on the implications the guidance has for letting agents, and how it can be enforced. Finally, it is also important that the OFT follows the forthcoming regulation of letting agents in Scotland closely, as this may have implications for some of the specifics contained in the guidance.

### Contact:

James Battye, Policy Officer, Shelter Scotland

Email: [james\\_battye@shelter.org.uk](mailto:james_battye@shelter.org.uk) Tel: 0344 515 2463

---

<sup>5</sup> Housing (Scotland) Bill, <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70102.aspx>