

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE – 7 SEPTEMBER 2005

REGULATION OF PRIVATE LANDLORDS CONSULTATION PAPER

Report by Executive Director of Neighbourhood Services

1. PURPOSE OF REPORT

- 1.1 To seek members approval to submit the proposed East Ayrshire Council response to the Scottish Executive consultation paper on the regulation of private landlords.

2. BACKGROUND

- 2.1 The Antisocial Behaviour etc. (Scotland) Act 2004 gives local authorities additional powers to regulate certain private rented housing in Scotland. Under part 7, if residents are engaging in antisocial behaviour at their home, and the private landlord is not taking the necessary management action to address it, the local authority can serve an antisocial behaviour notice setting out actions the landlord must take.
- 2.2 Under part 8 of the 2004 Act, all private landlords and letting agents, apart from Registered Social Landlords, and some other exceptions, must register with the local authority. In order to be registered the local authority must be satisfied the applicant is a fit and proper person. It will be an offence to let any residential property without being registered.

3. CONSULTATION

- 3.1 The Scottish Executive has published a consultation paper inviting comments on its proposals for the regulation of private landlords. A copy of the consultation paper is available at the members Information Point. A proposed response to the Scottish Executive's proposals have been prepared by officers and is appended to this report for members consideration.
- 3.2 Once the Executive have received and analysed all the responses, it will then lay the necessary Regulations and Orders before Parliament in October and finalise guidance by early December. The requirement for registration, and the associated offences, will come into force in March 2006.
- 3.3 Once guidance is received, more detailed planning will be required in relation to the cost and management of the registration scheme. Further reports will be put to Committee as the regulations become known.

4. FINANCIAL IMPLICATIONS

- 4.1 The cost of implementing the National Registration Scheme for Landlords is expected to be self funding through charging landlords to register.
- 4.2 The Scottish Executive have indicated that there will be funding available for any initial set up costs including the establishment of a suitable data base.
- 4.3 When any further financial implications become known they will be brought to the attention of the Committee.

5. LEGAL AUTHORITY/IMPLICATIONS

- 5.1 Implementation of the regulations for private landlords will assist the council to meet its statutory duty in relation to the Antisocial Behaviour etc. (Scotland) Act 2004.

6. POLICY IMPLICATIONS

- 6.1 Implementation of the regulations will also assist the council to meet the relevant policy objectives as set out in the Council's approved Local Housing and Homeless Strategies.

7. CONCLUSIONS

- 7.1 Local Authorities are requested to respond to the Consultation Paper on Regulation of Private Landlords by September 2005.

8. RECOMMENDATIONS

- 8.1 The Committee are recommended to:-
 - (i) approve the terms of the proposed response to the consultation document as set out in Appendix 1;
 - (ii) otherwise note the contents of the report

William Stafford
Executive Director of Neighbourhood Services

CMCA/LC

Date 16th August 2005

LIST OF BACKGROUND PAPERS

1. **Regulation of Private Landlords under The Antisocial Behaviour etc. (Scotland) Act 2004. Consultation on the Implementation of parts 7 and 8.**

Any person wishing to inspect the background papers listed above should telephone 01563 - 576614 and ask for Joseph Cassidy, Policy and Strategy Manager

Implementation officer – chris.mcaleavey@east-ayrshire.gov.uk

APPENDIX 1

K4. QUESTIONNAIRE

Registration of Private Landlords

Section B: Coverage

B1. Exclusions

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

A. Yes we agree given the specialised nature of these tenancies.

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

A. Yes on the basis that this will improve regulation, responsibility and landlord obligation within this sector.

Q. Are there other categories of landlord or property that should be **excluded** from registration? Please give reasons for any additional proposed exclusions:

A. Other groups who should be given consideration for exclusion are:

- 'Grace and Favour' tenancies
- The Police Officers occupying Police Authority owned houses
- Scottish Water
- The Forrestry Commission and other similar quangos .

We would also recommend that the guidelines make it clear that 'Crown' employees occupying properties such as those owned by the Ministry of Defence are exempt from the provisions of the legislation

Q. Is the proposed approach to guidance sufficient?

A. Yes

B2. Types of Applicant

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

A. We are satisfied that the proposals for dealing with joint owners are comprehensive

B3. Identifying Landlords

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

A. No further sources identified

Section C: Dealing with Applications

C1. Information from Applicants

Q. 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?

A. We recommend that further clarification is required within the form to ensure that it is not open to interpretation by the applicant. For example the term 'relevant' conviction is clarified.

We recognise that taking applicants at face value leaves the process open to 'abuse', however, given the nature of the process and the level of applications, it is difficult to consider any other viable approach.

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

A. Yes

Q. Is there any other information that should be prescribed, bearing in mind that it should be information needed to determine the application?

A. We recommend that the form asks applicants to declare **all** current and previous names they use or may have used, including any aliases.

We also recommend that the applicant declares any current or previous bankruptcy.

Q. Is the suggested approach to guidance appropriate?

A. Yes

C2. Fit and Proper Person Test

Q. Is it appropriate to start from the assumption that 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?

A. We would recommend the introduction of a 'matrix' or other risk assessment tool which can be used to assess applications. This would ensure a consistent approach and minimise the possibility of subjective decision making. Furthermore, it would reduce the likelihood of authorities making differing decisions on the same applicant.

Q. 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?

A. Yes

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

A. We would highlight that the exchange of information is crucial to this proposal

C3. Application Processes

Q. 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?

A. Yes. This can be implemented through a number of local media such as 'The Good Landlord Guide'

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

A. The approach appears to be very comprehensive

Section D: Costs and Fees

D1. Local Authority Approach to Fees

Q. 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?

A. We would like to see an appropriate, detailed fee structure before we can comment on this matter.

We agree, in principal, that a discount should be given as recommended.

The suggested fee of £50 appears reasonable but unlikely to cover the appropriate 3 year costs, particularly in smaller local authorities

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

A. The factors shown appear to cover all aspects

D2. Scottish Executive Funding

Q. Is this an appropriate approach to determining central funding for local authorities?

A. We recommend that authorities are given the opportunity to assess the figures provided in the 2001 census to ensure that they are still appropriate today

Section E: Action on Breach

E1. Detection of Breach

Q. Is the guidance on the detection of breaches appropriate?

A. Yes

E2. Decisions on Applying Sanctions for Breach

Q. 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 a rent penalty?

A. Yes

Q. Is the proposed guidance about decision-making by local authorities and consideration of the tenants' interests appropriate?

A. Yes

E3. Processes

Q. 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?

A. Yes this would be crucial for the tenant to sustain their tenancy in the long term.

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

A. We recommend early contact with agencies such as the Credit Union and CAB to encourage tenants to save and provide financial advice

Section F: Other Administration

F2. Passporting and Avoiding Duplication

Q. Are these proposals for passporting between different regulatory regimes appropriate?

A. Yes

Q. Are the arrangements for consistency between different local authorities appropriate?

A. Yes

Antisocial Behaviour Notices

Section G: Purpose and Coverage

Q. 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?

A. Yes – such measures are practical, cost effective and could prevent further action.

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

A. Yes

Section H: Content of Antisocial Behaviour Notice

Q. Is the proposed level and content of guidance appropriate?

A. Yes

Section I: Action on Failure to Comply

I2. Order as to Rental Income (Rent Penalty)

Q. Is the proposed guidance sufficient and appropriate?

A. Yes the guidance is comprehensive. We view this as an option which would be open to us, but one which would not be suitable in the majority of cases particularly where there is no housing benefit payable

I3. Management Control Order

Q. 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?

A. Yes

Q. 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.

A. Yes, the guidance appears to be sufficient and appropriate

I4. Local Authority Costs for Acting in Default

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

A. Yes

END OF QUESTIONNAIRE