



Response to Scottish Government's consultation
Draft statutory Code of Practice and training requirements for letting agents
in Scotland
From the Association of Residential Letting Agents
November 2015

Background

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.
2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.
3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Consultation questions

Part 1 – Draft Letting Agent Code of Practice

Section 1: Introduction

Question 1a: Does the introduction tell you enough about the broader regulatory background?

1. Yes, but as well as focussing on 'taking instructions from a landlord, letting and managing the property to the ending of a tenancy' as outlined in sub-section 1.13 the Code should emphasise the need for professionalism and due diligence to prospective tenants and landlords.



Question 1b: Please specify any more information about the regulatory background we should include.

2. Despite sub-section 1.5 outlining who the Code applies to it is very important that the regulatory background goes into greater detail and says that firms and individuals operating from a base out of Scotland but managing properties in Scotland will fall under the Letting Agent Code of practice.
3. ARLA is a UK wide organisation and we know from the introduction of the Rent Smart scheme in Wales that agents with staff outside the domain of the requirements need to be reminded that these staff still need to comply through training and awareness.

Section 2: Overarching standards of practice

Question 2a: Do the overarching standards we have listed reasonably reflect the standards that should be expected of letting agents operating in Scotland?

4. Yes. However, changes to the wording in Section 2 should be made to ensure that the standards are more precise. For instance, sub-section 2.1 and 2.12 should include the words 'prospective or potential' before the words 'landlords, tenants and applicants.'
5. Furthermore, sub-section 2.2 should say 'format' instead of 'way'. The Code should also provide examples here of how agents should provide clear information. Such as including wording which says 'using simple clear text with short sentences and no jargon or abbreviations.'

Question 2b: Please specify any other overarching standards of practice the Code should include.

6. To help make letting agents aware of training that is on offer, sub-section 2.7 of the Code should say that 'professional bodies like ARLA provide courses, events and qualifications to assist lettings agents and their staff.'
7. Sub-section 2.9 should outline the specific legal requirements such as Data Protection legislation which agents must adhere to when handling private information sensitively.

Section 3: Engaging landlords



Question 3a: Do the standards of practice proposed in the section on engaging landlords reasonably reflect the standards that should be expected of letting agents operating in Scotland?

8. Yes, but identity checks must be as simple as possible to allow landlords to engage with letting agents and prove they own the property. Excessive checks may put an unnecessary burden on both letting agents and landlords.
9. In Section 3 it would be preferable to replace the words 'Written agreement' with 'Terms of business.'

Question 3b: Please specify any other standards the Code should include on engaging landlords.

10. The Code should outline that from the start of the lettings process solicitor firms operating as letting agents should make it very clear whether or not the lettings side of the business is covered by the requirements of the Law Society of Scotland.

Section 4: Lettings

Question 4a: Do the standards of practice proposed in the section on letting reasonably reflect the standards that should be expected of letting agents operating in Scotland?

11. Yes. However, in sub-section 4.3 the Code should remove 'take all reasonable steps to' and replace the word 'or' with 'and'. The Code should also add in the word 'written' before 'communications.' After 'communications' put 'including emails'. By doing this the Code will be consistent with the wording in sub-sections 4.4, 4.26 and 7.1 which all refer to including the landlords' registration number in an agreement.
12. The words 'at the outset' should be included in sub-section 4.6 after the words 'renting the property'.
13. Sub-section 4.10 should include 'in the granting of a tenancy' after 'no more than two months' rent in order to remain consistent with the wording in sub-section 4.11.
14. For viewings (sub-section 4.12) agents must agree with the landlord on how, add 'and when' applicants will view their property and who will conduct the viewings. 'For you' should be removed.



15. In sub-section 4.14 replace the word 'should' with 'must' and add in 'When agents are first issued with keys, they must be carefully logged, and labelled in such a way to link to the property but not identify the address to an unconnected party.'

Question 4b: Please specify any other standards the Code should include in the section on lettings.

16. The section entitled 'Giving correct advice to applicants' in Section 4 should be renamed to say 'Providing information to prospective tenants'. This is because letting agents inform rather than advise applicants. The word prospective is important because without the tenancy process being complete this better explains the process from the outset.

Section 5: Management and maintenance

Question 5a: Do the standards of practice proposed on management and maintenance services reasonably reflect the standards that should be expected of letting agents operating in Scotland?

17. Yes.

Question 5b: Please specify any other standards the Code should include on management and maintenance services

18. In sub-section 5.23 the Code should refer to using Gas Safe Registered engineers when carrying out gas work or safety checks at the property.

Section 6: Ending the tenancy

Question 6a: Do the standards of practice proposed in the section on ending the tenancy reasonably reflect the standards that should be expected of letting agents operating in Scotland?

19. Yes. However, the section on 'Bringing the Tenancy to an end' should make clear that agents must inform a landlord in writing and as soon as possible after a tenant decides to end the tenancy.



20. Sub-section 6.3 should outline to the agent that where a tenant does not vacate a property on the due date, they should take steps to determine the tenants' intentions and inform the landlord as soon as possible.
21. Sub-section 6.7 should say 'preferably in daylight hours' after 'ensure it is conducted thoroughly.'

Question 6b: Please specify any other standards the Code should include in the section on ending the tenancy.

22. Section 6: Ending the tenancy should outline that an agents Terms of Business must say how much notice they require from a landlord wishing to end a tenancy.
23. The Tenancy deposits section should also include greater detail about what agents should do if a dispute occurs. For instance, the agent may have to advise all parties of the procedures of the relevant deposit protection scheme, act on any instructions given to them, communicate regularly with all parties, provide written information as well keep copies of relevant documents.
24. It should also be made clear in this section that the agent may be required to co-operate with any investigations by an independent body if raised by either of the parties.

Section 7: Communications and resolving complaints.

Question 7a: Do the standards of practice proposed in the section on communications and resolving complaints reasonably reflect the standards that should be expected of letting agents operating in Scotland?

25. Yes.

Question 7b: Please specify any other standards the Code should include on communications and resolving complaints.

26. In sub-section 7.4 the Code should also be downloadable via the agent's website.
27. Under Complaints resolution in Section 7 the Code should refer to the details of The Property Ombudsman in Scotland.



Section 8: Handling landlords' and tenant's money, and insurance arrangements

Question 8a: Do the standards of practice proposed in the section on handling landlords' and tenants' money reasonably reflect the standards that should be expected of letting agents operating in Scotland?

28. Yes, but 'the client should be advised that monies will be held in a designated client account' should be added to sub-section 8.3 in the Code.
29. The sub-section 8.12 on Money Laundering Regulations should say 'that if your organisation carries out any of the roles (letting agent selling to tenant in situ, letting agent selling landlords property to other landlords or anyone else, letting agent acting on behalf of a landlord to source property for buy to let, investment etc.) or duties caught under the definition of estate agency then it must register with the HM Revenue & Customs.'
30. In addition, the Code should say 'letting agents involved in block management who provide a registered address for a Resident's Management Company or acts as a Director of a Resident's Management Company, are caught under the definition of Trust and Company Service Provider and are consequently required to register with the HMRC for anti-money laundering purposes.'

Question 8b: Do the standards of practice proposed on insurance arrangements reasonably reflect the standards that should be expected of letting agents operating in Scotland?

31. Yes.

Questions 8c: The draft Code includes a requirement that you have client money protection insurance. This is a distinct type of insurance that protects the money of landlords and tenants against theft or misuse by the letting agency while it is in their control.

32. Yes.



Question 8d: Please specify any other standards of practice the Code should include on the handling of landlords' and tenants' money on – Insurance arrangements.

33. ARLA's Client Money Protection scheme applies to all ARLA member firms and protects client money held by an ARLA Member Firm in the course of its normal business of residential lettings and management of a landlords' residential property against wrongful and dishonest misappropriation of such funds by the member firm. However, for the scheme to operate successfully, it is a requirement of ARLA membership that participating members involved in letting and management already hold Professional Indemnity Insurance (PI), simply because PI insurance would be the first port of call should there be any claims.

Question 9: Do you have any other comments about our proposed draft letting agent Code of Practice.

34. ARLA welcomes the introduction of a statutory code of practice and training requirements for letting agents in Scotland. We believe it will help to further professionalise the industry and drive up standards throughout the sector.

Part 2 – Training Requirement

Proposal 1: Matters on which training must have been undertaken

Question 10a: Does Proposal 1 appropriately reflect the matters on which staff should undertake training on?

35. Yes.

Question 10b: Please specify any other training matters we should include in regulations.

36. Landlord Registration, HMO's and the role of the Local Authority should be included in the training. ARLA would also like to see property and block management included in the learning objectives.

37. The training in sub-section 9.1 c) should cover the procedures for extensions, renewal and termination of tenancies.



38. The training outlined in sub-section 9.1 e) should also look at the legal protection given to tenants and landlords under the consumer protection legislation including dealing with unfair terms and unfair commercial practices.

Proposal 2: Persons who must have undertaken training

Question 11a: Proposal 2 suggests placing a training requirement on:

- **The most senior person in the application's organisation, unless they have no input to the letting agency's day-to-day running; and**
- **All persons directly concerned with managing and supervising the letting agency's work**

Do you think these are the relevant people?

39. Yes.

Question 11b: Who else, if anyone, should have to comply with the training requirement?

40. Property management staff based outside of Scotland as well as the client account staff based in Scotland.

Question 11c: Should we include another requirement that there must be at least one person trained per office?

41. ARLA believes that the Scottish Government should eventually bring in proposals for the training of all staff involved in lettings agency work in Scotland. However, any proposals must take into consideration the size of firms and implementation should work to timescales adaptable to the number of offices a firm has.

Proposal 3: Qualifications which must be held by the applicant or other persons

Question 12a: Proposal 3 suggests the phased introduction of a mandatory qualification. Do you think we should introduce a mandatory qualification?

42. Yes. ARLA has long campaigned for greater regulation for letting agents and believe that mandatory qualifications will promote professionalism and basic standards within lettings that will benefit businesses and consumers.



Question 12b: If we decide to introduce a mandatory qualification, we propose this would come into force three years from the date the Letting Agent Register comes into force. Do you think this is an appropriate timeframe for a mandatory qualifications' introduction?

43. No. We think that 3 years is excessive and 2 years would be more adequate particularly because the majority of people are already in the profession and should have a degree of knowledge already.
44. In addition, ARLA members who choose to take the National Federation of Property Professionals Awarding Body SCQF Level 6 Technical Award in Residential Letting & Property Management – Scotland invest 120 hours of study and sit 4 exams of 30 minutes each to pass the qualification. It takes members an average of 12 months to pass all the units.
45. However, as the Code says cost can be an issue for some firms. The NFOPP Awarding Body charges £50 per unit to take the qualification and study material can cost up to £240.

Question 12c: We propose to set the mandatory qualification at Scottish Credit and Qualifications Framework level 6. Do you think this is the right level?

46. Yes. It is an ideal qualification for candidates working within the industry to improve existing knowledge in the key areas related to residential letting and property management.

Question 12d: Those applying to the Letting Agent Register will need to have met the requirements to be admitted. What type of evidence should applicants provide to show they have met the requirement?

47. Applicants should provide exam certificates (hard or electronic copies), reference number for when added to the register and if the certificate can't be supplied it should be verified by the awarding body.
48. We also think that evidence from membership bodies such as ARLA and RICS should be accepted.

Question 12e: When would you want this evidence to be provided – for example, with every application or on request from the Scottish Government when it appears an applicant or registered letting agent is not complying?



49. The evidence should be provided with every application to ensure that all agents register.

Proposal 4: Period within which the training must have taken place

Question 13a: Proposal 4 says that if we were to introduce a mandatory qualification requirement, those with an existing relevant qualification more than three years old would also need to have undertaken at least 20 hours of training in the previous three years.

50. Yes, this is more than enough and could be reduced. For instance, ARLA requires members to have completed a qualification that is letting agent specific plus nationally approved and accredited by Ofqual to join our organisation. Once members have joined we then only require them to carry out and log 12 hours of continual professional development every year to refresh their knowledge and stay up-to-date with developments within the industry. This can be done through reading, attending a course, event or training session relevant to their work.

Question 13b: Do you think three years is a reasonable time for people to complete this additional training?

51. No. It should be reduced from 3 years to 2 years particularly because the majority of these agents will already be working in the industry.

Transitional Arrangements

Question 14a: Before the qualification comes into force we propose that those subject to the requirement who have not obtained the mandatory qualification, would need to have undertaken at least 30 hours of training, covering all the matters prescribed by Ministers, in the previous three years. This would be to ensure that all letting agents admitted to the register had undertaken relevant training on all the areas identified as essential to the effective management of a letting agency.

Does our proposal ensure that those subject to the requirement will have had sufficient training in this initial period before the mandatory qualification is introduced?

52. Yes.



Question 14b: Is it appropriate that those subject to the requirement must have undertaken training on all matters (see Proposal 1) set by Ministers?

53. Yes, to ensure consistency throughout the industry.

Question 14c: Do you think 30 hours of training is appropriate?

54. Yes.

Question 14d: Do you think three years is a reasonable timeframe for relevant training to count towards meeting the requirement?

55. No, as for the reasons stated in points 43 and 51 we would like to see the timeframe reduced to 2 years.

Partial Equality Impact Assessment

Question 15: Do you have any comments on the partial Equality Impact Assessment?

56. No.

Question 16a: To assist us in determining the impact of the training requirement we are interested in the current level of training by those were are proposing covering by the training requirement. Please provide us with any information or comments you have that could help to inform us.

57. The Code should outline in greater detail how the training will be carried out and recorded particularly for those who will fall under the transitional arrangements. For instance, will the training be done by distance learning, seminars, courses, events or a mixture of these? In addition, how will people prove their attendance, would this be certificate or a central data base.

Question 16b: Do you have any comments on the partial Business and Regulatory Impact Assessment?

58. In Option C2 – Mandatory Qualification (page 66) the Partial Business and Regulatory Impact Assessment refers to an existing qualification attained through ARLA. It should



be made clear that this qualification is via the National Federation of Property Professionals Awarding Body organisation.

59. ARLA is aware that since existence of the NFOPP Awarding Body in 2002, 271 individuals have passed the NFOPP SCQF Level 6 Technical Award in Residential Letting & Property Management – Scotland. Therefore based on the figures provided on page 54 estimating that there are around 700 letting agent business in Scotland, we expect the training element and introduction of the mandatory qualification to affect a significant proportion of the lettings industry in Scotland.