

# **ROYAL INSTITUTE OF CHARTERED SURVEYORS SCOTLAND (RICS)**

## **WRITTEN SUBMISSION**

### **RICS Scotland**

1. A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,000 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.
2. Our members practise in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations.
3. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.
4. RICS Scotland comprises many working professional group boards and forums relating to the aforementioned sectors, and recently initiated the member-based RICS Scotland PRS Forum.
5. This Call for Evidence was circulated to members of the forum for their assessment of the Bill's provisions regarding letting agent registration, and their views have been collated within this response.
6. RICS Scotland tenders this submission having recently provided oral evidence to the Scottish Parliament's Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill's provisions for letting agent registration (part 4).
7. Additionally, RICS Scotland has discussed Part 6: Private Housing Condition of the Bill with expert members of the RICS Scotland Quantity Surveying and Construction Professional Group Board and the RICS Scotland Building Control Professional Group Board.

## Part 4: Letting Agent Registration

**Q10.** *Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?*

**Q11.** *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?*

### Oral Evidence

8. The Infrastructure and Capital Investment Committee's Call for written views on the Housing (Scotland) Bill, solicited the following: *Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?*
9. During the oral evidence session, RICS Scotland provided the following key points on various aspects of this query regarding letting agent registration:
10. Following consultation with relevant sector participants, including RICS, before publishing this bill, Scottish Government Ministers instructed officials to pursue 'Option 2'.
11. RICS Scotland supported, like most of the letting industry stakeholders and representative bodies, the foundation of 'Option 3'.
12. Whilst 'Option 2' falls short of the more consistent and targeted regulation of 'Option 3' that RICS Scotland supports, we recognise this development as a step in the right direction.
13. However, for option 2 to realise desired policy outcomes, in terms of raising professional standards and reducing consumer detriment, it is absolutely vital that there is a consistent and effective approach to enforcement of the proposed registration arrangements and associated code of practice.
14. RICS Scotland would like to emphasize that should letting agent registration go ahead, as set forth in the current provisions of the Bill, that it is important to ensure that *Registration* is not misperceived as *Regulation* – nor that “registered agents” are considered “regulated” or “accredited” agents.
15. It has been indicated that the Property Factors Act will form a ‘template’ (we use this term loosely) for the Letting Agent Registration element of the Housing Bill. RICS Scotland has published an impact review report on PFA, and is currently in dialogue with Scottish Government on its findings:

- 15.1 The compulsory registration of property factors has not stopped rogue factors. This is because the necessary “qualifications” for registering as a property factor are too low and very simplistic. So much so that some property factors with a history of malpractice are now legitimised to practice.
- 15.2 This shortcoming is coupled by both a lack of a visible policing body that enforces registration and monitors the sector, and the view that many owners and tenants are unaware of the need for their property factor to be registered, and abide by a code of conduct
- 15.3 On a related note, the report indicated that the Code of Practice, and subsequent Standards, are too minimal

### **UN Global Compact for Sustainable Development**

16. During the oral evidence session, the Chair of the Committee asked the RICS Scotland representative *“As a signatory to the United Nations’ Global Compact for sustainable development, what elements should a Code of Practice include to help the sector develop more sustainable business practices in line with the Compact’s 10 principles, in particular Principle 8, ‘undertake initiatives to promote environmental responsibility?’”*
17. The UN Global Compact is a strategic policy initiative created by the United Nations for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. By doing so, business, as a primary driver of globalization, can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.
18. To improve responsible business practices in the land, real estate and construction industry, the United Nations Global Compact and RICS (Royal Institution of Chartered Surveyors) are jointly developing a best practice toolkit for the sector. This collaboration was in January 2014 and will run for 2 years.
19. The primary goal of the collaboration is to support the process of developing a best practice tool kit for the real estate, land and construction sector. To this end, the UN Global Compact and RICS are working together to meet the following three objectives:
  - a) To identify key opportunities and challenges for the land, real estate and construction sector pertaining to the Global Compact’s issue areas and United Nations’ goals;

- b) To actively engage UN Global Compact participants from the land, real estate and construction sector as well as associated users and stakeholders to capture and scale up existing best practice efforts and initiatives in applying and implementing the Ten Principles of the UN Global Compact;
  - c) To elaborate on the Ten Principles of the UN Global Compact in order to develop a sector specific practical toolkit tailored to the needs of the land, real estate and construction sector and its "downstream users", by initiating a constructive intra-sectoral dialogue
20. By being signatories to the whole of the Global Compact, RICS has an obligation to "undertake initiatives to promote environmental responsibility".
21. In considering the embryonic stage of the collaboration, RICS is not in a position to sufficiently advise the Committee on how the principles can be implemented into the proposed Code of Conduct beyond what we have stated above.
22. However, RICS would welcome the opportunity to discuss future activity and progress of this collaboration with the Scottish Government and Parliamentarians.

### **RICS Scotland Views on Letting Agent Registration**

23. In considering the potentially pivotal role that letting agents will play in the lives of many Scottish citizens, RICS Scotland welcomes the prudent move by the Scottish Government in making provisions to raise standards in the sector.
24. As previously stated, RICS Scotland favours option 3 – the introduction of a legal obligation that all agents must be a member of a recognised professional or trade body
25. If option 3 is not taken forward, RICS Scotland makes the following recommendations on letting agent registration:
- 25.1 The registration process system would need to be more robust than its Property Factors Act counterpart by comprising, for example, details beyond basic personal or company details.
  - 25.2 There needs to be a visible policing body for the letting agent sector, with a purpose to inspect and investigate the industry, in a bid to scope out unregistered, or sub-standard, practitioners.
  - 25.3 The letting agent registration system would also have provisions for ensuring that letting agents that fail the 'fit and proper' person test, or are struck off, are not allowed to re-enter the sector

through alternate means; for example, by taking a “lower” position in large firm i.e. not director level, as to avoid “detection” when the company applies for registration.

- 25.4 Registration should include a renewal that is more regular than the every three years proposal.
26. Members of RICS, and other accreditation or trade bodies, already have to adhere to a code of conduct that includes the elements mentioned above, and more to ensure excellency in practice standards.

### **Costs of Letting Agent Training**

27. Article 220 of the Housing (Scotland) Bill Policy Memorandum (which illustrates the notions of option 3 (*A legal obligation to join a professional or trade body*)) states that *“This approach would also be likely to place the most significant financial burden on the industry. All letting agent businesses would be required to undertake mandatory accreditation and training, before being considered for membership of a professional or trade body.”*
28. RICS Scotland believes that the notion put forward in this statement was one of the key reasons for the rejection ‘option 3’ a suitable course of action to raise standards in the sector
29. If the Housing (Scotland) Bill provisions are to eliminate poor or mal practice and raise standards in the sector, then it is imperative that personnel who practice as letting agents – as sole practitioners or as part of a firm – undergo regular training.
30. If training of letting agent businesses staff is not undertaken, then standards will more than likely decrease over time.
31. Therefore, an adequate level of training will be required, and this will naturally place a financial burden on sector participants.
32. RICS Scotland believes that the raising of standards can only be achieved through ongoing training, or Continuous Professional Development (CPD), of market participants in order to ensure letting agent business staff are knowledgeable and compliant with any legislative changes.
33. RICS members have to undertake 20 hours of CPD to ensure they are aware of new best practice methods and procedures and recent legislative changes. This is one reason why RICS Scotland, and other sector bodies, endorse ‘Option 3’. Members of other accredited bodies also have to partake in developmental programs of a similar nature.

34. In a letter to this Committee from the Scottish Government's Bill team Leader, the proposed details of criminal offence if failing to register were outlined. This letter stated "It will be an offence to operate as a letting agent without registration (at section 39). A person who commits the offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale, or to both. It is also an offence (at section 40) for a person who is not registered to use a number purporting to be a letting agent registration number in any document or communication, without reasonable excuse. A person who commits that offence is liable on summary conviction to a fine not exceeding level 3 in the standard scale.
35. RICS Scotland wishes to raise key questions relating to the above points:
- 35.1 What mechanisms will be put in place to ensure that individuals who fail, or are removed from, the registration scheme cannot return to practice via alternate means?
- 35.2 Who will enforce or police the industry?
- 35.3 Can offenders apply for registration following their imprisonment term or payment of an imposed fine?
- 35.4 Where will the monies raised through fines, and potential registration fees, extend to?
- 35.5

### **Code of Conduct**

36. RICS members already have to adhere to a code of conduct. Will there be provisions for RICS members, and members of other accreditation bodies to *bypass* the need to sign up to another Code? We refer to paragraph 14 of this submission regarding registered agents and regulated agents.
37. We would recommend that the Code of Conduct undergoes thorough consultation to ensure it carries *weight* and is accepted by the sector.
38. The code of conduct should be legally binding with and make obligations to ensure that practitioners:
- Avoid conflicts of interest and any actions or situations that are inconsistent with its professional obligations;
  - Provide regular training and/or continuing professional development (CPD) for all staff;
  - Make provisions for their tenants and landlords to access a comprehensive complaints handling procedure;
  - Have access to separate client money bank account and client money protection; and
  - Carry professional indemnity insurance

39. We also believe that the Scottish Government should provide guidance for organisations and firms on how to adhere to all elements of the Code, and consider the provision of a rough template for the written statement.
40. RICS is well-placed to assist with the code of conduct formation should letting agent registration proceed as the preferred method, and offers expertise and knowledge on this particular element

### **Reason for Regulation as the Preferred Option**

41. RICS Scotland has put forward this element in its submission to the Scottish Parliament Finance Committee, but wishes to reiterate the benefits of option 3
42. Principles-based regulation, targeted where the risks are greatest, have the following three distinct elements:
  - i. legislation/standards;
  - ii. enforcement; and,
  - iii. redress.
43. RICS consumer surveys indicate that consumers want more consistent and targeted regulation of residential agents.
44. Others supporters of regulation of letting agents include: ARLA, CLA, Ombudsman Services, The Property Ombudsman, and Which?
45. Recent RICS impact assessment research shows there is a robust business case for full regulation – this was included in our written submission to the Scottish Parliament Finance Committee’s Call for Evidence on the Housing (Scotland) Bill.
46. In short, the summary figures from this research indicate that the benefits will outweigh the costs in less than 2.5 years (if regulation was obligatory on a UK-wide basis)
47. RICS’ proposed approach to regulatory reform mirrors the now well established approach in the financial services market. The benefits of introducing clear, consistent, and targeted regulation covering all aspects of the UK residential property market will include:
  - consolidated and reduced legislation/regulations;
  - a simplified regulatory framework – easier for consumers and businesses to understand;
  - reduced costs associated with business compliance; and
  - enhanced consumer protection.

48. A copy of RICS Scotland's submission to the Scottish Parliament Finance Committee, which outlines the benefits and costs of professional body membership, can be found here: [http://www.scottish.parliament.uk/S4\\_FinanceCommittee/ROYAL INSTITUTE OF CHARTERED SURVEYORS H.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/ROYAL_INSTITUTION_OF_CHARTERED_SURVEYORS_H.pdf)

### **Redress Mechanism**

49. The Housing (Scotland) Bill Call for Evidence queried. *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?*
50. RICS Scotland agrees that a redress mechanism is required – but it will all come down to the detail.
51. RICS Scotland would not have an issue with a nominal charge, £25 as an example, for dispute body applications. This could deter vexatious cases and “serial complainers”
52. The dispute body members would not only have experience in the sector, but also have to undertake regular training to ensure they fully understand new legislative provisions that affect the sector, and the possible impact of their decisions.

### **Part 6: Private Housing Condition of the Bill**

**Q14.** *Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?*

53. Building maintenance is key to sustaining the fabric of the built environment - its value to the economy in employment and expenditure terms is equally significant.
54. RICS Scotland suggests the introduction of a mandatory Scotland-wide Planned Maintenance scheme for residential property in multi Ownership or Estate situations, following the example of ‘Home Reports’, is considered through legislation .
55. This legislation would also make provisions for ‘Scheme’ Planned Maintenance documentation and Guidance.
56. This scheme could be provided for by a mechanism within legislation for punitive measures, such as fines or similar, for non- compliance, to be imposed (Belgian Monument is a case example here).
57. The *fabric* of the Built Environment could be maintained, and therefore reduce hazards and subsequent risk to owners and public from building failures, collapse or decay.

58. A requirement for 'Sinking Funds' could be put in place, managed and maintained by all Owners.
59. This proposal recognises the following:
  - a) Money spent on this area should not be considered as money waste - in the long term, sustainability performance will influence capital value, as buildings which show good performance are likely to suffer less obsolescence and value depreciation.
  - b) Maintenance plans need to incorporate some flexibility in budgeting in case resources become more restricted or more available during the course of the maintenance plan.
  - c) Curtailing maintenance budgets should be presented clearly to the client.
  - d) Increased risk of disruption to building use due to breakdowns if planned maintenance is cut back.
  - e) A potential decline in the overall standard of the building and its probable effect on rents, asset value or salability.

### **Other Issues**

***Q17.** Are there any other comments you would like to make on the Bill's policy objectives or specific provisions?*

***Q18.** Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?*

60. RICS Scotland supports an Electrical Safety Council (ESC) proposal to introduce mandatory electrical safety inspections in private rented housing.
61. RICS Scotland co-signed an open letter to the Housing and Welfare Minister Margaret Burgess in October 2013 to introduce a requirement for five yearly checks, by a registered electrician, of both fixed electrical installations in all rented property and any electrical appliances supplied with lets.
62. This proposal, and letter, was supported and co-signed by 12 trade associations, businesses and charities. A copy of this letter is attached in Appendix 1, and we refer the Committee to the ESC written submission for further background and information on this proposal
63. RICS Scotland would like to suggest the expanding of the ESC proposal so that the Repairing Standard includes provisions for compulsory smoke and carbon monoxide alarms.
64. The mains operated smoke alarms should be fitted by an approved electrician, such that multiple alarms are interconnected; properties on more than one level must have a smoke alarm on each level; and that

the entrance to each room must be within a maximum allowed distance of an alarm unit.

65. We would also suggest that The Repairing Standard is further amended to state that every property must have suitable CO alarms in each room that has a gas appliance or, if in a cupboard, then immediately outside the door to that cupboard.
66. This could be based on the standard set by Edinburgh Council for HMO properties such that they must be long life (5 years plus) and have batteries which last as long as the alarm.

**RICS Scotland**  
**28 February 2014**

Margaret Burgess MSP  
Minister for Housing and Welfare  
The Scottish Parliament  
T4.44  
Edinburgh  
EH99 1SP

**07.10.13**

Dear Ms Burgess,

## **ELECTRICAL SAFETY IN THE PRIVATE RENTED SECTOR**

How we live is changing. The Private Rented Sector (PRS) in Scotland has more than doubled in size over the last decade, with ever more families and vulnerable people renting privately. As a consequence, the PRS will continue to play an important role in meeting housing need. But all too often, private renters face poor conditions and serious safety hazards.

According to government statistics, over two thirds of all accidental fires in Scottish homes (more than 3,000 annually) are caused by electricity. Independent research also suggests that private tenants are more likely to be at risk of electric shock or fire than owner occupiers.<sup>i</sup>

Whilst we welcome the Scottish Government's efforts to improve conditions in the sector and drive up standards, more must be done to reduce risks to private renters by putting precautionary measures in place to ensure their safety.

We the undersigned believe that housing standards in the PRS can be improved without placing a significant additional burden on landlords, and that improving electrical safety for tenants should be a core part of any new requirements.

Given that a new Housing Bill is due to be considered in Holyrood before the end of this year, we urge you to seriously consider any future regulation that would further improve the PRS, including:

- Mandatory five-yearly safety checks by a competent person of electrical installations and any electrical appliances supplied with lettings
- Mandatory provision of RCD protection in all properties<sup>ii</sup>

Improving standards will not only benefit tenants but also help landlords keep their properties safe from the risk of fire. Making private renting a better option is crucial to ensuring everyone has a safe, affordable home to live in so we hope that you will seek to introduce these much-needed changes and will await your response with great interest.