



Regulation of Private Landlords

under the Antisocial Behaviour etc. (Scotland) Act 2004



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SCOTTISH EXECUTIVE

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ISBN 0 7559 4719 3

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B42013 06-05

Published by the Scottish Executive, June, 2005

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

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**REGULATION OF PRIVATE LANDLORDS
UNDER THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

Consultation on the Implementation of Parts 7 and 8

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A Regulatory Impact Assessment for this consultation paper is available separately, from the website address shown on page 10, or from the postal address shown on page 55.

**REGULATION OF PRIVATE LANDLORDS
UNDER THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

Consultation on the Implementation of Parts 7 and 8

EXECUTIVE SUMMARY

- i. The Antisocial Behaviour etc. (Scotland) Act 2004 (the Act) gives local authorities additional powers to regulate rented housing in Scotland. Under Part 7, if residents are engaging in antisocial behaviour at their home, and the landlord is not taking normal management action to address it, the local authority can serve an antisocial behaviour notice setting out actions the landlord must take. Under Part 8, all landlords and letting agents, apart from Registered Social Landlords and some other exceptions, must register with the local authority. In order to be registered the local authority must be satisfied the applicant is a fit and proper person. The Act lists various factors which the local authority must take into account in making that decision. It will be an offence to let any residential property without being registered.
- ii. Scottish Ministers have powers to regulate on various aspects of how landlord registration and antisocial behaviour notices will operate in practice, and to issue guidance to local authorities. Ministers are clear that, while landlord registration provides a very powerful tool to deal with bad landlords, the system should be as light-touch as possible to minimise the impact on the majority, who provide a good service for their tenants. Detailed proposals for regulations and guidance have been developed by a working group representing local authority, landlord, agent and consumer interests. This consultation paper seeks comments on those proposals.

Registration - Coverage

- iii. The Act excludes from registration houses used by religious orders and to provide certain categories of care regulated by the Care Commission. Further exclusions can be prescribed by order, but Ministers are keen to maintain a comprehensive register as far as possible. It is proposed that houses let by resident landlords should be excluded, because of the nature of this part of the market and the greater incentives for resident landlords to maintain the property and manage antisocial behaviour. Agricultural and crofting tenancies are also suggested for exclusion, because the tenancy applies primarily to the land and the responsibilities of landlords and tenants are very different from those of residential tenancies. We propose that tenants of tied housing (accommodation provided with employment) should have the protection of registration, particularly as there is often no clear agreement on rights and responsibilities between the owner and the employee.
- iv. The owner of a house is required to register with the local authority, and to give details of any agent they use as well as a list of let properties. Agents or prospective landlords who do not own any property may also register in their own right. Where the agent or owner is a company or corporate partnership, the organisation is registered. If a property is jointly owned by more than one individual, each individual will need to register. We are seeking views on the treatment of joint owners.

- v. Local authorities will want to identify landlords who may be letting without registration. A number of sources of information are proposed, including information from Housing Benefit records. References to information transfer throughout the paper are subject to the requirements of relevant law. Section 139 of the Act is intended to facilitate the exchange of information between different agencies and departments. The Scottish Executive is working closely with the Department for Work and Pensions to ensure an effective interface between registration and housing benefit.

Dealing with Applications

- vi. Ministers can regulate to require further information to be provided in an application for registration, in addition to the applicant's name and address, the name and address of any agent they use and the address of each property they let. It is proposed to require further information in connection with the fit and proper person test, such as previous convictions and registrations and a declaration that the applicant complies with the law relating to letting. A summary of the legal requirements would be provided to ensure applicants know what their obligations are. The Scottish Executive is seeking to amend an order under the Rehabilitation of Offenders Act 1974 to ensure that local authorities can get a full picture of an applicant's past record in relation to letting.
- vii. In line with the light touch approach, it is suggested that applicants should be accepted as fit and proper without further investigation, unless something on their application form or information in the local authority's possession prompts concern. The local authority will be able to act should information come to light at a later date which suggests that the registered person is not fit and proper. In all cases the local authority should make a balanced judgement on the risk that the applicant may fail to act properly .
- viii. Where there are concerns about an applicant, the preferred outcome is that the local authority should seek to change the situation so that the applicant's approach becomes acceptable. This would minimise any impact on the supply of accommodation. One way of achieving this might be for an owner to appoint a reputable agent. Provisions in the Housing (Scotland) Bill would, if enacted, require the local authority to take account of any agency agreement in the fit and proper person test. This paper outlines the elements that a local authority would want to see in an agency arrangement if it were to mean that it allowed the owner to be considered fit and proper.
- ix. We propose that local authorities should be required to provide applicants with information on their legal obligations and good practice. Where a local authority considers that an applicant owner is not fit and proper to be letting houses but could reasonably take steps to become fit and proper, such as contracting with a suitable agent, then the local authority should provide information and advice to the landlord on those steps and how to pursue them.
- x. Ministers are keen to ensure that application processes are handled in a consistent way across the country and are as streamlined as possible, avoiding duplication. The Executive is seeking to provide a single internet-based online system for local authorities to use. The system should allow people to apply to more than one local

authority while only giving their details once, and view the register for every authority. If one authority had relevant information about an application, this could be flagged to all other authorities to which the person had applied. Registration officers would have full access to the records for their area to process applications and maintain the register, while other local authority staff would have access to view the status of applications in progress. It will also be possible to make an application on paper.

Costs and Fees

- xi. We expect that the income from fees should broadly cover the costs of the registration scheme. Since the costs are likely to vary across the country, we intend to regulate on a fee structure, and allow each authority to set their fees within that structure. We propose to issue guidance on the activities which need to be costed for an authority to arrive at an appropriate fee. The key points of the proposed structure are that there will be a principal fee for an application, plus a supplementary charge for each property listed and each agent used by the applicant. The principal fee would be higher for late applications. Discounts would be allowed for online application, for landlords with charitable status, and landlords who are members of an approved accreditation scheme. There would also be proportional discounts for landlords with large portfolios. Landlords who hold HMO licences would only have to pay a fee to register additional properties or agents not covered by their licence.
- xii. The Executive intends to assist local authorities with the costs of establishing the registration system. We will discuss with CoSLA how funding will be distributed to ensure individual authorities' fees are kept to a reasonable level. We suggest a starting assumption for discussions of £50 for the basic principal fee and £10 for the supplementary charge.

Action on Breach

- xiii. There is a range of offences associated with registration, and a range of penalties which can be applied. In addition to removing registration (if the landlord was registered) and seeking prosecution, the local authority can also serve a notice stating that no rent is payable on the property. We propose to require that tenants should receive advice and support where action is taken against their landlord. If a landlord appeals against a rent penalty notice, the landlord should notify the tenant and provide specified information to encourage the tenant to set aside the money they would otherwise pay in rent, since they may have to pay it retrospectively if the appeal is successful.

Other Administration

- xiv. With the introduction of registration there will be three forms by which the quality of private landlords is recognised or regulated by local authorities: registration, HMO licensing, and voluntary accreditation schemes. We propose that holders of HMO licences who also require to register should be automatically placed on the register. Members of voluntary accreditation schemes would be automatically placed on the register where entry to the scheme requires an equivalent fit and proper person test carried out by the local authority. Membership of other accreditation schemes would

count as evidence to be taken into account in the registration process. Where a person applies for registration with more than one local authority, each authority must make its own decision, but should take into account any relevant information available from other authorities about the applicant.

Antisocial Behaviour Notices

- xv. The Act permits a local authority to serve an antisocial behaviour notice on the landlord of a “relevant house” in its area, if any person who occupies the house under a tenancy or occupancy agreement, or visits the house, is engaging in antisocial behaviour at or in the locality of the house. The notice must describe the antisocial behaviour that has led to the notice being served, and require the landlord to take specified action to deal with it, within a specified period. We propose to regulate to require a local authority to provide advice and assistance on the management of antisocial behaviour before serving a notice.
- xvi. The Act as it stands does not provide suitable procedures for houses used for holiday purposes. Ministers have powers to modify Part 7 of the Act by order as necessary to suit the circumstances of holiday lets. This could be required for example because the landlord specialises in letting for particular purposes such as stag holidays. However, the modifications required would be substantial, and we feel there is not yet sufficient evidence about this issue and the most effective way of providing for it in legislation. We therefore do not intend to make such an order at this stage.
- xvii. We propose to issue guidance to local authorities on the types of actions that could be considered good practice for landlords to take in tackling antisocial behaviour. We recommend that good practice of this type should be included in the general advice and training that local authorities could offer to all registered landlords. Authorities should ensure that the actions they require are reasonable and may need to provide support and advice on relevant legal requirements.
- xviii. If a landlord fails to comply with an antisocial behaviour notice, the local authority can report the landlord for prosecution as that failure is an offence, can apply to the sheriff for either an order as to rental income which suspends the tenant’s rent liability, or a management control order, or can take action to deal with the antisocial behaviour and recover the costs from the landlord.
- xix. We propose to make regulations so that if a landlord appeals against an order as to rental income, the landlord should notify the tenant and provide specified information to encourage the tenant to set aside the money they would otherwise pay in rent, since they might have to pay it retrospectively if the appeal was successful.
- xx. Under a management control order, the rights and responsibilities of the landlord are transferred to the local authority. We propose to make regulations that the authority should be able to incur normal day-to-day running costs, taking into account that additional management time may be required because of the circumstances that led to the order being made. Routine maintenance would be included, but not major improvement work without the landlord’s consent. We also propose that the costs would be recoverable as a debt.

- xxi. Where the local authority takes action to deal with the antisocial behaviour because the landlord had failed to comply with the antisocial behaviour notice, we propose to regulate so that it can recover from the landlord as a debt, payments made to third parties and its reasonable administrative and other costs, provided it has given the landlord notice of its intention to act and an estimate of the costs.

INTRODUCTION

1. The Scottish Parliament has legislated to give local authorities additional controls over landlords in the private rented sector in Scotland. This consultation paper seeks views on the details of how the Scottish Executive should implement the legislation. A Regulatory Impact Assessment is available separately.

2. We have developed the detailed proposals in consultation with a working group representing local authority, landlord, agent and consumer interests (see Annex 5). This paper sets out our conclusions and asks a number of specific questions on which we would particularly like to hear others' views. We would also welcome comments on any other aspects of our proposals. Information on how to respond to this consultation paper is provided in Section K.

The Scottish Executive's Policy on Private Renting

3. The legislation that this paper deals with is part of a wider set of policies affecting private renting in Scotland. Around 170,000 households rent from a private landlord. This is 8% of all households, or 21% of households in rented housing. Private renting provides flexibility and a wide range of choice, and makes an important contribution to meeting housing need. Scottish Ministers are keen to ensure a healthy private rented sector which continues to attract investment and provides well-managed, good quality housing. For this reason, local authorities are expected to include private renting in their Local Housing Strategies. These strategies assess the housing already in the area, and the need and demand for housing of different types, and set out the local authority's policies for ensuring appropriate housing is available.

4. Scottish Ministers recognise that the great majority of landlords provide a good service with which their tenants are satisfied. They want to give this positive encouragement and ensure that the sector is recognised as a valid housing choice. But, as in any market, there can be failures and abuses and it is government's role to protect those who could suffer as a result.

5. There has been law on landlords and tenants for centuries. The main areas of current law affecting private renting are in the Rent (Scotland) Act 1984 which covers protection from harassment and illegal eviction and limits advance payments in relation to a tenancy, the Housing (Scotland) Act 1987 which includes minimum standards for housing and landlords' repairing obligations, and the Housing (Scotland) Act 1988 which established the assured tenancy regime that applies to most private tenancies in Scotland.

6. Registration fits within a package of measures designed to guarantee minimum standards and recognise high standards in private rented housing:

- **Registration** will be an obligation on all private landlords (with some exceptions - see Section B1). Registration may be refused or removed if landlords fail to comply with the minimum legal requirements relating to letting.
- **Licensing** of Houses in Multiple Occupation (HMOs) was introduced by the Scottish Executive in October 2000. All landlords of HMOs in the private and public sectors require to be licensed by the local authority, meeting the authority's management and physical standards.

- **Accreditation** describes voluntary schemes, set up in partnership, usually between a local authority and local landlords, to recognise high standards, in a similar way to schemes for farm produce or tourist accommodation. Membership helps landlords to prove that they provide a high standard of accommodation and management, and can give access to benefits such as training, free advertising and financial discounts.

7. The Scottish Executive, through Communities Scotland, is supporting pilot landlord accreditation schemes in four local authority areas. Communities Scotland has published National Core Standards for Private Landlords, for local voluntary accreditation schemes to use as a basis for their work. This publication also includes guidance on how to establish a scheme. More information is available from Homepoint (telephone: 0131 313 0044; email: homepoint@communitiesscotland.gov.uk).

8. The Housing (Scotland) Bill, which is currently progressing through Parliament, focuses generally on the condition of private housing, and includes the following proposals to further improve standards in the private rented sector:

- Updating landlords' obligations to maintain the property and facilities they provide
- Establishing a simpler method of redress for tenants in relation to those obligations
- Giving private tenants a right to carry out adaptations for a disabled occupant, subject to the landlord's consent, which may not be unreasonably withheld
- Moving the HMO licensing regime into primary legislation, where it can be more effectively tailored to the context of residential letting
- Amendments to the Antisocial Behaviour etc. (Scotland) Act 2004, which are detailed in this paper

Parts 7 and 8 of the Antisocial Behaviour etc. (Scotland) Act 2004

9. The measures in the Antisocial Behaviour etc. (Scotland) Act 2004 dealing with private landlords are part of the wider package of tools available to police and local authorities to address problems of antisocial behaviour in local communities. They also provide a means, through registration, of regulating the private rented sector generally.

10. Part 7 of the Act allows local authorities to serve **antisocial behaviour notices** on private landlords. Consultation and other evidence has shown that the impact of antisocial behaviour in and around a privately rented house can be aggravated by the landlord's failure to take action in connection with such behaviour which would be considered normal good practice in letting any property. The antisocial behaviour notice tells the landlord what actions he or she should take to address the situation.

11. The Act sets out the basics of when and how antisocial behaviour notices can be used, and their consequences. It provides for some of the detail to be set out in regulations; it is also normal practice for the Scottish Executive to issue guidance to local authorities on the use of such powers. This paper consults on the content of those regulations and that guidance.

12. Antisocial behaviour notices should not be confused with antisocial behaviour orders (ASBOs). An ASBO is used directly against the person who is behaving in an antisocial way.

An antisocial behaviour notice is an alternative tool which may be useful where the problem is linked to a house and the landlord's failure to act is compounding the problem.

13. Part 8 of the Act requires local authorities to operate a **register of private landlords** and makes it an offence for an unregistered landlord to let houses. The local authority must be satisfied that the landlord, and any agent he or she uses, is fit and proper to be letting houses. This provides the local authority with another method for dealing with landlords who fail to adopt normal good letting practice on antisocial behaviour. It also goes further by providing, for the first time, basic information on the private rented sector in each area as well as an effective way of dealing with the worst landlords, even where there is no antisocial behaviour by tenants.

14. Again, the Act sets out the basics of registration and the consequences of a failure to register. It provides for some of the detail to be set out in regulations. Registration requires administrative systems to be established locally and nationally and the Scottish Executive will issue guidance to local authorities to assist them in establishing their systems and to ensure that they are co-ordinated as necessary. This paper consults on the content of those regulations and that guidance.

15. The aim of registration is to ensure that all landlords use basic good practice and comply with their legal obligations in letting. It must be emphasised that the great majority of landlords already do this, or are willing to do so when informed of the legal requirements, and registration should be implemented in a way that has minimum impact on these responsible landlords. It offers an opportunity for local authorities to build relationships with private landlords in their area, since they will have contact details for all landlords. At the same time, registration provides a powerful tool to deal with those landlords who refuse to comply with basic standards, by removing registration and thus preventing them from operating. However, for most landlords, the system should have a light touch.

Equal Opportunities

16. Scottish Ministers want to ensure that everyone in Scotland can access good quality, well-managed, private rented housing if they wish, regardless of age, gender, sexual orientation, race, religion or belief, disability or any other factors which might make them subject to discrimination. Public bodies and private landlords have certain legal obligations to avoid or prevent discrimination, and further provision in this regard is proposed by the UK government in terms of the Equality Bill currently being considered by the UK Parliament. Section 140 of the Antisocial Behaviour etc (Scotland) Act 2004 also stipulates that any person discharging a function under the Act must do so in a manner that encourages equal opportunities.

17. We expect local authorities to undertake all their functions with regard for equal opportunities. If you feel any part of the proposals could have a differential impact on any section of the community, we would welcome your comments.

18. This consultation paper can be made available in other languages or alternative formats if required. Please contact Lucie Dunn (telephone: 0131 244 5571; email: lucie.dunn@scotland.gsi.gov.uk).

HOW THIS PAPER IS ORGANISED

19. This paper breaks down the issues for antisocial behaviour notices and registration into a series of topics. For each topic, there are the following sub-sections:

Legislation

This summarises the relevant provisions in the Act and their effect. It is not a definitive interpretation of the law; only a court can interpret statute. The full text of the Act is available at:

<http://www.opsi.gov.uk/legislation/scotland/acts2004/20040008.htm>

Subordinate Legislation

This shows whether Scottish Ministers have regulation- or order-making powers relevant to the topic. Where they have such powers, it proposes the way in which they should be used. Consultation responses will influence Ministers' decisions on how they should use those powers and will be available to the Scottish Parliament when they decide whether to confirm the regulations and orders that are laid before them.

Guidance

The Scottish Executive will issue guidance to local authorities on the administration of their powers and duties under Parts 7 and 8 of the Act. This section proposes the guidance that should be provided for the topic in question. Consultation responses will influence the final form and content of the guidance. As with HMO licensing, we also intend to publish shorter versions of the guidance containing the material which is of relevance to potential applicants, tenants and other interested parties.

20. A questionnaire arranged under the same topics is provided both online and at the end of this paper (Section K4). Respondents are encouraged to use the questionnaire, as this will help us in the analysis of responses. We would also request that, where possible, you submit your comments through the electronic response form on the Scottish Executive website at www.scotland.gov.uk/consultations/current. Responses received in other forms will of course receive equal consideration (see Section K1).

21. The paper deals first with registration, as that is the more general provision which applies to all landlords. Initial action against poor landlords is likely in many cases to be through the registration route, with antisocial behaviour notices being an additional tool available for use in particular situations. The use of antisocial behaviour notices is therefore covered after registration, so that respondents consider it in the light of the thought they have already given to registration.

REGISTRATION OF PRIVATE LANDLORDS

Section A: Approach to Registration

22. This section provides a summary of the registration approach, to set the context for the more detailed explanation and consideration in sections B to F of this paper. Registration should not be confused with accreditation, which is voluntary and provides public recognition of higher standards of good practice.

23. Part 8 of the Act makes it an offence for the owner of a house to let it unless they are registered with the local authority. That is expected to have effect in March 2006. This applies to any house other than one owned by a Registered Social Landlord or local authority, and some other categories. There are powers for Ministers to make further exceptions. A landlord who has made a valid application will not be committing an offence by letting while the application is being processed.

24. Local authorities are required to establish and maintain a register; they will also need to receive and process applications. Applicants will require to provide certain information and Ministers can extend the list of information required in order for local authorities to be able to make their decisions. Local authorities will seek to identify landlords who have not registered.

25. To be placed on the local authority's register, the owner and any agent they use must be considered fit and proper persons to let residential property. This is a judgement by the local authority in the light of the balance of relevant information. The use of suitable agents should be a factor in deciding whether the situation is acceptable. The houses let also require to be listed, but they do not need to be inspected to be included in the register and the register does not have information on individual tenancies.

26. The process for application has been designed to be as easy as possible to minimise the impact on good landlords and the burden for local authorities. It is also intended to avoid duplication of processes where a landlord operates in more than one area or also holds an HMO licence or accreditation under a suitable voluntary scheme. The proposed processing system would be web-based with a central hub, which is intended to allow on-line application; the automation of a substantial part of the process; local decisions; and local maintenance of registers. Paper-based applications will also be possible.

27. Fees are intended to cover running costs, with the Executive helping local authorities with start-up costs. Ministers can control fee levels or fee structures if necessary.

28. Enforcement is for local authorities. It is intended that they should, where appropriate, seek to improve the situation so that the landlord can be registered, by working with the sector and with individual landlords. Ministers can require local authorities to give advice and assistance to landlords and tenants. Where a landlord is deregistered, the penalty of suspending rent liability is available as an effective sanction alongside the potential for criminal prosecution.

The key sections in the Act concerning the requirement to register are summarised in the following table:

How the Act requires landlords and agents to be registered

- The owner of a house commits an offence if the house is let for residential use and the owner is not registered with the local authority where the house is located (s.93(1))
- The owner of a house commits an offence if he communicates with another person with a view to letting the house, if the owner is not registered (s.93(2))
- Any person may apply to the local authority for registration (s.83(1))
- If the applicant owns a house which is let, and has an agent who acts for him in relation to that letting, the applicant must give details of the agent in his application (s.83(1)(c))
- In order to register an applicant, the local authority must be satisfied that either:
 - If no agent is specified, the applicant is a fit and proper person to act as a landlord (s.84(3)); or
 - If a house and an agent are specified, the applicant is a fit and proper person to act as a landlord and the agent is a fit and proper person to act for a landlord (s.84(4), with reference back to s.84(3)(c))
- A registered owner must notify the local authority if he appoints an agent (or a new agent). If the authority does not consider the appointed agent to be a fit and proper person, the owner will be removed from the register (s.88)

B: Coverage

B1. Exclusions

Legislation

29. The general approach of the legislation is to provide a register of all landlords, except social landlords, and the properties they let. The Act provides that local authorities, RSLs and Scottish Homes do not have to be registered. It also excludes houses:

- used for holiday purposes
- used by religious orders, the principal occupation of which is prayer, contemplation, education or the relief of suffering¹
- providing care services where the Care Commission is responsible for regulating the property as well as the service, namely:
 - a care home service
 - a school care accommodation service
 - an independent health care service
 - a secure accommodation service
- subject to a control order under section 178 of the Housing (Scotland) Act 1987 (where the local authority has taken over the direct management of the house)

Subordinate Legislation

30. Section 83(7) allows Ministers to modify the list of exclusions by subordinate legislation. This is in the form of an order which requires to be laid before Parliament and is subject to scrutiny by the relevant parliamentary committee.

31. Care needs to be taken in considering whether to add further exclusions. Various groups may argue that they should be excluded, because they feel their arrangements either do not fit the traditional idea of a private landlord or they are already 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 practical arrangements for registration described later in this paper, which are designed to be as light touch as possible, such that any impact on supply is minimised.

32. The working group has recommended that **resident landlords** should not be required to register. Only resident landlords with one or two unrelated lodgers would be entirely excluded from local authority scrutiny by this measure. Landlords with three or more unrelated lodgers would still be subject to HMO licensing, but would not be required to register separately. Resident landlords who also let other houses would be required to register for those other properties.

33. 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.

¹ A religious order is generally considered to be where a person who is a member donates all possessions and income to the order and is fully maintained by the order.

This means it would require substantial effort and resources to enforce the registration requirement.

34. 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. However, we consider that, overall, the potential effect on supply and the practical difficulties of implementation suggest that resident landlords should not be required to register.

35. The working group has also recommended that the owners of houses which are subject to **agricultural and crofting tenancies** should not be required to register. In these cases, the agricultural land and business is the main subject of the let. The house is a secondary consideration, and the respective responsibilities of landlords and tenants are very different from residential letting. The exclusion will apply to tenancies under the Agricultural Holdings (Scotland) Acts 1991 and 2003, the Crofters (Scotland) Act 1993 and the Small Landholders (Scotland) Acts 1886 to 1931.

36. The exclusion of accommodation provided as part of a contract of employment, often called **tied housing**, has also been considered. The argument could be made that the letting in these cases is secondary to the contract of employment. However, there are concerns that such properties are often poorly managed, since employers and employees may be unaware of how the law applies and have no clear agreement on rights and responsibilities with regard to the accommodation. There also appear to be increasing numbers of temporary workers, often from overseas, provided with shared or hostel accommodation, who could benefit from the assurance of registration.

37. At the same time, the use of traditional tied housing on rural estates is declining and properties are being let on ordinary residential terms. Inconsistency would result if one landlord was required to register some of his or her houses and not others, depending on whether he or she employed the tenants or not. If any action was taken against the landlord under the registration scheme, the tied tenants would not benefit.

38. For these reasons, and bearing in mind the light touch nature of the registration process, we agree with the working group's view that registration should apply to tied housing as it does to other housing.

39. It has been suggested that manses, rectories and other similar church properties should be excluded from the registration requirement. These are a form of tied housing (they are defined as job-related accommodation for Council Tax purposes) and given the light touch approach of registration we feel that they should be dealt with in the same way as other tied housing. The potential impact of registration on religious organisations would be reduced by the proposal for reduced fees for charities in section D1.

Guidance

40. The potential exclusions proposed above should not in general create difficulties of interpretation for local authorities and we would not intend issuing guidance beyond an explanation of the effect of the order. If, in the light of the consultation, tied houses were excluded, we would expect to issue guidance on how to assess whether the house is genuinely made available as part of the employment contract.

Questions

Is it appropriate to **exclude** resident landlords and agricultural and crofting tenancies from registration?

Is it appropriate to **include** accommodation provided with employment in registration?

Are there other categories of landlord or property that should be **excluded** from registration?
Please give reasons for any additional proposed exclusions.

Is the proposed approach to guidance sufficient?

B2. Types of Applicant

Legislation

41. Anyone can apply to be registered as a fit and proper person to be a landlord or to act for a landlord. They do not have to have a property to let or manage when they apply. Registration applies to owners, agents and prospective landlords in the following way:

- The owner of any house subject to a lease or occupancy agreement (except those in excluded categories) should be registered.
- If the owner uses an agent in respect of a house listed in the application, the agent must be named on the owner's application for registration. The owner will not be registered unless the agent is also deemed to be fit and proper. If an owner appoints an agent after gaining registration, or changes agents during the three-year registration period, they must inform the registering authority. If the authority is not satisfied with the new agent, the owner will lose their registration.
- Agents may wish to apply for registration independent of any owner. This would mean they could market themselves to owners as having already passed the fit and proper person test. An agent registered in their own right would still have to be named on the owner's application.
- Someone who is considering becoming a landlord may wish to apply for registration in advance, to ensure they will meet the test before investing in property.

Subordinate Legislation

42. The Act does not allow for any changes to the categories of applicants.

Guidance

43. The wording of the Act on the categories of applicants is quite complex and we intend to summarise the provisions in guidance as in paragraph 41 above. In addition, we will provide guidance on the meaning of "person". This is a "legal person" and does not just mean an individual. It includes companies, partnerships etc. which exist with a single legal identity. Where the property is owned by such a corporate "person", the organisation or partnership should submit the application and will be subject to the fit and proper person test.

44. Where a property is jointly owned by more than one individual and they do not together form a "legal person", each person will need to be separately registered, since either person could be unfit to let houses and either person could commit an offence of letting while unregistered. This applies to spouses and civil partners, as well as to individuals who are less closely connected. There may be scope to deal with joint owners as a single applicant, subject to each person satisfying the fit and proper person test.

Question

Do you have any views on how joint owners should be dealt with?

B3. Identifying Landlords

Legislation

45. Landlords are legally responsible for ensuring both that they are registered themselves, and that any agents they use are also listed on their registration. The legal requirement on the local authority is simply to maintain the public register and to deal with the applications which it receives. There is, however, a strong expectation that local authorities will take steps to ensure compliance. This is likely to involve both raising awareness, through general publicity and engagement with relevant groups, and identifying individual landlords to seek an application directly.

Subordinate Legislation

46. The Act does not provide for subordinate legislation on action to secure compliance.

Guidance

47. We expect to issue guidance to local authorities which will help and encourage them to identify landlords and ensure compliance with the registration requirement. The guidance will suggest good practice, derived largely from local authorities' experience in dealing with HMO licensing, and the main points are summarised in the following paragraphs. We expect that it will be supported by the development of a local authority network for the exchange of information and ideas, as has happened for HMO licensing, and encouraged by appropriate funding arrangements (see Section D2).

48. Registration applies to almost all private rented housing. So, unlike HMO licensing, there is no need to enquire about the number of occupants, their relationships or whether the property is their main residence. While this increases the number of landlords and properties to be covered, it should also make the job of identifying landlords easier, and it simplifies the message to be communicated when raising awareness. The most effective approach is likely to comprise targeting all private rented properties, before considering whether any fall within the excluded categories on a case-by-case basis. Possible sources of information, and routes for distributing information, include:

- landlords' groups / forums
- letting agents, student accommodation services
- property guides, websites (formal and informal) and newspaper adverts
- notice boards – in newsagents, supermarkets, community centres, health food shops, etc.

49. Communities Scotland has conducted research to identify the information available on the private rented sector. The report, "Collection and Provision of Private Rented Sector Information"² sets out various sources of information, and also makes recommendations about how local authorities can improve the information they collect. Other recommendations are being considered by the Scottish Executive.

50. The Scottish Executive also expects to advertise the need for registration, building on the success of its Better Renting website (www.betterrentingscotland.com) which summarises

² Available from Communities Scotland: Research Report 53, http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_009005.pdf. A summary is also published as Précis 66, http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_008892.pdf

the responsibilities and rights of landlords and tenants. As with the Better Renting campaign, national publicity is most effective if it is complemented by local advertising and editorial coverage arranged by local authorities. Publicity needs to reach everyone, since people often may not think of themselves as landlords, especially if they are renting their own home while they are living elsewhere. Publicity strategies should consider how to ensure awareness within ethnic minority communities, particularly as some communities are more likely to let to members of their extended family or through close community contacts and may not appreciate when, in these circumstances, they are acting as a landlord.

51. Local authorities themselves also hold a wide range of information, in the form of council tax registers, Housing Benefit records and other registers which may reveal properties which are rented. Section 139 of the Act makes specific provision which is intended to assist the exchange of information. Local authorities will need to satisfy themselves that the use of any personal data they hold complies with the Data Protection Act and other relevant legislation, subject to the effect of section 139, and that any changes to the way in which data is used are covered by the authority's data protection registration.

52. In practice, there should be close working relationships between officers carrying out registration and officers administering Housing Benefit. The key issue for Housing Benefit officers is to ensure that payments are not made for any property where a rent penalty notice is in force. We do not expect large numbers of penalty notices to be served, so this information can be passed from the registration team to Housing Benefit officers on an individual basis as necessary. Working in the other direction, it is an offence for anyone to let a house without being registered, unless they fall into an exempt category. It would therefore be desirable for registration and Housing Benefit officers to arrange to check where Housing Benefit is paid and the house should be registered but is neither registered nor included in an application which is being processed. However, this is a larger task and may not be worthwhile until the initial bulk of registration applications have been processed. It may be possible in due course (subject to the caveats in paragraph 51) to establish IT procedures to carry out automatic data matching between the two systems.

53. The Department for Work and Pensions (DWP) is making detailed amendments to the Housing Benefit regulations to take account of the registration arrangements and is likely to issue parallel guidance to Housing Benefit staff on the interaction between the two regimes.

54. It may also be possible to make use of "intelligence" obtained by other council officers in the course of their work (subject again to the caveats in paragraph 51). For example, staff in building, environmental health, social care and other areas may often become aware that properties are rented. Some local authorities have made good use of such contacts in HMO work.

55. Local authorities will need to establish checks to pick up instances where, for example, the same landlord is identified differently, and to avoid approaching excluded landlords repeatedly as a result of their being identified through different routes.

Question

Are there further sources of relevant information for identifying landlords who let whilst not being registered, which could be highlighted in guidance?

Section C: Dealing with Applications

C1. Information from Applicants

Legislation

56. Section 83 of the Act requires that an application for registration must state:

- the applicant's name and address
- the address of each house they let in the local authority's area
- the name and address of any agent they use for the houses specified
- any other information prescribed by Ministers

Subordinate Legislation

57. The regulation-making power to prescribe other information relates to information needed to determine the application. Local authorities may *request* additional information, but they cannot *require* information, other than that prescribed, as a condition of approving an application. It must be made clear to the applicant which information is mandatory and which is voluntary.

58. In deciding whether to register an applicant, local authorities must have regard to the considerations set out in section 85. This means that they need information on any previous convictions relating to fraud, dishonesty, violence or drugs, any evidence of discrimination in any business activity, breach of housing or letting law, or action in relation to antisocial behaviour affecting any house let by the applicant. Clearly, the simplest way of obtaining such information is to ask the applicant to provide it. Ministers propose to use their regulation-making power to prescribe that the following be provided:

- the applicant's date of birth (for identification)
- details of any licence, voluntary accreditation or registration held, refused or revoked in connection with letting houses in the UK
- a declaration of relevant convictions
- a declaration that the applicant complies with other legal requirements relating to his or her lettings
- the identity of any other joint owner (see paragraph 44)
- whether an organisation applying for registration is a charity or religious organisation (which will qualify for a discounted fee, see paragraph 95)

This additional information will not be included in the public register.

59. The application form issued would be accompanied by a summary of the legal requirements (including any requirements arising from local acts or byelaws) relevant to the applicant's declaration. This would ensure that applicants were aware of their obligations – which research shows is all too often not the case at present. Annex 1 lists the main legal requirements on landlords.

60. The working group considered a range of options for obtaining and verifying the information required from the applicant. Scottish Ministers were clear that registration should be a light touch process, recognising that the majority of landlords do provide a good service, but that many might leave the market, leading to a reduction in supply, if regulation was perceived as too onerous or expensive. An early suggestion was to involve Disclosure Scotland in every application, either requiring the applicant to provide a disclosure, or to

indicate their willingness to do so if required. However, this was considered to be unnecessary in every case, and could introduce significant delays with large numbers of landlords seeking disclosure at the same time. On further discussion, the working group concluded that, in general, the information provided on the application form should be taken at face value.

61. Convictions are, in any case, only part of the picture about an applicant for registration. More information, especially in relation to antisocial behaviour and housing or letting law, is likely to be held by the local authority. We propose that this should be drawn together to provide a list of names and properties about which the authority holds relevant information. Where either a name or an address in this list matches those provided in an application, the proposed IT system will automatically divert that application for individual processing. Any discrepancy between the information on the form and the information held by the local authority could prompt checks on other items as well. The authority can request a Basic Disclosure if this seems necessary in an individual case. A sample of applications could also be called in on a random basis for checking.

62. The types of offences which require to be declared in an application for registration are designed to protect tenants from financial loss, harassment, which may include physical intimidation, and discrimination, as well as to ensure that the property is properly maintained and managed. If local authorities cannot obtain information on such offences, they may not have a full picture of the applicant's suitability as a landlord. This is especially the case if the applicant has not been letting property continuously, but has convictions from previous activity as a landlord. The Rehabilitation of Offenders Act 1974 provides that conviction of a criminal offence with a sentence of less than two and a half years in prison is considered to be spent after a specified period with no further convictions. The specified period varies between 6 months and 10 years depending on the length of sentence. The general rule is that, once a conviction is spent, the convicted person does not have to reveal it and cannot be discriminated against on account of it. However, there are exceptions to this, and it is possible to extend those exceptions by making an amendment to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. We are therefore taking steps to make the necessary amendment to allow applicants to be asked to disclose spent convictions, and for applicants not to be able to omit convictions on the basis that they are spent. Any convictions which are disclosed will be considered by the local authority as part of its overall assessment of the application. The existence of previous convictions does not necessarily exclude an individual from registration.

Guidance

63. The required information would be as stated in the Act and in the regulations and we do not expect that this will need further comment in guidance. However, we expect to issue guidance on seeking further information on a voluntary basis. Such questions must be clearly identified as voluntary, with no conclusions being drawn from a refusal to answer them. The guidance will suggest that any such questions should be for the purpose of obtaining statistical or other data on the private rented sector or for building contacts between the local authority and landlords (and others) who are interested in working with them on, for example, accreditation schemes.

Questions

Taking into account the arguments in paragraphs 58 and 60, do you agree that the information provided by applicants should be taken at face value in most cases? Are there further checks which could be put in place to improve this approach? Would you suggest any alternative approach?

Do you agree that the information listed in paragraph 58 should be prescribed to be included with the application?

Is there any other information that should be prescribed, bearing in mind that it should be information needed to determine the application?

Is the suggested approach to guidance appropriate?

C2. Fit and Proper Person Test

Legislation

64. The key purpose of registration is to ensure that all landlords and agents are fit and proper persons to fulfil those roles. Section 85 sets out core considerations of which the local authority must take note when making its decisions. It must consider, amongst other things:

- any material which shows that the individual has:
 - committed any offence involving fraud, dishonesty, violence or drugs
 - practised unlawful discrimination in any business activity, on grounds of sex, colour, race, ethnic or national origins or disability
 - contravened any provision of the law relating to housing or landlord and tenant relations (summarised in Annex 1)
- any material relating to any action (or failure to act) in relation to antisocial behaviour affecting a house which they let or manage
- any other material relevant to the question of whether the person is fit and proper

65. There is no automatic refusal or withdrawal of registration simply because material exists in any of these categories. The local authority must have regard to these issues, and to any other relevant factors, in coming to a decision on whether the applicant is a fit and proper person to act as a landlord. In essence this is a judgement on the risk that the applicant may fail to act properly in relation to their future letting activity, and the local authority must judge to what extent problems from the past are likely to recur.

66. The test is a balanced judgement by the local authority taking account of the range of information that has come to its attention. The working group considered that this balance of judgement ought to take into account situations where a landlord handed over all effective management of the property to a reputable agent. Such an arrangement, on appropriate terms, could provide the required assurance for tenants even if the owner of the property would not be considered a fit and proper person to let a house on their own. The Housing (Scotland) Bill currently in Parliament includes an amendment to the fit and proper person test requiring local authorities to also have regard to the fact and nature of any agency arrangement when deciding whether an owner is a fit and proper person to be a landlord.

67. Proposed criteria for appropriate agency arrangements are suggested below. It is still the owner, and not the agent, who has the obligation to be registered when letting the house. This is because the owner has ultimate responsibility for what happens to his or her property and for the actions of any agent he or she employs. The amendment in the Bill does, however, meet the point raised by the working group.

68. The Housing (Scotland) Bill also includes provisions by which Scottish Ministers could introduce a code of practice, known as the Letting Code, setting out standards of management for all private rented housing. If this was introduced, compliance with the Letting Code would be another matter for local authorities to take into account. To have an effect, such a Code would need to go beyond the obligations listed in Annex 1. Given the changing state of regulation of private renting, it is not at present clear what further obligations might be desirable, considering that the impact on supply or on the voluntary accreditation approach which is currently being piloted is to be minimised. The Bill therefore provides that Ministers must publish an assessment of the effectiveness of existing obligatory and voluntary arrangements, and consult with relevant stakeholders about the need for a

Letting Code, before introducing one. The Letting Code proposals, as they currently stand, therefore have no direct implications for the introduction of registration.

Subordinate Legislation

69. The Act does not provide for subordinate legislation on the fit and proper person test.

Guidance

70. The approach to the fit and proper person test is at the core of administering registration. Ministers are keen that local authorities should use a ‘light touch’ approach based on risk assessment, which minimises the impact on good landlords and focuses effort on the worst landlords. The legislation and the system described in paragraph 85 are geared to this approach, as is the guidance proposed in this paper.

71. Ministers and the working group have recommended a light touch approach in view of the evidence that most of the estimated 40,000 landlords in Scotland do manage their properties responsibly. Local authorities are generally aware of those landlords who do pose an unacceptable risk to their tenants or the community. The most efficient approach is therefore to accept applicants without further investigation, if no concerns about them have been previously known to the authority or raised by information provided in the application. Additional investigation for all applications would add to the cost of the system, and draw resources away from pursuing specific problems.

72. The light touch approach is backed up by the ability of the local authority to act promptly when it comes to their attention that the landlord may not be fit and proper. They would then apply the following principles to deciding whether this is the case and whether to withdraw registration.

73. There are no considerations in the Act which automatically bar a landlord or agent from being registered. It is always the decision of the local authority as to whether any information which comes before them is relevant and significant in the circumstances of the person’s letting activity. The starting assumption should be that the applicant is a fit and proper person. A person who is not fit and proper may for example present a significant risk to the wellbeing of tenants or the community, and is not prepared (or not able) to take reasonable steps to change the situation. In considering the past actions of the applicant, or any convictions, the local authority should consider whether any problems are likely to occur again, and whether they are likely to affect the applicant’s letting activity.

74. The fit and proper person test does, however, cover a wide range of considerations and offers a powerful tool for local authorities to address the various issues which can cause conflict between landlords and tenants or other local residents. The authority is expected to take into account not only convictions for relevant offences, but any material which shows that the applicant has committed an offence or contravened any provision of housing or letting law. Material which has not been tested in court should, of course, be used with caution, but this provision is important because breaches of housing law are rarely brought to trial. The provisions of housing law and landlord and tenant law also include matters relating to physical standards, such as the repairing standard (where there is a tenancy), requirements relating to gas and electrical safety and fire-resistant furnishings, and compliance with statutory repair notices or improvement orders. Local authorities can also take into account any other material which appears to them to be relevant to the question of whether the applicant is a fit and proper person to act as a landlord.

75. Provisions in the Housing (Scotland) Bill will, if enacted, require the local authority to take account of an agency agreement in determining whether an owner is a fit and proper person to let property. This would mean that a landlord may be considered fit and proper if he or she uses a reputable agent. In such cases, the authority would want to closely scrutinise the terms of the agreement, to ensure that it makes clear that the owner has handed over the management of the property. The authority would also want to maintain a good relationship with the agent and be confident that he or she would inform the authority if the agent's arrangement with the owner changed significantly. Agents, in turn, would want reassurance that, if any action was to be taken in respect of antisocial tenants, the authority would take into account the fact that the agent has taken on responsibility for a particularly difficult situation.

76. In order to determine whether the information provided by the applicant should be taken at face value or whether the application should be subject to further scrutiny, it is desirable for each local authority to identify relevant information in its possession relating to landlords, agents, and properties which are thought to be rented. The identification of information needs to be realised in a systematic way to ensure that all information available to the authority is referenced. It could be difficult to justify the removal of registration at a later stage on the basis of information which the local authority had in its possession but failed to take account of when it granted registration. The evidence collated must also be sound, since a decision to refuse registration, based on such information, is open to appeal. Applicants would, of course, have the right to see and correct any information held about them. **We recommend that local authorities start planning as soon as possible to identify all relevant information in their possession.**

77. We suggest that each local authority establishes a list of names and addresses for which there is information held as in paragraph 76. Each application can then be checked against that list to see whether there is evidence that should be considered. The list of names and addresses is no more than a trigger for scrutinising the information that the local authority holds on file. Inclusion in the database must not in any way be regarded as being in itself the basis for refusal. It is only further investigation of the available information which could lead to refusal. The information available to the local authority should be considered in the round with other information provided by the applicant, and a balanced conclusion made as to whether that person poses any risk as a landlord.

78. In particular cases, local authorities may desire confirmation as to past convictions. This would require the applicant to request the appropriate type of disclosure from Disclosure Scotland. The proposed amendment order referred to in paragraph 62 will also allow standard disclosures by Disclosure Scotland for this purpose. If the local authority suspects that the applicant's declaration as to past offences is incorrect and the applicant refuses to request such a disclosure, the local authority may have sufficient grounds to refuse or remove registration.

Questions

Is it appropriate to start from the assumption that applicants are considered to be fit and proper persons unless there is information, held by the local authority or provided in the application form, to suggest otherwise? Are there alternative ways in which the fit and proper person test could operate, while maintaining a light touch approach?

Is the guidance outlined in paragraph 75 appropriate for determining whether an agency arrangement provides sufficient safeguards to register a landlord who is not otherwise fit and proper?

Are there practical issues around organising information held by the authority and the database that would trigger reference to that information?

C3. Application Processes

Legislation

79. The legislation requires that an application for entry in the register must provide the information required under Section C1 of this paper and be accompanied by the appropriate fee (see Section D). The local authority must consider whether the applicant, and agent if appropriate, is a fit and proper person and notify them of the result. Where the applicant passes the test, the authority must enter them in the register. If registration is refused, notification must also be sent to each property listed on the application as let by the applicant and to any agent named on the application.

Subordinate Legislation

80. The Act does not provide for the application process to be modified by subordinate legislation. However, section 99 of the Act gives Ministers a general power to make regulations requiring local authorities to give appropriate advice and assistance in connection with registration. When proposing that power, one of the considerations was that local authorities might be required to give specified information to applicants at the time of and during the processing of the application.

81. The aim of registration is to improve standards in private renting. In giving local authorities a list of landlords, agents and rented housing, it provides a route by which all landlords can be made aware of their responsibilities and best practice. The arrangements described in Section C1 will make clear to applicants, for many of them perhaps for the first time, the extent of their existing legal obligations. In addition, it is desirable that they should receive information on good practice. We propose to require local authorities to ensure that each applicant and agent is provided with, or has access to, information on good practice. This could include reference to the Executive's Better Renting website and the National Core Standards for Private Landlords published in connection with the pilot of voluntary accreditation schemes.

82. Where a local authority considers that an applicant landlord is not fit and proper to be letting houses but that there are steps that the landlord could reasonably take to become fit and proper, such as contracting with a suitable agent, then the local authority should provide information and advice to the landlord on those steps and how to pursue them. We think a local authority would normally do this anyway but, given the importance of avoiding unnecessary reductions in supply, we propose to make this a requirement through regulations.

Guidance

83. Ministers are keen to ensure that application processes are handled in a consistent way across the country, that the burden of application is minimised and that unnecessary duplication is avoided. This is particularly important for those landlords and agents who operate in more than one local authority area. Guidance will be important in achieving this. This section deals with the basic application process, while Section F2 expands further on the avoidance of duplication.

84. The Scottish Executive is seeking to provide a single internet-based online system for processing applications. This would have a central hub from which people could apply to every local authority while only giving their details once, and view the register for every authority. Access to the system is also expected to be provided through individual authorities' own websites. Local authority registration officers would have full access to all records for

their area, in order to process applications and maintain the register. The system should also allow all authorities to be notified if one authority has concerns about an applicant, so they can share information if appropriate. Local authority staff from other authorities and other departments, including Housing Benefit, are likely to have access to view the status of applications in progress, while the public will only be able to access the register of approved landlords and agents. Provision must also be made for applications to be accepted on paper. It is likely that council staff would enter the details onto the online system, to be processed in the usual way.

85. No offence is committed if a property is let while the owner's application for registration is being considered. This means that an applicant will need to be notified promptly that their application has been received and accepted as a valid application. This requires checking:

- whether any properties listed are excluded (see Section B1)
- that the correct fee has been submitted
- that all the required information has been provided

86. If the online application system is used, it should be possible to provide an automatic acknowledgement when all mandatory fields have been completed and credit card details have been given for the fee payment. Such a system would ask questions to determine whether any properties are excluded, and inform the applicant before any fee was paid. For online applications, it will probably be necessary to issue a copy of the details provided for the applicant to sign and return, to check the application and ensure that it has not been made falsely by another person.

87. For a paper-based application, the local authority would make the checks listed above and send the applicant an acknowledgement, or a note of the outstanding requirements, making clear that the application will not be treated as submitted until these are received. If any properties listed on the application are excluded, the fees submitted for those properties would need to be returned.

88. In line with the approach set out in Section C2, we do not feel it necessary to take any action to verify whether the information provided is accurate. Provision of false information, or failure to include details of any relevant house or agent, is an offence which could not only incur a fine, but would also stand as a contravention of housing law to be considered in any future fit and proper person test. This fact should be made clear on the application form.

89. Having received a valid application, the local authority must consider whether the owner/agent is a fit and proper person, having regard to the considerations set out in Section C2. There is no set procedure for doing this and no time limit within which the local authority must make its decision. Nor is there any procedure for objections to be made or for the applicant to be heard. A person whose application for registration is refused can appeal to the sheriff to overturn that decision. The Act does not limit the time within which an appeal may be made.

90. Authorities will want to consider at an early stage establishing a scheme of delegation for decisions on applications for registration. In general terms, the Scottish Executive would recommend that members should set the overall policy and delegate routine decisions to officers, considering directly only those applications which may not fit clearly within existing

policy. The scheme of delegation will also need to take account of the proposed online application system which will, in effect, automatically approve applications which are not flagged for further investigation.

91. The flow chart in Annex 2 shows a proposed system which local authorities might use when considering an application for registration.

92. There will be a large number of applications to be processed when registration is first introduced. Section F1 highlights issues local authorities might wish to consider when prioritising the processing of these applications.

Questions

Are the proposed requirements for a local authority to provide information and advice to applicants appropriate? Are there additional elements that could usefully be provided?

Do you have any comments on the approach to processing applications proposed in the guidance and the flowchart at Annex 2?

Section D: Costs and Fees

D1. Local Authority Approach to Fees

Legislation

93. 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. It is expected that the aggregate of fees should, broadly, meet running costs for the registration scheme within a local authority. Ministers can make grants to local authorities for the costs of registration, but it is expected that such grants will relate to the initial costs of establishing registration, or other extra pressures that may arise, rather than subsidise the day-to-day operation of the scheme (see Section D2).

Subordinate Legislation

94. Ministers have powers to make regulations about the fees charged by local authorities. The regulations could include limits on fees and different provisions for different situations, including where no fee should be charged.

95. Ministers are keen that fees should be set in a consistent way across the country, but recognise that variations in the scale and nature of the private rented sector mean that local authorities' unit costs in running registration will not be uniform. The approach we propose after discussion with the working group is to establish a fee structure in regulations, with local authorities deciding the actual fees within that structure. The structure we have in mind comprises:

- a principal fee for an application
- a higher principal fee for late applications
- a supplementary charge for each house and agent to be listed
- fees for notifying changes to the register at the same level as the supplementary charge on the first application
- discounts for applications or notifications made on-line
- proportional discounts for landlords with large portfolios
- discounts for landlords with charitable status (which would normally apply to any religious organisation which owns property) and for landlords who are accredited in a scheme acceptable to the local authority (where accreditation does not involve a full fit and proper person test)
- no principal fee where the landlord holds an HMO licence or suitable accreditation which includes a full fit and proper person test, and supplementary charges only for houses and agents not covered by the licence or accreditation

96. A landlord who owns several properties in one area would receive a discount from that local authority. The situation is more difficult where one landlord owns properties in several areas, as these would not be counted all together. We are considering whether an overall discount could be applied for such cases where an online application is made to several authorities. The reduction would then be shared across the fees for all the authorities involved.

97. We propose that a higher fee should be charged for late applications. We do not intend that this should apply to landlords who have been unaware of the requirement to register and have complied as soon as they were made aware of it. Rather, it should act as a

penalty for those landlords who do not apply promptly after being contacted by the local authority, or who fail to provide full information or the correct fee on request. These points would need to be made clear to landlords when they are first contacted, giving a reasonable deadline within which a valid application must be completed.

98. It would be possible for Ministers to set maximum levels for each of these charges. There is not firm information on the likely costs of administering registration, principally because it is difficult to estimate the proportion of applicants who will apply online and the numbers of landlords who will need to be followed up and possibly be the subject of enforcement action. There is therefore the danger that maximum fee levels set in regulations will prove either to be insufficient to meet local authorities' reasonable costs or will be higher than necessary and so encourage local authorities to charge more than they need. Our proposed approach is therefore to use administrative arrangements to achieve suitable fee levels in the first instance (see Section D2), on the basis that further regulations can be made if it proves necessary to limit fees or control the relative levels of different elements of the fee structure.

Guidance

99. The Executive will provide guidance to local authorities on the fee-setting process, expanding on the intentions behind the structure in the regulations and drawing on experience gained from setting fees for HMO licensing. The guidance will be linked to the funding arrangements described in Section D2.

100. Local authorities will need to cost the activities which will be involved in the registration process in order to arrive at an appropriate fee. A list of factors which may need to be taken into account is given at Annex 3. Registration is intended to be a light touch process, to minimise any effect on the supply of rented housing or on rent levels. The procedures recommended in this paper are intended to keep costs to a minimum, so that fees can also be kept low. However, experience with HMO licensing has shown that if fees are set too low, authorities may not have sufficient resources to operate the scheme effectively. Fees must therefore reflect realistic costs.

101. One of the key factors in determining costs will be the number of applications which have to be processed directly by local authority staff, outwith the automatic online system. This will depend on the number of landlords, agents and properties about which the authority holds relevant information. This highlights the importance of identifying that information at an early stage, to determine the scope of the exercise to help calculate the costs of the registration system.

102. The fees to be charged are fees for making an application or an amendment to the register. They are not fees for registration over three years, and are therefore not refundable if registration is refused, or cancelled before the end of the three-year period. The proposed structure provides for a higher principal fee for late applications. This might include applicants who delay in providing required information or the appropriate fee. However, it is not permissible to charge additional fees after a valid application has been received.

Questions

Is the fee structure proposed in paragraphs 95 to 97 appropriate? What would be appropriate levels for discounts? Are there any other circumstances in which a discount should be applied?

Does Annex 3 show all the factors to be taken into account when estimating the costs of registration?

D2. Scottish Executive Funding

Legislation

103. The Act gives Ministers powers to make grants to local authorities in connection with registration, on such conditions as they may determine.

Subordinate Legislation

104. The use of the grant-making powers is at Ministers' discretion and does not involve subordinate legislation or the parliamentary scrutiny that goes with it.

Guidance

105. The broad intention is that the costs of running the registration system should be met from fees, but that the Executive will assist local authorities with the cost of establishing the system. A significant part of registration is the online system described in paragraph 84 and Annex 2, which the Executive will fund both for its provision (including the central server) and continuing technical support.

106. We propose that local authorities should estimate their likely costs and fees in the light of the initial guidance and provide those estimates to the Executive. The Executive would then discuss with CoSLA an appropriate level and distribution of Executive funding. We would aim to do this by November 2005 to allow fees to be finalised prior to applications being invited. A suitable starting point for the distribution would be that local authorities would be grouped into bands according to the number of privately rented houses identified in their area by the 2001 Census, with an agreed allocation of funding being made in each band.

107. The final level of fees will reflect both local authorities' estimated costs and the funding allocated by the Executive, and the discussions with CoSLA could be geared to a target level for the principal application fee and supplementary charge mentioned in paragraph 95. As a preliminary working assumption, we think that a reasonable target would be £50 for the principal fee (payable every 3 years), and £10 for the supplementary charge. This should not be taken as a commitment, but we feel that it is helpful to give an indication of our current thinking.

Question

Is this an appropriate approach to determining central funding for local authorities?

Section E: Action on Breach

E1. Detection of Breach

Legislation

108. A landlord may breach the requirements of Part 8 in a number of ways, leading to a variety of sanctions:

- letting a property without being registered may result in prosecution or a rent penalty notice
- knowingly failing to provide information, or providing false information, required for an application for registration (e.g. agents, properties, convictions), or failure to notify the registering authority of any change of circumstances, may result in prosecution
- if a registered landlord or their agent is found to be no longer a fit and proper person, or if the landlord appoints a new agent who is not found to be a fit and proper person, the landlord will be removed from the register

Subordinate Legislation

109. The Act does not provide for subordinate legislation about detection of a breach of registration requirements.

Guidance

110. Sources of information about houses which are let without registration are mentioned in Section B3. Failure to notify the local authority of the existence of an agent or a property may also be identified from letting adverts etc. Evidence that a landlord or agent is no longer a fit and proper person to let or manage rented property is more likely to arise from complaints from tenants or neighbours, or intelligence from other agencies or local authority teams. If Ministers prescribe in regulations that relevant convictions must be included in the application for registration, owners and agents would also be obliged to notify the local authority of any new convictions. It may be possible for registration teams to establish links with the Police to facilitate exchange of information about complaints and prosecutions. The proposed network of local authority officers will also facilitate exchange of information about action taken against landlords who operate in more than one area.

111. It is important for registration officers to take care when investigating any suspected breach, to ensure that they can defend any sanctions on the basis of sound evidence, especially if the case leads to prosecution or an appeal against a local authority decision. It is recommended that officers should be trained in evidence gathering and making reports to the Procurator Fiscal. Their actions must also be in line with the requirements of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA).

112. There may be circumstances in which a landlord or agent who would not be regarded as fit and proper transfers nominal ownership or responsibility to a third party such as a family member but continues to have practical control over the tenancy. Where this occurs it will usually mean that false information has been provided, for example by failing to declare that the new owner is using the previous owner as an agent. Local authorities should be alert to such situations and be prepared to seek prosecution and withdraw registration where appropriate. They will already have encountered techniques for evading regulatory

requirements in other areas of their work, and the proposed network of local authority officers will provide a means of exchanging good practice on handling such cases.

Question

Is the guidance on the detection of breaches appropriate?

E2. Decisions on Applying Sanctions for Breach

Legislation

113. Various options are available to the local authority when a breach of the legislation has been detected. If the owner or agent is found to be not, or no longer, a fit and proper person, registration may be refused, or revoked. If an unregistered landlord is found to be letting a house, a rent penalty notice may be served. These are decisions taken by the local authority which are subject to appeal to the sheriff.

114. Where a person has committed an offence in connection with registration, the local authority may decide to refer the matter to the Procurator Fiscal. The decision on whether to prosecute lies entirely with the Procurator Fiscal.

Subordinate Legislation

115. There is no provision for subordinate legislation directly affecting the decisions on sanctions. However, there is a general power to require local authorities to provide advice and assistance in connection with registration (see also paragraph 80), and we propose that regulations should require advice and assistance to be given to tenants where it is decided to refuse or withdraw registration or apply the rent penalty.

Guidance

116. Decisions on action to be taken in the event of a breach of the law should be made at an appropriate level, set out in the scheme of delegation mentioned in paragraph 90.

117. In cases where an unregistered owner is found to be letting property, or where a registered owner has failed to declare an agent or a property, it will usually be appropriate to give the owner an opportunity to remedy the situation before imposing any sanction. If no application for registration is received, after the owner has been made aware of the requirement, or if there is repeated failure to notify changes to the information provided, then the local authority will want to take action. In addition to prompting a report to the Procurator Fiscal, such failings may indicate that an owner is no longer a fit and proper person and should have their registration removed.

118. The issues which a local authority must take into account when deciding whether someone is a fit and proper person to let or manage property are largely matters of fact. The individual will normally not be able to remedy what has happened, though there may be mitigating circumstances and it may be that the owner could take action to prevent a recurrence, for example, by putting management of the tenancy entirely in the hands of a reputable agent.

119. If an agent is deemed not to be a fit and proper person, either when they are appointed or as a result of information coming to light at a later date, it would seem reasonable for the local authority to contact the registered landlord, giving them the opportunity to end their association with that agent, rather than immediately removing the landlord from the register. As with the decision on an application for registration, the authority will need to take all the circumstances into account to reach a balanced view on whether registration should be withdrawn.

120. Where an authority takes action against a landlord, this can obviously have an impact on tenants. Removal of registration is not a ground on which the tenant can be evicted,

although the landlord would normally be expected to take action to end the tenancy or occupancy agreement as soon as possible, within the law. This may mean that tenants need advice on other housing options. They may also need support in case the landlord attempts to remove them from the property illegally. When a local authority refuses or removes registration from a landlord or agent, notification must be sent to the occupants of the properties involved. That notification should also include information on tenants' rights and where they can obtain support and advice.

121. Similarly, where a rent penalty is imposed, the landlord may seek to obtain money from tenants despite the suspension of their legal liability for rent. The local authority should monitor situations where this penalty is used, referring any evidence of harassment or illegal eviction to the Procurator Fiscal and providing advice and assistance to tenants as appropriate. This is particularly important when tenants are from vulnerable groups.

122. Where the imposition of a rent penalty is linked to the landlord's failure to address antisocial behaviour by the tenant, and the tenant is not receiving full Housing Benefit, the suspension of rent liability may be seen as a reward for antisocial behaviour. Local authorities should consider whether this is likely to be a significant factor, and consider whether it is appropriate to take action (or further action) against the tenant as well.

Questions

Do you agree that local authorities should be required by regulations to give advice and assistance to tenants whenever they refuse or withdraw registration or impose a rent penalty?

Is the proposed guidance about decision-making by local authorities and consideration of the tenants' interests appropriate?

E3. Processes

Legislation

Removal from Register

123. When a person is removed from the register, the local authority must send them notice in writing of the fact and the date of their removal. Notice must be sent by recorded delivery to the last address given for that person in the register. Notice must also be sent to each property included in that person's register entry, and to anyone the local authority knows to act for that person, provided that it has the agent's name and address. This would include an agent in the register entry and others, for example, an agent who had not been declared to the authority, or one who had been rejected as a fit and proper person. The aim of this provision is to ensure that no demand for rent is made by either the owner or an agent.

124. An owner can appeal to the sheriff against a decision to remove them from the register. There is no time limit for making such an appeal. The sheriff can make an order requiring the authority to enter the person in the register, and stating whether this is under subsection 84(3) (without an agent) or 84(4) (with an agent). The local authority can appeal to the sheriff principal against the sheriff's decision, but must do so within 21 days of that decision.

Rent Penalty Notice

125. The local authority may decide to serve a rent penalty notice if it is satisfied that a house is being let without the owner being registered. The notice must specify the name of the owner, the address of the house and the date on which the penalty takes effect (not earlier than the day after the notice is served). It must also explain that the effect of the notice is that no rent or other charges are payable under any lease or occupancy agreement applying to that house, until the notice is revoked or overturned on appeal.

126. The notice must be served on the owner of the house, and on any person who has a lease or occupancy agreement relating to the house, or who acts for the owner in relation to the letting, if the authority has names and addresses for such people. If the local authority cannot identify the owner of the house, the notice can be served by publication in two newspapers circulating in the area. If the authority knows the owner's name but not their current address, the notice should be served at the house to which it relates, and at any previous address the authority has for the owner. Failure to serve the notice on any tenants or agents does not invalidate the notice.

127. The local authority may revoke the notice if it is satisfied that the house is no longer being let without registration. It must serve notice of the revocation on the owner and on any tenant or agent known to it, as before. The provisions for serving notice if the owner's name or address is unknown do not apply to revocation, since the owner will have been identified in order for the notice to be revoked.

128. The owner of the house may appeal to the sheriff against a rent penalty notice. Any person with an interest may apply to the local authority to have a rent penalty notice revoked, and may appeal to the sheriff if they are unsuccessful. Appeals must be made within 21 days of the date from which the notice takes effect, or the date of the decision not to revoke.

Subordinate Legislation

129. Ministers have powers to make regulations in connection with an appeal against a rent penalty notice. The intended effect of such regulations is that the landlord must, when lodging an appeal, at the same time notify the tenant of that fact and provide specified information. The purpose is to ensure that the tenant is aware that, although he or she has received a copy of the notice from the local authority stating that the rent liability is suspended, the matter is under appeal and the tenant may therefore have to pay back-rent if the appeal is successful. This will encourage the tenant to set aside money which would, but for the rent penalty notice, be paid in rental.

130. If such regulations are made and the landlord does not comply with them, then the court that hears the appeal will not be able to order back-payment of rent even if the appeal is successful. We feel that such regulations would provide a useful protection for tenants in addition to the advice and assistance referred to in paragraphs 120 and 121.

Guidance

131. The processes are set out fully in the Act and guidance to local authorities will summarise those processes as set out above.

132. Tenants who are affected by a rent penalty notice may often be from groups which suffer financial exclusion. It is likely that they will not have access to a bank account, and may find it difficult to budget to save their rent money in case of a successful appeal. It would be helpful for local authorities to ensure that tenants in this position are offered appropriate support, including an appointment with a money adviser. If they are in receipt of Housing Benefit, contact should also be maintained with Housing Benefit administration. If an appeal by the landlord is successful, it will be possible for Benefit to be backdated.

Questions

Do you agree that regulations should be made so that tenants are alerted to the possibility of having to pay back-rent if an appeal is successful?

Are there any other steps that should be taken to help tenants plan for paying back-rent?

Section F: Other Administration

F1. Managing Introduction

Legislation

133. The local authority's obligation to maintain and publish a register takes effect when the registration provisions come into force. No-one is directly obliged to register by a particular date, but a person who lets a house after the registration provisions come into force, without being registered, will be committing an offence unless he or she has made an application which has not yet been determined. An "application" for this purpose is a valid application, with the required information and fee.

Subordinate Legislation

134. The Act's requirements are brought into force by commencement order. The power to make regulations and orders and pay grants is already in effect to allow preparations to be made. It is likely that the necessary regulations and orders will be approved by Parliament in November 2005. This is expected to coincide with the passing of the Housing (Scotland) Bill, bringing into effect the amendments to the Antisocial Behaviour Etc. (Scotland) Act 2004, so that the complete package is in place to give local authorities three months to complete their preparations.

Guidance

135. It is estimated that there are currently around 40,000 private landlords in Scotland, and around 170,000 private rented dwellings. Although not all landlords will apply promptly, local authorities will have large numbers of applications to deal with at the start of the process. Local authorities therefore face two challenges: to accept and process the initial surge of applications, and to bring stragglers into the system as soon as possible, through publicity and direct identification.

136. It is not an offence to let a property provided the owner has submitted an application for registration. However, this only holds true if the application is valid. The first task must therefore be to check that all necessary information has been provided and the correct fee paid, and confirm to the applicant that a valid application has been received. The intention is that this will be done automatically for on-line applications. The proposed online system will also automatically approve registration for applicants where there are no reasons for concern (subject to validation as in paragraph 86). Officers will need to prioritise the processing of those applications diverted to them for further investigation.

137. The various categories of applicant and their tenants will be affected in different ways by any delay in processing. Local authorities also need to consider the interests of landlords and tenants when planning their priorities for dealing with applications. Existing landlords and their agents are likely to suffer the least disruption from any delay, since they can continue to operate while their application is under consideration. However, the small number of landlords who are the subject of significant existing concerns should be dealt with as early as possible. Prospective landlords, who wish to obtain registration before investing in a property, are likely to be most affected by delays to their applications, since they will be unable to start up their business. Agents who wish to be separately registered will also want an early outcome so that they can advertise to new clients. Registering such agents before their client landlords will avoid the duplication and higher cost of assessing them under each

landlord's application, and will provide a pool of agents to whom less suitable owners can be directed.

138. Registration lasts for three years, and, therefore, there is likely to be a repeated upsurge in applications at three-year intervals. This will, however, be less concentrated than the initial round, since the inevitable delay in processing the first set of applications will spread out the date of registration.

139. The Scottish Executive hopes to run an extensive national publicity campaign to make landlords and tenants aware of the need for registration, and link this into more targeted action through national organisations and at local level. Local authorities will need to ensure that the appropriate contact details in their areas are widely publicised, including access to online facilities at the authority's libraries and offices. They should also use their contacts with internal colleagues and external organisations dealing with landlords and tenants, in order to spread publicity about the need to register.

140. The Scottish Executive has identified a lead contact for private landlord registration within each local authority and wishes to work with CoSLA to encourage an active network involving all local authorities for the exchange of good practice and as a route for information on the introduction for registration. In particular, the network will provide a means of contact on the use of the central online system and its continuing maintenance and support.

F2. Passporting and Avoiding Duplication

Legislation

141. We are considering promoting a technical amendment to the Act through the Housing (Scotland) Bill which will facilitate the passporting of applications between HMO licensing and registration.

Subordinate Legislation

142. There is no provision for subordinate legislation designed to facilitate passporting or to avoid duplication.

Guidance

143. With the implementation of registration, there will be three main forms by which the quality of private landlords is recognised or regulated by local authorities: registration, HMO licensing, and voluntary accreditation schemes. There is a need to ensure a consistent approach across these operations and to avoid duplication, with a view to minimising the burden on both landlords and the authority.

144. Logically, registration, as the most basic element of the system, should also be the first. Registration simply confirms that a landlord is a fit and proper person to let property, who complies with the existing statutory requirements. Licensing shows that the individual is a fit person to operate an HMO, which may be considered a more demanding task than general residential letting, particularly where larger, institutional premises are involved. It also requires compliance with more detailed standards. Voluntary accreditation schemes come at the top of the range, recognising those landlords who provide a high standard of property and management.

145. This ordering of elements would suggest that all new landlords should start by obtaining registration. If they subsequently applied for accreditation or for an HMO licence, there would be no need for a further fit and proper person test, although they would still be obliged to satisfy the additional requirements of the higher-level scheme. The various schemes were not introduced in this sequence, however, so ways need to be found in which to deal with existing landlords who already hold HMO licences or accreditation.

146. It is proposed that holders of HMO licences who require to be registered should be passported by being automatically placed on the register of landlords. In obtaining their licence, they will have already been passed as a fit and proper person by the local authority, so this test need not be repeated. They will need to provide a list of all their rented properties, since they may let some which are not HMOs and which are therefore unknown to the authority. Revocation of an HMO licence, or refusal of a renewal application, would lead to a review of their registration, as would any failure to notify changes to their non-HMO portfolio. Otherwise, if they still have an HMO licence when their registration is due for renewal, they would once again be automatically registered. Agents who manage HMOs are named on the HMO licence and subject to the same test as the owner, so the same arrangements with regard to registration would apply to them.

147. New landlords who wish to apply for an HMO licence, and do not let any other property, should be dealt with under HMO licensing and passported into registration. A discount on the HMO licence fee could be considered for registered landlords who move into the HMO sector.

148. We do not consider that all accredited landlords should automatically be passported to registration. This is because not all accreditation schemes involve a fit and proper person test carried out by the local authority. Where such a test has been carried out and it equates to the test required under registration, those who have passed it should not be required to undergo another, similar, test to achieve registration. For other accreditation schemes, it falls to the local authority to consider the standards required for entry, and the mechanisms for verification of those standards, and to decide whether these are sufficient to satisfy the requirements for registration in all cases, or whether they should simply be taken into account as evidence for the authority's decision.

149. A further question concerns passporting between authorities. Registration is the responsibility of each local authority – the legislation establishes the requirement for a local register in each area, rather than for a single national register. This means that it is the task of each authority, individually, to decide whether or not to accept an individual as a fit and proper person to let and manage residential property. However, the Scottish Executive wishes to encourage consistency between authorities as far as is possible. It would be undesirable for a single landlord to be registered by one local authority and refused by another, unless there were clear differences in the circumstances of their lettings in the different areas. We are proposing that the application form should ask whether the individual has been registered, or refused registration, in any other authority area. In line with the approach suggested in Section C2, it would seem appropriate for authorities to accept the application of any person who is registered by another authority, unless they have evidence of specific concerns about that person. If someone has been refused registration by one authority, other authorities could contact that authority (subject to the caveats in paragraph 51) to investigate the reasons, and would then consider whether those issues would justify the refusal of registration in their own area.

150. The design of the online system described in Section C3 is intended to facilitate the exchange of information between authorities and to automate the notification of all relevant authorities when an application is flagged for further investigation by any one of them. Where an application is made by other means, the local authority should enter it into the system to take advantage of this facility.

Questions

Are these proposals for passporting between different regulatory regimes appropriate?

Are the arrangements for consistency between different local authorities appropriate?

ANTISOCIAL BEHAVIOUR NOTICES

Section G: Purpose and Coverage

Legislation

151. The Act permits a local authority to serve an antisocial behaviour notice on the landlord of a “relevant house” in its area, if any person who occupies the house under a tenancy or occupancy agreement, or visits the house, is engaging in antisocial behaviour at or in the locality of the house. Antisocial behaviour for the purposes of Part 7 is behaviour which causes or is likely to cause alarm, distress, nuisance or annoyance.

152. Antisocial behaviour notices cannot be served in respect of houses which are:

- owned by a local authority, a registered social landlord or Scottish Homes
- in specified categories regulated by the Scottish Commission for the Regulation of Care under the Regulation of Care (Scotland) Act 2001
- used by a religious order
- the subject of a local authority control order in terms of section 178 of the Housing (Scotland) Act 1987

Subordinate Legislation

153. The Act gives powers to Scottish Ministers to make regulations requiring local authorities to provide advice and assistance in connection with Part 7 of the Act. We propose to make regulations to the effect that a local authority should provide advice and assistance on the management of antisocial behaviour before serving an antisocial behaviour notice.

154. Part 7 of the Act as it stands does not provide suitable procedures for houses used for holiday purposes. It is possible that holiday accommodation could be the source of repeated antisocial behaviour, for example, because the landlord specialises in letting for particular purposes such as stag holidays. The Act therefore gives Scottish Ministers powers to modify Part 7 by order as necessary to suit the circumstances of holiday lets.

155. The modifications to achieve this would be substantial. They would extend the definition of a relevant house and would alter the basis on which a local authority may serve a notice so that it does not relate to the behaviour of a particular occupant but to a series of occupants in defined circumstances. The way in which such a provision would be constructed would depend on the particular types of problem that it was intended to address and on the practicalities of using antisocial behaviour notices. For these reasons we do not propose to make an order at this stage but to first gather evidence from local authorities and others on when and how antisocial behaviour notices might be needed for use in connection with holiday accommodation, and how best to adapt the existing procedures.

Guidance

156. We intend to issue guidance to local authorities to complement that already provided for the use of other existing tools to combat antisocial behaviour.

157. Local authorities and the police are already used to identifying antisocial behaviour in terms of the general definition in the Act. The definition in Part 7 is slightly different. Behaviour which causes or is likely to cause nuisance or annoyance is antisocial for Part 7 as well as behaviour that causes or is likely to cause alarm or distress (corresponding to the

definition of antisocial behaviour which can be a ground for eviction under the Housing (Scotland) Act 1988). However, behaviour for the purposes of Part 7 has to have that effect at or in the locality of the house.

158. Concerns have been raised about the inclusion of antisocial behaviour that takes place “in the locality” of the house but not actually on the premises. Landlords may be worried that they would be expected to control the behaviour of their tenants, for example, at local shops or pubs. This is not the intention of the provision. The aim is to ensure that there is no artificial cut-off which could prevent antisocial behaviour being addressed if it occurs outwith the precise boundary of the premises. For example, if a tenant was engaging in a campaign of harassment against a neighbour, it would be counter-productive to provide that an antisocial behaviour notice could deal with anything the tenant does while standing in their own garden, but not if they step into the neighbour’s garden, or out onto the public road. Similarly, the antisocial behaviour might consist of repeatedly putting rubbish out in a way which blocks the pavement or creates litter. Local authorities should take care to ensure that issues covered by an antisocial behaviour notice are those which relate clearly to the tenant’s occupation of the house in question.

159. Where there is a problem of antisocial behaviour at a house, the local authority should, with its partners such as the police, consider the options available for dealing with the situation most effectively. This will include the possibility of direct action against the antisocial person, for example with an antisocial behaviour order (ASBO) or by supporting a persecuted neighbour in seeking an injunction. Where the house is let from a private landlord who could be but is not taking action that would help the situation, then it is open to the local authority to deal with the landlord’s approach.

160. Providing advice or training on good practice should be a standard part of a local authority’s engagement with private landlords. This would normally include advice on basic measures to guard against antisocial behaviour, such as making sure tenants are aware of their obligations and the possible consequences of breaching them, and maintaining good relations with neighbours so that any problems can be quickly identified and addressed. Information could also be provided on the assistance available from the local authority to help them deal with any antisocial behaviour by tenants, and private rented sector forums may suggest new or more effective ways to deliver this. Where a landlord has taken advantage of the advice or training opportunities available, through central and local government and through representative organisations, there should hopefully be no need for an antisocial behaviour notice; if one is served, however, there should be no surprises regarding the specific actions required of the landlord.

161. If regulations are made as proposed in paragraph 153, the local authority’s first action in approaching a landlord who is not dealing appropriately with antisocial behaviour would be to give suitable advice and assistance directly. If the landlord does not respond to this, the local authority might decide to use an antisocial behaviour notice. It might alternatively feel that it has the evidence to remove the landlord’s registration and that this would be the best option in all the circumstances.

Questions

Do you agree that regulations should be made requiring the local authority to provide advice and assistance to the landlord before serving an antisocial behaviour notice?

Do you agree that the Scottish Executive should not seek to make regulations relating to holiday lets until more evidence has been gathered?

H: Content of Antisocial Behaviour Notice

Legislation

162. An antisocial behaviour notice must describe the antisocial behaviour which has led to the serving of the notice and require the landlord to take specified action within a specified period. The notice must state the consequences of a failure to take the action, and inform the landlord of the right to request a review.

Subordinate Legislation

163. There is no provision for subordinate legislation about the content of an antisocial behaviour notice.

Guidance

164. An antisocial behaviour notice should be framed carefully. The description of the antisocial behaviour should be accurate and defensible. It should be clear to the landlord exactly what he or she is required to do in order to comply with the notice. If an individual faces a criminal penalty, it could be considered a breach of their human rights if they do not know clearly what they have to do to avoid that penalty. The actions required should also be reasonable, in the sense that it would be reasonable for an averagely competent landlord to carry them out or arrange for them to be carried out on his or her behalf. They might relate directly to the management of the tenancy or might, for example, require the landlord to provide information that might help in seeking an antisocial behaviour order against the tenant. Annex 4 gives illustrations of actions that might be appropriate, but the local authority will decide and specify actions that are appropriate to the detailed circumstances of the individual case.

165. In deciding what actions to require of the landlord, the local authority should take into account the relative costs of different options. For example, it can be very expensive for a landlord to obtain a court order for possession of the house, so consideration should be given to other options which could be effective at lower cost. It will always be important that a local authority can show that it has reached a reasonable decision.

166. Authorities should also ensure that the notice makes clear that only lawful actions should be taken to deal with the antisocial behaviour. This may require additional support and advice to be given to the landlord on how to go about, for example, obtaining possession or investigating complaints.

167. In some situations, the landlord might welcome the use of an antisocial behaviour notice if it is used as a route for the local authority to take over control of a very difficult situation through a Management Control Order (see Section I). This is likely to be a very unusual situation, and the local authority should normally encourage a landlord who is unable to cope to use a reputable agent.

Question

Is the proposed guidance sufficient and appropriate?

I: Action on Failure to Comply

II. Options

Legislation

168. Where a landlord has failed to comply with an antisocial behaviour notice, the local authority can:

- apply to the sheriff for an order as to rental income (a rent penalty)
- apply to the sheriff for a Management Control Order
- take action to tackle the antisocial behaviour and pursue the landlord for expenditure incurred in consequence of the landlord's failure

The authority can also refer the matter to the Procurator Fiscal for prosecution of the offence of failure to comply.

Subordinate Legislation

169. There is no provision for subordinate legislation to alter the range of options or regulate the circumstances in which each is used, except as detailed in Section I4.

Guidance

170. More detail on each of the sanctions that the local authority can pursue is given in the following sections. Where the authority refers the matter for criminal prosecution it is for the Procurator Fiscal to decide whether to proceed. The local authority will wish to consider carefully which of the options to pursue and, indeed, whether there is scope to work constructively with the landlord to obtain compliance before embarking on that route.

171. The local authority would need to assess reasonableness at each stage and be able to demonstrate to the sheriff that the requirement on the landlord was reasonable. In the case of a Management Control Order, it would also have to demonstrate that the order was necessary to enable the antisocial behaviour to be dealt with.

12. Order as to Rental Income (Rent Penalty)

Legislation

172. On application by the local authority, the sheriff may make an order that no rent or other consideration shall be payable or exigible for occupation of the house. The sheriff must be satisfied both that the landlord has failed to comply with the antisocial behaviour notice and that it would not have been unreasonable for the landlord to have done so. The sheriff can also make incidental orders if necessary.

173. The sheriff can revoke or suspend an order on application by the local authority or the landlord, if the sheriff is satisfied either that the action specified in the antisocial behaviour notice has been taken or that it is otherwise unreasonable for the order to continue. The revocation or suspension does not have retrospective effect.

Subordinate Legislation

174. Ministers have power to make regulations in connection with an appeal against an order as to rental income. This has the same purpose and effect as the similar power under Part 8, described in paragraphs 129 and 130 above, although it applies to an appeal against the sheriff's decision rather than an appeal against a local authority notice, and we propose to regulate in the same way.

Guidance

175. Considerations when seeking an order as to rental income are in many ways similar to those relevant to the use of a rent penalty notice under Part 8 (see Section E2). However, there are additional considerations linked to the problem of antisocial behaviour.

176. Where the tenant is paying all or some of the rent, an order as to rental income, though designed to strike at the landlord's income, could have the side effect of appearing to reward an antisocial tenant for his or her behaviour. This is a more significant issue for antisocial behaviour notices than for registration generally, because notices are always and explicitly linked to antisocial behaviour at the house. Local authorities will want to consider this carefully when deciding the action to take. In some cases action will be taken against the tenant as well; in others, it may be judged that the landlord poses the more serious and longer-term problem. If the landlord is registered, the question of whether to remove registration, thus affecting all properties he or she lets, may also be considered. It may be more effective in some cases to focus resources on seeking prosecution of the landlord.

177. This issue of "rewarding" a tenant for antisocial behaviour should not arise where the tenant is receiving full Housing Benefit. The effect of the order on the tenant should be financially neutral, but should have a direct impact on the landlord's income, as intended. Local authorities should ensure good liaison between officers dealing with antisocial behaviour notices and Housing Benefit administrators to ensure that Housing Benefit payments can be stopped.

178. Where the tenant receives more Local Housing Allowance³ than the rent payable, an order as to rental income will mean the tenant no longer receives that excess amount as general income. The local authority should consider the implications where this occurs. It

³ Local Housing Allowance is the reformed Housing Benefit currently being used in Edinburgh and due to be rolled out to all areas by 2008

may simply be a consequence for the tenant of his or her antisocial behaviour. It may in other cases create significant financial problems for vulnerable family members suffering from the impact of undesirable visitors.

179. The Department for Work and Pensions is intending to make regulations and issue guidance to Housing Benefit administrators to cover detailed consequential effects of an order as to rental income in various circumstances relating to Housing Benefit.

Question

Is the proposed level and content of guidance appropriate?

13. Management Control Order

Legislation

180. On the application of the local authority, the sheriff may make a Management Control Order which transfers to the local authority the rights and obligations of the landlord under the tenancy or occupancy arrangements existing at the time of the order. The order may be made for a period not exceeding 12 months. The local authority can recover from the landlord any sums that should have been paid to it in terms of the Management Control Order but were instead paid to the landlord. The sheriff can also make incidental orders. Schedule 3 of the Act provides details about the establishment and operation of Management Control Orders.

181. The sheriff may revoke a Management Control Order, either when the action specified in the antisocial behaviour notice has been carried out by the landlord or the local authority, or when it would in all the circumstances be unreasonable for the notice to continue to have effect.

Subordinate Legislation

182. Scottish Ministers have power to make regulations about the expenditure that the local authority can incur while managing the house under a Management Control Order, and about how they can recover that expenditure.

183. We consider that the local authority should be able to incur and recharge the cost of normal day-to-day management activities, whether it manages the house directly or through an agent such as a Housing Association. It would need to be able to demonstrate the reasonableness of such charges by reference, for example, to the management of its own houses, bearing in mind that the house which is the subject of the order is likely to involve a relatively high management input because of the antisocial behaviour.

184. The local authority's management of the house is for the purpose of dealing with the antisocial behaviour described in the antisocial behaviour notice. Since an order can run for up to 12 months, the local authority should be able to ensure that the tenant has acceptable living conditions meeting at least minimum legal standards, including the Tolerable Standard and the repairing standard. This is likely to involve expenditure on routine maintenance and may also involve expenditure on improvements necessary to meet those minimum standards.

185. However, the local authority's involvement with the property is essentially short-term and it should not use the opportunity of the Management Control Order to raise the standard of the property beyond the minimum necessary, without the landlord's consent. For example, it would be unreasonable for the local authority to carry out capital improvements as part of a wider mixed-tenure programme, at the landlord's expense but without the landlord's agreement. We intend to draw this distinction in regulations.

186. Costs should initially be recoverable from the rental income for the house, but may exceed that income. We feel that surplus costs should simply be recovered as a debt. If necessary the authority could seek an inhibition on the property for unpaid debt.

Guidance

187. Under a Management Control Order, the local authority takes on the rights and obligations of the private landlord. The property does not become part of the authority's housing stock, and legislation relating to social rented housing and the Scottish Secure Tenancy do not apply.

188. Local authorities, or the agents through whom they manage houses subject to a Management Control Order, will be familiar with the management tasks involved, and we do not intend to provide detailed guidance on this aspect of the use of orders. The areas which we would intend to cover in more detail are:

- deciding whether to seek a Management Control Order, in particular demonstrating that it is necessary in order to enable the antisocial behaviour to be dealt with
- the short-term nature of the arrangement and the purpose of the regulations about permissible expenditure as described above
- handling relations with the landlord and tenant with a view to establishing a stable and sustainable arrangement for the future

189. A Management Control Order is in practice an alternative to the rent penalty, as the local authority would not want to take on the landlord role with no entitlement to receive rent. But it demands a substantial input of time and effort and the local authority will not want to engage in this without some reasonable expectation that it will have the desired effect. It will also have to demonstrate this to the sheriff in order to justify the Order, and that suggests careful planning with colleagues involved in dealing with the antisocial behaviour.

190. The focus of the Management Control Order is the landlord role in dealing with the antisocial behaviour identified in the antisocial behaviour notice. The local authority may take action in relation to that behaviour which is not dependent on having management control – for example seeking an ASBO against the occupant concerned. The Management Control Order gives it the opportunity and the obligation to take those other actions which the landlord should have but has not taken. It will want to co-ordinate the various types of action to maximise their combined effect.

191. The local authority's first priority under the Management Control Order should be to take management actions that reduce or eliminate the impact on the community of the antisocial behaviour specified in the notice. But it should also seek to change the situation so that the landlord will manage antisocial behaviour effectively when the property is returned to his or her control. Part of that change may lie in the action taken by the local authority in relation to the particular tenant. The authority should also act to ensure that the landlord has both the capacity to manage effectively – whether as a result of advice, training or the engagement of an agent – and the intention to do so.

192. The local authority may well decide to provide continuing support after the Management Control Order has been revoked, so that the improvement to the situation achieved by the intervention can be sustained in a positive way rather than simply by the threat of a further formal intervention.

193. The landlord may have no wish to change but simply wait until the specific behaviour described in the antisocial behaviour notice has ceased, and then apply for the Management

Control Order to be revoked. This may have implications for the way in which the local authority chooses to detail the behaviour and the actions required in the notice. If the landlord takes this approach without intending to improve his or her management of antisocial behaviour in the future, the local authority may decide that the landlord's registration should be removed.

Questions

Do you agree with the proposals for regulations on the costs which a local authority may incur under a Management Control Order and on how it can recover those costs?

If the proposed guidance sufficient and appropriate? We would welcome comments particularly from those who have direct experience of the type of Control Order available under Part VIII of the Housing (Scotland) Act 1987.

I4. Local Authority Costs for Acting in Default

Legislation

194. Where a landlord fails to comply with an antisocial behaviour notice, the local authority may take steps that it deems necessary to deal with the antisocial behaviour described in the notice. For example, if the landlord fails to provide information in support of an ASBO, the authority may have to employ a professional witness to gather the evidence instead. Subject to regulations, the landlord will be liable for the local authority's expenditure.

Subordinate Legislation

195. Scottish Ministers may prescribe in regulations the description of expenses for which the landlord can be liable and the circumstances in which that liability arises. The regulations may also provide for the notification and collection of such expenditure and for the settling of related disputes.

196. The description of expenses we have in mind is both payments made to third parties for services necessary to deal with or contribute to dealing with the antisocial behaviour, and the reasonable administrative and other costs of the local authority in taking steps, or arranging for others to take steps, necessary to deal with the behaviour. The local authority's costs should be able to include a reasonable allocation of relevant overheads.

197. The liability for the cost should only arise if the local authority has given the landlord reasonable notice of its intention to act and the fact that the landlord would be held liable for the cost. The notice should include the local authority's estimate of the costs that could be incurred, but the liability would be for the actual costs and not limited to the estimate. The landlord should be given the opportunity to take the action specified in the antisocial behaviour notice before the local authority proceeds further.

198. We do not intend specifying time periods for the notifications described in the previous paragraph. There may well be a need to act urgently. If there is a need to act and the landlord is not available in time, the local authority should be able to proceed. We propose that recovery should be through a normal debt process, which will allow the court to test the reasonableness of the local authority's actions in creating the liability.

Guidance

199. Guidance will expand on the purpose and effect of the regulations.

Question

Do you agree with the proposed arrangements for liability for expenses and for their recovery?

J: Processes

Legislation

200. The following are the main aspects of processing antisocial behaviour notices not already covered in Section I:

- The local authority must send a copy of an **antisocial behaviour notice** to any known agent of the landlord; publish the notice if it cannot identify the landlord; or send it to the relevant house and the landlord's last known address if the current address is not known.
- The landlord has a right to have the antisocial behaviour notice reviewed by the local authority, by a person who was not involved in the decision to serve the notice and who is senior to the person who made that decision. The reviewer may confirm, vary or revoke the notice and may suspend the notice pending completion of the review. The local authority must give the landlord reasons for the decision taken on review.
- The local authority must give a copy of an **order as to rental income**, or of an order revoking or suspending that order, to any tenant and any agent, provided the local authority is aware of their name and address. No other aspect of the lease or occupancy agreement is affected by the operation of Part 7.
- The local authority must inform both the landlord, if practicable, and the tenant, or the occupant under an occupancy arrangement, of the making of a Management Control Order and give a copy to any known agent of the landlord. When a Management Control Order is revoked, the party which applied for the revocation (which could be the local authority or the landlord) must notify the other party and the occupiers as soon as practicable after the revocation.

Subordinate Legislation

201. There is no provision for subordinate legislation to alter these procedures.

Guidance

202. It will be for local authorities to interpret and apply the legislation on procedures and we do not feel that further detail is necessary in guidance.

RESPONDING TO THE CONSULTATION PAPER

Section K: Information and Documents for Response

K1: Response Information

This section explains how to respond to this consultation and how the Scottish Executive uses consultation in general. It also outlines which documents you will need to use when responding.

How to respond

203. We would appreciate **electronic** responses, where possible. To respond electronically, follow the weblink to the online response form, provide details in the required fields, fill in the parts of the questionnaire in which you are interested and click 'submit'.

204. If you do not have access to the Internet, or prefer not to respond in this way, you can submit a **handwritten** response. To do this, tear out or photocopy the Respondent Information Form (Section K3) and the questionnaire (Section K4), fill in your responses and mail them to the address indicated in paragraph 209. The Respondent Information Form **must** be filled in and returned (see paragraph 213 for further information on this).

205. If you wish to submit a response which is electronic, but not web-based (using a **Word** file, for example), we can arrange to email you the Respondent Information Form and questionnaire in another format. Please contact Lucie Dunn (telephone: 0131 244 5571; email: lucie.dunn@scotland.gsi.gov.uk) to request this.

206. The questionnaire is provided to assist you in structuring your response. However, if you do not choose to use it, please indicate clearly in your response which questions or parts of the consultation paper you are responding to. This will greatly aid us in our analysis of the responses received.

When to respond

207. We are inviting written responses to this consultation paper by **23 September 2005**. We would welcome earlier responses if possible. To ensure that all responses can be taken into account before regulations are laid in Parliament, we regret that responses received **after** 23 September will **not** be considered.

Where to send your response

208. If you do not choose to use the online response form, please send your response to:

housingconsultation@scotland.gsi.gov.uk

or

Lucie Dunn,
Scottish Executive,
Private Sector and Affordable Housing Division,
Area 1-H,
Victoria Quay,
Edinburgh,
EH6 6QQ.

Keeping informed about consultation

209. The Scottish Executive plans to organise a number of free seminars where delegates will have an opportunity to discuss the proposals in the consultation paper with Executive officials. If you would like to be notified of these events, please contact Lucie Dunn (contact details as above).

210. This consultation, and all other Scottish Executive consultation exercises, can be viewed online on the consultation web pages of the Scottish Executive 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.

211. The Scottish Executive now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). 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 SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and thus to be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

212. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. To ensure that we treat your response appropriately, please **complete** and **return** the Respondent Information Form (Section K3). 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 Executive 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.

213. The Scottish Executive will acknowledge receipt of all consultation responses.

Subsequent steps in the process

214. Where respondents have given permission for their response to be made public (see the Respondent Information Form), these will be made available to the public in the Scottish Executive Library by 28 October 2005 and on the Scottish Executive consultation web pages by 4 November. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE 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?

215. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach decisions on the detailed implementation of private landlord registration and antisocial behaviour notices. We aim to lay the necessary Regulations and Orders before Parliament in October, and to finalise guidance by early December. A report on this consultation will also be produced and made available on the Scottish Executive website. The requirement for registration, and the associated offences, will come into force in March 2006.

Comments and complaints

216. If you have any general queries about this consultation, please contact Lucie Dunn (contact details as above). If you have any specific comments or complaints about how this consultation exercise has been conducted, please contact Roger Harris, by email (roger.harris@scotland.gsi.gov.uk), or at the following address:

Roger Harris,
Scottish Executive,
Private Sector and Affordable Housing Division,
Area 1-H,
Victoria Quay,
Edinburgh,
EH6 6QQ.

K2. The Scottish Executive Consultation Process

217. Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

218. The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

219. Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses⁴. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

220. All Scottish Executive consultation papers and related publications (e.g. analysis of response reports) can be accessed on the Scottish Executive consultations webpage (see footnote for address). The views and suggestions detailed in consultation responses are analysed and used as part of the decision-making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise, the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

221. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

222. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

⁴ <http://www.scotland.gov.uk/consultations>

K3: Respondent Information Form

REGULATION OF PRIVATE LANDLORDS UNDER THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

Please tear out or photocopy this page, complete the details below and return it with your response. This will help ensure we handle your response appropriately.

Name:

Organisation (if applicable):

Postal Address:

.....

1. I am responding (please tick **one** box):

as an individual

on behalf of a group/organisation

go to Q2a/b and then Q4

go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in the Scottish Executive library and/or on the Scottish Executive website)?

Yes

go to 2b below

No, not at all

we will treat your response as confidential

2b. Where confidentiality is **not** requested, we will make your response available to the public on the following basis (please tick **one** box):

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation **will** be made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No

we will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

K4. Questionnaire

Please tear out or photocopy the following pages, fill in your responses and return them to the address indicated in paragraph 208.

Registration of Private Landlords

Section B: Coverage

B1. Exclusions

Is it appropriate to **exclude** resident landlords and agricultural and crofting tenancies from registration?

Is it appropriate to **include** accommodation provided with employment in registration?

Are there other categories of landlord or property that should be **excluded** from registration? Please give reasons for any additional proposed exclusions:

Is the proposed approach to guidance sufficient?

B2. Types of Applicant

Do you have any views on how joint owners should be dealt with?

B3. Identifying Landlords

Are there further sources of relevant information for identifying landlords who let while not being registered which could be highlighted in guidance?

Section C: Dealing with Applications

C1. Information from Applicants

Taking into account the arguments in paragraphs 58 and 60, do you agree that the information provided by applicants should be taken at face value in most cases? Are there further checks which could be put in place to improve this approach? Would you suggest any alternative approach?

Do you agree that the information listed in paragraph 58 should be prescribed to be included with the application?

Is there any other information that should be prescribed, bearing in mind that it should be information needed to determine the application?

Is the suggested approach to guidance appropriate?

C2. Fit and Proper Person Test

Is it appropriate to start from the assumption that applicants are considered to be fit and proper persons unless there is information, held by the local authority or provided in the application form, to suggest otherwise? Are there alternative ways in which the fit and proper person test could operate, while maintaining a light touch approach?

Is the guidance outlined in paragraph 75 appropriate for determining whether an agency arrangement provides sufficient safeguards to register a landlord who is not otherwise fit and proper?

Are there practical issues around organising information held by the authority and the database that would trigger reference to that information?

C3. Application Processes

Are the proposed requirements for a local authority to provide information and advice to applicants appropriate? Are there any additional elements that could be usefully provided?

Do you have any comments on the approach to processing applications proposed in the guidance and the flowchart in Annex 2?

Section D: Costs and Fees

D1. Local Authority Approach to Fees

Is the fee structure proposed in paragraphs 95 to 97 appropriate? What would be appropriate levels of discount? Are there any other circumstances in which a discount should be applied?

Does Annex 3 show all the factors to be taken into account when estimating the costs of registration?

D2. Scottish Executive Funding

Is this an appropriate approach to determining central funding for local authorities?

Section E: Action on Breach

E1. Detection of Breach

Is the guidance on the detection of breaches appropriate?

E2. Decisions on Applying Sanctions for Breach

Do you agree that local authorities should be required by regulations to give advice and assistance to tenants whenever they refuse or withdraw registration or impose a rent penalty?

Is the proposed guidance about decision-making by local authorities and consideration of the tenants' interests appropriate?

E3. Processes

Do you agree that regulations should be made so that tenants are alerted to the possibility of having to pay back-rent if an appeal is successful?

Are there any other steps that should be taken to help tenants plan for paying back-rent?

Section F: Other Administration

F2. Passporting and Avoiding Duplication

Are these proposals for passporting between different regulatory regimes appropriate?

Are the arrangements for consistency between different local authorities appropriate?

Antisocial Behaviour Notices

Section G: Purpose and Coverage

Do you agree that regulations should be made requiring the local authority to provide advice and assistance to the landlord before serving an antisocial behaviour notice?

Do you agree that the Scottish Executive should not seek to make regulations relating to holiday lets until more evidence has been gathered?

Section H: Content of Antisocial Behaviour Notice

Is the proposed level and content of guidance appropriate?

Section I: Action on Failure to Comply

I2. Order as to Rental Income (Rent Penalty)

Is the proposed guidance sufficient and appropriate?

I3. Management Control Order

Do you agree with the proposals for regulations on the costs which a local authority may incur under a Management Control Order and on how it can recover those costs?

Is the proposed guidance sufficient and appropriate? We would particularly welcome comments from those who have direct experience of the type of Control Order available under Part VIII of the Housing (Scotland) Act 1987.

I4. Local Authority Costs for Acting in Default

Do you agree with the proposed arrangements for liability for expenses and for their recovery?

END OF QUESTIONNAIRE

Annex 1: Legal Obligations on Landlords

The material to which a local authority must have regard, under section 86, in deciding whether an applicant is a fit and proper person to act as a landlord, includes material which shows that the applicant has “contravened any provision of the law relating to housing, or landlord and tenant law.” This Annex provides a brief guide to the range of issues which are covered by those legal requirements.

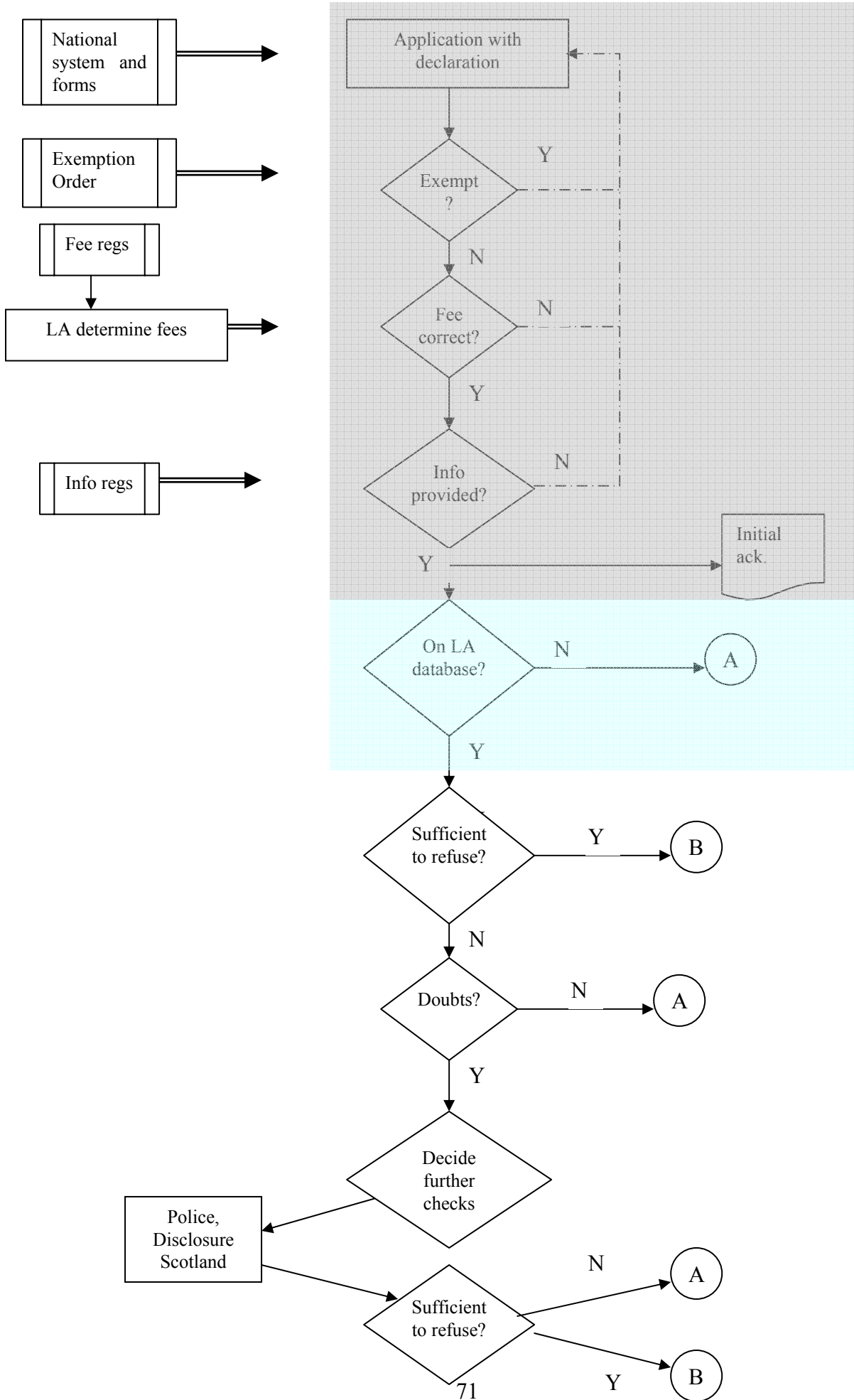
The exact obligations on landlords depend on the type of tenancy or occupancy arrangement in place. We hope to provide a more detailed description of legal requirements to accompany the registration guidance.

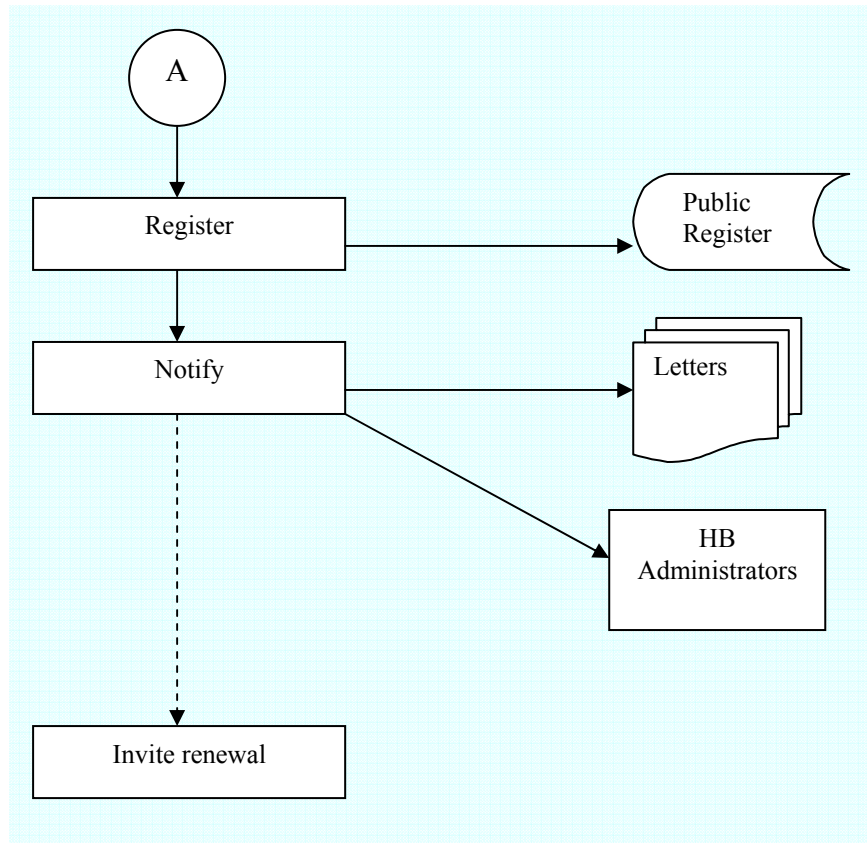
- The tenant must be given details of the landlord’s name and address, and the name and address of their agent, if they use one. Where an assured or short assured tenancy exists, a written agreement must be provided.
- Correct legal procedures for seeking possession of the accommodation (if the tenant does not leave when they are asked to). In most cases this means giving proper notice, and ultimately getting a Court Order. Under the Rent (Scotland) Act 1984, it is a criminal offence to evict a tenant unlawfully, or to use harassment to try to make them leave.
- Various rules apply to the charging and handling of rents and deposits:
 - No charge must be made for a person to have their name put on a list for accommodation
 - No charge must be made for drawing up or copying the tenancy agreement
 - If a deposit is required, it must be no more than the equivalent of two months’ rent
 - If rent is paid weekly, the landlord must issue a rent book and enter a receipt for each weekly payment
 - The tenant cannot be required to pay rent before the start of the rental period to which it relates
 - Proper procedures must be followed before changing the amount of rent to be charged
- The landlord must keep the accommodation wind- and watertight and generally fit for human habitation (in practice this normally means the house should meet the Tolerable Standard). In particular, the landlord is responsible for keeping the structure and exterior of the property in good repair, including drains, gutters and external pipes, and must make sure the installations for the supply of water, electricity and gas, and the appliances for heating the house and heating water, are kept in good repair and in working order. (The current Housing (Scotland) Bill proposes to extend this to cover fixtures, fittings and furnishing provided as part of the let, and to require the landlord to carry out an inspection prior to the beginning of every tenancy).
- The landlord must have any gas appliances checked annually by a CORGI registered contractor, and obtain a gas safety certificate. He must provide tenants

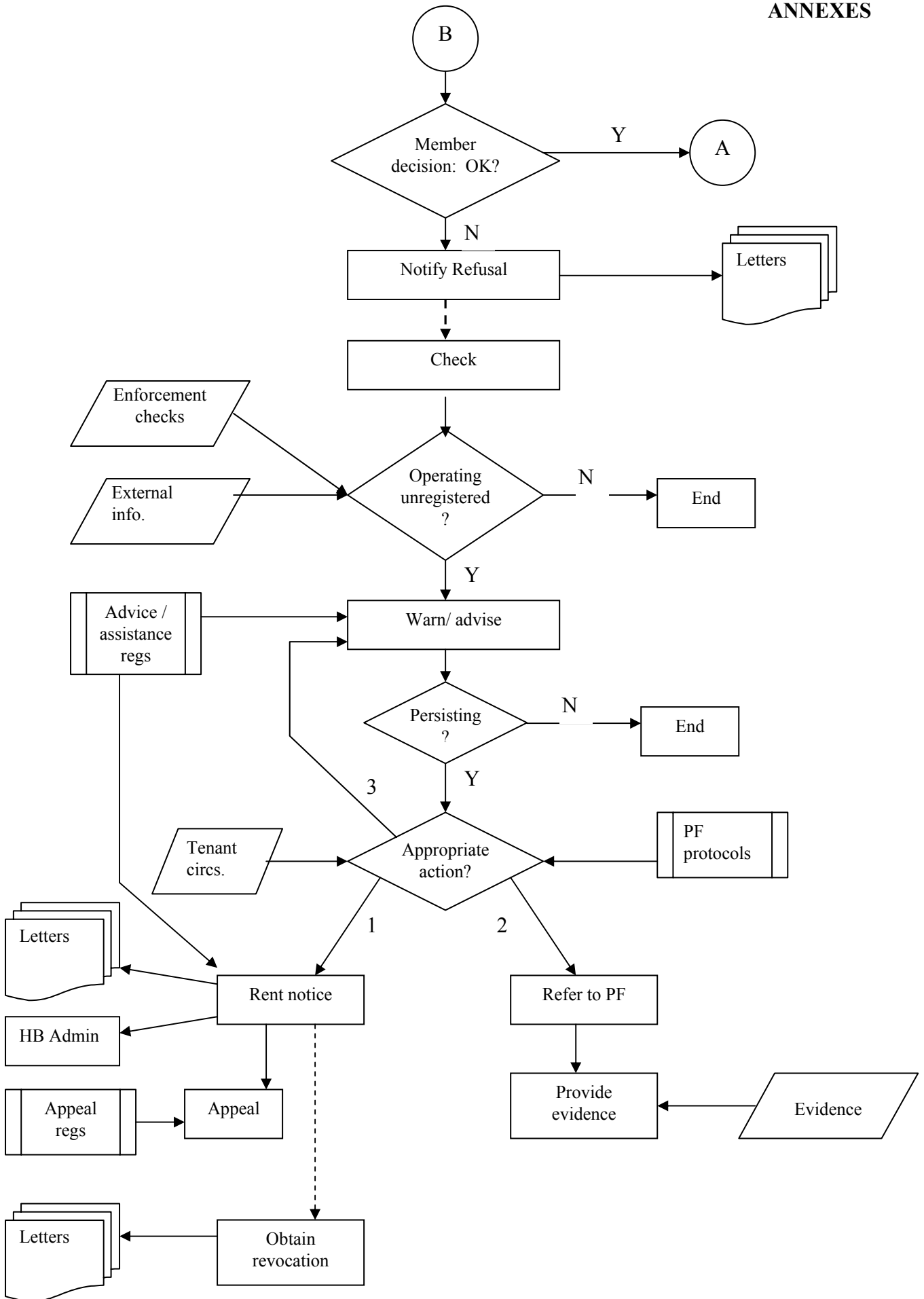
with a copy of the certificate, and keep the records for at least 2 years (Gas Safety (Installation and Use) Regulations 1998).

- All furniture and furnishings provided by the landlord must comply with the Furniture and Furnishings (Fire)(Safety) Regulations 1988.
- The landlord has a general duty to make sure that the electrical installations and appliances provided as part of the let are safe to use (Electrical Equipment (Safety) Regulations 1994).
- The landlord must comply with any statutory notices requiring property he or she owns to be repaired, brought up to a higher standard, closed or, if it is an HMO, provided with additional facilities or means of escape from fire.
- The owner of an HMO must hold a licence from the local authority and must comply with the conditions of that licence.
- In addition, the local authority must consider whether the applicant has “practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business”.
 - The Equal Opportunities Commission provides advice on its website for organisations and individuals who provide accommodation.
 - The Commission for Racial Equality has produced a Rented Housing Code of Practice to help landlords comply with their duties under the Race Relations Act 1976.
 - The Disability Rights Commission provides extensive guidance for suppliers of goods and services (which includes landlords) on the duty to make reasonable adjustments to make their services accessible to disabled people. The Disability Discrimination Act 2005 will extend the requirements on landlords to make reasonable adjustments or provide auxiliary aids and services to enable a disabled person to enjoy all the facilities of their home. Guidance on these requirements will be produced in due course.

Annex 2: Flowchart of Application Processing







Annex 3: Activities to be Included in Calculation of Fees

It is intended that the fees charged by local authorities to landlords reflect the cost of operating the registration system. The following list suggests activities which should be taken into account when fees are being set:

- **Identification and Awareness**
 - Identifying possible private rented properties
 - Issuing information about registration
 - Answering enquiries about registration and registered properties
 - Printing of publicity material
 - Officers presentations to interested groups, attendance at public meetings, etc.
 - Setting up and servicing regular liaison meetings with landlords, tenants, local residents, etc.
 - Enforcement activity leading to applications
- **Internal Co-ordination Groups**
 - Between Council teams, and Member/Officer groups
- **Processing Applications and Monitoring**
 - Drawing up database of names and addresses to trigger additional scrutiny
 - Publicising access to online application system in council offices and libraries
 - Issuing paper application forms as required
 - Dealing with applications flagged for further scrutiny
 - Notifying outcome of applications
 - Dealing with appeals against refusals to register
- **Monitoring and Renewal**
 - Monitoring IT application system
 - Maintaining public register
 - Dealing with amendments to the register
- **Enforcement**
 - Dealing with complaints or information raising concerns about registered landlords
 - Providing advice and assistance to landlords on antisocial behaviour
 - Notifying removal from register, dealing with appeals
 - Gathering evidence about unregistered landlords
 - Serving rent penalty notices, notification and appeals
 - Preparing reports for Procurator Fiscal
 - Attendance at court
 - Following up convictions

It is suggested that local authorities make information on the activities covered by the registration fee available to the public, in order to make clear all the activities which are involved in operating the system.

Annex 4: Actions a Landlord Could Take in Relation to Tenants' Antisocial Behaviour

The actions open to a private sector landlord for the better management of antisocial behaviour include, for example:

- enforcing terms in the tenancy agreement
- setting clear standards
- advising tenants (for example, on reducing noise nuisance)
- investigating complaints
- requesting the local authority to initiate an ASBO
- providing information in support of ASBO proceedings
- seeking an interdict
- seeking possession at the end of the term of the tenancy
- seeking possession on the grounds of antisocial behaviour

The Housing (Scotland) Bill removes a barrier to the last of these in the case of assured and short assured tenancies. Whether or not a landlord engages an agent to manage the property on the landlord's behalf, the landlord still remains responsible for these actions.

Annex 5: Implementation Advisory Group for the Antisocial Behaviour etc. (Scotland) Act, Parts 7 And 8 (August 2004 – Present)

SEDD representatives

Roger Harris (Chair)
Jean Waddie

**Arneil Johnston Public Sector
Housing and Facilities Consultancy**

Douglas Johnston (from October 2004)

**Association of Residential Letting
Agents (ARLA)**

Brian Adair

CoSLA representatives

City of Glasgow Council
Edinburgh City Council
North Lanarkshire Council
Adviser on Housing Benefit

David Webster
Michael Thain
Matt Costello/Robert Steenson
Peter Meehan

Department for Work and Pensions (DWP)

David Barr (from September 2004)
Maggie Simpkin (October 2004)

Scottish Association of Landlords (SAL)

John Blackwood

Scottish Consumer Council (SCC)

Jennifer Wallace (from September 2004)

Annex 6: List of Consultees

Scottish Local Authorities
 Convention of Scottish Local Authorities

Landlord and Property Agent Organisations

Association of Residential Letting Agents
 CKD Galbraith
 Council of Mortgage Lenders
 Law Society of Scotland
 Letting Solutions Ltd.
 MacLeod and MacCallum
 National Association of Estate Agents
 National Federation of Residential Landlords
 National Landlords Association
 Property Managers Association Scotland
 Real Estate Agents Edinburgh
 Royal Institution of Chartered Surveyors
 Scottish Association of Landlords
 Scottish Rural Property and Business Association
 Solicitors' Property Centres
 Turcan Connell

Other Housing and Community Interests

Chartered Institute of Housing
 Children in Scotland
 Citizens' Advice Scotland
 McClure and Naismith
 SACRO – Safeguarding Communities, Reducing Offending
 Scottish Association of Law Centres
 Scottish Association for Mental Health
 Scottish Council for Single Homeless
 SFHA
 Shelter Scotland
 Scottish Youth Parliament

Education Sector

Association of Scottish Colleges
 Association for Student Residential Accommodation
 Coalition of Higher Education Students in Scotland
 National Union of Students
 Edinburgh University Students' Association

NHS

Scottish NHS Confederation

Equality Groups

Age Concern Scotland
 Commission for Racial Equality
 Disability Rights Commission

Engender
Equal Opportunities Commission
Help the Aged
Ownership Options in Scotland
Positive Action in Housing (PATH)
Scottish Consumer Council
Scottish Disability and Housing Network
Scottish Women's Aid
Scottish Women's Convention
Young Scot
YouthLink Scotland



SCOTTISH EXECUTIVE

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ISBN 0-7559-4719-3

