POLICY NOTE

THE ENHANCED ENFORCEMENT AREAS SCHEME (SCOTLAND) REGULATIONS 2015

SSI 2015/xxx

1. The above instrument was made in exercise of the powers conferred by section 28 of the Housing (Scotland) Act 2014. The instrument is subject to affirmative procedure.

Background

2. Section 28 of the Housing (Scotland) Act 2014 (the 2014 Act) requires the Scottish Ministers to lay draft regulations providing for a scheme to enable a local authority to apply for additional discretionary powers so that it can target enforcement action at an area characterised by poor conditions in the Private Rented Sector (the PRS).

3. The provisions were introduced as a stage three amendment to the Housing Bill by Drew Smith MSP and were accepted by Parliament. In his statement to Parliament outlining the rationale for his amendment, Mr Smith noted:

> *"The power that is proposed is discretionary, time limited and targeted. Enhanced enforcement is not about a broader increase in regulatory power but about a recognition that in some places there are exceptional circumstances that justify a response that would not be considered proportionate if it was applied everywhere. I have no expectation that anything other than a small number of applications for enhanced enforcement status would be forthcoming, and it would be for the Scottish Ministers to determine whether applications would be granted."*

4. The 2014 Act introduced a number of new discretionary powers for local authorities that can be used to tackle poor standards in the PRS:

> *Section 25(1)* – Third party application in respect of the repairing standard, and
>
> *Section 25(6)* – right of anyone authorised by a third party applicant to enter any house to establish if there is a breach of the repairing standard.

5. Those powers, along with the new duties on landlords introduced by the 2014 Act – to provide carbon monoxide detectors (where there is a carbon emitting appliance) and to carry out electrical safety checks every five years, strengthen the framework of enforcement action available to local authorities. The Scottish Government considers that the powers in the 2014 Act, the Private Rented Housing (Scotland) Act 2011, Housing (Scotland) Act 2006 and the Antisocial Behaviour (Scotland) Act 2004, give local authorities the tools to deal with all but the most exceptional cases of poor standards in that sector.

Policy Objectives

6. The policy objective of the Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015 (the Regulations) is to enable local authorities to improve standards in the PRS where there is a concentration of properties let by private landlords in a geographic area and where those properties are characterised by overcrowding and anti-social behaviour.

Local authorities faced with this combination of issues are likely to require additional powers to tackle the problems and secure improvements in the area.

7. These Regulations:

(i) set out the process for local authorities to apply to the Scottish Ministers for designation of an area as an Enhanced Enforcement Area and for the continuation of that designation after the five year period; and

(ii) provide additional discretionary powers that local authorities can use in an Enhanced Enforcement Area (EEA) and the purposes for which the additional powers that are granted can be exercised.

8. More details of each of these aspects of the Regulations are provided below.

Process for application for designation of Enhanced Enforcement Area Status

9. The Regulations require that a local authority seeking the Scottish Ministers' approval for designation must make their application in writing. The policy intention is that a local authority should be able to define the area that is to be designated and that the information that is submitted by a local authority in support of its application should be proportionate. This approach recognises that there are likely to be different circumstances for each application and so it will be important that local authorities have flexibility to define the area and to decide what information would evidence the criteria that are specified in section 28 of the 2014 Act.

Supplementary guidance

10. The Scottish Government considers that it would be helpful to publish supplementary guidance to support a local authority in making an application to the Scottish Ministers for designation of an area as an EEA.

11. This guidance would be developed through consultation with local authorities and landlord representative bodies and would offer examples of what might constitute an "area". (For example an application might cover one tenement building, two or more adjacent tenements or other houses in a street, one street, or could be a larger area delineated by a number of streets or by a postcode area.)

12. The Scottish Government recognises that the exceptional nature of the circumstances that EEA powers are intended to deal with are likely to be unique to each application. To assist them in their thinking about the types of evidence that they would want to consider, the Scottish Government envisages that the guidance would offer examples of types of information that might be considered as evidence of one of the three criteria.

13. As noted in paragraph 14, the Scottish Government will consult stakeholders on the guidance. The list below is offered as an illustration of the types of evidence that a local authority might consider gathering to support its decision to apply for EEA designation for an area. The local authority would only be required to provide a summary of its evidence in its application to the Scottish Ministers for EEA designation.

Evidence of poor environmental standard:

- House condition information, including numbers of properties that are below tolerable standard, are in serious disrepair, are empty or have been abandoned.

- Information on "substandard" homes in the private rented sector as set out in section 69 of the Housing (Scotland) Act 2006.
- Dangerous Building Activity in relation to homes in the private rented sector under sections 29 and 30 of the Building (Scotland) Act 2003 and Defective Building activity under section 28 of the same Act.
- Complaints to the Private Rented Housing Panel about the condition of the property.
- Numbers of rent penalty notices served.
- Owners repeatedly failing to pay their share of repair costs.
- Statutory notices under housing, building standards and planning legislation.
- Levels of infestations of vermin, cockroaches or bed bugs.
- Number of abatement notices served in relation to house condition, waste, pest control and other matters associated with living conditions.
- Information or action taken under the Public Health (Scotland) Act 2008, Parts 3 or 5.
- Numbers of statutory Environmental Health Notices issued.
- Evidence from health practitioners that housing conditions are affecting the health of tenants.

Evidence of overcrowding:

- A disproportionate demand on refuse collection and cleansing services over a period of time compared to other parts of the local authority area with a similar density of property. This could either be a demand to collect refuse outwith established lift and disposal cycles, or requests from the community council, community groups or elected representatives to carry out a major clear up operation.
- Using information from school rolls, health service access and other data, including information gathered during landlord registration.
- Evidence and, or complaints from neighbours.
- Use of Overcrowding Statutory Notices (Part 3 of the Private Rented Housing (Scotland) Act 2011. We plan to bring these provisions into force later in 2015.

Evidence of antisocial behaviour:

- Information showing that the number of antisocial behaviour orders, reports of nuisance to the police, operational assessments carried out by the police, antisocial behaviour teams or community safety teams and complaints received under any part of the Antisocial Behaviour (Scotland) Act 2004 are disproportionately large relative to the size of the area.
- Requirement to install CCTV cameras within the area due to concerns raised by local residents about security (where residents too frightened to report incidents).
- Relatively large numbers of formal and verbal complaints about breaches or failures by individual property owners or their tenants that have been received by

the local authority, a social landlord, community safety organisations or community police.

- Evidence gathered through surveillance by Antisocial Behaviour Teams.
- Numbers of closure orders served by the Police under Part 4 of the 2004 Act.
- Matters which could be considered to be antisocial behaviour but that would be considered or addressed under other legislation such as Part III of the Environmental Protection Act.

14. The list above is intended to be illustrative only. The information is grouped under each criteria by way of example and is not exhaustive. It may be that some information could provide evidence of two of the characteristics. For example, "*Evidence from health practitioners that housing conditions are affecting the health of tenants*" could be evidence of poor environmental standards and overcrowding.

15. The Scottish Government considers that to be effective, the local authority must consider the application for EEA designation and the use of additional powers within the context of actions that it has already taken using existing powers and its wider strategy to improve standards in the PRS.

16. The Regulations require that a local authority must also set out its wider strategy for promoting private landlords' compliance with existing legislation and good practice in its application to the Scottish Ministers for EEA designation . The Scottish Government envisages that the strategy would outline work that the local authority is doing, or plans to do, to tackle bad practice either directly or by working with other bodies, agencies or community groups.

Additional discretionary powers for local authorities to use in an Enhanced Enforcement Area

17. The Regulations would provide a local authority with additional discretionary powers that it may use in an area that has been designated as an Enhanced Enforcement Area to supplement the existing powers that local authorities already have to tackle poor standards in the PRS. Local authorities have powers in relation to the licensing of Houses in Multiple Occupation, registration of private landlords and, as introduced by the 2014 Act, powers to inspect properties for breaches of the repairing standard and report those to the Private Rented Housing Panel.

18. The Scottish Government envisages that the additional discretionary powers would be targeted only at those areas characterised by the set of exceptional circumstances set out in section 28(2) of the Housing (Scotland) Act 2014. The concentration of those issues would justify a response that would not be proportionate or reasonable elsewhere.

19. The additional discretionary powers in the Regulations are:

i) *power to require a landlord who is applying for registration or who is renewing their registration to provide an enhanced criminal record certificate.*
The policy intention of this power is to allow a local authority to carry out an additional check to evidence that the landlord is a Fit and Proper Person under the

2004 Act. The local authority would be able to require landlords with properties in the EEA to submit an enhanced criminal record certificate as part of the landlord registration process. The enhanced certificate is of a higher level than the standard disclosure which is normally used for landlord registration under the 2004 Act.

ii) power to require landlords to produce documents or evidence for inspection by the local authority.

The Scottish Government envisages that this power would allow a local authority to require registered landlords, landlords who are applying for registration, any individual who isn't registered but who the local authority considers might be letting the property, their agents or persons acting on their behalf , to evidence that they are complying with their duties and responsibilities as a landlord.

The documents and evidence that are set out in the Regulations are:

a) a current insurance policy as specified by section 18 of the Tenements (Scotland) Act 2004. (That legislation requires each owner of a tenement flat to insure their flat for the reinstatement value of the flat).
b) a copy of the acknowledgement from the tenant, or other information that would evidence that the landlord has complied with the requirement to provide their tenant with the Tenant Information Pack. (This pack gives information to tenants about their responsibilities and those of their landlord. It sets out important information that is relevant to both parties.
c) that the landlord has provided their tenant with a copy of the Energy Performance Certificate for the property).
d) a copy of the record of maintenance and safety checks for gas appliances in the property.

iii) power for a person authorised by a local authority to enter the house or building

This power would give a local authority the right to enter properties to ensure that the accommodation is safe, well managed and of good quality. The policy intention is that a local authority would be able to use this as part of the landlord registration process; or to check a property belonging to a landlord who is already registered or to check a property that the local authority has grounds for believing is being let by an individual is not registered as a landlord. The Regulations provide that a local authority, in exercising this power, can only enter the property at a reasonable time and if asked, must produce written evidence that the individual is authorised to enter the building. Where a request for entry has been refused or a local authority considers that giving notice of entry would prevent it either accessing the property or being able to assess its condition, then it would be able to apply to the courts for a warrant for entry.

20. The 2014 Act requires the Scottish Ministers to set out in Regulations the purposes for which the additional powers that are granted can be exercised by a local authority. As outlined in paragraph 5 above, the Scottish Government considers that these powers would enable local authorities to tackle exceptional circumstances. The purposes for which the powers may be used are to:

- enable and assist the local authority to exercise any function under Part 8 of the Antisocial Behaviour (Scotland) Act 2004 (registration of landlords),

- ensure the safety and upkeep of the house,
- ensure that information is available to tenants and
- to enable or assist the local authority to decide whether the house and the building of which it forms part are safe, well managed and of good quality.

Advertisement and duration of designation

21. Section 28 of the 2014 Act requires a local authority to advertise that an area has been designated as an EEA. The policy intention is to allow a local authority to determine the most suitable approach to letting landlords, tenants and the wider community know that the designation has been granted. The Scottish Government would provide examples in its supplementary guidance to the Regulations.

22. The designation will last for five years, as prescribed by the 2014 Act. Given the extensive nature of the powers that a local authority would be able to apply following designation, the Scottish Government considers that it would be appropriate for the local authority to report to Scottish Ministers on how it has used the additional discretionary powers and on the impact of those powers in delivering its wider strategy for improving standards in the private rented sector. The Regulations provide the Scottish Ministers with the power to request such a report and require local authorities to provide the report within three months of the request.

Consultation

23. To comply with the requirements of section 28(3) of the Housing Scotland Act 2014 the Scottish Government consulted "local authorities and persons or bodies that represent the interests of landlords and tenants".

24. The Scottish Government published its consultation describing its proposed approach to preparing draft regulations and invited views on that approach. The consultation ran from 14 October to 12 December 2014, 2015. During that time the Scottish Government held two stakeholder discussion events that were attended by representatives from landlord bodies, local authorities, community councillors, a homelessness charity and a law centre (which provides advice to tenants).

25. The key principles underpinning the Scottish Government's proposed approach are that:
    - designation of an area as an EEA should be used to tackle only the most difficult and extreme circumstances and
    - the Regulations should allow local authorities to have flexibility to bring forward the most relevant evidence of the criteria specified in section 28.

26. Since the consultation, the Scottish Government has made a number of changes to its policy approach to address concerns raised or proposals made by respondents. It has:

    - developed its policy approach to ensure that the powers to tackle poor conditions are able to be used to target registered landlords, landlords that are applying for registration as well as landlords that are operating without being registered and

- decided to produce supplementary guidance to support local authorities that wish to apply for EEA designation (many of the examples set out at paragraph 13 above were suggested by respondents to the consultation).

27. A full list of those consulted, and who agreed to the release of this information, is attached to the consultation report published on the Scottish Government's website. http://www.gov.scot/Publications/2015/03/7304 Respondents include Glasgow City Council, City of Edinburgh Council, the Scottish Association of Landlords, Shelter and a number of Registered Tenants Organisation networks.

Impact Assessments

28. An equality impact assessment has been completed on the policy approach and is attached. There are no equality impact issues.

Financial Effects

29. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on the business of private landlords is expected to be minimal. Some landlords may encounter additional costs, for example for obtaining an enhanced criminal record certificate, for to providing insurance documents or gas maintenance and safety records. However, the Scottish Government considers that landlords that are complying with existing legislation, would already have copies of such certificates so the additional costs would be minimal.

30. Local authorities have discretion to apply for EEA designation. The Regulations require the local authority to set out its wider strategy for tackling poor standards in the Private Rented Sector and how the additional powers would help to achieve that strategy. Administration of those powers is likely to require the local authority to commit dedicated staffing and financial resources to the EEA but in the longer term this should reduce the reactive costs to the authority of responding under its statutory duties including those in relation to antisocial behaviour, infestations and environmental health issues.

Housing Regeneration and Welfare Directorate
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