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Public Sector Housing &  
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**SCOTTISH GOVERNMENT**

**Landlord Registration  
Legislative Consultation**

**Final Report**

**September 2008**



INVESTOR IN PEOPLE

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## 1. INTRODUCTION

In March 2008 the Scottish Government commissioned Arneil Johnston to build on its good practice review (*Advice and Support for Local Authorities in relation to Landlord Registration*), published in January 2008, to review the current legislative framework underpinning landlord registration. The focus of this piece of work is to examine issues identified through the good practice review for both primary and secondary legislation and consult with key stakeholders and provide recommendations on possible legislative change.

As the Good Practice recommendations were based on 22 local authorities' views and experiences of the landlord registration process it was essential that feedback from other stakeholders was also considered. As a result, a wide range of representatives from local authorities, landlord, agent and tenant groups across Scotland were invited to participate in two consultation events:

- 2<sup>nd</sup> May 2008: Landlord, Agent and Tenant Representatives; and
- 6<sup>th</sup> May 2008: Local Authorities Representatives.

Both consultation events were facilitated by Arneil Johnston and comments were recorded.

The Good Practice Review, the review of current legislation and the feedback from these consultation events have now been used as the basis for a consultation on amendments to secondary legislation under the Antisocial Behaviour etc. (Scotland) Act 2004 (issued 18th July 2008).

The following report outlines the legislative issues and makes recommendations for possible amendments to both secondary and primary legislation with the overall aim of making the scheme more effective and efficient.

## 2. NEED FOR LEGISLATIVE ADJUSTMENT

The good practice study made recommendations on all aspects of the landlord registration process and its accompanying guidance and identified areas where the performance by local authorities could be improved. The majority of these recommendations have been dealt with in revised good practice guidance currently being taken forward by the Good Practice Implementation Group in consultation with their local authority colleagues, improved partnership working between local authorities and the sector and by improvements to the current IT system. However, a number of issues remain outwith the remit of improved guidance or amendments to the IT process and instead may require the use of statutory mechanisms in order to enhance the effectiveness of landlord registration in Scotland.

### 2.1 Issues Regarding Secondary Legislation

Secondary legislation is made under authority contained in primary legislation. In Scotland, these are referred to as Scottish Statutory Instruments (SSIs). The Scottish Ministers have a number of regulation-making powers under the Antisocial Behaviour etc. (Scotland) Act 2004. In particular, these cover the following areas of registration:

- Mandatory information that must be included in an application for registration;
- discount framework;
- fees and how these should be calculated including any discounts;
- fees required for a change in circumstances;
- exemptions from registration; and
- duties on local authorities to provide advice and assistance.

### 2.2 Mandatory Information Requirements

Legislation currently prescribes the information which applicants must provide in their application for registration. At present it is not mandatory to provide an email address and/or telephone number. In the good practice review, local authorities stated the lack of a mandatory contact email address and/or telephone number made it difficult to contact applicants particularly where:

- clarification is required regarding application/registration details;
- there are enforcement issues; and/or
- a landlord is not resident within Scotland and does not have an appointed agent.

The good practice review recommended a numbers of potential solutions to resolving this issue:

- make the provision of an email address and/or telephone number a compulsory part of the application process;
- make the provision of an email address whilst applying online compulsory ;
- make the provision of contact details for an agent/property manager within the UK compulsory where landlords are resident outside the UK; and

- make the provision of an email address and/or telephone number compulsory for individuals responsible for the day-to-day management of the applicants' properties.

It is Arneil Johnston's view that the inclusion of an email address or telephone number would be useful for local authorities and tenants particularly in the interests of processing applications efficiently and in enforcing registration.

The general consensus from all stakeholders was that the application form should provide the opportunity for the provision of an email address and telephone number but that this should not be mandatory at this time. The Act requires applicants to ensure that all mandatory information is kept up to date. If an applicant fails to do this they are committing an offence. If email and/or telephone numbers were made mandatory, stakeholders were concerned that offences would be created under the Act if an applicant failed to keep these details up-to-date. It was also felt that this may be overburdensome on local authorities to enforce. It was therefore agreed that the preferred approach would be to encourage the submission of this information in an application without making it mandatory.

Local authorities suggested that the application form should include a statement to reassure applicants that any telephone or email information would not be made available publicly.

Landlord and tenant organisations both suggested that the application form should also request an email address or telephone number for those responsible for the day to day management of registered properties.

Landlord organisations suggested that as a matter of good practice, overseas landlords should be encouraged to have a local agent acting on their behalf.

### **Recommendation**

Given the feedback from stakeholders it is recommended that the provision of email addresses and telephone details should not be made mandatory for applicants or day-to-day managers. However, the current application form (paper and online) should be modified in such a way as to encourage the provision of this information from applicants.

The provision of telephone numbers and email addresses should be monitored following the redesign of the application form and if there is a consistent failure by landlords to provide this information further consideration should be given to making either the provision of a telephone number or e-mail address mandatory.

A compromise solution would be to require either the email address or the telephone number fields to be completed on the online system before the applicant can proceed with the application. This would have the effect of gathering the information required but not making it an offence if it was not kept up to date.

## **2.3 Re-Structuring Fee Arrangements**

The original legislation envisaged that Local Authorities would set their own fees for Landlord Registration. However, this was changed prior to implementation so that at present the Scottish Government sets fee levels nationally. Views were sought on whether local authorities should set their own fees based on local practice and circumstances as originally envisaged.

The current fee structure is set by Scottish Ministers and consists of the following key elements:

- Principal fee of £55;
- Additional Fees; and
- Fixed Discounts.

The majority stakeholder view was that fees should continue to be set nationally. It was considered that varying fees and discounts across local authorities would complicate the application and administration process for authorities and applicants and may potentially damage the credibility of the scheme. There were also concerns that the current private rental market may be particularly sensitive to any proposed increase in fee levels.

A minority of local authorities suggested that the current fees are too low. However, authorities agreed that a detailed cost benefit analysis of landlord registration should be undertaken before any proposed amendments are made regarding fees and discounts. None of the local authorities involved in the focus groups had done this.

### **Recommendation**

It is recommended that fees should continue to be set nationally. However, if local fee setting is to be considered this should not take place until a detailed cost analysis of the first three years of landlord registration has been completed for each authority to ensure that fees are set in line with cost recovery. It is also recommended that any proposed amendment to current fees is modelled to assess its impact on income for each local authority and costs for landlord and agents.

## **2.4 Review of Current Fees**

The following section outlines the current fee structure and suggests three potential revisions in order to improve the fee process. The fee areas considered for amendment are:

- Additional Property Fee;
- Late Application Fee;
- Charge for Change in Circumstances.

### **2.4.1 Additional Property Fee**

In addition to the principal fee of £55, applicants pay a fee of £11 for each property owned and let, unless the property is accredited for discount purposes or has a current HMO licence. However, the administration of this additional fee combined with these discounts can be complex particularly when linked to other discounts.

In order to simplify the administration of the additional property fee, the landlord and tenant focus group suggested the introduction of a property banding system, for example:

- applicants pay £XX if they own 0-5 properties;
- applicants pay £XX if they own 6-10 properties;

- applicants pay £XX if they own 11-20 properties; and
- applicants pay £XX if they own 21+ properties.

Stakeholder reactions were mixed. In particular, landlord and tenant organisations stated that the introduction of a property banding system may be a more cost effective process for applicants with large property portfolios i.e. in excess of 500 properties. Local authorities however, expressed concerns that the introduction of a banding system may discourage landlords, bordering between bands, from registering additional properties and would also complicate the administration of the online multiple area discount.

There was no majority support for amending the property fee. However, the Scottish Government should look at the options available and assess the potential impact on costs for landlords and fees generated.

### **Recommendation**

It is recommended that the current additional property fee structure should remain. However, should a banding system be considered in the future detailed modelling should be carried out to fully assess its impact.

### **2.4.2 Late Application Fee**

The current guidance does not specifically address the issue of when the non payment of fees becomes a late application or recommends appropriate enforcement action to be taken in these circumstances.

The current guidance enables local authorities to apply a late application fee provided an application has been submitted after an authority has made two separate requests for a valid application to be made.

The review identified that some local authorities dealing with outstanding invoice payments were interpreting non payment as the submission of an invalid or incomplete application and therefore were applying the threat of a late application if necessary.

The current late application fee of 200% of the principal fee is £110. However, a minority of stakeholders suggested that 200% of the total fee payable (including property fees) may work as a better deterrent to applicants than that of the principal fee.

If after a late application fee is applied and there is still no response, a valid application has not been made, the applicant has failed to register and is not legally permitted to let property.

The general consensus was that the late application fee of 200% of the principal fee should be retained and that it should be applied where there has been non payment following an application.

Local authorities also stated that where applicants were receiving a 100% discount, there is no incentive to ensure they register and at present they considered that there is no penalty that could be applied to ensure they register. However, this is not the case and where there is a late application they can be required to pay 200% of the principal fee.

### **Recommendation**

It is recommended that the late application fee remain at 200% of the principal fee (£110) and that it should also apply to late payments following two requests for payment.

It is also recommended that all local authorities should be made aware that where applicants receive a 100% discount and fail to register, their discount /exemption is void and a late application fee of 200% of the principal fee should apply (e.g. £110).

## **2.5 Charges for Change in Circumstances**

During the good practice review some local authorities identified that some landlords and agents did not keep their records up-to-date in two circumstances.

- Where landlords have sold a property and a new landlord has tried to register that property; and
- Where they have sent out information or requests for clarification or additional information and the contact details have not been up to date.

Potential solutions considered were:

- To apply a charge to landlords/agents to change details on their records; and/or
- where records are not kept up-to-date, and there is a level of administration involved for the local authority to then identify the whereabouts of the landlord or agent or to remove properties from a portfolio, a charge should be applied to the landlord/agent to cover the cost of that process; and/or
- improved awareness raising by local authorities on landlord/agents' obligations to maintain their records.

Section 87 of the 2004 Act outlines the registered person's duty to keep the local authority, within which they are registered, informed of any change of circumstance affecting registration. Further to that SSI 2005:558 states that no fee is payable for a change in circumstances except where a landlord adds a new property to their records. In addition, failure by a registered person to notify the local authority of changes in circumstances is a breach of landlord registration and could lead to a review of the landlords "Fit and Proper" Status.

The general consensus from all stakeholders was that there should be no charge for landlords and agents keeping their records up-to-date except when an additional property is added.

However, some local authorities feel that where landlords and agents do not maintain their records online and instead approach the local authority to do so, an administrative charge should be applied.

### **Recommendation**

It is recommended that the current practice of no charge being applied for landlords and agents keeping their records up-to-date, except when an additional property is added, should be continued.

As it is of the utmost importance that the information available on the public register is accurate, a charge should be introduced where the authority has to pursue a landlord or agent for accurate information. The charge for this service should reflect the local authorities' administrative costs.

## 2.6 Review of Current Discounts

This section outlines proposed amendments to the current discount regime. The discounts under consideration were as follows:

- Charities Discount;
- Multiple Area Discount;
- Online Discount;
- Joint Owner Discount;
- Single Agent Discount;
- HMO Licence Holder Discount; and
- Accredited Landlord Discount.

### 2.6.1 Charities Discount

Charities currently receive an 80% discounted principal fee. In addition, if a registered charity applies online they will also receive a further 10% discount which totals to an overall 90% discount. The good practice review identified that once this discount is applied, particularly in conjunction with any other type of discount, the total cost of registration is often very small. As a result, it often costs a local authority more to invoice the charity, than the actual cost of registration itself and therefore the application of the discount is not cost effective.

Three options were considered by stakeholders. These were:

- increasing the discount for registered charities to 100%;
- making registered charities exempt from registration; or
- removing the discount and make registered charities pay the full principal fee.

The overall consensus from stakeholders was that the charities discount should be amended so that all registered charities receive a 100% discount. This will ensure that the payment process for charities and local authorities is simplified and cost effective.

### **Recommendation**

The discount for registered charities should be increased from 80% to 100% of the principal fee in order to ensure the process of registration is as cost effective as possible. However prior to implementing the 100% discount we would recommend that a cost impact assessment is undertaken by the Scottish Government to analyse the full impact of this potential loss of income for local authorities.

### 2.6.2 Multiple Area Discount

Applicants applying to more than one local authority simultaneously using the online system currently pay the principal fee to one (lead) authority and receive a discount of 75% of the principal fee for all other consecutive local authority areas.

The good practice review identified two issues regarding the administration of the multiple area discounts:

- the concept of a 'lead' authority was not an effective one as each local authority assesses all applications against their own interpretation of the 'fit and proper' person criteria. However, only the lead authority receives a full fee with which to undertake this assessment; and
- for the impending renewals process, this discount will be difficult to apply as a landlord with property in more than one authority is likely to have different renewal dates.

This issue could be addressed by each local authority, in which an applicant has property, receiving a flat fee to cover the associated administrative costs of registration.

The stakeholder consensus was that landlords should continue to receive a discount if applying to more than one authority, online and at the same time. But there was also general agreement that the current multiple area discount was complex to administer and that some form of simplification should be devised.

#### **Recommendation**

It is recommended that the multiple area discount is reviewed to ensure that where applicants are applying online and have properties in more than one authority, a suitable flat rate fee is equally distributed to each authority. The current fee structure of 100% principal fee for first authority followed by 75% discount for all subsequent authorities appears to be fair in terms of costs to the landlord so any change would need to be broadly consistent with current amounts paid by landlords. However, it is also recommended that a modelling exercise is undertaken to assess the full impact of a change to even distribution to local authorities where multiple area discounts apply. It also recommended that this is undertaken with a view of being in place for the renewal process.

### 2.6.3 Online Discount

If an application is made online, the applicant currently receives a 10% discount. However, the online system does not require payment to be made at the time of the application in order to qualify for the 10% discount and the applicant has the option to request an invoice. Therefore, additional administration costs and delays in processing the application are introduced when applicants request an invoice.

Options to make the online discount more cost effective include:

- it should only be available when payment is made online; and
- the 10% discount should be removed when an invoice is requested; or
- an additional charge should be made when an invoice is requested.

The online discount rewards applicants for applying online by providing applicants with a 10% discount on the total amount due. This discount was introduced to eliminate excess administration and simplify the registration process for applicants and authorities. Feedback has suggested that the 10% discount does act as an incentive to applying online.

However, all stakeholders expressed concerns that the online discount should only apply when it is also accompanied by payment.

Stakeholders also suggested increasing the online discount to encourage more online applications. This may encourage landlords with large portfolios to complete the application process on line rather than submitting paper applications to the local authority for inputting on the system. However, some concerns were raised that applicants, not familiar with online systems, may be tempted to apply online to receive discounts which can result in increased administration and costs for the local authority where incorrect or incomplete applications are submitted.

### **Recommendation**

It is recommended that the online 10% discount should remain but that it is only available to applicants who also complete payment on-line.

It is also recommended that this adjustment be introduced to coincide with planned improvements to the payment options available online.

### **2.6.4 Joint Owner Family Member Discount**

Where joint owners are members of the same family, the lead owner will pay the full fee but the other joint owners do not pay a fee. However, local authorities and landlords have reported that the administration of this discount can often be complex particularly in determining who are (or are not) members of the same family.

The guidance defines 'family' as per section 108 of the Housing (Scotland) Act 2001.

The majority stakeholder view was that all joint owners should receive a 100% discount whereby only the lead owner would pay the full principal fee for registration. This would extend the current joint owner family member discount to apply to all joint owners. This would simplify the matter for both the public and the authority, and support accurate payment at the point of application.

### **Recommendation**

It is recommended that the joint owner family member discount be extended to all joint owners where such owners are individuals and not corporate entities (Firms, companies, charities etc.).

It is also recommended that the Scottish Government model the cost impact of increasing the coverage of this discount on the overall income for landlord registration. It should be noted that while there is likely to be a loss of income for local authorities there is also a reduction in administration.

### **2.6.5 Single Agent Discount**

An applicant who is registered as an agent of only one property receives a single agent discount of 50% of the principal registration fee. The good practice review identified that this discount results in complexity when single agents then go on to add additional properties once registered or where landlords, with only one property, think they are entitled to this discount.

The purpose of this discount is to provide a reduced fee for individuals who may look after a property for friends or family members and do not necessarily operate as agents or property managers as a fulltime occupation.

The potential solution would be the removal of the single property agent discount.

The general stakeholder consensus was that the removal of this discount would simplify the process. Also, the local authority group indicated that across Scotland the impact of changing the single agent discount may be minimal due to the small numbers of single agents. However, it may be helpful to identify the scale of the issue before removal is agreed.

### **Recommendation**

It is recommended that the single agent discount be removed with all agents paying the full principal fee.

### **2.6.6 HMO Licence Holder Discount**

At present, a landlord who holds a current HMO licence does not pay the principal fee for landlord registration and any additional HMO licensed properties will be included in the register without an additional fee. For all non-HMO properties owned by the landlord, the property fee but no principal fee is required. The Good Practice Review considered whether a discount is appropriate when registration is a condition of an HMO licence being granted.

Provisions to replace the current HMO licensing legislation are contained in Part 5 of the Housing (Scotland) Act 2006 and are not yet in force. The new provisions, when commenced, will align the 'fit and proper' person test for HMO licences with the test for landlord registration.

The good practice review recommended that if a landlord does not have a HMO licence at the time of renewal (as it is a new HMO) then they would require to register, and would receive no principal fee discount. When HMO properties become licensed they would be added to the landlord's registration records at no extra cost as the landlord will require to pay for an HMO license for these properties separately.

The good practice review also recommended that a landlord should qualify for an HMO discount if they hold a valid HMO license at the time of their registration renewal. However, there should be no discount for non-HMO properties.

The general stakeholder consensus was that the HMO discount was fair and should remain as it currently stands. By removing the discount, stakeholders were concerned that landlords would pay twice for the same fit and proper person test which was unfair.

Options were discussed for the 'fit and proper' person test fee to be discounted from HMO licence fees as opposed to landlord registration but no consensus was reached.

### **Recommendation**

It is recommended that the current HMO discount remains and the Scottish Government should review its implementation in the future, to ensure the registration and HMO licensing process for these landlords is effective.

### **2.6.7 Accreditation Discount**

Where landlords are members of a local accreditation scheme which operates the same 'fit and proper' person test as landlord registration, they receive a 100% discount from landlord registration. This discount was introduced at the onset of landlord registration, where a number of local authorities already had operational accreditation schemes.

Of the local authorities interviewed in the good practice review, Dundee, Dumfries & Galloway, the City of Edinburgh, Falkirk and Fife each had operational landlord accreditation schemes. However, only two accreditation schemes had a fit and proper test. These were South Ayrshire, not interviewed, who passported all accredited landlords and Dumfries & Galloway who required landlords to register and pay for any additional non accredited properties via landlord registration.

There was general agreement from stakeholders that the 100% discount for accreditation schemes be removed. The recently launched national voluntary accreditation scheme, Landlord Accreditation Scotland, does not have a fit and proper person test associated with it. The Scottish Government views landlord registration as the minimum standard all landlords should meet. Accreditation builds on this and focuses on promoting best practice.

### **Recommendation**

It is recommended that the 100% discount for accredited landlords is removed as registration should be the minimum standard all landlords should meet.

## **2.7 Review of Current Exemptions**

There are a range of circumstances in which specific types of properties are exempt from landlord registration.

This section discusses the current exemptions and outlines reasons why they may require revising or improving.

### 2.7.1 Resident Landlords

Where a resident landlord has lodgers living with him or her in his or her principal or only home under a tenancy or occupancy agreement, that house is exempt from registration. When passing the Act, Ministers agreed to keep the position on resident landlords under review.

Some local authorities reported during the focus groups that the tenancy management of private lets in the resident landlord sector is often the poorest and have expressed concerns regarding the protection of tenants' rights. Therefore, stakeholders were asked to consider whether or not resident landlords should be subject to landlord registration.

The good practice review found that evidence surrounding resident landlords is limited, and whilst some local authorities did keep records of tenancy management instances involving resident landlords, very few had any detailed knowledge of the sector.

Overall, while no stakeholder consensus was reached regarding the potential registration of resident landlords, there was a degree of concern about standards in the sector. In general, it was felt that the issue requires to be explored in more detail, with a view to considering whether or not resident landlords should be required to register.

Local authorities also reported that some applicants misunderstand the definition of 'resident landlord' despite this being clearly outlined in the current guidance.

#### **Recommendation**

On considering the potential benefits a change in the current position may have in protecting tenants' rights and security of tenure, it is recommend that the Scottish Government seek further evidence from the sector on tenancy management conditions within the resident landlord sector in Scotland with a view to requiring resident landlords to register.

### 2.7.2 Holiday Lets

Residential properties which are let or occupied for holiday purposes are exempt from registration. In the good practice review, some local authorities reported that in some parts of Scotland, properties being used as holiday lets for short periods of time are largely unregulated and often poorly managed, particularly in relation to antisocial behaviour.

When determining whether properties are exempt from registration as they are being used as holiday lets, the current guidance recommends a definition, as outlined by HM Revenue and Customs. The conditions to be considered are set out in ICTA88/S504 (3) and all three should be satisfied if a letting is to be considered a holiday let. These conditions are:

- the accommodation must be available for commercial letting to the public generally as holiday accommodation for not less than 140 days;
- the periods for which it is so let must amount (in the aggregate) to at least 70 days; and
- for at least seven months the property must not normally be in the same occupation for more than 31 days.

The exemption for holiday lets was briefly discussed during the focus groups with some local authorities requesting that the exemption be reviewed. However, the general stakeholder consensus was that it would not be appropriate for landlord registration to include holiday lets as the aims of the landlord registration scheme are about improving management standards in the context of long term private letting and the landlord-tenant relationship, where issues like repairs, tenancy management and evictions require to be addressed. It was also felt that the landlord registration provisions would not be the most effective way of tackling issues that may arise in short term holiday lets and that other powers are currently in place to tackle issues, such as noise nuisance (Part 5 of the Antisocial Behaviour etc. (Scotland) Act 2004).

### **Recommendation**

It is recommended that holiday lets remain exempt from registration.

### **2.7.3 Agricultural Exemption**

The Act exempts houses on an agricultural holding that are occupied (i.e. lived in) by the tenant farmer. The owner of the holding would therefore not be required to register that property. Any other houses on the land within the lease that the tenant farmer sub-lets (including tied housing within an agricultural holding i.e. a shepherd's cottage) are included in registration. This means that the owner – i.e. the landowner – requires to register those sub-let houses. The tenant farmer in these cases, as the landlord of the sub-tenancy, is deemed to be an agent of the owner for the purposes of registration. The tenant farmer can register as an agent in his or her own right or the owner can give details of the agent on his or her application to register, thereby registering the agent indirectly.

The owner of houses on agricultural land and occupied by a tenant of the relevant lease is exempt from landlord registration. However, under current legislation, where the tenant farmer has leased properties as part of the land holding and subsequently lets these properties out, either to employees or private tenants, the land owner requires to register as the landlord and the tenant farmer to register as their agent.

Some Landlord organisations have previously raised issues with the above, questioning whether the tenant farmer should be registered as an agent or as the landlord. However, within the focus groups, stakeholders agreed that improved guidance could provide clarity regarding this issue, and an amendment to the application form would assist applicants and local authorities to distinguish these relationships.

Therefore the general consensus was that due to the complex nature of the issue, this could be resolved via improved guidance as opposed to a revision in the legislation.

### **Recommendation**

It is recommended that the current guidance be revised to define clearly the position of tenant farmers and agricultural leases and how they are processed as part of landlord registration. In addition, it is recommended, the Scottish Government work in partnership with the Scottish Rural Property Business Association (SRPBA) and the NFU to arrange a training session for stakeholders on this issue.

#### **2.7.4 Insolvency Practitioners**

Most insolvency practitioners (IPs) dealing with personal bankruptcy work are appointed under the auspices of the Accountant in Bankruptcy, and therefore benefit from crown immunity from the need to register as landlords. However, a small number of personal cases and all company insolvencies are handled by private IPs to whom crown immunity would not apply. These IPs would therefore be required to register where they take over a privately rented property.

The Scottish Government considers that the position of private IPs who take ownership of rented houses is equivalent to that of executors or creditors and are proposing that the current 6 month exemption for executors and heritable creditors is applied to IPs.

The stakeholder view was that insolvency practitioners should receive a 6 month exemption in line with heritable creditors and executors. It was also suggested that it would be good practice for insolvency practitioners to ensure receiving landlords are aware of their obligation to register and that insolvency practitioners should keep local authorities informed when they are acting in these circumstances.

##### **Recommendation**

It is recommended that insolvency practitioners should receive a 6 month exemption in line with heritable creditors and executors. It is also recommended that current guidance is revised to ensure the position of insolvency practitioners is clear.

#### **2.7.5 Residential Caravans**

Landlord registration is detailed in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Part 8 relates to houses (buildings) – mobile homes do not therefore fall within the scope of the requirement to register. Site owners fall to be regulated by site licensing, not landlord registration.

However, some authorities have raised concerns that often static caravans are used to provide long term lets, often to vulnerable households, and therefore felt these owners are acting as landlords and should therefore be assessed as 'fit and proper' in order to protect tenants' rights.

This issue falls outwith the scope of landlord registration and as such stakeholders recognised that it might not be appropriate to include caravans in landlord registration at this time. However, it was considered by some stakeholders that registration would offer greater protection to tenants.

##### **Recommendation**

It is recommended that prior to any decision being made regarding the inclusion of residential caravans in landlord registration; the Scottish Government should consider undertaking research into the legal position of residents of privately rented mobile homes to identify the options for reform.

### **2.8 Advice and Assistance Regulations**

The good practice review identified that some local authorities would like clearer and more concise guidance on the types of information and advice to be provided

to landlords, agents and tenants where enforcement action is being taken or sanctions are being implemented and also on the rights and responsibilities of landlords, agents and tenants within the private rented sector. Local authorities should be referred to the Scottish National Core Standards and Good Practice Guidance for Private Landlords, which sets out the law and good practice in private letting in Scotland. In addition, a number of leaflets detailing the law, rights and responsibilities for landlords and tenants are available from the Scottish Government and have been provided to local authorities. Nevertheless, the Scottish Government may want to consider whether additional training is required.

Under SSI 2005/557 there is presently a duty for local authorities to provide advice:

- on good practice in letting to landlords; and
- to tenants where the local authority;
  - refuses to register a landlord; or
  - removes a landlord from the register; or
  - serves a rent penalty notice.

At present, due to data protection requirements, local authorities felt restricted in the types of information regarding applications received and/or registered that can be made available publicly. For example, a local authority can only confirm when an application is registered not that one had been received and is being processed. This would appear to be an anomaly in what is a publicly available register.

The stakeholders' view was that there should be an expansion of the current duty to include the provision of advice to tenants where they are reporting that landlords are unregistered, particularly addressing the issue of the fear of loss of tenancy.

While the Act requires agents to be notified if a landlord is refused, de-registered or has a Rent Penalty Notice this should be extended to include the provision of advice to agents on good practice.

There are also restrictions to the types of information local authorities can release to the public regarding applications and registrations which should be clarified particularly where advice is requested from prospective tenants.

### **Recommendation**

It is recommended that there should be an expansion of the current advice and assistance duty for local authorities to provide advice to tenants where they are reporting that landlords are unregistered.

As is currently the case for tenants, local authorities should also provide advice to agents and prospective tenants where a landlord refused, de-registered or has a rent penalty notice served.

There should also be an amendment to reflect the provision of advice to tenants and landlords where agents are refused or de-registered.

## 2.9 Primary Legislation

Primary legislation is the general term used to describe the main laws passed by the legislative bodies of the UK, for example, Acts of the Scottish Parliament. The Scottish Government remains fully committed to the overall aims and objectives of landlord registration but as part of the consultation process considered the views of stakeholders as to whether changes in primary legislation are required in order to strengthen the current provisions.

As any changes to primary legislation will be dependent on a suitable Bill being identified within the current legislative programme, within which to include proposed changes, this is likely to add significantly to any timescale for implementation. With renewals expected from April 2009, it would be unlikely that changes to primary legislation would be enacted to meet this deadline.

The good practice review identified a number of potential improvements that may require alteration to specific areas of primary legislation. These are:

- increased enforcement powers for local authorities to tackle various forms of non compliance and therefore improve the quality of landlords/agents operating in the sector and protect the rights of tenants;
- introduction of mandatory timescales for processing applications in order to avoid unnecessary delays in registering applicants;
- review of the current position of agents, in particular, the circumstances in which they are required to register; and
- review of the types and quality of information made available on the public register.

## 2.10 Review of the Current Enforcement Framework

The overall aim of landlord registration is to adopt a regulatory 'light touch' approach, recognising that the majority of landlords operate lawfully. Stakeholders were asked to consider the effectiveness of the existing enforcement framework.

The current enforcement powers available to local authorities via part 8 of the Antisocial Behaviour Etc (Scotland) Act 2004 are:

Breach	Sanctions Available (If Judged Appropriate)
Failure to register whilst continuing, or attempting, to let a residential property	<ul style="list-style-type: none"> <li>• Guilty of an offence. Report to the Procurator Fiscal</li> <li>• Rent Penalty Notice may be served</li> </ul>
Provision of false information or failure to include required information in an application form	<ul style="list-style-type: none"> <li>• Guilty of an offence. Report to the Procurator Fiscal</li> <li>• Refuse registration if judged not to be a fit and proper person</li> <li>• Rent Penalty Notice may be served</li> </ul>
Non-registered owner communicates with a person about taking a lease or occupancy of a house	<ul style="list-style-type: none"> <li>• Guilty of an offence. Report to the Procurator Fiscal</li> </ul>
Failure by a registered person to notify changes in circumstances	<ul style="list-style-type: none"> <li>• Review fit and proper person requirements and deregister if judged no longer to be a fit and proper person</li> </ul>
Registered person found to be no longer a fit and proper person	<ul style="list-style-type: none"> <li>• De-register</li> </ul>
De-registered person continues to let a property	<ul style="list-style-type: none"> <li>• Guilty of an offence. Report to the Procurator Fiscal</li> <li>• Rent Penalty Notice may be served</li> </ul>

Some local authorities have anticipated problems with obtaining evidence relating to unregistered landlords and the need to prove that a tenancy is in place. It has therefore been suggested that additional primary legislation may be useful, in order to enable local authorities to legally obtain the necessary information. This could include powers to seize evidence or take statements under caution.

However, the general stakeholder consensus was that appropriate enforcement tools are available within the current legislation and that more evidence of the current tools being used effectively would be required before a change to primary legislation is made. There were concerns that by strengthening existing enforcement powers the credibility and public good will of the scheme could be put at risk.

Landlord and tenant stakeholders suggested that it would be useful to publicise any enforcement action being undertaken in order to promote the scheme. They suggested that information on implementation and enforcement of landlord registration should be provided regularly and that the effectiveness of the current legislation should be tested prior to any change in primary legislation being considered.

### **Recommendation**

It is recommended that there is no change to primary legislation but that local authorities' concerns regarding the restrictions on legally obtaining information from individuals is given wider consideration by the Scottish Government.

As there is limited evidence that current enforcement measures are being fully utilised by local authorities it is pre-mature to consider any change to primary legislation. However, it may be beneficial that the use of enforcement action is reviewed regularly and good practice shared between local authorities.

## **2.11 Non Registered Owners Communicating with Prospective Tenants**

The good practice review recommended that all local letting agents, property centres, solicitors, property managers, newspapers, magazines, lettings web-sites etc are reminded that landlords require to register prior to advertising property to let and that they should only accept adverts from landlords with valid registration numbers. The issue for primary legislation was whether or not to make it an offence to accept advertising from unregistered landlords.

All stakeholders agreed that due to the vast number of ways in which landlords and agents can advertise property, including the internet, a change in legislation would be difficult to enforce. However, the general consensus was that it would be good practice for an advertisement (by whatever means) for a private rented property to include a valid registration number. There should also be a mechanism in place by which advertising agents etc can check that the registration number given is accurate.

### **Recommendation**

It is recommended that no change in primary legislation is required at this point in time.

It is also recommended that the Scottish Government monitor local authorities experiences of unregistered landlords and agents advertising property and consider whether current mechanisms are effective.

## **2.12 Mandatory Timescales for Processing Applications**

Currently no mandatory timescales are imposed on local authorities by which to process applications for landlord registration, though suggested timescales are included in guidance. In order to prevent unnecessary backlogs and to streamline the application process, it was suggested that mandatory timescales could be introduced for local authorities.

Most licensing regimes, including HMO Licensing, impose statutory time limits for the relevant authority to process applications. The maximum timescale suggested in guidance for local authorities to make a decision either to accept or refuse an application for registration by a landlord is 6 months, which corresponds with that used in most other types of licensing situations.

The current guidance for landlord registration recommends that from date of application to:

- date of notification of approval of an application that is not on the local authority database: 1 month;
- date of notification of the refusal of an application that is on the local authority database and from which there are sufficient grounds to refuse without further checks considered necessary: 3 months;
- date of notification of approval of an application that is on the local authority database but for which there are no doubts about approving: 3 months;
- date of notification of approval of an application that is on the local authority database and for which further checks are carried out including Disclosure Scotland results, but the conclusion from which is there are not sufficient grounds to refuse approval: 6 months;
- date of notification of rejection of an application that is on the local authority database and for which further checks are carried out including any Disclosure Scotland checks, the conclusion from which is that there are sufficient grounds to refuse approval: 6 months.

In general, all stakeholders agreed that in the interests of good customer service applications should be processed in a reasonable timescale. Stakeholders recognised the work that had gone in to clearing the backlog in applications over the last year and noted that the delays that were experienced at the start of the scheme should not arise again. It was also generally agreed that timescales should not be mandatory at this time and instead should remain outlined in guidance and in correspondence to applicants. This was to avoid a situation where a local authority may have concerns about a landlord but be unable to secure the necessary evidence within the six month timescale and the landlord may become approved by default. It was also suggested that timescales should be reviewed regularly and that the good practice implementation group should set and review local performance indicators.

### **Recommendation**

It recommended that timescales for processing applications are not made mandatory at this time.

## **2.13 Definition of 'Agent'**

During the good practice review it was identified that some individuals responsible for managing property did not view themselves as agents and therefore did not apply for landlord registration.

One potential solution would be to revise the primary legislation to provide a definition of 'agent' for the purposes of landlord registration.

Presently the guidance defines an 'agent' as a;

- a commercial agency:
  - a lettings agency
  - a property management agency
  - an estate agency

- an organisation such as a charity;
- an individual or individuals, for example, a couple who manage a rented house on behalf of a relative who is working abroad;
- an employee of an owner organisation (e.g. a factor for an estate that is a Trust or a company).

Stakeholders were concerned that prescribing the circumstances in which a person would be considered to be an agent would be complicated and may result in some agents modifying their practice to fall out with the provisions. Instead, the stakeholder view was that the definition of 'agent' could be more clearly defined in guidance by providing a clearer explanation of the types of services they may provide which would result in a requirement to register.

### **Recommendation**

It is recommended that there is no change in primary legislation and that current guidance is revised to clearly define the types of agents and the services they may provide that are required to register. This should also include a clearer definition of agents in relation to the agricultural exemption and single agent for the purposes of the associated discount.

## **2.14 Agents Requirement to Register**

The current guidance states that;

*'The owner of a registerable property must declare an agent who acts for him or her in relation to letting. It is not compulsory for agents to register in their own right, but agents may find it more convenient and cheaper and for their clients to do so.'*

As this statement contains the phrase 'it is not compulsory', some agents have taken this to mean that they do not require to register. However, the guidance also states that where an agent is declared they must register.

The overall consensus was that the mandatory registration of agents would be welcomed, regardless of whether or not they have been declared in an application for registration. It was generally felt that a landlord paying to include an unregistered agent on their applications was unfair and also that all enforcement action and sanctions should also apply to agents. This would ensure that all agents' services had passed a 'fit and proper' person test.

### **Recommendation**

It is recommended that all agents are required to register which would necessitate a change in primary legislation. This would also require that all enforcement action, sanctions, information and advice in force would also be applicable to agents thus increasing the cost of enforcement action for local authorities.

## **2.15 Approving Agents Acting For Non Registered Landlords**

At present, it is not an offence for an agent to act on behalf of an unregistered landlord and there are no available sanctions that can be taken against the agent to prevent this from occurring, the sanctions apply only to the landlord.

It could be argued that an agent willing to advertise property on behalf of unregistered landlords (who are therefore not complying with current legislation) may not necessarily be 'fit and proper' to let property. However as it is the local authorities' duty to enforce the legislation, it may not be appropriate to penalise the agent.

In general, there was no consensus among stakeholders on whether an agent should be refused registration if they are acting for a non-registered landlord. However, the Good Practice Implementation Group was considering the matter and may revise current guidance.

### **Recommendation**

As this is an area currently being considered by the Good Practice Implementation Group, it is recommended that no amendment to primary legislation is required regarding this matter at present.

## **2.16 Public Register**

At present the public register only contains information regarding registered landlords and their properties. The register does not provide information on whether applications have been received, are being processed, are under review or have been refused.

There was no consensus amongst stakeholders on whether there should be an additional status on the public site to identify application in progress or pending. Some felt that this would be a useful category for landlords, tenants and the public so they know that the landlord has submitted an application and it is being processed. This would also help limit the number of enquiries regarding applications.

Conversely, some local authorities felt that this would encourage enquiries from tenants and the public who will want to know why an application is being reviewed or refused, information that they did not want to be available publicly. It was also felt that where the local authority had not reached a decision about the fitness of the landlord, the landlord should not be subject to speculation from wider members of the public about his or her practice.

However, tenant organisations felt that the tenant has a right to know that the property and/or landlord are under review. They felt that tenants require guidance on the route they can take when a landlord has not yet been registered or is under review.

### **Recommendation**

It is recommended that a single additional status of "processing application" is made available on the public register. This would be useful for both applicants and the public. This would ensure that where applicants have submitted valid applications (applications that are correct and paid) that this is acknowledged publicly.

The public register should not include statuses that may cast aspersions on an individual's character prior to a decision being made on an application/registration. Therefore it would be inappropriate to have a status such as "under review".

### 3. CONCLUSIONS

Following consultation across the private rented sector in Scotland, a number of improvements to the current landlord registration process have been recommended that will require amendments to both secondary and primary legislation in order to be implemented.

The recommended revisions to primary and secondary legislation are summarised as follows:

#### 3.1 Secondary Legislation

The recommendations regarding to revisions to secondary legislation are:

- there should be an increase in the discount for registered charities to 100% of the principal fee;
- where applicants are applying online and have properties in more than one authority, a suitable flat rate fee should be distributed to each authority;
- a charge should be introduced where the authority has to pursue a landlord or agent for accurate information. The charge for this service should reflect the local authorities' administrative costs;
- the 10% online discount should only be available to applicants who also complete payment on-line;
- joint owner family member discount is extended to all joint owners;
- the single agent discount be removed with all agents paying the full principal fee;
- the 100% discount for accredited landlords should be removed;
- insolvency practitioners should receive a 6 month registration exemption in line with heritable creditors and executors;
- there should be an expansion of the current advice and assistance duty for local authorities to provide advice to tenants where they are reporting that landlords are unregistered.
- as is currently the case for tenants, local authorities should also provide advice to agents and ,if contact is made, prospective tenants where a landlord has been refused, de-registered or has a rent penalty notice served.
- There should also be an amendment to reflect the provision of advice to tenants and landlords where agents are refused or de-registered

In addition, the following recommendations to the registration process were also suggested;

- to modify the current application form (paper and online) to encourage the provision of a telephone number and/or email address for owners and day-to-day managers of private rented property;
- where applicants apply online, an email address should be required as part of the application process in order to administer and activate the online registration;

- fees should continue to be set nationally until a detailed cost analysis of the first three years of landlord registration is completed for each authority;
- the late application fee remain at 200% of the principal fee (£110) and that it should also apply to late payments following two requests for payment;
- all local authorities should be made aware that where applicants receive a 100% discount and fail to register, their discount /exemption is void and a late application fee of 200% of the principal fee should apply (e.g. £110);
- no charge should apply for landlords and agents to keep their own records up-to-date, except when an additional property is added;
- the current HMO discount should remain as it is and the Scottish Government should review its implementation in the future;
- the Scottish Government should seek further evidence from the sector on tenancy management conditions within the resident landlord sector;
- holiday lets remain exempt from registration
- current guidance should clearly define the position of tenant farmers and agricultural leases and how they are processed as part of the landlord registration;
- the Scottish Government should consider undertaking research into the legal position of residents of privately rented mobile homes to identify the options for reform.

### 3.2 Primary Legislation

With regards to revisions relating to primary legislation, the recommendations are:

- all agents should be required to register which would also require that all enforcement action, sanctions, information and advice in force be applicable to agents; and
- a single additional status of “processing application” should be available on the public register. This would ensure that where applicants have submitted valid applications (applications that are correct and paid) that this is acknowledged publicly.

Of the remaining issues relating to aspects of primary legislation, it was felt that those issues could be more effectively resolved in the following ways:

- by the Scottish Government giving wider consideration to local authorities’ concerns regarding the restrictions on legally obtaining information from individuals in order to enforce landlord registration;
- the Scottish Government monitor local authorities experiences of unregistered landlords and agents advertising property and consider whether current mechanisms are effective; and
- the current guidance is revised to clearly define the types of agents and the services they may provide, including a clearer definition of agents in relation to the agricultural exemption and single agent for the purposes of the associated discount.