

Landlord Registration

Statutory Guidance for Local Authorities

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Ministerial Foreword

The private rented sector plays an increasingly important role in Scotland's housing system. Some 700,000 people in Scotland make their homes in the sector: twice the number of ten years ago.

I want to see a sector that is characterised by more good quality homes, being managed more professionally, where tenants feel more secure. Where there are poor standards, local authorities should be taking tough, targeted enforcement to ensure every landlord is fit to let homes to private tenants.

The landlord registration system is a key element of the enforcement regime. It requires each authority to maintain a register of private landlords in its area, and to ensure that only those landlords that it judges to be fit and proper are allowed on the register, and it provides that anyone who rents property when they are not on the register is committing a criminal offence. In these ways, landlord registration gives local authorities the ability to control and regulate who can operate legitimately as a private landlord.

Since its introduction in 2006, the Scottish Government has strengthened the regime by giving local authorities new duties and discretionary powers to tackle poor physical and management standards in the sector.

I don't underestimate the challenge for local authorities of dealing with some 260,000 private landlords registered across the country. However, as the great majority of them are fit and proper persons and provide a service that their tenants find satisfactory, there should be little need for local authorities to routinely monitor their compliance. That frees them to focus on those landlords whose conduct is not satisfactory, and on those who have failed to register or to maintain their registration.

This guidance is intended to help local authorities deliver effective regulation. It highlights, through case studies, how particular local authorities are using their landlord registration powers to deliver improvements in the sector, for example by communicating effectively with all landlords on the register. It also highlights successful working with the police and other agencies to take action against landlords who deliberately flout the law.

I would encourage all local authorities to use this guidance as part of a continuing drive to raise standards and ensure greater consistency in enforcement across Scotland.

1. Introduction

Landlord registration was introduced in 2006 by the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”). The regime has been strengthened further in subsequent legislation – including increased requirements for the fit and proper person test; an increased penalty of up to £50,000 for operating as an unregistered landlord; and disqualification orders. The powers available to local authorities through landlord registration have also been strengthened, including powers to request a criminal record certificate in specified circumstances and to obtain information.

Whilst most landlords let their houses in a responsible way, some landlords continue to operate outside the law. Landlord registration, supported by other legislation, provides a means for local authorities to register persons who are fit and proper to act as landlords and agents, but also to take steps to deal with those who operate outside the law.

The worst landlords in the sector often target vulnerable tenants who are placed in overcrowded and badly maintained properties. Such poor living conditions have a negative impact on the lives of not only the tenants, but also neighbours, wider communities and also the businesses of legitimate landlords. There is also a growing body of evidence that has established links between poor housing and health and educational attainment, and that the effects can have serious far-reaching and long term consequences.

It can be difficult to establish the extent and nature of the problems caused by such landlords but it is important that local authorities take leadership on this issue and take appropriate enforcement measures. By targeting enforcement and using the full range of powers available to them, authorities will be able to disrupt illegitimate landlord businesses. Local authorities should seek advice from Data Protection colleagues about promoting information about effective enforcement activities, including successful prosecutions, for example via websites or newsletters. This will encourage other landlords to comply and provide wider public reassurance that landlord registration is an effective regime.

Local authorities should:

- Develop an understanding of the nature and extent of the problems in their area;
- Develop an understanding of the range of powers that can be used alongside landlord registration to tackle illegal practice;
- Develop mechanisms for sharing information across the authority and with other agencies to identify illegal landlord practice;
- Have clear policies and processes in place for dealing with complaints about landlords.

This guidance is intended to help local authorities ensure that all landlords operating in their area are registered and achieve satisfactory standards of performance for their tenants. It is made under section 99A of the Antisocial Behaviour etc. (Scotland) Act 2004 which also requires local authorities to have regard to it in

performing their landlord registration functions. It is designed to achieve good results for tenants, landlords and the communities where the landlords operate.

This guidance includes advice on how local authorities can learn from each other to help support their work to deal with problem landlords. It is not overly prescriptive in terms of administrative process – landlord registration is now well established and so local authorities are best placed to decide on the most efficient and effective way to deliver landlord registration, taking account of local governance arrangements and resources.

The focus of this guidance is on a proportionate approach to registration, which allows authorities to focus more attention on dealing with those landlords that do not comply with their legal duties in letting houses. The expectation has always been that effective enforcement action should be taken to refuse or remove unfit landlords from the register. Prosecution continues to be an option where an authority believes this action is justified.

This guidance has been produced following consultation with local authorities in Scotland, and other key stakeholders and representative bodies including Shelter Scotland, the Scottish Association of Landlords, the Association of Local Authority Chief Housing Officers, the Convention of Scottish Local Authorities and Police Scotland.

The Scottish Government is grateful to those local authorities who contributed with case studies illustrating successful approaches to improving standards in the private rented sector.

2. Strategic Overview

Role of Landlord registration

In May 2013 Margaret Burgess, then the Minister for Housing and Welfare, launched 'A Place to Stay, A Place to Call Home'¹, setting out the Scottish Government's vision and strategic aims for the private rented sector.

The vision is

"A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment"

In order to achieve this vision, three strategic aims were identified:

- to improve the quality of property management, condition and service;
- to deliver for tenants and landlords, meeting the needs of the people living in the sector; consumers seeking accommodation; and landlords committed to continuous improvement;
- to enable growth, investment and help increase overall housing supply.

The Strategy further clarified the purpose of landlord registration as:

- providing a register of all private landlords for public inspection with the added assurance that the local authority has conducted a fit and proper test;,
- providing a regularly updated register that can be used to assist dialogue between local authorities and landlords, and to disseminate best practice information; and
- ensuring that landlord registration enforcement action is targeted at tackling the worst landlords in the sector, whether that involves dealing with concentrations of such landlords in vulnerable urban communities, or challenging the practices of individual landlords in more rural or sparsely populated areas.

The landlord registration regime should help landlords reach the standards required by legislation to privately let properties. Those landlords who are unwilling or unable to achieve these standards should be removed from the rental market.

Poor standards harm not only tenants but also tarnish the image of the industry, reflecting badly on the private rented sector and disadvantaging the landlords who do manage their lets in a professional manner. A perception that the worst landlords can continue to operate risks reduced investment and could lead to a lack of availability of private rented properties.

Local Housing Strategies

Landlord registration assists in the development of local housing strategies. As at 31 January 2017 the landlord registration database held records of over 262,000 landlords with over 361,000 properties, compared to 180,000 landlords with just over 250,000 properties in 2011. Findings from the 2015 Scottish Household Survey

¹ [A Place to Stay, A Place to Call Home – A Strategy for the Private Rented Sector in Scotland](#)

indicate that the proportion of households in the private rented sector has grown steadily from 5% in 1999 to 14% in 2015. The sector clearly plays an important role in meeting housing need right across Scotland.

There are a range of submarkets within private renting which should be recognised in the approach to regulation. These include:

- Students;
- Migrant workers;
- Specific minority ethnic communities;
- Houses in Multiple Occupation;
- Landlords specifically targeting benefit dependent tenants;
- Renting in rural and remote rural communities; and
- Longer term letting to an increasing number of families.

An awareness of the size and nature of the private rented sector in a particular area is an important factor in helping local authorities to determine local housing need and develop appropriate local strategies to meet that need. It may be appropriate for authorities to develop different approaches to engaging with landlords and tenants in different submarket groups.

Local housing strategies should also cover the strategic objective of reducing and preventing homelessness and include information on how local authorities can balance their obligation in relation to homelessness with their role in helping to regulate the private rented sector.

Local authorities should set out the strategic outcomes that they are seeking to achieve in relation to the private rented sector, describing how those outcomes will be achieved and how success will be measured.

Better Regulation

Scottish Regulators' Strategic Code of Practice

In Scotland there are well-established better regulation programmes, including measures to improve the way legislation is developed and applied in practice. In that context, the Regulatory Reform (Scotland) Act 2014 includes provisions on promoting regulatory consistency, improving environmental regulation and a duty on regulators to contribute to achieving sustainable economic growth.

The '[Scottish Regulators' Strategic Code of Practice](http://www.gov.scot/Resource/0046/00467429.pdf)'² was made under section 5 of the 2014 Act and was approved by the Scottish Parliament on 18 February 2015. The Code was developed with and by both regulators and stakeholders. The Code requires regulatory functions to be exercised in accordance with the principles of better regulation.

Section 5 (5) of the Act requires regulators to whom the code applies to have regard to the code (a) in determining any general policy or principles by reference to which the regulator exercises any regulatory functions to which the code applies, and (b) in exercising any such regulatory functions. This duty to "have regard to" the

² <http://www.gov.scot/Resource/0046/00467429.pdf>

Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.

The principles of the Code apply to local authority delivery of landlord registration functions and set out the approach that local authorities should adopt, including that regulatory functions should be exercised in a way that is transparent, accountable, proportionate, consistent and targeted only where necessary. This means that for the majority of landlords who do operate in a responsible way, registration should not be burdensome. There is a distinction between landlords who may simply be unaware of their legal obligations and those that deliberately choose to flout the law. It is for local authorities to follow the principles of the Code and target effective enforcement measures at the landlords who do not act within the law, to ensure they either improve their practice or they are removed from the sector. Prosecution should be considered for the worst offenders.

The Code advises that regulators should share information about compliance and risk. Data Protection legislation constrains the way organisations use information, but in the limited circumstances where the law allows, regulators with common interests or activities should agree secure mechanisms for sharing information. The UK Information Commissioner's Office (ICO), the regulator of the Data Protection Act 1998, has issued the ['Data sharing code of practice'](#)³. This is a statutory code which provides a framework for organisations to make good decisions about data sharing and which local authorities should consider when engaging with landlords and other departments or agencies.

Legislative framework

Landlord registration is one of many pieces of legislation available to local authorities to help meet the aims set out in the Private Rented Sector Strategy. Local authorities should consider how landlord registration can be used alongside other legislation to drive improvements in landlord practice or tackle illegitimate landlord businesses. Section 85 of the 2004 Act is clear about the types of material that local authorities must have regard to when undertaking the fit and proper person test. In addition to evidence of specific offences, there is provision for authorities to take into account any contravention of the law relating to housing or landlord and tenant law. There is also provision for any other relevant material to be taken into account.

The chart below shows the timeline over which a range of provisions have been introduced to help drive improvements in the private rented sector, and which can be used to support landlord registration. The regulatory framework will be strengthened further by three key policies which are due to come into force by 2018 - the new private residential tenancy regime; the transfer of certain functions to the housing and property chamber of the First tier Tribunal (December 2017) and the regulation of letting agents (early 2018).

Other areas of legislation, some less obviously linked to housing, may also help to support landlord registration regulatory functions. These include:

³ https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf

- Trading Standards;
- Environmental Health and Waste Management;
- Unfair contract terms;
- Communal repairs and maintenance;
- Statutory Nuisance;
- Antisocial Behaviour



Landlord criminality

Whilst criminal landlords are in the minority, their illegal practices can have a disproportionate and devastating impact on communities and businesses across Scotland. Some criminality will be linked directly to the letting of houses, such as illegal evictions and operating as an unregistered landlord. In some cases, illegal landlord practice will be linked to other issues, such as providing illegal employment, benefit fraud, tax evasion, human trafficking, cannabis farms and money laundering. These are examples of material that is pertinent to the fit and proper person test.

The Scottish Government's publication '[Scotland's Serious Organised Crime Strategy](#)'⁴ sets out a vision of a Scotland free from serious organised crime, where communities are free from fear of violence; where businesses can compete fairly and prosper without being disadvantaged by those who launder money, evade taxes or cut corners; and where the vulnerable are protected from those who would seek to exploit, traffic or cheat them.

⁴ <http://www.gov.scot/Publications/2015/06/3426>

This vision maps well against the aims of landlord registration, by protecting households, neighbours and communities and in ensuring that good landlords do not see their business undermined by landlords who operate outside the law.

Local authorities should be aware that the private rented sector is attractive to criminals as a means of laundering money through property ownership and management. Criminals may also seek to legitimise their businesses by gaining recognition through various licencing and registration schemes. For example, successful landlord registration would be an attractive prospect to a serious criminal or crime group, who may use registered properties for activities such as prostitution, people trafficking, and the cultivation and production of illegal drugs.

As part of Police Scotland's commitment to developing a joined up approach to working against serious organised crime, there is a willingness to work with local authorities across a number of policy areas relating to the private rented sector, including landlord registration.

Recent improvements in joined up working practices include agreement by Police Scotland to establish a single contact point to Police Scotland for local authorities through their nominated Divisional Local Authority Liaison Officer via 101 or a locally agreed contact number. This is backed up with support from the National Police Scotland (Safer Communities) team offering specialist advice in relation to Serious Organised Crime.

Local authorities should consider how they can work in partnership with Police Scotland to identify landlords who are not registered or who are not suitable to be registered. In addition to those landlords involved in serious organised crime, this should extend to those involved in lower level crime. Examples of how local authorities are using Information Sharing Protocols to develop and implement more effective monitoring of compliance and enforcement processes are included later in this guidance.

3. Registration

Local authorities have a duty to prepare and maintain a register of landlords. Only those landlords that have been assessed by the local authority as being fit and proper should be entered on the register.

Applications

Applications should be made by the relevant person via the online Landlord Registration System wherever possible. This should ensure that landlords submit all the required information and pay the relevant fee, so that a valid application is submitted. The online process also provides flexibility with the site being available out-with traditional office hours. Applications can be made via smartphone and tablet. The system also captures email addresses that can be used for future correspondence with the applicant. Applicants who apply online can also benefit from a discounted application fee.

The online application process is especially useful for people that need to register in multiple local authority areas and/or include multiple rented properties. This minimises the amount of work that local authorities would otherwise have to do to input a paper application, calculate any discounts and process the relevant fee.

There may be justifiable reasons why an applicant is not able to access the online registration system. For example, access to internet services may not be available or reliable in some rural communities; some applicants with disabilities may find use of internet services problematic.

Additional support may be available to help those who are simply not at ease with use of the internet, through public libraries, landlord membership organisations and advice and information services. The manual application process should be an exception, but remain an option for those that need it.

Subsequent applications

Although the term 'renewal' is generally used, a subsequent application after a registration has expired, or is about to expire, is a new application in terms of the 2004 Act. For practical reasons, landlords are invited to 'renew' their application before the existing registration expires. The IT system will issue automated requests at 90 days and 30 days prior to the expiry of the current three year registration period, where an email address has been provided. Where an applicant is unable to submit their application online then the person will need to complete a paper application form.

The point at which a subsequent application is submitted provides an opportunity to proactively engage with landlords and to consider the information provided by the applicant against any new information that may be available. For example, complaints from tenants, referrals to the First – tier Tribunal or information from other local authority departments or external agencies, might encourage a local authority to perform a more rigorous scrutiny of the new application.

Local authorities should have robust processes for dealing with registrations that expire, after issuing two reminders, and where no new application is made, to ensure that the landlord is no longer letting properties. Where practical, these may involve:

- follow up phone calls;
- checking the Council Tax register or electoral role;
- checking housing benefit or universal credit;
- checking property ownership; or
- enquiries at the property.

Where an application is submitted and approved after the expiry of the previous registration period, the start of the 3 year registration period should begin on the date of approval – the legislation does not make provision for the application to be backdated. A rent penalty notice can be considered for any period that the relevant person is operating as an unregistered landlord.

[SSI 2008/403](#) amends [SSI 2005/558](#) to make provision that an additional fee is payable where an application is submitted after two separate requests for an application to be made have been issued. See the section “Additional Fee” for further details.

If a landlord continues to let property without being registered or without having submitted a valid application for registration then they are failing to comply with registration requirements and enforcement action should be undertaken by the relevant local authority. Rent penalty notices may assist with this process and a report to the Procurator Fiscal can also be considered.

Validation

A valid application contains the information required by section 83 of the 2004 Act and is accompanied by the relevant fee. The online system is designed to ensure that applicants cannot submit an application unless those criteria are met. The applicant must ensure that the information is correct to the best of their knowledge. Falsely declared information (which if material) results in an offence having been committed. This is subject to a fine not exceeding level 3 on the standard scale. This would also represent a contravention of housing law. Such an application may be updated to show the correct information, or refused if the local authority believes the failure justifies a decision that the person is not fit and proper.

Local authorities should have robust processes for dealing with incomplete paper forms or forms that are not accompanied by the appropriate payment and take steps to address this as quickly as possible. Unless the prescribed information has been provided, a form cannot be considered to be a formal application under section 83. Incomplete forms could be returned to the person as being invalid. Alternatively, the authority may wish to contact the person to confirm that the incomplete form is not a valid application but that it will be held for a limited time to allow the missing information/fee to be submitted.

An application should not be entered on to the system unless the correct payment has been received and only valid applications should be approved or refused. Local

authorities should consider the relevance of the defences in section 93(3) and (4) of the 2004 Act which only apply in the case of a valid application.

A valid application made within 12 months of a previous refusal does not allow the landlord to let property legally prior to a determination on the application being made. This is the exception to the statutory defences which normally apply.

Timescales for determination of applications

Landlords can legitimately let property, without committing an offence, once a valid application has been made but is awaiting a decision (see section on joint owners for exception) and so it is important that valid applications are assessed promptly. This will minimise the risk of tenants moving into properties where the landlord may ultimately have their application refused.

It will also ensure that local authorities are well placed to minimise the impact of section 21 of the Housing (Scotland) Act 2014, when this is commenced. This will introduce a new section 85B into the 2004 Act and establish a 12 month time limit for determining applications. Local authorities should consider this as the maximum time it should take to process an application.

Under the new section 85B, local authorities will be able to apply to the First-tier Tribunal for an extension to the 12 month period, before that period expires. The decision of the FTT on such an application will be final.

If the application is not determined within the 12 month period, and no extension has been granted, the application will be treated as having been approved and entered on the register on the day the 12 month period expired.

Registration in such cases lasts for a period of 12 months, in line with a similar provision for HMO Licensing. The registration status may be reviewed at any time if there is cause for concern but local authorities should consider the risks of not proactively approving or refusing applications promptly.

4. The 'Fit and Proper Person' Test

Local authorities must refuse an application for registration if not satisfied that the applicant is a fit and proper person to let houses.

The fit and proper person test is intended to provide a level of assurance that the landlord or agent is a suitable person to let privately rented property. It is a standard that all private landlords are required to uphold throughout the time that they operate as a private landlord.

Local authorities must take account of the information prescribed in section 85 of the 2004 Act when carrying out the fit and proper person test. This includes, amongst other things, material which shows that the person has committed specific offences or contravened any provision of housing law or landlord and tenant law, material which relates to any acts of the relevant person regarding antisocial behaviour affecting the house, and repairing standard enforcement orders.

Section 85(4) requires local authorities to have regard more generally to any material if it is relevant to the question of whether the landlord or agent is fit and proper. This means that local authorities can consider material other than a conviction or tribunal decision to assess whether or not an applicant is fit and proper to be approved for registration.

Unless a local authority is satisfied that the applicant is a fit and proper person to let houses, the application should not be approved. Further information about the duty on local authorities to provide advice and assistance, where the authority proposes to refuse or revoke an application is contained in Section 5 "Duty to Provide Advice and Assistance".

Joint owners

The 2004 Act offers some key principles on how applications from joint owners should be processed.

Every joint owner of a property must submit a valid application. Jointly owned properties should not be let until all joint owners have submitted a valid application otherwise the owner who has not submitted an application will commit an offence.

It is for local authorities to decide whether to determine applications for all the joint owners of a property at the same time. Whilst this may mean that some applications may need to be put on hold until all joint owner applications are submitted, there are benefits to taking this approach. Where joint owner applications are approved at the same time, the registrations will have the same start and expiry dates. Subsequent renewals should be more straightforward than if there are multiple expiry dates. This approach also avoids any complications that may arise if one joint owner is a fit and proper person, but another joint owner is not.

If a local authority decides to assess joint applications separately, the individual registration periods should start from the date each application is approved. The dates for the joint owner's registration periods should not be aligned.

If any one of the owners is found not to be fit and proper, the application for that owner should be refused, unless steps could be taken to address the relevant concerns. The other fit and proper owners should be approved, as it is the person who is being assessed as fit and proper for entry on the register, not the jointly owned property.

The result of this would be that the jointly owned property should not be let by any of the owners. If the jointly owned property is let to a tenant, the owner who is an unregistered landlord is guilty of an offence under section 93(1) of the 2004 Act.

Where only some joint owners are registered (because one or more of them have failed the fit and proper person test) the local authority should write to them advising them of this fact and the consequences of letting out the property.

Where the 'registered' owner owns another property in his or her sole name he or she will be able to let that property as it is unaffected by the fact that a joint owner of another property is unregistered.

Change of owner

In some cases, an application may be submitted with a property that is already included under another person's registration. This is most likely to happen where the property has been sold and the previous owner has not updated their registration details. In such cases, the landlord should not be prevented from meeting their legal duty, and an application for registration should be allowed. Where a duplicate address is identified, the local authority should make appropriate enquiries to establish the facts relating to the relevant property.

Scrutiny of applications

The registration process should not be an onerous burden on responsible landlords, who meet all their legal obligations in relation to letting houses. The application process is in the form of self-declaration of circumstances based on the specified information that must be included in the application. It is the applicant's responsibility to declare that the information provided in an application is complete and accurate, to the best of their knowledge.

Local authorities should develop an explicit risk based approach, using their experience and local intelligence, to identify and target registrations where further scrutiny might be appropriate. Such an approach may take the form of random checks.

Case study

Renfrewshire Council send a 5% sample of applications to Police Scotland, who have specific officers dealing with landlord registration, to enable them to comment

on applications. Cases that give cause for concern are referred to the council's Regulatory Functions Board, comprising of elected members of the Council. The Board has refused registrations based on information about criminality, the existence of a Repairing Standard Enforcement Order and failure to provide requested information.

Local authorities hold a range of information across different teams and departments that could be relevant in determining if a landlord meets the fit and proper person test. Those dealing with landlord registration applications should make use of information available within the local authority, including from:

- Legal Services/Licensing;
- Environmental Health;
- Housing;
- Antisocial Behaviour/Community Safety;
- Trading Standards
- Housing Benefits/Department for Work and Pensions;
- Homelessness Services;
- Money Advice/Debt Management Services
- Council Tax records

It may also prove useful to verify that the applicant is indeed the owner of the property, if it is suspected that the applicant is applying on behalf of an unsuitable owner.

The range of risks that each local authority considers and the weight that it applies to each will be a matter for local decision making but should include consideration of the following:

- offences that are required to be disclosed;
- intelligence provided by Police Scotland;
- evidence relating to the extent of the applicant's knowledge of private tenancy law and good practice;
- evidence of any delay or attempt to avoid registration;
- failure or delays in providing information;
- complaints from tenants or neighbours;
- issues arising from registration or property management in other local authority areas;
- any available information about the physical condition of the property;
- adverse decisions by the Housing and Property Chamber of the First Tier Tribunal (FTT).

Local authority risk frameworks should provide the basis for deciding what, if any, further scrutiny is required. Where an authority is satisfied that there are grounds for additional scrutiny of an application the approach taken should be proportionate to the level of risk identified but re-evaluated should new information give rise to further concerns.

Additional scrutiny of applications could include:

- seeking specific documentation relating to the property or the landlord's approach to letting (e.g. copies of the lease to be used);
- a property inspection (e.g. in connection with the repairing standard);
- details of the basis for the appointment of any agent involved;
- contacting the tenant;
- seeking further information from Police Scotland.

Police intelligence on a landlord or agent that is of sufficient quality and weight may be helpful to local authorities when undertaking the fit and proper assessment. Whilst convictions represent the strongest evidence, it is for local authorities to determine the level of evidence appropriate for refusing registration or removing a landlord from the register. Making use of all available evidence will help decision makers to demonstrate a more robust and risk based approach to the fit and proper test.

Local authorities should consider establishing internal and external Information Sharing Protocols (ISPs) to set out the terms of disclosure and sharing of information about private landlords. Many local authorities have confirmed that this approach is being taken on the basis of powers under section 139 of the 2004 Act to help inform the fit and proper assessment of landlords applying to be registered.

Information is also shared with Police Scotland for the purposes of preventing and detecting crime under the Data Protection Act 1998. The legal basis for sharing information should be included in any protocols that are put in place.

There may be cases where there is evidence of repeated behaviours in relation to letting houses. These could include:

- use of unfair lease terms;
- delaying repairs and poor quality repair work;
- failures in communications with tenants;
- the inclusion of discriminatory terms in advertisements;
- advertising properties through social media and other methods in return for sexual favours;
- accessing a tenanted property without the tenant's knowledge.

Judgement about the impact of these behaviours is likely to be linked to the extent to which the tenant is vulnerable. This is particularly important where the landlord is targeting letting of houses at a particular client group, for example to those on benefits, migrant workers or those who do not speak English as their first language.

Both the paper application form and online form for landlord registration include a privacy statement that information held about the applicant may be used to determine whether the relevant person is a fit and proper person to act as a landlord or agent. It also confirms that relevant information may be shared with other local authorities and that information may be shared with, or sought from Police Scotland and other relevant authorities. Information may be shared in terms of section 139 of the 2004 Act and also for the purposes of preventing and detecting crime under the Data Protection Act 1998.

The Data Sharing Code of Practice, available on the Information Commissioner's website is a statutory code that provides practical advice to all organisations, whether public, private or third sector, that share personal data and covers systematic data sharing arrangements as well as ad hoc or one off requests to share personal data.

Relevant convictions

Changes in legislation relating to the rehabilitation of offenders mean that landlords applying for registration no longer need to disclose certain spent convictions. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 (SSI 2015/329) introduced the concept of 'protected' convictions. A protected conviction does not need to be declared, even though landlord registration was previously an excluded profession under Schedule 3, section 9 of SSI 2013/50. Further amendments to the list of offences in the 1974 Act were made by SSI 2016/91, which came into force on 8 February 2016.

Local authorities should consider the impact of this change on the range of material that they must have regard to as part of the fit and proper person test. Local authorities should consider whether any protected convictions that are declared by an applicant, when they did not need to be declared, should be disregarded.

A local authority can request a criminal record certificate if it has grounds to suspect that information provided in an application is, or has become, incorrect in relation to material covered by section 85 (2),(3) and (4).

Case studies – Working with Police Scotland

Closer working with Police Scotland in North Lanarkshire has resulted in over 30 landlords being referred by the Fit and Proper Person Review Panel to the North Lanarkshire Licensing Committee. This approach has resulted in landlords being removed from the register/agreeing to be removed from the register prior to a Committee decision.

See Annex C – Case Studies 1 for further detail on the North Lanarkshire initiative, and other approaches to working with Police Scotland to inform the fit and proper person assessment taken by East Ayrshire, Dundee City, Angus and Moray Councils.

Requesting additional information

Whilst the information that must be provided in an application for registration is set out in legislation, some authorities have taken a risk based approach to requesting additional supporting evidence to show that all legal requirements are met. This approach is supported by section 97A of the 2004, which gives local authorities the power to obtain information from anyone associated with a particular property to help exercise landlord registration functions. Further information on how local authorities can use this power is contained in section 6 "Compliance".

The legislation requires applicants to make a declaration that they comply with all other legal requirements relating to their lettings. It is for local authorities to decide whether it is appropriate to request additional information to support an application, and to which applications this should apply.

Failure to provide supporting evidence might be an indicator that the landlord is not complying with all the legal duties relating to letting houses and as such may not be a fit and proper person. The person may be committing an offence if they knowingly give false information in connection with an application. Together with any other information held, local authorities must arrive at a balanced judgement on whether to approve or refuse the application.

Case studies - Requesting Additional Information

See Annex C – Case Studies 2 for examples of where local authorities are using existing powers to request additional information to support the fit and proper person assessment.

Decision making

Local authorities should establish appropriate arrangements for approving, refusing or revoking registration. Given variations in local authority governance structures, it may not be possible for all local authorities to operate in the same way. However, consideration should be given to the level of authority needed to make process applications and make routine decisions.

In many cases the decision to approve an application will be straightforward. However, refusing an application or revoking registration may have serious consequences for a landlord, tenant and agent and so authorities should have processes in place to ensure that decision making can be escalated to senior officers, scrutiny panels or licensing or registration committees as appropriate.

Given the range of practice across Scotland, local authorities may find it helpful to share information about what decision making structures they have in place.

Some cases will inevitably be more complex and so local authorities should seek advice from their own legal services where interpretation of the legislation is needed.

Approved applications

If an applicant is judged to be a fit and proper person for the purpose of registration, then the application should be approved and an entry made in the register.

The legislation states that the registration entry should be removed from the register on expiry of a 3 year period from the date of entry (generally the date of approval) or from the date registration is revoked if this happens within the 3 year period. For practical reasons, landlords who wish to continue to be registered can apply up to 3 months before the expiry date to ensure there is no break in registration.

If an application is submitted and approved after the expiry of a previous registration, the start date of the new registration period should not be backdated to the original expiry date. Registration is valid for three years although the fit and proper person status of the registered person can be reviewed at any time if there are concerns that registration requirements are no longer being met.

Refused applications

If a local authority is not satisfied that an applicant is a fit and proper person, and the person cannot take appropriate action to change that assessment then the application should be refused.

An applicant has the right of appeal against a refusal to register. The appeal must be made by summary application within 21 days of the decision. The sheriff may make an order that the person should be registered, specifying whether that person is fit and proper as an owner or an agent. If the sheriff refuses the application, there is a further right of appeal, within 21 days to the sheriff principal. The decision of the sheriff principal is final. Section 92ZA of the 2004 Act makes further provision for noting a decision to refuse entry to, or remove a person from the register. The note should be removed on expiry of the relevant period.

Where a local authority either proposes, or has decided, to refuse an application or revoke a registration, the local authority must provide the landlord and tenant with advice and assistance. See section 5 "Duty to provide advice and assistance" for further information about this duty.

HMO Licensing and Landlord Registration

Local authorities should consider whether a landlord has already been recognised as fit and proper through the HMO Licensing regime. Where a landlord holds an HMO licence, the landlord will be fit and proper for the purposes of landlord registration. In such cases local authorities should take a risk based approach to deciding whether the landlord can be passported onto the landlord register. This approach reduces the need for an unnecessary second fit and proper person test to be undertaken, for which a registration fee would not be chargeable. The legislation provides that where an application is made by a person who already holds a current HMO licence issued by the same authority, no registration fee is due, and no property fee is due for any house covered by the HMO licence.

HMO licensing focuses on the house as well as its management by a fit and proper person. The same fit and proper person test, as set out in section 85 of the 2004 Act, applies to both HMO licencing and landlord registration. It is possible for an owner to be registered as fit and proper but not granted an HMO licence for a house due to serious problems with the condition of the property. That owner could still obtain a licence for another house that meets all the local standards laid down by the authority. It should not be possible for an owner to be denied landlord registration but granted an HMO licence. Conversely, if a person failed the fit and proper person test for an HMO, then the local authority should consider the impact of that decision on the person's landlord registration status. In this respect, close working and sharing information between HMO licensing and landlord registration is crucial to the success of both regimes.

5. Duty to provide advice and assistance

Local authorities have a duty to provide advice and assistance to tenants and landlords in certain circumstances.

Details of the advice that should be given to tenants and landlords are set out in [SSI 2005/557](#) as amended by [SSI 208/402](#).

Landlords must be provided with general advice about what constitutes good practice in the letting of houses, if such advice has not already been provided as part of the process leading to the making of an application. Advice given could extend beyond landlord registration to encompass other aspects of letting houses, such as energy efficiency, tenancy deposit schemes and landlord accreditation.

If a local authority proposes to refuse or revoke an application and it considers that the relevant person can or might be able to take action to avert the proposed refusal or revocation, they should give advice on the appropriate action to take. In practical terms this may be a referral to dedicated training available through the local authority or organisations such as Landlord Accreditation Scotland. Alternatively, where the local authority has concerns about the performance of a landlord, for example in the maintenance of the property or management of the tenancy, or where the landlord is living overseas and is not contactable, it may be appropriate to suggest that the landlord appoints a registered agent in order to meet the requirements of registration.

Tenants should be provided with advice and information in respect of any decision to refuse or revoke a registration and to issue a rent penalty notice. Advice and assistance to tenants should include information on the general position of tenants or occupants where a landlord decides to terminate the tenancy; information on other relevant sources of individual advice (such as money and benefits advice); and details of how to access assistance that could be available from a local authority to prevent or address homelessness.

Local authorities should ensure that landlords and tenants, whose first language is not English, are able to access information about their rights and responsibilities by providing written information in other languages.

The duty to provide advice and assistance does not extend to the provision of legal advice. If such a request is made, the local authority should consider signposting the relevant person to appropriate advice agencies or organisations. A list of useful contacts is contained in Annex D.

Case studies 3 - Duty to provide advice and assistance

Dundee City Council and Highland Council alongside Lochaber Housing Association have been operating a joint project with Shelter Scotland to provide advice and support to help landlords meet their legal duties and improve day to day practice.

See Annex C – Case Studies 3 for further detail on this project and other approaches taken by South Ayrshire, South Lanarkshire and Aberdeenshire Councils.

Action Plans

“Action plan” is a term that is used by some local authorities to describe an intervention, as part of their help and advice role, to support landlords. They are used by some local authorities to help landlords to improve their practice so that they can meet the requirements for registration and may be used in conjunction with the requirement to undertake training to ensure the landlord is familiar with their legal responsibilities. The legal basis for providing advice and assistance where an applicant is at risk of not meeting registration requirements is set out in [SSI 2005/557](#).

For action plans to be used successfully, local authorities should establish clear procedures that:

- make it clear to the landlord what the issue is;
- set out the improvement that is required (though where there are options to achieve this the action plan need not be prescriptive on how the improvement is achieved);
- state a reasonable time-scale for the landlord to resolve the problem; and
- make clear the consequences of failing to comply.

In most cases the landlord will comply with the requirements of the action plan. However, should this not be the case the local authority should consider reviewing the landlord’s fit and proper person status. Where there is evidence that raises doubt as to the fit and proper person status, there should be clear escalation procedures to deal with the issue. These should include appropriate arrangements for refusal or revocation of fit and proper person status by senior managers or by a referral to a committee or scrutiny panel.

The process of preparing action plans should involve colleagues from other services where necessary. For example an action plan involving noise and refuse nuisance might typically be supported with input from Antisocial Behaviour and Environmental Health teams within the local authority.

Case studies

See Annex C – Case Studies 4 for examples of how action plans are used by East Ayrshire and Fife Councils.

Engaging with landlords

Local authorities should consider a range of actions to help landlords reach the standards required in privately letting properties, and to keep them informed of changes in legislation.

Examples of these actions include:

- inviting landlords to attend a regular landlord forum;
- promoting training programmes organised by various representative organisations;

- providing good practice information through a landlord checklist (see Annex C - Case study 3.);
- providing updates on relevant legislative changes through electronic newsletters or the Council website;
- publicising examples of successful enforcement activity; and
- promoting landlord accreditation schemes.

These measures, as part of the wider help and advice role, play a significant part in informing landlords, encouraging them to comply with their legal duties and improve practice. It is for individual authorities to decide what the most appropriate means of engagement with landlords in their area should be. For example, landlord forums may not be well attended in some geographical areas but it might be possible to run a webinar that local landlords can sign up for. However, all local authorities should consider using the register to proactively communicate with landlords/tenants to provide advice and assistance. Whilst data protection principles must always be followed, many local authorities consider that the duty to provide advice and assistance does provide the legal basis for such an approach.

Where pressures on resources make it difficult for individual authorities to engage with landlords, the value of collaborating on a regional basis to deliver joint communications to landlords should be considered.

Case studies:

Local authorities proactively engaging with landlords by issuing newsletters, promoting training, good practice and updates on changes in legislation include Aberdeenshire; Dumfries and Galloway; Dundee City; East Ayrshire; Glasgow City; Moray; North Lanarkshire and Renfrewshire.

Edinburgh City Council publicises landlord registration enforcement successes on their news pages:
http://www.edinburgh.gov.uk/news/article/1142/edinburgh_landlord_banned_from_renting_out_properties

East Ayrshire Council shares resources with other local authorities to organise an Ayrshire wide landlord conference. Responsibility for organisation of the conference is rotated.

Minority ethnic and migrant communities

In some locations, particularly in cities and larger towns there is evidence of landlords from minority ethnic backgrounds letting primarily to members of their own community. In some cases, landlords may target specific communities, including EU migrants as part of their overall business model.

There is no reason to believe that these landlords are less likely to be “fit and proper” than other landlords. However, engagement with them and their tenants can present particular challenges especially where English is not their first language.

It will be for each local authority to develop its approach to risk in such circumstances and to ensure that they have access to any necessary translation or other specialist services that may be required to support effective communication. The overriding principle should be that the ethnic origin of either tenant or landlord should not have a bearing on the requirements for compliance or the extent of the protection offered by landlord registration.

Local authorities should be aware of the equality duty which was created by the Equality Act 2010 and which came into force in April 2011. The general equality duty is set out in section 149 of the Equality Act and requires public authorities to have due regard to the need to eliminate discrimination; advance equality of opportunity; and foster good relations – when making decisions and setting policies. To do this, it is necessary for the organisation to understand the potential effects of its activities on different people. Where these are not immediately apparent, it may be necessary to carry out some form of assessment or analysis, in order to better understand them.

6. Compliance

Identifying unregistered landlords

Private landlords are expected to comply with their legal duty to register with the relevant local authority. If a landlord lets out a house to an unconnected person without being registered the landlord commits a criminal offence. The serious nature of the offence is reflected in the scale of the fine which can be applied on conviction and the Rent Penalty Notices that can be applied to unregistered landlords. A person guilty of operating as an unregistered landlord is liable, on summary conviction, to a fine of up to £50,000. In addition to imposing a financial penalty, the court may disqualify the convicted person from being registered by any local authority for up to 5 years.

Failure to register may be due to ignorance of the regime or a deliberate attempt to avoid registration but in both cases failure to comply with registration requirements is likely to have a detrimental effect on the quality of the let or the tenant's experience.

Identifying unregistered landlords remains a challenge and local authorities should use all sources of information available to them. These include:

- Housing Benefit/Local Housing Allowance claims;
- Council Tax register;
- Local Housing Allowance claims;
- Tenancy deposit scheme information;
- Environmental health reports;
- Reports/complaints from tenants, homeless applicants, landlords, members of the public;
- DWP (where Universal Credit is paid);
- Housing Options information where the client is renting; and
- the electoral roll.

Landlord registration teams should establish close links with colleagues who have an interest in improving standards in the private rented sector. It is expected that teams will develop clear information-sharing mechanisms with their own colleagues in Environmental Health, Anti-Social Behaviour, Homelessness, HMO Licensing and Social Care teams as well as any colleagues whose day to day work will help in establishing ownership of a property and identifying unregistered landlords. This joined up approach may also help to identify evidence that is relevant to a local authority's assessment of the fit and proper status of the landlord.

Local authorities can also access data from three approved tenancy deposit schemes in Scotland. All of them make information available to local authorities about the landlords that register with the individual schemes. It does not automatically follow that because a landlord has complied with tenancy deposit legislation they are also a registered landlord. Data provided by the tenancy deposit schemes is an accessible and useful resource that has been used successfully by some local authorities to identify unregistered landlords. All local authorities should consider the value of using this data in this way

Case studies

See Annex C – Case Studies 5 for examples of the approaches being taken to identifying unregistered landlords by Dundee, East Ayrshire, East Lothian, Fife, Midlothian and Renfrewshire Councils.

Tenants themselves are a useful source for identifying landlords and local authorities will find themselves engaging with tenants for a variety of reasons, e.g. payment of local housing allowance. Tenants who find it difficult to enforce their rights in respect of getting repairs done to their properties may also make contact with local authorities with a view to the council making a third party application to the Housing and Property Chamber of the First Tier Tribunal. Landlord registration teams may wish to make their colleagues aware of the online landlord registration system and the ability to search for registered landlords, and the importance of alerting their landlord registration colleagues when a search does not produce a match.

Likewise, prospective tenants may contact landlord registration teams when they cannot find a landlord's registration details using the public search function. This should serve as a prompt to the local authority to investigate that landlord further.

Externally there are many sources that can bring an unregistered landlord to light. For example, as Universal Credit rolls out, with the housing element being paid directly by the Department for Work and Pensions (DWP), processes are in place for DWP to check the landlord status on Scottish claims and notify the local authority accordingly. This will ensure checks on landlord registration form part of a claim for assistance with housing costs for a private residential let in Scotland.

Adverts for let properties must display the landlord registration number or the phrase "landlord registration pending" when an application has been made but not yet determined. Local authorities may wish to carry out random checks on property letting web-sites; local adverts and social media to ensure this is the case. In some cases it may be that an advert is accompanied by a false registration number or declaration of an application pending. Local authorities may wish to consider how sample checking of property adverts may be incorporated as a regular check or part of a specific exercise.

Failure to comply with the duty to include specified information in adverts, without reasonable excuse, is a breach of housing law. Such material can be considered as part of the fit and proper person test. Section 89 (4) of the 2004 Act also makes provision to remove a registered person from the register if they fail to comply with this duty.

Duty of registered person to provide information

A registered person has a legal duty to keep the information they have provided in their application for registration up to date. If a change of circumstances means that the information becomes inaccurate, the relevant person must update their online registration account or notify the local authority in writing of the change that has occurred.

A person who, without reasonable excuse fails to comply with this duty is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. It is for local authorities to consider whether prosecution is proportionate, depending on the nature of the offence and the detail of the change that was not notified to the authority. Where prosecution is not justified a review of the person's fit and proper person status may still be appropriate.

Power to obtain information

Local authorities have the power to require people associated with a property to provide information to enable or assist them to carry out their landlord registration functions.

Section 97A of the 2004 Act (as introduced by the Private Rented Housing (Scotland) Act 2011) sets out the power for local authorities to obtain information from anyone associated with a particular property to help with the exercise of landlord registration functions. The power can therefore be used to require landlords, tenants and agents to provide information.

One example of how this power may be used is by requiring an agent to provide a list of all properties they manage along with the owners' contact details and registration numbers. This is intended to help authorities to identify unregistered landlords and provides another useful tool to support enforcement, increase protection for tenants and improve management of the regime. Another example of how this power can be used is requesting additional evidence relating to gas and electrical safety, or buildings insurance for tenement properties to support the fit and proper person test.

It is an offence for a person to fail to provide information requested under section 97A, without reasonable excuse, or to knowingly or recklessly provide false information. In the case of a vulnerable tenant for example, it would be for the local authority in the first instance to decide whether they were justified in not providing the requested information and whether to refer it to the Procurator Fiscal. A person guilty of such an offence is liable on summary conviction of a fine not exceeding level 2 on the standard scale.

Case studies:

Dundee City Council has used this power to confirm the properties owned by a landlord/managed by an agent and to confirm a landlord's address.

Aberdeenshire and West Dunbartonshire Councils have used this power to put a process in place to request a list of clients from letting agents. This enables the Council to identify unregistered landlords.

Dumfries and Galloway used this power with online letting agents primarily based in England who were advertising rental properties without the inclusion of the landlord registration number, to request details of the landlord.

Glasgow City Council has procedures in place to use this power, and has used it to obtain information from tenants on one occasion and a letting agent on another.

Rent penalty notices

It is a criminal offence to operate as an unregistered landlord. Whilst prosecution is the ultimate sanction for landlords, rent penalty notices are an effective tool for encouraging landlords to register. For a Rent Penalty Notice (RPN) to be issued the local authority must be satisfied that the relevant person is not registered. An RPN cannot be issued for any other reason. Available evidence shows that the threat of a rent penalty notice is enough to prompt approximately 3 in every 4 affected landlords to take action to comply with registration requirements. This is a good example of how measures can be used to encourage compliance in a proportionate way and local authorities should consider using this enforcement measure in cases where an unregistered landlord is identified.

For RPNs to be fully effective, the local authority must communicate clearly with both the landlord and the tenant. Section 94 of the 2004 Act covers service of notice of an RPN and includes scenarios where the landlord cannot be identified, the current address is unknown or there is a failure to serve notice on the tenant or any agent acting for the landlord.

Where the tenant is in receipt of housing benefit or local housing allowance, effective procedures and communication routes should be established with colleagues processing those benefits to ensure that as far as possible the correct housing entitlements are paid.

With the roll out of Universal Credit (UC), the way in which claimants receive help with housing costs has changed. Under UC the rent element is paid by DWP. Both claimants and landlords can apply to have the housing costs paid directly to the landlords in some circumstances.

Due to the rules on change of circumstances under UC, the period covered by the RPN may not correspond with the tenant's assessment period. In some cases payment of housing costs may continue to be made, despite an RPN being in effect. In other cases, payment of housing costs may not be made for a period beyond the term of the RPN so that the tenant may have no funds to pay rent which they are liable for. Effective application of a rent penalty notice would ideally involve liaison with the tenant or DWP with regard to payment cycles, to ensure that the penalty is effective and the tenant is not disadvantaged. It is however recognised that this information may not be easy to access and that additional resources may be required.

DWP has expressed a willingness to work with local authorities to help facilitate rent penalty notices but it is clear that the current UC framework is likely to impact on the effectiveness of this enforcement measure. The legislation is not prescriptive about the effective date or period of RPNs, and so local authorities are able to consider how they will apply rent penalty notices in the light of the UC framework.

Discretionary Housing Payments may be considered if a tenant is placed into rent arrears in these circumstances.

Additional fee

The legislation ([SSI 2005/558](#)) states that where the application is submitted only after the local authority has issued two separate requests for an application to be made, an additional fee of £110 is payable. It is important that the fee is applied consistently by all local authorities. This demonstrates to compliant landlords that the sanction is being applied effectively against non-compliant landlords. It also ensures that local authorities receive the income from fees to cover the additional costs of dealing with unregistered landlords and those that do not renew their applications. There is no provision in legislation for a right of appeal against the additional fee.

Overview of breaches, offences and sanctions

When a landlord breaches the terms of the 2004 Act, there are a range of sanctions available under the 2004 Act, including criminal prosecution or disqualification. These sanctions effectively bar a landlord from letting a house where the landlord is not fit and proper. There are several ways in which a landlord or agent might be in breach of registration requirements and there are cases where immediate recourse to prosecution, removal from the register or a rent penalty notice will be disproportionate, in the first instance.

The table at Annex B summarises the types of breaches and accompanying sanctions available through the 2004 Act.

7. Enforcement

Where a local authority is satisfied that the relevant person is no longer a fit and proper person, that person must be removed from the register.

The majority of landlords and agents who comply with their legal duties and apply to be registered should complete the registration process with little difficulty. However, registration also aims to challenge and deal with the failings of landlords and agents in the private sector who do not comply with registration requirements. Provision of advice and support to those landlords who are simply unaware or are unclear about their legal obligations may be all that is needed to help improve landlord practice; tougher enforcement should be targeted at those who deliberately seek to avoid registration or who otherwise operate outside the law.

When a landlord fails to meet the requirements of the 2004 Act, local authorities should consider what sanctions are appropriate. Measures taken may result in refused or revoked registrations, cessation of rent liability for tenants, criminal prosecution and disqualification from operating as a landlord for a period of up to 5 years. A mandatory additional fee applies where an application is made after two separate requests for registration have been made.

Local authorities should consider the principles of the Scottish Regulator's Code of Practice (see Section 2 of the guidance) and adopt a proportionate and targeted approach to the use of enforcement powers. Local authorities should develop a monitoring, compliance and enforcement policy to support effective administration of landlord registration and use of discretionary powers, ensuring that action is targeted where most needed. This would also cover the decision making process and options for escalation in the event of non-compliance. The policy should be transparent and the possible consequences of non-compliance should be made clear to the relevant person in all correspondence. The choice of enforcement options should be an active one based on the specifics of each case. Not every option will be appropriate for all circumstances.

Enforcement decisions should be taken at an appropriate level of seniority depending on the significance of the action involved. Clear communication with both the landlord (and their agent, if they have one) is important at every stage of the process and should include details of:

- the issue, practice or failure on the part of the landlord that is giving rise to the potential for enforcement action;
- the actions required and the timescale for compliance if enforcement is to be avoided;
- the impact on the tenant(s) of not taking enforcement action;
- the likely escalation and consequences in the event of non-compliance; and
- details of appeals options where they exist.

A universal principle is that the 'fit and proper' person status afforded at registration remains a standard that all private landlords should be upheld throughout their three year registration period. Registration can and should be reviewed at any time that

material under section 85 of the 2004 Act casts doubt on a person's fit and proper status.

Where a person has been assessed as no longer being fit and proper, the outcome should be a decision to revoke the registration. The local authority must send the person notice in writing of the fact and date of removal. The person has the same right of right of appeal against revocation as for refusal of registration. The register must be noted for a period of 12 months when an authority revokes registration.

Where a local authority decides to refuse or revoke a registration or serve a Rent Penalty Notice, advice relating to the decision taken should be given to the occupants of the house concerned. This should include advice on the rights of tenants where a landlord decides to end a tenancy; money and benefits advice; and details of the assistance that could be available from the local authority under its duty to prevent homelessness.

The advice that should be given to both tenants and landlords in relation to a decision to refuse or revoke registration and serve a rent penalty notice is set out in [SSI 2005/557](#), as amended by [SSI 208/402](#).

Reports to the Crown Office and Procurator Fiscal Service

A range of measures is available to local authorities to encourage landlords to meet the legal requirements in relation to letting property and it is clear that positive local authority engagement helps responsible landlords to improve practice. This supports landlords to remain in the sector and maintain the supply of much needed private housing.

However, where less responsible private landlords are not willing to comply with their legal requirements, the local authorities should take the necessary steps to remove them from the register. It is a criminal offence to operate as an unregistered landlord or communicate with another person with a view to entering into a lease or occupancy agreement when not registered. If the landlord continues to let property after being removed from the register, referral to the Crown Office and Procurator Fiscal Service (COPFS) for prosecution should be considered.

A person found guilty of an offence under section 93(1) or (2) is liable on summary conviction to a fine of up to £50,000. In addition to imposing a financial penalty, the court may also disqualify the convicted person from being registered by any local authority for a period of up to 5 years.

Case study:

Fife Council have successfully taken a landlord to court and seen the first Disqualification Order in Scotland served for operating as an unregistered landlord.

See Annex C – Case Study 6 for further information on how the local authority took this case forward.

Building a case for prosecution can be a time consuming and complex process for local authorities. It is therefore crucial that where local authorities decide to refer cases to the COPFS, they have as good a chance as possible of being taken forward. Local authorities should engage with the relevant COPFS office to discuss their expectations for the level of evidence required for cases to progress, and the format in which cases should be presented.

The COPFS will not have any awareness of the case being referred to them. It is therefore important to build a case that demonstrates that it is being made in the public interest, and that highlights the impact that the landlord's actions are having on the tenant and wider community. The referral should build a clear picture of any aggravating circumstances, such as the landlord receiving rental income whilst failing to comply with the law. The referral should also show what other enforcement measures have been used by the local authority before taking the case to court. In order to help raise the profile of landlord registration cases, reference should be made to the maximum £50k fine for operating as an unregistered landlord, if that is relevant to the case.

It is not standard practice for the COPFS to provide feedback on the outcome of all cases. However, local authorities can engage with the COPFS' office to seek clarification of the decision, for example to understand why a fine has been set at a particular level.

The COPFS Enquiry Point can provide general case-related information about on-going cases (e.g. dates, outcomes of hearings). Staff there can also refer calls on for additional advice about referring a case or providing feedback on the outcome of a referral. Contact details for the Enquiry Point are contained in Annex D.

Well established relationships with other departments within the local authority and other agencies such as Police Scotland may also help to reduce the barriers to effective enforcement and should prove beneficial where there is a need for cooperation to develop a robust case for prosecution.

Consideration should be given to training appropriate local authority staff in evidence gathering and making reports to the PF. Their actions should be in line with the Regulation of Investigatory Powers (Scotland) Act 2000 and associated guidance.

Repairing standard

One of the considerations in the fit and proper person test is whether the applicant has contravened any provision of housing law. Landlords have a duty to ensure that property they let meets the repairing standard at the start and at all times during a tenancy. Tenants are able to raise disputes about the repairing standard with the Housing and Property Chamber of the First-tier Tribunal (FTT). The FTT will notify the relevant local authority when an application for a determination on the repairing standard is received. On receipt of such a notification, the local authority should check that the landlord that is the subject of the application is registered.

Where a landlord has failed to meet the repairing standard, the FTT will issue a Repairing Standard Enforcement Order (RSEO), detailing the repairs that need to be

done to the property concerned. The RSEO will also specify the period within which the work required by the order must be completed.

It is for the FTT to decide if a landlord fails to comply with an RSEO. If a landlord fails to comply with an RSEO the FTT will notify the relevant local authority. A landlord who, without reasonable excuse, fails to comply with an RSEO is committing a criminal offence (albeit a landlord cannot be guilty of an offence unless the FTT has decided the landlord has failed to comply with the RSEO).

The FTT will notify the relevant local authority of decisions relating to the issue, variation and revocation of an RSEO, as well as a landlord's failure to comply with an RSEO. Local authorities should use such evidence to review the landlord's fit and proper person status. This could also prompt the local authority to ask for additional supporting evidence or documentation, such as gas and electrical safety certificates, to demonstrate that the legal requirements for letting houses are being met.

If the local authority is not satisfied that a landlord is a fit and proper person, or that the landlord might be able to take action to avert revocation of their registration, the landlord's application should be refused or the landlord should be removed from the register.

Third party applications

The Housing (Scotland) Act 2014 introduced discretionary powers to enable a local authority to make a third party application to the FTT to enforce the repairing standard. This includes a right of entry to any house in respect of which a third party application to the FTT may be made. These powers were introduced because in some cases vulnerable tenants were not willing to exercise their right to report their landlord to the FTT in case the landlord ended their tenancy.

Where local authorities receive complaints or have material that indicates that a landlord is letting sub-standard property they should consider whether use of the powers to make a third party application to enforce the repairing standard is appropriate.

Once the landlord is notified about work that is needed to ensure that the house meets the repairing standard, anecdotal evidence suggests that in many cases the repairs are completed without the need for further enforcement action. This applies in particular where the landlord has been required to carry out works to ensure their property meets gas and electrical safety requirements. Local authorities can use these powers to ensure that landlords are complying with their legal responsibilities.

Each local authority will have its own structure for dealing with enforcement of registration and licensing. It may be that responsibility for enforcement does not sit with the team that administers landlord registration. Ensuring a joined up approach to working across relevant council departments will help to ensure that all those with an interest are kept informed, and can take the appropriate action to make sure the landlord complies with their legal duties.

As with cases where a tenant has applied to the FTT, local authorities should consider whether a landlord who is issued with an RSEO, or fails to comply with an

RSEO is a fit and proper person, and whether they should be refused or removed from the register. This may be particularly relevant where the application for the RSEO was preceded by a period of engagement between the landlord and the local authority, resulting in the local authority applying to the FTT.

As at 30 June 2017, 75 third party applications had been made, from 15 local authority areas. 56 of those applications have been made between Aberdeenshire, Dumfries and Galloway; Dundee City and Glasgow City Councils. All local authorities should consider how use of these new powers can help to improve standards or property condition for tenants living, or proposing to live, in the private sector.

Case study:

South Ayrshire Council has established good working relationships between enforcement officers and environmental health officers which enable 1 visit instead of 2 for a joint inspection of properties. When a tenant contacts the service reporting issues of disrepair, a joint inspection is carried out by both the Enforcement Officer and also the Environmental Health Officer. Experience has shown that in a vast number of cases issues with the Repairing Standard and issues with the Tolerable Standard go hand in hand. This allows for a joined up response from respective services when making the owner aware of any issues and avoids duplication of effort across departments.

At a property which failed the tolerable standards due to dampness within the property, Environmental Health applied the necessary pressure on the landlord required to get the work completed. The enforcement officer was able to discuss issues in relation to other failures in terms of repairing standard. This allowed for full compliance with all standards and minimal inconvenience to the tenant as there was not a requirement for multiple visits from a number of services.

Enhanced Enforcement Areas

Local authorities have discretionary powers to apply to Scottish Ministers to have an area designated as an Enhanced Enforcement Area (EEA) along with enhanced discretionary powers to be used in that area.

The Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015 (SSI 2015/252) are intended to be used by a local authority to deal with the most exceptional cases of poor standards in the PRS:

- where there is a concentration of properties let by private landlords in a geographical area; **and**
- where those properties are characterised as being of a poor environmental standard; **and**
- there is overcrowding; **and**
- a prevalence of antisocial behaviour.

In such exceptional circumstances, local authorities can apply to the Scottish Ministers to have an area designated as an Enhanced Enforcement Area (EEA). The Regulations provide that a local authority can seek three types of additional discretionary powers for use in an area that is designated as an EEA:

- they can require a landlord who is applying for registration, or who is renewing their registration to provide an enhanced criminal record certificate as an additional check that they meet the Fit and Proper Person test;
- they can require landlords (registered landlords, those applying for registration and any individual who isn't registered but who the local authority considers might be letting a property) to produce the documents or evidence specified in the regulations for the local authority's inspection. This check will allow the local authority to establish if the landlord is complying with their related duties and responsibilities; and
- the power to enter a house or building to ensure that the accommodation, and the common areas are safe, well managed and of good quality.

These additional, stronger, discretionary powers are expected to be used as part of a local authority's wider strategy to deal with poor standards, where use of existing enforcement powers has had limited impact on the issues. Separate guidance is available for local authorities on the use of EEA's:

[Enhanced Enforcement Areas Scheme \(Scotland\) Regulations 2015 Local Authority Guidance](#)

Case study

See Annex C – Case Study 7 for further information about the designation of an Enhanced Enforcement Area (EEA) status for four tenement blocks in Govanhill, Glasgow by Scottish Ministers the on 11 September 2015.

8. Agents

Now and in the future

The 2004 Act, does not provide a clear definition of agent. However, section 88(1)(b) refers to the registered person appointing a person to act for them in relation to a lease or occupancy agreement by virtue of which an unconnected person may use the house as a dwelling. Such a person may include professional letting agents, solicitors, friends or relatives who look after the property, arrange repairs, collect rent, or a person with power of attorney.

Landlords must declare any agent they use and the agent must be assessed as 'fit and proper' by the appropriate local authority. Due diligence should be undertaken whilst making this assessment. Agents may choose to voluntarily register in their own right with a local authority, but it is not compulsory.

The Scottish Government is introducing a regulatory framework for letting agents as provided for by the Housing (Scotland) Act 2014. Registration, monitoring and compliance and enforcement will be carried out by the Scottish Government. Regulation will include:

- mandatory registration with an associated fit and proper person test and training requirements that must be met;
- a statutory code of practice that letting agents must comply with;
- a new route of redress to the specialist housing Tribunal where an agent hasn't complied with the code: and
- powers for Scottish Ministers to obtain information and of inspection to monitor compliance and for effective enforcement.

These measures are due to be in place by early 2018. These requirements will apply to those carrying out letting agency work as defined by section 61 of the Housing (Scotland) Act 2014. It will be an offence for a person who is not a registered letting agent to carry out letting agency work.

Agents who do not fall within the definition of the 2014 Act will continue to be covered by landlord registration, for example those with power of attorney who are not acting on behalf of the landlord as a business.

The Scottish Government is currently working to implement letting agent regulation, which includes looking at how it should interact with landlord registration in the future to tackle poor practice and standards within the PRS. Sharing information will be an important aspect of this and it is therefore the Scottish Government's intention to work with local authorities to develop information sharing protocols to facilitate this.

(This section will be updated when the registration of letting agents commences.)

Annex A

Overview of Legislation

This table is intended to signpost readers to legislation relating to landlord registration. It is important to note that the links are to versions of the legislation published on legislation.gov.uk. Care should be taken to check for outstanding changes that have not yet been applied.

Legislation	Overview	Commencement
Relevant Acts		
Antisocial Behaviour etc. (Scotland) Act 2004	Part 8 introduces 'Landlord Registration' i.e. the requirement for each local authority to establish a register, showing registered persons and the house they let, and make it available for public inspection.	30 April 2006
Housing (Scotland) Act 2006	<p>Sections 175 and 176 amended the 2004 Act.</p> <p>Section 175 introduces powers to introduce a Letting Code and makes provision in connection with fit and proper considerations regarding the fact and nature of any agreement that the landlord has with an agent in connection with the letting of the house, when deciding whether the landlord (but not the agent) is a fit and proper person.</p> <p>Section 176 introduces a duty on local authorities to note decisions of private rented housing committees and specifies information on the register that must be made publicly available.</p>	<p>5 July 2006 SSI 2006/395</p> <p>29 January 2006 SSI 2006/14</p>
Private Rented Housing (Scotland) Act 2011 (Part 1)	The 2011 Act contains a number of provisions which amended the 2004 Act.	
	Section 1 – Fit and proper person - Considerations	1 July 2012 SSI 2012/120
	Section 2 – Fit and proper person: criminal record certificate	31 August 2011

		SSI 2011/170
	Section 3 – Landlord registration number	1 April 2013 SSI 2013/82
	Section 4 – Appointment of Agents	1 July 2012 SSI 2012/120
	Section 5 – Access to register: additional information	1 April 2013 SSI 2013/82
	Section 6 – Duty to include certain information in adverts	1 June 2013 SSI 2013/82
	Section 7 – Penalty for acting as unregistered landlord etc.	31 August 2011
	Section 8 – Disqualification orders for unregistered landlords	1 April 2013 SSI 2013/82
	Section 9 – Power to obtain information	1 April 2013 SSI 2013/82
	Section 10 – Part 8 of the 2004 Act: guidance (statutory)	31 August 2011 SSI 2011/170
	Section 11 – Information to be given to local authority	1 April 2013 SSI 2013/82
	Section 12 and Schedule – Minor and consequential amendments	1 April 2013 SSI 2013/82
Housing (Scotland Act) 2014	Section 21 –Once commenced it will insert a new section 85B into the 2004 Act which sets a 12 month time limit for determining an application for registration.	Not yet commenced
Landlord Registration – Regulations and Orders		
Private Landlord Registration (Advice and Assistance) Regulations 2005 (SSI 2005/557)	Makes provision for : <ul style="list-style-type: none"> • advice and assistance that a local authority must give to landlords (on good letting practice; action that may be taken to avert refusal of an application or removal from the register); • advice and assistance that a local authority must give to tenants where the authority refuses an application for registration; removes a landlord from the register or serves a 	31 March 2006 Amended by SSI 2008/402

	rent penalty notice.	
Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005 (SSI 2005/558)	Makes provision for: <ul style="list-style-type: none"> the methodology for calculation of fees by local authorities (substituted by Schedule 2 of SSI 2008/43 which introduced fees set by Scottish Ministers) information to be provided in an application for registration 	1 January 2006 Amended by SSI 2006/28; 2008/403; 2012/151
Private Landlord Registration (Appeals Against Decision As To Rent Payable) (Scotland) Regulations 2005 (SSI 2005/559)	Makes provision about the notice from the landlord to the tenant where a landlord appeals against a rent penalty notice.	31 March 2006
Private Landlord Registration (Modification) (Scotland) Order 2005 (SSI 2005/650)	Amends section 83 of the 2004 Act to add additional categories of houses which are disregarded for registration purposes (section 83 (6)(e) to (l)).	1 January 2006
The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2006 (SSI 2006/28)	Amends SSI 2005/558 as follows: <ul style="list-style-type: none"> replaces the original method of calculating the principal fee with £55; exempts liability for an additional fee for homes already caught by HMO licensing or other local authority accreditation; introduces a fee where an agent is specified in an application and the agent is not already registered or an applicant for registration. 	31 January 2006
The Private Landlord Registration (Advice and Assistance) (Scotland) Amendment Regulations 2008 (SSI 2008/402)	These regulations amend SSI 2005/557. They make provision for general advice to be given to tenants or potential tenants about letting practice or landlord registration.	12 February 2009
The Private Landlord Registration (Information and Fees) (Scotland)	These regulations amend SSI 2005/558. They introduce a revised Schedule 2 and include provisions for:	12 February 2009

Amendment Regulations 2008 (SSI 2008/403)	<ul style="list-style-type: none"> • exemptions to the principal and property fees • discounts to the principal fee • exemptions and discounts to the agent fee • late application fee • discount for online applications 	
The Private Landlord Registration (Modification) (Scotland) Order 2009 (SSI 2009/33)	<p>Amends section 83 of the 2004 Act to add an additional category of house which is disregarded for registration purposes (section 83(6)(m)) - house owned by a person acting as an insolvency practitioner.</p>	12 February 2009
The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/151)	<p>These regulations amend SSI 2005/558. They make provision for:</p> <ul style="list-style-type: none"> • Fees for appointing an agent • Material about firearms/sexual offences and antisocial behaviour orders to be considered in the fit and proper person test 	1 July 2012

Annex B

Summary of breaches, offences and sanctions

Breach/Offence	2004 Act	Sanctions available
Failure to register whilst letting a residential property	Section 93	<ul style="list-style-type: none"> • Rent Penalty Notice (Right of appeal) • Report to the Procurator Fiscal • £50k fine
Non-registered owner communicates with a person about entering into a lease or occupancy agreement	Section 93	<ul style="list-style-type: none"> • Report to the Procurator Fiscal • £50k fine
Provision of false information, or failure to specify required information in an application form	Section 83	<ul style="list-style-type: none"> • Refuse registration if not FPP (Right of appeal) • Summary offence fine £1k
Failure of registered person to notify changes in circumstance	Section 87	<ul style="list-style-type: none"> • Review FPP status • Remove from the register if not FPP (Right of appeal) • Summary offence fine £1k
Registered person no longer FPP	Section 84	<ul style="list-style-type: none"> • Revoke registration status and remove from the register (Right of appeal)
De-registered/refused person continues to let property	Section 93	<ul style="list-style-type: none"> • Rent Penalty Notice (Right of appeal) • Report to the Procurator Fiscal • £50k fine
Registered landlord's agent is found not FPP		<ul style="list-style-type: none"> • Report to the Procurator Fiscal • £50k fine
Failure to notify appointment of an agent or giving false information	Section 88	<ul style="list-style-type: none"> • Review FPP status • Remove from the register if not FPP (Right of appeal) • Summary offence fine £1k
Failure to include required information in an advert	Section 92B	<ul style="list-style-type: none"> • Review FPP status • Refuse/revoke registration if not FPP (Right of appeal)
Failure to comply with LA request for information	Section 97A	<ul style="list-style-type: none"> • Review FPP status if offence committed by landlord/agent • Refuse/revoke registration if not FPP (Right of appeal) • Summary offence fine £500

Annex C

Case Studies 1 – Work with Police Scotland

North Lanarkshire Council – Work with Police Scotland

Description of activity

Under section 84 of the Antisocial Behaviour (Scotland) Act 2004 (the Act) any landlord (or relevant person) falling within the scope of section 83 of the Act must be assessed as a 'fit and proper person' before being entered onto the landlord register.

North Lanarkshire Council (NLC) wanted to establish a robust enforcement procedure to identify any landlord who fails to meet any of the criteria set out under Section 85 of the Act or any other material that comes to the attention of the local authority. The aim was to set up a process that would take account of all appropriate material whilst allowing the individual an opportunity to respond to any decision taken by the council.

NLC identified the need to incorporate a review panel and a mechanism to allow the dissemination of relevant information between all parties concerned. NLC also established an independent panel or committee to make the final decision on whether or not a landlord is a fit and proper person. This was to avoid bias, introduce impartiality and fairness in the decision making process.

How action was taken

The process was established following consultation with NLC Environmental Health Service and other council departments that have an input into private sector housing. This ensured every landlord applying or renewing their registration was assessed in terms of the 'fit and proper person' test and that other relevant services were able to check for any complaints or other information that may have a bearing on that landlord and their review status. Legal Services were also consulted to verify compliance with the 2004 Act and that the procedure was provided in a consistent manner.

NLC decided that a new two tier process should be introduced to deal effectively with landlords identified for review. A Fit and Proper Person Review Panel was set up to report any concerns or recommendations to North Lanarkshire Council's Corporate Services Licensing Sub-Committee. NLC considered that a balanced Fit and Proper Person Review Panel should include representation from a range of council services and external partner agencies.

Membership of the Panel included:

- Chairperson (Senior Environmental Health Manager)
- Housing & Social Work (Antisocial Behaviour Team Manager)
- Police Scotland (Local Authority Liaison Officer)
- Scottish Fire & Rescue Service (Local Authority Liaison Officer).

It was also recognised that the Panel would benefit from input from an advisory non-

member, ideally someone in a position of authority who has a detailed knowledge of the landlord registration process and procedures within the Council. The Advisor's role is also administrative and includes furnishing the Panel with the relevant information arising from maintenance of the landlord register and the review list.

The Sub-Committee was set up exclusively to consider referrals from the Panel. It consists of two solicitors from North Lanarkshire Council's Legal Services, an elected member as Chairperson and several other elected members.

Upon receipt of a report from the Fit and Proper Person Review Panel, the Licensing Sub-Committee summons the relevant person or landlord to a hearing to account for any alleged misconduct as a fit and proper person.

NLC needed a robust and effective means of information exchange with Police Scotland. An intelligence mechanism was set up using the 'End of Day Reporting' (or EoDR) parameters on the landlord registration website.

Some landlords who fail to disclose relevant information which could affect their 'fit and proper person' status will have been approved. However, the legislation allows the local authorities to review that registration at any time where any material information subsequently emerges. Police Scotland intimated that there would be certain offences that would not be passed to the Fit and Proper Person Review Panel e.g. traffic or speeding offences etc. with identification for further scrutiny at their discretion.

Outcomes achieved

NLC have measured the success of this approach by means of statistical reporting to the Scottish Government and validation through internal audit, utilising the service computer database. The process has attracted extremely positive comments and recognition from Police Scotland.

The key objectives were to:

- Ensure that all registered landlords (or relevant persons) are assessed using the 'fit and proper person' test criteria;
- Provide a structure and a process which enables continuous review and assessment of landlord (or relevant person) conduct;
- Remove any unfit landlord (or relevant person) from the landlord register, where required;
- Take enforcement action when any landlord (or relevant person) fails to comply with a Repairing Standard Enforcement Order.

In practice, the process needed to evolve to remain viable. Initially the EoDR list was passed through to the local intelligence unit at Police Scotland on a two weekly basis. Due to the demand on resources within the Police Scotland, there was a risk of this service being withdrawn. However, Police Scotland's representative on the FPPRP arranged for the EoDR list to be sent to another unit thus preserving continuity.

NLC also experienced some issues recording information accurately and deciding where this information was best held. To keep accurate records and prevent data loss, landlord details are now recorded on a review list as well as their own computer database.

The main consideration for NLC when devising this process was to agree an information sharing protocol with Police Scotland and to provide sufficient administration resources to cope effectively with Police checks at the outset.

This may be challenging for local authorities with large numbers of landlords. However, the procedure can still be utilised by checking a percentage or a random sample of the EoDR list each time it is generated and sent to Police Scotland. Implementing a process of continual review from the outset encourages consistency and compliance with central government policy. Any legislative changes to the 'fit and proper person' test require to be incorporated into the process, again to ensure consistency and to ensure all relevant material is considered.

In North Lanarkshire, there were a total of 226 separate referrals to the FPPRP during January 2013 to January 2016.

From this figure, 31 landlords were identified for further review with a recommendation that they be removed from the register. These landlords were referred to the Licensing Sub-Committee with the following outcome.

- 12 landlords were struck from the Register.
- 1 report was not accepted by the Committee.
- 9 cases were upheld and approved by the Committee.
- 3 landlords agreed to remove themselves from the Register without the need for formalities.
- 2 landlords failed to appear before the Committee and were being pursued.
- 4 other cases were pending, awaiting deliberation by the Legal Services team.

There are costs associated with providing an effective landlord registration scheme and its associated fit and proper person process. Locally these costs are absorbed internally amongst the participant services but in common with most funding sources, may be subject to review.

Additional comments

An algorithm depicting the potential inter-relationship of the FPPRP, Licensing Sub-Committee and Police Scotland and how the shared information process flow operates can be made available if this is helpful.

East Ayrshire Council

East Ayrshire Council has established a protocol with Police Scotland whereby the police will verify any convictions declared by a landlord or agent. The council are in regular contact with the police, and an officer sits on the enforcement group along with a Private Sector Liaison Officer, Private Sector Assistant, solicitor, and Antisocial Behaviour Officer. Meetings are held every 4-6 weeks to discuss landlords who have caused concern. The targeted scrutiny has resulted in 9 landlords/companies with criminal convictions being de-registered. Three linked companies were also de-registered and the police are pursuing prosecutions.

Dundee City Council

Dundee City Council has been working with Police Scotland to develop an Information Sharing Protocol (ISP) to cover landlord registration, HMO Licensing and Antisocial Behaviour. This builds on a previous Antisocial Behaviour based ISP with Tayside Police. A Joint Officer Review group has been established with members from various departments within the council, Police Scotland and Scottish Fire and Rescue Services. A weekly list of new applicants and those reregistering is circulated to the group offering an opportunity for representations and comments to be made on any applications that cause concern.

Angus Council

Angus Council has established a protocol with Police Scotland whereby the Police will verify any convictions declared by the landlord or agent.

Moray Council

Moray Council's link to Police Scotland is now an invaluable part of the fit and proper person test. It helps provide clarity about convictions that would otherwise have been unknown. For example, landlords who only partially declare convictions, give vague details of the type of conviction as well as not declaring convictions at all, despite signing the declaration on the application form. The process allows for a much more robust test which significantly improves the quality of landlords in the sector.

Case studies 2 - Requesting additional information

East Ayrshire Council takes the view that in terms of the 'fit and proper' criteria there is a basis for requesting supporting documentation. Section 85 of the 2004 Act includes reference to whether the applicant has contravened any provision of the law relating to housing and also any other material relevant to the question of whether the person is fit and proper. The Council operates a proactive process to obtain information from tenants regarding management of their tenancy. Tenant questionnaires are issued to a selected number of tenants on a regular basis. If information is returned which suggests the landlord may not be complying with their legal requirements the case is reviewed and documentation requested.

Angus Council requests gas safety and electrical certificates as evidence to ensure they meet requirements, where they receive a complaint from a tenant.

East Lothian Council requests a range of additional documentation when a problem occurs or a complaint is received. This includes gas/electrical safety certificates; Energy Performance Certificate; Legionella Risk Assessment; AT5/tenancy agreement/inventory for the tenancy; proof that the tenancy deposit is protected; proof that they have permission from any lender to let the house; and that repairing standard duties have been met.

Case studies 3 - Provision of Advice and Assistance

Private Landlord Support Officer, Dundee

Overview of project

Shelter Scotland, with funding from the Oak Foundation, is currently undertaking a programme of work over the period 2015-19 to promote higher standards in the private rented sector in both the Dundee and Highland areas. This case study sets out Shelter Scotland's experience in the Dundee city area.

The focus for the Dundee project is on working with and supporting private landlords to meet their legislative requirements and enhance their practice. Shelter Scotland acts as the host for the project working in partnership with Dundee City Council and builds on the existing strong links between the local authority and the private rented sector, with the Private Landlord Support Officer (PLSO) being based within the Private Sector Services Unit of Dundee City Council.

The partnership between Shelter Scotland and Dundee City Council has enabled an innovative approach to raise standards across Dundee's private rented sector which pulls on the strengths of both organisations. The PLSO sits alongside both the enforcement and landlord registration teams, as well as other key colleagues such as Dundee Homefinders and Dundee Landlord Accreditation. This ensures that knowledge and best practice are shared effectively. No additional powers have been necessary to enhance the success of the project.

The PLSO has, amongst other things, developed landlord checklists which take landlords through the legislative requirements which apply to them as well as best practice. The initial checklist is sent out to landlords with all landlord registration approval letters and is advertised in quarterly newsletters and seminars for private landlords operating in the Dundee City Council area. The most popular queries to date have related to the landlord checklists, one-to-one support work, energy efficiency advice, common repairs and repairing standard, repossession paperwork and health and safety requirements.

The service has shown to be popular with 'accidental' landlords who are unsure of the legislative obligations and lack confidence, with a small portfolio size.

The quarterly newsletter which goes out to approximately 13,000 landlords and interested parties and seminars which are attended by on average 115 landlords on a quarterly basis remain a main source of referrals. The project is also diversifying referrals routes, for example by proactively contacting landlords who advertise property for rent informally online.

The service offered by a Private Landlord Support Officer

- One off advice – this tends to be bite size information on a specific topic. This is classed as low level support.
- One to one work – this involves working with the landlord over a longer period of time, particularly in the case of new or inexperienced landlords. This is classed as medium level support.
- A development plan – this involves the PLSO meeting with a landlord who has shown to have a gap in knowledge in one, or several areas. They will work through a development plan which monitors their progress through the course of the intervention. This is classed as enhanced support.

Project Development

Tenancy sustainment - One of the more unanticipated consequences of the project has been the opportunity to work with private tenants and their landlords to try and help sustain tenancies.

Informal advertising - Private landlords in Scotland are now required to state both their landlord registration number and the rental property's energy performance certificate when advertising properties for rent. However, it is still commonplace for these details to be omitted from property to let adverts. Failure to provide this basic information can often be an indicator that the potential landlord is also failing to meet their legal obligations in other respects. Many 'accidental' landlords who have unintentionally failed to comply with the law will often seek on-going guidance and support from the PLSO due to this intervention.

Educating private tenants - The PLSO has in conjunction with 'Dundee Homefinders' created a simple tenant checklist in leaflet form for tenants to take to viewings. Tenants can note any concerns which will automatically be routed to the PLSO who will then make initial contact with the landlord, bring the issues to their attention and seek to work with them for resolution.

Joint working

Key relationships have been developed with:

- **Dundee Homefinders** – The PLSO works closely with the local deposit guarantee scheme ‘Dundee Homefinders’, meeting with all their new landlords and also referring landlords to them where applicable.
- **Home Energy Scotland** – The PLSO is in frequent contact with the local Landlord Advisor in order to make landlords aware of the potential for energy efficiency upgrades in their properties, and how detrimental fuel poverty can be on their tenant’s wellbeing and financial capability.
- **Dundee City Council Housing Support Team** - The PLSO refers vulnerable clients to the service, with the aim of this intervention to improve tenancy sustainment in the PRS – ultimately ensuring the success of new tenancies and saving existing tenancies. This is a good opportunity to have a presence in properties housing vulnerable private rented sector tenants.

Outcomes achieved

In the first year of operation the Dundee project has taken on over 300 landlord cases and the Highland project over 200 cases. Feedback from landlords on the service provided has been very positive:

“My questions were answered clearly and I feel it’s reassuring to know that in case of problems there are qualified people on hand for support. We are really most grateful for this, thank you.”

“I had been attending the landlord seminars and was introduced to Laura, the Private Landlord Support Officer. I took her up on her offer of help and I could not be more thankful for her support. All my queries were answered and she explained the technicalities for me too. I would strongly advise any landlord that has issues to contact Laura.”

Costs or cost savings that arose from the project

It is important to note that the work of the PLSOs in both Highland and Dundee are both additional externally funded resources dedicated solely to improving practice among landlords in both areas. Crucially, dealing with issues relating to landlord compliance prior to the enforcement stage frees up the local authority’s time and resources to offer tougher and more targeted enforcement.

Adding value brought to private rented sector properties through utilising services through organisations such as Home Energy Scotland takes a holistic approach and can help reduce fuel poverty and related costs.

Tenancy failure places large direct costs on local authorities. By reducing homelessness where possible the project has significant scope for making financial savings to local authorities.

Ways that good practice can be shared.

The existing modes of communication with landlords in Dundee such as the seminars and newsletters enabled the PLSO to hit the ground running and build upon the already strong links between the local authority and private landlords and agents across the city.

Additional comments

The project is currently a pilot project until March 2018.
The useful range of tools and FAQs developed by the PLSO are available on the [Dundee City Council](#) website.

South Ayrshire Council

South Ayrshire Council is also in the process of developing a post under a similar model to that used by Dundee City with the Shelter project. They see the importance of having an officer who is able to liaise with landlords at the onset of application. Many of the landlords in South Ayrshire operate 1 or 2 properties and may be unaware of the full range of regulation and legislation which they require to comply with. The aim is to fund this role through a support provider to look at a range of issues such as:

- Compliance with registration process and assisting to ensure properties meet relevant standards
- To source and find those landlords who may be unregistered in the area and support them through registration process
- To work closely with our Housing Options team with a goal of reducing the number of homeless presentations from the private sector
- To look at ways to support tenants who may be at risk of losing their accommodation
- To be able to signpost landlords and tenants to any relevant service that they may require.

South Lanarkshire Council

South Lanarkshire Council run forum meetings for landlords twice a year, covering a range of topics including, legislative updates, guest speakers as well as an opportunity for landlords to discuss issues with specialists/professionals dealing with the private rented market. Average attendance is 70 private landlords. These are supported by the issue of a twice yearly private landlord newsletter, distributed at the forums and made available at the Council's website.

The partnership arrangement with Landlord Accreditation Scotland (LAS) ensures promotion of best practice. As at 31 March 2016, there were 1,068 accredited properties within the area.

In addition, SLC routinely facilitate landlord training, delivered by LAS. Two training sessions are offered as an incentive - the council pays for the first session attended. Courses are run in the afternoons and evenings, with a maximum of 30 landlords in each class. This creates a greater opportunity for maximising landlord attendance and ensures that any individual training needs are addressed.

Aberdeenshire Council

Aberdeenshire Council produce leaflets for tenants and landlords detailing their rights and responsibilities. The leaflet is provided to every landlord who submits an application for a new registration and renewal. This is also emailed via bulk email. The tenant leaflet is posted out to every PRS property registered in Aberdeenshire and is distributed to libraries, public building, CAB and Council Offices. This is done every time the leaflet is updated. Both leaflets are updated every 1-2 years.

Case studies 4 – Action Plans**East Ayrshire Council**

East Ayrshire Council has been using action plans since 2007. They have been very effective and have resulted in garden problems being dealt with and repairs being undertaken. If the property is managed by an agent and if the issue is not resolved the landlord is asked in for interview. This can be escalated to the Scrutiny Panel if required.

Fife Council

Fife Council encourages private landlords, who have been identified as poor performers regarding aspects of their rental practices, to undertake Landlord Accreditation Scotland (LAS) Core Standard Training, as part of a Landlord Action Plan. The Landlord Action Plans are reviewed every six months at a meeting with the landlord.

Case studies 5 – Identifying unregistered landlords**Dundee City Council**

At Dundee City Council, Enforcement Officers work within HMO Licensing and landlord registration, dealing with tenant complaints, identifying unregistered properties and liaising with other departments and services including Police Scotland and Scottish Fire and Rescue Services. Colleagues dealing with homelessness, the Housing Options Service and Housing Benefit all cross reference private rented cases with the landlord register. Unregistered landlords are also identified by checking the monthly data provided by the tenancy deposit schemes, properties that have been found as being below the tolerable standard and revenue/benefits enquiries all of which are received via the landlord registration email address.

East Ayrshire

East Ayrshire Council has enhanced cross service awareness by issuing all their Council staff with an electronic version of their newsletter. They also undertake random checks of advertised properties for registration numbers and Energy Performance Certificate information.

East Lothian Council

Where East Lothian Council identify unregistered lets the details are passed to landlord registration for action to be taken. The Council are also signed up to many of the online property portals and websites, which will email out newly advertised properties on a regular basis. This then allows for registration numbers to be validated, EPC ratings checked and unregistered landlords identified. Tenancy deposit scheme information is also checked to identify unregistered landlords.

Fife

Fife Council carries out random checks via letting web sites, in-store adverts and local newspapers to identify unregistered landlords.

Midlothian Council

Midlothian Council landlord registration team are supported by a Housing Investigation Officer within the Environmental Health – Public Health team. Their remit is to deal with complaints regarding private rented properties, provide advice about landlord registration and landlords' duties, chase up late registrations, identify unregistered lets and liaise with colleagues in other council departments including Council Tax, Housing Benefits, Homelessness and work with letting agents operating within the Midlothian area. Through this work, Midlothian Council has identified and secured the registration of a considerable number of unregistered rented properties. They also make contact with landlords where the registration has expired and visit, if necessary, to identify whether the property is still being let and requires being re-registered.

Renfrewshire Council

Renfrewshire Council has employed an additional enforcement officer to identify unregistered landlords, linked to its Tackling Poverty Initiative. The officer has established information sharing systems with Council Tax colleagues as well Scottish Fire and Rescue and Health and Social Care officers (through the Council's Community Safety Partnership Hub). The officer also looks at the Land Register and advertisements to let properties in the press and internet to find unregistered landlords. Letting agencies have been challenged where registration numbers have not been included in advertisements.

The role of the enforcement officer also includes helping Environmental Health Officers make third party applications to the FTT, and includes undertaking inspections to determine compliance with the repairing standard, and liaising with tenants during the process. The information obtained by the enforcement officer informs decisions to issue Rent Penalty Notices or take other enforcement action.

Case study 6 – Disqualification Order

Fife Council (Private Rented Sector Team – Housing Service)

Background

Mr M first made application for landlord registration in March 2008. There were several tenancy management and housing condition issues and his registration was placed under review. It was not until July 2010 that the landlord was removed from the review list, due to no further complaints and thus approved.

The registration was put back on to the review list in March 2012, again for tenancy management and housing condition issues, particularly in relation to the lack of Gas Safety Certificates (GSC). Several attempts were made to meet with the landlord, who refused to engage. Tenancy management and housing issues continued, and requests for GSCs (both current and historic), were ignored.

The landlord registration expired in July 2013, and the landlord failed to renew. The decision was taken to try again to call him in for meeting. The landlord eventually agreed to attend a meeting in December 2013. He failed to bring all copies of GSCs with him as requested, but he did provide a renewal application for his landlord registration.

Due to the many attempts to obtain GSCs, and the landlord's failure to engage, it was decided that the only course of action left, was to prepare a case for submission to the Procurator Fiscal (PF). In the meantime, it was decided that Mr M had failed the fit and proper person test, and in June 2015 his landlord registration renewal was refused. Mr M was notified of this in writing, advising him that he had a right of appeal. There was no response from the landlord. Subsequently his tenants were also notified of this decision in August 2015 encouraging them to seek housing advice.

Evidence used to build the case for disqualification

Copies of GSC were eventually received, but these were all current, and no historical certificates were handed in. This suggested that these had been done recently, and had never been in place before.

Witness statements from his tenants, confirmed that they still lived in the rental properties, and continued to pay rent, despite the landlord not being registered. Statements were also received from the Night Time Noise Team (NTNT) confirming that anti-social behaviour was on-going at one of the properties.

Council tax checks and Registers of Scotland checks confirmed that the landlord still owned all 3 properties, and that they were all tenanted throughout.

Partnership working

The work to bring about the successful disqualification involved working in partnership both within and outside Fife Council. This collaborative working is summarised below.

Police Scotland – Intelligence and information relating to links to other landlords and practices.

Protective Services Technical Officers – visits, technical advice and compliance.

Night Time Noise Team – visits for noise complaints.

Procurator Fiscal office – advice and guidance.

Challenges faced

Constraints of support and advice from other pertinent services, being provided in a timely manner – to allow the PRST to move the case forward efficiently. It was time consuming gathering all required evidence and making sure that all evidence was suitable for the PF and fitted in with relevant charges to take the case forward.

The process is currently resource intensive and can be deemed quite complex. This is currently being reviewed, locally.

Powers used and outcomes achieved

Mr M's case first went to court in November 2014 and he was charged under section 93 (1) of the Antisocial behaviour etc. (Scotland) Act 2004 (a separate charge for each of the 3 properties) and under section 36(3) (c) the Gas Safety (Installation and Use) Regulations 1998 (a separate charge for each of the 3 properties), making a total of 6 charges in all. He was found guilty and fined a total of £540.

However, the landlord continued to rent out all 3 of his properties, despite not being registered. Tenancy management issues were still on-going, and many instances of anti-social behaviour from some of his tenants. Fife Council therefore made the decision to return to court, in October 2016 and ask for a Disqualification Order.

The case went to court in April 2017, after being deferred from a February 2017 hearing date. On this occasion the landlord was fined £500 and a Disqualification Order for a period of 12 months was granted. This is the first Order of its kind in Scotland.

Next steps

The PRST has held a multi-agency follow up / review meeting to consider all next best actions on how the Disqualification Order can be policed.

Consideration is being given by Fife Council Housing Service that the tenants will be eligible to present as unintentionally homeless, albeit additional priority points will not be awarded.

Fife Council Technical Officers will visit all three of the landlord's properties to assess if tenanted and the condition of the properties

The local PF office has provided a written input explaining that there is no specific offence of acting in breach of a disqualification order, rather continuing to act as a disqualified (unregistered) landlord will be reportable to the PF as a breach of section 93 of the 2004 Act. The Standard Prosecution Report template has been further amended to address the specific offences in section 93 of the Antisocial Behaviour etc. (Scotland) Act 2004 and the local PF Deputy has offered to attend and provide a presentation on reporting to them.

Further multi-agency review meetings will be held, involving PRST, Protective Services (Technical Officers), Police Scotland, Legal Services, Procurator Fiscal's office, HM Revenue and Customs and any other relevant partners with a professional interest.

Case study 7 – Enhanced Enforcement Areas

Glasgow City Council

The EEA designation applies for a period of 5 years and provides Glasgow City Council (GCC) with a number of enhanced powers in the area, including:

- to require a relevant person to provide the local authority with an enhanced criminal record certificate;
- to request that documents be produced for inspection (such as a current insurance policy, gas safety certificate etc.); and
- the right to inspect a property.

In order to achieve EEA status, GCC has worked with a range of local partners to develop a strong evidence base which supported the need for such additional powers. Evidence submitted to Scottish Ministers documented that the area concerned suffered from a high concentration of private rented housing, that it was of a poor environmental standard, suffered from overcrowding and a prevalence of antisocial behaviour.

Since receiving EEA status in Govanhill, GCC have used the additional powers to request that all landlords within the designated area produce documentation for inspection. Over 90% of landlords have responded to the request, with many obtaining their first gas or electrical safety certificates as a result of the additional powers and therefore helping to drive up safety standards in the area.

A private landlord forum has been established within the EEA, where GCC officials are able to engage with landlords on a range of issues and build relationships in order to work towards solutions. As part of this work, GCC has seen a sharp increase in the number of private landlords within Govanhill who are undertaking landlord accreditation – again helping to improve overall property and management standards in the area.

A report on progress being made within the Govanhill EEA will be submitted by GCC, to Scottish Ministers.

Specific case study

A landlord who owns and lets one property within the EEA was written to on the 12 and 30 August 2016 requesting certification and a disclosure Scotland check as provided for in the EEA agreement. He failed to meet the terms of these requests.

In addition to this, the property was inspected as part of the EEA and on 03 August 2016 a closing order was issued in respect of this property being below tolerable standard as the electrical installations were not deemed safe and in good working order.

The tenants have been found alternative accommodation through liaison with other agencies including homelessness services. The house has now been closed and secured.

The landlord was referred to the Licensing and Regulatory Committee on 23rd November 2016 to consider his suitability to continue to be a registered landlord.

A total of 9 landlords (6 – Govanhill) had their registration refused or revoked at that Licensing and Regulatory Committee meeting on 23rd November, this includes in relation to the landlord and property mentioned above.

As the owner can no longer act as a landlord, and has failed to engage regarding their future intentions, it is anticipated that a Compulsory Purchase Order will be pursued.

Annex D

Useful Organisations and websites

The following organisations share our vision of
“A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment”

- **Citizens Advice Scotland**
Tel: 0800 800 9060
Web: <http://www.cas.org.uk/> - for contact details for local Bureaus
- **Crown Office and Procurator Fiscal Service (COPFS)**
Tel: 0844 561 3000.
E-mail: EnquiryPoint@copfs.gsi.gov.uk
Web: <http://www.copfs.gov.uk/>
- **First Tier Tribunal**
Tel: 0141 242 0142
Web: <https://www.prhpscotland.gov.uk/introduction>
- **Landlord Accreditation Scotland**
Tel: 0131 553 2211
Web: <http://www.landlordaccreditationscotland.com/>
Email: info@landlordaccreditationscotland.com
- **Renting Scotland**
Web: <https://rentingscotland.org/>
- **Scottish Association of Landlords**
Tel: 0131 564 0100
Helpline: 0131 564 0100
Web: <https://www.scottishlandlords.com/>
Email: info@scottishlandlords.com
- **Shelter Scotland**
Tel: 0808 800 4444 (*For free housing help and advice*)
Web: <http://scotland.shelter.org.uk/>
- **Scottish Land & Estates**
Tel: 0131 663 5400
Web: <http://www.scottishlandandestates.co.uk/>
Email: info@scottishlandandestates.co.uk



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