

Landlord Registration

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 (landlords and agents) are 'fit and proper persons' to be a landlord or, in the case of an agent, act on behalf of a landlord.

2.2 Section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 (as amended), (the "2004 Act as amended"), details the matters which should be considered in making such a determination. The 2004 Act as amended 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.

2.3 Since 2010 Environmental Health has been working closely with the police in making sure that Midlothian landlords were fully vetted before being 'approved' on the Landlord Register. This utilised powers contained in Section 139 of the Antisocial Behaviour etc (Scotland) Act 2004 which permits the disclosure of information '*which is necessary or expedient for the Act between relevant agencies*'

2.4 In February 2011, the General Purposes Committee agreed a procedure for checking the fit and proper status of individuals applying to be Midlothian residential landlords. This process involved Environmental Health working closely with the police to check every applicant's criminal status as part of the registration process. This process provided some reassurance that all new landlords were receiving a criminal check before appearing as 'approved' on the Landlord Register.

2.5 As part of the registration process, landlords have been and remain required to declare any convictions they have. Using the process agreed by Midlothian Council in 2011, cross checking of declarations made by landlords with the police has identified 0.1% of landlords who

have not declared relevant convictions. The vast majority (99.9%) of landlords made appropriate and correct declarations on their application for registration.

- 2.6 The Private Rented Housing (Scotland) Act 2011 amended the 2004 Act and clarifies that local authorities may require a criminal record certificate to be provided by the relevant person but stipulates that a local authority may only require a criminal record certificate to be provided for this purpose if there is *'reasonable grounds to suspect that the information provided with an application for entry in the Register is or has become inaccurate'*. Where reasonable grounds exist, an applicant can be required to provide the local authority with a criminal record certificate for the purpose of allowing the local authority to decide whether the person is or is no longer a fit and proper person.
- 2.7 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'*.
- 2.8 Changes in legislation mean Midlothian Council can no longer carry out routine criminal checks on all applicants. Additionally the police have recently advised that they cannot carry out routine police checks on landlords without due reason as, to do so, would breach human rights legislation. This report proposes a new mechanism in line with current legislation and Scottish Government guidance.

3 Proposed Procedure

- 3.1 Whilst routine criminal checks on all landlords are no longer permitted, the police have indicated that they will continue to provide relevant information where there are valid and demonstrable grounds for concern.
- 3.2 Additionally, internal local authority checks with the Council's Community Safety and Trading Standards teams will be made on all applicants to determine if reasonable information or grounds for concern exist.
- 3.3 In all circumstances where reasonable information or concern exists or becomes available, referral will be made to the police for further scrutiny to verify the accuracy of information provided on an application for entry in the landlord register.

4 Report Implications

4.1 Resource

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

4.2 Risk

There is a slight risk of not identifying a landlord's past criminal activity. However based on the historic Midlothian evidence the vast majority of landlords (99.9%) declare any convictions they have. In addition there remains the opportunity to review a landlord's registration status if any relevant information or offence subsequently comes to light. Continuing with the previously agreed process is outwith the remit of the amended legislation and would pose a major risk to the Local Authority.

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 Landlord registration system can 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 the new procedure is adopted, there will be a likely 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 internal checks are carried out by the Community Safety and Trading Standards teams, and that Midlothian Council operates the registration process in line with The Private Rented Housing (Scotland) Act 2011 and Scottish Government guidance which clarify when Councils should carry out criminal status checks.

4.7 Involving Communities and Other Stakeholders

There has been no involvement with communities in preparing this report as the suggested new procedure is a result of legislative change and follows Scottish Government guidance. Consultation has taken place with Police Scotland and the Council's Community Safety and Trading Standards teams in formulating this report.

4.8 Ensuring Equalities

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

4.9 Supporting Sustainable Development

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

4.10 IT Issues

None

5 Recommendations

Committee is recommended to:-

- (i) note that changes in legislation and clarification from Police Scotland in relation to data protection issues prevents the routine checking by the Council of applicants' criminal status with Police Scotland prior to determining an application for landlord registration; and
- (ii) agree the new procedure of internal checks in relation to all new landlords with the Community Safety and Trading Standards teams, with referral to Police Scotland where information may raise concern about a new applicant or an existing landlord.

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