

REGISTRATION OF PRIVATE LANDLORDS

Guidance for local authorities (April 2009)

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PART 1: STRATEGIC OVERVIEW

Key Points:

- ❖ **Landlord registration is a key policy to increase standards in the private rented sector**
- ❖ **Information collected through the scheme increases local authority knowledge about the sector**
- ❖ **Registration provides an effective tool for tackling bad landlords**
- ❖ **For the majority of landlords who operate lawfully, the scheme should be light touch**
- ❖ **The success of the scheme relies on effective local administration**
- ❖ **Local authorities have a duty to provide advice and assistance to both landlords and tenants**

The Scottish Government is committed to ensuring a well-managed, thriving private rented sector in Scotland that provides quality and security for tenants. Mandatory registration is an important strand of the Government's wider policy framework for the private rented sector, designed to secure good management, good standards and good behaviour across the sector, and by so doing to reinforce the positive contribution it makes to meeting housing need in Scotland.

Other major policy and legislative initiatives include modernisation of the Repairing Standard for private landlords; establishment of a Private Rented Housing Panel and Committee to support tenants who are in disputes over repairs with their landlord; production by Communities Scotland of National Core Standards for private landlords; support for the national voluntary accreditation scheme, Landlord Accreditation Scotland; giving tenants the right to adapt their houses to suit disabled occupants; and placing the system for mandatory licensing of Houses in Multiple Occupation (HMOs) in a new, more appropriate, statutory housing framework.

The importance of the private rented sector in Local Housing Strategies has been underlined by good practice research on the collection and provision of private rented sector information. Successful mandatory registration will help local authorities to improve their Local Housing Strategies by filling gaps in their knowledge of how many private rented sector properties are in their area and where they are located. This will, in turn, lead to more relevant and effective local policies to improve, regulate and support the contribution that the private rented sector makes to local economies and local housing markets.

Registration gives local authorities an effective means of dealing with the worst performing landlords who, by their behaviour and attitude, mismanage their properties, or fail to act in respect of their anti-social tenants and cause misery for their own tenants, other tenants, neighbours and communities. Such landlords tarnish the image of the great majority of landlords (and agents) who operate lawfully and would wish to see the negative image of their business replaced by recognition of the vital role they play in a modern housing market. As a result of targeting action on the worst landlords and agents, mandatory registration will, along with the other measures mentioned above, help to improve the reputation, image and professionalism of the whole private rented sector.

Registration represents a challenge for local authorities. While it provides a mechanism for local authorities to take action and deal with rogue landlords, it must be delivered with as light a regulatory touch as possible. The great majority of landlords and agents are not expected to fall foul of the registration process. They should pass through registration with no challenge to their competence or fitness to own and manage rented accommodation.

The skill for authorities is in identifying the minority of owners and agents meriting scrutiny, further investigation and for some, the decision to refuse registration. Authorities are expected to focus effort on finding the landlords who are evading registration and investigating those who are attempting to mislead in the information they provide.

The over-riding benefit of implementing the registration system should accrue to private tenants. Tenants should not be overlooked by local authorities in implementing the registration system. Indeed, duties are placed on authorities to provide information, advice and assistance when registration is refused or revoked and when a Rent Penalty Notice is served. [In addition, local authorities have a duty to provide advice to tenants and prospective tenants on letting practice and landlord registration when an enquiry is received.](#)

Registration should remove the worst landlords and agents from the rental market. A well measured approach by authorities to implementing registration, with a positive attitude to communicating with, and supporting, landlords who need some assistance to achieve registration, should encourage new entrants to the market.

PART 2: MANAGEMENT OVERVIEW

Key points:

- ❖ **Local authorities have a statutory duty to deliver landlord registration**
- ❖ **A sound management and organisational framework is needed to support successful implementation of the scheme**
- ❖ **Co-operation between council departments and joint working is a key part of delivery**
- ❖ **Robust and clear processes are required for effective delivery**
- ❖ **Appropriate delegated authority for decision making should be established**
- ❖ **Performance should be regularly monitored**

The Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act') sets out the basics of registration and the consequences of a failure to register. Some of the detail is set out in associated regulations. [The 2004 Act and associated regulations can be found at www.opsi.gov.uk](#) – a list of the regulations can be found at Annex 5.

For mandatory registration to be effective, a sound organisational and management framework must underpin the legislative duties and administrative procedures. There are a number of management issues that a local authority should consider to ensure that landlord registration is implemented as effectively as possible. Regular review of procedures and processes will ensure ongoing effectiveness of delivery.

- Success of registration requires co-operation between departments. It would be helpful if a statement was conveyed to all departments emphasising the authority's **explicit commitment to registration at the corporate level.**
- Senior management in the lead department for registration should **convey a clear message** to staff responsible for the registration process that the aim is to target most resources on identifying and dealing with the worst owners and agents while, for the others, the system should be applied with a **light touch**. The message should underline the point made throughout this guidance that registration should be a means of ensuring that all fit and proper landlords and agents are aware of basic good practice and undertake to comply with their legal obligations in letting. It should be made clear that registration is not meant to undermine the local rental market or discourage new landlords from entering the market.
- The **establishment of a joint officers working group** with members pulled from a range of departments across the local authority has proved useful to many authorities dealing with registration. Such groups have helped to facilitate inter-departmental liaison, agree information transfer arrangements and trouble-shoot problems that arise.
- Registration also places a duty on the local authority to **provide advice and assistance to tenants and to owners and agents** in particular situations. [Arrangements should be in place to ensure that this duty is complied with locally](#) and that processes are in place to help with vulnerable and minority groups where necessary. Management should ensure that suitable training is given where required.

- It is important that all local authorities have established **the appropriate level of delegated authority** to managers or officers for rejecting an application, revoking registration, applying a Rent Penalty Notice and submitting a report to the Procurator Fiscal's office. **Written procedures should be in place that outline the relevant decision making powers.**
- There is no single rule of thumb by which to decide whether an applicant is fit and proper to own or be responsible for letting property. Judgement is essential. Weighing up the pros and cons of conflicting information is inherent to the scrutiny process. Senior management must therefore take steps to ensure that decisions are **transparent, fair, non-discriminatory** to any minority or disadvantaged group and **defensible** against criticism and appeal. **All local authorities should have written procedures for their fit and proper test and should have established a clear process for scrutinising and deciding on applications.**
- Like other regulatory activities, it is important to establish a means of **monitoring and reviewing the performance** of registration activity. Responsibility for what is monitored and who reviews performance should be made clear. The IT processing system assists with quantitative measurement of basic information, such as the number of approvals and rejections. **This information is also monitored by the Scottish Government on a monthly basis.** It may also be useful to obtain 'consumer' feedback from registered owners and agents, and from private tenants, in order to assess the success of delivery.
- The strategic overview noted the benefit that registration work could bring to Local Housing Strategies. Successful mandatory registration provides the authority with a rich database of information about private landlords and their properties. However, registration work and housing strategy work are unlikely to be carried out by the same section, or, in some cases, within the one department. It will be necessary to ensure access to, or receipt of, data output tables by officers involved in **updating the Local Housing Strategy.**

Finally, it may be necessary to adapt the handling of registration, **for example, to deal with large volumes of applications.** The following particular points should be borne in mind:

- The IT system is intended to minimise the work involved in bulk processing; encourage web applications, for example, through libraries and other facilities
- Consider the use of agency staff for data entry of paper based applications **and basic processing tasks**
- The system works best if relevant information is organised in advance, so that applications needing detailed assessment can be diverted. It is important that any applications which are diverted to review are dealt with in a timely manner. **Authorities should remember that it is straightforward to revoke a registration if further information becomes available after the application has been approved**
- Confirmation of a valid application protects the applicant's legal position.

- Clear processes should be in place for dealing with different types of applications. If necessary, establish a strategy for clearing any backlog of applications, including ‘historic’ cases.
- Focus particularly on the legal requirements
- Wherever possible, inform applicants and potential applicants of timing in order to avoid unnecessary enquiries

This document is intended for use by local authorities as guidance in the implementation of private landlord registration. The guidance will be updated on an ongoing basis, with revisions available on the Scottish Government website:

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

PART 3: ADMINISTRATION OF REGISTRATION

3.1 INCLUSIONS AND EXCLUSIONS

Key points:

- ❖ In general, owners of privately rented property are required to register
- ❖ Agents can also register but are not required to do so
- ❖ Agents who do not register must still be assessed as fit and proper when acting for a landlord
- ❖ There are some exemptions to the requirement to register. If there are any doubts about whether a landlord is required to register, council legal teams should be consulted.

This section is designed to help authorities correctly identify included and excluded properties. Only if all the properties that a private landlord lets are exempt from registration will the landlord not need to register.

In many cases this should be a straightforward decision, but there will inevitably be individual cases that prove more complex. **Authorities should consult their legal services** for advice or contact registration colleagues in other authorities who may be able to help.

The scope of inclusions

In general terms, a person requires to be registered if he or she is the **owner** of residential property which is subject to a lease or occupancy agreement and is not specifically excluded. Local authorities and Registered Social Landlords (RSLs) are not required to register under this legislation. **The Crown is also exempt from the requirement to register.**

A lease or occupancy agreement will fall within the scope of the 2004 Act if the let is to an ‘unconnected person’. An ‘unconnected person’ is defined by the Act as, ‘a person who is not a member of the family of the relevant person’. The definition of a family member is to be construed in accordance with the Housing (Scotland) Act 2001 (the 2001 Act), section 108¹.

Where a property is let to a family member, this will fall outwith the scope of the 2004 Act.

An occupancy agreement has lesser force than a lease and is defined in the 2004 Act as ‘*any arrangement under which a person having a lawful right to occupy a house permits another, by way of contract or otherwise, to occupy the house or as the case may be, part of it: but does not include a lease*’.

As stated, registration has wide coverage and applies to all let residential property not specifically excluded.

❖ Agents

¹ See Annex 6

The owner of a registrable property must also declare any agent who acts for him or her in relation to the letting. **It is not compulsory for agents to register in their own right**, but they may find it more convenient for them and cheaper for their clients to do so. Experience shows that the majority of agents prefer to register.

Where an agent registers, he or she will pay a principal fee. Where a landlord registers and includes the details of that agent with his or her application, there will be no additional fee payable for this. If an agent is registered, then they will be able to supply the landlord with a registration number which can be used in the landlord's application for registration.

If a landlord applies for registration and specifies details of an agent who is not separately registered on the application, an additional principal fee (the 'agent fee') will be payable **by the landlord**. Local authorities can **encourage** agents to register separately to avoid an additional cost burden on their client. The agent fee compensates a local authority for the fit and proper checking activity they must carry out to establish that an unregistered agent who is specified within a landlord's application is fit and proper. An agent who is assessed as fit and proper under these circumstances should **not** become registered once the fit and proper checking activity is complete. **An agent can only become registered if they apply for registration in their own right**. Local authorities should establish their own processes for undertaking this fit and proper checking activity for agents.

It is good practice if a landlord specifies an unregistered agent within their application for the local authority to alert the landlord to the fact that they will need to pay the agent fee.

An agent may be:

- a commercial agency
 - a lettings agency
 - a property management agency
 - an estate agency
- an organisation such as a charity
- an individual or individuals, for example, a couple who manage a rented house on behalf of a relative who is working abroad
- an employee of an owner organisation (e.g. a factor for an estate that is a trust or a company)

The Antisocial Behaviour etc. (Scotland) Act 2004 defines an agent as being 'a person who acts for the person in relation to the lease or occupancy arrangement'.

It is worth considering the following principles when considering whether or not a person is acting as an agent and therefore needs to be assessed as fit and proper in relation to a landlord's application.

- Individuals, or agencies, supplying services to the landlord will normally only need to register if they are actually involved with the tenants on a regular basis.
- Any persons who carry out administration of a legal nature that does not involve direct contact with the tenants would not require to register..
- Contractors carrying out works to the property should not require registration.

Annex 6 provides a checklist to help local authorities and landlords to identify the typical activities that an agent may carry out. This could also be used as a guide for distribution to landlords and agents.

Local authorities should consider putting in place passporting arrangements for agents who are licensed to manage HMO properties.

Further details on Agents are provided at Section 3.4.

❖ **Tied housing**

Owners of tied housing, where accommodation is linked to the occupier's employment, must also be registered (excepting the specific exemption for manses, rectories etc. defined later in this section). A tied housing arrangement would exist where, for example, an employee is required to live on-site or the provision of housing is a term of the employment contract.

❖ **Tenant Farmers**

Owners of houses on an agricultural holding that are occupied (i.e. lived in) by a tenant farmer do not usually require registration (see section on Exclusions). However, in respect of any other houses on the land within the lease that the tenant farmer sublets (including tied housing within an agricultural holding) registration is required.

It is the owner (in this case normally the landowner) of the property who requires to register as the landlord. This applies whether the property is provided on a tied basis, provided rent free to former employees or their families or let under normal residential practices.

The tenant farmer, as the landlord of the sub-tenancy, is deemed to be an agent of the owner for the purposes of registration and will require to be assessed by the local authority as 'fit and proper'. The simplest way to do this is for the tenant farmer to apply to be registered as an agent. The owner can also give details of the agent on his or her application to register.

❖ **Bed and Breakfast establishments**

There is no requirement for Bed and Breakfast establishments to register where the primary purpose is holiday accommodation.

❖ **Joint owners**

Joint owners of rented residential properties require to be registered.

Where a house is jointly owned by more than one individual and they do not together form a 'legal person', (see the note at end of the section) each person will need to be separately registered, since either person could be unfit to let residential properties and either person could commit an offence of letting while unregistered.

Each joint owner will complete a registration, but discounts apply to the registration fee. A 'lead' joint owner should be designated by the owners from amongst their number. The lead owner will pay the principal and property fee for each of the jointly owned properties. See Section 5 for further details.

An applicant is obliged to declare if there are any joint owners of a property in their application for registration. The requirement to identify any joint owner is satisfied by supplying the name and address of the joint owner. Any other information which is provided about the joint owner is provided on a non-mandatory basis. Every joint owner is responsible for the submission of their own application and is required to make their own declarations, for example, that they comply with all housing legislation.

All joint owners will be subject to the 'fit and proper' test. If one of the joint owners fails the fit and proper test, the expected outcome would be that the application is rejected. However, before finalising its decision, the authority should consider if the appointment by the joint owners of a registered agent under an acceptable management contract would provide sufficient confidence to allow the person who failed the test to be acceptable for registration (see section 3.4 *The fit and proper test*).

Individual joint owner applications can be assessed separately and there is no need to wait for all joint owners to submit their applications before reaching a decision on one. If one joint owner fails to submit an application for registration the property cannot be let; if it is let all the joint owners would be committing an offence and enforcement action can be taken.

Where one of the joint, successfully registered, owners also owns and lets residential properties in his or her own name, these separately owned residential properties must be listed in the applicant's registration details. If the let of these properties commences after the applicant's initial registration, the applicant will be able to make the necessary amendments and fee payment online, or by contacting the local authority. Such an owner will have either already paid a principal fee, or been entitled to a 100% discount on the principal fee. The owner is registered and therefore not liable to pay an additional principal fee on the properties which are owned separately in that local authority area.

❖ **Unincorporated Trusts**

Unincorporated trusts are not separate legal personalities and should not be treated as such for the purposes of registration. In law, members of an unincorporated trust jointly own property. Therefore, for the purposes of registration, individual members of an unincorporated trust are required to register as joint owners. Appropriate joint owner discounts will apply.

Exclusions

Exclusions from registration are limited. Exemptions are included within section 83(7) of the 2004 Act which has been subsequently added to through regulations. Authorities need to be careful judging some types of exclusion as there are ‘boundaries’ on the scope of the exclusion.

Types of exclusion:

- lets to family members (as defined in section 108, Housing (Scotland) Act 2001)
- life rents
- houses for holiday use
- properties used by religious orders and organisations
- accommodation with care
- houses subject to control orders
- agricultural and crofting tenancies
- resident landlords
- transitory ownership (executors, heritable creditors and insolvency practitioners)

❖ **Life rents**

This is a recognised legal arrangement whereby a person does not own a property but retains a right to use it for the rest of his or her life; this use may commonly entail occupancy. Such a situation may arise for example where a parent continues to occupy the family home which has been inherited by their children.

❖ **Houses for holiday use**

Residential properties which are let or occupied for holiday purposes are exempt from registration. Distinguishing genuine from sham holiday use can be difficult, and the facts of each individual case must be scrutinised. It may be helpful to refer to the definition adopted by HM Revenue and Customs reproduced below. However, this is not specifically referenced in the registration provisions, and the particular details of each case must be considered.

“The conditions to be met are set out in ICTA88/S504 (3) and all three must be satisfied if a letting is to qualify:

- the accommodation must be available for commercial letting to the public generally as holiday accommodation for not less than 140 days
- the periods for which it is so let must amount (in the aggregate) to at least 70 days

- for at least seven months the property must not normally be in the same occupation for more than 31 days

A property that is let on a long-term basis cannot be regarded as available for holiday lettings. A property that is owner-occupied for part of the year cannot be regarded as available for letting while it is owner-occupied. Nevertheless, the words 'in the same occupation' should be interpreted as 'let in the same occupation' and do not preclude relief to an owner who moves out of their home during the holiday season and returns to live there when the season is over".

❖ **Religious orders and religious organisations**

Accommodation used by members of a religious order, the principal occupation of which is prayer, contemplation, education or the relief of suffering² is exempt from registration. Typical examples are a convent and a monastery. Registration is required if accommodation is occupied by persons who visit the order for a period of time, for example, to seek temporary accommodation or respite care, but are not themselves members of the order.

Religious organisations require to register and to list properties they own that are let or occupied **except** where the house is owned by an organisation which has the advancement of religion as its own principal purpose and the regular holding of worship as its principal activity and the house is occupied by a person whose principal responsibility is the leading of members of the organisation in worship and preaching the faith of that organisation.

❖ **Accommodation with care**

Accommodation providing care services is exempt from registration, 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

❖ **House subject to a Control Order**

A residential property, that is an HMO, which is in local authority management due to the service of a control order under section 178 of the Housing (Scotland) Act 1987, is exempt from registration.

² 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.

❖ **Agricultural, small holding and crofting tenancies**

See previous sections on tied housing and tenant farmers.

Residential properties which are subject to an **agricultural or small holding tenancy** and occupied by the tenant under that tenancy do not require to be registered. The exclusion applies 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.

All crofts are exempt from registration. The croft should be occupied by the crofter him/herself and should not be sublet. If there are allegations of a sublet then the matter should be dealt with by the Crofters Commission. If proof of exemption is required then copy leases can be obtained that clearly state that they are made under the exempt legislation. All crofts have a croft number and this should be available from the crofter or from the Crofters Commission itself.

❖ **Resident landlords**

Where a resident landlord has lodgers living with him or her in his or her principal or only home under a tenancy or occupancy arrangement, that house is exempt from registration. Any resident landlord with more than two lodgers is covered by HMO licensing. Authorities should be wary of sham resident landlord arrangements designed to avoid registration. The exemption only covers the landlord's main residence; if the landlord lets any other houses he or she must be registered and the houses must be recorded.

Ministers have agreed to keep the position on resident landlords under review and to receive further evidence about how the resident landlord sector is operating. It is acknowledged this sub-market is informal, fluid and not very visible. It would however be helpful if authorities could maintain a record of any problems with exempt resident landlords that are brought to their attention and of any knowledge they have about whether the sector is contracting or expanding.

❖ **Transitory ownership**

There are particular circumstances where the ownership of a house is short-term and part of a transitory process for which exemption from registration is granted:

- The house is in the lawful possession of a heritable creditor for a period not exceeding 6 months as the result of an action for repossession to realise a debt secured on the house
- The house is part of an estate of a deceased person and is being held by an executor for a period not exceeding 6 months for the purposes of dealing with the deceased person's estate.
- The house is in the hands of a person acting as an insolvency practitioner and has been so for a period not exceeding 6 months.

For all of the above, retention beyond 6 months for the purpose of renting or continued management requires registration.

Note: Insolvency practitioners who are appointed by the Accountant in Bankruptcy are not required to register as they are covered by Crown immunity.

❖ **Sharia compliant home ownership**

There are several arrangements currently available to Muslims which help them to fund the purchase of a home without breaching the requirement of Sharia law that they should not make or receive interest payments. Some of these arrangements may appear to involve renting when on the face of it they are not situations that are intended to be regulated by registration. However, the variety of possible arrangements suggests that in some cases tenants who should be protected might not be protected if specific provision was made about Sharia-compliant arrangements.

Many Sharia-compliant arrangements involve an intermediary buying the house under normal lending arrangements and then selling it on at a specified price that covers their whole costs and is payable in agreed installments. In other cases the ownership of the house remains with the intermediary until the installments have been paid, when the ownership transfers to the occupant for a nominal sum. In this latter arrangement the installments may be described as rent.

The existence in this situation of a contract which allows the occupant to live in the property is likely to be an occupancy arrangement for the purposes of registration. The landlord will have legal rights which affect the occupant's position and registration provides the occupant with protections. The variety of possible arrangements means that it would be inappropriate, on the basis of current information, to apply a blanket exclusion. It is for the local authority to make its own decision in the light of the legislation and the particular circumstances.

It would be helpful if local authorities could give the Scottish Government details of any cases where there are difficulties over the interpretation of Sharia-compliant arrangements, so that consideration can be given to further regulation if necessary.

❖ **Prospective owners of rented property**

Any person who intends to enter the letting market as a landlord should be advised to seek registration prior to purchase of a property to check whether they are judged to be a fit and proper person for letting purposes before they commit themselves to the investment. It would be helpful if that information was provided in local authority publicity material. Local authorities should seek to cooperate with local Buy to Let (BTL) mortgage lenders, Independent Financial Advisers and solicitors to ensure the clients of those organisations are properly briefed on the registration scheme and their future responsibilities as landlords.

It is an offence for a landlord to communicate with prospective tenants with a view to entering into a lease or occupancy agreement without having applied for registration or being registered.

❖ **Companies, organisations, trusts and charities: the applicant as a ‘legal person’**

A company, partnership, incorporated trust etc. registers as a ‘legal person’. Employees, directors, or partners of such a body do not need to register individually as either landlord or agent. This is because they are regarded as an integral part of the ‘legal person’. The company etc is liable for those actions of its employees, which are carried out on its behalf.

However, because an employee, director or partner is an integral part of the ‘legal person’, information about such an individual is clearly relevant material for the purposes of the fit and proper person test. The local authority may well choose to ask for the names of any employees etc. who will undertake day-to-day management on behalf of the employer, and to ask for further information about those individuals if necessary, such as relevant convictions. Refusal to provide such information would be a relevant consideration.

A resident factor is a particular example of an employee, director or partner, who could be part of a separate business providing agency services under a contract. A resident factor should not be dealt with as a separate category, but as an employee etc. or agent according to the particular basis on which that factor is carrying out management on behalf of the owner.

3.2 IDENTIFYING LANDLORDS

Key points:

- ❖ It is important that local authorities actively promote registration
- ❖ A variety of methods can be used to publicise the scheme
- ❖ Local authorities should make use of a variety of data sources to identify potentially unregistered landlords
- ❖ It is important to make sure that all landlords are aware of the requirement to register and how they can do this

This section provides local authorities with guidance on the identification of landlords in their area.

Landlords are legally responsible for ensuring that they are registered and that any agent they use is also listed on their registration application form. The legal requirements on the local authority are to prepare and maintain the public register, to deal with the applications received and provide advice and assistance to landlords and tenants as required by the Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005³ and by the Private Landlord Registration (Advice and Assistance) (Scotland) Amendment Regulations 2008 (see section 3.6 *Provision of information and advice*).

In practice, there are advantages to a local authority in adopting a proactive stance, by seeking to identify and support landlords and to advise them about the obligation they have to apply for registration. In addition, local authorities have an important role in ensuring that the scheme is properly enforced.

There are two major elements to ensuring that landlords are aware of their requirement to register:

- **promotion and publicity** so that landlords come forward to register
- **active searching of data sources** and information sharing with local authority colleagues to identify landlords and inform them of their duty to register and that they are committing an offence in operating without registration

Promotion and publicity

Each authority must decide how best to target its promotion and publicity work. In particular, many amateur or ‘informal’ landlords, for whom renting is a small-scale activity incidental to their main occupation or business, and owner occupiers who rent their own home while they are living or working elsewhere may be unaware of their obligations as a landlord. The importance of raising awareness of those obligations cannot be over-emphasised. It is important that local strategies for raising awareness of registration are regularly reviewed to ensure continued effectiveness, particularly as new landlords come onto the market.

³ See Annex 6

Local authorities have the major role in this promotional endeavour, but are supported by the Scottish Government. Key routes to promoting awareness among landlords include activity by :

- Scottish Government
- local authorities
- landlord and agents' organisations
- mortgage and financial advisers and insurers
- tenants
- Private Rented Housing Panel

❖ **Scottish Government**

The Scottish Government maintains web-based content to provide answers to a wide range of questions on registration, including information on the registration process and making contact with local authorities – www.betterrentingscotland.com.

The Scottish Government has produced publicity material, a guide for landlords and a leaflet for tenants and neighbours. Local authorities have access to the electronic version of this information material and are encouraged to tailor it with their local authority specific information, print it and disseminate. [Leaflets will be updated as required.](#)

Organisations such as the Scottish Association of Landlords (SAL), the Scottish Rural Property and Business Association (SRPBA), the Association of Residential Letting Agents (ARLA) and the Council of Mortgage Lenders (CML) have assisted in disseminating information about the registration scheme.

❖ **Local authorities**

Publicity needs to reach everyone who is, or may be, a registrable landlord or agent.

A variety of methods of promotion are available to local authorities to reach out across the wide spectrum of private landlords and agents that is encompassed by the mandatory registration process. Authorities may find it helpful to contact organisations, such as those listed in *Annex 5*, for assistance in making contact with landlords in their authority area.

Not all landlords have computer/internet access. This should be recognised by local authorities and addressed through the provision of advice and information by a variety of methods.

It is strongly recommended that local authorities provide:

- **written promotion material** for distribution
- **web based information**
 - explaining registration
 - identifying a contact officer
 - providing a link to the centralised registration application form

- opportunities for **direct contact** between landlords and the local authority
- **encouragement** for online applications for registration
- **support for local landlord forums**

Written material should make clear where public access to computer/internet facilities can be obtained, for example in libraries. Landlords who struggle to access or use the internet should be encouraged to make use of such public internet facilities as are available. Landlords could also access support by contacting:

- any landlord membership organisations with which they have links
- advice and information agencies
- youth information services (for landlords within the relevant age group)

Landlords may be able to seek technical support from staff in libraries overseeing the use of internet facilities. Local authorities may feel there is benefit in offering support to landlords who are facing difficulties in making an online application for registration.

The production of **promotional literature** about the registration scheme is fundamental. Written material in the form of attractively designed, ‘plain English’ leaflets, pamphlets and posters is essential for distribution through as wide a range of relevant outlets as possible (see below).

The incidence of private landlords from ethnic minority communities should be assessed. Where it is clear that this would assist, authorities should make available leaflets and pamphlets translated into appropriate languages and/or arrange for translators to be available in order to handle enquiries and concerns from members of ethnic communities – from tenants as well as from landlords. The Scottish Government will arrange for translated material if there is sufficient demand at national level. Local authorities should identify and communicate their needs to the Scottish Government in the first instance.

The Scottish Government has produced leaflets for adaptation and use by local authorities. If authorities also wish to produce their own material, it is advisable that this is kept simple and not over-detailed. The Scottish Government material may be used as guidance on content.

Local authorities should consider presenting information in such a way as to encourage landlords and agents to seek registration as a positive step. Emphasis could be placed on the benefits to landlords of removal of the worst landlords from the sector and the credibility to be drawn from acknowledgement that they are fit and proper to be landlords.

Publicity distribution points need to be mapped out. Any point within the authority that a private landlord or tenant might access should display leaflets and pamphlets, such as:

- all local housing offices
- Housing Benefit and Council Tax offices
- planning departments

- development departments
- social work offices
- environmental health offices
- libraries
- information services (including youth information services)

The possibility of including a leaflet with a **mail-shot** that may be made by the Housing Benefit section to private landlords can be discussed with colleagues in that section.

Promotional literature could be supplied to:

- Citizens' Advice Bureaux and other advice and information services
- estate agents
- property agents
- letting agents and other factors
- solicitors
- local banks and insurance agents
- landlord organisations or forums - all members should receive a copy and be asked to 'spread the word' amongst other landlords.

Advertisements publicising the registration scheme could be run in the lettings sections of local newspapers and property guides and the authority's communications office could produce **articles** to run in local commercial and free newspapers and newsletters. If private lets are advertised in any shop notice boards, an advertisement about registration can also be placed. Local **radio stations** could also be contacted.

Increasingly, house lets are advertised on the internet and authorities can run searches of formal (company) sites and informal sites set up by individual landlords for lets in their area. Authorities may also wish to consider making contact with the managers of such sites with a view to posting an advertisement or information on the site.

For authorities with **landlord associations** or joint landlord-council forums, registration officers can make presentations. In authorities with no associations or forums, it may be fruitful to hold one or more well-publicised **public meetings** to promote and explain the scheme.

Active searching of data sources

There is a variety of potential sources of information about private landlords that authorities can consider or request access to in order to identify landlords and their residential properties. Most are internal to the authority but some are external organisations.

For a variety of statutory and other purposes, local authorities hold a range of information about landlords, their residential properties and tenants. Information will be kept in formal registers as well as in more informal lists. Information will certainly be held by the housing service, but may also be held by other services and departments of the authority. Accessing such information to identify and contact landlords can assist in increasing compliance with registration.

There can be real value in establishing an **officers' working group** involving all the departments or sections within a local authority that potentially hold useful data. Such a group, co-ordinated by the lead registration officer, could have a remit to:

- co-ordinate data identification
- discuss issues of data sharing in relation to data protection legislation
- facilitate cross-checking, matching and verification of information drawn from diverse sources.

Authorities should cross-check to avoid approaching landlords who are not required to register as they are exempt, or making multiple approaches to landlords who have already been contacted or even registered. This can occur because of data input errors or inconsistent approaches to spelling a landlord's name in different databases. Joint working will facilitate avoidance of these kinds of errors.

However, in accessing and sharing any personal information, authorities must satisfy themselves that the use of this data complies with the provisions of the Data Protection Act 1998 and other relevant legislation and also with the terms of section 139 of the Antisocial Behaviour etc. (Scotland) Act 2004. Authorities must also ensure that any changes to the way in which data is used are covered by the authority's data protection procedures. Section 139 makes specific provision which is intended to assist the exchange of information on matters relating to antisocial behaviour⁴.

Potentially useful sources of information which officers might wish to consider include:

- housing benefit records
- house waiting list applications
- Private Sector Housing Grant applications
- temporary accommodation address lists
- housing advice centre records (e.g. from private tenant complaints)
- antisocial behaviour files
- a rent deposit scheme list
- owners in receipt of a factoring service
- private sector leasing schemes
- consumer complaints records from environmental/protective services
- council tax records

If not already in place, local authority officers should seek to establish the appropriate protocols for the access of such information and seek advice from their solicitors to ensure that there is compliance with the relevant legislation. Officers may wish to refer to Information Commissioner guidance: <http://www.informationcommissioner.gov.uk>. Care must be taken to ensure that the effort involved in accessing any of these sources (assuming no data protection barriers) is commensurate with the benefit to be gained.

⁴ See *Annex 6*

³ 'Collection and Provision of Private Rented Sector Information' (2005) Communities Scotland Research Report 53

There are also potential **external data sources** that authorities can consider. While recognising that some organisations may be restricted by their confidentiality rules, authorities can discuss and explain the purpose and use to which any released data will be used and how its confidentiality will be preserved. It may be that certain organisations cannot release any information but they will agree to inform all their customers or clients about registration and its mandatory nature for almost all landlords. Leaflets about registration should be given to such organisations for distribution.

Some data sources will be found in the same locations or in the same organisations at which promotional material and publicity have been directed. Possible external sources include:

- university and college accommodation services
- letting agents
- property management agents
- estate agents
- local solicitors
- lettings sections of local newspapers
- internet websites
- shop window adverts
- Citizens' Advice Bureaux
- housing aid centres
- tenants associations

❖ **Landlord and agents' organisations**

Many landlords across Scotland may be affiliated to national or local organisations, or involved in landlord forums. National organisations such as those listed in *Annex 5* are able to provide assistance in making contact with local organisations, or in the dissemination of materials to member landlords directly. Professional agents may be involved with associations such as the Association of Residential Letting Agents (ARLA).

An effective approach would also include the encouragement of landlords and agents to spread awareness of the requirement on landlords to register within the sector.

❖ **Mortgage and financial advisers**

The Buy to Let (BTL) market is a potentially difficult segment of the private rented sector about which to obtain information. Information on investors who have become, or plan to become, landlords is important.

The 'visibility' of such landlords can be low and their awareness of registration may be poor. The best way to engage with this type of landlord (other than by the general publicity campaign work) is to make contact with local mortgage lenders, independent financial advisers and insurance providers who deal with BTL products. Providing client data would breach client confidentiality, but they are very unlikely to want their clients to commit a criminal offence by not being registered. They can therefore be expected to accept registration

information materials to pass on to all their BTL clients. The Scottish Government has also provided information to lenders through the Council of Mortgage Lenders (CML.)

❖ **Tenants**

The benefits of registration are ultimately to give tenants an assurance about the suitability of their landlords and to protect them from the worst landlords. Information and publicity about registration is entirely appropriate for tenants and could be provided on that specific issue with leaflets and posters distributed to similar outlets as those described above for landlords (with the addition of homelessness units).

Tenants should be encouraged to recognise the benefits of registration, and to check whether their landlord is registered. A tenant who has concerns or complaints should be actively encouraged to make contact with the local authority (see section 4.2 *Breaches* for more information).

Authorities are encouraged to view individual tenants as a source of information when they seek advice or help from either a local authority or a voluntary housing agency. The vulnerability of private tenants must be recognised and the information they provide (possibly inadvertently) must be handled confidentially (see section 4.2 *Breaches* for more discussion of this issue).

❖ **Private Rented Housing Panel**

A committee of the Panel has a duty to notify the local authority of a landlord's failure to obey a Repairing Standard Enforcement Order. It may also be possible to obtain information from the Panel about landlords in cases that are resolved without the need for an Enforcement Order to be served.

Landlords resident outwith Scotland

Those landlords letting in Scotland but resident outwith Scotland may be more difficult to identify. As a group, they are therefore less likely to be aware of the obligation of registration.

Landlords living outside Scotland are most likely to manage their properties via an agent. If the agent has not already moved to act on the landlord's behalf with regard to registration, contact should be made with the landlord through the agent.

Landlords more generally should be encouraged to spread the word on registration to other landlords.

Tenants in turn should be encouraged to check that their overseas landlord is registered; where this is not the case, the local authority should be alerted. The local authority may be able to obtain the landlord's contact information from the tenant. If not, other investigations will be required.

Local authorities should be clear on their fit and proper processes and at what point an application would be subject to enhanced scrutiny because of the size of a landlord's portfolio or their location. Authorities should also consider the circumstances in which a landlord could

be asked to use an agent in order for them to be approved as fit and proper, including when this might apply to landlords who are resident outwith Scotland. These matters are for each authority to decide locally.

3.3 INFORMATION FROM APPLICANTS

Key Points:

- ❖ **Certain information must be provided in an application for registration**
- ❖ **An application is only valid once all mandatory information has been provided to the local authority and the fee has been paid**
- ❖ **Local authorities should take steps to obtain any missing mandatory information. Enforcement action should be considered if a landlord fails to provide the information required.**

The assessment of whether an owner and a person who acts for an owner should be registered should be based on all available information.

The application must be made by the 'relevant person' who is defined widely as a person who is not a local authority or a Registered Social Landlord (RSL).

The list of required information that the applicant **must** provide is restricted to the following:

- **Applicant profile**
 - the applicant's name and address
 - correspondence address for the applicant
 - the applicant's date of birth
 - other names by which the applicant has been known
 - previous addresses of the applicant in the last 5 years
 - the identity (name and address) of any other joint owner of the house (or residential properties) specified in the list; whether that person is a member of the family of the applicant and which joint owner is designated as lead owner for registration purposes
 - the company registration number if the applicant is a company
 - whether an organisation applying for registration is a charity and if so, its charity registration number
- **House information**
 - the address of each residential property that is let by the applicant in the local authority's area
 - the name and address of any agent who is used for the property (or properties) specified
 - the contact address in connection with day-to-day management of the property (or properties) specified

- **Judgements and adjudications**

- details of any licence, voluntary accreditation or registration held, refused or revoked in connection with letting residential properties in the United Kingdom
- [a declaration of relevant convictions in relation to specific offences](#)
- a declaration that the applicant complies with relevant housing legislation and other legal requirements relating to his or her lettings
- any court or tribunal judgments against the applicant under equality legislation (i.e. for equal pay, sex discrimination, race discrimination, disability discrimination, employment equality in terms of sexual orientation and religion or belief)

[Relevant convictions and spent convictions](#)

Relevant convictions are defined by section 85 of the 2004 Act as convictions relating to fraud, dishonesty, violence or drugs.

Applicants seeking to be registered as landlords must disclose details of both spent and unspent convictions. This will assist local authorities in determining if the landlord is fit and proper. However, information on spent convictions must be explicitly asked for on the application form in order for this requirement to be applicable. The online application form explicitly asks for information on spent and unspent convictions. Local authorities should ensure that paper application forms also reflect this locally.

Declaration

Applicants must be able to confirm that they comply with the legal requirements of landlord-tenant law and related obligations.

Some landlords, especially amateur landlords, may not be properly acquainted with lettings and rent legislation. To assist applicants in correctly stating their position on meeting their legal obligations, the application form is accompanied by a summary of their obligations (see *Annex I*).

There may be situations in which it is reasonable and appropriate for an agent to an application on behalf of their landlord client. However, the application (if paper) should be signed by the applicant.

Additional voluntary information requests

In addition to the information which an applicant must provide, additional information is also collected on a voluntary basis. This includes telephone numbers and email addresses (email addresses are mandatory when registering using the online system).

Authorities may also request that applicants respond to additional voluntary questions. These questions would normally be issued separately, as it is usually not possible to include such questions in the online system.

Given the nature of the registration process, authorities should consider very carefully whether any further information they may seek on a voluntary basis is really necessary or whether it will undermine the ‘light touch’ approach sponsored by Ministers.

It is recommended that additional voluntary information does **not** address further personal profile data such as National Insurance Number, driving licence details, passport number, UK banking arrangement and other such information. There may however be an interest for local authorities in seeking further information on:

- property size
- number of tenants
- type of tenancy

Voluntary information, if considered worth trying to obtain, is best linked to furthering an authority’s strategic planning interests (e.g. Local Housing Strategy) or to improving its networking with landlords and agents (e.g. to develop landlord training programmes).

It must be remembered that any non-mandatory information does not need to be provided by the applicant and sporadic completion of such information may not provide authorities with the quality or quantity of data they desire. In any case, such information requests must be clearly identified as voluntary.

3.4 THE FIT AND PROPER TEST

Key Points:

- ❖ All landlords and agents must be assessed as fit and proper by the relevant local authority
- ❖ A range of information can be taken into account in the fit and proper test
- ❖ The application process is intended to follow a light touch approach
- ❖ There are no automatic grounds for refusal
- ❖ Local authorities should have clear and robust procedures to ensure effective scrutiny

In assessing whether an applicant (landlord or agent) is a fit and proper person, authorities must take account of the information prescribed in section 85 of the 2004 Act.

Paraphrased, section 85 covers:

- any material which shows that the individual has:
 - committed **any offence** involving fraud, dishonesty, violence or drugs
 - practised **unlawful discrimination** in any business activity
 - 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 the person lets or manages
- any material relating to an arrangement for an **agent** to act for the landlord in relation to the lease or occupancy arrangement
- **any other material** relevant to the question of whether the person is fit and proper

The legislation does not provide any automatic grounds for authorities to refuse to register a landlord or agent.

With material that falls within section 85, authorities must evaluate its strength, veracity and importance and, together with any other relevant information it holds (which may be favourable or unfavourable to the landlord's or agent's position), arrive at a balanced judgement whether to accept or reject the application.

Without any negative information or legitimate concerns about an applicant, the application should be approved without further scrutiny. This is in the spirit of the legislation which has provided local authorities with registration as a means to identify and deal with the worst landlords, not to place every landlord under an initial presumption of unfitness or incompetence.

Unnecessary additional investigation for most or all applications will add unacceptably high costs to the system, draw resources away from pursuing the real problem landlords and ultimately fail tenants by undermining supply and, consequently, other key Scottish Government policies in relation to homelessness and a thriving private rented sector.

It is important for local authorities to have clear and robust processes in place for dealing with the processing of applications and for completing the decision making process. Failure to establish proper procedures can cause delays with processing.

Scrutiny of applications

The starting assumption is that the applicant is a fit and proper person.

If an authority identifies suspect information in the application form or holds other material that indicates the applicant may not be fit and proper to be a landlord or agent, it will have reasonable justification to challenge the presumption of approval. It can then carry out further enquiries to check not only the information about which it is concerned but any other information that it has collected.

It is important that the proper processes are in place to arrive at the decision to further scrutinise any application, and for this scrutiny to then be undertaken decisively and in a timely manner. In particular, local authorities should have established processes for progressing applications which are facing scrutiny due to a declared conviction. Local authorities should remember that a registration can always be revoked if further information about whether an applicant is fit and proper comes to light after approval.

Other than the fact that registration should be approved when no negative information is held about the applicant, there is no single ‘rule of thumb’ for making the decision to register or not to register an applicant.

Decisions about risk level and the relative importance of different types of negative information will involve a professional judgement by the officer or officers with responsibility for making decisions. **Decision making processes and relevant delegated authority should be in place to assist with this.**

If an authority’s detailed enquiries conclude, on reasonable grounds, that the applicant knowingly gave false mandatory information or knowingly omitted mandatory information (e.g. a relevant conviction), the applicant will, if subsequently found guilty, have committed a criminal offence in terms of section 83(4) of the 2004 Act. The authority might also consider that the applicant’s actions justify the refusal or removal of registration. Such a step should not be automatic but instead should be based on professional judgement taking account of all the circumstances.

In the case of an applicant who has a relevant conviction which was correctly declared, a judgement must still be made taking account of other information available about the applicant and if necessary by interview to assess whether he or she is able and willing to operate in a manner regarded by the local authority as fit and proper. **In considering past actions of the applicant and the conviction, 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.** In particular, the nature of any agency arrangement should be taken into account. It is quite possible to conclude that if the applicant represents a low risk, registration is appropriate.

Local authorities will need to establish a decision-making process for applications which do not allow for a clear cut decision, but are encouraged to delegate routine decision-making functions to officers.

For further discussion of scrutiny of applications, see section 3.5 *Processing and checking applications*.

Cross-checking with other information sources

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 residential properties which are thought to be rented.

Relevant information is information that represents reliable evidence of problems that have arisen with a landlord, his or her properties or with an agent.

It is expected that such information will encompass only a small minority of landlords and agents in relation to the overall number of landlords who will need to be registered. The evidence may be, for example:

- service of a Statutory Enforcement Notice (taking into account the reasons for serving it and whether the owner was at fault)
- record of complaints against the landlord
 - e.g. management or maintenance of rented house (making full allowance for communal disrepair that requires agreement by a number of owners)
 - treatment of tenant
 - failure to act to deal with antisocial behaviour of tenant

Local authorities are encouraged to set up and actively use an **online review** list which should contain a list of names and/or addresses of landlords, agents and properties for which there is evidence or information suggesting that the landlord may not be fit and proper. This will simplify and streamline the processing of applications. The value of this approach is maximised if there is interdepartmental co-operation and all relevant departments participate fully in the exercise. Review lists should be kept up-to-date.

Whilst disclosure of names and addresses for the purpose of constructing the list must respect any inhibitions due to data protection requirements, there is specific provision in the Antisocial Behaviour etc. (Scotland) Act 2004 for disclosure of otherwise confidential information if that disclosure is necessary or expedient for the purpose of any provision in the 2004 Act – registration of private landlords and agents is such a provision⁵.

Information which is provided to the local authority for the purpose of seeking action to deal with a landlord's failings – a complaint from a tenant or a neighbour, for example– can be regarded as for a purpose relevant to registration. [An applicant for registration will also be informed that information may be shared between local authority departments and other local](#)

⁵ See Annex 6

authorities for the purposes of undertaking fit and proper checking. It is intended that information will be shared where there is already an explicit suspicion giving rise to concern.

The types of relevant critical evidence held on file by an authority from which to identify the names and addresses of landlords, agents and residential properties include:

- statutory Nuisance Abatement Orders
- Antisocial Behaviour Orders (ASBOs) or Interim Antisocial Behaviour Orders
- Private Rented Housing Committee referrals
- records of multiple complaints of landlord/tenant problems including but not exclusively, antisocial behaviour (records may be held by housing or environmental health services)

It is important to note that the collated list of names and addresses on the review list is no more than a trigger for scrutinising the information that the local authority holds on file. Any application which produces a match to any entry on the review list will be automatically diverted by the IT system for scrutiny by a registration officer. Inclusion in the review list 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. Equally important is the need to make sure the evidence collated is as sound as possible, since a decision to refuse registration, based on such information, is open to appeal.

Local authorities may also wish to carry out more detailed investigation of a randomly selected sample of applications that would otherwise not be diverted by the system. This could be achieved by sampling applications which are provisionally approved by the system. Officers may find it helpful to base their sample of properties on the risk assessment framework outlined in Communities Scotland's '*National Core Standards and Good Practice Guidance for Private Landlords and for Local Accreditation Schemes*'⁶.

Landlords, agents and the fit and proper test

Section 84(4) of the 2004 Act is clear:

- both the applicant landlord and the agent must be classed as fit and proper in order for the landlord to be registered

While the legislation is clear, the decision on whether someone is fit and proper is a judgment and is not necessarily a clear cut yes or no. An assessment should be made on the risk that the applicant may fail to act properly in relation to future letting activity and the local authority must judge to what extent problems from the past are likely to recur.

There can be cases where the landlord as owner has failed a 'consideration' in relation to section 85 (or have been unacceptable on the basis of other material available to the authority)

⁶http://www.homepoint.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_006210.pdf

but such is the nature of the failure (or of any mitigating circumstances presented) that **the authority can give the landlord the opportunity to take steps to avoid the application being refused.** These steps should ensure fit and proper letting for the future.

The appointment of a suitable agent is one such way of avoiding non-registration but that does not make the landlord now automatically fit and proper and registrable. Authorities should consider the circumstances in which a landlord could be asked to use an agent in order for them to be approved as fit and proper, including when this might apply to landlords who are resident outwith Scotland. This is for each authority to decide locally but might involve considering whether the management of the property is satisfactory. Local authorities could consider whether procedures are in place for the following:

- Arranging or vetting potential tenants
- Preparing the lease, termination of other formal documents
- Collecting rent or holding deposits
- Dealing with any concerns the tenant raises
- Dealing with antisocial behaviour issues (note: the landlord has the legal responsibility to manage and ensure the issue is resolved)
- Instructing and organising repairs

If a landlord is unable to demonstrate his or her ability to deal with any of the above issues then they should be encouraged to put procedures in place – this might include using an agent.

Where the landlord agrees to appoint an agent, the reassessment by the authority will pivot on whether there is an acceptable agreement in place. The 2004 Act was amended by the Housing (Scotland) Act 2006 to require authorities to take account of any agreement between the landlord as owner and the ‘agent’, in assessing whether the landlord is a fit and proper person.

If the authority believes the agreement to be satisfactory in terms of the power it vests in the agent to have effective control and responsibility for the letting and management activity, it might mean that the landlord who otherwise would have failed can be registered.

Assessing agency agreements

Some confidence indicators that can be used to assess whether an agreement is both suitable and genuine include:

- Is the agreement between the parties signed by both parties?
- Is the agreement based on established codes of practice from trade bodies such as the RICS, ARLA and ARMA?
- Does the agreement set out clear lines of authorisation to the agent to act in respect of the letting and management of the house?
- Are the responsibilities of the owner and agent clearly set out?
- Has the agreement given the agent effective responsibility over the main lettings and management activities where the landlord alone might not act appropriately, such as:
 - inspecting the house to ensure it meets legal requirements for letting

- advertising the house; interviewing applicant tenants; obtaining references/credit checks
- selecting tenants; preparing a legally correct tenancy agreement; obtaining the tenant’s signature; holding the tenant’s deposit monies in an account
- collecting and recording rent payments; paying outgoings; making payments to the owner
- arranging necessary repairs and maintenance within clear expenditure guidelines; carrying out periodic inspections of the house
- dealing with tenancy problems and monitoring adherence to the terms of the lease; taking lawful action for re-possession
- dealing with antisocial behaviour by or against the tenant
- assessing the condition of the house at tenancy termination, returning deposits; withholding deposits if damage or loss occurred.

An authority may wish to seek answers to further questions not covered by the agreement, such as:

- Is the agent an individual, company, partnership or some other entity?
- Is the agent a member of any recognised trade body appropriate to letting or managing residential property?
- Does any such membership include external regulation of the agent’s standards and performance?
- Does the agent operate to a recognised code of practice?
- Is there any personal or commercial relationship (other than the agreement) between the landlord and agent?
- Will the agent receive any benefits from the landlord other than the stated fees and commissions set out in the agreement?

It is the duty of the landlord to inform the authority if he or she terminates the agreement or appoints a new agent. In the latter case, the landlord will need to produce a new agreement and this will require to be assessed in the same manner as the previous agreement. An authority may find it useful (as could an agent) to advise registered agents to inform the authority if an agreement has been terminated.

Advice to applicants

A local authority is required to give appropriate advice to landlords (and agents) where there is a likelihood that if given that advice, they could become eligible for registration. In giving advice on what action to take, it is sensible to stress to the applicant that there is no guarantee of registration being achieved.

It should be noted that the same duty is placed on an authority when it is proposing to remove a registered person from the register. Further information on both of these scenarios is provided in section 3.6 *Provision of information and advice*.

3.5 PROCESSING AND CHECKING APPLICATIONS

Key Points:

- ❖ **Clear lines of decision making should be established locally**
- ❖ **Robust processes are needed for all aspects of delivery, including application processing and enforcement**
- ❖ **Local authorities should have a process in place to manage the workload volume effectively**
- ❖ **There are three main stages of processing applications:**
 - **Validation: the process for checking applications are complete and paid**
 - **Scrutiny: the process whereby a person is assessed as fit and proper**
 - **Decision: making a decision to register a person or refuse an application**
- ❖ **Local authorities should consider setting local timescales for processing**

This section describes the administrative arrangements for dealing with applications. Those arrangements need to be established within a broader policy framework.

Setting the framework

Arrangements for registration should be placed in the context of the authority's strategic approach to improving the private rented sector and ensuring it plays a full part in providing for housing need. Registration has the potential to bring benefit to other service provisions such as homelessness and social work, and, by the same token, a corporate commitment and effort towards making registration work is desirable. This can be through, for example, the provision of information to registration administrators and joint cross-departmental working.

It is important that local authorities have clear processes in place for administering the registration scheme. This includes processes for dealing with any backlog of applications, processing new applications, and handling renewal applications. Robust enforcement processes are a key part of this process.

❖ Defining the level of authority to approve and refuse applications

The level of authority required to approve and refuse applications for registration is a decision to be taken by each local authority at its own discretion. Each local authority should determine its own procedures and protocols in respect of the delivery of landlord registration, making sure that established decision making processes are in place.

Routine decisions should be delegated to officers. Scrutiny of applications may be reserved for officers, with the final decision being made within the department with the lead management responsibility.

Refusing an application or revoking a registration will have serious consequences for the owner or agent as well as for the tenant. Each council should form an appropriate committee or sub-committee of elected members to constitute the forum in which to assess the

recommendation and strength of the supporting evidence presented by officers and make a decision accordingly.

The scheme of delegation will also need to take account of the online application system, which recommends for approval applications which are not flagged for further investigation. This does not remove control from the authority as it decides which applications to flag and, in any case, the notification to the applicant is issued by officers, not the IT system, giving the opportunity for sample checks or for reconsideration of cases where necessary.

❖ **Monitoring and review of performance**

Local authorities will want to monitor progress with registration at a local level; this can include using statistics from the online system.

The Scottish Government is able to use statistical data from the application system to monitor the implementation of registration, but may seek further information from local authorities, for example on enforcement. .

❖ **Landlord Registration Networking Group**

The Landlord Registration National Networking Group has demonstrated the benefit of local authority officers meeting together in a forum to share experiences, discuss problems and suggest solutions. The Scottish Government is grateful to local authorities continuing to contribute to this group.

Processing Applications

It is important that a consistent approach to processing and deciding on applications is adopted across local authorities. As well as landlords owning properties across more than one authority area, there are letting and estate agencies with lettings departments operating in a regional context.

Although local authorities have diverse corporate management and organisational structures, the administrative process for registration should aim to follow the procedures and tasks recommended in this guidance.

Common to all authorities is the core of the application process, namely the central, internet-based, IT system provided by the Scottish Government. It allows applicants in every local authority area to make an online application directly through the dedicated registration website at www.landlordregistrationscotland.gov.uk. Local authorities should provide a link to the application system from their own websites.

Where possible, applicants should be encouraged to use the online registration system. In the main, this is more efficient in terms of local authority staff time, as well as more convenient and cheaper for applicants with internet access and multiple properties. Applicants should be informed of where they might gain access to the internet, such as local libraries and of any practical support with applications that the authority can give to people who have difficulty accessing or making use of the internet. Applicants should also be informed that the appropriate payment will be due at the time of making an online application.

Local authority officers are able to manage registration data for their authority from any computer with internet access. No additional software, connections or security settings are required. 'Role-based security' is used to assign appropriate privileges to each user, who will be recognised from their user account and password when they log in. Account details must be kept secure to prevent unauthorised use of the system.

Annex 4 provides more detail on the operation of the online system.

The main functions in processing applications from their point of receipt to the outcome decisions are:

- managing the workload volume effectively
- managing paper application form submissions
- ensuring valid applications have been submitted
- scrutinising the valid applications
- reaching the decision to register or not to register an applicant

❖ **Managing the workload volume effectively**

Local authorities should use the data available from the online system to manage the volume of applications effectively. Data on the flow of applications can be used to anticipate likely volume of renewal applications, therefore allowing local authorities to plan appropriate staffing to avoid a backlog of work from building up. It is important that other key functions relating to registration are built into workplans. This includes effective enforcement of the scheme, for example, identifying unregistered landlords and taking action to ensure compliance with the legislation. Local authorities also have a duty to provide advice and assistance to both landlords and tenants. This duty should be considered in any workplans.

The stages in processing applications are described below:

- validating
- scrutinising
- decision-making

The IT system automates the validation checking procedure – all paper application information should be entered into the online system by the local authority, allowing the automated checking to validate paper-based applications alongside applications entered online by the applicant. **A valid application is one that has all mandatory fields completed and for which the correct fee has been paid**, based on the information in the application. Validating all received applications is a first priority, since it allows landlords to operate legally.

For validated applications, where no grounds for concern are identified from the specific information in the form or from any matching test against critical information held on the on-line system, the registration for those 'clean' applicants will automatically be processed electronically. The system notifies the authority of a 'pending approval' which the authority can normally issue at that point, manually marking the application as 'approved'.

There should be no significant delays in the system of approval for these applications. [Where local authorities wish to use confirmation letters for online applications, applicants should be encouraged to return these quickly to avoid delays.](#)

For those applications that have been diverted because of concerns, each authority should establish a clear basis for prioritising the scrutiny and possibly more extensive investigative work that could follow for some applicants. Such applications will be delayed, but for sound reasons. It is important that a clear process for decision making on such applications is established to allow for the applications to be processed once investigations have been concluded.

[Undue delays on the processing of all **diverted applications** should be avoided.](#) Local authorities may wish to prioritise activity on diverted applications in the following way:

- those owners or agents that officers judge give rise to the most serious concerns and which involve letting to sitting tenants (who are potentially at greatest risk)
- agents who give rise to any degree of concern, as they may be acting for, or intending to act for, a number of owners if they become registered
- prospective landlords or agents (i.e. applicants who declare no houses) since their business decisions are likely to hinge on the authority's decision. Undue delays should be avoided to prevent any impact on supply

❖ **Managing paper applications**

An application can be submitted online or as a paper application. Currently, around 75% of applications are made online with the remaining applications paper-based, but each authority should be geared up to handle these efficiently.

The authority should not have two parallel data bases (paper and electronic) as this is a recipe for confusion, duplication and oversight. Paper application data should be entered into the online electronic system to create a single list of private landlord, agent and property information. This has the added advantage that the system will then check and process the application in the same way as for online applications.

Data inputting staff will need to transfer the information in a paper application to the online system and carry out procedures to accept payment by cheque or cash and mark that on the system.

Data inputting errors could have serious consequences for the applicant and waste officer time, so it is advisable to carry out a cross-checking exercise on the accuracy of the input data once a batch of manual data input work has been completed.

❖ **Ensuring valid applications have been submitted**

It is important to distinguish validation from scrutiny.

Validation is the basic process of checking that all the required mandatory information has been included in the application form and that the correct fee in relation to the number of correctly included properties has accompanied the application. This does not mean all the information is correct or accurate. There may be falsely declared information about the applicant's personal details, convictions, agent identity or number of let properties, in which case, an offence has been committed that could not only incur a fine, but would also stand as a contravention of housing law to be considered in the subsequent scrutiny involving the fit and proper person test.

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

The online system will not accept an application, and allow payment to be entered, unless all mandatory fields have been completed. Where the application is made online, once it is completed and paid, an electronic acknowledgement will be provided, confirming that the application is valid.

For paper applications, where there are omissions or errors, local authorities should have clear processes in place to contact the landlord or agent as soon as possible (by letter, email or telephone) requesting the outstanding requirements. It should be made clear that the application cannot be treated as valid (and therefore is not protecting the applicant against committing an offence by letting without a valid application) until all the outstanding data is provided. **If an applicant fails to provide information when requested to do so by the local authority then the local authority should reject the application as invalid and take appropriate enforcement follow-up action.**

If a paper application has been submitted without payment, or the fee calculated is incorrect, the local authority should take steps to obtain payment or to correct the payment made. This could involve writing to, emailing or 'phoning the applicant. The application should not be entered onto the IT system until the correct payment has been received. **If payment is not received then the local authority should reject the application as invalid.** The implications of this should be explained to the applicant. It should not be possible for applicants using the online system to submit their application without at the same time paying the fee.

Once a paper application has been accepted as valid and paid, written confirmation should be sent by post.

❖ **Scrutinising the valid applications**

Scrutiny is the process whereby the person is assessed to discover whether he or she is fit and proper to carry out residential letting.

Ministers are clear that registration should be a 'light touch' process. It is recognised that the majority of landlords do provide a good service and that many might leave the market if regulation is perceived as too onerous or expensive.

A relatively straightforward ‘check’ is to match landlord applications against any information held within an authority on cases of antisocial behaviour, breaches of landlord-tenant law and complaints from tenants or neighbours. The authority must be confident that information used in this way is credible and not spurious or malicious. [Effective use of the online review list will assist with this.](#)

The basic approach to the review list is:

- compile a list of the names of landlords and addresses of residential properties where such breaches and complaints have been recorded
- upload the list to the registration IT system
- where either a name or an address in this list matches those provided in an application, the 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 may wish to seek a Basic Disclosure from Disclosure Scotland in order to be able to check the applicant’s declaration about convictions.](#) This would normally only be worthwhile if the authority had reason to doubt whether the applicant’s declaration was true.

[Local authorities can request information on both spent and unspent convictions for the purposes of fit and proper checking activity. Information on spent convictions is only required to be included in a person’s application if it is specifically asked for. The online system explicitly asks for details of both spent and unspent convictions. Local authorities may wish to adjust paper application forms locally to include this information.](#)

Some authorities may wish to carry out occasional spot checks by extracting a sample of applications at random and following up each of the mandatory answers for verification⁷. When selected landlords are contacted they should be told that they have been chosen on a random basis, not on the basis of suspicions.

The key purpose of collecting the mandatory information is to confirm if the applicant is a fit and proper person to be engaged in residential letting. The next section provides guidance on how authorities should go about that task.

❖ **Reaching the decision to register or not to register an applicant**

There are no automatic or mandatory criteria for deciding whether to approve or refuse an application. If the applicant is judged a fit and proper person for the purpose of registration, then that person should be registered. [If not, the person should not be registered. It is important that local authorities have processes in place to allow these decisions to be reached.](#)

If it is possible that by taking certain specific actions a person could become acceptable for registration, then, on a balance of risk and benefit, the person could be registered. Such cases

⁷ See also section 3.4 *The fit and proper test*

must be closely followed up to ensure that the required action is taken. If the landlord fails to act as required, he or she should be taken off the register. Guidance on how to approach the fit and proper person test is provided in section 3.4 *The fit and proper test*.

There is no mandatory timescale within which to decide on validly submitted applications. However, setting timescales for registration is recommended as this will provide both discipline and a structure within which registration officers and others who have an input into the process should aim to work.

Recommending timescales to local authorities from a national perspective must be viewed as tentative. Only overall, indicative, processing timescales are sensible and these have to vary according to the process route an application follows. Authorities should consider the viability of the following suggestions for target processing times by reference to the flowchart in *Annex 7*.

From date of validation of an application to:

- date of notification of approval of an application that is not on the local authority database: 1 month
- date of notification of the refusal of an application that is on the local authority database and from which there are sufficient grounds to refuse without further checks considered necessary: 3 months
- date of notification of approval of an application that is on the local authority database but for which there are no doubts about approving: 3 months
- date of notification of approval of an application that is on the local authority database and for which further checks are carried out including Disclosure Scotland results, but the conclusion from which is that there are not sufficient grounds to refuse approval: 6 months
- date of notification of rejection of an application that is on the local authority database and for which further checks are carried out including any Disclosure Scotland checks, the conclusion from which is that there are sufficient grounds to refuse approval: 6 months

It should be noted that the maximum period for processing and deciding on the more onerous regulation of an HMO licence is 12 months, but that is to allow for possible physical alterations to be made to the property to meet licensing conditions. That does not apply with landlord and agent registration and the maximum timescale suggested above of 6 months corresponds with that used in most other types of licensing situations. However, the volume of cases will also be a factor for some authorities.

Amendments to an applicant's registration information

A registered owner who initially self-manages a house but subsequently decides to appoint an agent to take over the management function must inform the local authority of the change. An amendment must be made to the owner's application to ensure that the agent is listed with the owner on the register. Owners can amend all their own information online.

If a registered owner cancels the appointment of an agent, the owner must inform the local authority. Agents could also perceive it as being in their best interests to ensure the authority is aware of a change, so that no future problems associated with the management of a particular house are attributable to them.

Where an applicant requires to add an additional property to his or her record, the additional fee would be charged for this.

No charge will be made for other amendments, for example, a change to a landlord's contact details. Landlords using the online system can update their own information online, with no resource implications for the local authority. Where any amendments require to be made by local authority staff, it is likely that the costs involved in seeking payment would negate any reasonable charge which might be made. [This approach is therefore discouraged.](#)

3.6 PROVISION OF INFORMATION AND ADVICE

Key Points:

- ❖ **Local authorities have a duty to provide advice and assistance to landlords and tenants in certain circumstances.**
- ❖ **Local authorities also have a duty to provide advice on letting practice or landlord registration to tenants and prospective tenants when an enquiry is received.**

This section details the responsibilities of local authorities as regards the provision of information and advice to landlords and tenants.

It has been recommended (section 3.2 *Identifying landlords*) that local authorities should undertake publicity as part of landlord registration.

In addition, local authorities are required by regulations to provide information and advice to landlords and tenants in particular situations.

Advice to landlords

❖ **Good practice information to applicants**

Information on what constitutes **good practice** in letting properties should be provided to each applicant at some stage in the process leading to registration or on registration. An appropriate stage could be the issue of the notification that the applicant's registration has been approved, if it has not been necessary to enter into dialogue with the applicant at an earlier stage of assessment.

This could be achieved by providing applicants with links to suitable advice on the internet such as sections 1, 2 and 4 of the '*National Core Standards and Good Practice Guidance for Private Landlords and for Local Accreditation Schemes*' which can be found at http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/hmcs_017006.pdf Other appropriate advice is available from organisations such as Scottish Association of Landlords or ARLA and other support services in the local authority area may be in a position to assist with suitable information.

As not all landlords will have internet access, authorities should consider providing hard copy extracts of guidance to applicants. The Scottish Government also publishes housing information and rights guides for private landlords and tenants, copies of which can be obtained from the Scottish Government Private Rented Housing Team (0131 244 5528) or by downloading them⁸.

Some authorities may have their own 'good landlord' guidance as part of a local accreditation scheme or for their HMO licensing scheme. Any of these sources could be relevant to providing guidance on good lettings practice.

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/PrivateRenting/leafletsforms>

❖ Advice in relation to refusal of registration or de-registration

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

The advice will depend on the basis on which non-registration or removal from the register is being considered but could cover failings in relation to tenancy or property management. In such a case, the applicant could be pointed to the Good Practice Guidance for Private Landlords, mentioned above.

The best advice may be that the person seeks legal assistance, for example, to draw up a legally correct tenancy agreement (though a model short assured tenancy is available at section 3 of the National Core Standards guidance).

In other cases, the best step may be to employ a suitable agent and hand over management responsibility to that agent. Although this may involve extra cost it may be the most appropriate way to ensure that the tenancy is handled in a fit and proper manner and that the tenant's interests are properly protected.

Landlords who face de-registration should be made aware of the consequences of this for their legal situation in the letting market, as well as resultant issues, such as insurance cover on the property.

Advice to tenants

There is also an obligation on local authorities to provide **tenants** and other occupants with advice and assistance in particular situations.

There may be an impact on a tenant's continuing security of tenure where a local authority:

- rejects an applicant's registration
- removes a registered person from the register
- applies a Rent Penalty Notice

None of these three types of action by an authority gives a landlord or agent grounds to evict a tenant. However, if occupation is on the basis of a Short Assured Tenancy (which is the predominant form of tenancy in the private sector) the landlord is entitled to end the tenancy at its proper term without specifying grounds, instead of rolling it forward to the next rental period (by "tacit relocation"). The same may apply to an Occupancy Arrangement, depending on its terms. The local authority's action might result in the landlord ending such a Short Assured Tenancy or Occupancy Arrangement earlier than might otherwise have been the case.

Information to tenants should emphasise that the action taking place relates to the landlord, not to the tenant. The **tenant's security continues until the tenancy ends** (or there is a

breach of the terms of the tenancy during the tenancy allowing the landlord to seek a court order to remove the tenant), and the landlord or agent must use lawful means only to bring the tenancy (or occupancy) to an end otherwise a criminal offence will have been committed.

The landlord should not assume that eviction is the only route if registration is refused or removed. One option is to sell or otherwise transfer ownership to a person who will be judged fit and proper, whilst the sitting tenant remains in place. The local authority will need to be satisfied that control of the property has been genuinely transferred and that the previous owner is not acting as an unfit agent. There may be other options by which the landlord could become registered (see section 3.4 *The fit and proper test - landlords, agents and the fit and proper test*).

Not all landlords are aware of the law; some may look for ‘shortcuts’ in the legal process. It is therefore essential that all tenants and occupiers affected by decisions not to register an applicant, to de-register a registered person, or to apply a rent penalty, have clear, easily understood information and advice on their housing options. They may also need assistance should the landlord attempt to remove them from the property illegally.

Where a rent penalty is imposed, the landlord may seek to obtain money from the tenant(s) despite the suspension of the 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.

When a local authority **refuses or removes registration** from a landlord or agent, notification must be sent to the occupants of the properties involved. With a **rent penalty notice**, the local authority should serve the Rent Penalty Notice on the occupants of the house or residential properties to which it applies, provided it knows them, but failure to do so will not invalidate the notice.

A local authority that has rejected an applicant’s registration or removed a registered person from the register is obliged to provide to the occupants in each house that is identified in the application form or on the register, advice and assistance on:

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

The requirement is to provide the information to the occupants of the house. The local authority will therefore not be in breach of this requirement if it is unable to establish who is formally the tenant in a given situation.

Advice and assistance must be provided to tenants and occupiers as soon as is practicable after the decision is taken by the authority. That advice and assistance should also be relevant to their circumstances. General materials which include the particular circumstances may be suitable, but the local authority should take steps to make sure that this is so, as those who have difficulty in using complex material can be the most vulnerable.

The Scottish Government has developed materials that should be suitable as the core of such information provision.

The same advice and assistance should be provided to occupants when the landlord is served a notice that no rent is payable on a residential property. The details about the service of Rent Penalty Notices are covered in section 4.3 *Sanctions* which also deals with the need for advice on setting aside money if the landlord appeals.

General advice to tenants and prospective tenants

In addition to the above duty, where a tenant or prospective tenant approaches a local authority to enquire about letting practice or landlord registration, the local authority must provide the person with general advice in relation to those matters⁹.

The provision of advice could include supplying the person with leaflets which are specific to their own situation or query.

⁹ As specified in the Private Landlord Registration (Advice and Assistance) (Scotland) Amendment Regulations 2008

3.7 PASSPORTING APPLICATIONS AND AVOIDING DUPLICATION

Key Points:

- ❖ Where a landlord holds an HMO licence they are exempt from paying the principal registration fee in the local authority area in which they hold that licence. The property fee will not be payable on HMO licensed properties.
- ❖ Local authorities can take steps to passport HMO licence holders onto the landlord register.

This section deals with the management of applications in respect of HMO-licensed properties.

The key point for consideration is whether a landlord has already been recognised as fit and proper to be letting houses. Where a landlord holds an HMO licence, the landlord will be fit and proper for the purposes of registration and may be passported to the system. This passporting means that the landlord will not require to pay the principal registration fee in the local authority area in which the licence is held. The additional property fee will not be payable on HMO licensed properties.

❖ HMO licensing and landlord registration

HMO licensing has been in operation since October 2000 and incorporates an assessment of whether the owner, as applicant, is a fit and proper person to hold a licence.

HMO licensing is a stricter regime than registration and focuses on the house as well as its management by a fit and proper person. In contrast to registration, an HMO licence is specific to the house. It is possible for an owner to be registered as fit and proper but not granted an HMO licence for a house due to serious problems with the condition of the property. That owner could still obtain a licence for another house that meets all the local standards laid down by the authority. It should not be possible for an owner to be denied landlord registration but granted an HMO licence.

The linkage and information transfer between HMO licensing and landlord registration is crucial to the success of both systems of regulation. Details of the procedures to be followed are included in *Annex 2*.

❖ Passporting registration information between authorities

The landlord register is the responsibility of each local authority in relation to its area. Whilst there is a centralised IT website, there is no national register. Where an applicant (or a person already registered by one authority) owns or manages rented property in other areas, officers in different authorities can communicate with each other directly about application information, the fit and proper person test and decisions (while respecting any data release restrictions that may apply with certain types of information).

Each local authority must make its own decision on each application for registration which it receives. Local authorities may however make use of all information available to them, including that shared with them by other local authorities, in reaching that decision.

3.8 THE REGISTER

Key Points:

- ❖ **Local authorities are required to maintain a register of landlords**
- ❖ **All landlords and agents will automatically be placed on the register when approved**
- ❖ **Limited information is available to the public**
- ❖ **Details can be withheld from the register in some circumstances**

This section deals with the content of the landlord register and the release of information.

Local authorities are required to maintain a register of landlords and agents who are considered fit and proper persons to let a house under a lease or occupancy arrangement.

Registration lasts for three years and information on the person and their residential properties for let is held on the register (see Section 3.3 Information from applicants).

The release of information to members of the public is circumscribed with the aim of ensuring that the information is not used for malicious or commercial marketing purposes or would not, if released, represent an unacceptable intrusion in a registered person's private life. There is no requirement for the local authority to make the register as a whole publicly available. Section 88A of the 2004 Act makes some provisions about the release of information from the register. Local authorities must also take into account the Freedom of Information (Scotland) Act 2002 and data protection principles.

Access to the register in a local authority's area is, in legal terms, by application to the local authority. In the great majority of cases this is done by accessing the website, without any need for the involvement of local authority staff. In accordance with section 88A(1), the website enables a member of the public to request information with respect to a particular residential property or a particular person. The website does not enable visitors to obtain lists of registered persons or houses in the local authority's area.

- where information is requested about a particular property, the website will automatically provide:

- the name of the owner if the house is listed on the register
- the name of any person listed on the register who acts for the owner in relation to that house
- the contact address on the register to which correspondence with the owner or person who acts for the owner can be sent

- where information is requested about a particular person, the website will automatically confirm whether that person is on the register. In order to identify the correct person, the address of that person also requires to be entered.

If the website fails to provide such information, for example because of restrictions on searching manually-entered addresses, local authority staff should provide it routinely on request. The website will direct any queries to the relevant local authority contact.

A member of the public may ask for more information than listed above, by application to the local authority. Local authorities should be aware of the distinction between information entered on the register, under section 84(5) of the 2004 Act, and the additional information which is required to be provided as part of an application for registration. Much of the latter information may be sensitive, being intended to help the local authority determine whether the applicant is a fit and proper person, or whether they are entitled to discounts on the application fee. Any request for information other than that required to be released under section 88A(1) must be considered in accordance with Freedom of Information requirements. Information is exempt from release if its disclosure would contravene any of the requirements of the Data Protection Act 1998.

Where the authority is concerned that release of any information on the register about a property or registered person may jeopardise the safety and welfare of any person, or the security of any premises (e.g. a landlord's home as well as any listed house), then it can withhold this information from the register. Such information can be flagged in the IT system so that it does not appear as a result of a web-based enquiry. The types of cases where this approach is desirable include, for example, women's refuges and halfway housing, where the identity of the owner would indicate the nature of the accommodation and could lead to harassment by, for example, estranged partners or prejudiced neighbours.

Local authorities may feel that this approach is appropriate in some other cases and should be prepared to consider restricting information in this way on the application of an individual, if they feel that the case merits such a restriction. The legal test relates to whether provision of that information would be likely to jeopardise the safety or welfare of any person, or the security of any premises.

Local authorities should seek to ensure that all relevant staff are properly trained to avoid any inadvertent disclosure of inappropriate information by telephone or other means.

PART 4: BREACHES, DECISIONS AND SANCTIONS

Key Points:

- ❖ **Registration intended to be a light touch approach but sanctions should be used as appropriate**
- ❖ **Local authorities should take action to identify unregistered landlords and take appropriate enforcement action**
- ❖ **Where a landlord fails to register local authorities can consider using a rent penalty notice or reporting the case to the procurator fiscal**

4.1 OVERVIEW

The landlord registration scheme has been designed as a **light touch approach**. The great majority of landlords and agents should pass through the process with little or no dispute or disruption to their ‘business’.

However, registration also aims to **challenge and deal with the failings of landlords and agents** and, in particular, with the worst of their number. In those situations, local authorities will be expected to adopt an enforcement role.

In adopting an enforcement role in respect of registration, local authorities should have due regard to the Enforcement Concordat, adopted by all Scottish local authorities. Guidance on best practice in implementation of the Concordat can be found on the CoSLA website¹⁰.

When a landlord breaches the terms of the 2004 Act, authorities can apply **sanctions** which can lead to criminal prosecution or a cessation of the rent payment. These sanctions effectively act as a bar on a landlord’s ability to let a house.

Such outcomes must be the right course of action in the worst cases. However, there are cases where a landlord or agent has fallen foul of the requirements for registration yet immediate pursuit of prosecution or removal from the register or imposition of a rent penalty is too drastic (see section 3.4 *The fit and proper test*).

Local authorities will have to make the judgment but, in some cases, taking into account mitigating circumstances or giving the landlord or agent an opportunity to ‘right the wrong’ is the more sensible and practical approach before deciding if sanctions are necessary. This is particularly so where the landlord has failed to register through ignorance or inaction; it is better to ensure that such a person registers (provided he or she is fit and proper) than to move to sanctions and quite possibly lose the landlord and the landlord’s houses from the market.

However, equally important is that local authorities should undertake enforcement action where appropriate. **Effective enforcement is the key to the overall success of the scheme.** Robust local processes should be in place to support this.

¹⁰ <http://www.cosla.gov.uk/attachments/execgroups/es/esbestprac.pdf>

Types of breaches and sanctions

There are several types of breaches and accompanying sanctions available in Part 8 of the 2004 Act:

Breach	Sanctions available if judged appropriate
Failure to register whilst continuing, or attempting, to let a residential property	<ul style="list-style-type: none"> • Guilty of an offence. Report to the Procurator Fiscal • Rent Penalty Notice may be served
Provision of false information or failure to include required information in an application form	<ul style="list-style-type: none"> • Guilty of an offence. Report to the Procurator Fiscal • Refuse registration if judged not to be a fit and proper person • Rent Penalty Notice may be served
Non-registered owner communicates with a person about taking a lease or occupancy of a house	<ul style="list-style-type: none"> • Guilty of an offence. Report to the Procurator Fiscal
Failure by a registered person to notify changes in circumstances	<ul style="list-style-type: none"> • Review fit and proper person requirements and remove from register if judged no longer to be a fit and proper person
Registered person found to be no longer a fit and proper person	De-register /remove from register
De-registered person continues to let a property	<ul style="list-style-type: none"> • Guilty of an offence. Report to the Procurator Fiscal • Rent Penalty Notice may be served
Registered landlord's agent found to be not fit and proper	<ul style="list-style-type: none"> • Landlord's name removed from the register

4.2 BREACHES

Key Points:

- ❖ Local authorities should take steps to ensure an application is valid, specifically that all mandatory information is included and that it is paid.
- ❖ A range of breaches and sanctions apply to landlord registration.
- ❖ If a breach occurs then local authorities should apply sanctions as appropriate.
- ❖ A local authority can reassess if a landlord or agent is fit and proper at any time.
- ❖ If a registered landlord is found to be no longer fit and proper then their registration can be revoked.

❖ Failure to register

Gaining knowledge about a failure to register

There are a number of methods by which local authorities can identify owners and residential properties who should be registered.

Key sources of information on unregistered landlords could be:

- tenants
- neighbours
- police
- housing benefit records
- other landlords and agents

Authorities could also share methods of detection and gathering of evidence used, for example, by HMO licensing enforcement officers, antisocial behaviour teams and housing benefit fraud detection officers.

Tenants

One possible source of information about non-registered landlords is tenants who approach the local authority for help with a tenancy or housing benefit payment problem or following a dispute with their landlord. Information retrieval should be carried out sensitively.

It is expected that an authority will pursue a landlord's possible failure to register even where the tenant does not want that to happen.

However, the limited security of tenure which some tenants have and the vulnerability of many socially or economically disadvantaged tenants must be recognised and treated sensitively by a local authority. It must be appreciated that if a landlord discovers that their non-registration has been identified via their tenant, the tenant's residence may be terminated, lawfully or unlawfully. However, the fact that the local authority confronts a landlord about his or her failure to register does not mean that the source of the information must be released to the landlord.

Any tenant who becomes a source (possibly inadvertently) of identifying a landlord's failure to register should be fully advised of the security of tenure position and what to do in the case of harassment or unlawful eviction. Particular advice may be required where a deposit is being withheld.

Should the worst outcome arise and the tenant be forced out, the authority is expected to assist the ex-tenant in whatever way is practicable, for example:

- advice on options (if any) open to them
- referral to a specialist housing aid centre
- provision of temporary homeless accommodation under its statutory homelessness duties

There should be appropriate signposting to the relevant advice and support agencies for the tenant. Tenants can be supported in accessing information and advice services available from voluntary sector organisations such as Citizens' Advice and Shelter, as well as the local authority's own or partner advice services.

The local authority should seek the tenant's agreement to engage the police if an unlawful eviction has taken place. Any action taken would be in the name of the tenant.

Neighbours

A neighbour of a house of a non-registered landlord is another valuable source of intelligence. This may arise from a complaint made to the department responsible for registration or to another department of the authority. The complaint may not relate to non-registration but to another problem such as noise, refuse disposal or drug-taking.

Similar to a tenant's position, care must be taken not to expose a neighbour to any potential backlash from a landlord (or agent) who is confronted with the failure to register.

Police

Complaints that neighbours or tenants of a rented house make to the police are a possible source of information. The police are not obliged to pass on such information, but it is reasonable for an officer faced with a complaint about a tenanted house to enquire if the owner is registered as it is an offence not to be, unless that person is exempt. Local authorities should consider meeting with a senior police officer to discuss whether informal links can be established so that the local authority is made aware of a house or landlord that has come to the police's attention. Some local authorities have already established such links in respect of registration, HMO licensing and antisocial behaviour.

Housing benefit

Registration officers are strongly advised to make contact with colleagues who administer housing benefit. They will wish to be advised promptly when a rent penalty is to be applied

to the landlord of a tenant who is a housing benefit claimant. This is because benefit payment must be timeously ceased to avoid having to reclaim benefit from the tenant at a later stage. There is also scope for housing benefit administrators to notify registration officers of landlords identified by claimants, so that these can be checked. Ideally, housing benefit administrators will notify those landlords who are not registered; it would then be for the registration administrators to establish whether the landlord was required to be registered or was exempt, and then to follow up if appropriate. The most suitable arrangement for notification should be discussed locally.

Exercising discretion

Mandatory registration represents a major change in how private letting activity is carried out in Scotland and it is inevitable that it will take some time for an appreciation of what is required to filter through to all landlords. **This is particularly true when new, potentially inexperienced landlords enter the market.** Many smaller landlords may not even perceive themselves as landlords or as falling within the scope of registration.

Given that registration has now been widely publicised, local authorities should consider whether an owner who has not registered, could fairly have been expected to have known about registration by that time. An assessment of whether there has been a conscious attempt to avoid registering needs to be made and if so whether that, combined with other relevant information, is justification for refusing to register the landlord. Otherwise the appropriate step would be to give the owner an opportunity to submit an application.

If an application is received the approach should be:

- to allow registration (if otherwise judged a fit and proper person)
- to make the owner fully aware of the risk he or she has run and the possible consequences of any future breach of requirements
- to record a note on the registration file about the original failure to apply timeously, so that this information can be considered if there is further cause to doubt the landlord's suitability

Where no valid application is received and the landlord lets or attempts to let a property, an offence is committed. A report may be made to the Procurator Fiscal and a Rent Penalty Notice served. **A late application fee should also be considered,** where two letters have been issued by the authority

Where a non-registered owner or agent has submitted a valid application to register, together with the appropriate fee, but the application has not been determined, no offence is committed if the property is let out. This exemption from committing an offence does not apply to a person who has been refused registration within the previous year of him or her making another application to register. This prevents a person who has been refused registration from reapplying immediately and being protected from prosecution while the new application is being processed.

❖ **Provision of false information or failure to include required information in an application form**

The registration process is intended as a ‘light touch’ approach, but officers should still be alert to the possibility of false and misleading information being provided or required information being omitted. **To be valid, an application should include all mandatory information and the fee should be paid.** If an application is invalid and a landlord fails to take steps to provide the missing information or payment, then enforcement action should be considered. The application should be rejected. The implications of this should be explained to the applicant. If their application is rejected and the landlord continues to let property then they are committing an offence.

There are various ways in which owners may seek to deceive an authority when completing the application form. Some examples to note are:

- nominal transfer of ownership of a house by an owner unlikely to pass the fit and proper person test to a third party such as a spouse or other relative, whilst retaining practical control of the management of the letting
- identification of a person (individual or company) as an agent for the management of the letting whilst the owner actually retains practical control
- omission of residential properties owned by the applicant
- omission of the name of a joint owner who may expect to be failed on the fit and proper person test if the name were declared
- omission of the declaration of a relevant conviction or judgment against the owner

If the authority concludes that the false or omitted information was not due to simple error or misunderstanding and that the owner has therefore committed an offence, a report can be sent to the Procurator Fiscal.

The authority might judge that the conscious deception rendered the applicant an unfit and improper person to be letting houses, and so refuse the application. It would then be open to it to apply a Rent Penalty Notice if the house continued to be let.

❖ **Communication by a non-registered owner to a person about taking a lease or occupancy of a house**

Where it is brought to the local authority’s attention that an owner who has failed to register or has been refused registration or has been taken off the register has proposed letting a house to a possible tenant (or occupier), it should investigate whether an offence has been committed.

The purpose of providing for such an offence is to block a loophole that would otherwise allow an unregistered landlord to have dealings with a potential tenant prior to the completion of his or her registration.

If the authority has sufficient evidence to confirm that a communication about the let or occupancy took place, a report can be sent to the Procurator Fiscal. The communication by the owner has to be specific to a potential client. It does not apply in cases where, for

example a potential purchaser of a BTL property is discussing the feasibility of financing the purchase with a mortgage lender.

Where a non-registered owner or agent has submitted an application to register, together with the appropriate fee, but the application has not been determined, no offence will have been committed in discussing a possible let of a house listed on the application form with a potential tenant.

❖ **Failure by a registered person to notify changes in circumstances**

Where a registered owner has failed to declare a change of agent or a change of property, it will usually be appropriate to give the owner an opportunity to remedy the situation before imposing any sanction.

If there is repeated failure to notify such changes to the information provided, the local authority will want to take action by re-assessing whether the owner is still a fit and proper person or should have their registration removed. If the authority discovers there has been a failure of a more serious nature, namely, to notify it of a new relevant conviction or judgment in relation to landlord-tenancy law, this in itself should result in a reassessment of whether the registered person is still fit and proper to let residential properties. In addition, the authority may decide that a report should be forwarded to the Procurator Fiscal.

Where the local authority deregisters an agent, the owner of the property should be notified and the local authority should remove that person from the register.

Revocation of registration

A local authority can reassess if a landlord or agent is fit and proper at any time. This will normally be in response to new information regarding the relevant person.

The factors that an authority should take into account when assessing if a person is fit and proper to let residential properties, or to act as an agent for an owner, have been set out in section 3.4 *The fit and proper test*.

Where a registered person has been reassessed as no longer fit and proper, the outcome may be a clear-cut decision to revoke the registration, in which case, when a person is removed from the register, the local authority must send the person notice in writing of the fact and the date of removal.

Notice must be sent by recorded delivery to the last address given for that person in the register 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 was known to but had not been declared to the authority or one who had been rejected as a fit and proper person.

Information, advice and assistance

A landlord's tenant(s) or occupier(s) must be informed where the landlord's registration has been revoked. This must be done as soon as practicable after the landlord's name has been removed from the register by sending a notice of the decision to the address of each of that landlord's houses on the list for that local authority prior to the landlord's removal.

Clearly, this decision will have potential implications for the tenant(s). The local authority is therefore also required to provide advice and assistance to the occupants of every house listed on the landlord's register before removal. This should make clear that revoking the landlord's registration has no immediate effect on their security of tenure. Relevant law on security of tenure rights should be explained clearly to them. They should be advised of where they can get practical assistance if they are threatened with harassment or are unlawfully evicted. They should be advised of their rights if they become homeless and of the implications if they voluntarily give up their tenancy. The authority's homelessness obligations to them should be explained. Tenants should be provided with the contact details of appropriate officers or agencies to assist them with issues or problems arising from their landlord's deregistration (see Section 3.6 *Provision of information and advice*).

Some Occupancy Arrangements, such as those used in tied accommodation, may need particular advice given the nature of the arrangement. For example, a tied tenant may need to take advice on employment implications. The local authority should normally have made every effort to ensure that an employer landlord is made aware of the steps that he or she could take in order to be able to obtain registration (see section 3.6 *Provision of information and advice*).

These information, advice and assistance responsibilities are significant. Such responsibilities will also arise when a Rent Penalty Notice is served or when a landlord is refused registration. There is also the requirement to provide good practice advice to private landlords. All authorities need to identify the resources and skills necessary to provide effective support to private tenants and landlords.

There needs to be the capacity to advise on the effect of homelessness legislation and private tenant-landlord legislation. Good communication skills will also be important. Some authorities are already well rehearsed in dealing with the problems in the private rented sector. Others will have limited experience and will not have had any dedicated officers for this housing sector. Those authorities are advised to plan and resource the delivery of an efficient and effective information, advice and assistance service to private tenants and landlords in terms of the duties arising from mandatory registration, whether this service is delivered direct by officers or by referral to agencies which are known to be available and able to provide suitable assistance.

4.3 SANCTIONS

Key Points:

- ❖ **A range of sanctions are available to local authorities**
- ❖ **Local authorities should work with their local Procurator Fiscal to establish the evidence that might be required prior to a report being made**
- ❖ **Rent Penalty Notices and Late Application Fees can be effective in tackling non-compliance**

❖ **Report the case to the Procurator Fiscal**

It would be sensible for a local authority's key registration officer to arrange to discuss with the Procurator Fiscal's office particular expectations the Fiscal has for the types of cases and nature of evidence that should be presented by the authority for there to be a reasonable chance of a prosecution being pursued.

In support of this approach, appropriate local authority 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).

Local contact with the Procurator Fiscal is important in order to establish effective working relationships and mutual understanding.

❖ **Serve a Rent Penalty Notice**

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 or having a valid application under consideration, and that taking account of all the circumstances relating to the owner, service of the notice is appropriate. The notice relates to the particular house; it is up to the local authority to decide whether to serve a notice in relation to one, some, or all of the landlord's let properties. It would be sensible to consider the relative impact on the various tenants affected before making such a decision.

If the occupancy arrangement involves a nominal rent or is on a rent-free basis, pursuit of a prosecution through the Procurator Fiscal would be the more appropriate route for applying a sanction.

A Rent Penalty Notice must specify:

- the name of the owner
- the address of the house
- the date on which the penalty takes effect (not earlier than the day after the notice is served)
- 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

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.

There is an obligation on a local authority that has served a Rent Penalty Notice that it must provide to the occupants of the house on which the notice was served advice and assistance on:

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

Local authorities should ensure that tenants affected by the notice are, if possible, offered an appointment with a money adviser. If they are in receipt of housing benefit, contact should also be maintained with the housing benefit administration section of the authority. If an appeal by the landlord is successful, back-payment of benefit will be possible.

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 Police/Procurator Fiscal and providing advice and assistance to tenants as appropriate. This is particularly important when tenants are from vulnerable groups.

❖ **Additional Fee ('Late Application Fee')**

There is an additional fee for late applications after the local authority has issued two separate requests for an application to be made. The late application fee is £110 (twice the principal fee), over and above the registration fee of £55. The online discount of 10% does not apply to the late application fee. Charities can still be liable to pay the late application fee, despite a 100% discount on the principal fee and property fee.

4.4 APPEALS

Key Points:

- ❖ **A landlord can appeal against a refusal, revocation or rent penalty notice.**
- ❖ **It is important that local authorities have clear decision making procedures in place in order to defend against an appeal.**

❖ Refusal or removal of registration

An applicant or a registered person has the right to appeal to the sheriff against a refusal to register or a decision to remove that person from the register. **The appeal is made by summary application; there is a time limit of 21 days for the appeal to be made¹¹.** The sheriff may make an order that the person should be registered, specifying whether that person is fit and proper as an owner or as an agent.

If the sheriff refuses the application there is a further right of appeal, within 21 days, to the sheriff principal.

Clearly, when making a decision to refuse or remove registration, local authorities should take into account the potential need to defend that decision in court.

❖ Rent Penalty Notices

The owner of a house may appeal to the sheriff against a Rent Penalty Notice or against the refusal of a local authority to revoke a 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 on which the notice takes effect, or the date of the decision not to revoke.

The tenant must be aware of the appeal in order to set aside rent money so that if the appeal is successful, the accumulated unpaid rent can be repaid if ordered by the sheriff to do so.

Regulations provide that when the landlord appeals, he or she must also serve a notice on the tenant at the same time or as soon as is reasonably possible after lodging the appeal, either by post, hand delivery or email (if consented to by the tenant as an acceptable form of communication). If the landlord does not notify the tenant of the appeal, the sheriff, if granting the appeal, cannot order back-rent to be paid from the date on which the rent ceased to be payable (or the local authority refused to revoke the notice).

Tenants who are affected by a Rent Penalty Notice may often be from groups which suffer financial exclusion. They may well not have access to a bank account, and may find it

¹¹ SI 1999 /929, Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 provides at 2.6 that a 21 day limit will apply.

difficult to budget to save their rent money in the case of a successful appeal. Local authorities should aim to establish whether a particular tenant is likely to face these difficulties, and then ensure that money advice is available if the tenant so desires.

Where an owner has taken steps to register but is still refused registration and the Rent Penalty Notice remains in force, the appeal is likely to be that the decision to refuse registration and so revoke the notice was unreasonable or unjustified. The officers who refused registration or revocation of the notice must ensure that they have good grounds for doing so and that they are able to defend their decision.

PART 5: FEES AND DISCOUNTS

The fee structure for landlord registration is laid out in the following regulations:

- The Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005,
- The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2006 and
- The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2008 ¹².

The key elements of the fee structure are:

- the principal fee
- additional fees for properties
- agent fee (where applicable)
- fixed discounts and fee exemptions

This section of the guidance outlines the principles involved in the fee calculation.

Principal and Property Fee

Each landlord and agent applying for registration should pay a principal fee of £55 to each local authority in which they apply and, in the case of landlords, a property fee of £11 for each property registered.

Various discounts and exemptions apply and these are detailed below.

Exemptions

The following exemptions apply to both the principal fee and the property fee.

❖ Charities¹³

Registered charities are exempt from paying both the principal fee and property fee although they are still required to register. This means that charities receive a 100% discount.

A late application fee of £110 can still be applied to a charity if they fail to make a valid application for registration following two requests from the local authority.

❖ Joint Owners¹⁴

¹² www.opsi.gov.uk

¹³ Para 2, Schedule 2, the Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2008 ('the 2008 Amendment Regulations').

¹⁴ Para 4, Schedule 2 of the 2008 Amendment Regulations

If a property is jointly owned then a 'lead' owner should be designated by the owners from amongst their number. The lead owner will pay both the principal fee and the property fee(s) for each of the jointly owned properties. Any joint owner who is not the lead joint owner is exempt from paying both the principal fee and any property fees for the jointly owned properties. If a non-lead joint owner also rents out properties which are not jointly owned, then they should pay the relevant fee for registering these individual properties.

The discount for joint owners also applies to members of an unincorporated trust. Members of the unincorporated trust are all required to apply for registration (as they are not a single legal entity they cannot apply for registration as one). However, the joint owner discount will apply to any such applications.

❖ **HMO Licence Holders¹⁵**

Where an application is submitted by a person who holds an HMO licence in the local authority to which the application is being made, that person will be exempt from paying either the principal fee or the property fee (unless any non-HMO properties are contained within the application at which point a property fee will be payable).

Discounts

❖ **Applications made to multiple local authorities¹⁶**

Where a new or renewal application is made to more than one local authority, at the same time, using the online system, a discount of 50% of the principal fee will be provided in each case. This means that the applicant will pay £27.50 to each local authority in which they apply for registration.

Where a landlord has applied for registration or is registered in one authority and subsequently applies for registration in another authority or renews their application in one authority, using the online system, the subsequent application or renewal will receive a 50% discount on the principal fee. This means they will pay £27.50 for each of the subsequent applications. This will enable the multiple area discount to be applied at the point of registration renewal.

❖ **Online Discount¹⁷**

Where an application is made using the online system a 10% discount will be provided. This discount does not apply: where no fee is due (for example, when an application is submitted by a charity) and to the additional fee payable in respect of late applications.

Additional Fee – Late Application¹⁸

Where an application is submitted only after the local authority has issued two separate requests for an application to be made, an additional fee of £110 is payable.

¹⁵ Para 3, Schedule 2 of the 2008 Amendment Regulations

¹⁶ Para 5, Schedule 2 of the 2008 Amendment Regulations

¹⁷ Para 9, Schedule 2 of the 2008 Amendment Regulations

¹⁸ Para 8, Schedule 2 of the 2008 Amendment Regulations

Agent Fee¹⁹

Agents can apply for registration in their own right although it is not compulsory for them to do so. **If an agent is not registered or has not applied for registration** and a landlord specifies that agent as acting on their behalf in their application, the agent must be assessed as fit and proper by the relevant local authority; the landlord's application may proceed separately and may be approved or otherwise before the assessment of the agent's application is complete.

An agent fee of £55 is charged in order to compensate each relevant local authority for its fit and proper checking activity. It is the landlord and not the agent who is liable to pay this fee.

The agent fee will not be due when the agent is a registered charity, a current HMO licence holder in the area of the authority to which the application is being submitted, a local authority or a registered social landlord.

If the agent fee is due to be paid, regulations provide that a discount can be applied to the fee as follows:

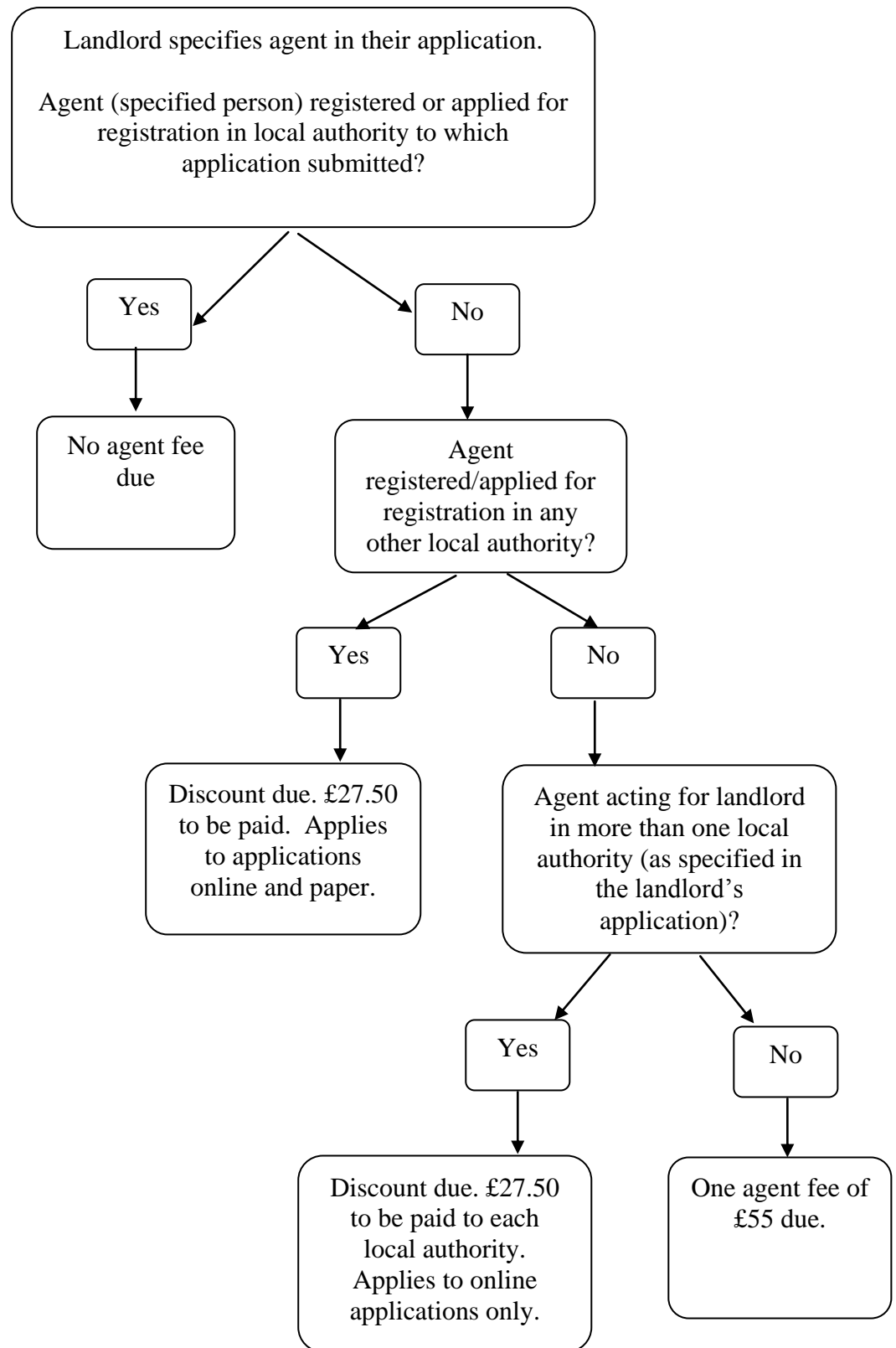
- Where the agent acts for the landlord in respect of property in more than one local authority area, and the application is made to more than one local authority at the same time, using the internet-based application system, a discount of 50% on the agent fee may be claimed. This means that the agent fee would be £27.50 for each local authority.
- Where the agent is registered by a local authority other than that to which the landlord applies, or has submitted an application to such a local authority and has not been notified of a decision on it, a discount of 50% of the agent fee may be claimed. This means that the fee payable to the local authority in which the agent is unregistered will be £27.50. This discount is applicable to both paper and online applications. Local authorities may therefore need to check if an unregistered agent who is specified within a landlord's application is registered or has applied for registration in any other local authority, before determining the fee due.

Please note that the current IT system does not allow a landlord to specify an unregistered agent within their application. The agent fee cannot therefore currently automatically be charged using the online system. This is under review by the Scottish Government and an update to the system will be provided in due course.

The following flowchart has been produced to assist local authorities in determining when an agent fee and any discounts may be applicable:

¹⁹ Para 7, Schedule 2 of the 2008 Amendment Regulations

Agent Fee



Payment of Fees

An applicant applying using the online system must pay online by either debit or credit card. There is no invoicing function available. An applicant will be unable to submit their renewal application without first paying the fee due.

The invoicing function is still available for local authorities; however, this is for administrative purposes only – for example, because some local authorities need an invoice number in order to process a payment. Invoices should not be used in the standard practice of collecting payment.

When a paper application is submitted payment must accompany it. Applicants requesting a paper application should be advised of the need to submit their application along with payment for the fee due. Where payment does not accompany an application, local authorities should take steps to address this. This might involve returning the application as invalid (without payment) or contacting the landlord/agent to request that payment is made. An application should not be entered onto the IT system until the correct payment is received. An application is not valid until it has been paid and the local authority may wish to consider taking enforcement action where payment is outstanding if the landlord is letting out his or her property.

Annex 1: Legal obligations on landlords

The material to which a local authority must have regard, under section 85, 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 and is not intended to be definitive; local authorities should consider independently the circumstances in each case.

The exact obligations on landlords depend on the type of tenancy or occupancy arrangement in place.

- the tenant must be given details of the landlord’s name and address. 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 Housing \(Scotland\) Act 2006 extends this to cover fixtures, fittings and furnishing provided as part of the let, and requires 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 or she 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 extends 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.](#)

Annex 2: Procedures for passporting HMO landlords

The table below provides guidance on the required and suggested actions that should flow from different ‘interactions’ between licensed HMOs and registered landlords and agents.

	ACTION
Licensed owner or manager/agent with only HMO houses	<ul style="list-style-type: none"> • Passported automatically to the landlord register with no further assessment • The licence-holder is notified and required to inform the local authority of any non-HMO houses he or she owns • The licensing section must be informed of any changes to the licence-holder’s details, and if he or she acquires any new HMO property (requires to apply for a new licence) or disposes of any HMO property (requires to surrender the licence). The authority should amend the register accordingly • If an HMO licence is revoked or the authority refuses its renewal, registration must be reviewed. Depending on the grounds for revoking or refusing licensing, registration may or may not need to be revoked as well <ul style="list-style-type: none"> ○ If the individual holds HMO licences in more than one local authority area, they should be passported to each register. If one authority subsequently revokes or refuses to renew an HMO licence, this should be communicated to the other authority(ies) and each should review registration, taking account of whether the same circumstances are applicable in their area
Licensed HMO owner with both HMO and non-HMO houses	<ul style="list-style-type: none"> • Passported automatically to the landlord register with no further assessment as already passed as fit and proper person • The licence-holder is notified and required to inform the local authority of any non-HMO houses he or she owns • If any of the non-HMO properties appears on the review list, the registration should be reconsidered • If grounds arise to justify revoking landlord registration, the HMO licence must be revoked as well (as the owner is no longer fit and proper to be allowed to continue letting) unless there is a possibility of management of all the houses being transferred to a registered agent or agents (see section 3.4 <i>The fit and proper test</i>) • If an HMO licence is revoked or the authority refuses its renewal, registration must be reviewed. Depending on the grounds for revoking or refusing licensing, registration may or may not need to be revoked as well • The licensing section must be informed of any changes relating to the HMO property, and the registration section of any changes to the non-HMO portfolio. Any changes to the HMO record must also be made to the register • If the individual holds HMO licences in more than one local authority area, they should be passported to each register, with the addresses of non HMO houses in each area attached to the landlord’s registration record in that area. If one authority subsequently revokes or refuses to renew an HMO licence, this should be communicated to the other authority(ies) and each should review registration, taking account of whether the same circumstances are applicable in their area
New owner/ landlord applying for an HMO licence for a house	<ul style="list-style-type: none"> • The owner should be assessed as fit and proper as part of the HMO licence assessment • If approved for an HMO licence the owner should be automatically passported to the landlord register • If not approved for an HMO licence due to failing the fit and proper person test, the owner should not be placed on the landlord register • If the owner is already registered in relation to non-HMO letting, he or she should be accepted as passing the fit and proper test for an HMO licence but as there are other licence requirements to consider (i.e. the standards of the house), the owner may or may not achieve an HMO licence

Annex 3: Central online system for landlord registration

www.landlordregistrationscotland.gov.uk

The online landlord registration website provides a central hub which can be used by:

- landlords and agents – to make applications and update their details
- local authorities – to manage registrations and provide online access to their register
- tenants and neighbours – to check whether relevant landlords are registered

This is not intended to be a comprehensive guide to the landlord registration IT system – a full user guide is available. This *Annex* will outline:

- processes
- late application fee
- public searching
- local authority reports

Processes

There are a number of key processes for consideration:

- authorised users
- review lists
- fees and discounts
- the registration process

❖ **Authorised users**

The system uses ‘role-based security’. This means that each user is assigned to one or more roles, and each role is authorised to carry out different actions and view different information.

- the **Overall System Administrator** sets up accounts for local authority system administrators and Scottish Government users
- **Scottish Government Users** deal with payment processes and have access to statistical information. They do not have any access to personal information on the system
- **Local Authority System Administrators** set up accounts for local authority users

- **Local Authority Registration Officers and Registration Managers** have access to all information, personal and public, for all records for their own local authority area, as well as access to the public information on other authorities' registers. They are able to upload and download information and reports, change the status of applications, and create and edit user accounts for public users and registered persons. Some changes of status (e.g. refusal, approval after review) are restricted to registration managers
- **Registered Persons and Companies** are able to view their own records for all local authorities to which they have applied, and view the status of all their applications. 'Registered person/company' includes landlords, agents and prospective landlords who do not yet let property
- an **Anonymous User** is a person without a user account who will only be able to view public information for approved registrations, in one local authority at a time (see 'Public Search')

❖ **Local authority review lists**

Each local authority needs to maintain its online 'review list'. This is the information which triggers an application for registration to be diverted for review by a local authority officer, including landlords, agents or property addresses about which concerns have been raised or where the local authority wants to make contact with the owner. Every record must show the source of the information, for example a file number, so that the registration officer can check the reason for review. The system will divert applications if they match the review list on:

- individual's name and home address
- individual's name and date of birth
- company name
- let property address

Because there may be several applicants with the same name, the system requires additional information and will not match on name alone. It will, however, use a probability system, so it can manage some degree of mis-spelling or use of initials versus full name, for example. Local authority staff can upload a new review list at any time and it is recommended that the list is regularly reviewed and maintained.

❖ **Fees**

A principal fee of £55 is charged for registration. The system will hold the rules to calculate all additional fees and discounts. Information on the site will provide details of how these additional fees and discounts will be applied.

❖ **Registration process**

This is how a landlord or agent will make an application for registration online. Where applications are submitted on paper forms, local authority staff will need to enter them in the system and the process will then follow a similar path.

- **Obtain a user account**

In order to register using the online system, the person requires to have an email address. The person will be prompted to enter a username and password, with some basic information about him or herself. The account then needs to be activated. An activation code can be sent out by email. This is to prove there is a real person involved, to avoid the system being spammed by systems that can generate automatic account requests.

- **Enter personal details**

Having logged in and activated their account, the user enters all their personal or company details, including statements about any convictions, accreditations, and any information required for discounts, such as charitable status.

- **Enter property details**

The user enters details of the properties they own. The system uses address-matching software to ensure that addresses are always entered in the same format, to make searching and matching more reliable. It will ask for the postcode, or partial details, and complete the rest of the address. For flats, the system can offer a list of all flats in the building to select from, and there will be tips on how flat numbers are presented. If the address is not found, the person will need to contact the local authority – only registration officers and managers can override the address software for let property addresses. In particular, this will allow local authorities to use their own standards for identifying flats. (All users can override the software for home addresses, to allow for addresses outside the UK.)

The system will identify the local authority area for each let property address, and allocate the application to the relevant authorities. Agents and prospective landlords will be able to select the authorities they wish to apply to from a drop-down list.

- **Add co-owners and agents**

For each property, the user can add an agent or joint owner(s). If an agent or joint owner has already applied for registration, the user can just enter their reference number, or enter their name and address and the system will match the records.

If an agent is not yet registered, the user will need to contact their local authority. This is because the system will not currently allow an unregistered agent to be specified within their application for registration. In these circumstances, the local authority will need to take steps either to encourage the agent to register in their own right, or to assess the agent as fit and proper.

Joint owners can be added directly as new users, within the main application, and the applicant can indicate if the joint owner is a member of their family and lives at the same address. The system will generate a user account and password and a letter will be generated prompting the co-owner to correct/complete the information. Co-owners or

landlords and agents will not have access to one another's personal details (unless they choose to share passwords).

Joint owner applications do not have to be approved at the same time; therefore there may be situations where joint owners have different approval and expiry dates.

The applicant must also identify a contact address for the property. This may be, for example, an office address rather than the owner's home address, or the local office for a company which has several addresses

- **Make payment**

The system calculates the total to be paid, showing an itemised "shopping basket" of all the elements – each local authority, each property and any discounts. [In order to use the online system, the user is required to pay online by credit or debit card.](#) The payment is approved by a third party online payment service (Worldpay), and the money goes into a central account (held by the Scottish Government) before being split up and distributed to local authorities by bank transfer. The payment is accompanied by the registration reference number, for reconciliation purposes.

If the user is unwilling or unable to pay online, they can choose to submit a paper application form. The paper application should be accompanied by the appropriate fee. An application is not valid until it is paid and all mandatory information has been completed. The online discount and multiple area discount is only available when the application is completed and submitted online.

[NB. Once all mandatory fields have been completed and payment has been made, the user has made a valid application and is not committing an offence by letting.](#)

- **Details issued for signature**

[The IT system has the facility for local authorities to send confirmation letters, which can be used to confirm the details entered by the user. If local authorities choose to use confirmation letters, they should print the details from the system and send them out to be checked, signed and returned.](#)

[If a signature is not received back within a reasonable time, the local authority should issue a reminder. After a further period, the application should be rejected. Failure to take action if confirmation letters are not returned can lead to a backlog of unapproved applications and this should be dealt with swiftly and decisively.](#)

- **Applications diverted for review**

When the application is completed and paid, the system will check it against the review list. It will also check other triggers, such as declared convictions or unlicensed HMOs (see below). If there is a match to the review list or any other trigger, the application will be identified for review by local authority officers. If an application is diverted as a result of a match to the review list of one local authority, all other authorities involved in that application will be informed, so they can, if necessary, enquire about the reason for

diversion. If a local authority wishes to review an application which has not tripped any of the triggers to be automatically diverted, the status can be manually set to 'review' when the application is received.

The review process is for each local authority to determine according to its own procedures and scheme of delegation. Once the review process is completed, the registration manager will update the status of the application on the system. Each authority makes its own decision, and registration may be approved in one authority and refused in another, depending on the applicant's circumstances. The system will also allow an application to be marked as "under appeal" if necessary.

- **Approval**

The system will set the status of the application as 'pending approval' if the following stages are completed:

- application not diverted for review
- all mandatory fields completed
- payment received

A list of applications which have changed to "pending approval" status will be provided for each day. Applications can only be moved from "pending approval" to "approved" by a local authority user manually changing the status. This ensures that no applicant will appear on the register without active confirmation from local authority staff.

The local authority should then send a registration approval letter. Each authority will do this separately, to make clear that registration is granted by each authority individually. Either when seeking a signature or when confirming registration approval, the authority can ask the applicant additional, optional questions, and enclose information on private renting issues.

- **Amendments**

If the user amends his or her details at any time, the system will check whether any payment is required (for additional properties) or whether the new information triggers review, and will put the record back into the application and checking process if necessary.

Late Application Fee

The fee structure allows for a late application fee of £110 to be applied, if the application is submitted only after the local authority has issued two separate requests for an application to be made. To make such requests, the local authority must know the name and an address for the applicant. They can therefore create a user account for that person, and put a marker on that account that it should be charged the late application fee. The user account details can be included with the second request letter, or alternatively the system should match the details if the person obtains a separate user account and applies under that, or submits a paper application that is entered by a registration officer. It may be advisable to include information about anyone subject to a late application fee on the review list, to check that they have been caught and matched with the pre-existing user account.

Public Searching

Concerns have been raised about how people might use information obtained from online registers. Examples of problems that might arise include:

- downloading lists of names and addresses to create mailing lists for unsolicited advertising
- identifying landlords with large portfolios of property, to target for robbery or protection rackets
- providing lists of property belonging to a particular landlord could lead to vandalism, putting tenants at risk, or libelous letters to current tenants, from anyone with a grudge
- identifying all rented property in an area could lead to victimisation or harassment of tenants

For this reason, it has been agreed that public searching of the registers should be restricted to individual properties or persons, and should avoid giving lists that would identify additional people or addresses on the register. Further information can be provided by local authorities, if they are satisfied with the enquirer's reasons for wanting that information.

In all cases, the user must specify the local authority whose register he or she wants to search, or the property address. Only one register can be searched at a time.

- **Property search**

For neighbours or tenants who want to know the landlord / agent of a particular property. The user will be prompted to enter the address, usually the street number and name plus the town. The address matching software will complete the rest of the details, or offer options, to arrive at a single real address. The system will then search for that address in the register. If found, it will return the names of people registered in association with that address (owner(s) and agent) and the contact address.

- **Registered Person/Company search**

For prospective tenants, clients or business partners who want to know whether a particular person or company is registered in a particular authority. The user must first identify the local authority whose register he or she wants to search. As with the review list, a name on its own is not sufficiently unique to search on. The user must enter the name and either the home / registered office address or a contact address. The system will search for that data and will simply return a statement that the person is or is not registered with that local authority.

If no match is found, the user will be invited to contact the local authority. Local authority officers will be able to view the full register, and may be able to find a match where the details provided by the user are slightly inaccurate, or can note the person/company or property for further investigation

Annex 4: Useful organisations

Local authority officers may find it useful to make contact with some of the following organisations, which can advise on making contact with landlords at local level and with professionals working with landlords.

Association of Student Residential Accommodation

admin@asra.ac.uk

<http://www.asra.ac.uk>

Association of Residential Letting Agents

Arbon House, 6 Tournament Court

Edgehill Drive

Warwick

CV34 6LG

Tel: 01926 495800

Fax: 01926 417788

info@arla.co.uk

<http://www.arla.co.uk>

Association of Residential Managing Agents

178 Battersea Park Road

London

SW11 4ND

Tel: 020 7978 2607

Fax: 020 7498 6153

info@arma.org.uk

<http://www.arma.org.uk>

Council of Mortgage Lenders

Bush House

North West Wing

Aldwych

London

WC23 4PJ

Tel. 0845 373 6771

Kennedy.Foster@cml.org.uk

<http://www.cml.org.uk/cml/policy/issues/scotland>

Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

Tel: 0131 226 7411

Textphone: 0131 476 8359

Fax: 0131 225 2934

lawscot@lawscot.org.uk

National Farmers Union Scotland

Rural Centre - West Mains

Ingliston

Midlothian

EH28 8LT

Tel: 0131 472 4000

Fax: 0131 472 4010

webmaster@nfus.org.uk

National Union of Students Scotland

29 Forth Street

Edinburgh

EH1 3LE

Tel: 0131 556 6598

Fax: 0131 557 5679

mail@nus-scotland.org.uk

<http://www.nusonline.co.uk/scotland>

Royal Institute of Chartered Surveyors

9 Manor Place

Edinburgh

EH3 7DN

<http://www.rics.org>

Scottish Association of Landlords

22 Forth Street

Edinburgh

EH6 4NQ

Tel: 0131 270 4774

<http://www.scottishlandlords.com>

Scottish Rural Property and Business Association

Stuart House

Eskmills Business Park

Musselburgh

EH21 7PB

Tel: 0131 653 5400

Fax: 0131 653 5401

info@srpba.com

<http://www.srpba.com>

Annex 5: Extracts from relevant legislation

This *Annex* includes details of some extracts from legislation referred to in this guidance. The legislation can be found in full at www.opsi.gov.uk.

❖ Housing (Scotland) Act 2001 (the 2001 Act)

Section 108 – Meaning of "family" and "spouse": cohabitation

‘(1) For the purposes of this Act, a person ("A") is a member of another's ("B's") family if-

(a) A is the spouse of B, or A and B live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, or
(b) A is B's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

(2) For the purpose of subsection (1)(b)-

(a) a relationship by marriage is to be treated as a relationship by blood,
(b) a relationship of the half-blood is to be treated as a relationship of the whole blood,
(c) the stepchild of a person is to be treated as that person's child, and
(d) a person brought up or treated by another person as if the person were the child of the other person is to be treated as that person's child’.

❖ Antisocial Behaviour etc. (Scotland) Act 2004 (the 2004 Act)

Section 139 - Disclosure and sharing of information

(1) Where subsection (2) applies, any person who, apart from this subsection-

(a) would not have power to disclose information to a relevant authority; or
(b) would be by virtue of any enactment (including subsection (3)) or rule of law susceptible to a sanction or other remedy if the person disclosed the information,

shall have that power or shall not be susceptible to that sanction or remedy.

(2) This subsection applies if the disclosure is necessary or expedient for the purposes of any provision of-

(a) this Act; or
(b) any other enactment the purpose of which is to make provision for or in connection with antisocial behaviour or its effects.

(3) Subject to subsection (4), where-

(a) by virtue of subsection (1) a person discloses to a relevant authority information in respect of which the person is subject to a duty of confidentiality; and
(b) on disclosing the information, the person informs the authority of the breach of the duty, the authority shall not disclose the information.

(4) Subsection (3) shall not prevent disclosure in any case where disclosure is permitted or required by virtue of any enactment or rule of law.

(5) In subsections (1) and (3), "relevant authority" means-

(a) a local authority;
(b) a chief constable;

- (c) the Principal Reporter;
- (d) a registered social landlord;
- (e) an authority administering housing benefit;
- (f) a person providing services relating to housing benefit to, or authorised to discharge any function relating to housing benefit of-
 - (i) a local authority; or
 - (ii) an authority administering housing benefit.

(6) Any person who, by virtue of this Act, must or may provide information or who provides or receives information for the purposes of any provision of this Act shall have regard to any relevant guidance given by the Scottish Ministers.

(7) The Scottish Ministers may, by order, modify the meaning of "relevant authority" in subsection (5).

❖ Private Landlord Registration (Advice and Assistance)(Scotland) Regulations 2005

Advice and assistance – landlords

2. A local authority shall provide an applicant for registration under section 83 of the 2004 Act with general advice on what constitutes good practice in the letting of houses, if such advice has not already been provided as part of the process leading to the making of the application.

3. If a local authority proposes to–

- (a) refuse an application for registration under section 84(2)(b) of the 2004 Act; or
- (b) remove a registered person from the register in terms of section 89(1) of the 2004 Act,

that local authority shall, if it considers that the applicant or registered person can, or might be able to, take action to avert that proposed refusal or removal, give the applicant or registered person advice on the appropriate action to take.

Advice and assistance – tenants

4. (1) Where a local authority makes a decision to–

- (a) refuse an application for registration of a landlord under section 84(2)(b) of the 2004 Act;
- (b) remove a landlord from the register in terms of section 89(1) of the 2004 Act;
- (c) serve a notice that no rent is payable in terms of section 94(1) of the 2004 Act,

it shall provide advice and assistance in relation to the relevant action referred to in (a) to (c) to the occupants of each house, as the case may be, that is–

- (i) specified in the landlord's application for registration under section 83 of the 2004 Act;
- (ii) immediately before the removal, entered in the landlord's entry in the register; or
- (iii) specified in the notice which has been or is to be served.

(2) The advice and assistance to be given in terms of paragraph (1) shall include–

- (a) information on the general position of tenants or occupants where a landlord decides to terminate a lease or occupancy arrangement other than under a Scottish secure tenancy or short Scottish secure tenancy;
- (b) advice on sources of individual advice and assistance including money advice and benefits advice should the landlord decide to terminate the tenancy or occupancy agreement;
- (c) details of the assistance that could be available from a local authority in terms of homelessness legislation and of how to seek such assistance.

(3) The advice and assistance to be given in terms of paragraph (1) shall be provided as soon as practicable after the relevant decision specified in paragraph (1) has been taken.

❖ Private Landlord Registration (Advice and Assistance) (Scotland) Amendment Regulations 2008

General advice - tenants and prospective tenants

2.—(1) The Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005(2) are amended in accordance with the following paragraph.

(2) After regulation 4(3) (advice and assistance – tenants) insert—

“(4) Where a person who is, or who is considering becoming, a tenant approaches a local authority to enquire about letting practice or landlord registration, the local authority must provide to the person general advice in relation to those matters.”.

Annex 6: Agents

The following guidance has been produced following the work of the Arneil Johnston Good Practice Implementation Group. The guidance is intended to support local authorities to identify when someone is acting as an agent and needs to be included in an application for registration. This guidance can also be used to assist landlords in identifying agents.

When is someone an agent and need to be included in the application for registration?

An agent is anyone who acts for you in relation to a property you let. This may be a professional such as a letting agent or solicitor, or a friend or relative who looks after the property, arranges repairs, collects rent and so on. You must declare ANY agent you use. Your application cannot be approved until both you and any agents you use have been assessed as fit and proper.

The key principal is that the person working for you is in regular, direct contact with the tenants in your let property. This would exclude a tradesman carrying out a repair, but not the person who regularly organises the repairs on your behalf. This would exclude the solicitor that simply draws up a lease for you but not the one who acts on your behalf regularly getting tenants to sign leases and taking arrears control and eviction action against them where required.

The table below illustrates some of the activities an agent undertakes. This should help you decide if you have an agent that should be included in your application for registration.

Action taken on behalf of the landlord	Exceptions
Organises the advertising of the property for let	Where this is the only activity undertaken eg the newspaper or website
Arranges viewings of the property, shows prospective tenants around	Where done as a commercial arrangements only as part of the tenant selection process.
Arranges or vets potential tenants	
Prepares the lease, termination, or other formal documents	If this is the only activity undertaken and is done so with your express consent on each occasion e.g. involvement of a solicitor.
Setting the rent level	If this is the only activity undertaken eg consulting with a lettings agent, estate agent, solicitor
Arranging for rent collection, accepting rent payments	This clearly does not include the banking staff involved in this process
Holds any tenants deposit	Any agency providing a local or national rent deposit guarantee scheme
Makes any deposit determinations at the end of the let	
Accepting payment from the landlord for services provided related to the let property	Anyone providing a one – off service eg tradesman carrying out repairs

Acts as an intermediary between the landlord and tenant on a regular basis	Does not include mediation agencies offering a dispute resolution service
Deals with any antisocial behaviour issues on behalf of the landlord. Note: The landlord has the legal responsibility to manage and ensure the issue is resolved	
Deals with any tenant related issues	
Is involved in dispute resolution between their tenant and the landlord	Any mediation service working with the parties
Inspects the property	Not if the property is void and no contact with any tenants
Instructs or organises repairs	This is distinct from carrying out repairs. These would be carried out by a contractor
Has the legal right to serve notice on the tenant	Solicitors who are acting for the landlord on this one action and not coming into direct contact with the tenants
Can be pursued by the tenant for losses	
Produce an end of tenancy report on the condition of the property	Not if a technical person e.g. surveyor, hired to produce a on-off report
Ensures that at end of tenancy outstanding bills/ Council Tax are addressed	
Produces an inventory for use in re-letting the property	