

THE MORAY COUNCIL
ENVIRONMENTAL SERVICES DEPARTMENT

Private Landlord Registration Enforcement Policy

1. Scope of policy

- 1.1 This policy provides a framework encompassing the rights and responsibilities of the Council, in the management of the Registration of Private Landlords Scheme, including where appropriate, enforcement action.

- 1.2 Legislation to enable the Registration of Private Landlords was passed by the Scottish Parliament in the Antisocial Behaviour (Scotland) Act 2004. The overriding purpose of the scheme is to give local authorities an effective means of dealing with the worst performing landlords who, by their behaviour and attitude, mismanage their properties, or fail to act in respect of their antisocial tenants.

- 1.3 This policy recognises the important role that the private rented sector can play in meeting housing need and tackling homelessness.

2. Strategic context

- 2.1 The Private Landlord Registration Enforcement Policy will assist the Council to meet its Corporate Development Plan, Local Housing Strategy, Homelessness Strategy, and Service Plan aims and priorities. In particular it will ensure the regulation and improvement of the private rented sector.

3. Objectives and principles of the policy

3.1 The overall aim of the policy is to ensure that landlords comply with current legislation and good practice and ensure that all private landlords are "fit and Proper" to be letting residential property. The requirement will help to remove disreputable landlords from the market and protect tenants and their neighbours from the impact of antisocial behaviour and mismanaged property in the wider community.

3.2 The specific objectives of the Private Landlord Registration Enforcement Policy are:

- to ensure that all private landlords within Moray are registered in accordance with current legislation;
- to identify landlords who are failing to meet minimum legal requirements, in relation to the standard of their accommodation;
- to use enforcement sanctions when necessary as a tool for raising standards in the private rented sector in Moray; and
- to provide a framework which ensures that the scheme operates in a fair, transparent and accountable manner.

3.3 The principles underpinning the Policy are:

- The Council will implement detailed procedures and agreed practices uniformly across the service;
- Training is provided to ensure that staff are equipped to carry out the roles expected of them; and
- Communication with landlords, tenants and service users is in "plain language" and will make clear who the appropriate officer is to contact in the case of queries.

4. Legal framework

4.1 The Moray Council will ensure that the Policy complies with current legislation and promotes good practice. A detailed list of current legislation is contained in **APPENDIX I**.

4.2 The legal requirements for the Council are to maintain the public register, to deal with the applications received and provide advice and assistance to landlords and tenants as required by the Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005.

4.3 The Anti-Social Behaviour etc (Scotland) Act 2004 (“the 2004 Act”) places a requirement for all private sector landlords to register with the local authority. Part 8 of the 2004 Act includes the following:

- Landlords, their agents and any houses let will be listed on a public register.
- Local authorities will consider relevant information available to it in determining whether a landlord is a ‘fit and proper person’ to let houses (Section 85 of the 2004 Act). Certain information that must be considered when applying this test, include:
 - 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.

- Application of a fit and proper test may result in landlords being refused at the point of application or de-registered subsequently. There is a right of appeal.
- Following registration a landlord must ensure that their information on the register is kept up-to-date. Landlords will be required to re-register every three years.
- Not to register will be a criminal offence and a number of penalties may apply.

4.4 The Private Rented Housing (Scotland) Act 2011 supports responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector amends the landlord registration regime. Provisions in the 2011 Act change the operation of the system for registration of private landlords, including amending the “fit and proper person” test and increasing the penalties for breaches of the legislation from £5,000 to a *maximum of £50,000*.

4.5 Registration requires landlords to state that they abide by their legal responsibilities in their role as a landlord of private residential property.

4.6 The Housing (Scotland) Act 1988 covers most leasing arrangements within the private sector. In addition, the Rent (Scotland) Act 1984 will be relevant in cases of protected tenancies.

5. Areas of enforcement

5.1 The majority of landlords and agents will be registered with little or no disruption to their business. Scottish Government guidance emphasises that local authorities should adopt a light touch approach when taking enforcement action. Enforcement action will be used to challenge the practices of the worst landlords, including the following types of breach:

- Failure to register;

- Provision of false information;
- Registered landlord found to be no longer a fit and proper person;
- De-registered person continues to let properties;
- Failure by a registered landlord to notify a change in circumstances; and
- Communication by a non-registered owner to a person in relation to providing leasehold accommodation.

Examples of breaches and the type of enforcement action available to the Council are available is detailed in **APPENDIX II**.

5.2 Where enforcement action is taken, it will be proportionate to the breach of the private sector landlord registration scheme.

6. Persons responsible for enforcement action

6.1 Responsibility for the administration, management and enforcement of the registration of private landlords will be undertaken by *staff within the Housing and Property Service*. Where appropriate, advice and referrals will be made to other services, for example, Environmental Health or Legal Services.

6.2 The Council will also ensure that general enforcement action, such as issuing late application fees, will be undertaken.

6.3 Specific case may be referred to the Landlord Registration Enforcement Panel. This panel includes representatives from Legal Services, Environmental Health and Trading Standards. Examples of such instances include, determining whether to send a report to the Procurator Fiscal.

7. Opportunity to register

- 7.1 Information publicising the requirement to register, including guidance notes and application forms are widely available to the public, including online. Significant work has been undertaken in relation to raising awareness, including providing landlords with advice and information about the registration process. Therefore, landlords should be aware of their responsibilities.
- 7.2 The Council will give landlords the opportunity of taking steps to avoid an application being refused; these steps are intended to ensure fit and proper letting for the future.
- 7.3 Legislation and Scottish Government guidance details the circumstances under which landlords and agents are required to register and the procedures that must be followed.
- 7.4 Generally a landlord requires to be registered if he or she is the owner (or joint owner) of residential property which is subject to a lease or occupancy agreement and is not specifically excluded. Properties which are owned by local authorities and Registered Social Landlords (RSLs) are exempt from registration under this legislation. Should an agent be used in this process the local authority must be notified of this arrangement and the agent must be registered. It is the responsibility of the landlord to ensure that any agent they use is registered. However, agents may wish to register of their own accord so that they can market themselves as approved agents.
- 7.5 Registrations are valid for 3 years from the date of approval. Landlords must re-apply on or before the expiry date of their registration in order to continue legally letting property.
- 7.6 In order to proceed with registration, landlords are subject to a “fit and proper person” test. This should be straight-forward for the majority of applicants and is intended to prevent criminal activity from impacting on a tenant’s occupation.

8. Failure to register

- 8.1 The Council is committed to pro-actively driving up standards and addressing worst practice and will undertake random spot checks to identify landlords who have not registered under the scheme. Unregistered landlords are brought to the attention of *the Housing and Property Service* by other council departments, outside agencies and members of the public. Where this happens, emphasis will be placed on intensive management and personal contact by *staff from the Housing and Property Service* to resolve issues in the first instance.
- 8.2 The Council will endeavour to maintain regular and sustained contact with landlords and agents who are not registered and will provide advice and assistance and state what action is required to resolve the issue.
- 8.3 Where a property is found not to be registered, an initial reminder letter and an information pack will be sent to the landlord requesting them to register within 14 days. If no registration is received within this timescale, a final reminder letter will be sent giving the landlord 7 days in which to register and advising that a late application fee will be applied.
- 8.4 Where the issue is not resolved, any enforcement action taken will be in proportion to the breach of the scheme. The sanctions available, if judged appropriate are:
- Rent Penalty Notice may be served.
 - If guilty of an offence - report to the procurator fiscal.

9. Failure to provide good management practices

- 9.1 Where it is identified that a landlord or agent has failed to comply with any legal obligation in relation to the letting and/or management of properties, initial contact will be made with the landlord or agent in order to inform them of the identified concerns. Appropriate advice and information should be given to the landlord and if deemed necessary an action plan agreed in order to address the areas of concern.
- 9.2 The Council will advise the landlord that their management practices will be monitored and that failure to adhere to their legal obligations will result in their suitability as a “fit and proper person” being reviewed.
- 9.3 An action plan for improvement will be agreed with the landlord and monitored by *staff within the Housing and Property Service*. *Housing and Property staff* will liaise with appropriate Council services and the Police where evidence of antisocial behaviour, poor property conditions and management practices have been identified.
- 9.4 Where a landlord fails to comply with any recommendations or action plan, the Council will decide on the appropriate course of action to be taken and the possibility of reviewing the fit and proper status of the landlord/agent concerned.

10. Provision of false information or failure to include required information in an application form

- 10.1 It is a criminal offence to provide misleading or incorrect information, or not to include the required information. The Council understands that most landlords who miss out sections or questions have done so by mistake or have not understood what has been asked of them. Therefore, the Council will adopt a “light touch” approach in the first instance and try to work with landlords to ensure that all relevant information is provided. For example, if an application is received without all of the required information, in the first instance, the applicant will be asked to complete it in full.

- 10.2 If it is discovered that misleading or incorrect information has been provided, the Council will consider the facts of the case before reaching a decision regarding which enforcement action, if any, shall be pursued.
- 10.3 In accordance with Section 87(5), of the Antisocial Behaviour (Scotland) Act 2004, a person who is guilty of such an offence, will be liable on summary conviction to a fine.
- 10.4 The Council also assess and review the “fit & proper person” status of the landlord to determine if they should have their registration removed.
- 10.5 The Council might decide that the conscious deception rendered the applicant an unfit and improper person to be letting houses, and so refuse the application. Should the owner continue to let the property, the Council may issue a Rent Penalty Notice.
- 10.6 In cases where it is concluded that false or omitted information was not due to simple error or misunderstanding and that the owner has therefore committed an offence, a report may be sent to the Procurator Fiscal.

11. Failure by a registered person to notify changes of circumstances

- 11.1 Landlords can update their details at any time through the website using their username and password or by contacting the Council in writing.
- 11.2 If a landlord fails to inform the Council of a change in circumstances they are committing an offence. In cases where no notification has been received, the Council will contact the landlord to determine if the

failure constitutes a deliberate attempt to mislead the Council or was a genuine oversight.

11.3 In accordance with Section 87(5), of the Antisocial Behaviour (Scotland) Act 2004, a person who is guilty such of an offence, will be liable on summary conviction to a fine.

11.4 In cases where there is a repeated failure to notify the Council of changes or if that failure is of a more serious nature (such as conviction or judgement in relation to landlord-tenancy law), the Council will assess and review the “fit & proper person” status of the landlord to determine if they should have their registration removed.

11.5 In addition, the Council may decide that a report be sent to the Procurator Fiscal.

12. Failure to meet the repairing standard

12.1 Where a tenant makes a complaint to the Council with regards to a private rental property failing to meet the Repairing Standard (as defined by section 13 of the Housing (Scotland) Act 2006), appropriate advice will be given to the tenant on the correct procedures involved in addressing such problems and the role of the Private Rented Housing Panel (PRHP). The Council only has an advisory role. The tenant will be advised to seek independent legal advice. The tenant will also be advised to contact the Citizens Advice Bureau for more detailed information and advice.

12.2 In addition to its advisory role, the Council will, if appropriate, arrange for a visit to be undertaken by Environmental Health in order to assess the complaint.

- 12.3 If the complaint is substantiated and the landlord fails to act on the complaint, the Council will contact the landlord in order to remind them of their statutory obligation under the Repairing Standard.
- 12.4 Where the PRHP serve a Repairing Standard Enforcement Notice on the landlord or makes any other recommendations, the landlord's level of compliance will be regularly monitored and their "fit & proper" status reviewed.
- 12.5 The Council will ensure that it notes in its register of landlords where a PRHP has made or varied a repairing standard enforcement order, or consented to the landlord entering into a tenancy or occupancy arrangement relating to a house where a repairing standard enforcement order applies. When an order is revoked or a certificate that the work has been carried out is granted, the information about the order must be removed from the register.
- 12.6 Where a landlord has failed to comply with a Repairing Standard Enforcement Notice, the Council will be notified. If the landlord continues to fail to rectify the identified repairs, the Council will investigate whether, as a result of the landlord's non-compliance, he/she is a fit and proper person to remain on the register of private landlords.
- 12.7 In serious cases of non-compliance by a landlord, the Council will consider the possibility of removing registration from that landlord. The final decision to deregister a landlord will be taken by the Head of Housing and Property.

13. Enforcement actions

- 13.1 Enforcement action taken will be based on an escalation process up to and including referral to the Procurator Fiscal. Such a referral will only be used as a final resort and where all other management action and enforcement methods have been exhausted.

13.2 In terms of the Anti-Social Behaviour etc (Scotland) Act 2004 (as amended) the Moray Council can apply the following four sanctions:

- Late application fee;
- Rent penalty notice;
- De-registration;
- Report to the Procurator Fiscal.

13.3 Care will be taken when applying enforcement actions as consideration must be given to the tenant's rights and welfare in addition to that of the landlord. It is important to note that refusal or revocation of registration does not necessarily provide the landlord with legal grounds to end a tenancy. In addition the Council also has statutory duties to prevent homelessness where possible and to ensure there is appropriate access to free, good quality, housing advice.

14. Late application fee

14.1 This doubles the principle fee for registering as a landlord and would be applied when it has been identified that a property has been let by an unregistered landlord. The law requires that at least two notifications be issued prior to the late application fee being applied.

15. Rent Penalty Notice

15.1 If the Council is satisfied that a landlord has failed to make a valid application to be registered, has been de-registered or where an application has been refused registration, it may decide to serve a Rent Penalty Notice.

15.2 The Rent Penalty Notice (RPN) suspends the rent liability of a tenant living in an unregistered property.

15.3 Where, following the issue of warning letters, no application is received the landlord will be issued with a Rent Penalty Notice (RPN) in

accordance with Section 94 of the Antisocial Behaviour etc. (Scotland) Act 2004 suspending rent payments on each property let by the landlord.

15.4 The notice will give a period of 28 days prior to its commencement during which the landlord may still register. If the landlord registers during this period, the RPN will be revoked prior to commencement.

15.5 Service of the RPN will be authorised by the Homelessness Strategy and Development Manager. In the first instance, the notice will be served by first class recorded delivery to the landlord and tenant(s). Failure of delivery will result in the notice being served by Sheriff Officers.

15.6 The Council will ensure that suitable advice and assistance is given to the tenant with regards to financial implications arising from the service of the notice. The Council will ensure that tenants are given advice and assistance concerning; security of tenure, benefit maximisation, housing benefit, homelessness services and the homelessness duties of the Council.

16. Report to the Procurator Fiscal

16.1 This will only be used as a final resort and where all other management action or enforcement methods have been exhausted. For example, when a landlord has failed to make a valid application to register and/or has failed to comply with another sanction. If the Procurator Fiscal successfully prosecutes a landlord under the Anti-Social Behaviour etc (Scotland) Act 2004, the Council will re-evaluate the landlord's status. He/she will no longer be considered to be a fit and proper person and will be unable to let property in Moray.

16.2 If, after the commencement of a RPN, no application for registration has been submitted following the period of 28 days, the Council will refer the case to the Landlord Registration Enforcement Panel. This

panel includes representatives from Legal Services, Environmental Health and CAB. A case will be presented by the Homeless Strategy and Development Manager to the Panel who will determine whether agreement is given to proceed to the stage of evidence gathering in order to compile a case for submission to the Procurator Fiscal.

- 16.3 Full statements shall be taken from all relevant witnesses and copies of any documentary evidence pertaining to the renting of property by the subject landlord should also be obtained along with any other information deemed relevant to the case. At this stage any witness will be informed that the content of the statement will remain confidential however should the matter lead to criminal proceedings the defence would be required to be provided with a copy of any statement provided.
- 16.4 Any statement or interview which is required to be taken under caution may have to be taken by Environmental Health Officers, ASB Officers and the Police who have legislative powers to do so.
- 16.5 The Council will ensure that regular contact is maintained with all witnesses in relation to any subsequent proceedings against the landlord or agent, keeping them up to date with the progress of the case and their requirements should the case go to trial. Suitable advice and assistance will also be offered in compliance with The Private Landlord Registration (Assistance & Advice) (Scotland) Regulations 2005 along with contact numbers of other departments and agencies that can offer assistance and advice, e.g. Homelessness Services, Victim Support, Citizens Advice, and Shelter.
- 16.6 Following the completion of evidence gathering a case shall be presented to the Head of Housing and Property with the recommendations of the Landlord Registration Enforcement Panel. The case will only be submitted to the Procurator Fiscal upon the authorisation of the Head of Housing and Property.

17. De-registration

17.1 Registered landlords who fall foul of the fit and proper requirements may be de-registered. This means they would no longer be legally allowed to let property in Moray. De-registration will be viewed as a last resort for the Moray Council. Landlords and agents will be given every opportunity to take corrective action. This option will be considered in the context of local housing market needs and the consequences of removing a landlord's properties from the market. Only the Head of Housing and Property, based on the evidence provided, will be authorised to de-register a landlord.

18. Appeals

18.1 Landlords will have the right to appeal the conditions of registration or the registration process or any decision taken by staff within the Council to enforce a late application fee. A panel of managers from legal/housing/environmental health who were not involved in the original decision will consider any appeals.

18.2 Landlords can appeal to the Sheriff against a Rent Penalty Notice within 21 days of the notice taking effect. The tenant will be made aware of any appeal in order for them to set aside rent money so that if an appeal is successful, the accumulated unpaid rent can be repaid if ordered by the Sheriff.

18.3 Landlords can appeal to the Sheriff if they are de-registered (or against any decision by the Moray Council not to register a landlord) by means of a summary application. There is no time limit for such an appeal. The Sheriff may make an order that the person is registered, specifying whether that person is fit and proper as an owner or agent. If the Sheriff refuses the application a further appeal, within 21 days, can be made to the Sheriff Principal.

19. Performance monitoring

- 19.1 In order to comply with its service commitments, the Council will ensure the management and monitoring of enforcement sanctions *which will be reported annually to the Communities Committee. Any operational practice issues identified will be reported to the Housing and Property Services Management Team.*

Legislation

[Antisocial Behaviour etc. \(Scotland\) Act 2004](#) (Parts 7, 8)

[Housing \(Scotland\) Act 2006](#) (see sections 175, 176)

[Private Rented Housing \(Scotland\) Act 2011](#) (Part 1)

Regulations and Orders:

Part 8 - Registration

- [Private Landlord Registration \(Advice and Assistance\) Regulations 2005 \(SSI 2005/557\)](#)
- [Private Landlord Registration \(Information and Fees\) \(Scotland\) Regulations 2005 \(SSI 2005/558\)](#)
- [The Private Landlord Registration \(Information and Fees\) \(Scotland\) Amendment Regulations 2006 \(SSI 2006/28\)](#)
- [Private Landlord Registration \(Modification\) \(Scotland\) Order 2005 \(SSI 2005/650\)](#)
- [Private Landlord Registration \(Appeals Against Decision As To Rent Payable\) \(Scotland\) Regulations 2005 \(SSI 2005/559\)](#)
- [The Private Landlord Registration \(Advice and Assistance\) \(Scotland\) Amendment Regulations 2008 \(SSI 2008/402 \)](#)
- [The Private Landlord Registration \(Advice and Assistance\) \(Scotland\) Amendment Regulations 2008 \(SSI 2008/403\)](#)
- [The Private Landlord Registration \(Modification\) \(Scotland\) Order 2009 \(SSI 2009/33\)](#)

Part 7 - Antisocial Behaviour Notices

- [Antisocial Behaviour Notice \(Appeal Against Order As To Rent Payable\) \(Scotland\) Regulations 2005 \(SSI 2005/560\)](#)
- [Antisocial Behaviour Notice \(Management Control Orders\) \(Scotland\) Regulations 2005 \(SSI 2005/561\)](#)
- [Antisocial Behaviour Notice \(Landlord Liability\) \(Scotland\) Regulations 2005 \(SSI 2005/562\)](#)
- [Antisocial Behaviour Notice \(Advice And Assistance\) \(Scotland\) Regulations 2005 \(SSI 2005/563\)](#)

APPENDIX II

There are several types of breaches and accompanying sanctions available in Part 8 of the 2004 Act:

Breach	Sanctions available if judged appropriate
Failure to register whilst continuing, or attempting, to let a residential property	<p>Guilty of an offence.</p> <ul style="list-style-type: none"> • Report to the Procurator Fiscal • Rent Penalty Notice may be served
Provision of false information or failure to include required information in an application form	<p>Guilty of an offence.</p> <ul style="list-style-type: none"> • Report to the Procurator Fiscal • Refuse registration if judged not to be a fit and proper person • Refuse the application and issue a Rent Penalty notice
Non-registered owner communicates with a person about taking a lease or occupancy of a house	<p>Guilty of an offence.</p> <ul style="list-style-type: none"> • Report to the Procurator Fiscal
Failure by a registered person to notify changes in circumstances	<ul style="list-style-type: none"> • Review fit and proper person requirements and remove from register if judged no longer to be a fit and proper person
Registered person found to be no longer a fit and proper person	<ul style="list-style-type: none"> • De-register /remove from register
De-registered person continues to let a property	<p>Guilty of an offence.</p> <ul style="list-style-type: none"> • Report to the Procurator Fiscal Rent Penalty Notice may be served
Registered landlord's agent found to be not fit and proper	<ul style="list-style-type: none"> • Landlord's name removed from the register