



Antisocial Behaviour etc (Scotland) Act 2004 – Part 8

Registration of Landlords

Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004 provides for the registration of all private landlords with their local authority, and makes it an offence for the owner of a house to let the property unless they are registered. The system is expected to be introduced in March 2006, and the Scottish Executive issued guidance in July 2005 as to the implementation of the legislation.

Requirement of Registration

All private landlords and their agents must register. The landlord will have to give a list of all the properties they let, and details of any agent they use. Agents will also be able to register independently, so that a landlord will know they have already been checked before using them. Where a property is jointly owned, each person will need to be separately registered. It should be noted that registration is by landlord rather than by property. Once the provisions have come into force, a landlord will either have to be registered or have made a valid registration application which has not yet been determined, otherwise they will be committing an offence.

The Act allows for certain exclusions, including properties used as holiday lets or for religious purposes, and agricultural and croft tenancies. Resident landlords will not be required to register.

The Application Process

The application process has been designed to be as straightforward as possible. The system will be web-based allowing applications to be made online, though paper applications will also be accepted.

Fit and proper person test

Once the application for registration has been received, the local authority will make a judgement based on whether the owner (or owner and agent if applicable) is a fit and proper person to let residential property.

The authority will take into account information about past behaviour, including:

- any relevant unspent convictions, particularly in relation to fraud, violence or drugs.
- any evidence that the applicant has failed to take steps to deal with antisocial behaviour in his or her properties.
- any evidence that the applicant has failed to comply with the law relating to housing or letting, including management, money and physical issues.
- any evidence that the applicant has practised illegal discrimination in any business activity.

A “light touch” approach will be taken in order to minimise the impact on landlords who provide a good service. Information provided on the application form will be taken at face value, provided that no concerns about the applicant have previously been known to the local authority or raised by the information provided in the application.

Letting a property before an application has been decided

No offence is committed if a property is let while the owner's application for registration is being considered, provided that the application is valid – that is, that all of the necessary information has been provided and the required fee has been paid.

Time period of registration

Registration lasts for three years after which time the landlord must apply again to the local authority.

Fees

An application fee will be chargeable, though it is not yet clear how much this will be. A fee structure has been established by the Executive but it is for each local authority to set their own fees within the structure. There will be discounts available for online applications.

Breaches and Consequences

The requirements of Part 8 of the Act may be breached by a landlord in a number of ways, with corresponding sanctions:

- letting a property without being registered may result in prosecution or a rent penalty notice. A rent penalty notice is a document served by the local authority stating that no rent or other charges are payable under any lease or occupancy agreement applying to that house.
- knowingly failing to provide information, or providing false information, or failure to notify the authority of any change in circumstances may result in prosecution.
- if a registered landlord or their agent is found to be no longer a fit and proper person, or if the landlord appoints a new agent who is not found to be a fit and proper person, the landlord will be removed from the register.

Interaction with other Schemes

Once landlord registration has been introduced, there will exist three main ways in which the quality of private landlords will be recognised and regulated:

- Registration – which confirms that a landlord is a fit and proper person to let residential property.
- HMO (Houses in Multiple Occupancy) licensing – which requires greater compliance with certain standards.
- Accreditation – a voluntary system which recognises higher agreed standards of good practice.

To avoid duplication, where a landlord has already been assessed a “fit and proper person” under the HMO license scheme or an appropriate accreditation scheme, re-assessment under the Act will be unnecessary.

Reasons behind Registration

The aim of the Act is to improve the standard of private renting; by establishing a list of landlords and rented housing, local authorities will have a route by which landlords can be made aware of their responsibilities and best practice.

Further Information

The registration scheme is likely to begin in March 2006 and will be advertised at a national and a local level. The Executive's website www.betterrentingscotland.com gives useful information for both landlords and tenants.

Antisocial Behaviour etc (Scotland) Act 2004 – Part 7

Antisocial Behaviour Notices

Part 7 of the Act allows a local authority to serve an antisocial behaviour notice on the landlord of a house if any person who occupies or visits the house is engaging in antisocial behaviour at or in the locality of the house. Antisocial behaviour is defined to include behaviour which causes or is likely to cause alarm, distress, nuisance or annoyance.

The notice will identify specified action which the landlord must take within a specified time.

If the landlord fails to comply with the terms of the notice, there are three possible sanctions:

- an order as to rental income. This is an order by the sheriff that no rent or other consideration shall be payable for occupation of the house. The landlord thus loses the right to collect rent from the tenant.
- a Management Control Order. This is an order by the sheriff that transfers the rights and obligations of the landlord under the tenancy or occupancy arrangements to the local authority for a maximum of twelve months.
- the local authority can take steps to deal with the antisocial behaviour, at the expense of the landlord.

Housing (Scotland) Act 2006

The Housing (Scotland) Act 2006 received Royal Assent on 5 January 2006 and once it comes into force, it will tighten up the statutory repairing obligations for all private sector landlords. The Act also provides for the creation of a body called the Private Rented Housing Panel (PHRP) which, together with Private Rented Housing Committees (PHRC), will have powers to resolve disputes concerning landlord's statutory repairing obligations.

Currently, Schedule 10 of the Housing (Scotland) Act 1987 imposes certain obligations on landlords, in addition to their common law repair obligation. Landlords of residential property, which is being let for a period of less than seven years, are prevented from contracting out of their repairing obligations in respect of keeping the subjects wind and watertight and have an obligation to upkeep fittings used for gas, electricity, heating and water.

Under the Housing (Scotland) Act 2006, landlords will be able to transfer the responsibility for specific works, detailed in a lease for a period of not less than three years, to their tenants but will be unable to contract out of their overriding obligation to meet the "repairing standard" which is defined in the Act. The Act also extends the repairing obligation to include appliances and furnishings provided by the landlord.

More onerous for the landlord is the creation of the PRHP and PHRC. The Act will give private sector tenants the right to appeal to the PRHP and then the PHRC if their landlords do not fulfil their statutory repairing obligations or if they fail to do so within a reasonable time.

If the PHRC decides that a landlord has not fulfilled his duty it will be able to make a "rent relief order" reducing rent by up to 90%. It will be an offence for a landlord to re-let a property unless the works specified in the relief order have been completed. Local authorities will also be given the power to carry out the works specified by the order if the landlord does not.

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