

## Briefing for the Public Petitions Committee

**Petition Number:** [PE1778](#)

**Main Petitioner:** David Findleton

**Subject:** Review the Landlords' Register Scheme

Calls on the Parliament to urge the Scottish Government to review the effectiveness of the Scottish Landlords' Register Scheme.

### Background

Since 2006, there has been a requirement for all private sector landlords to be registered. Information about this can be found at [Landlord Registration Scotland](#). Additionally, [the Letting Agent Registration \(Scotland\) Regulations 2016](#) provide information about criteria needing to be met to be on the letting agent register. Registration is therefore a legal requirement for landlords.

### Legislation

Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 states that private landlords need to register themselves and their properties with the local authority in which a property is situated. Local authorities must ensure that each landlord is a "fit and proper person" before they are approved.

Local authorities must take account of the information prescribed in section 85 of the 2004 Act when carrying out the fit and proper person test. Shelter Scotland advise that local authorities should look for:

- Information showing that the landlord has committed fraud, or violent or drug related offences.
- Evidence of discrimination in any business activity.
- Information showing that they have broken any other laws in relation to housing.
- Information showing that they are a bad landlord, or that they have been a bad landlord in the past.
- Antisocial behaviour problems in any properties the landlord rents out or is responsible for.
- If the landlord has an agreement with a letting agent (or anyone else who's acting on their behalf in letting the property), that the terms of that agreement are adequate.
- Anything else which is relevant.

A criminal conviction doesn't necessarily mean that a landlord won't pass the test. The council looks at every case individually. It may consider:

- what the conviction was for
- how long ago it was
- whether or not it will affect the person's ability to be a good landlord
- the risk of the same thing happening again and whether that would affect the person's duties as a landlord.

Section 85(4) allows local authorities to consider material other than a conviction or tribunal decision to assess whether or not an applicant is fit and proper to be approved for registration

A landlord can be de-registered if they do not meet the fit and proper person test. Local authorities consider whether a landlord is ignorant of the legislation or whether they are failing to comply. However, there may be an issue in getting the evidence to prove failure to comply.

Existing local authority powers include:

- If a local authority becomes aware of poor standards in private letting management they can, and do, draw up Action Plans for private landlords to get properties to reach the required standard.
- Rent Penalty Notices (RPNs). Local authorities use these to encourage landlords to make improvements while applying a firm penalty to cases where improvements or actions were not made within an acceptable time-frame.

There may be variable practice amongst local authorities about how they deal with landlord registration applications, and once an applicant is registered, how they evidence landlords' poor practice. Some may have a more "light touch" approach than others. Consequently, Landlord Registration is sometimes criticised as being ineffective. However, the principal aim is to improve standards within the Private Rented Sector rather than punishing poorly performing landlords.

Part 1 of The Private Rented Housing (Scotland) 2011 Act (2011 Act) made several amendments to these provisions with the intention of improving the operation of the scheme. The following summarises the main aspects of the scheme.

- A strengthened 'fit and proper person' test
- The requirement for 'property to let' adverts to include the landlord's registration number
- Powers for local authorities to obtain information about private landlords
- An increase in the maximum fine for landlord registration offences from £5,000 to £50,000

The 2011 Act also gave local authorities new powers to obtain information for the purposes of registration activity and to help identify unregistered landlords.

A local authority can serve a notice on specified persons requiring them to provide:

- information on the nature of their interest in the house;
- specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and
- such other information about the house or such a person as can be reasonably requested.

The Housing (Scotland) Act 2006 identified the Repairing Standard, which governs the condition of properties. Part 3 of the Housing (Scotland) Act 2014 increases the things landlords have to do, including ensuring properties have carbon monoxide detectors and carry out regular electrical safety inspections. The Scottish Government, in 2017, published guidance which requires local authorities to enforce landlord registration criteria. Any failure to comply with the repairing standard should result in action being taken by the local authority under the Environmental Protection Act 1990. Local authorities have enforcement notices that they can service on substandard properties to ensure landlords bring them up to standard. Statutory notices can also be issued under the Building (Scotland) Act 2003.

### **Scottish Government Action**

The Scottish Government published an evaluation of the Landlord Registration Scheme in 2011. The evaluation consisted of: an analysis of the financial and administrative information provided by the Scottish Government by local authorities; an online survey of local authorities and case study analyses. The results suggested that there were more than 175,000 landlords registered, though the report indicated that it was not possible to get an accurate picture of how many landlords had not registered.

The research indicated that the Scheme had gone some way to achieving its goal of raising standards, stating that, “there is evidence that the sector is more aware of its obligations... and there have been some improvements in landlord behaviour.”

Deciding on the effectiveness of the legislation to ensure that only “fit and proper” persons become registered landlords is more difficult. The number of landlords that are refused entry to the register and the reasons they failed to meet the criteria for registration could be useful (if the data were made available). However, this does not identify if people are passed as wrongly identified as “fit and proper”. The level of the scrutiny and the numbers needed to be processed may mean that some landlords are registered when they perhaps should not be. How robust the process for assessing fit and proper person status is, is unclear.

Consultation with different landlords and landlord groups suggest that landlords support the idea of registration but feel little is done to identify those that operate outside the register or who are registered but should no longer be. The view being that those are the rogue landlords and that they should be prevented from operating outside the legal system.

The Private Landlord Registration (Information) (Scotland) Regulations 2019 amended the regulations from 16 September 2019. This amends the information that needs to be provided by the landlord when they are applying for registration.

### **Scottish Parliamentary Action**

The most recent parliamentary discussion regarding landlord registration was in 2015.

#### **Question S4W-27427: Alex Johnstone, North East Scotland, Scottish Conservative and Unionist Party, Date Lodged: 10/09/2015**

To ask the Scottish Government how many landlords have been (a) convicted and (b) sanctioned under the Landlord Registration Scheme.

#### **Answered by Margaret Burgess (18/09/2015):**

Responsibility for administration of the Landlord Registration Scheme rests with local authorities and Information on the number of prosecutions is not held by the Scottish Government. The Scottish Government does monitor local authority Landlord registration enforcement activity. Since January 2011, 25 cases have been reported to the procurator fiscal, prior to this time this figure was not collated centrally.

With reference to other sanctions under Landlord registration legislation, local authorities undertake a range of work to pro-actively enforce Landlord registration and improve standards. For example, since April 2008, there have been 36,637 late application fees applied, and 8,590 rent penalty notices served, 321 action or improvement plans were instigated, 86 landlords have been deemed to be not “fit and proper” and 139 landlords have been refused registration or had their registration revoked.

**Alex Marks**  
**Senior Research SPICe**  
**17 December 2019**

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