

Housing (Scotland) Act 2014

SSI 2015/252

Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015

Local Authority Guidance

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Background

1. The Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015 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 (PRS).
2. The Scottish Government published its Private Rented Sector Strategy, *A Place to Stay, A Place to Call Home*, in 2013. The Strategy sets out the Scottish Government's vision and strategic aims for the private rented sector. It aims to improve and grow the PRS by enabling a more effective regulatory system, targeting tougher enforcement action and attracting new investment. The additional discretionary powers under the Enhanced Enforcement Areas Scheme Regulations, support this targeted approach to enforcement.
3. This guidance supplements [SSI 2015/252](#). It sets out points for a local authority to consider when making an application to Scottish Ministers for these additional discretionary powers.

Purpose

4. These additional powers are intended to be used by a local authority to deal with the most exceptional cases of poor standards in the PRS. In such cases, a local authority could apply for Enhanced Enforcement Area (EEA) designation where they can evidence that an area suffers from **all** of the following:
 - where there is a concentration of properties let by private landlords in a geographic area; **and**
 - where those properties are characterised as being of a poor environmental standard; **and**
 - there is overcrowding; **and**
 - a prevalence of anti-social behaviour.
5. They complement the powers that a local authority has in relation to the licensing of Houses in Multiple Occupation and Landlord Registration. Local authorities have discretion to apply for EEA status and the additional powers that they consider would allow them to tackle the problems in a particular area.
6. The table on the following page, shows the additional powers and the purposes for which the local authority can exercise those powers that are set out in the Regulations.

Power	Purpose
To request an enhanced criminal record check.	To evidence that a landlord is a Fit and Proper Person (as part of the landlord registration process)
To require existing landlords who are applying for registration or renewing their registration and any individual who isn't registered to produce documents or evidence for inspection. <ul style="list-style-type: none"> <input type="checkbox"/> a current insurance policy <input type="checkbox"/> a copy of a tenant's acknowledgement that they have received a copy of the Tenant Information Pack. <input type="checkbox"/> that the landlord has provided the tenant with a copy of the Energy Performance Certificate for the property. <input type="checkbox"/> a copy of the record of maintenance and safety checks for gas appliances in the property. 	To enable and assist the local authority to exercise any function under Part 8 of the Antisocial Behaviour (Scotland) Act 2004 (registration of landlords), to ensure the safety and upkeep of the house and to ensure that information is available to tenants.
To enter properties.	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.

A strategic approach

7. The PRS is a diverse sector with a broad customer base, highlighting its role in meeting a wide range of housing need and demand. It is recognised as providing a good housing option for those requiring flexibility in terms of employment, for students and for those setting up homes for the first time. However, in recent years, the sector has also become a housing option for those seeking longer-term accommodation.

8. The growth of the PRS in recent years means it plays an increasingly important role in meeting the needs of individuals and families in communities across Scotland. For this reason, it is important that local authorities should consider the range of powers available to them to improve and enforce standards in the sector as part of a strategic approach to the PRS. Such an approach should encompass advice and support for landlords (either individually or through a Private Landlords' Forum), advice for tenants, as well as clear policies on tougher enforcement that is targeted at those landlords who will not or are unable to improve.

Duration of designation

9. The 2014 Act prescribes that the designation will last for five years once granted by Scottish Ministers and allows the local authority to reapply for designation before the five years has expired, ensuring continuity if this is needed.

10. Given the extensive nature of the powers that a local authority would be able to apply following designation, the Regulations provide the Scottish Ministers with the power to request a report on the local authority's use of those powers in delivering its wider strategy for improving standards in the private rented sector. The local authority must provide a report to the Scottish Ministers within three months of receiving a request.

Outcomes

11. By targeting these tougher enforcement powers at a particular area, and using them as part of a wider strategy for improving standards in the PRS, a local authority could expect to achieve the following outcomes:

- greater compliance by landlords with landlord registration and houses in multiple occupation legislation, leading to improved standards of service for tenants;
- improvements to property safety and repair leading to improved housing conditions for tenants renting in the enhanced enforcement area; and
- reduction in reports of environmental standards breaches and of anti-social behaviour, leading to improved amenities for the community as a whole.

Applying for Enhanced Enforcement Area Designation

Strategic context

12. An application for designation to Scottish Ministers must be made in writing. The local authority should set out its wider strategy for promoting good practice and ensuring private landlords' compliance with existing legislation and for improving the poor environmental standard of the private rented housing in the area. A checklist of what information a local authority must submit to Scottish Ministers, in its application for an area to be designated, is provided at **Annex 1**.

13. 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 and to improve environmental standards.

Identifying an area for designation as an Enhanced Enforcement Area

14. The Regulations enable a local authority to define the area that is to be designated. The area must have the characteristics that are set out in Section 28 of the Housing (Scotland) Act 2014.

15. 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. The application to Scottish Ministers must include a description or plan that clearly identifies the area.

Evidence to support the application

16. The application must include a summary of the evidence that the local authority has considered when determining that it would make an application for designation.

17. The Regulations are not prescriptive about the types of evidence that a local authority would be required to submit with an application. This is because 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.

18. The examples set out in **Annex 2** are offered as an illustration of the types of evidence that a local authority might consider gathering to support its decision to apply for an area to be designated as an EEA.

19. 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 both poor environmental standards and of overcrowding.

Statement of the powers that are being sought

20. An application by a local authority must include information about the powers that are being sought, how they will be used and how they will enhance the local authority’s general strategy for improving the PRS.

Advertising that an area has been designated

21. The Regulations require the local authority to publicise that an area has been designated as an Enhanced Enforcement Area. As the circumstances for each area will differ, the local authority is able to decide the most suitable approach to letting landlords, tenants and the wider community know that the designation has been granted. The application to the Scottish Ministers must set out the approach that the local authority has determined would be the most effective way to advertise that a designation has been granted.

22. Possible examples of how a local authority may advertise a designated EEA include:

- writing to the occupants of all properties in the designated area;
- writing to all registered landlords in the area;
- publishing a notice of the designation in a local newspaper or community council newsletter;

- information leaflets/posters within a local library, community centre, council or housing association office; and/or
- wide distribution of an information sheet on the designation in the area.

23. A local authority may also wish to give consideration to providing translation of the designation notices into other languages, in order to make it as accessible as possible to those living within the area.

Considering the application and granting designation

24. The Scottish Ministers will consider an application by a local authority. Before granting designation, and the additional discretionary powers that are being sought, they will have to be satisfied that the application:

- clearly identifies the area to be designated;
- sets out the local authority's wider strategy for improving standards in the PRS;
- provides a summary of the evidence considered by the local authority that demonstrates that the area to be designated meets the characteristics described in the legislation;
- states the powers that are being sought and the purposes for which these will be used and how this fits with the wider strategy for the PRS; and
- details how the local authority will advertise the designation, particularly to landlords, tenants and the wider community in the area to be designated.

25. The Scottish Ministers will notify the local authority of their decision in writing, usually within 28 working days. However, this will be dependent on whether sufficient evidence to support the designation has been submitted with the local authority application.

26. Once granted, it will be for a local authority to consider how best to advertise notice of the designation to people living within the area affected (see paragraphs 21-23).

27. Following designation, a local authority may also wish to give consideration as to how they will record what additional powers are used and the impact of those powers in improving overall standards within the area. This will be particularly important should the Scottish Ministers request a progress report on the impact of the EEA designation (see paragraph 10).

ANNEX 1

Checklist

The written application for Enhanced Enforcement Area designation should provide the following information:

Information	√
Map, plan or description showing the area to be designated	
Strategy for improving standards in the PRS	
Summary of the evidence considered by the local authority in determining the area set out in the application that demonstrates the area has a concentration of properties let by private landlords, where those properties are characterised as being of a poor environmental standard, there is overcrowding and a prevalence of antisocial behaviour.	
Which powers are being sought and the purposes for which those powers will be used.	
Details of how the local authority will advertise to landlords, tenants and the wider community should the area be designated as an Enhanced Enforcement Area.	

ANNEX 2

Types of evidence that would support a decision to apply for 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 or 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 out with 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 for the purposes of landlord registration.
- Evidence and, or complaints from neighbours or community groups or community councils.
- Use of Overcrowding Statutory Notices (Part 3 of the Private Rented Housing (Scotland) Act 2011 – the Scottish Government plans 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 are too frightened to report incidents).
- 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. Comparing these figures with figures for the same reports in other areas with similar housing density would help to illustrate the scale of the problem.
- Evidence gathered through surveillance by Antisocial Behaviour Teams.
- Numbers of closure orders served by the Police under Part 4 of the Antisocial Behaviour (Scotland) 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.

ANNEX 3

Links to relevant legislation

This table is intended to sign post readers to legislation relating to Enhanced Enforcement Areas. It is important to note that the links are to versions of the legislation published on www.legislation.gov.uk and care should be taken to check for outstanding changes that have not yet been applied:

Legislation	Link
Landlord Registration (Antisocial Behaviour etc. (Scotland) Act 2004, Part 8)	http://www.legislation.gov.uk/asp/2004/8/part/8
Houses in Multiple Occupation (Housing (Scotland) Act 2006, Part 5)	http://www.legislation.gov.uk/asp/2006/1/part/5
The Repairing Standard (Housing (Scotland) Act 2006, Part 1 – Chapter 4)	http://www.legislation.gov.uk/asp/2006/1/part/1/chapter/4
Tenements (Scotland) Act 2004	http://www.legislation.gov.uk/asp/2004/1/1/contents
Private Housing (Tenancies) (Scotland) Act 2016	http://www.legislation.gov.uk/asp/2016/1/9/contents
Private Rented Housing Panel (Housing (Scotland) Act 2006, Part 1 – Chapter 4)	http://www.legislation.gov.uk/asp/2006/1/part/1/chapter/4
Assured Tenancy Regime (Housing (Scotland) Act 1988)	http://www.legislation.gov.uk/ukpga/1988/43/contents
First Tier Tribunal Housing and Property Chamber (Tribunals (Scotland) Act 2014)	http://www.legislation.gov.uk/asp/2014/1/0/contents
Letting Agent Regulation (Housing (Scotland) Act 2014, Part 4)	http://www.legislation.gov.uk/asp/2014/1/4/part/4



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