

# **PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **STRUCTURE AND SUMMARY OF THE ACT**

#### **Part 1 – Registration of Private Landlords**

##### ***Sections 1 and 2 – Fit and proper person***

6. Section 85 of the 2004 Act describes the material that local authorities must have regard to when considering if a landlord is a fit and proper person (or if a person appointed to act for a landlord is a fit and proper person so to act). To improve protection for private tenants, section 1 of the Act expands the list of offences that have to be considered, to include firearms and sexual offences. Regulations will require these to be declared by an applicant for landlord registration, and section 2 of the Act makes provision for a local authority to require a criminal record certificate to be produced to it, on application or subsequently.
7. Sections 85(3) and (4) of the 2004 Act require a local authority to take into account any information that it deems relevant to the question of whether the landlord or agent is a fit and proper person. To assist local authorities in determining what is relevant, the Act specifies certain information that must be considered when applying this test, specifically:
  - previous convictions under legislation relating to landlord registration or HMO licensing;
  - breaches of the Repairing Standard;
  - complaints and information which come to the local authority's attention (for example from tenants, neighbours and others) where landlords have not paid their share of the cost of communal repairs or payments to property factors;
  - antisocial behaviour by the landlord, the tenant, or at the property;
  - concerns and other information which come to a local authority's attention in relation to a property, through its other functions; for example when investigating noise complaints or carrying out environmental health inspections; and,
  - failure to produce a criminal record certificate where the local authority requires it.
8. [Section 1](#) also gives Ministers the power to add, amend or remove offences or other unlawful acts that must be taken into account by a local authority in applying the fit and proper test.
9. [Section 2](#) of the Act adds a new section 85A to the 2004 Act which gives a local authority the power to require a criminal record certificate if it deems this is necessary when applying the fit and proper person test. If an applicant for registration fails to

*These notes relate to the Private Rented Housing (Scotland) Act  
2011 (asp 14) which received Royal Assent on 20 April 2011*

provide this he or she will not be placed on the register. A registered landlord who fails to provide it may be removed from the register.