

# Notice of Meeting and Agenda



## General Purposes Committee

**Venue:** Council Chambers/Hybrid,  
Midlothian House, Dalkeith, EH22 1DN

**Date:** Tuesday, 04 February 2025

**Time:** 10:00

**Executive Director : Place**

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@midlothian.gov.uk)

**Further Information:**

This is a meeting which is open to members of the public.

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## **1 Welcome, Introductions and Apologies**

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## **2 Order of Business**

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Including notice of new business submitted as urgent for consideration at the end of the meeting.

## **3 Declaration of Interest**

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Members should declare any financial or non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

## **4 Minute of Previous Meeting**

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- 4.1 Minute of the General Purposes Committee Meeting of 19 November 2024, submitted for approval 4 - 8

## **5 Public Reports**

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- 5.1 Private Sector Landlord Registration Applications - Fit and Proper Person Determination, Policy and Procedure, report by Chief Officer Place 9 - 19

- 5.2 Landlord registration: Proposed protocol for prescribed information checking, landlords failing to register and the service of Rent Penalty Notices, report by Chief Officer Place 20 - 29

Exclusion of Members of the Public

**(A) TO CONSIDER RESOLVING TO DEAL WITH THE UNDERNOTED BUSINESS IN PRIVATE IN TERMS OF PARAGRAPHS 6, 9 AND 11 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 - THE RELEVANT REPORTS ARE THEREFORE NOT FOR PUBLICATION; AND**

**(B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.**

## **6 Private Reports**

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- 6.1 Application for Grant of Private Hire Car Driver's Licence

- 6.2 Short-Terms Let Licensing – Determination of a Licence Application 1 Dalhousie Mains, Dalkeith, EH22 3LZ. Reference No. ML00107N, report by Chief Officer Place

- 6.3 Short-Terms Let Licensing – Determination of a Licence Application Reference No. ML00130N 18 Dalum Loan, Loanhead EH20 9LL, report by Chief Officer Place

**7 Date of Next Meeting**

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The next meeting will be held on 18 March 2025 at 10:00.

# Minute of Meeting

General Purposes Committee  
Tuesday 4 February 2025  
Item No 4.1

## General Purposes Committee



Date	Time	Venue
Tuesday 19 November 2024	10.00 am	Council Chambers/Hybrid

### Present:

Councillor Virgo (Chair)	Councillor Bowen
Councillor Drummond (Virtual)	Councillor Imrie
Councillor McCall (Virtual)	Councillor McEwan
Councillor McKenzie	Councillor Milligan
Councillor Parry	Councillor Pottinger (Virtual)
Councillor Russell	Councillor Scott (Virtual)
Councillor Smail	Councillor Winchester

### In attendance:

Kevin Anderson, Executive Director, Place
Derek Oliver, Chief Officer Place
Alan Turpie, Legal and Governance Manager/Monitoring Officer
Edel Ryan, Senior Manager, Protective Services
PC Iain Anderson, Police Scotland
Hannah Forbes, Democratic Services Officer
Maria Perez, Democratic Services Officer

## 1. Welcome and Apologies

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The Chair welcomed everyone to the meeting of the General Purposes (GP) Committee.

Apologies were received from Councillor Alexander, Councillor Cassidy, Councillor Curran, and Councillor McManus.

## 2. Order of Business

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Order of Business as per the agenda.

## 3. Declarations of interest

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Councillor Milligan confirmed that they would ask to be recused for the discussion of item 6.1 on the agenda.

## 4. Minute of Previous Meeting

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The Minute and the Private Addendum to the Minute of the Meeting of 10 June 2024 was submitted and approved as the correct record.

The Minute of the Meeting was moved by Councillor McKenzie and seconded by Councillor Winchester.

The Private Addendum to the Meeting was moved by Councillor Parry and seconded by Councillor Winchester.

## 5. Public Reports

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No.	Application Type	
5.1	Licensing of Taxis and Private Hire Vehicles – Amendment to Condition relating to Window Tinting.	Report by Derek Oliver, Chief Officer Place
Outline of report and summary of discussion		

The Senior Manager Protective Services presented the report for decision on behalf of the Chief Officer Place.

The Senior Manager Protective Services highlighted an error on page 1 of the report. Where the third paragraph of the recommendation states “*the minimum level of light transmission in the glass contained in all other windows with the exception of the tailgate window, [...] must be a minimum of 70%*” should read a minimum of 65% instead.

The new recommended conditions relating to window tinting for Midlothian taxis and private hire vehicles, and submitted to the Elected Members for decision, are the following:

*“The windscreen, all windows and glass partitions (where fitted) must be made of safety glass in accordance with the British or European Standard in force at the time of approval.”*

*“The minimum level of light transmission in the glass contained in the front windscreen (75%) and the doors for the front passenger and driver (70%), when measured against the light meter at the Taxi Examination Centre, must comply with the standard specified in Section 32(10) of the Road Vehicles (Construction and Use) Regulations 1986.”*

*“The minimum level of light transmission in the glass contained in all other windows, excluding the rear tailgate window, when measured against the light meter at the Taxi Examination Centre, must be a minimum of 65%.”*

*“The minimum level of light transmission in the glass contained in the rear tailgate window, when measured against the light meter at the Taxi Examination Centre, must be a minimum of 30% and should not be reduced from the factory fit option by the addition of any film, temporary tint material, or replacement glass.”*

The Senior Manager Protective Services stated that a review of all conditions for taxis and protective hire vehicles will be presented to Elected Members in due course. The proposed change in conditions is for window tinting and responds to concerns expressed by the trade. Taxi and private hire operators have voiced their frustration with Midlothian’s current conditions about window tinting, listed in paragraph 3.2. of the report.

The factory standard for light transmission in the windows rear of the driver (behind the B pillar) is less than 70% and while most windows can be replaced at a cost, it is not possible to replace the tailgate window. Operators had also noted that Midlothian Council has a stricter standard than other neighbouring Local Authorities. The standards of East Lothian Council and Edinburgh City Council are noted in section 3.8 of the report for comparison.

Scottish Government guidance is sparse on the matter as the most relevant publication from May 2023 does not address window tinting. However, UK Government guidance updated in November 2023 states there is no statutory level of tinting for the windows behind the B pillar. Acknowledging the change from factory standard windows requires significant cost and inconvenience to operators, English

Local Authorities were advised to not request drivers change the windows back of the B pillar.

The advice from Police Scotland is that the back window should always allow view of the inside of the vehicle, and that a lesser level of tint in windows may be preferable to women, children and vulnerable adults when travelling alone. While Police Scotland's preference would be to see through the windows they understand the issues about the availability of non-tinted windows in the market.

There is no additional risk for Midlothian Council should Elected Members decide to change the current minimum level of tinting in the rear tailgate window as it would have a minimum impact in crime detection and result in less cost to operators.

The Chair thanked the Senior Manager Protective Services for the report and opened it up for discussion.

Elected Members noted if car manufacturers feel factory standard levels of tinting are safe, it would be reasonable to change Midlothian Council's current conditions. This change would help taxi and private hire drivers operate in the current financial climate.

Elected Members asked if the upcoming conditions review would look at the scenario described in section 3.6.2.4 where executive hire vehicles with privacy windows apply for plate exceptions and whether Midlothian Council needs to consider this for future proofing. The Legal and Governance Manager/Monitoring Officer stated that other Scottish Local Authorities operate a waiver system, and this could be considered to provide a future proof position. This is a separate matter to the decision presented to the Elected Members today.

Elected Members asked if a vehicle licenced in another Local Authority with different window tinting conditions would be breaking the law by crossing into Midlothian. The Legal and Governance Manager/Monitoring Officer stated if the driver was not breaking the law by picking up a fare in a different Local Authority than the area they are licenced to operate in, they would not break the law by crossing into Midlothian with a vehicle with different tinting standards.

Councillor Curran moved the recommendations in the report with the amendment noted by the Senior Manager Protective Services to correct the typo in the report. Councillor McCall seconded the motion.

#### Decision

Elected Members agreed to move the new window tinting conditions for taxis and private hire vehicles proposed in the report, with the amendment that the minimum level of light transmission in the glass contained in all other windows behind the B pillar, excluding the rear tailgate window, when measured against the light meter at the Taxi Examination Centre, must be 65%.

## 6. Private Reports

## **Exclusion of Members of the Public**

**In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraphs 3 and 6 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973:-**

- 6.1 Application for Renewal of a Taxi Driver's Licence

## **7. Date of Next Meeting**

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The date of the next meeting is Tuesday, 4 February 2025.

The meeting terminated at 11:08 am.



**Title of Report:** **Private Sector Landlord Registration Applications - Fit and Proper Person Determination, Policy and Procedure**

**Report by:** Derek Oliver, Chief Officer, Place Directorate

## **Report for Decision**

### **1 Recommendations**

The committee are asked to:

- i. Note and approve the proposed procedure for fit and proper persons checking of landlord registration applications/renewals and the criteria for submitting a referral for Committee determination (Appendix C)
- ii. Note the enforcement actions that may be undertaken by the Protective Services Public Health and Environmental Protection (PHEP) team when the Committee determine an application for landlord registration be refused. Namely, where the legal criteria are met, the service of a rent penalty notice under Section 94(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 which suspends the rent liability of the tenant; and secondly consideration of a referral for prosecution to the Crown Office Procurator Fiscal Service.

### **2 Purpose of Report**

To gain governance on the revised policy for processing of Landlord Registration Applications specifically regards the proposed fit and proper person checking procedure and the criteria for cases requiring referral for Committee determination.

To ask Committee to note when the Committee determine a landlord application be refused and there is evidence regards existing tenant(s) appropriate statutory enforcement action will be undertaken by the PHEP Team, including the service of a rent penalty notice (Section 94, 2004 Act) where appropriate.

**Date** 16<sup>th</sup> January 2025

**Report Contact:** Laura Gunning

Tel No: 07385 969692 [laura.gunning@midlothian.gov.uk](mailto:laura.gunning@midlothian.gov.uk)

### **3 Background/Main Body of Report**

#### **3.1 The Antisocial Behaviour etc. (Scotland) Act, 2004 Section 83 requires private landlords to register with the Local Authority in which their rental property is located.**

Section 84(2) stipulates that a Local Authority must be satisfied the relevant person is a 'fit and proper' person before granting a registration. In making this determination the Local Authority must have regard to Section 85(2):

- any offence committed involving
  - Fraud or other dishonesty
  - Firearms
  - Violence
  - Drugs
  - Sexual offence (as defined by Section 210A(10) of the Criminal Procedure (Scotland) Act 1995)
- any practice of unlawful discrimination in, or in connection with, the carrying on of any business
- any contraventions of any Letting Codes, housing law or landlord and tenant law
- any antisocial behaviour notices
- any other material appearing to the Local Authority as relevant to a fit and proper determination. Examples (Section 85(8)) include:
  - Complaints and other information which come to the attention of the Local Authority in relation to fulfilment of any financial obligation in respect of any house which is included in the application
  - Concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house included in the application
  - Failure to provide a criminal record certificate (when requested) within the specified reasonable period

#### **3.2 The proposed procedure for fit and proper checking (Appendix C) adopts a risk-based approach with (in accordance with Scottish Government advice) a starting assumption that the applicant is a fit and proper person. Additional scrutiny will be applied where suspect information indicating an applicant may not be a fit and proper person is identified.**

The Public Health and Environmental Protection (PHEP) team will organise fit and proper checking as follows:

- **Step 1** - All Applications - Check the application form for a criminal conviction or antisocial behaviour declaration. Where this applies, require the applicant to obtain and submit a criminal record

certificate from Police Scotland as permitted under Section 85A of the 2004 Act

*Note: these cases will also separately be referred for prescribed information checking (property safety certificates)*

- **Step 2** – Upon receipt of the criminal record certificate will be reviewed for any offences relevant to fit and proper criteria (see 3.1) that are ‘unspent’ and therefore still within disclosure period. This will be determined with reference to Scottish Government guidance on the rules of self-disclosure in relation to previous convictions and alternatives to prosecution ([Supporting documents - Self-disclosure of previous convictions and alternatives to prosecution: guidance - gov.scot](#)).

When an unspent conviction is determined, a marker will be placed against the application prior to proceeding to the internal checks stage.

In instances where an applicant fails to provide a requested Criminal record, a marker will be placed against the application for final review prior to Committee referral.

- **Step 3** – In conjunction with criminal certificate submission, internal checks within Midlothian Council are made to establish any information held on databases, registers or local knowledge relating to the applicant and any properties included within the application. The following departments are consulted:
  - Trading Standards – for any fraudulent or dishonest behaviour by the applicant(s)
  - Licensing – for any breaches of licensing law
  - Environmental Health:
    - Any previous landlord complaints
    - Service of any statutory notices
    - Any property condition complaints demonstrating breach of housing law

The consultation period for internal checks will be 10 working days, after which a nil response will be assumed as no concerns.

Where any relevant information is received, a marker will be placed against the application for final review.

- **Step 4** - The online First Tier Tribunal for Scotland (Housing and Property Chamber) registers ([Previous Tribunal Decisions | Housing and Property Chamber](#)) will be checked for any relevant records under the following databases:
  - a. Eviction and civil proceedings decision database
  - b. Repairing standard decisions database
  - c. Other private tenancy applications decisions database

Where any relevant information is discovered, a marker will be placed against the application for final review.

- **Step 5** – Final review. Any markers placed on the application are collated and report submitted to The General Purposes Committee to request determination of the application.

3.3 Following a Committee decision to refuse an application for landlord registration, the Protective Services PHEP Team will investigate whether the property continues to be operated under lease or occupancy arrangement with an unconnected person (i.e. not a family member as defined by Section 83 of the Housing (Scotland) Act 1987) using it as a dwelling. If this is the case, an authorised officer of the PHEP team will undertake appropriate statutory enforcement service e.g. service of a rent penalty notice under Section 94(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 which suspends the rent liability of the tenant. Consideration will also be given to whether or not referral for prosecution is made to the Crown Office Procurator Fiscal Service.

3.4 Member will be advised, when asked to consider individual applications, that the applicant has the right of appeal to the First Tier Tribunal for Scotland Housing and Property Chamber within 21 days of the date of decision. Where the Tribunal upholds a valid appeal it can instruct a Local Authority to enter the applicant onto the Landlord Registration Register.

## **4 Report Implications (Resource, Digital and Risk)**

### **4.1 Resource**

No anticipated resource impact. The Protective Services Public Health and Environmental Protection team will manage the workload within existing resource.

### **4.2 Digital**

No specific additional requirements.

### **4.3 Risk**

Midlothian Council has a legal obligation to satisfy themselves that an applicant for landlord registration/renewal is 'fit and proper.' Conducting associated checks reduces the risks for potentially vulnerable tenants.

### **4.4 Ensuring Equalities (if required a separate IIA must be completed)**

Not required.

### **4.5 Additional Report Implications (See Appendix A)**

See Appendix A

## **Appendices**

**Appendix A – Additional Report Implications**

**Appendix B – Background information/Links**

**Appendix C – Fit and Proper Person checking procedure**

## **APPENDIX A – Report Implications**

### **A.1 Key Priorities within the Single Midlothian Plan**

Midlothian will be healthier

Midlothian will be safer

### **A.2 Key Drivers for Change**

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

### **A.3 Key Delivery Streams**

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

### **A.4 Delivering Best Value**

There are no cost implications.

### **A.5 Involving Communities and Other Stakeholders**

Other Local Authorities and Scottish Government guidance have been consulted during preparation of this report.

### **A.6 Impact on Performance and Outcomes**

Approval of the proposed procedure will enable the Public Health and Environmental Protection team to apply consistent, robust fit and proper checking of landlord applications/renewals.

### **A.7 Adopting a Preventative Approach**

Implementation of consistent, holistic background checking of prospective landlords and associated properties thereby protecting the rights of tenants some of whom may be vulnerable.

### **A.8 Supporting Sustainable Development**

Not applicable.

## APPENDIX B

### Background Papers/Resource Links

The Antisocial Behaviour etc. (Scotland) Act 2004 - [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)

Scottish Government guidance on conviction disclosure periods: [Supporting documents - Self-disclosure of previous convictions and alternatives to prosecution: guidance - gov.scot](#)

The Housing and Property chamber registers [Previous Tribunal Decisions | Housing and Property Chamber](#)

## APPENDIX C - Fit and Proper Person Checking Procedure

Fit and Proper assessment Criteria: (S85 Antisocial Behaviour etc (Scotland) Act 2004)

- Any offence involving
  - Fraud or other dishonesty
  - Firearms
  - Violence
  - Drugs
  - Sexual offence
  - Unlawful discrimination
- Contravention of housing or landlord and tenant law
- Antisocial behaviour notices
- Failure to provide a criminal record certificate within period required by MLC to assist fit and proper determination of a fit and proper determination and whether to enter the register the relevant person on the landlord register (S85A (1) information provided is or has become inaccurate ( S85A (1) )
- Failure to provide a criminal record certificate within period required by MLC where reasonable grounds to suspect the information provided within an application has become inaccurate (S85A (2))
- New bullet point for 2
- Any other material if it appears to the LA that the material is relevant. (S85 (4) )  
Examples of material included at 85(8) complaints (service requests) and other information in respect of any house which is included in the application.

### Midlothian Council approach

Applications to be assessed using a risk-based approach with a starting assumption that the applicant is a fit and proper person. If suspect information is identified that indicates the applicant may not be a fit and proper person this presumption will be challenged with additional scrutiny.

### Step 1 (Admin) – Check the application for a criminal conviction or antisocial behaviour declaration

Where there is a criminal conviction or antisocial behaviour declaration, place the application on hold. Email the applicant and require them to obtain and submit a Criminal Record Certificate. Add to post GP list Also refer the case for prescribed information checking.

*Note: To obtain a certificate, the applicant will need to make a subject access request online to Police Scotland [Subject Access Requests - Police Scotland](#)*

Once the certificate is received, refer to Technical Officer.

If a relevant person fails to submit a certificate within the specified timescale, record a marker against the application for final review stage

### Step 2 (Technical Officer): Checking the Criminal Record Certificate

2a) Is anything listed relevant to the above fit and proper criteria?

If no: Refer back to admin for progression to step 3

If yes: Continue to step 2b

2b) Has the disclosure period passed (is the conviction 'spent'?)



Refer to appendix 1 (discuss with Principal EHO / team manager if unsure)

If yes - refer back to admin for progression to step 3

If no - Refer back to admin for completion of step 3 but advise them there is a relevant conviction, therefore a 'marker' against the application.

### **Step 3 (Admin) - Internal checks (Applicable to all applications)**

#### **3a Internal checks**

Email the following to request any info held on databases, registers or local knowledge relating to the application:

1. Trading Standards ([tradingstandards@midlothian.gov.uk](mailto:tradingstandards@midlothian.gov.uk))
  - Any fraudulent or dishonest behaviour by the applicant(s)
2. Licensing team (DR) ([licensing@midlothian.gov.uk](mailto:licensing@midlothian.gov.uk))
  - Any breaches of licensing law
3. Environmental Health (Technical Officer)
  - Landlord complaints (LLreg database / Uniform)
  - Service of statutory notice (stat notice register)
  - Property condition complaints demonstrating a breach of housing law (Uniform)

Request a response within 10 working days.

#### **3b First tier tribunal check**

Check online: [Previous Tribunal Decisions | Housing and Property Chamber](#) for any relevant records under:

- d. Eviction and civil proceedings decision database
- e. Repairing standard decisions database
- f. Other private tenancy applications decisions database

### **If 'yes' add marker to application**

#### **Step 4 (admin) – Review (after 10 working days from internal check request)**

Are there any 'markers' against the application (from stages 1, 2 or 3)?

If yes: Refer to Principal EHO or team manager for consideration of Committee referral (step 5). Put case on hold in the meantime.

If no: Approve application provided it was either not selected for prescribed information or those checks were satisfactory.

#### **Step 5 - PEHO / Team Manager review**

Review markers: Criminal record (step 2) or internal checks (step 3).

Are prescribed info checks satisfactory (where applicable)?

Complete formal report for submission to GP Committee.

#### **Step 6 – (Admin) Process application accordingly following Committee decision**

If a person is refused registration or removed, it must be noted within the register that a particular person was refused/removed (S 92ZA)

## **Appendix 1 (F&P Person procedure) – Determining whether a conviction is spent**

A conviction is spent once the disclosure period has passed.

The below summary tables are from Scottish Government 'Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders

([Supporting documents - Self-disclosure of previous convictions and alternatives to prosecution: guidance - gov.scot](#))

### **A) Custodial sentence disclosure period:**

Disclosure periods for custodial sentences		
Sentence length	18 or over on date of conviction	Under 18 on date of conviction
Up to (and including) 12 months	Length of sentence plus 2 years	Length of sentence plus 1 year
Over 12 months & up to (and including) 30 months	Length of sentence plus 4 years	Length of sentence plus 2 years
Over 30 months & up to (and including) 48 months	Length of sentence plus 6 years	Length of sentence plus 3 years
Over 48 months	This is an excluded sentence and the conviction will not become spent after a specific amount of time	This is an excluded sentence and the conviction will not become spent after a specific amount of time

### ***Examples:***

Examples of Disclosure periods for custodial sentences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
6 months	2½ years	1½ years
12 months	3 years	2 years
24 months	6 years	4 years
36 months	9 years	6 years
48 months	10 years	7 years

## **B) Non-custodial sentence disclosure period:**

Disclosure periods for non-custodial sentences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
Absolute discharge	Zero	Zero
Admonishment	Zero	Zero
Bond of caution	6 months, or length of caution period, whichever is the longer	3 months, or length of caution period, whichever is the longer
A fine or compensation order	1 year	6 months
Community Payback Order, Drug Treatment & Testing Order and Restriction of Liberty Order	12 months or length of order, whichever is the longer	6 months or length of order, whichever is the longer
Adjournment/Deferral after conviction	Until relevant sentence <sup>4</sup> given	Until relevant sentence given
An order under section 61 of the Children and Young Persons (Scotland) Act 1937	N/A	12 months

Ancillary Orders	Length of order <sup>5</sup>	Length of order
An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years
Any other sentence not mentioned in sections 5 to 5J of the 1974 Act	1 year	6 months
Mental Health Orders		
Hospital Direction	Not a sentence under the 1974 Act (not included in a disclosure certificate)	All have same disclosure periods as someone 18 or over at date of conviction
Guardianship Order	Zero <sup>6</sup>	
Assessment/Treatment Order	Until final disposal given	
Interim Compulsion Order	Until final disposal given	
Compulsion Order (CO)	Length of order. After 12 months an application can be made to the MHTS <sup>7</sup> under section 164A of the MH 2003 Act <sup>8</sup> for disclosure to end	
Compulsion Order with Restriction Order (CORO)	Length of order. If the restriction order ends and the CO remains, an application can be made to the MHTS for disclosure of the CO to end 12 months after the restriction order ends	

## **C) Notification requirements for Sexual Offences**

Notification requirements do not affect when a conviction becomes spent. A person may still be subject to notification requirements despite the associated conviction being spent.

Notification periods are listed in S82 of the [Sexual Offences Act 2003](#)

**Title of report: Landlord registration: Proposed protocol for prescribed information checking, landlords failing to register and the service of Rent Penalty Notices**

**Report by: Derek Oliver, Chief Officer, Place Directorate**

## **Report for Decision**

### **1 Recommendations**

The committee are asked to:

- i. Note the legal requirement for fit and proper person checking regarding landlord registration.  
  
Section 84(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 stipulates that a Local Authority must be satisfied the relevant person is a 'fit and proper' person before granting a registration and Section 85(2)-(4) further stipulates the considerations to determine this.
- ii. Note the legal requirement for landlords to provide prescribed information with their landlord registration application. The required information is detailed in Schedule 1 of the Private Landlord Registration (Information) (Scotland) Regulations 2019.
- iii. Note it is an offence under Section 93(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act') for a relevant person, who is not registered as a landlord by Midlothian Council, to own a house within Midlothian under a lease or occupancy arrangement with an unconnected person using it as a dwelling.
- iv. Note that under Section 94(1) of the 2004 Act a Local Authority may serve a Rent Penalty Notice (appendix C) when satisfied that the conditions in 1(iii) above are met and an offence is therefore being committed.
- v. Approve the proposed protocol for determination of landlord registration/renewal applications or incidents of failure to apply for registration as follows:
  - a) Any application/renewal giving rise to doubt regarding the applicant's fit and proper status will be referred to Committee for determination
  - b) Any application/renewal failing legal obligation in terms of prescribed information will be subject to a procedure (detailed in 3.1) aimed to seek compliance but can ultimately be refused by the Public Health and Environmental Protection (PHEP) team
  - c) Any landlord letting a property to an unconnected person who does not engage with the landlord registration process by failing

to lodge an application for registration, will be subject to a procedure (see 3.2 below ) aimed to seek compliance. Failure to comply can result in the issue of a Rent Penalty Notice by the Protective Services Public Health and Environmental Protection (PHEP) team.

- vi. Delegate authority to authorised officers within the Protective Services Public Health and Environmental Protection (PHEP) team to serve a Rent Penalty Notice when conditions in 1(iii) are established.

## **2 Purpose of Report/Executive Summary**

Under current arrangements any landlord registration case which fails to fully comply with the legislation is brought before the General Purposes Committee for decision. This report seeks to update the position for statutory action through powers delegated to authorised officers within the Protective Services Public Health and Environmental Protection Team for certain specific legislative breaches.

Those specific statutory breaches and associated statutory powers are:

- a) Where a property is occupied, or being offered for occupation, such that it meets the definition of requiring a landlord registration, but the landlord fails to apply, despite being advised and reminded, a Rent Penalty Notice may be served and/ or referral for prosecution made to the Crown Office Procurator Fiscal Service.
- b) Where an application for landlord registration is made but the applicant fails to produce the required Prescribed Information the application should be refused and a Rent Penalty Notice served.

Committee should note that cases where investigation calls into question an applicant's ability to satisfy the fit and proper person criteria will continue to be referred to Committee for decision.

**Date:** 14<sup>th</sup> January 2025

**Report Contact:** Laura Gunning Tel No: 07385 969692

[laura.gunning@midlothian.gov.uk](mailto:laura.gunning@midlothian.gov.uk)

### **3 Background**

#### **3.1 Legislative background**

Private landlords play a large role in meeting housing need across Scotland. The Private Sector Landlord Registration scheme offers a checking process and degree of assurance via landlord 'fit and proper' testing and property condition declarations/checks.

Landlords must declare any criminal convictions and may in specific circumstances be required to submit a Police Scotland certificate. They must separately register every private rental property owned and make prescribed information declarations for each. This includes confirmation the property meets the repairing and tolerable standard, has current electrical and gas safety certification and compliant fire, smoke and carbon monoxide detection. Landlords must apply to renew their registration every three years.

Midlothian Council currently have almost 4750 registered private rental properties.

The legislative context of landlord registration is contained within Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act'). It includes a duty on Local Authorities to prepare and maintain a public register of private landlords. It also makes it an offence under Section 93(1) for a relevant person who is not registered as a landlord by Midlothian Council to own and operate a house within Midlothian under a lease or occupancy arrangement with an unconnected person using it as a dwelling. A person guilty of this offence shall be liable on summary conviction to a fine not exceeding £50,000. The Court also has the power to impose a ban from registering as a landlord in any local authority area for up to 5 years.

In addition, or, as an alternative to considering Procurator Fiscal referral, where the conditions in 1(iii) are met, a Local Authority may serve a Rent Penalty Notice under Section 94(1) of the 2004 Act stipulating that no rent (or payment in kind) shall be payable in relation to the specified property. The tenant in a property at time of service of a RPN has the legal right to continue to reside in the property under the terms of their lease agreement until the lease arrangements expire. The tenant(s) must be informed of the service of a Rent Penalty Notice (Section 94(5)(b)). Once served, a Rent Penalty Notice remains in force until such time the conditions for issue (Section 94(2) of the 2004 Act) are no longer met. A recipient can make a written request to the Public Health and Protection Team requesting that a Rent Penalty Notice be revoked, with evidence substantiating that the conditions upon which it was served are now resolved.

The 2017 Statutory Guidance for Local Authorities Landlord Registration states at page 28 that:

*Whilst prosecution is the ultimate sanction for landlords, rent penalty notices **are an effective tool for encouraging landlords to register**. For a Rent Penalty Notice (RPN) to be issued the local authority must be satisfied that the relevant person is not registered. An RPN cannot be issued for any other reason.*

The recipient of a Rent Penalty Notice can appeal within a 21 day period to the First-tier Tribunal for Scotland (Housing and Property Chamber). Upon successful appeal, provided a landlord suitably notifies the tenant of their intention to appeal, the Tribunal may require a tenant to pay the landlord any rental sums that would have been due since notice issue.

Where a tenant claims housing benefit to directly pay their rent, Midlothian Council will seek to advise the Department for Work and Pensions (DWP) that a Rent Penalty Notice has been issued.

## **3.2 Operational procedures:**

### **3.2.1 Seeking compliance with prescribed information provision**

Landlords are required to ensure their property meets the repairing and tolerable standards and is compliant with a number of specific matters including that it has current electrical and gas safety certification, and compliant fire, smoke and carbon monoxide detection, referenced in the legislation as Prescribed Information.

Prescribed information checking will be applied by Midlothian Council to a minimum of 10% of applications per year in line with Scottish Government statutory guidance. The checks will be applied as follows:

- i. To any applications with a 'no' response against the following prescribed information advising any of the following requirements are not available/in place:
  - a. Gas safety certificate*
  - b. Electrical Installation Certificate (EICR)*
  - c. Portable Appliance Testing documentation (PAT)*
  - d. Presence of interlinked smoke alarm and heat alarm*
  - e. Presence of a carbon monoxide detector in any room with a carbon fuelled appliance**
- ii. To any applications with declared criminal convictions or antisocial behaviour orders*
- iii. Where local knowledge suggests a check should be made*

*Note that all cases meeting the criteria in i-iii above will be referred for PI checking even if the 10% quota is exceeded*

- iv. If the 10% has not been exceeded:*

*To the first case received every month and every 10<sup>th</sup> thereafter (1,11,21,31 etc) until the required 10% is reached that month.*

The procedure for seeking this information from landlords includes two written requests each with a two week response period. Further failure to comply results in a final warning letter with a three week response period advising that failure to comply will result in service of a Rent Penalty Notice by Midlothian Council to remove rent liability from the tenant and referral to the 1<sup>st</sup> Tier Housing Property Chamber (who are the responsible party for enforcing failed obligations in the property under the Repairing and Tolerable standard). The procedure therefore allows for a minimum period of seven weeks and three written requests from the point of initial request to provide prescribed information until potential service of Rent Penalty Notice.

### **3.2.2 Seeking compliance with the requirement to submit a valid landlord registration**

A suspected unregistered landlord is sent two advisory letters, each with a one week response period, regarding the legal requirement for landlord registration. They outline the offence of operation without registration and possible sanctions including a report to the Procurator Fiscal and service of a Rent Penalty Notice. They also provide advisory information on how to make an application.

Failure to respond results in up to two unannounced visits by a member of the Public Health and Environmental Protection team to obtain information on property occupation. If it is established that the property is being occupied as a dwelling, by a person unconnected to the owner under a lease or occupancy arrangement, a third and final letter is sent to the property owner. This final letter advises the outcome of our investigation, advises a Rent Penalty Notice will now be processed and details its consequences.

## **4 Report Implications (Resource, Digital and Risk)**

### **4.1 Resource**

No anticipated resource impact. The Protective Services Public Health and Environmental Protection team will manage the workload within existing resource.

### **4.2 Digital**

No specific additional requirements.

### **4.3 Risk**

Enabling prompt action against landlords either refusing to register or failing to provide prescribed information to demonstrate legal compliance reduces the risk to potentially vulnerable tenants. Any concerns identified during fit and proper checking will be presented to Committee for determination of the landlord registration application.



**4.4 Ensuring Equalities (if required a separate IIA must be completed)**

Not required.

**4.5 Additional Report Implications (See Appendix A)**

See Appendix A

**Appendices**

**Appendix A – Additional Report Implications**

**Appendix B – Background information/Links**

**Appendix C – Rent Penalty Notice example**

## **APPENDIX A – Report Implications**

### **A.1 Key Priorities within the Single Midlothian Plan**

Midlothian will be healthier  
Midlothian will be safer

### **A.2 Key Drivers for Change**

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

### **A.3 Key Delivery Streams**

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

### **A.4 Delivering Best Value**

There are no cost implications.

### **A.5 Involving Communities and Other Stakeholders**

Other Local Authorities and Scottish Government guidance have been consulted during preparation of this report.

### **A.6 Impact on Performance and Outcomes**

This will enable the Public Health and Environmental Protection team to robustly investigate alleged unregistered landlords and take prompt direct action against failure to provide satisfactory prescribed information.

### **A.7 Adopting a Preventative Approach**

Procedures initially adopt an informal approach to aim for a prompt resolution before commencing formal proceedings.

### **A.8 Supporting Sustainable Development**

Not applicable

## APPENDIX B

### Background Papers/Resource Links (insert applicable papers/links)

The Antisocial Behaviour etc. (Scotland) Act 2004 - [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)

The Private Landlord Registration (Information) (Scotland) Regulations 2019 - [The Private Landlord Registration \(Information\) \(Scotland\) Regulations 2019](#)

## Appendix C – Rent Penalty Notice example

Midlothian Council  
Environmental Health  
Midlothian House  
Buccleuch Street  
Dalkeith  
EH22 1DN

Place Directorate  
  
Kevin Anderson  
Executive Director – Place

Midlothian

### RENT PENALTY NOTICE

SECTION 94 OF THE ANTISOCIAL BEHAVIOUR etc. (SCOTLAND)  
ACT 2004

Reference Number: RPN/



**To:**

**Property:**

**Name of Owner(s):**

**Date of Commencement:**

**This notice is served upon you as owner of the above property as you have failed to complete a valid landlord registration for this property.**

The effect of this Notice is that no rent or other charges for the period starting from the specified date of commencement shall be due or payable to you by any tenant or occupant under any lease or occupancy agreement applying to the above property. This will remain the case until the Notice is either revoked by Midlothian Council or overturned on appeal by the First Tier Tribunal.

You may apply to Midlothian Council for the Notice to be revoked. Midlothian Council will only revoke the Notice if it is satisfied that the circumstances under which the Notice was served on you have been satisfactorily resolved. If it is not satisfied, your request to revoke the Notice may be refused.

You may appeal to the First Tier Tribunal within 21 days of the date from which the Notice takes effect, or the date of any decision by Midlothian Council not to revoke the Notice.

If you appeal, you must serve notice of the appeal to the tenant or occupant at the same time or as soon as is reasonably possible after lodging the appeal stating that (a) you have appealed either this Notice or Midlothian Council's decision to refuse to revoke the Notice and (b) that the tenant or occupant may, if the First Tier Tribunal so order, be required to pay the rent or other charges that would have fallen due during the period this Notice was in force.

You should refer to the explanatory notes on the reverse of this Notice.

Signed: ..... Date:.....

Name: .....

Address: Environmental Health, Midlothian Council,  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3AA

Tel:

E mail:

## EXPLANATORY NOTES FOR RENT PENALTY NOTICE

1. If you do not understand the effect of this Notice you should seek legal representation.
2. You have the right of appeal to the First Tier Tribunal in terms of Section 97 of the Antisocial Behaviour etc. (Scotland) Act 2004 if you consider that the Rent Penalty Notice should not have been served. Any appeal should be made within 21 days from the date the Notice takes effect, as specified in the Notice
3. The First Tier Tribunal can be contacted at:  
  
Glasgow Tribunals Centre  
20 York Street  
Glasgow  
G28GT  
  
Telephone: 0141 302 5900
4. If you appeal you must serve notice on the tenant of the property at the same time, or as soon as reasonably possible after lodging the appeal. Failure to notify the tenant will mean that if your appeal is granted the First Tier Tribunal cannot order back-rent to be paid.
5. This Rent Penalty Notice has been issued as Midlothian Council is satisfied that the conditions listed in Section 94(2) of the Antisocial Behaviour etc. (Scotland) Act 2004 are met in relation to the relevant property; namely:
  - (a) You as the owner of the house are a relevant person: where a relevant person is defined as meaning a person who is not a local authority, a registered social landlord or Scottish Homes
  - (b) The house is subject to a lease or occupancy arrangement which means that an unconnected person (a person who is not a member of the family of the relevant person) may use the house as a dwelling
  - (c) You as the relevant person are not registered by the Authority as a Landlord
  - (d) Having regard to all the circumstances relating to the relevant person it is appropriate for a notice to be served.
6. You may apply for revocation to Midlothian Council of the Rent Penalty Notice if you believe and can substantiate that the conditions which allowed service of the notice are no longer met.

Any application for revocation of the Notice must state clearly why you feel that the Notice should be revoked.

An application for revocation should be made in writing to:-

Environmental Health, Midlothian Council, Fairfield House , 8 Lothian Road  
DALKEITH, EH22 3M

Email: [Landlord.Registration@midlothian.gov.uk](mailto:Landlord.Registration@midlothian.gov.uk)