

T: 0300 244 4000
E: scottish.ministers@gov.scot

Ariane Burgess MSP
Convener
Local Government, Housing and Planning
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: localgov.committee@parliament.scot

4 September 2024

Dear Convener,

Thank you for the request for an update to the above public petition requested by the Local Government and Communities Committee.

I am acutely aware that correspondence on this petition has been ongoing for some considerable time and for that I do sincerely apologise.

I indicated in my last letter to the Committee on 26 October 2023 that we hoped to make revised Landlord Registration Statutory Guidance available to the Committee in November 2023. Unfortunately, that has not been possible. In developing the revised version of the Statutory Guidance, we undertook further consultation with local authorities to inform this update. However, our internal engagement has highlighted that a fuller consultation is required to ensure compliance with the duty to consult. I am minded to agree with that analysis as I am keen to ensure that all key stakeholders and representative bodies have the opportunity to make their views known on this important guidance.

In addition to this, and as you will be aware, the Housing (Scotland) Bill introduced to Parliament on 26 March 2024 includes important measures that, if passed, will impact on landlords. As a consequence, we will want to assess the implications of the legislation and determine if the Statutory Guidance ought to reflect the impact of these changes on the considerations within the landlord registration regime. Given this, I want to make best use of the time of local authorities, key stakeholders, representative bodies, and the Committee. I appreciate that this may take some time as the Bill progresses, therefore, I have asked my officials to begin the engagement process with the Local Authorities to establish a working group to review the Statutory Guidance and start the process of drafting guidance on the administration of the Prescribed Information element of the fit and proper person test, with a view to gathering information and views from the working group to feed into the wider amendments prior to stakeholder consultation

However, I do want to offer reassurance in terms of the current landlord registration regime and the efficacy of the current statutory guidance and legislative provisions.

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Landlord registration provides a register of all private landlords for public inspection, with the added assurance that the local authority has conducted a fit and proper test on those involved. The regime aims to encourage local authorities to make best use of the legislation, and the tools this makes available to them, to improve the sector and to apply enforcement measures where appropriate.

The protection of tenants is paramount and encouraging landlords to register helps to make clear the compliance standards that are required to be met. Providing free access to justice for tenants through the First-tier Tribunal for issues such as repairing standards and evictions also provides an accessible and effective route for redress for tenants to use.

While the Fit and Proper Person test does require self-declaration, Local authorities must take account of the information prescribed in section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 (the 2004 Act) when carrying out the fit and proper person test. This includes, amongst other things, material which shows that the person has committed specific offences or contravened any provision of housing law or landlord and tenant law, material which relates to any acts of the relevant person regarding antisocial behaviour affecting the house and repairing standard enforcement orders.

Local authorities are encouraged develop an explicit risk-based approach to applications, using their experience and local intelligence, to identify and target registrations where further scrutiny is appropriate. This includes consulting with other relevant agencies (including, but not limited to Trading Standards and Police Scotland) and making use of information available within the local authority (e.g. from other licensing regimes).

Following a public consultation in 2018, Scottish Ministers introduced changes to strengthen the fit and proper person test. The Private Landlord Registration (Information) (Scotland) Regulations 2019 requires landlords to provide more information about compliance with other legal duties (please see list in Annex A), and local authorities are able to gather further information on these requirements in considering the fit and proper person assessment. Additionally, Landlord Registration is just one of many pieces of legislation available to local authorities to assist them with the fit and proper person test and ongoing compliance with registration requirements - a list of the supporting legislation is also provided in Annex A.

Local Authorities also have a range of discretionary powers that they can use to encourage compliance and target breaches by landlords, including:

Rent Penalty Notices	If the local authority is satisfied that a landlord has failed to make a valid application, has been de-registered or if an application has been refused, a Rent Penalty Notice suspends the rent liability in an unregistered property
Action Plans	Used as part of the local authorities duty to provide advice and support to landlords. These are designed to help landlords improve their practices to allow them to meet the requirements for registration. This may also be used in conjunction with the requirement for landlords to undertake training to help them understand their full legal responsibilities.
Third Party Reporting	The Housing (Scotland) Act 2014 introduced powers that enable the local authority to make a third party application to the First-tier Tribunal to enforce repairing standards.

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For more significant breaches, there are a range of powers available to the local authorities, including criminal prosecution or disqualification. The table at Annex B provides an overview of the more significant breaches and available sanctions.

The guidance is intended to help local authorities ensure that all landlords operating in their area are registered and achieve satisfactory standards of performance for their tenants. It is designed to achieve good results for tenants, landlords and the communities where the landlords operate.

I hope the approach to updating the Statutory Guidance, and further explanation of the operation of the landlord registration regime is acceptable to the Committee.

Yours Sincerely,

PAUL MCLENNAN

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

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ANNEX A – Prescribed Information Requirements introduced in 2019

As part of the online application digital platform, landlords are required to provide information relating to:

- Gas safety
- Electrical safety
- Electrical appliance test
- Fire, smoke and heat detection
- Carbon monoxide detection
- Public and Private water supply information
- Energy performance
- Legionella risk assessment
- Rental property insurance
- Common repairs; and
- Tenancy deposit arrangements.

Supporting Legislation

- Assured Tenancy Regime 1989
- Houses in Multiple Occupancy 2000
- The Tenements Act 2004
- The Repairing Standards 2007
- Overcrowding Statutory Notices 2011
- Tenancy Deposits 2012
- Tenants Information Pack 2013
- Enhanced Enforcement Area 2014
- Private Rented Sector Tribunal 2014
- Letting Agent Registration 2014

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ANNEX B – Significant Breaches and Sanctions available to Local Authorities

Breach / Offence	Available Sanction
Failure to register whilst letting a property	<ul style="list-style-type: none"> • Rent Penalty Notice • Report to COPFS • On summary conviction, up to £50k fine and possibility of a ban on letting properties for up to 5 years
Non-registered owner communicates with a person about entering into a lease or occupancy agreement	<ul style="list-style-type: none"> • Report to COPFS • On summary conviction, up to £50k fine
De-registered / refused person continues to let property	<ul style="list-style-type: none"> • Rent Penalty Notice • Report to COPFS • On summary conviction, up to £50k fine
Provision of false information or failure to specify required information in an application form	<ul style="list-style-type: none"> • Refusal of application (right of appeal) • On summary conviction fine up to level 3 on the standard scale
Failure to comply with Local Authority Request for information	<ul style="list-style-type: none"> • Review of Fit & Proper Person Status • Refuse / revoke registration • On summary conviction, fine up to level 2 on the standard scale

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