



Briefing 14 -50 December 2014

APSE Consultation Response on ‘Housing (Scotland) Act 2014 – Section 28 Private Rented Housing: Enhanced Enforcement Areas’

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland

For information only to England, Northern Ireland and Wales

Key Issues

- This APSE briefing includes APSE’s response on the Housing (Scotland) Act 2014 – Section 28 Private Rented Housing: Enhanced Enforcement Areas
- Within the response APSE has highlighted some areas where clarification/ further information would be welcomed

1.0 Background

[Section 28 of the Housing \(Scotland\) Act 2014](#) requires Scottish Ministers to provide a scheme to allow local authorities to apply for additional discretionary powers to enable them to target enforcement action in an specified geographic area of private rented housing that appears to be overcrowded (e.g. a high demand on refuse collection) and/or of a poor environmental standard (e.g. properties below tolerable standard, levels of infestation), and where there is a prevalence of antisocial behaviour (e.g. disproportionately high ASBOs, large number of complaints in the area); these areas would be designated as Enhanced Enforcement Areas (EEAs).

Where the Scottish Ministers agree of this necessity, a local authority will acquire certain additional discretionary powers for prescribed purposes – such as a power to require landlords to produce documents for inspection and the inspection of properties let by a registered landlord.

The EEA will apply for an initial period of five years with the option to make a further application for an extension, and the scheme requires the local authority to advertise the fact that an area is designated as an EEA.

Scottish Ministers must lay a draft of the regulations before the Scottish Parliament by 1 April 2015, therefore a consultation ran from 14 October until 12 December 2014.

The full consultation documents can be accessed by [clicking here](#). (Also see APSE briefing note 14-38 for further information on the consultation). The remainder of this briefing replicates APSE's response to the consultation.

2.0 APSE Response

APSE was pleased to be given the opportunity to respond to the consultation. APSE's full response is outlined below:

Evidence to support applications for Enhanced Enforcement Area Designation (EEA)

Section 28 (1)

Before designating an EEA, the Scottish Government must have evidence that the area to be designated displays each of the following characteristics:-

- (a) A poor environmental Standard
- (b) Over crowded and
Prevalence of antisocial behaviour

Examples of potential evidence local authorities could submit include:

Evidence of poor environmental standard:

- House condition information, including numbers of properties that are below tolerable standard (BTS), are in serious disrepair or have been abandoned.
- Numbers of rent penalty notices served.
- Owners repeatedly failing to pay their share of repair costs.
- Statutory notices under Environmental Health legislation.
- Levels of infestations of vermin and or bed bugs.

Evidence of overcrowding:

- A disproportionate demand on refuse collection and cleansing services.
- Information on overcrowding - e.g. drawing from school rolls, health service and other data, including information gathered during landlord registration
- Overcrowding Statutory Notices

Evidence of prevalence 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 or community safety teams and complaints received under any part of the Anti-social

Behaviour etc. (Scotland) Act 2004^[3] are disproportionately large relative to the size of the area.

- 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, social landlord, community safety organisations or community police.

Response Question 1 – Do you agree that this is the right sort of evidence needed to support an application?

APSE broadly agrees with the examples of evidence outlined within the consultation for local authorities to use when preparing an application. However, APSE would comment that consideration of an EEA should still apply even if **all three** categories (environment, overcrowding and anti social behaviour) are not fully evidenced. APSE would suggest that a degree of discretion be applied to allow for an application to be considered, where a combination of issues are evidenced under at least one of the categories.

Response Question 2 – Are there any other types of evidence that you think should be required to support an application for designation of an area? What are those?

APSE's membership have highlighted a range of other indicators including high turnover statistics, residents complaints/ statements relating to the area, requirement for the local authority to install CCTV cameras due to concerns from local residents (many residents are too frightened to report incidents) and relative proportion of properties in Private Rented Sector ownership which could all potentially be used as additional forms of evidence within local authority applications. APSE would also suggest that combination of evidence, for example no less than 2, should be sufficient grounds for an application.

Additional powers that would apply in an Enhanced Enforcement Area (EEA)

Section 28 (2)

Where Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to-

(i) the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004.

(ii) authority to inspect dwellings let by a landlord who is entered on that register."

The discretionary powers noted above would add to the tools that local authorities already have to tackle poor conditions and would be targeted only at those areas

characterised by a set of exceptional circumstances. The concentration of those issues would justify a response that would not be proportionate or reasonable elsewhere.

The types of discretionary powers might include:

- Providing for an additional check to evidence that the landlord is a Fit and Proper Person by giving local authorities the power to require landlords with properties in the EEA to submit an enhanced disclosure check as part of the landlord registration process.
- A power to require existing registered landlords to produce documents for inspection (to include enhanced disclosure checks, gas safety certificates, electrical safety checks).
- A power to enter properties in the EEA to ensure that the accommodation is safe, well managed and of good quality.

Given the exceptional circumstances which local councils are attempting to address in an EEA, one option could be to enable local authorities to request an enhanced disclosure check, both for landlords who are registering and for landlords who are already registered, in an EEA. The enhanced disclosure is of a higher level than the standard disclosure which is normally used for landlord registration under the Antisocial Behaviour etc. (Scotland) Act 2004^[4].

A consequential change in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010^[5] would also be needed to deliver this policy.

The extensive nature of these powers, the exceptional circumstances that they would be used to tackle and the likelihood that they would need to focus significant local authority resources underlines the argument that an EEA should only be granted where there are significant and severe issues that need to be addressed.

The regulations must set out the purposes for which the additional powers that are to be granted can be exercised. They are that the additional powers provide local authorities with effective means to tackle the combination of poor environmental standards, overcrowding and a prevalence of anti-social behaviour in an area that is characterised by an over-provision of poor and overcrowded private rented housing.

Scottish Ministers must be able to demonstrate that the powers granted are reasonable and proportionate for the circumstances. As a result, they consider it will be necessary for the local authority to set out in its application the range and type of powers that it is seeking and details of how it intends to use these powers.

Response Question 3 – Do you consider these are the right types of discretionary powers to secure positive outcomes for tenants and communities?

APSE welcomes these additional discretionary powers for local authorities. APSE would like to note the importance for the local authority to have enhanced powers regardless of

the area. For example if a landlord is not deemed fit and proper to manage a property within an EEA but also has other properties out with the EEA, this landlord should not be able to continue to let any property. Another example would be where a property within an EEA is found to be in poor condition, a local authority may wish to consider the condition of properties let by the same landlord out with the EEA.

APSE hopes that these additional discretionary powers along with local authority existing powers help communities particularly where tenants are unlikely to report poor standards.

Response Question 4 – Are there other additional types of powers, or specific powers that might be useful for targeting action within EEAs? What are those powers and how might they be used?

APSE's membership raised potential additional powers which could be used to target action within EEAs. These include the power to remove a private landlord's registration should they, for example, refuse to participate in common repairs; refuse to meet their share of common repair costs; refuse to pay factoring fees; have been served with a maintenance order for failing to maintain their property. Other potential reasons for revoking or refusing registrations may include landlords not having building insurance or if the property is served with a closing order.

It was also highlighted that local authorities have the power to issue Rent Penalty Notices (RPN) if a breach in the registration application process has occurred. It would assist local authorities further if they were able to utilise these notices for breaches in tenancy conditions or failure to provide requested information, for example, gas safety certificates.

Response Question 5 – Do you think the powers that are granted should be the same for each application, or should they reflect local circumstances?

While APSE believes there should be consistency in the way powers are used, powers should be general and flexible to allow local authorities to deal with particular circumstances within particular EEAs, as the application of the EEA will vary from location to location due to the combination of issues surrounding it.

Providing local authorities with discretion on the range of issues to be included within applications and in pursuing the most effective course of action would allow local authorities the opportunity to select from a range of measures enabling specific issues to be tackled in the most effective way. APSE would also like to note that the range of measures provided must be flexible allowing for targeted enforcement.

Designation as an Enhanced Enforcement Area (EEA)

Section 28 (2)(c)

Where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that-

- (i) the local authority must take steps to advertise the fact that the designation has been granted,
- (ii) the designation will apply for a period of five years commencing from the date on which the Scottish Ministers notify a local authority of its decision,
- (iii) the local authority may make a further application for the area to be designated as an Enhanced Enforcement Area before the expiry of its first designation".

As well as being discretionary, the powers in section 28 of the 2014 Act are intended to be time limited and targeted.

Where Scottish Ministers designate an area as an EEA, that designation would apply for 5 years from the date of notification of their decision to the local authority. The local authority would be able to make a further application for the designation of the area to continue, before the first designation expires. This would ensure that there is no break in any long term strategy to tackle poor conditions in the area.

The Scottish Government considers that it would be reasonable for the local authority to submit an annual report detailing use of its powers and progress with tackling the problems it has identified in the EEA.

The Scottish Government would expect the local authority submitting a further application for continuing the designation to provide the same type and range of evidence as for an initial application, along with a summary of how it has used the additional powers and evidence of the impact that those have had.

When Scottish Ministers have made their decision to designate an area as an EEA, section 28(c)(i) of the 2014 Act requires the local authority to advertise that the designation has been granted. The Scottish Government expects that local authorities would set out in their application for designation how they intend to advertise the designation.

Response Question 6 – Do you agree that an application for the designation to continue should be supported by a summary of how the local authority has used the additional powers and evidence of the impact of that use?

APSE broadly agrees that any application to continue the EEA should be supported by a summary of how the local authority has used the additional powers and evidence of the impact of that use. APSE notes that the summary would also benefit from a note on how the continuation of the EEA designation is expected to make further improvements.

Response Question 7 – Do you consider it reasonable that a local authority should provide an annual report on the use of these powers to Ministers?

APSE would find it reasonable for local authorities to provide an annual report on the use of these powers to Scottish Ministers. These reports would also provide useful reporting information for the appropriate local authority committees. APSE would also highlight

that it would perhaps be beneficial to agree the reporting requirements at the time of designation.

Response Question 8 – Do you have any other comments on what should be covered by the Enhanced Enforcement Area regulations or how these might operate?

Please see response provided in question 3.

Draft Equalities Impact Assessment

Question A – Do you consider that there are other groups that these regulations will affect? If so, which groups are they?

APSE would consider that these regulations could see evidence of stigmatisation or indeed market failure. These regulations may also affect landlords/ owner occupiers who are currently complying with the regulations.

However, APSE would highlight that the likely long term benefits which could be achieved as a result of effective local authority action, in turn enabling the removal of the designation should help to restore stability to the area.

Question B – Do you consider that there are other factors that might prevent the desired outcomes being achieved? If so what are those?

APSE would ask for further information to be provided on what the desired outcomes are and how the successful utilisation of the powers are to be measured.

It should also be highlighted that the membership raised a level of concern. Noting the effectiveness of the legal process (in terms of penalties applied and willingness of tribunal/ court officers to apply sanctions) would provide an integral part in enabling this legislation to work in practice.

With regards to Private Sector Landlords being uncooperative and/ or re-locating to a different area, the additional powers for local authorities to remove the Landlord Register (see Question 3 response) would be of great importance.

Question C – Do you have any other comments on any aspect of the Draft Equalities Impact Assessment?

As with response to Question 3 and Question B, APSE would suggest the powers are available for local authorities not only to be used within a specific geographic area. Justification for this should be provided within evidence gathered within the local authority application.

Thank you for the opportunity to respond to this consultation, 'Housing (Scotland) Act 2014 – Section 28 Private Rented Housing: Enhanced Enforcement Areas'.

3.0 APSE Comment

APSE supports any additional powers that assist our membership in tackling prevailing problems in the private rented sector. However, as outlined within the consultation response as applications for EEAs could be time consuming, APSE would hope that any powers are general and flexible for local authorities to use on a case by case basis. APSE's membership also highlighted other factors and powers which used with the current powers available to local authorities, could provide a more targeted response.

APSE will continue to work with our member authorities on Scottish Government consultations.

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