

Landlord registration and antisocial behaviour penalties - liaison with LA registration sections: Scotland

Registration of landlords

Penalties for non-registration

- 1 Since 30 April 2006, as a result of provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, all landlords in Scotland, with a few exceptions, must register with their Local Authority (LA).
- 2 Each LA must have a register of landlords in the private rented sector and the properties that they let.
- 3 Some properties are exempt from the scope of landlord registration. For example
 - the property is the landlord's home (resident landlords)
 - properties let to family members (as defined by s.108 Housing (Scotland) Act 2001)
- 4 It is an offence to let a house without being registered or while awaiting the outcome of a valid application to register. There are penalties for failure to register. As well as seeking prosecution, the LA can serve a notice that no rent is payable on the property. These are called rent penalty notices.
- 5 When a rent penalty notice is in force, the landlord cannot charge rent to the tenant. A rent penalty notice takes effect from a date which is specified by the LA's registration section, and it must be no earlier than the day after the day on which it is served.
- 6 Anyone with an interest can appeal to the courts against a rent penalty notice within 21 days of the date that it takes effect. If the appeal is successful then the notice can be revoked.
- 7 The LA can revoke a rent penalty notice once the landlord has registered or the house is no longer subject to a lease or occupancy arrangement. The LA registration section specifies the date of revocation and from that date the landlord can charge rent to their tenants again.

The effect of a rent penalty notice on HB

- 8 During the currency of a rent penalty notice a landlord cannot charge rent in respect of the property to which the notice refers. This means that tenants living in the property cannot get HB.

Working with colleagues in the registration sections of the LA

- 9 A lead officer and other staff will implement the registration provisions which are in Part 8 of the Act. Depending on the arrangements within your LA, these staff may be part of housing, environmental health, licensing or other sections. For the purposes of this manual, we will call them 'registration sections'.
- 10 Guidance issued to LAs by the Scottish Executive on how to implement these provisions recommends that the staff concerned make contact with HB sections to come up with suitable communication and working arrangements.
- 11 The website for the guidance on registration is <http://www.scotland.gov.uk/publications/2006/02/14100433/0>
- 12 The main situation when communication is important is if the LA has issued a rent penalty notice because the landlord is letting without being registered. LAs are expected to encourage the landlord to apply for registration rather than move straight to the rent penalty.
- 13 In addition, your registration colleagues may wish to approach you to find out if there are any tenants claiming or getting HB to help with their enforcement of the registration requirement.
- 14 You should make your own communication arrangements taking into account local practice and relevant legislation. This includes data protection legislation, as read with section 139 of the Antisocial Behaviour etc. (Scotland) Act 2004 which allows for the disclosure and sharing of information, making specific reference to HB.

The public register of landlords

- 15 The public register of landlords is available on the internet.
- 16 The website is <https://www.landlordregistrationscotland.gov.uk>
- 17 This register shows landlords whose applications have been processed and accepted by the LA. It will not show landlords who
- are complying with the law because they have applied, but whose application is being processed by the LA
 - do not require to register because they only let properties which are exempt - the main category is resident landlords who do not let other property
 - have been refused registration or who have had registration removed
- 18 So the fact that a claimant's landlord is not on the register is not clear evidence that the landlord is letting illegally.

- 19 Information for tenants about registration, including leaflets, is available from the registration section. You may wish to provide claimants with a leaflet since registration is designed to protect their interests.

Information for registration officers

- 20 Registration officers have to identify and pursue landlords who should be registered but are not. Information about the addresses of HB claimants and the identity of their landlords is helpful to registration sections. This helps to prevent or detect criminal offences and you should assist registration officers in this way. Discuss with your registration and legal colleagues, as appropriate, how to share such information within your authority. Remember to take the appropriate data protection legislation into account.

Rent liability and unregistered properties

- 21 If a claimant is living in an unregistered property it does not mean that the landlord cannot charge rent. So it is possible for a tenant to live in an unregistered property and be entitled to HB. But if that property is subject to a rent penalty notice, then the landlord cannot charge rent and so no HB is payable.
- 22 If possible agree, through local arrangements, for the registration section to notify HB of the few rent penalty notices that may be issued. This is preferable to HB checking the register for each house identified in a claim and then checking with the registration section whether those houses that are not registered are subject to a notice. Again, the best approach will depend on local arrangements and should be discussed locally.

Failure to address antisocial behaviour

Penalties

- 23 Since 30 April 2006, as a result of provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, an LA can serve an antisocial behaviour notice on a landlord if
- anyone who occupies or visits their property engages in antisocial behaviour at or near the property, and
 - the landlord has failed to take reasonable management steps to address the problem
- 24 The notice requires the landlord to take specified actions to deal with the antisocial behaviour. If the landlord fails to comply with an antisocial behaviour notice, that is an offence.
- 25 If the landlord fails to comply with the antisocial behaviour notice, the LA can apply to the courts for either
- a no rent payable order, which means the landlord cannot charge rent and so HB cannot be paid, or
 - a management control order if the LA takes over the management of the property, and rent becomes due to the LA

No rent payable orders

- 26 No rent payable orders are issued by the court and aimed at landlords who fail to address antisocial behaviour by their tenants or other occupants/visitors. They may apply if the LA has served an antisocial behaviour notice on the landlord and the landlord has not taken the steps set out in the notice to rectify the antisocial behaviour.
- 27 When a no rent payable order is in force, the landlord is not allowed to charge rent to the tenants in the property. The landlord can appeal to the courts against a no rent payable order within 21 days of the date that it takes effect. If the appeal is successful then the notice can be revoked.
- 28 A no rent payable order can be revoked, or suspended for a specified period, once the court is satisfied that the landlord has taken reasonable action to address the antisocial behaviour.

The effect of a no rent payable order on HB

- 29 As the landlord cannot charge rent when these orders are in force, the tenant cannot get HB during the currency of the orders.

Management control orders

- 30 Another form of sanction if the landlord does not comply with the measures in the antisocial behaviour notice is the management control order. These can last up to 12 months - the period is specified in the order. They are issued by the court at the LA's request.
- 31 During the period of these orders, the rights and responsibilities of the landlord are transferred to the LA. This means that rent becomes due to LA rather than the original landlord.
- 32 If the court considers that the landlord has taken reasonable action to address the antisocial behaviour, or that it is unreasonable for the order to continue, an order may be revoked.

The effect of a Management control order on HB

- 33 As, during the currency of a management control order, rent becomes due to the LA rather than the landlord, if the tenant is on HB, it is payable to the LA rather than the private landlord.

Working with colleagues in the antisocial behaviour sections of the LA

- 34 The antisocial behaviour notice provisions, which are in Part 7 of the Act, are likely to fall within the remit of the antisocial behaviour team within your LA, although again, depending on local arrangements, other sections may be involved.
- 35 Guidance issued to LAs by the Scottish Executive on the implementation of these provisions recommends that the staff concerned make contact with HB sections to come up with suitable communication and working arrangements.

- 36 The website for the guidance on antisocial behaviour notices is <http://www.scotland.gov.uk/publications/2006/05/02135500/0>
- 37 The main situations when communication is important are when the court has made a
- no rent payable order following non-compliance with an antisocial behaviour notice - antisocial behaviour notices will be relatively infrequent, and so there are likely to be few rent penalty notices
 - management control order following non-compliance with an antisocial behaviour notice - management control orders are likely to be very infrequent, they are burdensome for the LA and so will be used only if it is the only effective way of rectifying the situation
- 38 You should make your own communication arrangements taking into account local practice and relevant legislation. This includes data protection legislation, as read with section 139 of the Antisocial Behaviour etc. (Scotland) Act 2004 which allows for the disclosure and sharing of information, making specific reference to HB.
- 39 Because very few no rent payable orders are expected to be made, Scottish Executive guidance to LAs on the use of the antisocial behaviour provisions (in Part 7 of the Act) says that they should notify HB administrators when such orders are made or suspended. The guidance can be found on the internet, the web address is <http://www.scotland.gov.uk/publications/2006/05/02135500/0>
- 40 Even fewer management control orders are likely to be made. They do not affect entitlement to HB, but they mean that rent is due to the LA rather than the private landlord. Again, the relevant sections in the LA should notify HB administrators in the few instances where this happens.