

**Landlord Registration – Revision of arrangements to determine applications****Report by: Mary Smith, Director Education, Communities and Economy****1 Purpose of Report**

To seek approval for revised arrangements to undertake checks on the status of individuals applying to be residential landlords.

**2 Background**

**2.1** Landlord Registration has been in place since 1 April 2006. In determining applications, local authorities are required to assess whether applicants are 'fit and proper persons' to be landlords in their area.

**2.2** Section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 (as amended), (the "2004 Act") details the matters which should be considered in making such a determination. The 2004 Act, requires local authorities, when determining applications for the purposes of landlord registration, to have regard (amongst other things) to whether the applicant has committed any offence involving the following:-

- fraud or other dishonesty, firearms, violence or drugs;
- sexual offence;
- unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability; or
- contravention of any law relating to housing or landlord and tenant law; or
- whether any antisocial behaviour orders have been served in on the landlord or tenants

**2.3** The current mechanism by which such checks are conducted was approved by the General Purposes Committee on 1 April 2014.

Following changes in the Midlothian Council, including the deletion of the Community Safety Team, a new mechanism to determine landlord registration applications requires to be adopted.

**2.4** There is guidance concerning the actions that Local Authorities can adopt when determining applications. The Private Rented Housing (Scotland) Act 2011 amended the 2004 Act and clarified that local authorities could only exercise the right to require a criminal record certificate to be provided by the relevant person (applicant) if there is *'reasonable grounds to suspect that the information provided within an application for entry in the Register is or has become inaccurate'*.

- 2.5** Scottish Government guidance issued in relation to landlord registration also states *‘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’*.
- 2.6** The Midlothian Council procedure for determination has been amended on a number of occasions in light of emerging circumstances and statutory guidance. The most recent amendment took place in 2014 when the General Purposes Committee agreed a revised procedure of carrying out internal checks with the Community Safety and Trading Standards teams on all applicants to determine if reasonable information or grounds for concern exist and, if so, these applications were referred to Police Scotland for further scrutiny.
- 2.7** With the deletion of the Community Safety Team, the procedure for considering applications needs to be revised. Lengthy discussions have taken place with the police who have recently indicated that they will continue to do ‘limited searches for Midlothian Council where there is a possible cause for concern or criminal activity’.

### **3 Proposed Procedure**

- 3.1** It is proposed that Fit and Proper Person checks will be conducted by the Environmental Health Team and the Trading Standards Team. Where any concerns are raised in relation to a landlord, these cases will be referred to Police Scotland for consideration.

### **4 Report Implications**

#### **4.1 Resource**

There are no current resource implications directly arising from this report.

#### **4.2 Risk**

Landlord Registration applications require to be determined. Failure to adjust the process to reflect the current circumstances of Midlothian Council will pose a risk to the Local Authority.

There remains a minimal risk that a person making an application for Registration may not declare past criminal activity and this may remain undetected. However, based on historic Midlothian evidence, the vast majority of landlords (99.9%) declare any convictions they have.

The opportunity to review a landlord's registration status if any relevant information or offence subsequently comes to light is provided for within the legislation.

In addition, in response to an amendment in the Statutory Guidance a new range of detailed checks are being introduced for 10% of applicants in relation to 'prescribed information'. This 10% check will enable further scrutiny of the applicant's compliance with general aspects of the legislation. This matter will be the subject of a further report to the General Purposes Committee.

#### **4.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- ☒ Community safety
- ☒ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above

#### **4.4 Key Priorities within the Single Midlothian Plan**

The management of private rented housing in Midlothian area will contribute to the principal aim "Midlothian - a great place to grow". Landlord registration system can also impact on early years of children living in private rented accommodation by helping to ensure the provision of good housing, provided by fit and proper landlords.

#### **4.5 Impact on Performance and Outcomes**

The previous method of determining landlord registration is no longer sustainable and, until a new procedure is adopted, there will be a temporary adverse impact on the time taken to determine applications for landlord registration.

#### **4.6 Adopting a Preventative Approach**

The adoption of the revised procedures will ensure that:

- i) internal checks are carried out by Environmental Health and Trading Standards; and
- ii) Midlothian Council operates the registration process in line with The Private Rented Housing (Scotland) Act 2011 and Scottish Government guidance.

#### **4.7 Involving Communities and Other Stakeholders**

There has been no involvement with communities in preparing this report as the proposed new procedure is as a result of changes to the Council's structure, specifically deletion of the Community Safety Team and is in line with legislation and follows Scottish Government

guidance. Consultation has taken place with Police Scotland and the Council's Trading Standards Team in formulating this report.

#### **4.8 Ensuring Equalities**

This report relates to an operational amendment to an existing procedure to enforce the requirements of the landlord registration legislation therefore an EqIA has been completed for the report.

#### **4.9 Supporting Sustainable Development**

There are no identified sustainability issues that relate to this report.

#### **4.10 IT Issues**

None

### **5 Recommendations**

General Purposes Committee is recommended to:-

- i) note that due to changes in the Council's structure that the current process for checking landlords is no longer possible; and
- ii) agree the new procedure of internal checks in relation to all new and renewal applications by Environmental Health and Trading Standards, with referral to Police Scotland where information may raise concern about a new applicant or an existing landlord.

**Date: 8 November 2019**

**Report Contact:**

**Name:** Edel Ryan; Environmental Health Manager

**Tel No:** 0131 271 3742

**Email:** [edel.ryan@midlothian.gov.uk](mailto:edel.ryan@midlothian.gov.uk)