



REGISTRATION OF PRIVATE LANDLORDS

CONSULTATION ON AMENDMENT OF SECONDARY LEGISLATION

under the Antisocial Behaviour etc. (Scotland) Act 2004

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SECTION 1 - PURPOSE OF CONSULTATION

What is this consultation about?

This consultation seeks views on proposed amendments to Regulations made under section 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 ('The Act'). Under the Act, since 30 April 2006, all owners of privately rented housing in Scotland have been required to apply for registration with their local authority. The aims of landlord registration are to raise standards of accommodation and management and assure private tenants that their landlord is a fit and proper person to let property.

In 2007, Arneil Johnston was commissioned to undertake a Good Practice Review of the implementation of landlord registration. The resulting Private Landlord Registration Good Practice Report¹ included a number of recommendations in relation to improving delivery, including some recommendations on the existing legislative framework. As a result of this work, Arneil Johnston was further commissioned to undertake a review of the legislation underpinning the landlord registration scheme. As part of this review, two focus groups have been held with representatives from local authorities, landlord and agent organisations and tenant groups. The focus groups concentrated primarily on recommendations made by Arneil Johnston in relation to secondary legislation but also considered aspects of primary legislation.

This consultation paper proposes a number of amendments to the secondary legislation underpinning landlord registration, drawing on the conclusions of the Good Practice Review and the legislative focus groups. The amendments are intended to: streamline delivery of the scheme; prepare for the start of the application renewal process in March 2009; and make delivery of the scheme more effective and efficient.

Who should respond

Those with responsibility for landlord registration and housing matters within each local authority; landlords, agents and tenants affected by landlord registration and the proposed amendments; and organisations with an interest in the private rented housing sector should respond to this consultation.

¹ Private Landlord Registration Good Practice Report available for download from http://www.arneil-johnston.co.uk/index.php?option=com_docman&task=cat_view&gid=13

Participating in this consultation

We are inviting written responses to this consultation by 10th October 2008. You should use the form provided at Section 4 to submit your response to the consultation questions. Please send your response to:

Housing2admin@scotland.gsi.gov.uk

or

Jane Macpherson
Area 1-J (South)
Victoria Quay
Edinburgh
EH6 6QQ

We would be grateful if you would use the form provided at Section 4 to submit your response or clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received. If you are replying electronically it would be helpful if the email header could read 'Landlord Registration Regulations - consultation response' and also include your name or that of your organisation if you are replying on behalf of an organisation.

This consultation paper has been distributed to a wide range of stakeholders; a list of those invited to respond is available on request.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultation (SEconsult: <http://www.scotland.gov.uk/Consultations/seConsult>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore to be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your responses to be made public. Please complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, these will be made available to the public in the Scottish Government library by 10th November 2008 and on the Scottish Government web pages by 17th November 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library and placing them on the website. You can made arrangements to view responses by contacting the Scottish Government library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on amending the Regulations. We aim to issue a report on this consultation process and lay amended Regulations in 2008.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Jane Macpherson
Area 1-J (South)
Victoria Quay
Edinburgh
EH6 6QQ

SECTION 2 – BACKGROUND

Policy

Under the Antisocial Behaviour etc. (Scotland) Act 2004 (“The Act”) since 30 April 2006, all owners of privately rented housing in Scotland have been required to apply for registration with their local authority. Mandatory registration is an important strand of the Scottish Government’s wider policy framework for the private rented sector, designed to increase standards of management and property condition across the sector, and, by so doing, to reinforce the positive contribution the sector makes to meeting housing need in Scotland.

The Scottish Parliament has passed several pieces of legislation in recent years, over and above landlord registration, including the *Repairing Standard, Right to Adapt* for disabled tenants and new provisions for the licensing of *Houses in Multiple Occupation*, aimed at increasing standards and improving the reputation of the private rented sector as a good option for tenants. The Government has also recently launched a *National Voluntary Landlord Accreditation Scheme*, Landlord Accreditation Scotland, which aims to further improve standards by promoting best practice in private letting through training, advice and guidance for landlords and agents.

The Scottish Government made clear in *Firm Foundations*², the consultation paper on the future of housing in Scotland, that it wants to see the private rented sector play a greater role in meeting housing need. As the Guidance Notes for Local Authorities on the Registration of Private Landlords make clear³, landlord registration plays a key role in this in a number of ways. Successful mandatory registration helps local authorities to improve their Local Housing Strategies by filling gaps in their knowledge of how many private rented sector properties are in their area and where they are located. This in turn leads to more relevant and effective local policies to improve, regulate and support the contribution that the private rented sector makes to local economies and local housing markets. Since April 2006 there have been over 118,000 applications for registration (this includes joint owners and agents of property), with over 172,000 privately rented properties included within these applications. These statistics alone provide us with a greater knowledge about the size and location of the sector and its potential.

The implementation of the landlord registration scheme was informed by an Implementation Advisory Group (The Housing Sub-Group of the Implementation Advisory Group for the Antisocial Behaviour etc (Scotland) Act 2004)⁴. The proposals contained in this consultation do not seek to revisit the policy principles agreed by that Group – those principles and the secondary legislation underpinning landlord registration have already been widely consulted on. Instead, this

² Firm Foundations can be accessed at <http://www.scotland.gov.uk/Publications/2007/10/30153156/0>

³ Guidance notes can be accessed at <http://www.scotland.gov.uk/Publications/2006/02/14100433/0> and <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16193/PrivateRenting/registrations/update>

⁴ Papers from the meetings of the stakeholder group can be accessed on the internet via <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16193/PrivateRenting/registrations/advgrpmeetings>

consultation proposes amendments to the legislative framework which are designed to make delivery of the scheme more efficient and effective. The previous consultation paper, Regulation of Private Landlords under the Antisocial Behaviour etc (Scotland) Act 2004⁵, and the consultation responses⁶ can be accessed on the Scottish Government website.

The proposals set out in this consultation paper have been informed by discussions with key stakeholders as part of the Arneil Johnson review of the implementation of the scheme. (See section below on 'Review').

Application process

Responsibility for implementing landlord registration rests with local authorities. Each local authority is responsible for identifying landlords who are required to register and for ensuring that the registration process is completed satisfactorily. Applicants are required to provide certain information within their application for registration. This includes a list of the properties they let and details of any joint owners and any agents who manage the property.

Before registering a landlord, a local authority must be satisfied that he or she is 'fit and proper' to let property. In assessing whether an applicant is fit and proper, local authorities must take account of a range of information. This includes whether or not the applicant has committed any relevant offences, including any contravention of the law relating to housing or landlord and tenant relations. In addition, the local authority may take account of any other material it considers relevant to the question of whether the applicant is fit and proper. In particular, this includes the landlord's ability to properly fulfil his or her legal obligations as a landlord.

Applications can be made either on paper or online at www.landlordregistrationscotland.gov.uk. A landlord must apply for registration in all local authorities where he or she owns privately rented property, unless an exemption applies.

A principal fee of £55 is charged for each owner or agent plus £11 for the registration of each property. Various discounts are available, including a discount of 75% of the principal fee for registration in multiple authorities.

Implementation

There have been a number of difficulties with the implementation of landlord registration and the Scottish Government has made the successful delivery of the scheme a priority since May 2007. Over the last year significant progress has been made. The latest registration approvals figures show that 79% of all applications for registration have now been assessed and approved nationally. This is against a backdrop of increasing numbers of applications (87,875 applications received by May 2007, 118,055 applications received by June 2008).

⁵ <http://www.scotland.gov.uk/Publications/2005/07/08172434/24352>

⁶ <http://www.scotland.gov.uk/Publications/2005/10/31111044/10452>

Two years into delivery, we are also seeing the wider benefits of registration. Local authorities are more aware of the size and make-up of the private rented sector in their areas and landlords are increasingly aware of the law and their responsibilities towards tenants. In particular, positive engagement between local authorities and the sector has increased over this period through, for example, the development of local landlord forums. We are clear that we want to see this progress continue.

Review of implementation

In response to the difficulties experienced in the delivery of the scheme, the Scottish Government committed to review the implementation of landlord registration. The purpose of the review was to examine the efficiency and effectiveness of existing arrangements and consider where improvements could be made to better support local authorities in the delivery of the scheme. In late 2007, Arneil Johnston was commissioned to undertake a Good Practice Review of the implementation of the scheme by local authorities⁷. As a result of this review, Arneil Johnston made a number of recommendations aimed at streamlining delivery and making the scheme more efficient. The recommendations focussed in the main on changes to local authority business practices and processing arrangements, including, for example, moving to a pre-payment application process to avoid some of the difficulties that have arisen in relation to invoicing for outstanding fees. The Scottish Government is currently working with local authorities to take these recommendations forward.

A number of the Good Practice recommendations touched on aspects of the existing legislative framework and areas where this could be improved to further streamline delivery of the scheme. Arneil Johnston therefore undertook further work to focus specifically on the legislation underpinning the scheme and consider opportunities to make this more efficient and reduce administrative complexity. A key element of this work was to consider these issues in the context of the start of the application renewal process. An application for registration is valid for 3 years from the point that the application is approved by a local authority. As the first application was approved in March 2006, the first registration is due to expire in March 2009. This consultation therefore focuses on changes to secondary legislation which will support and improve the registration renewals process.

Arneil Johnston held two focus groups – one with representatives from local authorities, and a second with landlord and agent representative bodies and organisations representing tenants – to explore aspects of the current operation of the scheme and areas where changes to legislation may make the operation of the scheme more effective. A list of focus group attendees is available at Annex A. The views of the focus groups were largely consensual. In general, there was recognition that the implementation of landlord registration had significantly improved, but that a number of legislative changes could have a positive impact on making the scheme more efficient and effective. The views of the focus groups are included within this paper.

⁷ A copy of the findings can be found at http://www.arneil-johnston.co.uk/index.php?option=com_docman&task=cat_view&gid=13

Cost of delivering the scheme

The Scottish Government has supported local authorities with the costs of implementing the scheme through the provision of grant funding. A total of £5.2m grant funding was made available to local authorities between February 2006 and March 2008 to support the start-up costs associated with the delivery of the scheme. Under the Concordat arrangements between Local Authorities and the Scottish Government, baseline grant funding of £1.98m per annum in 2007-08 for landlord registration has been rolled up in the overall local government settlement for the period 2008-11. Ongoing funding arrangements for registration activity will be determined locally, in line with the Concordat.

It is the Scottish Government's intention that the scheme moves to full cost recovery over time and that local authority fee income supports the ongoing administration of the scheme. This is in line with other licensing regimes, in particular, HMO licensing.

The Act makes provision for fees to be charged for an application for registration, and for notifying the authority of any changes to the information held on the register. These fees are currently set nationally by Ministers. We intend to continue to set fees nationally for the reasons outlined below.

For the period April 2006 to March 2008 local authorities received approximately £5m in income through registration fees. An application for registration lasts for 3 years from the point of approval. Therefore, a landlord/agent will only be required to pay a fee every 3 years, unless additional properties are subsequently registered. This means that, broadly speaking, local authority fee income over the three year cycle in terms of the application renewal process should be approximately £1.7m per annum. This is based on the current number of landlords and agents registered with the scheme. With an increased focus on enforcement of the scheme over the coming months, we expect the numbers of landlords applying for registration, and, hence, fee income, to increase. In addition, a number of local authorities report outstanding fee payments which, once collected, should further increase income under the scheme. The amount of fee income collected by local authorities varies according to the number of landlords and properties in any given area.

A significant part of registration process is the online system. The Scottish Government currently funds both its provision (including the central server) and continuing technical support. The Scottish Government is also taking forward a comprehensive package of measures to improve the online system, to make applying online easier for landlords and more efficient for local authorities to process applications. These costs are not passed on to local authorities.

Local authority finance returns, outlining income and expenditure under the scheme for the period grant funding was made available (Feb 2006 to March 2008) point to considerable variation in the costs of administering landlord registration. Overall, local authorities report expenditure of approximately £6.6m. This includes expenditure on start up costs, to recruit and train staff and establish local systems and processes, as well as additional staff costs associated with processing the backlog in applications.. Scottish Government grant funding was provided to support these costs.

Arneil Johnston undertook an expenditure analysis earlier this year, based on local authority finance returns up to September 2007. This exercise was intended to draw conclusions on the average cost of processing applications in order to provide a benchmark for local authorities and to inform the Scottish Government's consideration of how fees should be set, the level of fees and whether these should be reviewed. However, the results from this work were inconclusive. Arneil Johnston found that levels of income and expenditure varied significantly between local authority areas. Variations were not always linear, for example, increased costs associated with increased numbers of landlords. Some local authorities had experienced particular difficulties with the administration of the scheme, including the interface with the online system; others had established separate processes and business practices to support delivery; staffing levels and grades were also variable. For these reasons Arneil Johnson were unable to determine a benchmark cost for delivering the scheme. Given the patchy information available to date on costs, we are not proposing any changes to how the principal fee is set and its level at this time. Instead, we believe that the significant progress made in delivering the scheme over the last year needs time to bed in. We can expect reduced administrative costs associated with the Good Practice Review and changes to local authority business processes. The changes proposed in this consultation will also help to reduce the administrative burden on local authorities and, hence, the cost of the scheme overall.

This approach was supported by the focus groups, although a minority of local authorities would like to determine fee levels locally. As any determination of local fee levels would be based on cost recovery, we do not feel that there is sufficiently robust evidence on the costs of delivering the scheme to support this approach at this time. In addition, none of the local authorities at the focus groups had carried out any cost analysis locally on delivery of the scheme. Given that the focus of our review and this consultation is on ensuring that the registration renewal process is as efficient and straightforward as possible, we feel there would be significant practical feasibility issues associated with local authorities setting their own fees at this time. In particular, building variations in local fee rates into the online application system before March 2009 would be challenging. We will, however, continue to monitor the cost of delivering the scheme and will keep the position of local fee setting under review.

This consultation proposes changes to other aspects of the fee and discount structure. These recommendations take into account the views of the focus groups and the primary aim is to simplify the current structure. Where we are able to, we have costed the impact of these changes as they affect landlords and local authorities. Overall, we expect the financial impact of these changes to be broadly cost neutral, with any loss in income to local authorities off set by savings in terms of a reduction in costs associated with administrative complexity. Landlords stand to gain in certain circumstances, when they come to renew their application.

Legislative Context

Ministers have a number of regulatory powers under the Act. These include powers to:

- prescribe information that must be included in an application for registration (Section 83(1)(d) of the Act);
- specify fee levels and how they are determined (Section 83(3) of the Act);
- modify exemptions for particular categories of dwelling (Section 83(7) of the Act);
- make regulations requiring local authorities to provide advice and assistance to landlords and tenants (Section 99 of the Act);
- specify that the tenant is not required to repay any rent due for the period of a rent penalty notice (Section 97(7) of the Act).

The instruments listed below were made in exercise of these powers.

- The Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005, SSI/2005/557 – the '*Advice and Assistance*' regulations
- The Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005, SSI/2005/558. Updated by: The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2006, SSI/2006/28 – the '*Fees*' regulations.
- The Private Landlord Registration (Appeals against Decisions as to Rent Payable) (Scotland) Regulations 2005, SSI/2005/559
- The Private Landlord Registration (Modification) (Scotland) Order 2005, SSI/2005/650 – the '*Exemptions*' regulations

This paper consults on proposals to amend the above statutory instruments.

SECTION 3 – PROPOSALS

This section proposes amendments to the regulations outlined at Section 2 in the context of recommendations made by Arneil Johnston and the legislative focus groups.

Section 3a: The Fees Regulations

Regulations are contained in SSI 2205/558, as amended by SSI 2006/28. These regulations were made in exercise of the powers conferred by section 83(1), 83(3) and 87(4) of the Act.

Structure

When making an application for registration, landlords and agents pay a fee relevant to their circumstances. The key elements of the fee structure are the principal fee (currently £55) with an additional property fee for each property registered (£11 per property). There are also a number of additional fees and fixed discounts.

The following table provides a breakdown of all current discounts:

Type of Discount	Discount
Joint Owner Discount If joint owners are members of the same family, the lead owner will pay the full fee but other joint owners will not pay a fee. Therefore only the lead owner pays the full principal fee.	100%
Multiple Area Discount A landlord who owns property in more than one local authority will be due to pay the full principal fee in the authority where most properties are held and a discounted fee in the other authorities.	75%
Single Agent Discount An applicant who is registered as an agent of only one property receives a single agent discount.	50%
HMO Licence Holder A landlord who holds a current HMO licence does not pay the principal fee for landlord registration. Any additional HMO licensed properties will be included in the register without an additional fee. For all non-HMO properties owned by the landlord, the property fee but no principal fee is required.	100%
Accredited Landlords Accredited landlords are passported into registration only where the accreditation scheme operates the same 'fit and proper' person test as landlord registration. At present only Dumfries & Galloway and South Ayrshire Council passport accredited landlords into registration for no fee.	100%

Online Discount Applicants applying online receive a 10% discount on the total amount due.	10%
Charities Discount Landlords that are registered charities receive an 80% discounted principal fee.	80%

The following table provides details of all additional fees:

Other Fees	Value
Additional Property Fee Applicants pay an additional fee of £11 for each property owned and let, unless the property is accredited for discount purposes or has a current HMO licence.	20% of principal fee
Late Application Fee After a local authority has issued two separate requests for an application to be submitted, an additional fee of 200% of the principal fee is added to the fee payable on the application. This currently stands at £110.	200% of principal fee
Agents Fee Where an agent is acting for more than one property.	100% of principal fee

The fee structure is designed to broadly meet the running costs of the registration scheme within a local authority, including administering and enforcing the scheme. Fees are set at a level deemed to be reasonable for those required to register and also take into account differing circumstances where it may be appropriate for additional fees and discounts to be applied.

As discussed in section 2, fee levels are currently set by Ministers at a national level. This means that fees are consistent across the country and allows us to continue to build an evidence base on the costs of delivering the scheme. We intend to continue to set fees nationally for the time being but will keep this position under review.

Implementation

In practice, the fee and discount structure has proved complex to administer by local authorities and has often caused confusion amongst applicants as to the amount due. The Arneil Johnston review recommended that the current structure should be simplified. This view was supported by the focus groups, where it was recognised that the current structure has caused administrative delays and has led to confusion in some instances.

In order to streamline the fee and discount structure a number of amendments were proposed by the groups. These proposals are designed to make it easier to apply for registration and are also intended to significantly reduce the administrative

burden for local authorities. The intention is to make overall delivery of the scheme more effective, reducing delays in the processing of applications.

Proposed Amendments

Consecutive Area Discount

Applicants applying to more than one local authority simultaneously using the online system currently pay the principal fee to one (lead) authority and receive a discount of 75% of the principal fee for all other consecutive local authority areas. The consecutive area discount was designed to minimise application fees for landlords with properties in a number of local authorities, while also compensating local authorities for the work involved in assessing applicants as fit and proper. This discount does not apply to applications made on paper.

In practice, there have been administrative difficulties in allocating the 'lead authority' which has caused problems with the application of this discount. Some local authorities also feel that the current system does not adequately compensate them for processing applications. In cases where the consecutive area discount is applied, authorities are still required to assess an individual as 'fit and proper' prior to approval; however, the fee received for doing this is considerably reduced where the local authority is not the 'lead' authority.

Both focus groups agreed that we should keep the consecutive discount. However, local authorities were keen to simplify the discount, in particular to address the problems relating to the lead authority and the cost of processing applications. Local authorities suggested that we abolish the notion of a 'lead authority' and replace it with a flat rate consecutive discount on the principal fee which increases according to the number of local authorities applied to, meaning that the same amount is paid to each local authority. This does not affect the property fee, which would remain at £11 per property registered, paid to the relevant local authority area.

The implementation of a flat rate discount affects the total amount payable by a landlord depending on how many local authorities an applicant is registering with. As we are continuing to set fee levels nationally and do not propose to change the amount of the principal fee, it is important that any revised discount should be fair and comparable to the current amounts paid by landlords registering with more than one local authority.

The following table outlines a number of options for implementing a flat rate discount. Applying a flat rate of 60% discount appears to be broadly comparable, in terms of costs to the landlord, with the current system, although landlords applying to more than 6 local authorities will see a small increase in costs. This would also mean that local authorities were given more compensation for fit and proper checking activity. There is an anomaly to take into account, however, with a landlord applying consecutively to two local authorities paying a fee of £44 – which would be less than that for one local authority where the fee would remain at £55.

On balance we are therefore proposing that this discount is amended to a flat rate discount of 60% of the principal fee in each local authority where the landlord applies for registration online, simultaneously, in more than one area.

Number of local authorities the landlord is applying to	Current rate, £55 principal fee, plus discounted rate of 75%	75% discounted flat rate (i.e. 75% discount on the principal fee in each local authority)	60% discounted flat rate	50% discounted flat rate	40% discounted flat rate	25% discounted flat rate
1	55	55	55	55	55	55
2	68.75	27.5	44	55	66	82.5
3	82.5	41.25	66	82.5	99	123.75
4	96.25	55	88	110	132	165
5	110	68.75	110	137.5	165	206.25
6	123.75	82.5	132	165	198	247.5
7	137.5	96.25	154	192.5	231	288.75
8	151.25	110	176	220	264	330
9	165	123.75	198	247.5	297	371.25
10	178.75	137.5	220	275	330	412.5
11	192.5	151.25	242	302.5	363	453.75
12	206.25	165	264	330	396	495

Cost Implications

The cost of amending this discount will be broadly neutral for landlords applying for registration in multiple local authorities consecutively and online, although landlords applying to more than 6 local authorities will see a small increase in costs. The introduction of a flat rate discount should ensure a fairer distribution of funds across local authorities. Local authorities should also benefit from a reduced administrative burden as the discount is simplified and the problems associated with allocating a 'lead' authority are removed.

Question: Do you agree that a flat discounted rate of 60% should be applied to applications made simultaneously online to more than one local authority? If not, what should the level of discount be?

Accreditation

In addition to landlord registration, a number of local authorities also run a local landlord accreditation scheme. These schemes promote best practice in private letting through provision of training, advice and guidance. A national accreditation scheme, Landlord Accreditation Scotland, was recently launched and is part-funded by the Scottish Government. The aim of the scheme is to improve standards in private renting and make accreditation available to landlords throughout Scotland.

When landlord registration was launched in 2006, it was recognised that a small number of local accreditation schemes were in place which already assessed

landlords as fit and proper. A discount for accredited landlords was therefore provided for within secondary legislation. This meant that those accredited landlords who had previously been assessed as fit and proper were passported into landlord registration without having to pay an additional registration fee. A property fee was still required for any non-accredited properties. In practice, this discount has only been used by two local authorities, South Ayrshire and Dumfries and Galloway, as these were the only local accreditation schemes which included a fit and proper person test.

Our view is that landlord registration represents the minimum legal requirement that all private landlords should meet. Accreditation builds on this minimum standard and is aimed at promoting best practice. The national accreditation scheme, and the majority of local accreditation schemes, do not operate a fit and proper person test and local authorities are responsible for checking applications in the normal way. Our view is therefore that the current discount for accredited landlords should be removed from landlord registration. This view was supported by both focus groups.

Cost Implications

Only two local authorities, Dumfries and Galloway and South Ayrshire, currently operate a landlord accreditation scheme which contains a fit and proper person test. The removal of the discount for accredited landlords will therefore affect accredited landlords in these areas only - approximately 1,075 landlords, with 2,649 properties. If the discount for accredited landlords is removed, the principal fee of £55 plus a property fee of £11 per property will require to be paid at the point the applications are renewed. This equates to approximately £88,000 in fees. Dumfries and Galloway and South Ayrshire Councils would therefore see an increase in the fee income received.

Question: Do you agree that the discount for accredited landlords should be removed?

Charities Discount

Charities applying for registration receive a discount. This is currently 80% of the total amount payable (principal fee plus property fees).

In practice, the application of the 80% discount has placed an administrative burden on local authorities when processing payment which is disproportionate to the fees being sought. For example, when an online discount has been applied in addition to a charity discount, some authorities have reported invoicing for as little as £2.50, meaning that the cost of issuing an invoice (around £8-12) can outweigh the fee collected.

Participants in the focus groups were strongly in favour of keeping a discount for charities but recognised that its application was not particularly cost-effective. Local authority representatives were keen to address this and suggested increasing the discount to 100% to minimise bureaucracy.

We therefore propose to increase the charity discount to 100% to ease the administrative burden of processing and collecting small amounts of outstanding fees. The late application fee of 200% of the principal fee will still apply and charities could still be liable to pay this amount if they fail to register when asked to do so by a local authority.

Cost Implications

There are currently approximately 450 charities registered on the landlord registration system across Scotland. Although we do not know the total fee paid by each registered charity (due to differences in the number of properties registered) we can estimate that the loss of income associated with increasing the discount is approximately £13 per charity (based on a charge of the principal fee and one property fee). This would broadly equate to a loss of income of £6,000 in total across Scotland. The cost implication is therefore minimal. We would also expect local authorities to make administrative savings by the simplification of this discount. This proposal also recognises and rewards charities for the role they play in the provision of rented housing.

Question: Do you agree that the charities discount is increased from 80% to 100%?

Online discount

Applicants using the online system currently receive a 10% discount on the fee payable. This discount is intended to reflect the reduced administrative burden on local authorities when applications are made online. In practice, online applications have often involved significant manual input from local authorities, where applications are made incorrectly or have missing information.

The Scottish Government is working with local authorities to improve the online application system and make it easier for landlords and agents to manage their applications. We want the application process to be as quick and easy as possible, for applicants and local authorities.

The online discount currently acts as an incentive to encourage online applications; however, a significant number of applications are still made on paper. This results in an increased administrative cost for local authorities and can result in delay in processing and approving applications. In particular, delays can be caused when paper applications are made by landlords or agents with large property portfolios.

Landlords and agents are expected to amend their personal and property details pertaining to their registration/application as circumstances change. It is an offence not to notify the relevant local authority when details change. These amendments can either be made online by the landlord or agent, or by the local authority (for example if notified by paper). We want to encourage landlords and agents to manage their own details online wherever possible.

In order to further encourage applicants to apply online we propose to increase the online discount from 10% to 20%. This proposal was supported by focus group

attendees. We believe that an increased discount will act as a further incentive to encourage online applications, particularly for those landlords and agents with large property portfolios. It should be noted that local authorities are still required to carry out a fit and proper assessment of each application regardless of whether it is made online or on paper.

This proposal was supported by the focus groups.

Cost Implications

The impact of increasing the online discount is thought to be broadly cost neutral. Although the total fee received by local authorities for online applications will be less, the administrative burden on local authorities of processing paper applications will be significantly reduced. Landlords and agents applying for registration will also benefit financially from this recommended change.

We estimate that approximately 75% of applications for registration are made online and therefore currently receive an online discount. We can estimate the potential impact on fee income for local authorities using an example of a typical application comprising the principal fee of £55 and one property fee of £11. A 10% discount on such an application is currently £6.60 – meaning the fee payable is £59.40. If the online discount is increased to 20%, the discount on a typical application would increase to £13.20, and the fee payable would be £52.80. If this is multiplied across the current number of online applications (estimated to be 75% or 88,500), the potential loss of fee income to local authorities is around £584,000 across Scotland. However, our view is that this loss will be balanced by administrative savings.

Question: Do you agree that the online discount should be increased from 10% to 20%?

Single Property Agent Discount

When applying for registration a landlord must declare any agent who acts for them in relation to the property. An agent who manages more than one property on behalf of a landlord(s) will pay the full principal fee of £55. This reflects the local authority requirement to assess all agent applications to determine if the agent is a fit and proper person to act for a property.

An agent operating in relation to only one property currently receives a 50% discount. This discount was intended to encourage single property agents to register, for example, to encourage registration by family members who may be new to private renting and who are acting as an agent for a property which they may have inherited.

In practice, however, this discount has caused confusion and a considerable administrative burden for local authorities. This is because people are unclear as to whether they are a single agent or a single landlord and whether the fee applies. Some agents with more than one property have also stated that they are a single agent to avoid paying the full fee. When genuine single agents add another property

to their portfolio, there is currently no legislative facility to enable the local authority to charge the remaining 50% of the full fee.

Given the complexity of administering the discount, and the relatively small amount of fee involved, we propose to remove this discount. This proposal was broadly supported by the focus groups.

Cost Implications

There are currently approximately 1850 applicants who have claimed the single property agent discount although we believe that in some cases this discount was claimed in error. This proposal will therefore have a minimal financial impact. Single property agents will now be liable to pay a full registration fee of £55 instead of the current £27.50. This represents an estimated increase in local authority income of £50,000.

Question: Do you agree with the proposal to remove the discount for single property agents?

Joint Owner Family Member Discount

Joint owners who are family members currently receive a 100% discount on the fee payable. A lead joint owner is nominated and pays the full fee, with family members registering their details but not paying a fee. This practice ensures that each registered person is assessed as fit and proper to let property, but minimises the financial burden for joint owners of property who are family members.

In practice, local authorities have reported difficulties with processing joint owner applications where the joint owner family member discount is not applicable. The process for registering and charging correct fees to unrelated joint owners can be complex and has led to significant delays in the applications for registration being assessed. Joint owners currently make separate applications for registration which are then linked for the purposes of administration. Delays are often experienced with some joint owners taking considerable time to complete their applications. There have also been problems with joint owners claiming they are related when they are not, which then leads to additional checks and invoicing further down the line. There are currently around 1000 joint owners on the landlord registration system. The majority of these are thought to be in receipt of the joint owner family member discount.

Local authorities who attended the focus groups suggested that the joint owner family member discount was extended to all joint owners. All owners, joint or otherwise, will still need to be assessed as fit and proper; however, this will reduce the administrative complexity of current arrangements and improve the efficiency of the scheme. Examples of joint owners who would now be eligible for this discount could include business partners and friends. We are not aware that the extension of this discount would have any unintended consequences, for example, by including in the scope of the discount applicants who should be required to pay a full fee.

Cost implications

The loss of income to local authorities is thought to be low given the estimated small number of joint owners who are not currently in receipt of the joint owner family member discount. Local authorities should also benefit from reduced administrative complexity in applying this discount.

Question: Do you support the proposal to extend the joint owner family discount to all joint owners? Do you foresee any unintended consequences of extending this discount?

Unincorporated Trusts

In its original guidance to local authorities on landlord registration, and in information to applicants online, the Scottish Government advised that a trust should be treated as a single body, equivalent to a company. Having reviewed this issue, we now consider that this advice does not accurately reflect the current legal position as regards unincorporated trusts. Such trusts are not separate legal personalities and should not be treated as such. An unincorporated trust cannot therefore be regarded as a single entity owning property. In law, members of an unincorporated trust jointly own the property.

Current practice is therefore for individual members of an unincorporated trust to register as joint owners, with each being liable for a full fee. The Scottish Government does not wish to penalise unincorporated trusts or discourage people from becoming members of a property-owning unincorporated trust. It is therefore proposed that the fee regulations be amended to correct this situation, so although individual members of an unincorporated trust would still be liable to register; only a 'lead member' would be liable to pay a fee. We can achieve this through the proposal to extend the joint owner discount. As members of an unincorporated trust jointly own the property, the extension of the joint owner discount would automatically apply.

Cost Implications

All members of unincorporated trusts are currently liable to pay a registration fee. The introduction of this discount will significantly reduce the financial burden on members of an unincorporated trust, in line with the fees charged for incorporated trusts. We do not hold data on the number of unincorporated trusts currently registered therefore we are unable to assess the financial loss to local authorities by applying this discount. However, numbers are thought to be small. Local authorities will also benefit from a reduced administrative burden in processing applications from unincorporated trusts and the costs are therefore thought to be broadly neutral.

Question: Do you agree that members of an unincorporated trust, other than the 'lead member' should receive a 100% discount on the application fee for landlord registration?

Section 3b: The Exemptions Regulations

Order contained in SSI 2205/650. This order was laid in exercise of the powers conferred by section 83(7) of the Act.

Structure

The general approach of landlord registration is to provide a register of all landlords, except social landlords and the properties they let. A person requires to be registered if he or she is the owner of a residential property which is subject to a lease or occupancy agreement and is not specifically excluded.

Exemptions apply to properties rather than to people. If all of a landlord's properties in a particular local authority area are covered by one or more of the exemptions, he or she does not need to register with that authority. If only some of his or her properties are exempt, the other properties must still be registered. A property is exempt from registration if it is:

- A care home service
- A school care accommodation service
- An independent health care service
- A secure accommodation service
- Let under an agricultural tenancy and occupied by the agricultural tenant
- The only or main residence of the landlord
- Occupied under a liferent
- Let under a crofting tenancy
- Used for holiday lets only
- Owned by a religious organisation and occupied by a leader or preacher of that faith
- Occupied only by members of a religious order
- Let to members of the landlord's family only
- Held by an executor – 6 month exemption applies
- Held by a heritable creditor – 6 month exemption applies
- Owned by a local authority or Registered Social Landlord
- If a control order under section 178 of the Housing (Scotland) Act 1987 is in force in respect of the house

Implementation

The current list of exemptions is limited but provides exemptions as appropriate where the underlying principles of registration are not applicable. For example, the current 6 month exemption for executors and heritable creditors reflects the transitory nature of their involvement with the relevant property and is designed to provide flexibility under certain circumstances. If the executor or creditor continues to hold the property beyond the initial 6 month period, and it continues to be let, they are required to apply for landlord registration. Since the executor or creditor does not obtain the house deliberately with the intention of becoming a landlord, this provides a reasonable period for them to resolve the situation, while giving protection to tenants in the longer term.

Care needs to be taken in considering whether to add further exemptions. Various groups may argue that they should be exempt, because they feel their arrangements either do not fit the traditional idea of a private landlord or they are sufficiently regulated. There are also arguments about the effect of additional regulation on supply in certain sub-sectors. However, these must be balanced against the aim of creating a comprehensive register to benefit all tenants, and must take into account the practice arrangements for registration, which are designed to be as light touch as possible, such that any impact on supply is minimised.

This consultation paper does not seek to re-open discussion on the list of exemptions already consulted on and provided for in the legislation. Instead, it picks up on practical issues associated with administering the scheme. Following discussion within the focus groups, where a number of issues in relation to the current list of exemptions were explored in some detail, we are proposing one additional exemption from landlord registration. This exemption is intended to bring the treatment of insolvency practitioners in line with that of executors and heritable creditors. A record of the focus group discussions can be found in the Arneil Johnston Legislative Review Report⁸.

In addition, we are seeking views on whether the current exemption for landlords who are resident in the property that they let should remain.

Proposed Amendments

Insolvency Practitioners

There are a range of circumstances in which insolvency practitioners (IPs) may take ownership of property, normally with the intention of disposing of it in order to realise the value to pay creditors of the insolvent person or company. In some cases such property may include privately rented housing with sitting tenants, meaning that the IP would become subject to the requirements of landlord registration.

Most IPs dealing with personal bankruptcy works are appointed under the auspices of the Accountant in Bankruptcy, and therefore benefit from crown immunity from the need to register as landlords. However, a small number of personal cases and all company insolvencies are handled by private IPs to whom crown immunity would not apply.

The Scottish Government considers that the position of private IPs who take ownership of rented houses is equivalent to that of executors or creditors, and we therefore propose that IPs should therefore benefit from an equivalent short term exemption.

A six month period was put forward by the landlord registration Implementation Advisory Group as an appropriate exemption for executors and creditors. It may be argued that insolvency cases generally take longer to resolve than executries and

⁸ Report available via <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/PrivateRenting/registrations/Introduction>

repossessions. However, it is important also to consider the position of the tenant. Where the owner of a rented property dies or is subject to repossession or insolvency proceedings, there will inevitably be a period of uncertainty, but proper management of the letting should be re-established as soon as possible. If the property is not disposed of, or vacated by the tenant, within the exemption period, the executor/creditor/IP is not necessarily expected to manage the tenancy directly but could place it in the hands of a letting agent.

Question: Do you agree that houses held by an insolvency practitioner should be exempt from registration for 6 months?

Resident landlords

Resident landlords are currently exempt from landlord registration. This was recommended by the Implementation Advisory Group and consulted on at the time. Although resident landlords are exempt, landlords with three or more unrelated lodgers are still subject to HMO licensing. Resident landlords who also let other houses are required to register for those other properties.

Lettings by resident landlords make an important contribution to housing supply for some groups such as students and temporary workers. It is generally a secondary activity for landlords and often a casual one, so that any disincentive is more likely to lead the landlord to withdraw from the market. This type of letting is also often intermittent and would be very difficult to identify, since the property would show up as owner-occupied for most purposes.

Registration is intended to help improve both physical and management standards in private rented housing. Where a person lets rooms in his or her own home to a lodger, there are greater incentives for the landlord to maintain the property and manage antisocial behaviour effectively, because of the direct effect on the landlord's own interests as a resident of the same house. On the other hand there is greater potential for the tenant's privacy to be invaded and for harassment to occur, because they have day to day contact and share parts of the house. At the time, the view was taken by the Implementation Advisory Group that, overall, the potential effect on supply and the practical difficulties of implementation argued against the registration of resident landlords.

However, Ministers agreed to keep the position on resident landlords under review. It is within this context that we are now consulting on whether or not the exemption for resident landlords should remain.

The local authority focus group pointed to some issues with resident landlords and suggested that the exemption should be removed. These problems can include poor management standards and vulnerability of tenants, for example, tenants facing an increased risk of eviction. However, to date we have little evidence as to the extent of the problem, with local authorities citing individual cases in the focus groups. Organisations representing landlords were of the view that the exemption should remain in place. This reflects the lack of evidence on the scale of the problem, potential difficulties in enforcing registration and fears that tenants could be placed in a vulnerable position.

We are seeking views as part of this consultation on whether Ministers should reconsider the position of resident landlords.

Question: Do you agree that the exemption for resident landlords should be reconsidered by Ministers? Do you have any evidence to underpin your view?

Section 3c: The Advice and Assistance Regulations

Regulations contained in SSI 2005/557. These Regulations were made in exercise of the powers conferred by section 99 of the Act.

Structure

Local authorities have a duty to provide advice and assistance in a number of circumstances. Information on what constitutes good practice in letting properties should be provided to each applicant at some stage in the process leading to registration or on registration, for example, when an application is approved. There are a number of ways in which this requirement can be achieved, for example, providing applicants with information leaflets on private renting and the law in Scotland and providing links to suitable advice on the internet. Some authorities also provide their own 'good landlord' guidance for distribution.

Where a local authority proposes to refuse to register an applicant or to de-register an already registered person and if it considers that the applicant or registered person may be able to take steps to achieve registration or to prevent de-registration, then it must provide appropriate advice on what steps could be taken.

In addition, there is also an obligation on local authorities to provide tenants and other occupants with advice and assistance in particular situations, where the local authority:

- refuses to register a landlord
- removes a landlord from the register
- applies a rent penalty notice

The intention is to ensure that tenants and occupants are aware of the potential consequences for them of action taken against the landlord, of their right in that connection and of sources of help and advice should they need it.

Implementation

Advice and assistance provided to tenants usually includes details of the following:

- security of tenure and evictions
- sources of money and benefits advice
- homelessness services
- the homelessness duties of the local authority

The level of advice and assistance provided to tenants and landlords can vary among local authorities. We are aware that a number of local authorities provide advice and assistance beyond the minimum prescribed by the Regulations.

Proposed Amendment

In addition to the duty to provide advice and assistance in the above circumstances, tenant organisations also suggested in the focus groups that local authorities should provide advice to tenants who report an unregistered landlord. This would involve advising the tenant of their rights, for example, through the provision of an

information leaflet, and steps that the local authority is taking to enforce the provisions.

While we understand that a number of local authorities already provide advice and assistance to tenants in these circumstances, we feel it is appropriate to amend the legislation to reinforce this requirement in order to ensure that landlord registration works effectively to provide adequate support for tenants. We therefore propose to amend the current advice and assistance legislation to require local authorities to provide advice to tenants where they discover their landlord is not registered but they believe they should be. As local authorities cannot advise on the status of an application – the law provides that a local authority can only release certain prescribed information about landlords on their register, in other words, landlords who have been approved – this advice would be in general terms with regards to the law and tenants' rights.

Cost Implications

We know that a number of local authorities already provide advice to tenants. In addition, the Scottish Government has made available a number of leaflets on private renting and the law, aimed at landlords and tenants. We are therefore of the view that the impact on local authorities of providing additional advice to tenants reporting an unregistered landlord should be minimal. Local authorities will also benefit in terms of enforcement activity and information being provided to them about unregistered landlords in their area.

Question: Do you support the proposal to extend the current advice and assistance regulations to require local authorities to provide advice to tenants where they discover their landlord is not registered but they believe they should be?

SECTION 4

SUMMARY OF QUESTIONS AND CONSULTATION RESPONSE FORM

Name of individual/organisation:

Fees

1. Do you agree that a flat discounted rate of 60% should be applied to applications made simultaneously online to more than one local authority? If not, what should the level of discount be?

Yes/No:

Comments:

2. Do you agree that the discount for accredited landlords should be removed?

Yes/No:

3. Do you agree that the charities discount is increased from 80% to 100%?

Yes/No:

4. Do you agree that the online discount should be increased from 10% to 20%?

Yes/No:

5. Do you agree with the proposal to remove the discount for single property agents?

Yes/No:

6. Do you support the proposal to extend the joint owner family discount to all joint owners? Do you foresee any unintended consequences of extending this discount?

Yes/No:

Comments:

7. Do you agree that members of an unincorporated trust, other than the 'lead member' should receive a 100% discount on the application fee for landlord registration?

Exemptions

8. Do you agree that houses held by an insolvency practitioner should be exempt from registration for 6 months?

Yes/No:

9. Do you agree that the exemption for resident landlords should be reconsidered by Ministers? Do you have any evidence to underpin your view?

Yes/No:

Comments:

Advice and Assistance

10. Do you support the proposal to extend the current advice and assistance regulations to require local authorities to provide advice to tenants where they discover their landlord is not registered but they believe they should be?

Yes/No:

ANNEX A – LIST OF FOCUS GROUP ATTENDEES

Landlord and Agent Representatives

Association of Residential Letting Agents
National Federation of Property Professionals
Private Rented Housing Forum
Property Managers Association of Scotland
Scottish Rural Property and Business Association

Tenant Representatives

National Union of Students
Scottish Council for Single Homeless
Shelter

Local Authority Representatives

Aberdeenshire Council
City of Edinburgh Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council (representing CoSLA)
Falkirk Council
Glasgow City Council
Highland Council
Inverclyde Council
North Ayrshire Council

