

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.

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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)
 - Any fraudulent or dishonest behaviour by the applicant(s)
2. Licensing team (DR) (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 ⁴ 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 ⁵	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 ⁶	
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 ⁷ under section 164A of the MH 2003 Act ⁸ 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](#)