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| Report To: | Education & Communities Committee | Date: 04 September 2012 |
| Report By: | Head of Safer & Inclusive Communities | Report No: EDUCOM/17/12/DH |
| Contact Officer: | Drew Hall | Contact No: 01475 714272 |
| Subject: | Registration of Private Landlords – Fit and Proper Person Test Procedure | |

1.0 PURPOSE

- 1.1 The purpose of this report is to seek the Committee's approval for the criteria and the procedure applying to the fit and proper person test on Private Landlords.

2.0 SUMMARY

- 2.1 The Antisocial Behaviour etc. (Scotland) Act 2004 introduced the Private Landlord Registration Scheme to Scotland. The scheme has operated since 2006. The scheme placed a legal responsibility on all private landlords to register with Local Authorities where they have housing for rent.
- 2.2 Over 1800 landlords have applied to the Council for registration of 3385 properties. Only 3 landlords have had their registration refused or removed as a result of clear breaches of the legislation.
- 2.3 The legislation requires a Landlord or an agent to be a fit and proper person. As part of the registration process, applicants must disclose relevant criminal convictions. Information sharing protocols between the Council and Strathclyde Police now permit Landlords to be checked for relevant convictions.
- 2.4 The legislation lists considerations that the Local Authority must have regard to when deciding if the Landlord/Agent is a fit and proper person. The criteria for determining whether an individual is to be regarded as a fit and proper person have been developed having regard to legislative requirements and other relevant considerations.
- 2.5 Any Landlord/Agent aggrieved by the refusal or removal of their registration can appeal to the Sherriff.

3.0 RECOMMENDATIONS

- 3.1 That the Committee:
- Note current progress with Private Landlord Registration in Inverclyde; and
 - Agree the criteria and procedure for the execution of the Fit and Proper Person test outlined in section 5 of this report

John Arthur
Head of Safer & Inclusive Communities

4.0 BACKGROUND

- 4.1 Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004 provides that all Landlords who are not a local authority or Registered Social Landlord must register with the local authority. Failure to register is a criminal offence.
- 4.2 The legislation provides that the Local Authority shall register a landlord where it is satisfied that the relevant person (either the landlord or his agent) is a “fit and proper person” to act as a landlord. When considering whether someone is a fit and proper person the Act provides that the local authority shall have regard to materials:-
- showing that the person has committed any offence involving fraud or other dishonesty; violence; or drugs;
 - showing that the person has practised unlawful discrimination in connection with the carrying on of any business;
 - showing that the person has contravened any provision of the law relating to housing or landlord and tenant law;
 - relating to any action or failure to act in relation to antisocial behaviour affecting a house which the person lets or manages; or
 - relevant to the question of whether the person is a fit and proper person.
- 4.3 Over 1800 landlords have applied to the Council for registration of 3385 properties. Only 3 landlords have had their registration refused or removed as a result of clear breaches of the legislation. Any Landlord/Agent aggrieved by the refusal or removal of their registration can appeal to the Sheriff. In the 3 cases mentioned, appeals were never lodged.
- 4.4 The legislation requires a Landlord or an agent to be a fit and proper person. As part of the registration process, applicants must disclose relevant criminal convictions. Landlords who have fully disclosed relevant convictions have been interviewed and an assessment made in relation to the interview, nature of convictions and the age of the convictions before deciding to approve or refuse an application for registration.
- 4.5 Strathclyde Police have recently been in contact with Safer and Inclusive Communities with a view to becoming more proactive in sharing information on Landlords’ criminal activities. This is welcomed by the service. Previously, investigation of an applicant was undertaken by the service and Strathclyde Police utilising the information sharing protocols that were in place.
- 4.6 The legislation lists considerations that the Local Authority must have regard to when deciding if the Landlord/Agent is a fit and proper person. With the additional information support from the Police now being available, this is an opportune time for the Council to review its “Fit & Proper Person” Criteria together with the procedures for assessing and determining Landlord/Agent registrations.

5.0 PROPOSALS

- 5.1 Having regard to the Legislation, Guidance from the Scottish Government and in consideration of experience gained in administering the registration scheme, it is proposed that the categories of information which will be considered when assessing whether someone is “a fit and proper person” shall be as follows:-

- i. Information from the Police about relevant criminal convictions and activities, particularly in relation to fraud or other dishonesty; violence; or drugs;
- ii. Information from the Social Protection Team of Safer & Inclusive Communities Service about antisocial behaviour by tenants in the private sector;
- iii. Information about convictions for housing benefit fraud;
- iv. Information from the Public Health and Housing Team of Safer & Inclusive Communities concerning a view that a landlord has failed to comply with his duties as landlord following service of statutory notices;
- v. Information provided by the Private Rented Housing Panel to the Council and which information will cover the following areas:-
 - a) the making or variation of a Repairing Standard Enforcement Order; [an Order requiring a landlord to carry out such work as is necessary to bring the property up to the standard set out in the Housing (Scotland) Act 2006]
 - b) revocation of a Repairing Standard Enforcement Order; or
 - c) consent to the landlord entering into a tenancy or occupancy arrangement or the grant of a certificate under Section 60 that work required under a Repairing Standard Enforcement Order has been completed and the landlord to whom the notice relates is a person registered by the local authority.
- vi. Information about breaches of any Letting Code issued by the Scottish Government;
- vii. Information from other Council services about the continued non payment of accounts relating to rental homes belonging to the Landlord.

5.2 It is further proposed that the Head of Safer & Inclusive Communities shall determine an applicant's status as a Fit and Proper person. Such determinations will have regard to the criteria listed in paragraph 5.1 together with consultations with other relevant Council Services, the Police and where relevant other Local Authorities.

5.3 All Landlords/Agents who have fully disclosed their convictions and were previously registered will continue to be registered unless there has been a material change to their circumstances. Any material change will result in a review of their Fit and Proper Person status.

5.4 Where appropriate consideration will be given to some landlords who fail the Fit and Proper Person test being permitted to transfer the full management of their rental properties to an accredited property agent. The Council will need to be satisfied that the landlord in this case has no direct involvement with operation of the rental business.

6.0 IMPLICATIONS

6.1 Financial

There are no significant financial considerations

6.2 Legal

Legal and Democratic Services have been consulted on the content of this report.

6.2 Equalities

When delivering services to our customers, full cognisance is taken of equality and diversity processes and procedures.

7.0 LIST OF BACKGROUND PAPERS

- 7.1
- Antisocial Behaviour etc.(Scotland) Act 2004
 - Registration of Private Landlords – Guidance Note for Local Authorities (April 2009)