

Private landlord registration in Moray

This leaflet tells you about landlord registration, who it affects and what action we can take against those who do not register.



the **moray** council

Updated February 2013

We try to review our leaflets regularly to make sure you have the most up-to-date information. However the content of this leaflet is only correct at the time it is published.

For more information or advice contact us on **0300 123 4566** or visit our website at **www.moray.gov.uk**.

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What is landlord registration?

Landlord registration is a system that helps councils monitor private landlords and make sure that they are suitable people to let out property. Private landlords must apply to their local council for registration. It is a criminal offence not to register.

What is the aim of landlord registration?

The aim of landlord registration is to make sure that all private landlords in Scotland are 'fit and proper' people to let residential property. The requirement to register helps us to remove the worst landlords from the market and protect tenants and the wider community from the impact of antisocial behaviour and poorly managed property.

Why do I have to apply for landlord registration?

The Scottish Government introduced law which means that since 30 April 2006 all private landlords, with some exemptions, must apply for registration in the register of landlords.

Who should register?

Private landlords who let property in Scotland must register. You should register before starting to let your property. If you use an agent, they must also register. Certain landlords do not need to register. You will be

exempt from registration if your property is:

- Your only or main home.
- A house of multiple occupancy (HMO). If there are more than two unrelated lodgers you will need to get a HMO licence. Please contact us for more information.
- Let to members of your family only.
- Only used for holiday lets.
- Used to provide certain types of service regulated by the Care Inspectorate.
- A croft (croft houses cannot be sublet).
- An agricultural tenancy and it is let to a tenant farmer.
- Owned, occupied or used by a religious organisation, leader or preacher.
- Tenanted by someone who has a life rent.
- Held by an executor, for six months from the date of the previous owner's death.
- Possessed by a heritable creditor, for six months from the date of possession.
- In the hands of a person acting as an insolvency practitioner and has been so for a period not exceeding 6 months.

If you are not sure if any of the above applies to you, please contact us. Contact details are at the end of this leaflet.

How do I apply for landlord registration?

There are two ways to apply for landlord registration.

- The easiest way to register is online at the landlord registration website. A 10% discount applies to online applications.
- If you ask, we will send you a paper application form that you can fill in.

Please see the end of the leaflet for contact details.

Which local authority should I register with?

You must register with each local authority area that you let property in. If you own properties in more than one area, you can apply to register for all authorities on one application. If you do this, you will get a discount on the fees that you will have to pay.

What information will I need to give?

You will need to give the following information:

- Your name, address, date of birth and any other names that you are known by, or have previously been known by;
- Your previous home addresses for the last five years;
- Your email address and contact phone number;
- The addresses of all the properties that you let;
- The name and address of any agents that you use; and
- Information on any relevant unspent convictions or court/tribunal judgements.

You will need to sign a declaration confirming that you will comply with all relevant laws when letting property.

What if I jointly own a property with someone else?

All joint owners must register. You should nominate one person as the lead owner. The lead owner will pay all fees.

What does 'fit and proper' mean?

We will use any information available to us to reach a decision on whether you are 'fit and proper'. In reaching our decision, we will take into account any evidence that we have of:

- Fraud, dishonesty, violence or drugs;
- Unlawful discrimination;
- Breaches of law relating to housing;
- Failure to address antisocial behaviour;
- Breaches of the repairing standard.

We also have the power to ask for a criminal record certificate when applying the fit and proper person test. Particularly if we have reasonable grounds to suspect that the information provided is, or has become, inaccurate. If a registered landlord does not give this, we may remove them from the register.

What happens if I'm not considered to be a 'fit and proper' landlord?

You will not be allowed to register initially. However, we can advise you on what improvements you can make to let you register in the future. You will also have the right to appeal our decision (please refer to page 17).

Will members of the public be able to access my details online?

The register can be viewed online on the landlord registration website. Any person who enters your name will be able to tell if you are registered. By entering the address of one of your properties they will be able to see your name, your agent's name if you use one and the contact address that you have given for that property.

How will I benefit from registration?

Registration will help remove disreputable landlords and those who provide poor housing or inadequate housing management. If we have an up to date email address, we will also send you updates. For example, when legislation changes.

How much does it cost to register?

We do not set the fees. The Scottish Government have a fee structure which all local authorities must follow.

The government are aware of the need to keep fees at a reasonable level. The registration fee for a set three year period is £55 and you must also pay an additional £11 for each property you let. You may be entitled to a discount if you fall into one of the following categories:

- if you apply online;
- you have an HMO licence;
- you own a property with a joint owner (only the lead owner will pay the fees);
- you are applying to more than one local authority;
- or
- you are a charity.

Contact us for more information.

What does the cost of the registration cover?

The fees that are charged go towards the cost of running the scheme. They do not cover the whole cost of running the scheme.

The Scottish Government advise that those involved in the private rented sector should bear some of the costs of the regulation needed to improve the sector. Therefore fees go towards the running costs of registration, while central funding covers enforcement.

How long does registration last?

Registration lasts for three years from the date we approve your application. After three years you will have to apply to renew your registration. We will contact you and remind you to do this.

If I am not registered, can I still let my property?

No. If you are not registered it is a criminal offence to let a residential property.

What happens if I don't register or renew my registration?

We know that most landlords and agents should pass through the process without any disruption to their business. A breach of landlord registration or failure to register may result in sanctions, including a fine of up to £50,000. Scottish Government guidance stresses that local authorities should adopt a light touch approach when taking enforcement action. We can use enforcement action to challenge the practices of the worst landlords, including the following types of breach:

- failure to register;
- giving false information;
- a registered landlord no longer being a fit and proper person;
- where a de-registered person continues to let properties;

- where a registered landlord does not tell us of a change in circumstances; and
- communicating with a potential tenant about renting a property if you are not registered.

What do you mean by enforcement action?

In August 2012, we agreed our Private Landlord Registration Enforcement Policy. This details why, when and what enforcement action we may use.

The enforcement action that we can use is set by law and ranges from applying additional fees to making a referral to the Procurator Fiscal.

If we take enforcement action, we will make sure that it is in proportion to the breach of the private landlord registration scheme. We will always attempt to contact landlords and agents, give them advice and assistance and tell them what they must do to resolve an issue.

The enforcement action that we take will be based on an escalation process. For example, making a referral to the Procurator Fiscal will only be used as a final resort and where we have used all other management action and enforcement methods available to us.

Why would you use enforcement action?

We may use enforcement action when the private landlord registration scheme has been breached.

The types of breaches are explained below.

Property not registered

If we find out that you are renting a property and are not registered, we will send a letter and information pack to you telling you that you should register within 14 days. If you don't register within this timescale, we will send you a final reminder, giving you a further seven days to register. If you do not register after this, we may apply a late application fee. This means you will pay **£110** on top of what you would have paid if you had applied promptly.

Poor management practices

If we find out that you (or an agent) have not met your legal duties on letting and/or managing your properties, we will contact you and tell you about our concerns. For example, poor property conditions, antisocial behaviour or management practices. We will give you advice and information on how you can resolve the situation.

If necessary, we will agree an action plan, which we will monitor. If you (or an agent) do not comply with your legal duties, or with an action plan, we will review your suitability as a 'fit and proper' person.

Giving false information or not giving information asked for in an application form

It is a criminal offence to give misleading or incorrect

information, or not to include the required information. We understand that most landlords who miss out sections or questions have done so by mistake or have not understood what has been asked of them. In the first instance, we use a 'light touch' approach and try to work with landlords to make sure that they give us all relevant information. For example, if an application is received without all of the necessary information, we will contact you and ask you to fill in all of the information needed.

We will always consider the facts before deciding whether we should take any enforcement action. If we decide that not giving the information or giving false information was deliberate, you can be fined. In addition, we can review your 'fit and proper' person status. If we find you are not fit and proper to be a landlord and you continue to rent a property, we may issue a rent penalty notice. In extreme situations, we may send a report to the Procurator Fiscal. (This is explained on page 16).

Failure to tell us of a change in circumstances

It is an offence not to tell us of a change in circumstances. You must tell us, as soon as possible, if any of your details change during the three-year registration period. For example, any changes to the list

of properties you own, or changes to your contact details and those of agents you use. From 31 August 2011 it is an offence if you do not tell us if you appoint an agent. The maximum penalty for this offence is £1,000.

You can update your details at any time through the website (using your username and password) or by contacting us. Please see the end of the leaflet for contact details.

If we are made aware of a change in your circumstances, we will contact you to decide if the failure was a deliberate attempt to mislead us or if it was a genuine oversight.

In more serious cases, for example, if the information relates to a conviction or housing law, we can review your fit and proper person status and decide if you should have your registration removed. In extreme situations, we may send a report to the Procurator Fiscal. (This is explained on page 16).

Failure to meet the repairing standard

If we are made aware that you let a property that does not meet the repairing standard, we only have an advisory role. We will advise you to get independent legal advice and to contact the Citizens Advice Bureau for more detailed information and advice. Advice may

include the role of the Private Rented Housing Panel.

As part of our advisory role and to assess the complaint, we may arrange for a property visit to be made by environmental health.

If the case is referred to the Private Rented Housing Panel and they decide to serve a repairing standard enforcement notice on you or make any other recommendations, we will monitor your level of compliance and review your 'fit and proper' status.

Where a repairing standard enforcement order is in place, a note will also appear in the register of landlords. It will be removed when the order is withdrawn.

If you do not obey a notice, we will investigate if you are 'fit and proper' to let a property and may consider removing your registration. The final decision to deregister a landlord will be made by the Head of Housing and Property.

What enforcement action will you use?

Enforcement action that we can use is set by law. We can apply the following four sanctions:

- Late application fee;
- Rent penalty notice;
- De-registration;
- Report to the Procurator Fiscal.

Late application fee

This may be applied when it has been identified that a property has been let by an unregistered landlord. By law at least two notifications must be issued prior to the late application fee being applied. This means you will pay **£110** on top of what you would have paid if you had applied promptly.

Rent penalty notice

If we are satisfied that you have failed to register, have been de-registered or have been refused registration, we may decide to serve a rent penalty notice. This means that, while the notice is in force, your tenant will not have to pay rent. The notice gives a further 28 days from the date it starts during which you may still register. If you do register during this period, the notice will be cancelled.

We will contact your tenant and make sure that they get suitable advice and assistance about the financial implications resulting from the service of the notice. We will make sure that tenants are given advice and assistance on:

- security of tenure;
- benefit maximisation;
- housing benefit; and
- homeless services and the homelessness duties of the Council.

De-registration

If we judge that a landlord is not a 'fit and proper' person, they can be refused registration or de-registered. This means you would no longer be legally allowed to let property in Moray and will be committing a criminal offence if you continue to act as a landlord.

We will only use this as a last resort and will always give landlords and agents every opportunity to take corrective action. Only the Head of Housing and Property, based on the evidence provided, will be authorised to de-register a landlord.

Report to the Procurator Fiscal

This will only be used as a final resort and where we have exhausted all other management action or enforcement methods. For example, when a landlord has failed to make a valid application to register and/or has failed to comply with another sanction. If the Procurator Fiscal successfully prosecutes a landlord, we will re-evaluate the landlord's status. The landlord will no longer be considered to be a fit and proper person and will be unable to let property in Moray.

Before making a report to the Procurator Fiscal, the case will be referred to the Landlord Registration Enforcement Panel. This panel includes representatives from housing

and property, legal services, environmental health and the Citizens Advice Bureau (CAB). The Panel will decide whether agreement is given to continue to the stage of evidence gathering needed to prepare a case for the Procurator Fiscal.

Can I appeal if you take any enforcement action against me?

You have the right to appeal the conditions of registration or the registration process or any decision taken by us to enforce a late application fee. A panel of managers from legal, housing and environmental health, who were not involved in the original decision, will consider any appeals.

You can appeal to the Sheriff against a rent penalty notice within 21 days of the notice taking effect. Your tenant will be made aware of any appeal in order for them to set aside rent money so that if your appeal is successful, the accumulated unpaid rent can be repaid (if ordered by the Sheriff).

You can appeal to the Sheriff if you are de-registered (or against any decision made by us not to register a landlord) by means of a summary application. There is no time limit for such an appeal. The Sheriff may make an order that the person is registered, specifying

whether that person is fit and proper as an owner or agent. If the Sheriff refuses the application a further appeal, within 21 days, can be made to the Sheriff Principal.

Overview of the types of breaches and enforcement action available

Breach	Enforcement action available
Failure to register or renew registration while continuing, or attempting, to let a residential property	Guilty of an offence. <ul style="list-style-type: none"> • Late application fee • Report to the Procurator Fiscal • Rent penalty notice may be served
Giving false information or not including information required in an application form	Guilty of an offence. <ul style="list-style-type: none"> • Report to the Procurator Fiscal • Refuse registration if judged not to be a fit and proper person • Refuse the application and issue a rent penalty notice
Non-registered landlord communicates with a person about letting a house	Guilty of an offence. <ul style="list-style-type: none"> • Report to the Procurator Fiscal

Breach	Enforcement action available
Failure by a registered person to notify changes in circumstances	<ul style="list-style-type: none"> • Review fit and proper person requirements and remove from register if judged no longer to be a fit and proper person
Registered person no longer a fit and proper person	<ul style="list-style-type: none"> • De-register / remove from register
De-registered person continues to let a property	<p>Guilty of an offence.</p> <ul style="list-style-type: none"> • Rent penalty notice may be served • Report to the Procurator Fiscal
A registered landlord's agent is found to be not fit and proper	<ul style="list-style-type: none"> • Landlord's name removed from the register

Jargon buster

De-registration	If it is decided that a landlord is not a 'fit and proper' person, they can be refused registration or de-registered which means that they would be committing a criminal offence if they continue to act as a landlord.
Energy Performance Certificate (EPC)	This is a document which states the energy efficiency of a building based on the standardised way the building is used and provides the building owner with a number of ways in which the efficiency could be improved. It is a legal requirement to give an EPC to tenants.
Fit and proper test	The fit and proper person test means that private landlords have to meet a certain standard before they can legally rent out property. The test is designed to remove any bad landlords from the system and

	to improve the standards in the private rented sector generally. This should give tenants extra protection from bad landlords.
Landlord registration	Every council in Scotland holds a formal register of all landlords and letting agents in their area. This is called the landlord register. The purpose of the register is to help councils monitor private landlords and make sure that they are suitable people to let out property. All private landlords have to apply to the local council for registration. If they haven't registered, or haven't applied for registration, it's a criminal offence.
Late application fee	If you do not register or are late in renewing your registration you may be issued with an additional late application fee. This is £110 on top of what you would have paid if you had applied promptly.

<p>Private Rented Housing Panel</p>	<p>The Private Rented Housing Panel (PRHP) gives tenants an effective way of forcing landlords meet their duty to make sure that the house they lease to that tenant meets the repairing standard.</p>
<p>Procurator Fiscal</p>	<p>The Procurator Fiscal makes preliminary investigations into criminal cases, takes written statements from witnesses (known as precognition) and are responsible for the investigation and prosecution of crime.</p>
<p>Rent penalty notice</p>	<p>If a private landlord is renting out a property and is not registered, we can send a rent penalty notice to that landlord. The rent penalty notice prevents a landlord from charging rent to a tenant or a prospective tenant for a property for the period that the notice is in force.</p>
<p>Repairing standard</p>	<p>The repairing standard came into effect in September 2007. It extends the legal duties of a private</p>

landlord to repair a house. Rented property must now meet the repairing standard before it is let and at all times during the tenancy.

A house meets the repairing standard if -

1. the house is wind and water tight and in all other respects reasonably fit for human habitation;
2. the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
3. the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
4. any fixtures, fittings and appliances provided by the

landlord under the tenancy are in a reasonable state of repair and in proper working order;

5. any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
6. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Before the tenancy starts landlords, or someone acting for the landlord, will have to inspect the property to make sure it meets the standard. At the start of the tenancy (or earlier) landlords must tell tenants about the Repairing Standard and the Private Rented Housing Panel.

More information

You can find more information in our Private Landlord Registration Enforcement Policy. You can access this on our website. Or if you prefer, please contact us and we can give you a paper copy. You can also find more information in our leaflet, 'A Guide for Private Landlords'.

Contact details



The Moray Council

Landlord registration

PO Box 6760

Elgin

IV30 9BX



0300 123 4566



www.moray.gov.uk

Landlord Registration Scotland

You can apply on this website, for registration with all local authorities in Scotland, track applications and tell registering authorities of any changes to your details.

- **www.landlordregistrationscotland.gov.uk**



Moray Citizens Advice Bureau

30 - 32 Batchen Street

Elgin

IV30 1BH



01343 550088



bureau@moraycab.casonline.org.uk



www.moraycab.org.uk

Private Rented Housing Panel

This can help Scottish landlords and tenants resolve their differences and can provide tenants with a way to force landlords to do necessary repairs.



www.prhpscotland.gov.uk

Shelter Scotland

This can give information to help you understand your rights and responsibilities and the rights and responsibilities of your tenants.



4th floor Scotiabank House

6 South Charlotte Street

Edinburgh

EH2 4AW



0808 800 4444 (calls are free from UK landlines and main mobile networks (Virgin, Orange, 3, T-mobile, Vodafone and O2).



www.scotland.shelter.org.uk

If you need information from the Moray Council in a different format, such as Braille, audio tape or large print, please contact:

如果閣下需要摩里議會用你認識的語言向你提供議會資訊的話，請要求一位會說英語的朋友或親人與議會聯繫

Jeżeli chcieliby Państwo otrzymać informacje od samorządu rejonu Moray w swoim języku ojczystym, Państwa przyjaciel lub znajomy, który mówi dobrze po angielsku, może do nas

Se necessita de informação, do Concelho de Moray, traduzida para a sua língua, peça o favor a um amigo ou parente que fale Inglês para contactar através do:

Jeigu Jums reikalinga informacija iš Moray regiono Savivaldybės [*Moray Council*], kurią norėtumėte gauti savo gimtąja kalba, paprašykite angliškai kalbančią draugą arba giminaičių susisiekti su mumis

Чтобы получить информацию из Совета Морэй на Вашем языке, попросите, пожалуйста, Вашего друга или родственника, говорящих по английски, запросить ее

Si necesitas recibir información del Ayuntamiento de Moray en tu idioma. Por favor pide a un amigo o familiar que hable inglés que:



Housing and Property
The Moray Council
PO Box 6760
Elgin
IV30 9BX



0300 123 4566



housing@moray.gov.uk



(Wednesday or Thursday Only): 18002 01343 563319