**POLICY NOTE**

**DRAFT : THE RENT (SCOTLAND) ACT 1984 (PREMIUMS) REGULATIONS 2012**

1. The above instrument was made in exercise of the powers conferred by section 89A of the Rent (Scotland) Act 1984 which was inserted by section 32 of the Private Rented Housing (Scotland) Act 2011. The instrument is subject to affirmative procedure.

2. Section 32 of the Private Rented Housing (Scotland) Act 2011 amends section 90 of the Rent (Scotland) Act 1984 to make clear that a premium means any fine, sum or pecuniary consideration, other than rent and a refundable deposit and includes any service or administration fee or charge.

3. In addition to this change to the definition of a premium, section 32(2) also inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy.

4. The above instrument clarifies that other than rent and a refundable deposit (not exceeding two months' rent), the only permissible charge in relation to the grant, renewal or continuance of a tenancy is in relation to a 'Green Deal' plan.

**Policy Objectives**

5. The overall policy objective is to clarify the law in relation to charges made to tenants by landlords, and agents acting on their behalf. This policy contributes to the Scottish Government's work on improving standards and quality within the Scottish private rented sector. The objective also fits with the Scottish Government's strategic 'Safer and Stronger Scotland' objective, which helps local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and better quality of life.

6. Section 82 of the Rent (Scotland) Act 1984 currently makes it an offence to charge or receive any premium or require the making of any loan, in addition to rent, as a condition of the grant, renewal or continuance of a protected tenancy (as defined in section 1 of the 1984 Act). Section 27 of the Housing (Scotland) Act 1988 provides that sections 82, 83 and 86-90 of the 1984 Act will also apply to assured tenancies (as defined in section 12 of the 1988 Act) as they do to protected tenancies (with some modifications).

7. Although the intention of existing legislation is to prevent the making of any charge apart from rent and a refundable tenancy deposit (not exceeding two months' rent), there is evidence that confusion exists about what this means in practice and this has resulted in a variety of charges being made to tenants.

8. Various stakeholders, including members of the Scottish Private Rented Sector Strategy Group[1] have called for the position to be clarified. Initial industry engagement identified that a wide range of views existed as to how this could be done, with many stakeholders stating that there are reasonable pre-tenancy charges which should be permitted,

[1] http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview/strategy

while others stated that it is possible to have a successful business model where no charges are made to prospective tenants.

9. There is anecdotal evidence that some letting agents currently charge an administration fee to cover overheads, costs of background checks and references etc. Good practice published by the Association of Residential Letting Agents highlights that other administration charges must reflect actual costs incurred. However, research published in 2011 by Shelter Scotland and the Resolution Foundation suggested that some agents were charging tenants unjustifiably large administration fees.

10. The instrument details that the UK Government's Green Deal should not be treated as a premium. The Energy Act 2011 introduces the Green Deal, a financial plan which can be put in place to improve the energy efficiency of a property, with the costs for such work being repaid through the utility bills of that property (which in many privately rented properties, will be paid for by the tenant). It is expected that the Green Deal will be available from 2013.

**Consultation**

11. To comply with the requirements of section 89A(3) of the Private Rented Housing (Scotland) Act 2011, the Scottish Government held a full public consultation which put forward three options when taking forward implementation of provisions.

12. The consultation took place between 4 April and 28 May 2012. The report on the findings of the consultation was published on 26 August 2012 and is available at the following address:

http://www.scotland.gov.uk/Publications/2012/08/8961/0

**Impact Assessments**

13. An Equality Impact Assessment in relation to the implementation of section 32 of the Private Rented Housing (Scotland) Act 2011 has been completed and is attached.

**Financial Effects**

14. A Business Regulatory Impact Assessment (BRIA) in relation to the implementation of the Private Rented Housing (Scotland) Act 2011 has been completed and is attached.

15. Some letting agent business will currently charge a range of administration charges made to tenants and therefore the commencement of section 32 of the Private Rented Housing (Scotland) Act 2011 will require those letting agents who adopt such a practice, to adapt their business model. Many letting agents already operate to a business model whereby the tenant incurs no charges other than rent and a refundable deposit and it is possible for letting agents to transfer the administration costs to their clients, the landlord, who in turn is able to have regards to the associated cost and levels of service provided by agents.

16. The order has no financial effects on the Scottish Government. We do not expect there to be any significant administration burden on local authorities.

**Scottish Government**
Directorate for Housing, Regeneration, Commonwealth Games and Sport

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