

Antisocial Behaviour Etc (Scotland) Act 2004

Private Landlord Registration

As part of the Antisocial Behaviour etc (Scotland) Act 2004, the Scottish Executive introduced private landlord registration. The registration process is designed with a number of ends in mind. It should enforce minimum standards in private renting and should remove the worst offenders. It should also allow tenants and other parties to identify and contact Landlords of private rented property and provide a national database.

With effect from **30 April 2006** all private landlords letting residential property in Scotland require to register unless all of the properties let by them are covered by exemption – see below. It will be an offence for a landlord to continue letting property in Scotland after this date without having submitted a valid application to register. The registration process will require **registration with each Local Authority in which the property let is situated**. On line registration will allow applications to be made to all Local Authorities at one time.

A Local Authority will require basic information about the landlord, the landlord's managing agents, information on any relevant unspent convictions or court judgements and a declaration that the landlord complies with all relevant laws when letting property.

To be registered the landlord must be **"fit and proper"** to let residential property. The Local Authority may make use of any relevant information available to them to reach that decision including information about fraud, dishonesty, violence, unlawful discrimination, breach of any laws relating to housing etc.

Different Local Authorities may come to different decisions. The **exemptions** include where a property: -

- † Is the only or main residence of the landlord and there are not more than two other lodgers.
- † Is let to members of the landlord's family only.
- † Is used for holiday lets.
- † Is occupied by virtue of an agricultural or crofting tenancy.
- † Is occupied by virtue of a liferent.
- † Is held by an executor.
- † Is possessed by a heritable creditor.

Unless joint owners together form a legal person eg a partnership all joint owners must be registered. One of their number may be the lead owner and will pay the full fee whereas the others will pay a discounted fee.

The Scottish Executive have fixed the way in which fees are to be calculated but each Local Authority will decide its own principal fee based on its reasonable costs of running the scheme. There will be a **principal fee for the first property** and then a **discounted fee of 20% of the principal fee for each additional property** let. The **fee may also be discounted** (potentially to nil) if the landlord has an HMO Licence or owns property jointly with family members. The Scottish Executive have indicated that the principal fee is likely to be small – perhaps £50.

Agents can register in their own right but are not legally obliged to do so.

Applications **require to be renewed every three years**.

If the landlord fails the “fit and proper” test the Local Authority may allow the matter to be resolved by the landlord using a managing agent who is approved by the Local Authority as fit and proper. If that were not possible the property would require to be sold. The tenant would have statutory protection for a period.

Failure to comply with registration is a criminal offence – fines up to £5000 - and the Local Authority also has **other sanctions** available to it if a registered landlord is not taking the proper steps to deal with antisocial behaviour, for example rent penalties and antisocial behaviour notices. It has been suggested that rent penalties will be for a one off situation and it is not expected that they will be used frequently.

At the time of preparing this Alert (mid January 2006) the Scottish Executive do not have the national system in place and therefore the Local Authorities do not have their individual systems in place. It is therefore **not possible for landlords to register at this time and the registration fees and discounts are not known**. As a result Local Authorities are likely to be inundated with applications close to 30 April and it is likely that many applications will not be dealt with until after that date.

If you have any queries or wish more information or to discuss any of the points in this Alert please contact -

Sylvia Johnstone, Associate
50 Castle Street, Dundee DD1 3RU
Tel 01382 229111
Email sjohnstone@thorntons-law.co.uk
www.thorntons-law.co.uk

