

**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)