

Regulatory Committee

09.30am, Monday, 23 August 2021

Landlord Registration – Previous Convictions

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee:
 - 1.1.1 Notes the contents of this report and the revised process for considering fitness of landlords to be entered onto the register.

Paul Lawrence

Executive Director of Place

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Landlord Registration – Previous Convictions

2. Executive Summary

- 2.1 This report briefs members on the process for checking the previous convictions of applicants who wish to be included on the Register of Landlords, and explains that this process differs from standard licence applications
- 2.2 The relevant legislation has changed, meaning that a more limited number of convictions may now be taken into account by the Council when deciding whether a landlord is fit and proper to enter the register.
- 2.3 Members should note that this does not change the existing process for the Committee's consideration of applications.

3. Background

- 3.1 Landlord Registration was introduced in 2006 under the Antisocial Behaviour etc. (Scotland) Act 2004. Subject to some statutory exceptions, it requires landlords of let properties and Houses of Multiple Occupancy to register with their local authority. The registered person is required to be a fit and proper person. The matters to which the local authority must have regard in considering whether a registered landlord is a fit and proper person are laid out in the Antisocial Behaviour etc. (Scotland) Act 2004.
- 3.2 The Act provides that the Committee must have regard to certain material including whether the landlord has contravened any provision of the law relating to housing, or landlord and tenant law. The actions of the landlord in relation to any antisocial behaviour affecting a house which they let or manage must also be taken into account.
- 3.3 As part of the registration process, applicants are asked to disclose relevant criminal convictions. Consideration must be given to any material that shows that the applicant has committed any offence involving:
 - Fraud or other dishonesty;
 - Violence;
 - Drugs;

- Discrimination;
 - Firearms (within the meaning of section 57(1) of the Firearms Act 1968); or that the applicant has
 - Committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995.
- 3.4 The Rehabilitation of Offenders Act 1974 ('the 1974 Act') and associated legislation provide that spent convictions and 'protected spent convictions' may not be referred to.
- 3.5 The 1974 Act provides that if a local authority is satisfied, taking into account relevant considerations such as evidence already before it, that justice cannot be done except by requiring evidence relating to a person's spent convictions then this information may be required and considered. There is an established 'two step' process for determining whether or not such information should be heard. It is generally accepted that this provision could allow such convictions to be taken into consideration.

4. Main report

- 4.1 There are currently 57,484 registered landlords in the city. Over the last year 240 applicants have declared convictions. In the majority of these applications the convictions declared are not relevant to any of the criteria covered within 3.2 and 3.3 of this report, and therefore had no bearing on the applicant's fitness and propriety to be a landlord.
- 4.2 If a landlord declares a conviction the application is assessed by officers within the Directorate, in line with the Antisocial Behaviour etc. (Scotland) Act 2004 and the associated statutory guidance.
- 4.2.1 Where the offences do not have an impact on the fitness and propriety of the applicant to act as a registered landlord - for example drink driving or other crimes not outlined in 3.4 above - these applications will normally be approved and the landlord entered into the register.
- 4.2.2 Where the offence/s may have an impact on the fitness and propriety of the applicant to act as a registered landlord - for example assault/drugs/sexual offences - the applications will be assessed by a panel consisting of the Regulatory Managers for Licensing and Trading Standards and Enforcement.
- 4.3 Thereafter for convictions which are relevant the Directorate will request that Police Scotland provides relevant details for Committee consideration. Police Scotland then provides the City of Edinburgh with a letter disclosing the details of the offences that an applicant has been convicted of, provided the convictions are within the disclosure periods set out in the 1974 Act.
- 4.4 After taking the offence/s into consideration, a decision will be made regarding whether or not the application should be granted or alternatively should be brought

before the Licensing Sub-Committee so that it can hear details of the offence/s and hear from Council Officers, Police Scotland and the applicant or their representative. The Committee will then decide whether the applicant is fit and proper to be a registered landlord in Edinburgh.

Changes to the legislation

- 4.5 In November 2020 the disclosure periods for most offences in Scotland were reduced as a result of amendment to the 1974 Act. For example, prior to the change a fine had to be disclosed for up to five years after conviction. As a result of the change a fine must now only be disclosed up to a year after the conviction.
- 4.6 Correspondence from Police Scotland (Appendix 1) confirms that only details of disclosed convictions which fall within the newly reduced disclosure periods may now be supplied to the Council with respect to applications for landlord registration.
- 4.7 Therefore, taking into account the changes to the legislation and the correspondence from Police Scotland, the following process will now be used to determine whether or not to bring an applicant before the Licensing Sub Committee for determination of whether or not the applicant is fit and proper.
 - 4.7.1 An application for landlord registration will generally only be referred to the Licensing Sub Committee where Police Scotland have provided a letter detailing previous convictions upon request;
 - 4.7.2 If an applicant has provided details of a protected spent conviction in error, this information should be disregarded and such applications will not be referred to Committee
 - 4.7.3 If the Council is aware of relevant information from other sources relating to the matters described in 3.2 and 3.3 above, the application may be referred to the Committee.
- 4.8 The Committee and the city's tenants may be reassured that the vast majority of registered landlords have no relevant convictions to disclose, and that often any convictions which do exist have no bearing on the applicant's fitness and propriety to be a landlord. Regardless of convictions, should landlords fail to fulfil their legal responsibilities to their tenants, the Licensing Enforcement team and Police have relevant powers to take appropriate enforcement action. This may include seeking the removal of the landlord from the Register of Landlords.

5. Financial impact

- 5.1 Any costs implementing policy changes will be contained within the current ring-fenced income generated from licence application fees.

6. Stakeholder/Community Impact

- 6.1 The development of policy in respect of the registration of landlords is part of the wider policy-making role for the Council.
- 6.2 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 6.3 The contents and recommendations described in this report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.

7. Background reading/external references

- 7.1 [Landlord registration: Statutory guidance for local authorities](#)

8. Appendices

- 8.1 Appendix 1 – Police Scotland Letter dated 4 June 2021: Introduction of the Management of Offenders (Scotland) Act 2019.

Appendix 1

04/06/21



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City of Edinburgh Council
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Marc Copland
Sergeant

Liquor and Civic Licensing
St Leonards Police Station
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Dear Ma'am,

INTRODUCTION OF THE MANAGEMENT OF OFFENDER (SCOTLAND) ACT 2019, AND ITS IMPACT ON REHABILITATION OF OFFENDERS ACT 1974 IN RELATION TO MATTERS REGULATED BY LICENSING SUB-COMMITTEE

Introduction

The Rehabilitation of Offenders Act 1974 primarily exists to support the rehabilitation into employment of reformed offenders. Following a specified time, which varies according to the disposal administered or sentence passed, convictions become considered 'protected'. This means the person does not require to disclose the conviction on applications for a job, or specifically for the purposes of the Licensing Sub Committee, on an application for a licence. There are however, some exceptions to that, depending on the sentence given, and the type of licence applied for.

The following is provided to members of The Licensing Sub Committee for their information in relation to the legislative measures placed upon Police Scotland when disclosing convictions of applicants and licence holders in order to assist in the Committee's decision as to whether they meet the 'fit and proper person' test.

Information

On 30th November 2020, The Management of Offenders (Scotland) Act 2019 amended the Rehabilitation of Offenders Act 1974 to reduce disclosure periods for the vast majority of sentences issued by courts in Scotland, in order to assist convicted persons, who do not re-offend, to move on with their lives as if the conviction did not exist. This is considered a 'protected conviction'. The tables below illustrate the new disclosure periods for sentences issued in Scotland.

Table A: Rehabilitation periods for custodial sentences and community sentences

Sentence/disposal	Rehabilitation period for adults (aged 18 and over when convicted) from end of sentence including licence period	Rehabilitation period for young people (aged under 18 when convicted) from end of sentence including licence period
Community order or youth rehabilitation order+	Total length of order plus 1 year	Total length of order plus 6 months
Prison sentence or detention in a young offender institution for 6 months or less	Total length of sentence (including licence period) plus 2 years	Total length of sentence (including licence period) plus 18 months
Prison sentence or detention in a young offender institution for over 6 months and up to and including 30 months (2½ years)	Total length of sentence (including licence period) plus 4 years	Total length of sentence (including licence period) plus 2 years
Prison sentence or detention in a young offender institution for over 30 months (2½ years) and up to 48 months (4 years)	Total length of sentence (including licence period) plus 7 years	Total length of sentence (including licence period) plus 3½ years
Imprisonment or detention in a young offender institution	Never spent	Never spent

Sentence/disposal	Rehabilitation period for adults (aged 18 and over when convicted) from end of sentence including licence period	Rehabilitation period for young people (aged under 18 when convicted) from end of sentence including licence period
for over 48 months (4 years) or a public protection sentence		

(NACRO, 2021)

Table B: Rehabilitation periods which do not have buffer periods so start from the date of conviction

Sentence/disposal	Rehabilitation period for adults (aged 18 or over at the time of conviction or at the time the disposal is administered)	Rehabilitation period for young people (aged under 18 at the time of conviction or at the time the disposal is administered)
Simple caution/youth caution++	Spent immediately	Spent immediately
Conditional caution/ youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Absolute discharge	Spent immediately	Spent immediately
Bind over	At the end of the order	At the end of the order
Conditional discharge order	At the end of the order	At the end of the order

Sentence/disposal	Rehabilitation period for adults (aged 18 or over at the time of conviction or at the time the disposal is administered)	Rehabilitation period for young people (aged under 18 at the time of conviction or at the time the disposal is administered)
Fine+++	1 year	6 months
Compensation order++++	When paid in full	When paid in full
Attendance centre order	At the end of the order	At the end of the order
Care order	When order ceases to have effect	When order ceases to have effect
Confiscation order	When order ceases to have effect	When order ceases to have effect
Forfeiture order	When order ceases to have effect	When order ceases to have effect
Hospital order	When order ceases to have effect	When order ceases to have effect
Referral order	At the end of the order	At the end of the order
Relevant order+++++	When order ceases to have effect	When order ceases to have effect
Reparation order	Spent immediately	Spent immediately
Disqualifications	When order ceases to have effect	When order ceases to have effect
Endorsements	5 years	2½ years

(NACRO, 2021)

Table C: Alternatives to Prosecution

Sentence/disposal	Buffer period for adults (aged 18 and over when convicted) from end of sentence including licence period	Buffer period for young people (aged under 18 when convicted) from end of sentence including licence period
Category 1 AtPs*	Spent immediately	Spent immediately
Category 2 AtPs	3 months	3 months

*Category 1 AtPs are warnings given by a constable or a procurator fiscal and fixed penalty notices given under s. 129 of the Antisocial Behaviour (Scotland) Act 2004. All others are Category 2 AtPs.

(NACRO, 2021)

Exclusions and Exemptions

Exclusions and exemptions in legislation allow the police to protect the public and most vulnerable by ensuring that we furnish the Licensing Committee with a complete picture of an individual's suitability to hold certain licenses. However, please note that the exclusions and exemptions apply only to Taxi and Private Hire Licenses.

Therefore, in relation to any other licence application governed by Civic Government (Scotland) Act 1982, Police Scotland cannot lawfully disclose a protected conviction.

There are no exclusions or exemptions permitted under any legislation relating to Landlord Registration, or HMO Licensing. Therefore, for those applications, Police Scotland can

again only disclose un-protected convictions to the Committee to assist them in their decision making process.

The disclosure of a conviction by an applicant that, upon review by Police Licensing, is actually considered protected, still cannot be legally disclosed by the Police, despite the applicant's initial disclosure on an application form.

Sexual Offences

It may be pertinent to note that Rehabilitation of Offenders Act is also relevant to offences considered 'sexual offences'. If a person is placed on the Sex Offenders Register, this is not considered as a 'relevant order' referred to in Table 3, therefore the disclosure of sexual offences are subject to the same protections given by the act. For example, if a person is convicted of a 'sexual offence' and sentenced to a fine, and placed on the Sex Offender's Register for 2 years, the offence becomes protected after 1 year, as that is the disclosure period for a fine. Therefore, an applicant can be on the Sex Offenders Register, but have no disclosable convictions. There is no legislation that requires applicants to disclose registration requirements of this nature.

Liquor Licensing

Whilst I appreciate liquor licensing does not fall under the remit of the Licensing Sub-Committee, for your information, due to legislation contained within Licensing (Scotland) Act 2005, the new disclosure periods do not apply to liquor licensing at this time. Further legislation is required to enable this change to take effect for liquor licensing and therefore the previous disclosure periods still apply.

Conclusion

Edinburgh's Police Licensing Department will continue to work closely with City of Edinburgh Council Licensing Department and Licensing Sub Committee however, we must strictly adhere to relevant legislation when disclosing information. Failure to do so may be an offence under Data Protection Act.

I can also report that a robust and thorough regime remains in place between Police and Council Licensing Departments, to assess all applications and ensure relevant and accurate information is provided timeously to the Committee to assist in the decision making process in relation to the 'fit and proper person' test.

I hope the above information is of use in informing the Committee of possible reasons in a reduction in Police representations outlining convictions, as well as explaining why, in some cases, Police will not comment on a conviction, despite the applicant disclosing it.

Reported for your information.

Yours faithfully

Sgt Marc Copland

Liquor and Civic Licensing Dept.

Edinburgh Division

For enquiries please contact the Licensing Department on 0131 662 5752.