

## **PE1778/A**

Scottish Government submission of 19 March 2020

The committee asked for the Scottish Government's views on the issues raised by the petitioner; their call for a review of the landlord register scheme; and whether the registration scheme makes a distinction between good landlords and rogue landlords and the latter be identified.

The petitioner raised the following three areas of concern:

- i. Lack of scrutiny and investigation of individuals in determining whether they are a 'fit and proper' person to hold landlord registration;
- ii. No checks are carried out by any relevant authority in relation to a landlord's compliance with their legal responsibilities and obligations; and
- iii. The emphasis of Scottish Government guidance for local authorities on a 'light touch' approach to implementing landlord registration.

### ***Lack of scrutiny and investigation of individuals in determining whether they are a 'fit and proper' person to hold landlord registration.***

Administration and enforcement of landlord registration is the responsibility of individual local authorities. Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004 (the 2004 Act) requires local authorities to have regard to a range of material when considering whether a landlord is fit and proper to let houses. This includes, amongst other things, material which shows that the person has committed specific offences or contravened any provision of housing law or landlord and tenant law, material which relates to any acts of the relevant person regarding antisocial behaviour affecting the house, any criminal convictions and any repairing standard enforcement orders.

The fit and proper person test is intended to provide a level of assurance that the landlord or agent is a suitable person to let privately rented property. It is a standard that all private landlords are required to uphold throughout the time that they operate as a private landlord. Unless a local authority is satisfied that the applicant is a fit and proper person to let houses, the application should not be approved. Additionally a local authority can review an approved registration at any time if information becomes available that indicates that a landlord is not meeting these standards.

### ***No checks are carried out by any relevant authority in relation to a landlord's compliance with their legal responsibilities and obligations.***

Local authorities do carry out checks as part of processing applications for registration. To further strengthen landlord registration, the Scottish Government introduced changes in September 2019 through the Private Landlord Registration (Information) (Scotland) Regulations 2019 to increase the information landlords must provide when applying for registration or renewing their registration. Landlords are now required to make detailed declarations that they meet the existing obligations around letting houses when they make their application for Landlord Registration. This covers key elements such as gas and electrical safety, appropriate fire and carbon monoxide detection, legionella risk assessments along with compliance around Energy Performance Certificates, tenancy deposits, common repairs and landlord insurance. This brings an increased burden on the local authorities so the fees within Landlord Registration were increased for the first time last summer to help fund the higher level of administration.

The overall aim of this change is to improve standards in the private rented sector by raising the awareness of landlords for their responsibilities and confirming that they meet their legal obligations. The policy also helps to reduce the disadvantage faced by legitimate landlord businesses that are undercut by landlords who operate outside the law.

Prescribed information has already provided local authorities with better information to support their enforcement activity. In most cases where landlords have indicated that they cannot meet these obligations or that they do not understand their obligations, local authorities are able to provide help and advice to the landlord. However, where an applicant refuses to comply, or is unable to meet their obligations the local authority will consider enforcement action which can lead to refusal of the application.

***Emphasis of Scottish Government guidance for local authorities on a 'light touch' approach to implementing landlord registration.***

The guidance for local authorities which was published in 2009 very much reflected the challenge of registering Scotland's landlords at that time. Over the intervening years the regime has been significantly strengthened including the publication of statutory guidance in 2017. This revised guidance offers a robust steer to help local authorities deliver effective regulation, making it clear that they should develop an explicit risk based approach, using their experience and local intelligence, to identify and target registrations where further scrutiny might be appropriate. The guidance also highlights case studies of how particular local authorities are using their landlord registration powers to deliver improvements in the sector including in relation to the fit and proper person test.

<https://www.gov.scot/publications/landlord-registration-statutory-guidance-local-authorities-2017-statutory-guidance-local>

Local authorities are also required to exercise their regulatory powers, including those linked to landlord registration, in line with the Scottish Regulators' Strategic Code of Practice.

The Scottish Government's statutory guidance on landlord registration emphasises this and highlights the need for policies and practice to reflect the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed. The Scottish Regulators' Strategic Code of Practice is available at:

<https://www.gov.scot/publications/scottish-regulators-strategic-code-of-practice/>.

Since the introduction of landlord registration in 2006, the Scottish Government has increasingly strengthened the regime by giving local authorities new duties and discretionary powers to tackle poor physical and management standards in the sector, along with strengthened obligations for anyone who wants to let residential property in Scotland.

The Scottish Government recognises that the majority of landlords are fit and proper persons and provide a service that their tenants find satisfactory. Where landlords are compliant with the requirements the need for local authorities to routinely monitor their compliance is diminished. This allows local authorities to focus on those landlords whose conduct is not satisfactory, and on those who have failed to register or to maintain their registration.

The Scottish Government therefore does not agree with the views of the petitioner and we do not think that a review of the policy is required. The Scottish Government's aim is to see a private rented sector that is characterised by good quality housing, being managed more professionally, where tenants feel more secure. Where there are poor standards, local authorities should be taking targeted enforcement to ensure every landlord is fit to let homes to private tenants and the landlord registration system supports local authorities in doing this.