

To: Regulatory Functions Board

On: 18 August 2021

Report by: Director of Finance and Resources

Heading: Landlord Registration: Proposed Delegated Powers to Officers

1. Summary

1.1 The purpose of this report is to advise the Board of current outstanding applications for private landlord registration where landlords have not confirmed their compliance with regulatory requirements set out in regulations made under the terms of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”).

1.2 The report also sets out the options considered by officers to facilitate determination of these applications and recommends that authority be delegated to officers to refuse applications where applicants fail to declare their compliance with the prescribed requirements.

2. Recommendations

2.1 It is requested that the Board:-

2.1.1 Agree to delegate the power detailed at Paragraph 4.1 of this report to the Head of Corporate Governance, Legal and Democratic Services Manager and Assistant Managing Solicitor (Licensing); and

2.1.2 Otherwise note the terms of the report.

3. **Background**

- 3.1 The Council has considered and determined applications for private landlord registration, made under the terms of the 2004 Act, since the introduction of landlord registration in 2006. On 16th September 2019, new Regulations made under that Act came into force, the Private Landlord Registration (Information) (Scotland) Regulations 2019 (“the 2019 Regulations”).
- 3.2 The effect of these regulations has been to require an application for landlord registration to contain a declaration that the applicant complies with various legal requirements relating to their let properties and confirmation from the landlord that they have complied with their responsibilities as landlords on other matters, such as provision of relevant safety certificates to their tenants. Prior to these regulations coming into force, landlords applying for registration were required to confirm their compliance with their legal duties but only in general terms.
- 3.3 The Regulations, which set out the various requirements fully, are available at <https://www.legislation.gov.uk/ssi/2019/195/contents/made> However, the categories in relation to which compliance requires to be declared or confirmed (hereinafter “the compliance categories”) relate to the following responsibilities of landlords:
- The repairing and tolerable standard
 - Gas safety obligations
 - Electrical safety reports
 - Portable Appliance Testing of electrical items
 - Fire, smoke and heat detection
 - Carbon Monoxide detection
 - Private Water Supply requirements (where applicable)
 - Energy Performance
 - Legionella Risk Assessment (and necessary steps taken as a result of the assessment)
 - Rental Property Insurance (for tenemental properties)
 - Common Repairs (for tenemental properties)
 - Tenancy deposit requirements
- 3.4 Following the introduction of the 2019 Regulations, it has become increasingly apparent that a high proportion of landlords either are not compliant with or, notwithstanding assistance from the Council’s licensing team, do not fully understand their requirements as private landlords. In addition, there have been a very significant number of landlords who have failed to engage with the licensing team, with repeated correspondence to landlords remaining unanswered. As a result, the number of outstanding applications has risen considerably, due to a declared failure to meet one or more of the compliance categories, as further detailed at Paragraph 3.5 and 3.6.

3.5 Initially, attempts had been made to engage with landlords to assist them to achieve compliance with the requirements and, thereafter, correspondence was issued to landlords in anticipation of referring applications to the Regulatory Functions Board for determination. However, following the introduction of restrictions relative to the coronavirus pandemic in early 2020, and again from late 2020 to April 2021 when Level 4 restrictions were in place, works were only permitted to take place within residential dwellings which were essential for the wellbeing, safety and functioning of the household. This precluded some works from being carried out on behalf of landlords to achieve compliance, while other landlords reported difficulties in having safety checks completed as contractors were not available to provide these.

3.6 Although a number of cases were referred to the Regulatory Functions Board in February 2021, these cases were continued, given the existing level of restrictions, to allow a further opportunity to landlords to comply. However, the number of cases outstanding due to the above compliance issues is now in excess of 1,000. As restrictions have now eased considerably to allow non-essential repairs and other services to be provided in residential dwellings, officers have considered what options may be available to allow these applications to be progressed and determined and recommend the approach set out at Paragraph 4.1 of the report.

4. **Proposal**

4.1 It is recommended that the Board delegate powers to officers to refuse applications for landlord registration where non-compliance is declared, which powers could be exercised where, despite officers attempting to engage with applicants, the non-compliance continues and/or applicants fail to engage with the Council. At present, while officers have delegated powers to grant applications for landlord registration where no significant adverse factors exist, they have no power to refuse an application.

Unlike the position with applications for licences made under the terms of the Civic Government (Scotland) Act 1982, there is no legal requirement for a hearing to be held to determine applications for landlord registration. It is anticipated, however, should the Board agree this option as recommended at section 2.1.1 of the report, that the specified officers would exercise the delegated power only in circumstances where they had written to an applicant on at least two occasions giving them an opportunity to confirm they now fully meet the compliance categories. It is recommended that the terms of the new delegated power would be as follows:

“To refuse applications for landlord registration where an applicant has failed to declare or confirm that they comply fully with the requirements and responsibilities set out in the Private Landlord Registration (Information) (Scotland) Regulations 2019.”

4.2 In reaching the above recommendation, officers considered two alternative options but are of the view that these would not be feasible. The first option considered by officers was that the outstanding applications, and future similar applications, be referred to the Board for consideration and determination. However, the very substantial number of cases now outstanding, as set out at Paragraph 3.6, would require a large number of additional Board meetings to be arranged to accommodate these cases. On the basis of an optimistic assessment that 50 such applications might be able to be considered and determined at each additional Board meeting, over twenty special meetings of the Board would be required to deal with the applications currently outstanding, with an ongoing need to make similar arrangements for applications which continue to be received meantime. In addition, the preparation for Board meetings to accommodate such arrangements would give rise to considerable resource implications which would impact severely on the delivery of the licensing service.

4.3 The other approach officers considered related to whether all, or some, applications which disclose some level of non-compliance could be granted by officers, on the basis of a direction by the Board together with a delegation of powers to approve these. Officers are of the view that this approach would similarly not be feasible. The 2019 Regulations place a requirement on applicants for landlord registration to declare and confirm that they meet the compliance categories and the Council requires to be satisfied that a landlord is fit and proper in order to approve their registration. Further, it is the view of officers that granting non-compliant applications would give rise to various risks. Board Members may consider, while recognising that failure to meet some of the compliance categories could have greater safety implications than a failure to meet others, that requirements such as gas and electrical safety- and fire, smoke, heat and carbon monoxide detection- are of considerable importance, with the potential for serious and tragic consequences where let properties are not properly maintained.

5. **Conclusion**

5.1 The Board is asked to agree to delegate the power to officers as recommended at Paragraph 2.1.1 of the report.

5.2 The Board may wish to note that, in the event of this recommendation being agreed and an application being refused by officers, it is open to a landlord to reapply for landlord registration once they meet the compliance categories. Officers would then be able to consider granting the new application under delegated powers. Unlike those applying for landlord registration for the first time, who are entitled to let their properties until their application is determined, those landlords refused registration within the preceding 12 months would not legally be able to do so.

- 5.3 At a meeting on 4 March 2021, Council approved funding of £200,000 to provide support for private tenants and private landlord enforcement activities. A report by the Director of Communities and Housing Services has been referred to the Communities, Housing and Planning Policy Board on 17 August 2021, detailing proposals to utilise this funding and outcomes that can be delivered.

Implications of the Report

1. **Financial** – Nil.
 2. **HR & Organisational Development** – Nil
 3. **Community/Council Planning** –
 - Our Renfrewshire is thriving – encouraging people to live in Renfrewshire through improved regulation of the private rented sector.
 - Our Renfrewshire is safe – improving the safety of those residing in the private rented sector by improving processes to ensure the suitability of registered private landlords.
 - Creating a sustainable Renfrewshire for all to enjoy – regulating the private rented sector to achieve improved housing standards.
 4. **Legal** – The 2019 Regulations require applicants to confirm they are compliant with the categories detailed in the report. The Council as the landlord registration authority require to be satisfied as to the suitability of registered private landlords under the terms of section 84 of the Antisocial Behaviour etc. (Scotland) Act 2004 in order to approve an application for registration.
 5. **Property/Assets** – Nil
 6. **Information Technology** – Nil
 7. **Equality & Human Rights** -The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report, as they seek only to delegate powers to officers to facilitate the determination of landlord registration applications. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
 8. **Health & Safety** – Nil
 9. **Procurement** – Nil
 10. **Risk** – in the event of refusal of an application for landlord registration, it is open to an applicant to appeal the decision to the First Tier Tribunal (Housing and Property Chamber).
 11. **Privacy Impact** – Nil
 12. **Cosla Policy Position** – Nil
 13. **Climate Risk** – Nil.
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List of Background Papers

None

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