

**REPORT TO: HOUSING COMMITTEE – 19 SEPTEMBER 2005**

**REPORT ON: RESPONSE TO CONSULTATION ON THE REGULATION OF PRIVATE LANDLORDS**

**REPORT BY: DIRECTOR OF HOUSING**

**REPORT NO: 578-2005**

**1. PURPOSE OF REPORT**

- 1.1. To inform Committee of consultation on the implementation of Parts 7 (Antisocial Behaviour Notices) and 8 (Registration of Private Landlords) of the Antisocial Behaviour etc. (Scotland) Act 2004 and to seek Committee approval to the attached response.

**2. RECOMMENDATIONS**

- 2.1. It is recommended that the Housing Committee approves the draft response (Appendix 1) and agrees to its submission as Dundee City Council's response to the Scottish Executive's Consultation Paper.

**3. FINANCIAL IMPLICATIONS**

- 3.1. There are no immediate financial implications at this time, however the implementation of this legislation will bring a staffing requirement relative to the processing of applications, maintenance of the Register of Landlords, provision of advice and guidance as well as enforcement action in detecting and dealing with breaches of the legislation.

**4. LOCAL AGENDA 21 IMPLICATIONS**

- 4.1. The implementation of this legislation is designed to ensure a healthy private rented sector which continues to attract investment and provides well managed, good quality housing. Health will be protected by ensuring safe, clean, pleasant environments and people will be able to live without fear of personal violence or antisocial behaviour.

**5. EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1. This legislation will ensure that everyone can access good quality, well-managed, private rented housing, regardless of age, gender, sexuality, race, religion, disability or other factor.

**6. BACKGROUND**

- 6.1. THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

6.1.1. The Antisocial Behaviour etc. (Scotland) Act 2004 gives local authorities additional powers to regulate rented housing in Scotland. Under Part 7, if residents are engaging in antisocial behaviour at their home, and the landlord is not taking normal management action to address it, the local authority can serve an antisocial behaviour notice setting out actions the landlord must take. Under Part 8, all landlords and letting agents, apart from Registered Social Landlords and some other exceptions, must be registered with the local authority. In order to be registered the local authority must be satisfied the applicant is a fit and proper person. The Act lists various factors which the local authority must take into account in making that decision.

6.1.2. It will be an offence to let any residential property without being registered.

## 6.2. **REGISTRATION OF PRIVATE LANDLORD**

### 6.2.1. **Registration – Coverage**

The Act excludes from registration houses used by religious orders and to provide certain categories of care regulated by the Care Commission. It is also proposed that houses let by resident landlords should be excluded. It is however proposed that tenants of tied housing (accommodation provided with employment) should have the protection of registration.

The owner of a house will be required to register with the local authority and to give details of any agent they employ as well as listing all of their properties. In addition to the applicant's and agents details, each will have to provide information in connection with the fit and proper person test, likely to include information on previous convictions and registrations as well as a declaration that the applicant complies with the law relating to letting.

### 6.2.2. **Dealing with Applications**

The Scottish Executive propose a "light touch" approach suggesting that the landlords should be accepted as fit and proper without further investigation, unless something on the application form or information in the local authority's possession prompts concern. To minimise the impact on the supply of accommodation, where there are concerns about an applicant the preferred outcome is for the local authority to work with the owner to resolve these concerns. The example given is for an owner to appoint a Registered Agent to manage the properties. Local authorities will also be required to provide applicants with information on their legal obligations and good practice.

### 6.2.3. **Costs and Fees**

It is expected that income from fees will broadly cover the costs of administering the scheme and the Scottish executive intend to issue guidance to local authorities on determining fees. The proposals include for a principal fee with a smaller supplementary fee for each property to be registered. The Executive further indicate that they intend to assist local authorities with the costs of establishing the registration system.

### 6.2.4 **Processing Applications**

The Scottish Executive are to provide a single, national, internet-based online system for processing applications with access to the system for each local authority via their own websites. Local authority Registration Officers will have full access to all records for their own area to enable them to maintain the register and to process applications made on paper.

### 6.2.5 Breaches

There will be a range of offences associated with registration and a range of penalties which can be applied. In addition to removing registration (where a landlord is already registered) and seeking prosecution, the local authority can also serve a notice stating that no rent is payable on the property. There will however be a requirement to provide advice and support to tenants where action is taken against a landlord.

### 6.3. **ANTISOCIAL BEHAVIOUR NOTICES**

- 6.3.1. The Act permits a local authority to serve an antisocial behaviour notice on a landlord of a "relevant house", if any person who occupies the house under a tenancy or occupancy agreement, or visits the house, is engaging in antisocial behaviour at or in the locality of the house. The notice must describe the antisocial behaviour that has led to the notice being served and require the landlord to take specific action to deal with it within a specified period. Local authorities will be required to provide advice and assistance on the management of antisocial behaviour before serving a notice. The Executive also intend to issue guidance on the types of action that could be considered good practise for landlords to take in tackling antisocial behaviour

If a landlord fails to comply with an antisocial behaviour notice, the local authority can report the landlord for prosecution as the failure is an offence. Application can be made to the sheriff for either an order as to rental income which suspends the tenant's rent liability, or a management control order. Alternatively they can take action to deal with the antisocial behaviour and recover costs from the landlord. Under a management control order, the rights and responsibilities of the landlord are transferred to the Local authority.

### 7. **CONSULTATION**

The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Environmental Health and Trading Standards, Director of Planning and Transportation and the Director of Economic Development have been consulted in the preparation of this report.

### 8. **BACKGROUND PAPERS**

- 8.1. Regulation of Private Landlords under the Antisocial Behaviour etc. (Scotland) Act 2004 – Consultation Paper.
- 8.2. Copies of this documents have been placed in the Members' Lounge.

**ELAINE ZWIRLEIN**  
**DIRECTOR OF HOUSING**

**SEPTEMBER 2005**

**DUNDEE CITY COUNCIL'S RESPONSE  
TO  
REGULATION OF PRIVATE LANDLORDS  
under the Antisocial Behaviour etc. (Scotland) Act 2004**

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**GENERAL COMMENTS**

Dundee City council welcomes the opportunity to comment on the consultation paper but are concerned at the ambitious timescales for implementation and the funding of the registration process.

Experience with the introduction of mandatory Licensing for HMOs, suggests there will be a need to devote significant resources to implementing the scheme, resources which are not in place at this time. The lead times intimated give little time to consider, where necessary, the recruitment of additional staff and creation of support systems, protocols and networks.

As is acknowledged within the consultation, with no real idea of the impact of the introduction of the scheme it will be extremely difficult to accurately assess the likely costs involved in setting up the scheme, ongoing operational costs and the anticipated significant costs associated with enforcement activity.

This lack of knowledge makes it extremely difficult to determine in the first instance the staffing requirements of preparing for implementation in March 2006, notwithstanding that there is no funding available now and recruiting is a lengthy process.

The Council does however support the intention to improve the regulation of the private rented sector and agrees that the scheme should not adversely affect the good landlord. We do however see opportunities to further support HMO licensing by requiring additional information regarding HMOs within the registration process.

The Council would respond to the specific questions in the Consultation Paper as follows:

**LANDLORD REGISTRATION**

**Section B: Coverage**

**B1. Exclusions**

**Is it appropriate to exclude resident landlords and agricultural and crofting tenancies from registration?**

As resident landlords with more than two tenants will require to be licensed we would support this approach. As a City Authority we would make no comment on agricultural or crofting tenancies.

**Is it appropriate to include accommodation provided with employment in registration?**

We would support this proposal and would suggest that it should specifically extend to include accommodation provided as part of training.

**Are there other categories of landlord or property that should be excluded from registration?**

None. However it may be worth considering whether it should be a requirement for a resident landlord, with less than three tenants, who has been subject to an Antisocial Behaviour Notice to register.

**Is the proposed approach to guidance sufficient?**

Paragraph 29 of the consultation refers to “properties let”. It is considered that landlords should be required to list all properties whether let, available for let or otherwise unoccupied to avoid any loophole in registration.

**B2. Types of Applicant**

**Do you have any views on how joint owners should be dealt with?**

In terms of joint owners we would support them being treated as a single applicant with the register listing both as joint owners and, as suggested, subject to all owners satisfying the fit and proper person test.

**B3. Identifying Landlords**

**Are there further sources of relevant information for identifying landlords who let while not being registered which could highlighted in guidance?**

Consideration should be given as to whether it is practical to require the press to only advertise properties to let on the basis of publishing a registration number with each advertisement. An advertisement for property to let would require a statement and registration number.

**Section C: Dealing with Applications**

**C1. Information from Applicants**

**Taking into account the arguments in paragraphs 58 and 60, do you agree that the information provided by applicants should be taken at face value in most cases? Are there further checks which could be put in place to improve this approach? Would you suggest any alternative approach?**

It is considered that there is a risk in accepting at face value the information given by an applicant. Will the very landlords whom it is considered need to be regulated actually disclose relevant information? Within this Council’s HMO licensing scheme the fitness of a landlord is verified by referring the applicant to the Police. This currently costs £50. Such an approach would identify relevant information possibly not disclosed by the applicant. Only non HMO operators/agents would need to pay such an additional fee. Taking into account however the Light touch process proposed this is probably the best option.

**Do you agree that the information listed in paragraph 58 should be prescribed to be included with the application?**

Yes.

**Is there any further information that should be prescribed, bearing in mind that it should be information needed to determine an application?**

Details of all directors of a company should be listed.

In a situation where there are concerns and further enquiries as to the applicants suitability are to be carried out, possibly involving the Police, it may be useful to have details of the applicant's/agent's driving licence.

It is suggested that the application for Registration should include a requirement to identify properties being let as HMOs. Where a landlord chose not to identify an HMO being operated by him, this could subsequently give reason to consider removing a landlord from the register. Effectively another tool in licensing enforcement.

The application for registration should perhaps require the applicant to categorise his properties (i.e. resident landlord, properties let as HMOs, other let properties, other properties).

### **Is the suggested approach to guidance appropriate?**

Yes, however clarification is required as to the approach to registration where minors are involved as owners. Who will make the application? Who will be listed as an agent?

### **C2. Fit and Proper Person Test**

**Is it appropriate to start from the assumption that the applicants are considered to be fit and proper persons unless there is information, held by the local authority or provided in the application form, to suggest otherwise? Are there alternative ways in which the fit and proper person test could operate, while maintaining a light touch approach?**

Please refer to our response to C1 above. It is accepted that for the vast majority this approach will be acceptable, however as indicated above there is a perceived risk with the landlords regulation is primarily aimed at regulating. The option would be to refer all applicants to the police, as is the case for HMOs in this Council. Any additional charge would only be levied against landlords not passported from another acceptable scheme.

**Is the guidance outlined in paragraph 75 appropriate for determining whether an agency arrangement provides sufficient safeguards to register a landlord who is not otherwise fit and proper?**

We would seek clarification of the approach to fitness where an agent is also involved. In the summary contained on page 12 of the consultation paper, it is stated that "if a house and an agent are specified, the applicant is a fit and proper person to act as a landlord and the agent is a fit and proper person to act for a landlord"

From information contained elsewhere in the consultation it is assumed that where a landlord is considered unfit but a suitable agent is appointed, the landlord can be considered for registration. A fit landlord with an unfit agent however cannot be registered.

We would further suggest that there is a need to define "effective management" Any guidance should specify the minimum level of management required from a contract between a landlord and a suitable agent where the appointment of an agent is being considered as a means of registering an unfit landlord. There should be a formal agreement or agency contract, possibly based on ARLA or RICS codes of practise but not exclusively requiring an agent to be a member of ARLA or RICS. Effectively a minimum management standard for Registered (Accredited) Agents to operate to. This would go some way to avoiding the appointment of an agent in name only.

**Are there practical issues around organising information held by the authority and the database that would trigger reference to that information?**

A standard database utilised by all authorities would help in information sharing and access. Time and the resource cost to develop a system which will allow an authority to gather, in advance of the implementation date, relevant information, not previously held at one location. The lack of funding at this time means that this will have to be carried out by the local authority using existing limited resources.

### **C3. Application Process**

**Are the proposed requirements for a local authority to provide information and advice to applicants appropriate? Are there any additional elements that could be usefully provided?**

Yes. It may be appropriate to consider issuing standard advice to a tenant confirming registration as well as in the case of refusal of registration. Costs involved would need to be taken into account.

**Do you have any comments on the approach to processing applications proposed in the guidance and flowchart in Annex 2?**

The costs and resources associated with identification and enforcement action should not be underestimated. Adequate separate funding must be made available. Based on limited experience of enforcement action under HMO licensing it is not considered that the proposed fee level included for discussion within the consultation will in any way adequately cover this element of registration.

## **Section D: Costs and Fees**

### **D1. Local authority Approach to Fees**

**Is the fee structure proposed in paragraphs 95 to 97 appropriate? What would be appropriate levels of discount? Are there any other circumstances in which a discount should be applied?**

In principal it is considered that the fee structure is acceptable, but should be as simple as possible.

As the online system will presumably register all properties automatically, it may be possible to consider charging a principal fee only with a supplementary charge applied to paper applications requiring manual input of information.

From HMO experience there are a number of possible approaches to setting fee structures. One option would be to consider banding numbers of properties (up to 5, up to 10 etc.) with a maximum fee set. The maximum fee could be based on a pre set banding level (i.e. More than 50 properties).

Discounts should be avoided, particularly where manual input of information is required. A simple fee scale would be the best approach.

**Does Annex 3 show all the factors to be taken into account when estimating the costs of registration?**

No. Additional considerations should include, developing in-house IT systems to enable the transfer/sharing of information. Amending/updating Council web pages. Financial costs associated with administering payments. Recruitment costs. Training (Procurator Fiscal/IT). Furniture & equipment.

Again we would emphasise that whilst agreeing that the fee scale should cover the day to day costs of administering the scheme, the costs associated with enforcement action should not be passed on to those landlords who have registered.

How often will fee scales be reviewed either to take into account general increased costs or under/over-estimating of costs of managing the scheme?

## **D2. Scottish Executive Funding**

### **Is this an appropriate approach to determining central funding for local authorities?**

We would suggest that the costs associated with enforcement action should be included in any allocation of central funding. This would both recognise the significant resources involved in pursuing enforcement action and the view that those landlords who have been registered should not be subsidising the pursuit of non registered landlords.

Provision will need to be made to accommodate any under or over estimating of costs by a local authority in respect of central funding.

It may be necessary to consider tapering funding to accommodate development of the scheme. There is a need for funding now to help with preliminary development, leading to implementation.

## **Section E: Action on Breach**

### **E1. Detection of Breach**

#### **Is the guidance on the detection of breaches appropriate?**

From experience gained in enforcement action within HMO licensing, it is not considered that the guidance adequately recognises the effort, resources or training required to carry out successful enforcement action.

The Executive may wish to consider providing central funding or training in evidence gathering and reporting to the Procurator Fiscal.

### **E2. Decisions on Applying Sanctions for Breach**

#### **Do you agree that local authorities should be required by regulations to give advice and assistance to tenants whenever they refuse or withdraw registration or impose rent penalty?**

Yes, however it will be difficult to assess the effort and resource to comply with this requirement and again if the costs are to be recovered from the fees paid, a realistic fee will have to be charged. Alternatively, as indicated earlier, central funding should address this issue.

#### **Is the proposed guidance about decision-making by local authorities and consideration of the tenant's interests appropriate?**

Yes.

### **E3. Process**

#### **Do you agree that regulations should be made so that tenants are alerted to the possibility of having to pay back-rent if an appeal is successful?**

Yes.



In respect of paragraph 124 it is suggested that there should be a specific time limit for a landlord to appeal

**Are there any other steps that should be taken to help tenants plan for paying back-rent?**

There may be some merit in considering the practicalities of setting up a suspense account into which a tenant could pay rent pending the outcome of any appeal against a rent penalty notice.

**Section F: Other Administration**

**F1. Managing Introduction**

Paragraph 133. Guidance should set a maximum period of time in which a landlord must respond to a request to register

Paragraph 134. This is an ambitious time scale and is not considered to be sufficient time to adequately recruit, train and develop the scheme.

Paragraph 138. Will the three year period be measured from time of application, date of registration or date of identification?

**F2. Passporting and Avoiding Duplication**

**Are these proposals for passporting between different regulatory regimes appropriate?**

It is considered that a more appropriate ascending order of merit for the different regulatory regimes would be; Registration, Accreditation, Licensing. It is believed that this would recognise the higher fitness test as well as physical standards required within HMO licensing.

It is not considered that a landlord should be able to avoid the enhanced fitness test, involving the Police, associated with HMO Licensing, on the basis of a judgement in turn based upon a self certification process under Registration.

For those landlords who also operate licensed HMOs, there may be merit in linking registration and subsequent renewal to their existing licenses. As their HMO licenses are renewed so too would they automatically be re-registered subject to receiving updated property lists and there being no change to any appointed agent. This may allow consideration to be given to no additional fee over and above the cost of HMO licence renewal fees. New landlords entering the sector by operating HMOs could be automatically registered with no additional fee charged.

In respect of paragraph 149, there may be merit in including within the on-line register a database, available to local authorities only, of landlords refused registration thus encouraging consistency. this would also help to overcome reliance on the applicants declaration.

**ANTISOCIAL BEHAVIOUR NOTICES**

**Section G: Purpose and Coverage**

**Do you agree that regulations should be made requiring the local authority to provide advice and assistance to the landlord before serving an antisocial behaviour notice?**

Yes.

**Do you agree that the Scottish Executive should not seek to make regulations relating to holiday lets until more evidence has been gathered?**

Yes.

#### **Section H: Content of Antisocial Behaviour Notice**

**Is the proposed level and content of guidance appropriate?**

We agree with the view expressed that any notice should be time limited and specific requiring the landlord to act within a specific time or be found in breach of the notice.

We would also suggest that guidance be available to the sheriff that an Antisocial Behaviour Notice is only required where no action has been taken by the landlord and that action would have resolved a difficulty.

#### **Section I: Action on Failure to Comply**

##### **12. Order as to rental Income (Rent Penalty)**

**Is the proposed guidance sufficient and appropriate?**

Guidance on the use of suspense accounts as outlined earlier may be worth considering.

##### **13. Management Control Order**

**Do you agree with the proposals for regulations on the costs which a local authority may incur under a Management Control Order and on how it can recover those costs?**

Yes.

**Is the proposed guidance sufficient and appropriate? We would particularly welcome comments from those who have direct experience of the type of Control Order available under Part VIII of the Housing (Scotland) Act 1987**

We agree that the guidance is sufficient and appropriate and have no additional comment to make.

##### **14. Local Authority Costs for Acting in Default**

**Do you agree with the proposed arrangements for liability for expenses and for their recovery?**

Yes.