

PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 1 – Registration of Private Landlords

5. The provisions in this Part make amendments to the landlord registration provisions contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act').

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 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.

Section 3 – Landlord registration number

10. Landlord Registration numbers are currently provided for administrative reasons when landlords are registered but have no legal status. Section 3 therefore amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing and outlines that local authorities must provide landlords with their registration number when advising them that their registration has been completed.

Section 4 – Appointment of agents

11. **Section 4** introduces a new subsection (2A) to section 88 of the 2004 Act to allow a local authority to charge a registered landlord a fee when the landlord notifies the local authority of the appointment of an agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord's register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will enable local authorities to recover costs and will be fairer for those landlords and agents who pay fees, because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. New subsection (2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable. The Act further amends section 88 to make it an offence if landlords do not notify local authorities that they have appointed an agent or provide false information. The penalty is a fine on summary conviction not exceeding level 3 on the standard scale.

Section 5 – Access to register: additional information

12. Information on registered private landlords and their properties is held on a register maintained by the local authority for the area where each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants section 5 of the Act provides two additional categories of information to be made available to the public. Subsection (1) amends section 88A(1) of the 2004 Act to make available information on whether a registration application has been made but not yet determined; and whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person's agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord, or because the person's agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

Section 6 – Duty to include certain information in advertisements

13. To prevent unregistered landlords from advertising their properties, section 6 of the Act inserts a new section 92B into the 2004 Act which requires all adverts for properties for let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase "landlord registration pending". Reusable 'To Let' boards are exempt from this due to costs for landlords. Where there is more than one owner of the property, only one landlord registration number (or the phrase "landlord registration pending" if relevant) need be included in the advertisement. For a registered landlord the sanction for failing to include a registration number is that they may be removed from the register. For an applicant for registration the sanction is that the application may be refused.

Sections 7 and 8 – Penalties for unregistered landlords

14. **Sections 7 and 8** give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. To reflect the seriousness of the behaviour of some landlords, the Act increases the maximum fine level in section 93(7) of the 2004 Act, for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to £50,000 and introduces a new section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. These provisions bring landlord registration in line with HMO licensing. The Act outlines the landlord's right of appeal and makes provision for revocation of any disqualification order, though no revocation can occur unless there has been a change of circumstances, and even then not within the first year of the order taking effect.

Section 9 – Power to obtain information

15. **Section 9** inserts new section 97A into the 2004 Act. Section 97A details powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice requiring such a person 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. To help local authorities identify unregistered landlords, the Act contains a power for local authorities to require a letting agent to provide information in relation to any house in the area in relation to which the agent acts, including the address of the house and the name and address of the owner.
16. **Section 9** also outlines the methods a local authority must use to advise the person that they are required to provide information, which may include electronic service. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale.

Section 10 – Part 8 of the 2004 Act: Guidance

17. **Section 10** of the Act makes an amendment to the 2004 Act by introducing a new section 99A which requires local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration. Ministers are required to consult local authorities and, if they think fit, others before issuing any such guidance.

Section 11 – Private Rented Housing Panel: information to be given to a local authority

18. To further help local authorities identify unregistered landlords, section 11 of the Act amends the 2006 Act by inserting new section 22A which requires the Private Rented Housing Panel to pass onto the local authority details about the landlord and property, which must include the landlord registration number if known and details of any agent the panel knows is acting on the landlord's behalf. This requirement arises where an application is made to the panel by a tenant relating to the repairing standard.