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| <b>Report To:</b>       | <b>Education &amp; Communities Committee</b>  | <b>Date:</b> 09 September 2014       |
| <b>Report By:</b>       | <b>Head of Safer &amp; Inclusive Communities</b>  | <b>Report No:</b><br>EDUCOM/57/14/DH |
| <b>Contact Officer:</b> | <b>Drew Hall</b>  | <b>Contact No:</b> 01475 714272      |
| <b>Subject:</b>         | <b>Registration of Private Landlords – Formal<br/>Procedure for Refusal or Revocation</b> |                                      |

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to seek the Committee's approval for proposed amendments to current procedures used to refuse to register a Private Landlord or to remove the Landlord from the Private Landlord Register including on the grounds of not being a fit and proper person.

## 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 residential landlords to register with those Local Authorities where they are actively renting housing.
- 2.2 2,868 landlords have applied to the Council for the Registration of 4,180 properties. 3 landlords have had their Registration refused or removed as a result of breaches of the legislation.
- 2.3 The legislation requires a Landlord or an agent to submit to the Council specific Information on the property and personal details etc. As part of the registration process, applicants must also disclose relevant criminal convictions. Information sharing protocols exist between the Council and Police Scotland to permit background checks to be made on applicants and to ensure that relevant criminal convictions are disclosed.
- 2.4 The legislation lists considerations that the Local Authority must have regard to when considering applications including the criteria for 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 were approved by the Committee in September 2013
- 2.5 It is proposed to amend the procedure for refusing to register Private Landlords or to remove them from the Register including in the event that they fail to meet the fit and proper person test or are deemed to no longer meet the test as the case may be. It is proposed to introduce a Panel of Officers to make this decision as opposed to the current procedure whereby a single Officer takes the decision. Any Landlord/Agent aggrieved by the refusal or removal of their registration can appeal to the Sheriff.

### **3.0 RECOMMENDATIONS**

3.1 That the Committee:

- a) Note current progress with Private Landlord Registration in Inverclyde; and
- b) Approve the procedure for the refusal or revocation of Landlords; and
- c) Approve the Fit and Proper Person test assessment criteria 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 (hereafter “the 2004 Act”) 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 Section 84 of the 2004 Act provides that the local authority shall register a landlord where the appropriate information has been submitted, the appropriate fee paid and where it is satisfied that the relevant person (either the landlord or their agent) is a “fit and proper person” to act as a landlord. When considering whether someone is a fit and proper person, Section 85 of the 2004 Act provides that the local authority shall have regard to materials (among other things):-

- showing that the person has committed any offence involving fraud or other dishonesty; violence; drugs ; sexual or firearms offences;
- 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 Letting Code or 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 2,868 landlords have applied to the Council for registration of 4,180 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 not lodged.

4.4 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 was made in relation to the interview, the nature of convictions and the age of the convictions before deciding to approve or refuse an application for registration.

4.5 Police Scotland have agreed to be 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. The process and criteria review were approved at the September 2013 meeting of the Committee.

4.7 The Head of Safer & Inclusive Communities is currently the sole arbiter of the Fit & Proper person test for the Council.

## 5.0 PROPOSALS

5.1 Having regard to the Legislation, Guidance from the Scottish Government and in consideration of experience gained in administrating 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 or other relevant source about relevant criminal convictions or activities, particularly in relation to fraud or other dishonesty; violence; drugs; sexual or firearms offences;
- ii. Information from Social Protection Team of Safer & Inclusive Communities Service about failure to address reports about antisocial behaviour by tenants in the private sector;
- iii. Relevant information about 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;
- 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 all Council services about the continued non-payment of accounts relating to property belonging to the Landlord.

5.2 It is considered that the determination of refusal of applications or consideration of revocations should no longer be a responsibility of the Head of Safer & Inclusive Communities due to other potential conflicts with this post's other housing responsibilities. It is proposed that a small Panel comprising the Corporate Director Education, Communities & Organisational Development and the Head of Legal & Property Services determine in such cases 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 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 may be given to 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 question has no direct or active involvement with the operation of that housing rental business.

## **6.0 IMPLICATIONS**

### **6.1 Financial**

There are no significant financial considerations

### **6.2 Legal**

Legal and Property Services have been consulted on the proposals

### **6.3 Human Resources**

There are no significant human resource consideration

### **6.4 Equalities**

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

### **6.5 Repopulation**

Having a good quality private rented housing sector will enhance the area.

## **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)
  - Registration of Private Landlords – Fit and Proper Person Test Procedure report to the Education & Communities Committee ( September 2012)
  - Registration of Private Landlords – Fit and Proper Person Test Procedure Review report to the Education & Communities Committee ( September 2013)