
Report To:	Environment & Regeneration Committee	Date:	12 January 2023
Report By:	Interim Director, Environment & Regeneration	Report No:	ENV006/22/MM
Contact Officer:	Martin McNab	Contact No:	01475 714246
Subject:	Landlord Registration Update		

1.0 PURPOSE AND SUMMARY

- 1.1 For Decision For Information/Noting
- 1.2 To update Committee on the enforcement options available under the Private Landlord Registration regime including the use of Rent Penalty Notices (RPNs) and on circumstances where the Housing (Landlord Registration) Sub-Committee may be required to meet to make a determination on a landlord's fit & proper status.
- 1.3 The Antisocial Behaviour etc. (Scotland) Act 2004 ("the Act") introduced the Private Landlord Registration Scheme to Scotland. The scheme has operated since 2006. The scheme placed a legal responsibility on private residential landlords to register with those local authorities where they are actively renting housing to unrelated persons. Agents formerly also had to register with the Council but now must register on the Letting Agents Register (LAR) operated by the Scottish Government.
- 1.4 For the majority of applicants registration is a fairly straightforward administrative process however where there are issues with registration enforcement options include Rent Penalty Notices and ultimately the refusal or revocation of registration under the Fit and Proper Person test. A procedure was approved by the Education & Communities Committee in 2017 for the approval, refusal or removal of a landlord's registration, the latter being by the Housing (Landlord Registration) Sub-Committee under the Fit and Proper Person test assessment criteria in Section 85 of the Act. This report updates the Committee on progress on Landlord Registration including the circumstances where a referral may be made to the Sub-Committee.

2.0 RECOMMENDATIONS

- 2.1 That the Committee notes the current progress on Landlord Registration in Inverclyde.

Stuart Jamieson
Interim Director, Environment & Regeneration

3.0 BACKGROUND AND CONTEXT

- 3.1 Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004 provides that, other than the limited exemptions contained in Section 83 of the Act, all landlords who are not a local authority or registered social landlord must register with the local authority. Failure to apply for registration is a criminal offence.
- 3.2 A report was brought to the Education & Communities Committee in 2017 setting up the Housing (Landlord Registration) Sub-Committee and proposing a procedure for referrals to the Sub-Committee under the Fit and Proper criteria. An update on progress on Landlord Registration was brought to the Environment and Regeneration Committee in 2019. That report included the enforcement flowchart which is reproduced at Appendix 1. Staffing issues and the impact of the pandemic have prevented progress on some enforcement elements since then however officers are currently preparing a case under the Fit and Proper Person test which we hope to bring before the Sub-Committee in due course.
- 3.3 The Landlord Registration process including guidance on the Fit and Proper test is subject to statutory guidance which includes guidance on the use of enforcement options including Rent Penalty Notices and the evidential requirements for the Fit and Proper Person test. New draft guidance was consulted on in March this year which should make the requirements of the test much clearer. While we don't know when the final version of the guidance will be available our actions in progressing towards a Fit and Proper Person recommendation are currently informed by the draft guidance.

4.0 PROCESS & ENFORCEMENT OPTIONS TO DATE

- 4.1 As of November 2022 there were 2471 landlords registered in Inverclyde with a total of 3686 properties. This is an average of 1.5 properties per landlord which clearly indicates that the majority of landlords in Inverclyde have a single property.
- 4.2 Landlords are required to renew their registration every 3 years resulting in a regular workstream of registrations for approval. In November 2022 for example there were 131 applications made of which 73 were approved, 52 required further information, 6 required changes and 1 was cancelled. A total of 128 applications were approved in November including applications from previous months.
- 4.3 Where properties are found to be unregistered or there is a lack of co-operation with resolving issues the Council may serve a Rent Penalty Notice (RPN) which prohibits the landlord from charging or receiving rent for a property. To date this has been the most commonly used enforcement option in Inverclyde with 56 RPNs served to date of which 19 have resulted in a positive resolution. In many circumstances an RPN is a relatively simple and effective enforcement tool however the enforcement of an RPN is dependent on the cooperation of tenants, not least to establish that the RPN is being complied with. This means that the RPN may not be suitable as a sole enforcement option in all circumstances. It should be noted that tenants may be in a vulnerable position in their relationship with their landlord so this is not always entirely straightforward.
- 4.4 Where there have been a number of issues around a particular landlord or which involve a number of properties more intense engagement has taken place with landlords. These have resulted in the establishment of improvement plans which can be used in conjunction with RPNs to address wider failings. This engagement has been successful in all but a very small number of cases resulting in either the landlord being brought into compliance or in a couple of cases in unsatisfactory landlords leaving the sector.

5.0 PROPOSED REVISED FIT & PROPER PROCESS

5.1 There are obviously some landlords for whom the engagement and improvement plan process is inappropriate. This may be as a result of the landlord's failure to engage in this process or it may be that there is a technical need for a formal decision on the landlord's "fit & proper" status, for example in the case of undeclared convictions. At present there is one Inverclyde landlord in the first category but potentially a slightly larger number with the potential to fail the fit & proper test on other grounds. The landlord in the first category was the subject of intense attempts at engagement in early 2020 however these were unsuccessful and further progress was delayed by the pandemic and then the retirement of the Private Sector Housing Officer. Since the current Private Sector Housing Officer came into post he has been reviewing outstanding applications and ensuring that processes are fit for purpose. It is now appropriate to revisit the process for fit and proper assessments.

5.2 In the March 2017 report "**Registration of Private Landlords – Formal Procedure for the Approval, Refusal or Removal of Registration**" a process was proposed whereby reports on fit and proper persons were submitted to an officer panel, comprising at that time the Corporate Director Education, Communities & Organisational Development and the Head of Legal & Property Services. If the officer panel was satisfied that the grounds existed for Refusal or Revocation the matter would be placed before the Sub-Committee for ratification or rejection. It is proposed that this system is retained albeit that the officer panel would now comprise the Director of Environment & Regeneration and the Head of Legal & Democratic Services.

5.3 As mentioned above the service is currently compiling evidence in relation to one case which it is to be hoped we will submit to the panel in due course. This evidence is likely to include

- Details of previous engagement with the service over registration and their outcome.
- Identification of properties believed to be rented by the individual concerned which are not registered.
- Records of statutory notices served including where the Council had to take default actions.
- Evidence from internal and external partners including Police Scotland.

5.4 If the officer panel is satisfied that there is sufficient evidence as detailed above a meeting of the Housing (Landlord Registration) Sub-Committee will be called. There are however circumstances where matters are brought to the attention of the service by partners which justify consideration by the sub-committee without the process alluded to in 5.2 above. An example of this might be a letter from Police Scotland drawing attention to convictions which might impact on a landlord's fit & proper status. Discussions are ongoing with the Head of Legal & Democratic Services as to how best to bring these matters to the sub-committee's attention. One potential option might be to schedule meetings of the sub-committee in the calendar going forward but cancel if there is no business.

6.0 IMPLICATIONS

6.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO	N/A
Financial		X	
Legal/Risk		X	
Human Resources		X	
Strategic (LOIP/Corporate Plan)		X	
Equalities & Fairer Scotland Duty		X	

Children & Young People's Rights & Wellbeing		X	
Environmental & Sustainability		X	
Data Protection		X	

6.2 Finance

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

6.3 Legal/Risk

None.

6.4 Human Resources

None.

6.5 Strategic

None.

6.6 Equalities and Fairer Scotland Duty

None.

(a) Equalities

This report has been considered under the Corporate Equalities Impact Assessment (EqIA) process with the following outcome:

	YES – Assessed as relevant and an EqIA is required.
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, assessed as not relevant and no EqIA is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report’s recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO – Assessed as not relevant under the Fairer Scotland Duty.

6.7 Children and Young People

Has a Children’s Rights and Wellbeing Impact Assessment been carried out?

	YES – Assessed as relevant and a CRWIA is required.
X	NO – Assessed as not relevant as this report does not involve a new policy, function or strategy or recommends a substantive change to an existing policy, function or strategy which will have an impact on children’s rights.

6.8 Environmental/Sustainability

Has a Strategic Environmental Assessment been carried out?

	YES – assessed as relevant and a Strategic Environmental Assessment is required.
X	NO – This report does not propose or seek approval for a plan, policy, programme, strategy or document which is like to have significant environmental effects, if implemented.

6.9 Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
X	NO – Assessed as not relevant as this report does not involve data processing which may result in a high risk to the rights and freedoms of individuals.

7.0 CONSULTATION

7.1 The Head of Legal and Democratic Services has been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

8.1 Registration of Private Landlords – Formal Procedure for the Approval, Refusal or Removal of Registration, Education & Communities Committee 7th March 2017, **EDUCOM/25/17/DH**

Registration of Private Landlords – Progress Update, Environment & Regeneration Committee 17th January 2019 **ENV006/19/RD**

