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| <b>Report To:</b>       | <b>Education &amp; Communities Committee</b>   | <b>Date:</b> 7 <sup>th</sup> March 2017                   |
| <b>Report By</b>        | <b>Corporate Director Education, Communities &amp; Organisational Development.</b>                               | <b>Report No:</b>   |
| <b>Contact Officer:</b> | <b>Drew Hall</b>   | <b>EDUCOM/25/17/DH</b><br><b>Contact No: 01475 714272</b> |
| <b>Subject:</b>         | <b>Registration of Private Landlords – Formal Procedure for the Approval, Refusal or Removal of Registration</b> |   |

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to seek the Committee's approval for proposed amendments to current procedures used to approve or refuse to register a private landlord, or an agent, or to remove the landlord, or agent, from the Private Landlord Register including on the grounds of not being a fit and proper person.

## 2.0 SUMMARY

- 2.1 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 are also required to be registered with the Council.
- 2.2 The majority of landlords and agents are behaving in a proper manner and are assisting in the Council's objective to support good quality housing and proper management in this key sector. However, a small number of landlords and agents are failing to perform to an acceptable standard in their compliance with housing legislation and in view of this it is an appropriate time to review and revise the Council's approach to dealing with that small minority.
- 2.3 The legislation lists considerations that the local authority must have regard to when considering applications including the criteria for deciding if the landlord / agent is a "fit and proper" person. The criteria for determining whether a landlord/Agent is to be regarded as a "fit and proper person" originally approved by the Committee in September 2013 have been reviewed and amended. It is proposed to amend the registration procedure for approval, refusal or removal of private landlords or Agents.

## 3.0 RECOMMENDATIONS

- 3.1 That the Committee:
- Notes current progress with Private Landlord Registration in Inverclyde;
  - Approves the new procedure for the approval, refusal or removal of a landlord's registration;
  - Approves the Fit and Proper Person test assessment criteria set out in Section 85 of the Act and detailed in section 5 of this report; and

- d) Approves in principle the establishment of a Housing (Landlord Registration) Sub-Committee to consider the refusal or removal of the registration of a private landlord or Agent and that it be remitted to the Head of Legal & Property Services to make arrangements for the Council to consider consequent amendments to the Scheme of Administration and arrangements for membership and a quorum at its statutory meeting in May 2017.

**Martin McNab**  
**Head of Safer & Inclusive Communities**

## 4.0 BACKGROUND

- 4.1 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.

It should be noted that limited companies etc. where they are legal persons are treated in the same manner as individuals.

- 4.2 Section 84 of the Act provides that the local authority shall register a landlord or agent where the appropriate information has been submitted, the appropriate fee paid and where it is satisfied that the relevant person is a "fit and proper person" to act as a landlord or agent.

When considering whether someone is a fit and proper person, Section 85 of the Act provides that the local authority shall have regard (among other things) to any material specified in Section 85 subsections (2) to (4) of the Act viz. –

"(2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has–

(a) committed any offence involving–

(i) fraud or other dishonesty;

(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968;

(ii) violence; or

(iii) drugs;

(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995;

(b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or

(c) contravened any provision of–

(zi) any Letting Code issued under section 92A;

(i) the law relating to housing; or

(ii) landlord and tenant law.

(3) Material falls within this subsection if it relates to any actings or failure to act by the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house–

(a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c); and

(b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.

(3A) Material falls within this subsection if it relates to any agreement between the relevant person and any person in terms of which that person acts for the relevant person in relation to a lease or occupancy arrangement such as is mentioned in section 84(3)(c).

(4) Material falls within this subsection if it appears to the Authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person."

- 4.3 3060 landlords and agent have applied to this Council for registration of 4,590 properties. Only 3 landlords have had their registration refused or removed as a result of clear breaches of the criteria in Section 85. Any landlord / agent aggrieved by the refusal or removal of their registration may appeal to the Sheriff. In the 3 cases mentioned, appeals were not lodged.
- 4.4 As part of the registration process, applicants must disclose relevant criminal convictions. Landlords who have fully disclosed relevant convictions have been interviewed and an assessment was made in relation to the interview, the nature of convictions and the age of the convictions before deciding to approve or refuse an application for registration.
- 4.5 Police Scotland have agreed to be proactive in sharing information on landlords' criminal activities. This is welcomed by the Service. Previously, investigation of an applicant was undertaken by the Service and Strathclyde Police utilising the information sharing protocols that were in place.

## **5.0 PROPOSALS**

A key objective of this report is to update the Council's review process for potential refusals and removals in line with Scottish Government guidance. To do this, as explained within this report, the process for consideration of granting registration is as described in terms of existing practice.

- 5.1 Having regard to the statutory framework, the Guidance from the Scottish Government as detailed in Paragraph 4.2 and also in Section 85 of the Act and in consideration of experience gained in administering the registration scheme, it is proposed that the categories of information which will be considered when assessing whether someone is "a fit and proper person" shall be as follows:-
- i. Information from the Police or other relevant source about relevant criminal convictions or activities, particularly in relation to fraud or other dishonesty; violence; drugs; sexual or firearms offences;
  - ii. Information from any Scottish Local Authority council services about failure to address reports about antisocial behaviour by tenants in the private sector;
  - iii. Relevant information about housing benefit fraud;
  - iv. Information from any Scottish Local Authority council services concerning a view that a landlord has failed to comply with statutory duties as a landlord;
  - v. Information provided by the First-tier Tribunal for Scotland (Housing and Property Chamber (formerly the Private Rented Housing Panel) to the Council and which information will cover the following areas:-
    - a) the making or variation of a Repairing Standard Enforcement Order (an Order requiring a landlord to carry out such work as is necessary to bring the property up to the standard set out in the Housing (Scotland) Act 2006);
    - b) revocation of a Repairing Standard Enforcement Order; or
    - c) consent to the landlord entering into a tenancy or occupancy arrangement or the grant of a certificate under Section 60 that work required under a Repairing Standard Enforcement Order has been completed and the landlord to whom the notice relates is a person registered by the local authority.

- vi. information from any Scottish Local Authority about breaches of any Letting Code issued by the Scottish Government.
- vii. Information from any Council services about the continued non-payment of accounts relating to property belonging to the Landlord.
- viii. evidence that a landlord or agent is failing to perform their duties in relation to housing law etc. in an appropriate manner due to lack of knowledge or experience or administrative capacity or adequate and competent staffing.

5.2 A key objective of this report is to update the Council's review process for potential refusals and removals in line with Scottish Government guidance. To do this, as explained with in this report, the process for consideration of granting registration is as described in terms of existing practice.

For potential refusals and removals, however, it is necessary in terms of the guidance to introduce Elected Members' review for the ratification of refusal or removal. This is a new step, requiring Elected Member involvement and this can be achieved by the Committee establishing a Housing (Landlord Registration) Sub-Committee which, it is suggested, should comprise 5 Members with a quorum of 3. If this is approved in principle by the Committee, the Head of Legal & Property Services will take steps at the statutory meeting of the Council in May 2107 to include provision for the nomination of appointments to the Sub-Committee and to make the necessary amendments to the Scheme of Administration to fulfil its remit.

It is considered that the determination of the refusal of applications or consideration of revocations should be structured in a more transparent manner with suitable oversight to avoid potential conflicts with other housing responsibilities.

It is proposed that:

- (i) Officers, authorised by the Head of Safer & Inclusive Communities, will be permitted to approve applications where, based on the information available, the fit and proper test is satisfied.
- (ii) Where the Council is considering the refusal of an application or the removal of an existing registration, the officers will attempt to engage with the landlord or agent with a view to providing appropriate advice on what steps could be taken, as part of a formal action plan, to ensure compliance with legislation and avoid the need for refusal or removal.
- (iii) In any case where the above Officers are not satisfied that the fit and proper test is complied with the matter shall be referred to a panel of officers, comprising the Corporate Director Education, Communities & Organisational Development and the Head of Legal and Property Services.
- (iv) Where the panel are satisfied that grounds exist for Refusal or Revocation the matter will be placed before the Sub-Committee for ratification or rejection.

All of the above determinations will have regard to the statutory criteria listed in paragraph 5.1 together with consultations with relevant Council Services, the Police and where relevant other Scottish Local Authorities.

5.3 All landlords / agents that have fully disclosed their convictions and were previously registered will continue to be registered unless there has been a material change to their circumstances. Any material change will result in a review of their Fit and Proper Person status.

5.4 Where appropriate, consideration may be given to landlords/Agents who fail the "fit and proper person test" being permitted to transfer the full management of their rental

properties to an accredited property agent. The Council will need to be satisfied that the landlord in question has no direct or active involvement with the operation of that housing rental business.

## 6.0 IMPLICATIONS

### 6.1 Financial

Financial Implications - One off Costs

| Cost Centre | Budget Heading | Budget Year | Proposed Spend | Virement From | Other Comments |
|-------------|----------------|-------------|----------------|---------------|----------------|
| N/A         |                |             |                |               |                |
|             |                |             |                |               |                |
|             |                |             |                |               |                |
|             |                |             |                |               |                |

Financial Implications - Annually Recurring Costs/ (Savings)

| Cost Centre | Budget Heading | With Effect from | Annual Net Impact | Virement From (if applicable) | Other Comments |
|-------------|----------------|------------------|-------------------|-------------------------------|----------------|
| N/A         |                |                  |                   |                               |                |

### 6.2 Legal

The Head of Legal and Property Services has been consulted on the proposals.

### 6.3 Human Resources

There are no significant human resource considerations.

### 6.4 Equalities

Has an Equality Impact Assessment been carried out?

Yes See attached appendix

No This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required.

### 6.5 Repopulation

Having a good quality private rented housing sector will enhance the area.

## **7.0 LIST OF BACKGROUND PAPERS**

- 7.1
  - Antisocial Behaviour etc.(Scotland) Act 2004
  - Registration of Private Landlords – Guidance Note for Local Authorities (April 2009)
  - Registration of Private Landlords – Fit and Proper Person Test Procedure report to the Education & Communities Committee ( September 2012)
  - Registration of Private Landlords – Fit and Proper Person Test Procedure Review report to the Education & Communities Committee ( September 2013)