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<b>Report To:</b>	<b>Environment &amp; Regeneration Committee</b>	<b>Date:</b>	<b>9 March 2023</b>
<b>Report By:</b>	<b>Director, Environment &amp; Regeneration</b>	<b>Report No:</b>	<b>ENV014/23/MM</b>
<b>Contact Officer:</b>	<b>Martin McNab</b>	<b>Contact No:</b>	<b>01475 714246</b>
<b>Subject:</b>	<b>Landlord Registration Process</b>		

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## 1.0 PURPOSE AND SUMMARY

1.1  For Decision  For Information/Noting

1.2 The purpose of this report is to recommend a change to the way in which the Council considers concerns that have been raised in respect of the suitability of private residential landlords under the Antisocial Behaviour etc. (Scotland) Act 2004 (“the Act”). It is believed that these proposals will simplify and improve the consideration of such matters.

1.3 The Act introduced the Private Landlord Registration Scheme to Scotland. The scheme has operated since 2006. The scheme placed a legal responsibility on private residential landlords to register with those local authorities where they are actively renting housing to unrelated persons. Agents formerly also had to register with the Council but now must register on the Letting Agents Register (LAR) operated by the Scottish Government.

1.4 The existing arrangements for considering such matters were approved by the Education & Communities Committee in 2017 for the approval, refusal or removal of a landlord’s registration, refusal and removal being considered by the Housing (Landlord Registration) Sub-Committee. This consideration includes an assessment as to whether the landlord in question is a “fit and proper person”- in terms of Section 85 of the Act. This report fulfils a remit from the January meeting of the Committee by recommending changes to the existing arrangements.

1.5 Rather than concerns over the suitability of private landlords being considered by the Director of Environment and Regeneration and the Head of Legal and Democratic Services who would decide whether a meeting of the Housing (Landlord Registration) Sub-Committee should be held, it is recommended that the process could be expedited by reports being submitted directly to the General Purposes Board for consideration.

1.6 This would obviously require a change to the Council’s Standing Orders and Scheme of Administration, including the removal of the Housing (Landlord Registration) Sub-Committee, and the approval of Inverclyde Council. However, it is clear that the process of determining whether or not a landlord is “fit and proper person” has a great deal of commonality with a number of civic licensing regimes already covered by the General Purposes Board, such as for taxi licensing. If the Council were to decide that consideration of these matters could fit appropriately under the remit of the General Purposes Board then the process for submission of reports on this matter could be simplified to work within the current arrangements for the General Purposes Board.

## **2.0 RECOMMENDATIONS**

- 2.1 That the Committee approves the proposed change to the way in which the Council considers concerns that have been raised in respect of the suitability of private residential landlords under the Antisocial Behaviour etc. (Scotland) Act 2004, with such matters instead being considered by the General Purposes Board and the Housing (Landlord Registration) Sub-Committee being removed, and remits this decision to the full Council for consideration of the associated changes to the Council's Standing Orders and Scheme of Administration.
- 2.2 That the Committee notes it will receive an annual update on Private Residential Landlord Registration.

**Stuart Jamieson**  
**Director Environment & Regeneration**

### 3.0 BACKGROUND AND CONTEXT

3.1 Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004 provides that, other than the limited exemptions contained in Section 83 of the Act, all landlords who are not a local authority or registered social landlord must register with the local authority. Failure to apply for registration is a criminal offence.

3.2 The Landlord Registration Update report brought to the January meeting of the Environment & Regeneration Committee gave details of the current situation in respect of Landlord Registration and the processes in place for calling a meeting of the Housing (Landlord Registration) Sub-Committee. Members expressed a desire to see faster progress on bringing cases before them and it was remitted to the Director to bring a report back to this meeting. A link to that January 2023 report is included here:-

<https://www.inverclyde.gov.uk/meetings/meeting/2519>

3.3 In the March 2017 report “Registration of Private Landlords – Formal Procedure for the Approval, Refusal or Removal of Registration” the Education & Communities a process whereby concerns over the suitability of private landlords were reported to an officer panel, comprising at that time the Corporate Director Education, Communities & Organisational Development and the Head of Legal & Property Services. If the officer panel was satisfied that the grounds existed for refusal or revocation of the necessary licence then the matter would be placed before the Sub-Committee for ratification or rejection. A link to that March 2017 report is included here:-

<https://www.inverclyde.gov.uk/meetings/meeting/1943>

3.4 This process was intended to ensure that landlords are only referred to members for consideration of their fit and proper status when senior officers are satisfied that the evidence for bringing such a referral is sufficient. In reality officers would be very unlikely to bring a case for members’ consideration without involving senior officers in all circumstances. What the process does not allow for is a straightforward process should Police Scotland raise issues about a landlord’s suitability based upon previous convictions. The obvious parallel for these, admittedly rare, cases would be referrals to the GP Board from Police Scotland for Taxi Drivers.

3.5 Section 84 of the Anti-Social Behaviour etc. (Scotland) Act 2004 provides that the local authority shall register a landlord or agent where the appropriate information has been submitted, the appropriate fee paid and where it is satisfied that the relevant person is a “fit and proper person” to act as a landlord or agent. When considering whether someone is a fit and proper person, Section 85 of the Act provides that the local authority shall have regard (among other things) to any material specified in Section 85 subsections (2) to (4) of the Act viz. –

“(2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has–

(a) committed any offence involving–

(i) fraud or other dishonesty;

(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968;

(ii) violence; or

(iii) drugs;

(a) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995;

(b) practised unlawful discrimination in, or in connection with, the carrying on of any business;  
or

(c) contravened any provision of–

(zi) any Letting Code issued under section 92A;

- (i) the law relating to housing; or
- (ii) landlord and tenant law.

(3) Material falls within this subsection if it relates to any actings or failure to act by the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house–

(a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c);  
and

(b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.

(3A) Material falls within this subsection if it relates to any agreement between the relevant person and any person in terms of which that person acts for the relevant person in relation to a lease or occupancy arrangement such as is mentioned in section 84(3)(c).

(4) Material falls within this subsection if it appears to the Authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.”

## 4.0 PROPOSALS

- 4.1 In terms of the Council’s Standing Orders and Scheme of Administration, the remit of the Housing (Landlord Registration) Sub-Committee is “[t]o consider and decide on the refusal or removal of the registration of a private landlord or agent in prescribed circumstances”. General reports and updates on the private landlord registration are instead submitted to the Environment & Regeneration Committee, therefore the sole function of the sub-committee is essentially to carry out this *quasi-judicial* function, i.e., to consider whether or not a private residential landlord is a “fit and proper person”.
- 4.2 It should be remembered here that Private Residential Landlord Registration is a Scottish Government scheme large parts of which are administrative and operational. Although there are tools to encourage compliance landlords to meet the standards expected of them, such as Rent Penalty Notices, these are used operationally. It is not a licensing system unlike many of the Civic Government regimes and member input is required solely in relation to the fitness of an individual to be a landlord.
- 4.3 As noted in the January report to the Committee, the circumstances in which such a decision is required will arise relatively infrequently. Given this, and the *quasi-judicial* nature of such matters, it would make sense for such decisions to instead be taken by the General Purposes Board which regularly deals with such considerations on civic licensing matters, and has greater experience in doing so, including in ensuring the rights of licence holders (in this case private landlords) are met, and all relevant parties able to input into such decision-making. This would also enable any such issues to be considered at the regular scheduled meetings of the General Purposes Board, rather than special meeting of the Housing (Landlord Registration) Sub-Committee having to be arranged, potentially at short notice. As is currently the case, it would

still be for the appropriate Head of Service to initially consider any concerns which are raised over the suitability of private landlords (or prospective private landlords), and only where it is assessed that such concerns have substance and/or merit consideration by the General Purposes Board, would such concerns be remitted to the General Purposes Board, failing which they would be determined by officers under delegated authority.

- 4.4 It is therefore recommended that the Committee approves a proposed change to the way in which the Council considers concerns that have been raised in respect of the suitability of private residential landlords under the Antisocial Behaviour etc. (Scotland) Act 2004, with such matters instead being considered by the General Purposes Board and the Housing (Landlord Registration) Sub-Committee being removed, and remits this decision to the full Council for consideration of the associated changes to the Council's Standing Orders and Scheme of Administration. This would not affect the Environment & Regeneration Committee's responsibility to oversee the implementation of Private Residential Landlord Registration along with other matters affecting housing enforcement but it would streamline and improve the current process. It is, however, proposed that the Committee receive an annual update on Private Residential Landlord Registration.

## 5.0 IMPLICATIONS

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO	N/A
Financial		X	
Legal/Risk	X		
Human Resources	X		
Strategic (LOIP/Corporate Plan)		X	
Equalities & Fairer Scotland Duty	X		
Children & Young People's Rights & Wellbeing			X
Environmental & Sustainability			X
Data Protection			X

## 5.2 Finance

There are no financial implications arising directly from this report.

### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### 5.3 Legal/Risk

There are legal duties on the Council under the 2004 Act, in relation to the registration of private residential landlords. The proposals in this report will help ensure the Council meets its duties under the Act, and mitigate the risk of legal challenge to the Council in respect of the same.

### 5.4 Human Resources

The only Human Resources implications arising directly from this report are the need for officers to implement the proposals. However, it is expected that this can be contained within existing budgets.

### 5.5 Strategic

All tenures of housing are covered by the Local Housing Strategy which is currently under development.

### 5.6 Equalities and Fairer Scotland Duty

None.

#### (a) Equalities

This report has been considered under the Corporate Equalities Impact Assessment (EqIA) process with the following outcome:

	YES – Assessed as relevant and an EqIA is required.
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, assessed as not relevant and no EqIA is required

#### (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO – Assessed as not relevant under the Fairer Scotland Duty.

## 6.0 CONSULTATION

6.1 The members of the General Purposes Board and the Housing (Landlord Registration) Sub-Committee, together with the Head of Legal and Democratic Services, have been consulted in the preparation of this report.

## **7.0 BACKGROUND PAPERS**

- 7.1 Registration of Private Landlords – Formal Procedure for the Approval, Refusal or Removal of Registration, Education & Communities Committee 7<sup>th</sup> March 2017, **EDUCOM/25/17/DH**

Registration of Private Landlords – Progress Update, Environment & Regeneration Committee 17th January 2019 **ENV006/19/RD**

Registration of Private Landlords – Progress Update, Environment & Regeneration Committee 14th January 2023 **ENV006/22/MM**