

Agenda Item	<b>6</b>
Report No	<b>HLC/026/18</b>

## THE HIGHLAND COUNCIL

**Committee:** Highland Licensing Committee

**Date:** 15 May 2018

**Report title:** Private landlord registration – Consultation on a review of landlord registration applications and fees

**Report by:** Principal Solicitor – Regulatory Services

### **1.0 Purpose/Executive summary**

1.1 This report invites members to agree a response to the current consultation by Scottish Government on a review of landlord registration applications and fees (Appendix 1)

### **2.0 Recommendation**

2.2

Members are invited to approve the consultation response appended to this report (Appendix 2)

## 3.0 Background

### 3.1

Scottish Government are currently consulting on a review of the landlord registration application process and fees under the Antisocial Behaviour etc (Scotland) Act 2004 (the “Act”). This is not a wholesale review of the landlord registration system. It focuses instead on (a) expanding the prescribed information which applicants for registration are required to provide in their applications for registration, and (b) on possible changes to the registration fee structure. The full consultation document is attached at **Appendix 1**.

### 3.2

The aim of requiring additional prescribed information would be to raise applicants’ awareness of their responsibilities as landlords. Applicants are currently required to confirm in their applications simply that they comply with legal requirements relating to the letting of houses. The proposal would expand on this so that applicants must specifically confirm whether they comply with the following standards and requirements relating to letting houses:

- property meets standards that apply to it (i.e. the “tolerable standard” and the “repairing standard”)
- property meets the specific requirements relating to gas, electrical and carbon monoxide safety;
- there is a current Energy Performance Certificate (EPC) for the property and it is available to tenants
- property advertisements include details of the landlord registration status and EPC
- owners of flats within a tenement are aware of their responsibilities in relation to common repairs and have appropriate buildings insurance
- risk assessments for Legionnaire’s disease have been undertaken and findings acted upon as necessary
- the implications of renting houses for mortgage, insurance and tax purposes are understood
- tenancy deposit protection is applied when a deposit is taken

### 3.3

In The Highland Council, landlord registration is administered by a small team of 3.4 FTE administrative and clerical staff (the “LR team”) within the Council’s legal service. The LR team is overseen by the Principal Solicitor – Regulatory Services.

### 3.4

There are currently approximately 11,000 landlords registered in Highland. Each of them requires to renew their registration every three years and, in the interim, to notify any changes to their registration and let property details so that these can be kept up to date on the online register. The LR team also deals with “enforcement” work – primarily chasing up unregistered landlords to encourage them to register. The processes involved are labour intensive and time consuming and the LR team is already overstretched by the volume of work involved.

- 3.5 The proposed consultation response attached at **Appendix 2** has been drafted with this in mind. In particular, while seeking to support those of the proposed changes to the application process which are designed to raise applicants' awareness of their various responsibilities as landlords, the response also seeks to minimise the extent to which this would create additional demand on Council resources by increasing the LR team's workload.
- 3.4 It should be noted in this regard that the registration fee increases proposed in the consultation are not increases to accommodate any new or additional workload. They are proposed merely to reflect authorities' rising registration costs in the period since the fees were fixed by Scottish Ministers in 2006. Similarly, those of the proposed changes which would remove certain fee "discounts" are designed to more accurately reflect authorities' existing and actual costs and not to accommodate additional workload.

Author: Susan Blease

Date: 02 May 2018

Background papers: Antisocial Behaviour etc (Scotland) Act 2004

Appendix 1: Scottish Government Consultation – Landlord Registration in Scotland

Appendix 2: Draft consultation response

# **Landlord Registration in Scotland**

**Consultation on a review of landlord  
registration applications and fees**

**March 2018**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Ministerial Foreword



The Scottish Government's vision is for the people of Scotland to be able to live in good quality homes which have high management standards and are fit for the future.

With around 770,000 people now living in privately rented homes, we know that the sector plays a vital role in helping to meet housing need in Scotland.

Tenants should be able to rely on their landlord to provide them with a home that meets all the standards set out in legislation, and is managed professionally.

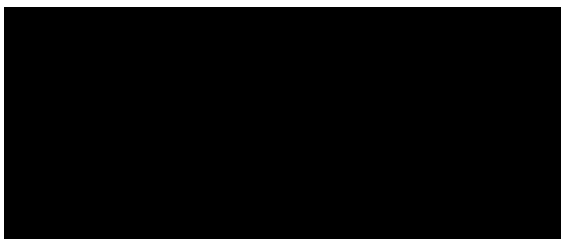
Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 introduced mandatory registration for private landlords. As part of the registration process local authorities have the power to decide who can legally operate as a landlord. I know that most private landlords provide good quality accommodation and services to their tenants. However there is evidence that this is not always the case.

Local authorities have a crucial role in supporting landlords to meet their legal obligations and in taking action to deal with those who cannot or will not comply. To do this effectively they need to be assured that landlords understand what is required of them and meet those requirements. Asking for that information as part of the application will help local authorities make better informed decisions about whether or not a landlord complies with the requirements of registration.

I am very clear that landlord registration fees should be used by local authorities to deliver better standards in the sector. The application fees have not changed since 2006 but the sector and how it is regulated has. It is therefore reasonable to review the registration fee structure.

This consultation seeks your views on expanding the information provided by those who apply to be a registered landlord and on increasing application fees. These proposals are intended to strengthen the system of landlord registration in a proportionate way.

I look forward to hearing your views on this consultation.



**Kevin Stewart MSP,**  
Minister for Local Government and Housing

## Background

Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) placed a duty on local authorities to prepare and maintain a public register of private landlords and registration was commenced in April 2006. As at 31 January 2017 there were almost 268,000 entries on the register, linked to 362,000 registered properties. Since the launch of a new IT system in February 2017, there have been a further 23,000 new applications.

The Scottish Government’s Strategy for the Private Rented Sector in Scotland, published in May 2013, summarised the purpose of landlord registration as:

- providing a register of all private landlords for public inspection, with the added assurance that the local authority has conducted a fit and proper person test;
- providing a regularly updated register that can be used to assist dialogue between local authorities and landlords, to disseminate best practice information;
- ensuring that enforcement action is targeted at the worst landlords in the sector, whether that involves dealing with concentrations of such landlords in vulnerable communities, or challenging the practices of landlords in more rural or sparsely populated areas.

## Why we are consulting

The Scottish Government is seeking views on proposals for reviewing two specific aspects of landlord registration:

- Information that must be included in an application for registration; and
- Application fees.

The private rented sector has grown steadily from 5% in 1999 to 15% in 2016 - an estimated increase of 250,000 households. So it is clear that private landlords play an important role in meeting housing need in Scotland. When choosing a property to rent, tenants may have little information to help them decide whether their prospective landlord is reliable and provides a good standard of accommodation and services. The system of landlord registration should allow the tenant to rely on the judgement of their local authority as to whether a landlord is a fit and proper person to rent property.

Although the presumption is that most landlords aim to let their properties responsibly, the evidence indicates that some landlords apply for registration without being fully aware of their [responsibilities as a landlord](#). For example, property condition is an area where many landlords fail to meet the legal requirements, and about which tenants have most complaints. A minority of landlords also deliberately choose to operate outside the law, by providing poor quality services and accommodation, often to vulnerable people. Some examples of the available evidence relating to poor property condition are included in Annex A.

Landlords who apply for registration are required to make a general declaration that they meet the legal duties for letting houses. However, the evidence suggests that this is not enough to ensure that they do understand and comply with their

responsibilities. The consultation therefore includes proposals to ask for additional information about compliance with legal duties relating to letting houses, when a person applies for registration, renews registration and adds a property to an existing registration. The aim is to:

- raise awareness about landlord responsibilities;
- identify where further advice or support may be required;
- provide better information for local authorities to carry out the fit and proper person test; and
- improve confidence that anyone who is approved and entered onto the register is a suitable person to let houses.

Other amendments are also proposed, to simplify the application process.

The application fees that are paid when someone applies for registration have not increased since 2006. As the expectations on local authorities to deliver more effective administration of landlord registration increase, it is important that the increased costs to local authorities are taken into account. A review of the current application fee structure will ensure that fees continue to be proportionate and reasonable to the authorisation process undertaken by local authorities, as required by the EU Services Directive, which is implemented by the Provision of Services Regulations 2009. Under the EU Directive, the charges for landlord registration should generally not exceed the costs to local authorities of processing applications. The consultation also provides the opportunity to consider simplifying the complex range of discounts that may apply in specific circumstances and whether fees are appropriate for specific changes in circumstance.

## How we would like you to help

This consultation is comprised of 18 questions and set out in three parts:

- **Part 1** provides more detail about the application process and seeks your views on proposals for requiring additional evidence of compliance with landlord duties and some miscellaneous amendments to simplify the current application process.
- **Part 2** provides more detail on the current fee structure and seeks your views on proposals to amend application fees and discounts, so that they better support the work of local authorities related to processing applications.
- **Part 3** seeks your views on the impacts of the proposals on equality groups and businesses.

Responses to the consultation will be used to inform the final policy and impact assessments that will be prepared in support of any Order to lay new regulations.

Information on how to respond to the consultation is on page 21. The questions are set out in full in the answer form on page 24.



## **Part 1 – Prescribed Information**

### **Overview**

When applying to be registered as a private landlord, the applicant must provide certain personal information and limited information about property they rent out to tenants. This is referred to as 'prescribed information' and is set out in section 83(1) of the 2004 Act and regulations made under that section by the Scottish Ministers. A summary of the information required is included at Annex B. This supplements other information that local authorities must consider, under section 85 of the 2004 Act, when they assess whether a landlord is a fit and proper person to let houses.

A person who applies to be registered must declare that the information included in the application is accurate and that they comply with other legal requirements relating to the letting of houses. The information provided may be shared with other local authorities for purposes relating to landlord registration and other relevant authorities, including Police Scotland.

Any evidence that an applicant is not meeting their legal responsibilities as a landlord should be taken into account when the local authority decides whether the application should be approved or refused. If an application is approved, the entry remains on the register for a period of three years. A person can be removed from the register at any time if the local authority decides they are no longer a fit and proper person. At the end of every three year cycle, a new application must be made in order to continue operating legally as a landlord.

### **Proportionate regulation**

Most landlords behave responsibly and want to provide good quality homes and services to their tenants. Any failure to comply with the legal duties related to letting houses may well be due to a genuine lack of awareness of what it means to be a landlord rather than a deliberate avoidance of the law. This is borne out by the outcomes of a recent joint project supported by Shelter, in Dundee and Highland Councils for a Private Landlord Support Officer to provide advice and assistance to landlords. As part of the project Dundee Council developed a checklist to help landlords better understand what their legal responsibilities are when renting out houses.

The Scottish Government considers that the proposals outlined below are reasonable and would complement the work that local authorities do by embedding the provision of advice and support at the outset so that landlords better understand what their responsibilities are. The additional information would also help local authorities to make better informed decisions about the fit and proper person status of landlords.

The legislation is clear that it is the duty of the person making the application to ensure that information provided is accurate, and remains accurate. To provide false information is an offence. Local authorities are responsible for the scrutiny and assessment of the information given in the application form. A risk based approach may be taken to the request for any additional evidence to support the application. For example, the local authority may currently decide that it is not reasonable to ask every applicant to provide physical documents relating to gas/electrical safety and

that a sample check of applications is sufficient. A landlord may, however, be asked to provide relevant documents if the local authority has concerns about the accuracy of the information provided or the safety of the property. A local authority has the power to obtain information under section 97A of the 2004 Act for the purpose of enabling or assisting it to carry out landlord registration functions.

### **Proposal - to expand prescribed information**

The consultation proposes that applicants are required to confirm whether they comply with the following requirements relating to letting houses:

- property meets standards that apply to it (i.e. the Tolerable Standard and the Repairing Standard);
- property meets the specific requirements relating to gas, electrical and carbon monoxide safety;
- there is a current Energy Performance Certificate for the property and it is available to tenants;
- property advertisements include details of the landlord registration status and EPC rating;
- owners of flats within a tenement are aware of their responsibilities in relation to common repairs and have appropriate buildings insurance;
- owners of houses in multiple occupation have an HMO licence;
- risk assessments for Legionnaire's disease have been undertaken and findings acted upon as necessary;
- the implications of renting houses for mortgage, insurance and tax purposes are understood;
- tenancy deposit protection is applied when a deposit is taken.

Further information about the requirements proposed for inclusion in the prescribed information is included at Annex B.

To help applicants understand the legal responsibilities relating to letting houses they will be signposted to information on the relevant standards, before being allowed to complete their application. Provision can be made to allow for applicants to say why a duty does not apply. For example, property may not require an EPC or a landlord may not take a tenancy deposit. The same process would apply to any properties that are added to a registration after the initial application has been approved.

If the local authorities have concerns that a landlord does not meet their legal duties, they should provide appropriate advice and assistance about good letting practice to help the landlord meet the requirements of registration. Many local authorities already provide this type of support, but where letting practice does not improve to meet the required standards local authorities should consider refusing the application.

**Question 1a:** Do you think that landlords should have to confirm whether they comply with each of the requirements specified above? Please explain your answer

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 1b:** If not, which requirement(s) do you think landlords should not have to confirm that they comply with and why?

Please explain your answer below.

Comments

**Question 1c:** Do you think that landlords should be required to provide evidence of compliance with any of the requirements specified above?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 2:** What other questions, if any, do you think should be included in an application for landlord registration?

Please explain your answer below.

Comments

### Energy Performance Certificate rating

Scottish Ministers have powers under section 64 of the Climate Change (Scotland) Act 2009 to require the assessment of a property's energy performance, and for the owner to take action to improve the energy efficiency and environmental impact of a property. The Scottish Government consulted in 2017 on proposals for improving energy efficiency and condition standards in the private rented sector. Scottish Ministers have confirmed that minimum energy efficiency standards will be introduced, and that these will be confirmed as part of the routemap for Scotland's Energy Efficiency Programme, which will be published in May 2018.

To support the enforcement of the minimum standards, once introduced, applicants could be asked to provide information on the EPC rating of the property when confirming that there is an EPC. The 2017 consultation also proposed situations where the landlord may have a longer time frame to improve the property, or would only need to make some improvements, for example for technical or legal reasons – if exceptions are confirmed then provision could be made to allow landlords to provide details of any agreed reason as part of the application process.

**Question 3:** Do you think that landlords should be asked to provide the domestic EPC rating for property?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## **Proposal - Miscellaneous amendments to prescribed information**

### **Contact information**

Paragraph 11 of the current Schedule asks for details of the contact address in connection with day to day management of property included in the application. This is in addition to information required by the 2004 Act about an applicant's home address and also the correspondence address that must be displayed on the public register. The additional requirement to ask applicants for a contact address leads to confusion as to where the landlord should be contacted and where information, including from the local authority, should be sent.

In order to clarify and streamline the registration process, one option would be to amend the legislation so that only the applicant's home address and a correspondence address are required. The correspondence address would be the address that anyone searching the register can use to contact the landlord and that local authorities can use to send out information to the landlord.

An applicant can specify what address they want correspondence to be sent to. The address given can be the landlord's home address, agent's address, or an alternative address. The online application enables an applicant to nominate a different address for individual properties, for example if properties are managed by different letting agents and the applicant wants correspondence to go to the agent.

**Question 4:** Do you think that the applicants should only be required to provide a home address and a correspondence address?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Other contact details

Applicants are not currently required to provide an email address (unless using the online system), a home telephone number or mobile telephone number. Local authorities can post correspondence using the address provided by the landlord but it is often more convenient and cost effective to contact landlords by email or phone. For example, local authorities often use email addresses to meet their legal duty to provide advice and assistance to all registered landlords by sending updates when the law changes or to notify them of local landlord events. A phone number is also useful when trying to contact landlords who need to renew their registration.

**Question 5:** Do you think that applicants should be required to provide an email address, home and mobile phone number (if they have one)?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Part 2 - Landlord registration application fees.

### Overview

Section 83(2) of the 2004 Act makes provision for an application to be accompanied by such fees as the local authority may determine. However, this is subject to section 83(3) of the 2004 Act which makes provision for the Scottish Ministers to bring forward regulations to prescribe:

- fees;
- how fees are to be arrived at;
- cases where no fee is payable.

It is important to note that these powers only allow fees to be set in connection with the authorisation process for applications. Primary legislation would be needed to introduce fees in connection with enforcement costs or financial penalties.

When landlord registration was introduced in 2006, the Scottish Ministers used powers under section 83(3) to set national fees. The aim was to simplify the fee structure; make it easier to apply for registration and reduce the burden on local authorities and large numbers of landlords to register for the first time. Maintaining a national fee structure helps to provide consistency and certainty for landlords that regardless of where they let property, they will pay the same fee to register.

The setting of any fee for landlord registration is also subject to the EU Services Directive (EUD), as implemented in the UK by the Provision of Services Regulations 2009, which provides that any charges which applicants may incur under an

authorisation scheme must be reasonable and proportionate to the cost of procedures and formalities under the scheme. Application fees should not include the costs of enforcement (such as prosecution of a landlord).

## **Application fees**

For most landlords, the application fee consists of the principal fee of £55, and a property fee of £11 (for each property being let). The principal application fee is paid when a new and renewal application for registration is submitted to the local authority. It is a one off payment that does not exceed the reasonable cost to local authorities of scrutinising, processing and making determinations on applications. The property fee of £11 is payable for every property included in an application or that is added to an existing registration. The payment of a fee based on number of properties reflects the additional work involved in checking and processing an application with multiple properties. Registration lasts for up to three years. In some cases, an additional fee may also be payable where a landlord renews their registration only after the three year registration has expired. More information on the range of tasks that local authorities carry out to process landlord registration applications is included at Annex D.

Certain discounts may apply to landlord registration fees and these are considered later in the consultation. A summary of the current fees and discounts available is included at Annex E.

## **Proposal - Application fees**

Due to the wide variety of tasks that local authorities undertake to process an application and the varying structure of the teams which undertake these tasks, it can be very difficult for local authorities to provide precise figures on the costs which they incur when processing landlord applications. For this reason, it is difficult to use component costs as a basis on which to uprate the fees. As an alternative, the consultation proposes that registration fees should be uprated by inflation (the Consumer Prices Index) from the period between 2006 (when the fee was initially set) to 2016 (the latest full year for which CPI is available).

The Consumer Prices Index, published by the Office of National Statistics, is a measure of the overall level of price growth in the economy and can be used to give an indication of the change in costs faced over a given period. CPI, rather than other published measures of inflation, has been chosen because CPI is classified as a National Statistic by the UK Statistics Authority - while other measures of inflation, such as the Retail Prices Index (RPI), are not.<sup>1</sup>

Over the period from 2006-2016, CPI (All Items Index) has increased by a total of 26%. Other indicators which may give an indication of the change in costs faced by local authorities when assessing applications include the average increase in employee costs which local authorities face in their Non-Housing Revenue Account

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<sup>1</sup> This means that CPI has been certified by the UK Statistics Authority as being compliant with the Code of Practice for Official Statistics. Full information on Official Statistics are available from the UK Statistics Authority - <https://www.statisticsauthority.gov.uk/national-statistician/types-of-official-statistics/>

housing functions (as reported through the Local Financial Returns) and the overall increase in public sector pay over the period. Over the period from 2006-2016, these measures have increased by approximately 32% and 26% respectively. The fact that these measures have grown approximately in line with inflation supports the use of inflation as a measure by which to uprate the landlord registration application fee.

Regulations could be drafted in a way that enable fees to be uprated annually, but only on the basis that this is subject to regular review to ensure that the increase by CPI is appropriate. The regulations would require details of the annual increase to be published.

Uprating the principal, property and additional fees by CPI would result in revised fees of approximately £70; £14 and £139 respectively. Annex F provides an estimate of the additional income this would generate to help local authorities with the increased cost of administering landlord registration.

**Question 6:** Do you think it is reasonable to increase registration fees in line with inflation, to reflect the increased cost to local authorities?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

### Proposal - Additional fee

The legislation currently requires an additional fee of £110 to be paid when a landlord re-applies to be registered after an existing registration has expired. In other cases, the fee is applied to landlords who have never previously been registered. In all cases, the legal basis for applying the fee is that an application has only been made after the local authority has issued two separate requests for the person to register. In 2016, 8,146 additional fees were applied to landlords who failed to renew their registration in time; 180 additional fees were applied to landlords who had not previously been registered.

The fee represents the increased work that local authorities have to undertake in order to help non-compliant landlords meet the requirements of registration. The amount of work needed to deal with expired registrations and un-registered landlords varies from case to case. For example, some landlords may renew their registration after receiving a letter or telephone call prompt from the local authority. Other landlords require much greater pre-application support from the local authority in order for them to submit an application for registration.

Therefore, the single rate additional fee currently charged to landlords may not always reflect the amount of work undertaken by the local authority to secure an application for registration. In order to ensure that the fee is proportionate to the work undertaken and complies with the principles of the EUD, regulations could be drafted

so that the additional fee is set as a maximum amount. This would enable a local authority to vary or waive the fee according to the additional work undertaken.

**Question 7:** Do you think it is reasonable for local authorities to charge a lower additional fee, in cases where the maximum set fee exceeds the costs of the work undertaken to prompt a landlord to make an application?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

### **Landlord Registration fee discounts**

Annex E includes a summary of the discounts that may apply, depending on an applicant's circumstances. The way in which discounts are calculated can be complex, difficult to apply and in some cases does not reflect the work that local authorities do to process applications. The consultation seeks views on whether some of the discounts should be discontinued.

It is anticipated that changes to any of the discounts would apply from a specified date in the future. Any discounts already given prior to the specified date would not be affected.

#### **Proposal - Online discount**

Where an application for registration is made online, the total fee charged is subject to a 10% discount. The discount for a landlord with a single property is currently £6.60 (£55 principal fee, plus £11 property fee, minus 10%).

The discount was introduced in 2006 to encourage landlords to use the on-line system and reduce the burden on local authorities of manually registering large numbers of landlords and properties. However, now that landlord registration is well established, the majority of people automatically choose the on-line application process as the most convenient way to submit an application.

It was also assumed that an on-line application would mean lower processing costs for local authorities. In practice, local authorities have indicated that applying the on-line discount is problematic. For example, there are many occasions when applicants who have complex circumstances or are not confident in using the on-line system seek assistance when completing the online process. Providing this support can be resource intensive for the local authority and so the 10% discount is not an accurate reflection of the difference in costs between processing on-line and paper applications. In addition, some stakeholders who either choose or need to submit paper applications feel that the 10% discount is unfair and puts them at a financial disadvantage.



**Question 8:** Do you think that the 10% discount applied to on-line applications should be changed? If so, what should be changed?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

### **Landlord Registration on-line system**

Whilst local authorities must accept paper applications, enabling online applications through the landlord registration website offers a more effective means for the majority of applicants to submit an application for registration.

Historically, the Scottish Government has fully funded the operating and development costs of the online IT system. The benefit of this approach has been to remove the burden for local authorities of having to develop and maintain 32 individual registers and to provide more administrative consistency across Scotland. In the light of budget constraints the Scottish Government needs to consider where it can reasonably recover costs. With the introduction of a new online application system in February 2017, the annual operating costs of hosting the service and providing support desk services is approximately £130,000 per year. This represents an approximate 25% reduction in previous core operating costs.

### **Proposal - Recovery of support costs**

The consultation proposes to include an amount within the principal fee as a reasonable contribution to the core running costs of the on-line system. This is on the basis that these are legitimate service costs that help to keep the overall costs of processing down, so that all applicants can benefit from lower fees.

Based on the number of landlords who applied to be registered in 2016 and 2017, and who paid a principal fee, the additional cost per application would be no more £2.00 over a three year registration period. This equates to approximately £0.67 per year. This figure may be reduced, depending on whether other proposals in the consultation relating to fee discounts are taken forward. For example, division of the support costs across a larger number of fee paying applicants would result in a smaller contribution per applicant. This element of the application fee would be kept under review to see if it exceeds or falls short of the amount required to support the system.

**Question 9:** What are your views on including an amount in the application fee to cover the operating costs of the on-line registration service?

Please explain your answer below.

Comments

## Proposal - Joint owner discount

Where a property is jointly owned, the law requires that all the joint owners must apply to be registered. The regulations currently make provision for one of the joint owners to be nominated as a lead owner. The lead owner is required to pay the principal application fee; the other joint owners receive a 100% discount and do not pay this fee. The discount was originally introduced in 2006 to encourage compliance with the new landlord registration system.

Local authorities must be satisfied that all the joint owners are fit and proper to act as landlords. All applications must be checked to make sure they are complete before the local authority can carry out the assessment as to whether an applicant can be approved and entered on the register. Joint owner applications are complex and often additional work is undertaken to ensure that all joint owners submit an application. Jointly owned property should not be let until all joint owners have applied to be registered.

Where a joint owner applies to be registered the local authority must assess whether the person is fit and proper. In cases where the joint owner currently receives a 100% discount the authority does not receive any income towards the costs of carrying out any of the work that underpins that fit and proper person test.

The consultation seeks views on whether it is reasonable and beneficial for local authorities to receive a principal application fee for joint owner applications that require them to carry out a fit and proper person assessment.

An additional benefit of this proposal would be that the application process would be greatly simplified for both landlords and local authorities, removing the complexities associated with nomination of a lead owner and any subsequent updates to registrations when the lead owner changes. Anecdotal evidence also suggests that in some cases landlords have changed lead owner status to avoid paying the appropriate fees.

It might be argued that removal of the joint owner discount could discourage applicants from declaring the names of all joint owners. There is always a risk that some applicants will try to avoid paying the relevant fee but they are legally required to provide accurate information. It is an offence for applicants to knowingly provide false information and a person guilty of such an offence is liable to a £1,000 fine.

**Question 10:** Do you think that a local authority should receive an application fee when they carry out a fit and proper person test on a joint owner?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## **Proposal - Multiple area discount**

Although there is a central on-line system for making applications and searching for information about a landlord or property, each local authority is responsible for preparing and maintaining their own register of private landlords. In practice, each local authority is required to check that applications made in that area are complete and payment has been received; to assess whether the person is fit and proper to let houses; and to make a decision on whether to register a person or refuse an application.

Applicants applying to more than one local authority receive a 50% discount on each on-line application made to multiple local authorities at the same time. The discount also applies to online applications where the person is currently registered, or has submitted an application to another local authority but has not been notified of a decision. The discount is confusing to understand and is complex to administer. Additionally, the discount does not apply to applicants who make a paper application. A person making a paper application must pay the full fee to each local authority that they apply to.

Based on data from the register, the table at Annex G gives an indication of the value of multiple area discounts, using examples where landlords or agents operate in up to 12 local authority areas. The number of people registered across 13 to 31 local authorities drops significantly to the point that only 1 person operates across all 32 local authorities. The table also shows the corresponding value of the uncharged work undertaken by local authorities in the examples provided.

The financial impact of the multiple area discounts on applicants increases in line with the number of local authority areas to which an application is made. The number of applicants who register across multiple local authorities reduces as the number of local authorities increases. Only 1 person was registered across 27, 31 and 32 local authorities. The data indicates that the majority of landlords only own 1 - 3 properties. We think it is therefore likely that it is commercial letting agents who are managing properties for landlords across many of the 32 local authorities.

It should be noted that letting agents are not required by law to register with the local authority; they do so as a business choice. The Housing (Scotland) Act 2014 introduced provisions for a separate letting agent register, to be administered by the Scottish Government. The new register was introduced on 31 January 2018. Anyone operating as a letting agency business must have applied to the Scottish Government to be registered by 1 October 2018. This discount will therefore no longer apply to letting agents once they transfer to the new letting agent register.

Removal of this discount would have a minimal effect on the majority of landlords. The benefits of the proposal would be a simplified fee structure that would ensure that local authorities received the appropriate fee for carrying out the fit and proper person assessment on applicants.

**Question 11:** Do you think that each local authority should receive the full application fee when a person applies to more than one local authority, and the fit and proper person assessment is required?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

### Proposal - Agent fee discount

If a landlord uses an agent to act on their behalf in relation to letting houses, use of that agent must be notified to the relevant local authority. The meaning of 'agent' in relation to landlord registration means anyone who is acting on behalf of the landlord. The 2004 Act does not distinguish between different types of agent, and so this captures commercial letting agent businesses as well as those acting as a power of attorney and family members acting on behalf of relatives. Most agents currently noted on the register are commercial letting agents.

Annex E summarises the fees and discounts that apply:

- i. when agent details are included in a new or renewal application;
- ii. when a landlord adds an agent to an existing registration.

Landlords receive a 100% discount on the application fee where an agent is already registered in, or has applied to the same local authority as the landlord, or where an agent operating as a business is registered with the Scottish Government. This is because the application fee to meet the cost of the fit and proper person test will have been paid by the agent at the point of application. However there is no corresponding discount for a letting agent who has applied to the Scottish Government to be registered.

The consultation therefore proposes to make provision for landlords to receive a 100% fee discount where an agent has applied to be registered with the Scottish Government. This would mean that the discount is applied consistently, regardless of whether the agent is registered or has applied to either local authorities or the Scottish Government.

**Question 12:** Do you think that landlords should receive a 100% discount on the application fee for a letting agent who has applied to be registered with the Scottish Government?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Proposal - Change of circumstance

A person who is registered by a local authority has a duty to notify any change to information provided in their application in relation to their name and address, let property addresses, details of any agent used, the addresses to be used for correspondence, and the prescribed information as set out by Scottish Ministers. (See Annex B).

The 2004 Act permits Scottish Ministers to prescribe fees to accompany notification of a relevant change in circumstance. The fees are currently limited and only permit a fee to be charged when a registered person updates their registration to add details of a property that is not already included on the register. The fee is currently £11.

A registered person can notify many straightforward changes in circumstance directly to a local authority, or by updating their records via the online system, at no cost. However, there are other changes in circumstance which require scrutiny by the relevant local authority, to ensure that the requirements of registration continue to be met. Where the changes are notified via the on-line system, the update provided by the registered person will automatically be referred to a local authority official for further investigation. Such changes in circumstances include:

- applicant's date of birth;
- issue of an HMO Licence;
- convictions;
- antisocial behaviour notices or orders;
- decisions relating to repairing standard enforcement orders;
- refused or revoked licences.

The types of change listed above could have an impact on the fit and proper status of the registered person. It is important that local authorities carry out whatever checks are needed to understand the significance of the change, to be satisfied that the person can remain on the register. The consultation therefore seeks your views on whether fees should be extended to cover wider range of change in circumstance, as a reasonable contribution to the cost of the additional scrutiny undertaken by local authorities.

**Question 13:** What are your views on charging a fee for specific changes in circumstance to an existing registration?

Please explain your answer below.

Comments

## Incentivising landlords

Landlord registration is a key tool for helping to improve standards in the private rented sector. The consultation has proposed that a number of discounts that may

currently apply to an application are removed. The basis for these proposals is to ensure that local authorities receive the appropriate fee for the work they do.

However, we are interested to hear stakeholder views on other ways in which landlords might be incentivised to comply with registration requirements and improve standards.

For example, it may be appropriate to offer a discount on the principal fee for landlords who have passed a training course as a member of a recognised accreditation scheme that includes a training requirement. This could encourage landlords to improve their business practices and be applied fairly to the principal fee for both online and paper applications.

Another option might be to offer a discount to encourage landlords and agents to renew their applications within a specified period prior to expiry of an existing registration. This may help to minimise the amount of enforcement work required by local authorities for which they are not currently able to charge non-compliant landlords for.

**Question 14:** What are your views on offering incentives to landlords and agents to apply for registration and/or improve their practice?

Please explain your answer below.

Comments

## Part 3 – Impact Assessments

### Equality Impact Assessment

The Scottish Government does not think that the policies proposed in the consultation will have potentially negative impacts for equality groups in the PRS. However, we welcome your comments on the impact of the proposals on particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing. Your views on the impact of these policies will be used to inform the final Equality Impact Assessment that will be prepared in support of any Order to lay new regulations.

**Question 15:** Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Business and Regulatory Impact Assessment

To help us determine the impact of the policies proposed in the consultation, we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable).

Any comments received will be used to inform the final BRIA which would be prepared in support of any Order to lay new regulations.

**Question 16:** Do any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Responding to this consultation paper

We are inviting written responses to this consultation paper by **7 June 2018**.

We would be grateful if you would use the consultation questionnaire provided and it would be helpful if you could respond to the consultation using the Scottish Government digital platform Citizen Space - <https://consult.scotland.gov.uk/>.

You can view and respond to this consultation online at <https://consult.gov.scot/landlord-registration/registration-fee> . You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted by the closing date of **7 June 2018**.

If you are unable to respond online, please read the consultation paper and give us your views by completing the consultation answer form. Please complete the Respondent Information Form included in this document (see “Handling your consultation response” below) and sent by email to: [Landlordreg2018@gov.scot](mailto:Landlordreg2018@gov.scot) .

or by post to:

Landlord Registration Consultation  
Scottish Government, Victoria Quay  
Private Rented Sector Team (1HS)  
Edinburgh  
EH6 6QQ

## Handling your consultation response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public?

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached and included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response via email. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

All respondents should be aware that the Scottish Government is subject to the Freedom of Information (Scotland) Act 2002 and would therefore have to consider



any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the consultation process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk> . If you use Citizen Space to respond, you will receive a copy of your response via email. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## **What happens next?**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

Following the closing date, all responses will be analysed and used as part of the decision making process, along with any other available evidence.

Any consultation events that are arranged will be communicated separately.

We aim to issue a report on this consultation process in late summer 2018. Depending on the responses received, this may:

- indicate the need for further policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to inform the development of legislation and finalise this before it is implemented

## **Comments and complaints**

If you have any comments about how this consultation exercise has been undertaken, then please send any comments to [Landlordreg2018@gov.scot](mailto:Landlordreg2018@gov.scot) .

or write to us at:

Landlord Registration Consultation  
Scottish Government, Victoria Quay  
Private Rented Sector Team (1HS)  
Edinburgh  
EH6 6QQ



## Consultation on landlord registration applications and fees.

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

## Consultation Answer Form

### Part 1 – Landlord registration: Prescribed information

**Question 1a:** Do you think that landlords should have to confirm whether they comply with each of the requirements specified above? Please explain your answer

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 1b:** If not, which requirement(s) do you think landlords should not have to confirm that they comply with and why?

Please explain your answer below?

Comments

**Question 1c:** Do you think that landlords should be required to provide evidence of compliance with any of the requirements specified above?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 2:** What other questions, if any, do you think should be included in an application for landlord registration?

Please explain your answer below.

Comments

**Question 3** If a minimum energy efficiency standard linked to an EPC rating is introduced, do you think that landlords should be asked to provide the domestic EPC rating for property?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 4:** Do you think that the applicants should only be required to provide a home address and a correspondence address?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 5:** Do you think that applicants should be required to provide an email address, home and mobile phone number (if they have one)?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Part 2 – Landlord registration: Application fees

**Question 6:** Do you think it is reasonable to increase registration fees in line with inflation, to reflect the increased cost to local authorities?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 7:** Do you think it is reasonable for local authorities to charge a lower additional fee, in cases where the maximum set fee exceeds the costs of the work undertaken to prompt a landlord to make an application?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 8:** Do you think that the 10% discount applied to on-line applications should be changed? If so, what should be changed?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 9:** What are your views on including an amount in the application fee to cover the operating costs of the on-line registration service?

Please explain your answer below.

Comments

**Question 10:** Do you think that a local authority should receive an application fee when they carry out a fit and proper person test on a joint owner?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 11:** Do you think that each local authority should receive an application fee when a person applies to more than one local authority, and the fit and proper person assessment is required?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 12:** Do you think that landlords should receive a 100% discount on the application fee for a letting agent who has applied to be registered with the Scottish Government?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 13:** What are your views on charging a fee for specific changes in circumstance to an existing registration?

Please explain your answer below.

Comments

**Question 14:** What are your views on offering incentives to landlords and agents to apply for registration and/or improve their practice?

Please explain your answer below.

Comments

### Part 3 – Landlord Registration: Impact Assessments

**Question 15:** Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

**Question 16:** Do any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

Comments

## Annex A

### Evidence relating to property condition

The Scottish House Condition Survey 2016 found that 48% of private rented sector households lived in houses with some disrepair to critical elements of the building e.g. roof; external walls; foundations; wet/dry rot and 24% lived in houses with problems of critical and urgent disrepair which, if not put right, would cause the fabric of the building to deteriorate further and/or place the health and safety of the occupier at risk. The survey also found that 2% of privately rented houses failed the basic requirements of the [Tolerable Standard](#), meaning that they were not deemed fit for human habitation.

Another indicator of the problems associated with poor property condition is the referrals made to the sheriff court prior to 1<sup>st</sup> December 2016 and, after then, to the First-tier Tribunal (FTT) by tenants who believe the property they rent does not meet the [Repairing Standard](#). The Repairing Standard, contained in Part 1 Chapter 4 of the Housing (Scotland) Act 2006 covers the legal and contractual obligations of private landlords to ensure that a property meets minimum physical standards. Private landlords have a legal duty to ensure that rented properties meet the repairing standard at the start of the tenancy and at all times during the tenancy.

Table 1 gives a breakdown of 319 applications referred to the sheriff court in 2015, by issue type. The % figures total more than 100 as some of the applications included multiple problems.

Table 1.

Repairing Standard	Number	As % of applications received
Wind and Watertight	201	63
Structure and Fabric	122	38
Water, Gas and Electrical Installations	179	56
Fixtures, Fittings and Appliances	156	49
Furnishings Provided By Landlord	63	20
Fire Detection Provision	94	29
Carbon Monoxide Provision	3	13



## Annex B

### Summary of current Prescribed Information for Application for Registration (Scottish Statutory Instrument 2005/558: Schedule 1)

1. The date of birth of the applicant.
2. Details of any licence, voluntary accreditation or registration held, refused or revoked in connection with letting houses in the UK by the applicant.
3. A declaration of –
  - (a) any convictions of the applicant relating to offences involving the matters listed in section 85(2)(a) or (aa) of the 2004 Act; and
  - (b) any convictions of the applicant relating to offences in connection with any matter relating to the provisions referred to in section 85(2)(c) of the 2004 Act and any finding of a court or tribunal that the applicant has contravened any of those provisions; and
  - (c) any antisocial behaviour order (or interim order) within the meaning of Part 2 of the 2004 Act, and any antisocial behaviour notice within the meaning of Part 7 of the 2004 Act, that relate to matters provided for by section 85(3) of the 2004 Act.
4. A declaration that the applicant complies with other legal requirements relating to his or her lettings.
5. The identity of any other joint owner in relation to any property declared by the applicant under section 83(1)(b) of the 2004 Act, and–
  - (a) whether that person is a member of the family of the applicant; and
  - (b) which one of the joint owners is to be designated as the lead owner for the purpose of registration.
6. Whether the applicant is registered as a charity and the relevant charity registration number.
7. Other names by which the applicant has been known.
8. Where the applicant has not been resident for 5 years or more at the address provided under section 83(1)(a) of the 2004 Act, all previous addresses of the applicant in the last 5 years.
9. Where the applicant is a company, the company registration number.
10. Any court or tribunal judgements against the applicant under–
  - (a) the Equal Pay Act [1970 \(c. 41\)](#),
  - (b) the Sex Discrimination Act [1975 \(c. 65\)](#),
  - (c) the Race Relations Act [1976 \(c. 74\)](#),
  - (d) the Disability Discrimination Act [1995 \(c. 50\)](#),
  - (e) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. [2003/1661](#)); or
  - (f) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. [2003/1660](#)).
11. The contact address in connection with day-to-day management of the property.

## **Annex C**

### **Information about proposed additional prescribed information**

#### **Tolerable Standard**

The Tolerable Standard is a minimum standard for habitability introduced in the 1969 Housing (Scotland) Act, and updated by the 1987, 2001 and 2006 Acts. The standard has been the principal measure of housing quality in Scotland for almost 40 years. It is a "condemnatory" standard; a house that falls below it is not acceptable as living accommodation. Whilst it is local authorities that have a statutory duty and specific powers to deal with houses that fall below the tolerable standard, private landlords should not be letting houses that do not meet this basic standard.

A dwelling meets the tolerable standard if it:

- is structurally stable;
- is substantially free from rising or penetrating damp;
- has satisfactory provision for lighting, ventilation and heating;
- has an adequate piped supply of wholesome water available within the house;
- has a sink provided with a satisfactory supply of both hot and cold water within the house;
- has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;
- has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
- has an effective system for the drainage and disposal of foul and surface water;
- has satisfactory facilities for the cooking of food within the house;
- has satisfactory access to all external doors and outbuildings;
- has electrical installations that are adequate and safe to use. The "electrical installation" is the electrical wiring and associated components and fittings, but excludes equipment and appliances;
- has satisfactory thermal insulation.

#### **Repairing Standard**

The Repairing Standard, contained in the Housing (Scotland) Act 2006, covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard. Landlords also have a duty to repair and maintain their property from the tenancy start date and throughout the tenancy.

A privately rented property must meet the Repairing Standard as follows:

- the property must be wind and water tight and in all other respects reasonably fit for people to live in.
- the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order.
- installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order.
- any fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order.

- any furnishings that the landlord provides under the tenancy must be capable of being used safely for the purpose for which they are designed.
- the property must have a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire.
- the property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Repairing Standard includes a duty to ensure that homes have smoke and fire detectors. This requires more than one alarm. Current guidance advises that all alarms must be mains wired with battery back-up. Alarms must be interlinked but this can be wireless.

Landlords also have a duty to ensure that homes have carbon monoxide (CO) detectors. CO alarms must have a battery that lasts the life of the alarm in each room housing a gas appliance (other than those used solely for cooking) and in any living room or bedroom if a flue from these appliances runs through it.

The Repairing Standard also requires landlords to carry out an electrical safety inspection which has two parts, an Electrical Installation Condition Report (EICR) completed by an approved electrician and a Portable Appliance Test (PAT) which can be carried out by an approved electrician or a landlord who has completed a relevant training course.

Private landlords should have regard to guidance issued by Scottish Ministers on:

- satisfactory provision for detecting and warning of fires  
<https://beta.gov.scot/publications/fire-safety-guidance-private-rented-properties/>
- electrical installations and appliances in private rented property  
<https://beta.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/>
- the provision of carbon monoxide alarms in the private rented sector  
<https://beta.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/>

## **Energy Performance Certificates**

The Energy Performance of Buildings (Scotland) Regulations 2008, as amended, place obligations on owners of buildings to provide prospective and new tenants with a domestic Energy Performance Certificate (EPC) when a property is rented out. EPCs are only required for a 'dwelling', not part of a dwelling. For example, where a lease is for a bedroom and shared access to bathroom and kitchen facilities an EPC would not be required. Any property which has been continuously left empty since before 1 Jan 2009 would not need to have an EPC.

An EPC shows a property's energy efficiency and also highlights potential improvements that could be made to save energy. An EPC has a unique 20 digit reference number and is valid for a period of 10 years. It does not have to be updated during this time. EPCs are lodged on a central database. If a tenant has not been provided with a copy of the certificate, they can search the central register using the postcode for the address. Any concerns relating to the provision or authenticity of the EPC should be raised by the tenant with the relevant local authority.

## **Property advertisements**

Details of the EPC rating must be included in commercial media when advertising the property for rent. Building owners who fail to provide the EPC to the tenant or include the energy rating when advertising the property for rent could be subject to a penalty charge notice (minimum £500) in each case.

The Private Rented Housing (Scotland) Act 2011 requires registered landlords to include the registration number in communications to advertise a property. Where a landlord has applied to be registered, and does not yet have a registration number, the words “landlord registration pending” must be included in the advertisement.

## **Common repairs and Buildings Insurance**

In flats and tenements, landlords share the responsibility with all owners within the building to maintain any part of the building that provides, or is intended to provide, support or shelter to any other part. The repairing standard includes work any part of the building which the tenant is entitled to use which is adversely affected by the disrepair. For more information about rights and responsibilities in relation to common parts see the guidance at

<http://www.gov.scot/Topics/Justice/law/17975/CommonRepairCommonSense>.

Section 18 of the Tenements (Scotland) Act 2004 imposes an obligation on the owners of flats within a tenement to insure their flats for the reinstatement value. A tenement is a building comprising two or more related flats which are owned or designed to be owned separately and which are divided horizontally. Examples of the type of properties are large houses which have been converted into flats. High rise blocks, “four in a block” and modern blocks of flats will also qualify as tenements, as well as the traditional sandstone or granite buildings of three or four storeys.

The obligation to insure will be met if the insurance cover is provided in whole or in part by a common policy of insurance. This will allow owners to have a combination of common and individual policies of insurance whether or not there was any provision for a common policy in the title deeds.

An owner won't be obliged to insure against a particular risk, if after reasonable efforts, they're unable to obtain insurance or the cost of obtaining that insurance is unreasonably high. The risks which owners should insure against are prescribed in legislation.

<https://www.legislation.gov.uk/ssi/2007/16/contents/made>

## **Licensing of Houses in Multiple Occupation**

Mandatory licensing applies to houses or flats occupied by three or more unrelated people, who share bathroom or kitchen facilities. Houses in Multiple Occupation (HMOs) must meet physical standards set by the licensing local authority under Part 5 of the Housing (Scotland) Act 2006.

The owner of an HMO must have a licence from the local authority where the property is situated. Licensing helps ensure that accommodation is safe, well managed and of good quality.

Before granting a licence the local authority must be satisfied that:

- the owner and any manager of the property is 'fit and proper' to hold a licence
- the property meets required physical standards
- the property is suitable for use as an HMO (or could be made so by including conditions in the licence)

HMOs are also covered by [fire safety legislation](#).

The local authority sets the standards required and also sets the fees charged for a licence application. Scottish Ministers have issued guidance to local authorities on the licensing of HMOs at

<https://beta.gov.scot/publications/licensing-multiple-occupied-housing-statutory-guidance-for-scottish-local-authorities/>

## **Legionnaires' disease**

Landlords have a duty to carry out a risk assessment of hot and cold water systems for Legionnaires' disease. Under the Control of Substances Hazardous to Health Regulations 2002, landlords are responsible for ensuring that the risk of exposure to legionella in rented property is properly assessed and controlled. Part 2 of the HSE guidance published at <http://www.hse.gov.uk/pubns/books/hsg274.htm> gives information on landlord's duties. You can also get information on legionella from Scottish Water at

<http://www.scottishwater.co.uk/business/our-services/scottish-water-scientific/scientific-services/legionella>

## **Mortgage, insurance and taxation**

Private landlords should be aware of the impact of letting houses on mortgage and insurance commitments. Landlords should tell their mortgage lender about plans to rent the mortgaged property out. Some lenders have restrictions on who the property can be let to. Some mortgages may have terms and conditions that stop the property from being rented out to anyone. Letting the property without consulting the mortgage provider could lead to a break in contract.

Renting out property may also have an impact on existing buildings and contents insurance. Landlords should talk to their insurers and let them know that they plan to rent out their property. They will give advice on what steps to take regarding:

- buildings insurance
- contents insurance
- property owners liability

For tax purposes, landlords will be treated as running a business if they are letting out one or more properties and so it is important that landlords understand their tax obligations. HM Revenue and Customs have a range of resources to help landlords establish the correct taxable status and what might be allowed as expenses. Further information can be found on the Renting Scotland website at

<https://rentingscotland.org/articles/landlords-and-tax>

and on the HM Revenue and Customs website at

<https://www.gov.uk/guidance/income-tax-when-you-rent-out-a-property-working-out-your-rental-income>

## Tenancy Deposit Protection

When a landlord rents out a property, a tenancy deposit may be taken from the new tenant before they move in. A deposit is a sum of money which acts as a guarantee against:

- damage to the property
- cleaning bills if the property is left in poor condition
- bills that are left unpaid, like fuel or telephone bills
- unpaid rent

If any of the above happens, the deposit may be used to cover costs. If there are no issues when the tenant moves out, the deposit should be paid back to them in full. The amount that can be charged as a deposit cannot be more than two months' rent. For example, if the rent is £500 a month, the landlord cannot ask for more than a £1000 deposit.

Once the tenant has paid the deposit for the property, it must be lodged with one of three approved tenancy deposit scheme providers operating in Scotland within 30 working days of the tenancy starting. Once the deposit has been registered with one of these providers, the following written information must be given to the tenant:

- the amount of the deposit and the date it was received
- the date the deposit was paid into the tenancy deposit scheme
- the address of the property
- a statement confirming the landlord is registered (or has applied to be registered) with the local council that covers the area where the let property is located
- the name and contact details of the tenancy deposit scheme provider used
- the circumstances in which all or part of the deposit may be kept at the end of the tenancy

Further information about tenancy deposit protection can be found on the Scottish Government's website at

<https://www.mygov.scot/tenancy-deposits-landlords/>

## Annex D

### Processing landlord registration applications

Local authorities carry out a wide range of functions to process landlord registration applications, including:

- clarifying and checking information provided in new and renewal applications (including use of power to obtain information);
- clarifying details on paper application forms; requesting missing information, correcting details and adding paper applications to the online register;
- conducting compliance investigations with a range of internal council departments and other agencies, such as Police Scotland, prior to deciding an application;
- sharing and reviewing information held by other local authorities in relation to the fit and proper person test (including complaints about the landlord);
- provision of advice and assistance at the point of application to support landlords to be compliant, including referral to training courses and development of action plans to improve landlord practice so that the landlord can meet the fit and proper person test;
- seeking expert legal advice on complex applications;
- preparation of advice and referral to committee for a decision on applications, for example where the case is complex or may be refused;
- making and issuing decisions relating to approvals and refusals;
- noting the register when applications are refused;
- office costs such as printing, posting, photocopying; and
- processing payments.

Specific tasks relating to property may include:

- checking information provided in relation to let property, including joint owner information;
- requesting and checking documentation (for example, tenancy agreement; gas safety certificate etc.);
- clarifying any address and/or ownership anomalies;
- manually adding addresses to applications;
- inspection of properties where there are concerns over the condition or safety of property let by the applicant;
- cross referencing information provided on properties with a Houses in Multiple Occupation licence.

## Annex E

### Summary of current fees and discounts

Fee	Amount	Description	Discounts
<b>Principal fee</b>	£55	Paid by each landlord and agent applying for registration	<p>10% discount (after any other discounts/exemptions):</p> <ul style="list-style-type: none"> <li>• available when using the internet based application system</li> </ul> <p>50% discount:</p> <ul style="list-style-type: none"> <li>• On each application - available for on-line applications made to multiple local authorities at the same time; or</li> <li>• for an online application where currently registered, or has submitted an application to another local authority but hasn't been notified of a decision</li> </ul> <p>100% discount:</p> <ul style="list-style-type: none"> <li>• for joint owners who are not lead owners, Scottish charities, holders of an HMO licence</li> </ul>
<b>Property fee</b>	£11	Paid for each property registered	<p>10% discount:</p> <ul style="list-style-type: none"> <li>• available when using the internet based application system</li> </ul> <p>100% discount:</p> <ul style="list-style-type: none"> <li>• properties included in an HMO licence</li> </ul>
<b>Agent fee</b>	£55	Paid by a landlord where an agent is specified in the application, and that agent is not already registered or has applied for registration	<p>10% discount:</p> <ul style="list-style-type: none"> <li>• available when using the internet based application system</li> </ul> <p>50% discount:</p> <ul style="list-style-type: none"> <li>• where the agent acts for the applicant in more than one area and on-line applications made to multiple local authorities at the same time, 50% discount in each case ; or</li> <li>• where the agent is currently registered, or has submitted an application to another local authority but hasn't been notified of a decision</li> </ul> <p>100% discount:</p> <ul style="list-style-type: none"> <li>• the agent is already registered with that local authority;</li> </ul>



			<ul style="list-style-type: none"> <li>the agent has made a valid application to that local authority to be registered;</li> <li>the agent would be exempt as a charity or HMO licence holder</li> <li>the agent is a LA or registered social landlord</li> </ul>
<b>Additional fee</b>	£110	<ul style="list-style-type: none"> <li>Applies only after a LA has issued two separate requests for an application to be made</li> <li>And two separate requests for the landlord to submit formal notification of appointment of an agent. (SSI 2012 No. 151 – commenced 1/7/12)</li> </ul>	None
<b>Additional agent fee</b>	£55	Applies when a registered landlord notifies that an agent has been appointed (SSI 2012 No. 151)	10% discount: <ul style="list-style-type: none"> <li>available when using the internet based application system</li> </ul> 50% discount: <ul style="list-style-type: none"> <li>the agent is already registered or has submitted an application with another local authority and is awaiting a decision</li> </ul> 100% discount: <ul style="list-style-type: none"> <li>the agent is already registered or has sought to become registered with that local authority</li> <li>the agent is a charity, local authority or registered social landlord</li> </ul>

## Annex F

### Impact of increasing fees by Consumer Price Index

This estimate represents the additional income across all 32 local authorities based on current fee levels and the number of transactions carried out using the online system only, in 2016.

Fee type	Proposed increase	No. of on-line transactions in 2016	Approx value of CPI increase
Principal application	£15	61,371	£920.5k
Property	£3	101,908	£305.7k
Additional	£29	2,612	£75.7k

## Annex G

### Summary of costs relating to the multiple area discounts

Number of local authorities applied to	Current fee - with multi area discount (£)	Proposed fee - without multi area discount (£)	Value of uncharged work for LAs per application (£)	Number of landlords/agents affected as at January 2017	Total value of uncharged work for LAs (£)
1	n/a	55	n/a	244,738	n/a
2	55	110	55	13,314	732,270
3	82.50	165	82.50	1817	149,902.50
4	110	220	110	507	55770
5	137.50	275	137.50	206	28325
6	165	330	165	96	15840
7	192.50	385	192.50	83	15977.50
8	220	440	220	44	9680
9	247.50	495	247.50	23	5692.50
10	275	550	275	22	6050
11	302.50	605	302.50	23	6957.50
12	330	660	330	7	2310
32	880	1760	880	1	880



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W W W . G O V . S C O T

**Draft consultation response**

*The responses to Questions 1a to 1c below relate to the proposed additional prescribed information listed in the report*

**Part 1 – Landlord registration: Prescribed information**

**Question 1a:** Do you think that landlords should have to confirm whether they comply with each of the requirements specified above? Please explain your answer

Yes  No  Unsure

Please tick only one box and explain your answer below.

The Council agrees in principle with this proposal. It will flag up to applicants for landlord registration their specific legal responsibilities in respect of ensuring appropriate standards for their tenants and the additional fact that there may be mortgage, insurance and tax implications for themselves which, if not addressed, could in turn affect the stability of tenancies granted.

Itemising these requirements/standards would also hopefully reduce the number of enquiries our landlord registration staff deal with in relation to the current form of declaration and what the specific legal requirements they must comply with are.

However, we have the following comments:

- Applicants should be signposted, in advance of being able to commence completion of the application form, to specific information on each of the relevant requirements/standards, and should have to have signed a declaration that they have read and understood these requirement/standards, before they can proceed to commence completion of the registration application form.
- The on-line application form should be set up so that when an applicant reaches the section requiring them to give a declaration of “Yes”, “No” or “Not applicable” to each of the requirements/standards, they cannot move on to the next requirement/standard in the list until they have completed their declaration for the one before it.
- The on-line form should also be set up so that where an applicant declares one of the requirements/standards to be “Not applicable”, they cannot move onto the next requirement/standard in the list until they have completed a section explaining their reasons as to why the requirement/standard in question is “Not applicable”.
- For paper forms, it should be clarified that these will be returned to the applicant by the Authority as incomplete should any of the required declarations not have been completed and reasons for any “Not applicable” declarations given.
- It should be recognised that where an applicant's declaration in respect of any one or more of the requirements/standards is “No”, there will then be further resource implications for the Authority. Landlord registration staff will require to refer the matter to other services or agencies for further investigation and then provide the applicant with an opportunity to rectify the position and demonstrate compliance with the particular requirement/standard in question before then potentially referring the application to Committee to determine whether the application should be refused (in the event that compliance with the requirement/standard is not achieved).

Question 1b: If not, which requirement(s) do you think landlords should not have to confirm that they comply with and why?

Please explain your answer below.

N/A

Question 1c: Do you think that landlords should be required to provide evidence of compliance with any of the requirements specified above?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Authorities should be able to take an applicant's declaration that they comply with each of the requirements/standards at face value, and it should be made clear on the application form that should any false declaration be made, the applicant will be committing an offence.

Specific provision should be made to require the applicant to provide evidence of compliance with any the requirements/standards where the local authority so requests. It would be anticipated that any such request would be made only where an authority has any reasonable cause to doubt the truthfulness of any declaration of compliance made by the applicant.

Otherwise, there should be no general requirement that the applicant submit evidence of compliance with the standards/requirements at the time of submitting their application. Any such requirement would have significant resource implications, involving considerable additional work for authorities in collating, checking and storing the evidence submitted.

Question 2: What other questions, if any, do you think should be included in an application for landlord registration?

Please explain your answer below.

None

Question 3: If a minimum energy efficiency standard linked to an EPC rating is introduced, do you think that landlords should be asked to provide the domestic EPC rating for the property?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Landlords must already display the EPC rating in any advert and in the Tenant Information Pack. However, if a minimum rating is introduced, and the additional suggested compliance questions were included in the application for registration, then the applicant should be required to confirm the rating in their application to confirm that it is the minimum standard or above.

Question 4: Do you think that the applicants should only be required to provide a home address and a correspondence address?

Yes  No  Unsure

Please tick only one box and explain your answer below.

No, we strongly believe that landlords should, as in the original landlord registration system, provide a home address, a correspondence address and a contact address.

The home address supplied should be the address at which they live (as required by section 83(1)(a) of the 2004 Act. The correspondence address supplied should be the postal address to which they wish the authority is to send them correspondence by post. The contact address supplied should be the address they wish made available for public search and public contact purposes.

The home, correspondence or contact address may be one and the same if the applicant wishes, but the applicant should be able to select different addresses for correspondence and contact if they so wish. They should also be entitled to select as their correspondence or contact address their agent's address or the address of any person dealing with their affairs.

In this regard, it should be noted that some landlords are in care homes and have a person with power of attorney who deals with their affairs, or are living abroad and want their correspondence to be sent to a family member/friend in the UK rather than their agent. This flexibility should be allowed, provided that the addresses for local authority correspondence and public contact are clear and are kept up to date at all times.

Question 5: Do you think that applicants should be required to provide an email address, home and mobile phone number (if they have one)?

Yes  No  Unsure

Please tick only one box and explain your answer below.

They should be encouraged to provide such details for local authority contact purposes, as it makes it far easier for authorities to contact them if they do so. However, this should be voluntary, not compulsory. The application form will also require to be updated to be GDPR compliant from 25 May 2018, insofar as explicit consent to contact by email may be needed.

It should be noted also that the new system introduced by Scottish Government/Registers of Scotland only asks for a mobile number but authorities have been lobbying to have this changed either to just 'phone number' or 2 options for landline and mobile number.

## Part 2 – Landlord registration: Application fees

Question 6: Do you think it is reasonable to increase registration fees in line with inflation, to reflect the increased cost to local authorities?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Yes as the fees have not increased since 2006 despite inflation. Registration workload has also increased each year so authorities' administration costs have risen.

Question 7: Do you think it is reasonable for local authorities to charge a lower additional fee, in cases where the maximum set fee exceeds the costs of the work undertaken to prompt a landlord to make an application?

Yes  No  Unsure

Please tick only one box and explain your answer below.

This would introduce a high risk of inconsistency in the criteria applied (by different authorities or even by different officers or committee members within the same authority) to determine whether the additional fee should be varied or waived. It would impact on resources in that it would increase workload in handling requests for variation or waiver of the additional fee and would increase workload in handling complaints about the determination of a request to vary or waive the additional fee.

It should also be noted that whether landlords are 1 day late or 1 month late in lodging a renewal application, the authority has undertaken the same amount of additional work in each case, by sending out the required two separate renewal requests/reminders and in many cases following this up with a third "last chance" reminder, whether by letter, telephone or email. The same is true in the case new applicants who apply only after the two requests/reminders have been sent.

It should also be borne in mind that the true costs of securing a late renewal or a delayed first application may in fact be higher than the additional fee, as the authority may have been forced to undertake enforcement work (eg issuing rent penalty notices) before an application is ultimately received. Such additional enforcement costs are not, of course, reflected in the level of the additional fee.

Question 8: Do you think that the 10% discount applied to on-line applications should be changed? If so, what should be changed?

Yes  No  Unsure

Please tick only one box and explain your answer below.

It should be removed altogether. It is unfair to landlords who do not have online access and, in any event, online applications can cause as much, if not more, work than paper applications.



Question 9: What are your views on including an amount in the application fee to cover the operating costs of the on-line service?

Please explain your answer below.

While the Council has no objection in principle to this proposal, we would make the following comments:

- The additional amount (eg £2) should be in addition to the £15 increase proposed to reflect inflation between 2006 and 2016. The principal fee would therefore become £72.
- Clarification is needed as to whether the additional amount is to be payable also by joint owners (in the event that they are no longer to receive 100% joint owner discount).
- Charging this additional amount would add a degree of additional administrative and accounting work. In particular, where fees are paid on-line, Scottish Government would need an accounting system for separating out its £2 share before paying the balance to the local authority. Similarly, where paper applications are lodged and fees paid direct to the local authority, authorities would need an accounting system in place for paying over Scottish Government's £2 share to them, and a mechanism in place for doing so.

Question 10: Do you think that a local authority should receive an application fee when they carry out a fit and proper person test on a joint owner?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Yes. There is as much work involved in processing a joint owner application as there is in processing the lead owner's application and there can often be more than one joint owner, each creating this same amount of work.

Question 11: Do you think that each local authority should receive an application fee when a person applies to more than one local authority, and the fit and proper person assessment is required?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Yes. Each local authority which has to process a multi area application has the same amount of work, and the time and resources involved are in each case the same as those required in processing a single area application but, currently, for only a portion of the single area application fee.

Question 12: Do you think that landlords should receive a 100% discount on the application fee for a letting agent who has applied to be registered with the Scottish Government?

Yes  No  Unsure

Please tick only one box and explain your answer below.

Although landlords must declare their agent and, if the agent is not already registered, pay the application fee, in reality most agents register themselves and pay their own fee so that their registration details can be used for all of their various client landlords.

Eventually, the new Scottish Government agent register will mean that agents will have made their own application to be entered on that register and will have paid the fee to Scottish Government for that registration. Scottish Government will have undertaken the assessment of whether the agent meets the fit and proper test so no additional fit and proper checks on the agent will be required for landlord registration purposes.

However, the landlord registration and agent registration systems will need to “talk” to each other so that, before adding an agent to a landlord’s registration, local authorities do not have increased workloads in having to check that agents are registered and thus approved (i.e. assessed as fit and proper) on the Scottish Government agent register.

In the interim, the full fee for registration in the register of landlords should still be applied for any agent who has applied for registration with Scottish Government but has not yet been approved by them, as the local authority will require to carry out a fit and proper assessment for landlord registration purposes in the absence of Scottish Government’s approval of the agent’s application for registration.

Question 13: What are your views on charging a fee for specific changes in circumstance to an existing registration?

Please explain your answer below.

The new landlord registration system creates ‘update’ applications for certain changes/amendments but does not specify in the update application when it is notified to the local authority what exactly the changes to be made are. The local authority has to check what the update is and then process and approve it. This can be a time consuming and complicated process (more so than in the case of a straightforward addition of an additional property for which the current fee is £11). The Council considers that a fee of 50% the full application fee should apply to meet the cost of such updating work, but would also ask that the system be amended so that the change applied for is detailed on the update application. Insurance companies and other service providers charge for amendments to be made. Changes to landlord registrations should be treated no differently.

It is recognised that there is a risk that, despite their being a legal requirement that landlords keep their registration details up-to-date, some may fail to update their registrations if they face a charge for doing so. Given the time and resources expended by local authorities in processing update applications, however, this is not a good reason for not introducing a charge for such applications.

Question 14: What are your views on offering incentives to landlords and agents to apply for registration and/or improve their practice?

Please explain your answer below

Offering a discount on the principle fee for landlords who have passed a training course as a member of a recognised accreditation scheme would fly in the face of the legal requirement under EUD, as implemented by the UK in the 2009 Regulations, that the charges made under an authorisation scheme should be reasonable and proportionate to the cost of procedures and formalities under the scheme. The cost of procedures and formalities will be no greater in the case of a landlord who has not passed such a training course. Indeed, the cost in the case of a landlord who has passed such a training course will be higher, since authorities will also have to require to check details and proof of the relevant qualification.

Similarly, applying a discount to the principle fee for early renewal applications but not to every other timeous renewal application would also breach the 2009 Regulations.

If it is felt that the principal fee is a fair charge for an authority's work in checking, processing and approving an application, then how can a discount for applying early be justified? The authority will still have to do the same amount of work in checking, processing and approving the application.

Separately, if the aim of discounting is to encourage registration, it should be borne in mind that landlords are committing an offence if they do not apply for registration. Why should they be offered a financial incentive to obey the law?

### Part 3 – Landlord registration: Impact Assessments

Question 15: Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

If applied equally to all applicants, the proposals are fair to all equality groups and should not directly or indirectly impact on any particular equality group.

Question 16: Do any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below.

Specific resource (additional workload) implications are as indicated at answers 1(a), 1(c), 7 and 9 above. It should be noted however, that all changes to application processes inevitably create additional workload (eg, setting up new paper application forms, guidance notes and systems, providing staff training, etc.)