

EXECUTIVE NOTE

THE PRIVATE LANDLORD REGISTRATION (MODIFICATION) (SCOTLAND) ORDER 2009 (SSI 2009/33)

The above order is laid before Parliament in accordance with section 141(4) of the Antisocial Behaviour etc. (Scotland) Act 2004 and in exercise of the powers conferred by section 83(7) of that Act. The order is subject to affirmative resolution procedure.

Policy

The Antisocial Behaviour etc. (Scotland) Act 2004 established the framework for the mandatory registration of private landlords in Scotland. Landlord registration aims to raise standards of accommodation and management in the private rented sector and assure private tenants that their landlord is a fit and proper person to let property.

Regulations were introduced in 2005 and 2006 to provide for the operation of the landlord registration scheme and established the necessary administrative and information processing arrangements to deliver the scheme.

The general approach of landlord registration is to provide a register of all landlords, except social landlords, and the properties they let. A person is required to be registered if he or she is the owner of a residential property which is subject to a lease or occupancy agreement and is not specifically excluded.

Exemptions apply to properties rather than to people. If all of a landlord's properties in a particular local authority area are covered by one or more of the exemptions, he or she does not need to register with that local authority. If only some of his or her properties are exempt, the other properties must still be registered.

The current list of exemptions is limited but provides exemptions as appropriate where the underlying principals of registration are not applicable.

Amendment to the scheme exemptions

The amendment to the Order is intended to bring the treatment of private insolvency practitioners in line with that of executors and heritable creditors. Executive and heritable creditors currently receive a 6 month exemption from registration in recognition of the transitory nature of their ownership. The Scottish Government considers that the position of private insolvency practitioners who take ownership of rented houses is equivalent to that of executors or creditors and therefore an equivalent short term exemption should apply. This exemption only relates to private insolvency practitioners who are not already exempt from registration as they are appointed under the auspices of the Accountant in Bankruptcy and therefore benefit from crown immunity.

Consultation

Review of Legislation

In 2007 consultants Arneil Johnston were commissioned to undertake a good practice review of landlord registration and to identify and share good practice in delivery of the scheme. The resulting Good Practice Report made a number of recommendations including some on the existing legislative framework.

Arneil Johnston were further commissioned in 2008 to undertake a review of the legislation underpinning the scheme to see whether changes to legislation could make delivery of the scheme more efficient. As part of this review, two focus groups were held with representatives from local authorities, landlord and agent organisations and tenant groups. Following the focus groups, Arneil Johnston recommended a number of changes to secondary legislation which formed the basis of a public consultation.

Public Consultation

A public consultation on the proposed amendments was carried out between July and October 2008. The consultation was issued to a wide range of stakeholders including local authorities and CoSLA. In addition, all landlords and agents registered under landlord registration were invited to take part in the consultation. A copy of the consultation and the responses can be found at <http://www.scotland.gov.uk/Publications/2008/07/17092436/0>. The regulations have been revised to reflect the comments received.

Financial Effects

The amendment to the Order will have a limited financial impact on local authorities and private insolvency practitioners. Detailed information on these impacts is given in the attached regulatory impact assessment.

Regulatory Impact Assessment

A regulatory impact assessment has been produced (a copy of which accompanies this Executive Note).

Equalities Impact Assessment

The consultation on the amended regulations sought input from Equalities groups including the Equality and Human Rights Commission. None of the responses received raised specific Equalities issues with the amendments being proposed. An Equality Impact Assessment has been produced in support of the amended regulation.

REGULATORY IMPACT ASSESSMENT

Private Landlord Registration – amendments to secondary legislation.

This Regulatory Impact Assessment (RIA) provides an assessment of the impact of amendments to the following regulations and orders:

- The Private Landlord Registration (Advice and Assistance) (Scotland) Amendment Regulations 2008 (SSI 2008/402)
- The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2008 (SSI 2008/403)
- The Private Landlord Registration (Modification) (Scotland) Order 2009 (SSI 2009/33)

1. Purpose and intended effect

Objectives

The objective of the amendments is to improve the efficiency and effectiveness of landlord registration to the benefit of local authorities, landlords/agents and tenants. In addition, the amendments are intended to prepare for the start of the registration renewal process in March 2009.

The package of amendments as proposed comprises in summary:

- Amendments to the fee and discount structure designed to simplify the structure which is currently complex and can be difficult to administer. It is intended that the changes to the structure will increase efficiency of implementation locally, by reducing the administrative burden on local authorities. This in turn will benefit landlords and agents registering with the scheme who should see a quicker turn-around of their applications and reduced bureaucracy in the application process.
- Modification to the exemptions order to extend the current 6 month exemption for executors and heritable creditors to include private insolvency practitioners. This will ensure the legislation is consistent in its approach to transitory ownership of property.
- Place a duty on local authorities to provide general advice in relation to letting practice and landlord registration to tenants and prospective tenants where they approach a local authority to enquire about letting practice or registration. This will extend the current duty on local authorities to provide advice and assistance to tenants when their landlord is refused registration, is de-registered, or where a rent penalty notice is served. Tenants will benefit from this increase in available advice.

In addition, the fee regulations also clarify the policy intention behind the treatment of fees payable where a landlord specifies an agent who acts on their behalf in their application; and the fee charged where a landlord holds an HMO licence in one local authority area and makes an application for registration in another local authority area where they are not registered. The amended regulations also clarify the fee exemption for registered social landlords and local authorities where these groups are specified as acting as an agent within a landlord's application for registration. These amendments reflect current practice therefore local authorities and applicants should see no change.

Background

The Antisocial Behaviour etc. (Scotland) Act 2004 ('The Act') established the framework for the mandatory registration of all private landlords in Scotland. Regulations were introduced in 2005 and 2006 to provide for the operation of the scheme and established the necessary administrative and information processing arrangements to deliver the scheme.

The implementation of the landlord registration scheme was informed by an Implementation Advisory Group (The Housing Sub-Group of the Implementation Advisory Group for the Antisocial Behaviour etc. (Scotland) Act 2004). The amendments now being proposed to secondary legislation do not seek to revisit the policy principles agreed by that Group – those principles and the secondary legislation underpinning the scheme have already been widely consulted on.

Following some initial difficulties with the implementation of landlord registration, the Scottish Government has made the successful delivery of the scheme a priority since May 2007. The latest registration approvals figures show that 111,395 (85%) of 131,706¹ applications have now been assessed and approved nationally. This is against a backdrop of increasing numbers of applications (87,875 applications received by 30 April 2007, 131,706 applications received by 30 November 2008).

In response to the administrative difficulties experienced in the delivery of the scheme, the Scottish Government committed to review the implementation of landlord registration. The purpose of the review was to examine the efficiency and effectiveness of existing arrangements and consider where improvements could be made. In late 2007 consultants Arneil Johnston were commissioned to undertake a good practice review of the implementation of the scheme and to identify and share good practice in delivery of the scheme. The resulting Private Landlord Registration Good Practice Report² included a number of recommendations in relation to improving delivery, including some recommendations on the existing legislative framework. The recommendations have been addressed by a Good Practice Implementation Group made up of 11 local authorities who have worked to ensure the implementation of the recommendations nationally.

As a result of the good practice work, Arneil Johnston was further commissioned to undertake a review of the legislation underpinning the scheme to see whether changes to legislation could also make delivery of the scheme more efficient. As part of this review, two focus groups were held with representatives from local authorities, landlord and agent organisations and tenant groups. Following the focus groups, Arneil Johnston recommended a number of changes to secondary legislation which formed the basis of a public consultation. The proposals contained within this RIA follow on from the review and the consultation³.

Rationale for Government Intervention

Registration is intended to help promote a healthy private rented sector and further enhance its contribution to meeting housing need. Registration is intended to follow a 'light touch'

¹ Figures correct at 30 November 2008

² A copy of the report can be found at http://www.arneil-johnston.co.uk/index.php?option=com_docman&task=doc_view&gid=88&Itemid=38

³ A copy of the Arneil Johnston Legislative Report can be found at http://www.arneil-johnston.co.uk/index.php?option=com_docman&task=doc_view&gid=97&Itemid=38

approach using a straightforward application process. Implementation of some aspects of landlord registration, in particular the fee and discount structure, has proved complex. The proposed changes to the secondary legislation on fees and discounts are intended to simplify the application process which in turn should lead to more effective implementation of the scheme by local authorities.

An application for registration is valid for three years from the point of approval. Once the three years has expired a new application must be submitted. This process is referred to as 'registration renewals'. The proposed legislation changes will help to prepare for the start of the registration renewals cycle in March 2009.

The amendments will also ensure consistency in the legislation in relation to transitory ownership of property by extending the 6 month exemption for executors and heritable creditors to include private insolvency practitioners (IPs). The majority of IPs are exempt from registration as they are appointed by the Accountant in Bankruptcy (AiB). A small number of private IPs take on personal bankruptcy cases but are not appointed by the AiB and are therefore required to register. The 6 month exemption will therefore affect this group of IPs.

Local authorities have a duty to provide advice and assistance to landlords in a number of circumstances in relation to landlord registration. In addition, local authorities have a duty to provide tenants with advice and assistance in particular situations: where a landlord is refused registration; where a landlord is removed from the register and; where a rent penalty notice is applied. The amendments propose to place a duty on local authorities to provide general advice in relation to letting practice and landlord registration to tenants and prospective tenants where they approach a local authority to enquire about letting practice or registration. This amendment will provide additional protection to tenants, particularly those in a potentially vulnerable position.

2. Consultation

A public consultation on the legislative proposals was carried out between July and October 2008. The consultation was issued to a wide range of stakeholders. In addition, all landlords and agents registered under landlord registration were invited to take part in the consultation. A copy of the consultation and the responses can be found at <http://www.scotland.gov.uk/Publications/2008/07/17092436/0>

A total of 141 responses were received. The majority of these (103) came from landlords and agents. 24 local authorities responded and a number of landlord associations, housing and tenant groups.

There was broad agreement to the majority of the proposals; however, there was no clear consensus on the change to the multiple area discount and the proposed change to the online discount.

The issues raised in relation to the multiple area discount centred on the proposed level of discount to be offered where an application is made to more than one local authority. The consultation proposed to make this discount 60% of the principal fee; however, this created an anomaly whereby a landlord applying to two local authorities would pay less than a landlord applying to one. A number of respondents raised this anomaly as an issue. In

addition, some local authorities raised concerns about the loss of fees resulting from the removal of the concept of a 'lead authority'. In order to address these concerns the proposed change to the regulation has been amended so that the discount offered is 50% of the principal fee when an application is made to more than one local authority.

The consultation proposed to increase the discount offered to applications made online from 10% to 20%. It was anticipated that this would increase the number of applications made online and would result in reduced bureaucracy for local authorities. The majority of respondents agreed with this proposal. However, some concerns were raised by a number of local authorities about the impact this would have on fee income. These local authorities also responded that the loss of fees would not be balanced by administrative savings. This is because applicants applying online can often require the same support as applicants applying on paper. In response to these concerns, the proposal to increase the online discount will not be taken forward.

3. Options

Option 1: Do nothing

Implementation of landlord registration would continue along current arrangements. The fee and discount structure would remain the same; private insolvency practitioners not exempt under AiB would continue to be liable to register immediately (without a 6 month exemption) and tenants would continue to receive advice and assistance in a limited set of circumstances.

Amendments to the fee and discount structure are intended to simplify the administration of the scheme for local authorities. They are also intended to make the application process easier and quicker for landlords. If the amendments to the fee and discount structure are not made, significant improvements to the administration of the scheme by local authorities would be unlikely. This has an impact for ongoing implementation of the scheme and also for the start of the registration renewal process in March 2009.

If the order relating to exemptions is not amended to include a 6 month exemption for private insolvency practitioners, the legislation will be inconsistent in its treatment of transitory ownership of property and will disadvantage private insolvency practitioners for carrying out similar work to executors and heritable creditors. However, landlord registration will continue to operate with no impact on the ongoing delivery of the scheme and no change to current practice.

If the regulations relating to advice and assistance are not amended then local authorities will continue to have a duty to provide advice and assistance to tenants when their landlord is refused registration, is de-registered, or when a rent penalty notice is served. However, local authorities will not have a duty under this Act to provide advice in relation to letting practice and landlord registration where a tenant or prospective tenant enquires about this. This will mean that tenants could be placed in a vulnerable position if they are not aware of the process and implications of landlord registration and their rights and responsibilities in relation to registration and letting.

Option 2: Amend the fee and discount structure only

The amendments to the fee and discount structure will improve the efficiency and effectiveness of landlord registration. Local authorities will have a reduced administrative burden in relation to administering the fee and discount structure and landlords/agents will benefit from reduced bureaucracy. It is anticipated that more applications will be completed accurately and that the processing time for applications will be reduced.

Option 3: Amend the fee and discount structure and introduce a 6 month exemption for insolvency practitioners.

As option 2. In addition, the treatment of private insolvency practitioners who are not exempt from registration under AiB would be brought in line with that of heritable creditors and executors who currently receive a 6 month exemption. If, after 6 months, the insolvency practitioner is still in possession of a privately rented property then they would be required to submit an application for registration. The amendment to the legislation will ensure consistency in the treatment of transitory ownership of privately rented property.

Option 4 Amend the fee and discount structure, introduce a 6 month exemption for insolvency practitioners and extend the duty on local authorities to provide advice and assistance.

As option 2 and 3. In addition, the duty on local authorities to provide advice and assistance to tenants where their landlord is refused registration, de-registered, or where a rent penalty notice is served, will be extended so that local authorities will have a duty to provide general advice in relation to landlord registration and letting practice to tenants and prospective tenants.

4. Costs and Benefits

Current costs of delivering the scheme

The Scottish Government has supported local authorities with the costs of implementing the scheme through the provision of grant funding. A total of £5.2m grant funding was made available to local authorities between February 2006 and March 2008 to support the start-up costs associated with the delivery of the scheme. Under the Concordat arrangements between Local Authorities and the Scottish Government, baseline grant funding of £1.98m per annum in 2007-08 for landlord registration has been rolled up in the overall local government settlement for the period 2008-11. Ongoing funding arrangements for registration activity will be determined locally, in line with the Concordat.

It is the Scottish Government's intention that the scheme moves to full cost recovery over time and that local authority fee income supports the ongoing administration of the scheme. This is in line with other licensing regimes, in particular, HMO licensing.

The Act makes provision for fees to be charged for an application for registration. These fees are currently set nationally by Ministers. We intend to continue to set fees nationally for the reasons outlined below.

For the period April 2006 to March 2008 local authorities received approximately £5m in income through registration fees. An application for registration lasts for 3 years from the point of approval. Therefore, a landlord/agent will only be required to pay a fee every 3 years, unless additional properties are subsequently registered. This means that, broadly speaking, local authority fee income over the three year cycle in terms of the registration renewal process should be approximately £1.7m per annum. This is based on the current number of landlords and agents registered with the scheme. With an increased focus on enforcement of the scheme over the coming months, we expect the numbers of landlords applying for registration, and, hence, fee income, to increase. In addition, a number of local authorities report outstanding fee payments which, once collected, should further increase income under the scheme. The amount of fee income collected by local authorities varies according to the number of landlords and properties in any given area.

Since April 2008 a further 17,801 landlords and agents have submitted an application for registration. Around 17,950 properties were contained within these applications. This figure includes joint owners and applicants eligible for a discount; however we can estimate that the fee income generated from these new applications has given local authorities an additional £1million.

A significant part of the registration process is the online system. The Scottish Government currently funds both its provision (including the central server) and continuing technical support. The Scottish Government is also taking forward a comprehensive package of measures to improve the online system, to make applying online easier for landlords and more efficient for local authorities to process applications. These costs are not passed on to local authorities.

Local authority finance returns, outlining income and expenditure under the scheme for the period grant funding was made available (February 2006 to March 2008) point to considerable variation in the costs of administering landlord registration. Overall, local authorities report expenditure of approximately £6.6m. This includes expenditure on start up costs, to recruit and train staff and establish local systems and processes, as well as additional staff costs associated with processing the backlog in applications. Scottish Government grant funding was provided to support these costs.

Arneil Johnston undertook an expenditure analysis earlier this year, based on local authority finance returns up to September 2007. This exercise was intended to draw conclusions on the average cost of processing applications in order to provide a benchmark for local authorities and to inform the Scottish Government's consideration of how fees should be set, the level of fees and whether these should be reviewed. However, the results from this work were inconclusive. Arneil Johnston found that levels of income and expenditure varied significantly between local authority areas. Variations were not always linear, for example, increased costs associated with increased numbers of landlords. Some local authorities had experienced particular difficulties with the administration of the scheme, including the interface with the online system; others had established separate processes and business practices to support delivery; staffing levels and grades were also variable. For these reasons Arneil Johnson were unable to determine a benchmark cost for delivering the scheme. Given the patchy information available to date on costs, we are not proposing any changes to how the principal fee is set and its level at this time. Instead, we believe that the significant progress made in delivering the scheme over the last year needs time to bed in. We can expect reduced administrative costs associated with the Good Practice Review and changes to

local authority business processes. The changes proposed will also help to reduce the administrative burden on local authorities and, hence, the cost of the scheme overall.

This approach was supported by the focus groups who examined the legislation underpinning the scheme, although a minority of local authorities would like to determine fee levels locally. As any determination of local fee levels would be based on cost recovery, we do not feel that there is sufficiently robust evidence on the costs of delivering the scheme to support this approach at this time. In addition, none of the local authorities at the focus groups had carried out any cost analysis locally on delivery of the scheme. We feel there would be significant practical feasibility issues associated with local authorities setting their own fees at this time. In particular, building variations in local fee rates into the online application system before March 2009 would be challenging. We will, however, continue to monitor the cost of delivering the scheme and will keep the position of local fee setting under review.

Sectors and groups affected

- *Landlord and agents:* since April 2006 all landlords of privately rented property are required to register with the relevant local authority in order to be assessed as fit and proper to let property. Any agent declared in a landlord's application for registration must also be assessed as fit and proper. Agents can also apply voluntarily to be registered. There are a limited number of exemptions relating to types of let property. The amendments proposed to the fee and discount structure will affect the majority of registration applicants, with some specific groups in particular being affected – landlords/agents with let property in more than one local authority, accredited landlords in Dumfries and Galloway and South Ayrshire, charities, joint owners and single property agents.
- *Other businesses:* private insolvency practitioners who are not exempt under AiB will be affected by the proposed change to registration exemptions.
- *Local Authorities:* responsibility for implementing landlord registration rests with local authorities. Each local authority is responsible for identifying landlords who are required to register and for ensuring that the registration process is completed satisfactorily. Local authorities are responsible for carrying out the fit and proper test in relation to landlords and agents. The proposed changes will affect the administration of the scheme locally.
- *Tenants:* the scheme is designed to increase standards in the sector and to make the sector more visible to tenants (and neighbours of let property). The public register allows tenants to check that their landlord is registered and has been assessed as fit and proper. The amendment to the advice duties of local authorities will increase the support available to tenants and prospective tenants.
- *Scottish Government:* retain overall policy control of landlord registration and support local authorities in their implementation of the scheme. The Scottish Government has provided grant funding to local authorities to support administration costs and also funds the development and support costs associated with the IT system.

Benefits

Option 1: Do nothing

Option	Cost	Benefit
1	<p>General</p> <ul style="list-style-type: none">• Costs of scheme delivery will remain the same for local authorities.• No changes required to IT system, representing a saving of around £6,250 to the public purse• No decrease in the administrative burden on local authorities and applicants <p>Fees/discounts</p> <ul style="list-style-type: none">• Landlords/agents will see no change in the fees they pay or discounts they receive• No increase in efficiency of the system as a result of the fee and discount amendments <p>Exemptions</p> <ul style="list-style-type: none">• Insolvency practitioners who are not exempt under AiB will continue to register without a 6 month exemption. Costs will remain the same for the applicant and for the local authorities in processing applications. <p>Advice and Assistance</p> <ul style="list-style-type: none">• Tenants will not see an increase in the advice they receive from local authorities.• There will be no additional cost to local authorities of providing increased advice to tenants and prospective tenants.	<ul style="list-style-type: none">• No changes required to the legislation• No changes required to the current application process for either local authorities or applicants• No changes required to the IT system other than those already identified under the Good Practice Review and those changes required to facilitate registration renewals.

Option 2: Amend the fee and discount structure only

This section considers the costs and benefits associated with amending the fee and discount structure. Each amendment is considered in turn. For all changes the central IT system will require amendment. The estimated cost of this is £6,250 which will be borne by the Scottish Government. However, the simplification of the fee and discount structure should lead to a reduced level of required IT support from local authorities, therefore resulting in a cost saving to the Scottish Government for the IT support contract each month. It is estimated that this could be around £1,000 per month.

When making an application for registration, landlords and agents pay a fee relevant to their circumstances. The key elements of the fee structure are the principal fee (£55) with an additional property fee for each property registered (£11 per property). There are also a number of additional fees and fixed discounts.

Multiple Area Discount

Applicants applying to more than one local authority simultaneously using the online system currently pay the principal fee of £55 to one (lead) authority and a discounted principal fee (£13.75) to each additional local authority. This discount was intended to reflect that the main burden of processing an application to multiple authorities would be undertaken by one lead authority, with other authorities carrying out a reduced level of scrutiny and therefore requiring a reduced fee to compensate them for this activity.

In practice, an application made to multiple authorities requires the same amount of work in each area. The concept of lead authority therefore only applies to the application of the discount. This has resulted in an inequitable distribution of fees between authorities. The discount has also been complex to administer, often resulting in incorrect payments being made.

The amendment proposed will remove the concept of ‘lead’ authority and will introduce a system whereby a simultaneous online application to more than one authority will be subject to a flat rate discount of 50% on the principal fee. In addition, where an applicant renews a current registration online and has an active registration in more than one other authority, a discount of 50% will be applied regardless of whether the application is made simultaneously.

Option	Cost	Benefit
2	<ul style="list-style-type: none"> • Cost implications for landlords and agents will vary depending on how many local authorities they are registered in. A full breakdown of the costs is provided at Annex A. • Landlords and agents registering in three local authorities or less will see the principal fee they pay remain the same or reduce. This will affect around 121,729 landlords/agents. • Landlords and agents registering in more than three local authorities will see the principal fee they pay increase. The amount of increase will vary depending on the number of local authorities. This will affect around 581 landlords/agents. • Local authorities could potentially see an increase or a decrease in fee income, depending on whether or not they are currently classed as a ‘lead’ authority for the purposes of a consecutive application. Lead authorities currently receive the full principal fee of £55 on an application. This will reduce to £27.50 where the multiple area discount is applied. • Those authorities who were not previously classed as ‘lead’ authority will see an increase in fees from £13.75 per application to £27.50. • It is not possible to estimate the actual cost of 	<ul style="list-style-type: none"> • Local authorities will benefit from a more equitable distribution of fees where an application is made to more than one local authority, in order to compensate them for the fit and proper activity carried out. • The fee and discount structure will be simplified. This will reduce the administrative burden for local authorities. • Landlords and agents will benefit from transparency in the application of fees and discounts, and will benefit from a simplified application process. • Saving to the public purse with reduced IT support costs.

	the changes to the discount for individual local authorities due to the complex nature of the information held.	
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Remove the 100% discount for accredited landlords

Landlords who are accredited under a landlord accreditation scheme which operates a fit and proper test currently receive a 100% discount on landlord registration. A property fee is still required for any non-accredited properties. There were only two accreditation schemes in Scotland that included the fit and proper test in their application requirements (Dumfries and Galloway and South Ayrshire). The local Dumfries and Galloway scheme is no longer in operation. The recently launched national voluntary accreditation scheme, Landlord Accreditation Scotland, and the majority of local accreditation schemes, do not operate a fit and proper person test. Landlord Accreditation Scotland is free to join although members are expected to attend training sessions which do incur a charge.

The amendment proposed will remove the 100% discount for accredited landlords.

Option	Cost	Benefit
2	<ul style="list-style-type: none"> Landlords currently receiving the 100% discount will be required to pay a fee at the point of registration renewal – approximately 1,075 landlords representing 2,649 properties will be affected. The cost to existing accredited landlords who renew their registration, and new landlords who would previously have received a discount, will be the £55 principal fee plus £11 for each property let. Dumfries and Galloway and South Ayrshire Councils will receive an increase of approximately £88,000 in fees (based on each registered landlord having two properties). 	<ul style="list-style-type: none"> Removal of the discount will reinforce the message that registration is the minimum standard for landlords to meet, with accreditation building on this through best practice. The removal of the discount will help to simplify the overall fee and discount structure Saving to the public purse with reduced IT support costs

Increase the Charities Discount from 80% to 100%.

Charities applying for registration currently receive a discount. This is currently 80% of the total amount payable (principal fee plus property fee). In practice the application of this discount has placed an administrative burden on local authorities when processing payment which is disproportionate to the fees being sought. For example, when an online discount has been applied in addition to a charity discount, some authorities have reported invoicing for as little as £2.50, meaning that the cost of issuing an invoice (around £8-12) can outweigh the fee collected.

The amendment proposed will increase the charities discount from 80% to 100%. The late application fee of 200% of the principal fee will still apply and charities could still be liable to pay this amount if they fail to register when asked to do so by a local authority.

Option	Cost	Benefit
2	<ul style="list-style-type: none"> • Approximately 450 charities are currently registered. A typical fee charged would be £13 (discounted principal and one property fee). We do not know the total fee paid by each charity given the differences in number of properties depending on the charity. • Loss of income from fees for local authorities expected to be around £6,000 nationally (based on current number of registered charities). • Reduced administration costs for local authorities where invoicing is involved. 	<ul style="list-style-type: none"> • Reduced administration for local authorities increasing the efficiency of the application process • Charities will benefit from reduced costs and reduced bureaucracy of the application process. • Saving to the public purse with reduced IT support costs

Remove the Single Property Agent Discount

When applying for registration a landlord must declare any agent who acts for them in relation to the property. An agent who manages more than one property on behalf of a landlord(s) will pay the full principal fee of £55. An agent operating in relation to only one property currently receives a 50% discount on this principal fee. This discount was intended to encourage single property agents to register, for example, to encourage registration by family members who may be new to private renting and who are acting as an agent for a property.

In practice this discount has caused confusion and an administrative burden for local authorities who are required to establish the correct payment due and ensure this is collected and amended on the IT system. This is because people can be unclear as to whether they are a single agent or a single landlord and whether the discount applies. Some agents with more than one property have also stated they are a single agent to avoid paying the full fee. When genuine single agents add another property to their portfolio there is currently no legislative facility to enable the local authority to charge the remaining 50% of the full fee.

Option	Cost	Benefit
2	<ul style="list-style-type: none"> • There are approximately 1850 applicants who have claimed the single property agent discount. This includes applicants claiming the discount incorrectly. Agents who manage only one property will see their principal fee increase from £27.50 to £55. • Local authorities will see an increase in income from fees of approximately £50,000 nationally. 	<ul style="list-style-type: none"> • The removal of the discount will reduce the administrative burden on local authorities • Agents and landlords will benefit from a clearer and more straightforward application process. • Saving to the public purse with reduced IT support costs

Extension of the Joint Owner Family Member Discount to all Joint Owners

Joint owners who are family members currently receive a 100% discount on the principal fee. A lead joint owner is nominated and pays the full fee, with family members registering their details but not paying a fee. This practice ensures that each registered person is assessed as fit and proper to let property, but minimises the financial burden for joint owners of property who are family members.

In practice local authorities have reported difficulties with processing joint owner applications where the joint owner family member discount is not applicable. The process for registering and charging the correct fee to unrelated joint owners can be complex and has led to delays in processing. Joint owners currently make separate application for registration which are then linked for the purposes of administration. Delays are often experienced with some joint owners failing to complete their applications quickly. There have also been problems with joint owners claiming they are related when they are not, which then leads to additional checks and invoicing further down the line.

If the joint owner family member discount is extended, all joint owners will still need to be assessed as fit and proper by the relevant local authority. However, the complexity of administering this discount correctly will be reduced which should result in administrative savings for local authorities.

Option	Cost	Benefit
2	<ul style="list-style-type: none">• There are approximately 50,000 joint owners currently registered on the system. Of these, around 3700 are unrelated and would therefore not qualify for the joint owner discount. It is not known how many of these unrelated joint owners are currently registered as 'lead owner' but we can estimate approximately 50% fall into this category. On this basis, 50% (or 1850) would become eligible for a discount as a result of the change, with the remaining 50% still liable to pay a fee as 'lead owner'.• Joint owners who become eligible for a discount as a result of the proposed change will no longer be required to pay the principal fee of £55.• The total loss of income for local authorities as a result of extending the discount is anticipated to be around £101,750, based on the above assumptions.	<ul style="list-style-type: none">• The removal of the discount will reduce the administrative burden on local authorities. There will be a reduction in the costs of processing an application.• Agents and landlords will benefit from a clearer and more straightforward application process.• Saving to the public purse with reduced IT support costs

Additional Amendments

In addition, the fees regulations also clarify the policy intention in the treatment of fees payable where a landlord specifies an agent who acts on their behalf in their application; and the fee charged where a landlord holds an HMO licence in one local authority area and makes an application for registration in another local authority area where they are not registered. In

both instances the applicant is eligible for the multiple area discount where that is applicable. The amended regulations also clarify the fee exemption for registered social landlords and local authorities where these groups are specified as acting as an agent within a landlord's application for registration. These amendments reflect current practice therefore local authorities and applicants should see no change.

Summary of Option 2

The table below summarises the main costs and benefits associated with this option.

Option	Cost	Benefit
2	<p><i>Landlords and Agents:</i></p> <ul style="list-style-type: none"> • Cost implications for the changes to the consecutive discount will vary for landlords and agents depending on how many local authorities they are registered in. • Landlords accredited under the Dumfries and Galloway and South Ayrshire accreditation schemes will see an increase in fees as the accreditation discount is removed (principal fee of £55 and property fee of £11 will be payable). • Charities will receive a 100% discount on fees as a result of the increase to the charities discount. • Single property agents will no longer be eligible for a discount and will see an increase in the fee payable (£55 as opposed to current fee of £27.50). • Joint owners who are not family members will benefit from a 100% discount on the principal fee where they are not the 'lead owner'. <p><i>Local Authorities:</i></p> <ul style="list-style-type: none"> • Cost implications for local authorities resulting from the changes to the consecutive discount will vary depending on whether or not they previously received the 'lead' authority fee. • Dumfries and Galloway and South Ayrshire councils will see an increase in fees as a result of the removal of the accreditation discount (approximately £88,000). • Local authorities will see a reduction in fee income as a result of the increase to the charities discount (approximately £6,000). • Local authorities will see an increase in fee income as a result of the removal of the single property agent discount (approximately £50,000). • Local authorities will see a reduction in fee 	<ul style="list-style-type: none"> • Simplification of the overall fee and discount structure • Reduced administration for local authorities increasing the efficiency of the application process • Agents and landlords will benefit from a clearer and more straightforward application process. • Savings to the public purse with reduced IT support costs

	<p>income of approximately £101,750 as a result of the change to the joint owner discount.</p> <ul style="list-style-type: none"> • Reduced administration costs for local authorities where invoicing is involved. 	
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Option 3: Amend the fee and discount structure and introduce a 6 month exemption for insolvency practitioners.

Costs and benefits as per Option 2.

The general approach of landlord registration is to provide a register of all landlords, except social landlords, and the properties they let. There is a limited list of exemptions to registration. Exemptions are provided as appropriate where the underlying principles of registration are not applicable.

A 6 month exemption currently exists for executors and heritable creditors which reflects the transitory nature of their involvement with the relevant property and is designed to provide flexibility under certain circumstances. If the executor or creditor continues to hold the property beyond the initial 6 month period, and it continues to be let, they are required to apply for landlord registration. Since the executor or creditor does not obtain the house deliberately with the intention of becoming a landlord, this provides a reasonable period for them to resolve the situation, whilst giving protection to tenants in the longer term.

There are a range of circumstances in which insolvency practitioners may take ownership of a property, normally with the intention of disposing of it in order to realise the value to pay creditors of the insolvent person or company. In some cases such property may include privately rented housing. Most insolvency practitioners dealing with personal bankruptcy works are appointed under the auspices of the Accountant in Bankruptcy and therefore benefit from crown immunity from the need to register as landlords. However, a small number of personal cases are handled by private insolvency practitioners to whom crown immunity would not apply.

We consider that the position of private insolvency practitioners who take ownership of rented houses is equivalent to that of executors or creditors, and we therefore propose that insolvency practitioners should therefore benefit from an equivalent short term exemption.

Option	Cost	Benefit
3	<ul style="list-style-type: none"> • Costs as per option 2 • We do not know the number of insolvency practitioners currently registered with landlord registration and are therefore unable to estimate the cost implications for insolvency practitioners and local authorities. • However, the number of applicants affected by this change is thought to be small. The loss of income to local authorities will be therefore be minimal. 	<ul style="list-style-type: none"> • Benefits as per option 2. • The legislation will be consistent in its treatment of transitory ownership of property.

Option 4 Amend the fee and discount structure, introduce a 6 month exemption for insolvency practitioners and extend the duty on local authorities to provide advice.

Costs and benefits as per Option 2 and 3.

Local authorities have a duty to provide advice and assistance in a number of circumstances in relation to landlord registration. Information on what constitutes good practice in letting properties should be provided to each applicant at some stage in the process leading to registration or on registration. There are a number of ways in which this requirement can be met, for example providing applicants with information leaflets on private renting and the law and providing links to suitable advice on the internet.

Where a local authority proposes to refuse to register or de-register an applicant and if it considers that the applicant or registered person may be able to take steps to achieve registration or to prevent de-registration, then it must provide appropriate advice on what steps could be taken.

In addition, there is also a duty on local authorities to provide tenants with advice and assistance in particular situations, where the local authority:

- Refuses to register a landlord
- Removes a landlord from the register
- Applies a rent penalty notice

The intention is to ensure that tenants and occupants are aware of the potential consequences for them of action taken against the landlord, of their rights in that connection and of sources of help and advice should they need it.

Advice and assistance provided to tenant usually includes details of the following:

- Security of tenure and evictions
- Sources of money and benefits advice
- Homelessness services and duties of the local authority

In the majority of cases, Scottish Government or Local Authority leaflets are available on these subjects for issue to tenants.

We propose to extend the above duty so that local authorities will have a duty to provide advice to tenants and prospective tenants in relation to letting practice and landlord registration when an enquiry is received. This could involve advising the tenant of their rights and responsibilities, for example, through the provision of an information leaflet, and steps that the local authority can undertake to enforce registration.

A number of local authorities already provide advice to tenants in these circumstances. The amendment will ensure that all tenants have access to advice on private renting.

Option	Cost	Benefit
4	<ul style="list-style-type: none"> • Costs as per option 2 and 3 • We are aware that a number of local authorities already provide advice to tenants where they report that their landlord may be unregistered. The cost of this advice is met through current local authority resources and local authorities can usually draw on existing materials, for example, tenant leaflets. The cost of the proposed duty on those local authorities who do not currently provide advice is thought to be small. • In order to quantify the impact on local authorities, information on current levels of enquiries in Glasgow and Edinburgh have been used. Neither Council felt that the burden of increasing the advice and assistance duty was onerous. Glasgow City Council estimate that around 20 calls per month (minimum) are received from tenants reporting an unregistered landlord. The Council responds to each enquiry, and the time spent averages around 10-15 minutes. • City of Edinburgh Council estimate they receive around 260 calls a month covering queries from unregistered landlords to requests for applications. Around 65% of these calls are routine and take around 5 minutes to deal with. The remaining 35% are more complex and take an average of 15-20 minutes to resolve. Clearly in both cases there may be follow up work for councils to do, for example to follow up on a reported unregistered landlord. This would be part of local authorities' existing enforcement procedures. 	<ul style="list-style-type: none"> • Benefits as per option 2 and 3 • Tenants will receive appropriate advice where they have concerns and will be clear about their rights and responsibilities.

5. Small/Micro Firms Impact Test

Many private landlords are small or micro businesses. Landlord registration statistics suggest the average size of a private landlord's property portfolio is 1.6 properties. Clearly the actual size varies depending on the size of the landlord's business. Landlords with the smallest number of houses often treat letting as their secondary source of income, but they still want their letting business to be profitable.

The current fee structure is intended to minimise the cost implications of landlord registration for landlords. The structure is designed to broadly meet the running costs of the registration scheme within a local authority, including administering and enforcing the scheme. Fees are set at a level deemed to be reasonable for applicants and also taking into account differing circumstances where it may be appropriate for additional fees and discounts to be applied.

In practice, the fee and discount structure has proved complex to administer by local authorities and has often caused confusion amongst applicants as to the fee amount due. The complexities of the structure have caused administrative delays and increased bureaucracy for applicants. The proposed amendments to the fee and discount structure are designed to make it easier to apply for registration and are also intended to reduce the administrative burden for both local authorities and applicants.

The cost implications for the changes to the fee and discount structure for individual landlords and agents are outlined below:

Type of landlord	Impact
Consecutive Discount	Cost implications for landlords and agents will vary depending on how many local authorities they are registered in. See Annex A.
Accredited landlords in Dumfries and Galloway and South Ayrshire	<p>For registered landlords who renew their application and for new applicants, the accreditation discount will no longer apply. Landlords will therefore be required to pay the principal fee of £55 and a property fee of £11 for each property let.</p> <p>As the Dumfries and Galloway scheme is no longer in operation, the number affected will be approximately 1,300.</p>
Charities	<p>Charities will no longer be required to pay a fee for registration.</p> <p>The number affected is approximately 450.</p>
Single property agents	<p>Agents acting in relation to only one property have previously received a 50% discount on the principal fee. This will no longer apply. Single property agents will therefore be required to pay the full principal fee of £55.</p> <p>The number affected is approximately 1850.</p>
Joint owners	<p>Joint owners who are not family members currently pay a principal fee of £55 to register. This requirement will be removed, resulting in a small cost saving to joint owners.</p> <p>The number affected is approximately 1850.</p>

Based on the above, the cost impact on individual private landlords and agents is thought to be minimal. In some cases they will benefit and in some cases they will see an increase in the fee payable. Any cost increase should be balanced by improved administration of the scheme.

Private insolvency practitioners who are currently liable to register will benefit from the introduction of a 6 month exemption from registration. This will bring the treatment of insolvency practitioners in line with that of executors and heritable creditors and will therefore ensure consistency in the legislation.

There should not be any impact on small/micro firms as a result of the proposed amendments to the advice and assistance regulations.

6. Legal Aid Impact Test

There should be no impact on legal aid as a result of these proposals.

7. Test run of business forms

The application process for landlord registration can be completed online via the landlord registration website, or by submitting a paper application. The proposed changes to the legislation will result in amendments to both the online and paper application forms, as well as changes to the online system for the processing of applications. An IT sub-group made up of local authority representatives, is involved in the detailed development of all amendments to the online system. It is intended that this group and other available local authorities will test the online system and the paper application to ensure that it is simple and easy to use.

8. Competition Assessment

Because the registration requirement is general, the amendments should have no significant effect on the relative competitiveness of well-run landlord businesses of equivalent size. The cost implications for landlords and agents for each of the amendments are small and have been kept to a minimum.

It is not thought that the increase in fees for some landlords and agents will impact on investment decisions by prospective landlords or by existing landlord contemplating alternative ways of investing. For most investors costs on this small scale will not have a determining impact by comparison with changes in other economic factors affecting investment decisions.

9. Enforcement, sanctions and monitoring

The enforcement of the registration requirement, including those aspects dealt with in the regulations, is carried out by local authorities. The Act provides them with sanctions to deal effectively with landlords who fail to comply, but the local authorities should seek to correct the situation before considering applying sanctions. These sanctions are considered to be appropriate and sufficient for ensuring the robust enforcement of registration. However, the success of enforcement is reliant on local authorities using the available sanctions. Work is ongoing with local authorities to support them in progressing with enforcement of the scheme.

The amendments to the regulations will not affect the current enforcement procedures for registration and no additional sanctions are required as a result of the changes.

The Scottish Government will continue to monitor the implementation of landlord registration by continuing contact with local authorities, including analysis of management information from the registration system and contact with local authorities through the National Network of lead officers and the various sub-groups in existence.

10. Implementation and delivery plan

The amendments to the regulations will come into force on 12 February 2009. This will mean that the amendments are in place in time for the start of the registration renewals cycle which is due to begin in March 2009.

Adjustments to the IT system will be introduced to coincide with the amendments coming into force. Guidance for local authorities on changes to process and the IT system will be produced by the Scottish Government and the IT supplier.

Guidance and information on the changes aimed at landlords, agents and tenants will also be prepared and disseminated through local authorities, agents, representative organisations and other channels, as well as being published on the Scottish Government website and the Landlord Registration website. Dissemination will be linked to local authorities' own local arrangements for publicity and also to prepare for the start of registration renewals.

11. Post-implementation review

The implementation of landlord registration will continue to be monitored using statistical data from the landlord registration IT system. The Scottish Government is committed to a full evaluation of landlord registration in 2010.

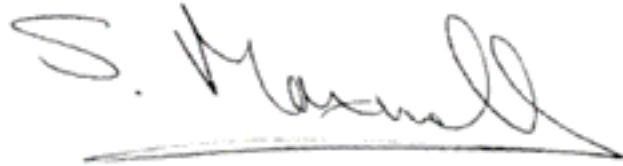
12. Summary and recommendation

On the basis of the costs and benefits above, option 4 is recommended as it delivers the objective of improving the efficiency and effectiveness of landlord registration to the benefit of local authorities, landlords/agents and tenants. The amendments will also assist preparation for the start of the registration renewal process in March 2009.

It is recommended that the amendments to the instruments are introduced into Scottish law.

DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

A handwritten signature in black ink, appearing to read 'S. Maxwell', is written over a horizontal line. The signature is cursive and somewhat stylized.

Signed by the accountable Minister _____

STEWART MAXWELL
Minister for Communities and Sport

Date 26/11/2008

Annex A

Multiple Area Discount – Table of Costs

Number of local authorities the landlord is applying to	Current rate, £55 principal fee, plus discounted rate of 75%	50% discounted rate	Number of landlords/agents affected (estimated)
1	55	n/a	115,692
2	68.75	55	5224
3	82.50	82.50	813
4	96.25	110	269
5	110	137.50	109
6	123.75	165	65
7	137.50	192.50	37
8	151.25	220	21
9	165	247.50	14
10	178.75	275	9
11	192.50	302.50	5
12	206.25	330	8
13	220	357.50	8
14	233.75	385	6
15	247.50	412.50	2
16	261.25	440	2
17	275	467.50	5
18	288.75	495	1
19	302.50	522.50	3
20	316.25	550	1
21	330	577.50	3
22	343.75	605	4
23	357.50	632.50	0
24	371.25	660	0
25	385	687.50	4
26	398.75	715	0
27	412.50	742.50	1
28	426.25	770	1
29	440	797.50	0
30	453.75	825	1
31	467.50	825.50	0
32	481.25	880	2

NB The figures relating to registrations in a high number of local authorities are likely to relate to agents as opposed to landlords.