

**Antisocial Behaviour etc (Scotland) Regulations 2004
Registration of Private Landlords
Procedure for Disposal of Applications****Report by Colin Anderson, Director Communities and Wellbeing****1 Purpose of Report**

This report is to inform the General Purposes Committee of the transfer of the administration and enforcement of the Registration of Private Landlords to the Communities and Wellbeing Division, Environmental Health section and to request approval from the Committee for procedural changes.

The changes to procedure, if implemented, will improve the registration process timescales and shall also allow the Authority to resolve a backlog of applications yet to be determined.

2 Background

- 2.1 Landlord Registration has been in place since 1 April 2006. In determining applications, local authorities are required to assess whether applicants (landlords and agents) are 'fit and proper persons' to be a landlord or in the case of an agent, act on behalf of a landlord. Section 85 of the 2004 Act (as amended), details the matters which should be considered in making such a determination.
- 2.2 Guidance issued by the then Scottish Executive states that '*without any negative information or legitimate concerns about an applicant, the application should be approved without further scrutiny.*' The legislation provided local authorities with a means to identify and deal with the worst landlords, not from a presumption that every landlord was unfit or incompetent. The Private Rented Housing (Scotland) Bill, as presently drafted, allows Local Authorities the right to require an applicant to provide a criminal record certificate, but "only if it has reasonable grounds to suspect that the information provided with an application for entry in the register is..., or has become, inaccurate"
- 2.3 The General Purposes Committee agreed in August 2009, based on the information available at that time, to require all applicants to produce a criminal record statement provided by the police to ensure that Midlothian landlords were fully vetted before being 'approved' on the Landlord Register.
- 2.4 A draft procedure for the processing of first time applications and required renewals is attached at Appendix 1. This complies with both current Scottish Government guidance and with the proposed Housing Bill.

The draft procedure proposes to remove the need for applicants to submit a statement provided by the police about their criminal history and details a replacement mechanism whereby the Police Local Authority Liaison Officer (LALO) will supply the Environmental Health section with a verified outcome concerning the presence or absence of information on any relevant convictions in terms of Section 85 of the 2004 Act. This then allows us to seek an Extract of Conviction, for relevant cases, from the Courts, at zero cost.

This, in turn, will permit timely approval of those applications where verified information demonstrates no relevant convictions exist and to inform the General Purposes committee of applications where concerns have been highlighted. It should be noted that the proposed police checks conducted by the Police LALO are as detailed as those currently sourced by the applicant.

An extract of Section 85 of the Act, incorporating the amendments proposed to that Section by the Private Rented Housing (Scotland) Bill, is attached at Appendix 2.

- 2.5 A mechanism to establish significant changes in the Section 85 status of an already approved applicant is under development by Environmental Health. That procedure will inform the need for a review by the General Purposes Committee in cases where information provided by the applicant is or has become inaccurate and will be brought before Members for their consideration as soon as possible.

3 Report Implications

3.1 Resource

There are no negative resource implications arising for Midlothian Council from this report.

If adopted the revised procedure will; streamline the process; reduce costs in relation to staff resource spent in processing applications and reduce time taken between the lodging of an application and determination of outcome. Reduced application processing times will be beneficial to applicants, the Local Authority and prospective tenants; will result in a more cost effective system and will prevent potential loss of revenue to the Local Authority which may arise as a result of delays in approval leading to an extended timescale before a renewal is required.

The Group Manager, Community Safety & Housing Estates has indicated that the screening of the routine quantity of applications can be incorporated into the current workload.

3.2 Risk

Scottish Government has commenced a 'root and branch' review of landlord registration. Amongst other performance matters this will scrutinise local authorities' landlord approval rates, enforcement procedures and how the landlord registration fees are being spent.

This national review is anticipated to take approximately 6 months to complete.

3.3 Policy

Strategy

The adoption of the Determination of Landlord Registration Applications Procedure for new applicants and renewals contributes directly to the Midlothian Council Corporate priorities of:

- Supporting healthy, caring and diverse communities where local needs are met
- Delivering Responsive, Efficient and Effective Services to the People of Midlothian
- Maintaining Midlothian as a safe place to live, work and visit

It will also ensure that Midlothian Council operates the registration processes as charged in S82(1) of the Antisocial Behaviour Scotland Act 2004.

Consultation

In drafting the procedure consultation took place with

- Midlothian Council Legal Services
- The Group Manager Community Safety & Housing Estates, managing the LALO
- The courts, in determining availability of obtaining extract of Conviction from the Courts

Comments received have been incorporated into the procedure.

Equalities, Sustainability & IT issues

There are no equalities, sustainability or IT implications arising from this report.

4 Summary

This report seeks approval for amendment to the Procedure for Disposal of Applications for Registration of Private Landlords.

5 Recommendations

The Committee is asked to:-

- a Approve the Landlord Registration Procedure as contained at Appendix 1 of this report.
- b Continue the delegation of powers of approval to the Chair of the General Purposes Committee through the Director, Communities and Wellbeing; Environmental Health to approve registration applications from private landlords in terms of the Antisocial Behaviour etc. (Scotland) Act 2004 where no concerns exist or no adverse police report is provided.
- c Note that the mechanism to capture relevant information to trigger a review will be brought before Members as soon as possible.
- d Note that when the Private Rented Housing (Scotland) Bill comes into force a further paper will be brought before Members.

19 January 2011

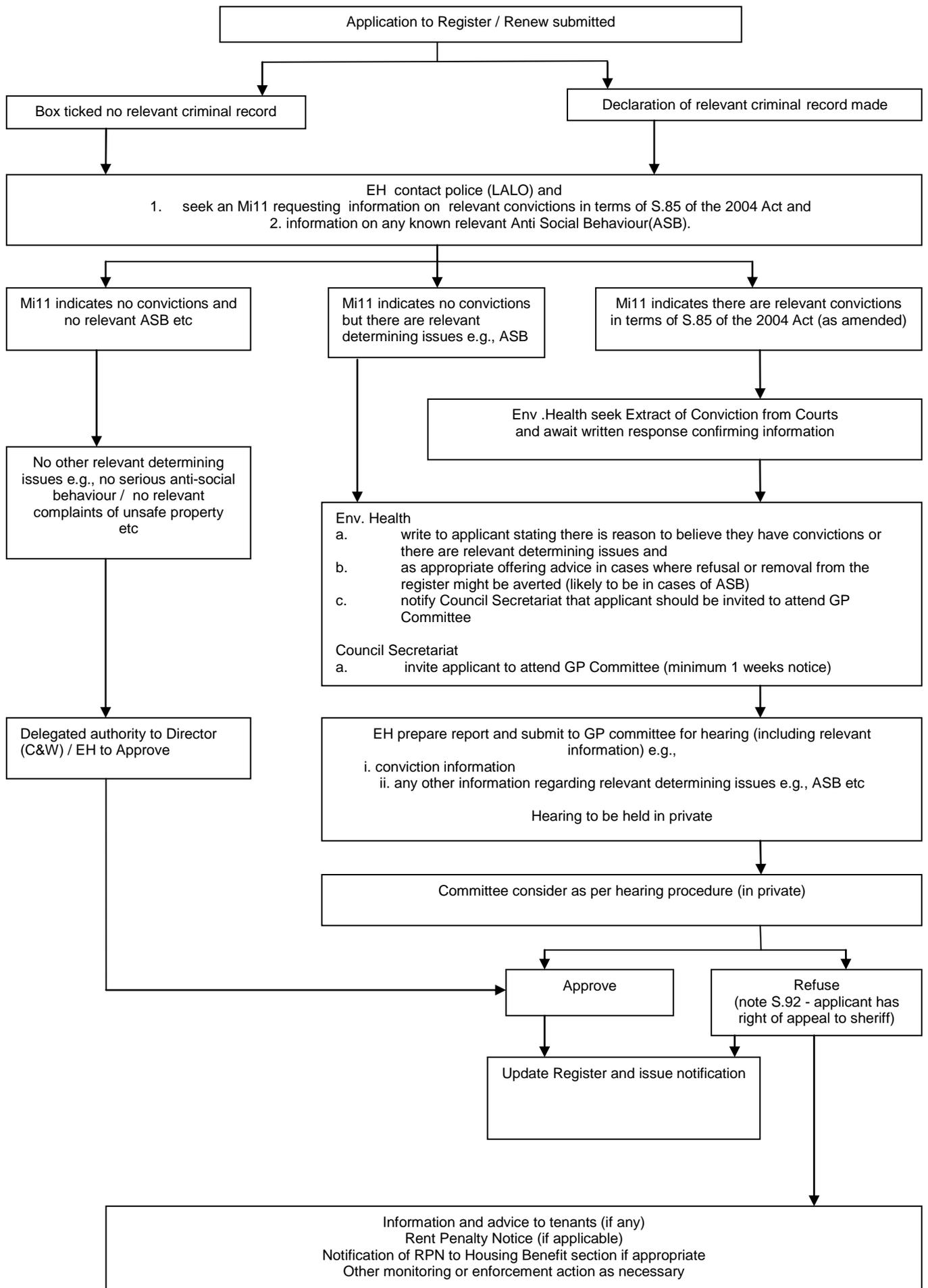
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Background Papers:

2004 Act
Guidance

Landlord Registration Procedure - 1st time Applications & Renewals



Section 85 of the Antisocial Behaviour etc (Scotland) Act 2004.; incorporating the amendments as currently proposed by the Private Rented Housing(Scotland) Bill.

Note: the sub-sections *underlined and in italics* are the proposed elements.

Section 85 - Section 84: considerations

- (1) In deciding for the purposes of section 84(3) or (4) whether the relevant person or, as the case may be, the person is a fit and proper person, the local authority shall have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has—
- (a) committed any offence involving—
 - (i) fraud or other dishonesty;
 - (ia) firearms (within the meaning of section 57(1) of the Firearms Act*
 - (ii) violence; or
 - (iii) drugs;
 - (aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));*
 - (b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or
 - (c) contravened any provision of—
 - (zi) any Letting Code issued under section 92A;
 - (i) the law relating to housing; or
 - (ii) landlord and tenant law.
- (3) Material falls within this subsection if it relates to any actings of the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house—
- (a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c); and
 - (b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.
- (3A) Material falls within this subsection if it relates to any agreement between the relevant person and any person in terms of which that person acts for the relevant person in relation to a lease or occupancy arrangement such as is mentioned in section 84(3)(c).

- (4) Material falls within this subsection if it appears to the authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.
- (4A) A local authority need not, despite subsection (1), have regard to any material falling within subsection (3A) in deciding for the purposes of section 84(4) whether a person specified in an application by virtue of section 83(1)(c) is a fit and proper person to act for a landlord.”
- (5) In subsection (3), “actings” includes failure to act.
- (6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—
- (a) an offence or disqualification under—
 - (i) this Part;
 - (ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);
 - (b) a repairing standard enforcement order made under section 24(2) of that Act.
- (7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—
- (a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;
 - (b) an antisocial behaviour notice within the meaning of Part 7.
- (8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)
- (a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;
 - (b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;
 - (c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.