



Clackmannanshire Council Private Landlord Registration Guide

September 2017



**Clackmannanshire
Council**

www.clacks.gov.uk

Comhairle Siorrachd
Chlach Mhanann

What is landlord registration?

Landlord registration was introduced in 2006 by the Antisocial Behaviour etc. (Scotland) Act 2004 and is a system that helps councils monitor private landlords and make sure 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 a 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
- 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 guide.

How do I apply for landlord registration?

There are two ways to apply for landlord registration.

- The easiest way to register is online on the landlord registration website.

www.landlordregistrationscotland.gov.uk

A 10% discount applies to online applications.

- If you prefer, we can send you a paper application for you to complete and return.

Please see the end of this guide 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 5 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.

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 agents name if you use one and the contact address that you have given for that property.

How much does it cost to register?

Clackmannanshire Council 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.

What does the cost of 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. Registration 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 to 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. We can use enforcement action to challenge the practices of the worst landlords, including the following types of breach;

- failure to register or renew;
- 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?

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 to you telling you that you should register. We will send you a final reminder, giving you a further 14 days to register. If you do not register after this you will pay £110 on top of what you would have paid if you had applied promptly.

Giving false information or not giving information asked for on the 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 will try to work with landlords to make sure they give us all the relevant information. For example, if an application is received without all 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 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 more serious situations, we may send a report to the Procurator Fiscal.

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 property person status and decide if you should have your registration removed. In extreme situations, we may send a report to the Procurator Fiscal.

Failure to meet the repairing standard.

If a case is referred to the First-tier Tribunal for Scotland and they decide to serve a repairing standard enforcement notice on you or make any other recommendations, we may 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 Licensing Board.

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 Procurator Fiscal

Late Application Fee

This may be applied when it has been identified that a property has been let by an unregistered landlord. If you allow your registration to expire you will be considered an unregistered landlord.

By law at least two notifications must be issued prior to the late application fee being applied. The Late Application Fee is currently £110 in addition to the normal fees applied.

Clackmannanshire Council will send reminders to the contact address you have provided 10weeks and 4weeks prior to your registration expiry date.

Rent Penalty Notice

If we are satisfied that you have failed to register, renew your registration, 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 you 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
- homeless services and the homeless 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 deregistered. This means you would no longer be legally allowed to let property in Clackmannanshire and will be committing a criminal offence if you continue to do so.

We will use this as a last resort and will always give landlords and agents every opportunity to take corrective action.

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 Clackmannanshire.

Summary of breaches, offences and sanctions

Breach/Offence	2004 Act	Sanctions available
Failure to register whilst letting a residential property	Section 93	<ul style="list-style-type: none"> • Rent Penalty Notice (Right of appeal) • Report to the Procurator Fiscal • £50k fine
Non-registered owner communicates with a person about entering into a lease or occupancy agreement	Section 93	<ul style="list-style-type: none"> • Report to the Procurator Fiscal • £50k fine
Provision of false information, or failure to specify required information in an application form	Section 83	<ul style="list-style-type: none"> • Refuse registration if not Fit & Proper (Right of appeal) • Summary offence fine £1k
Failure of registered person to notify changes in circumstance	Section 87	<ul style="list-style-type: none"> • Review Fit & Proper status • Remove from the register if not Fit & Proper (Right of appeal) • Summary offence fine £1k
Registered person no longer FPP	Section 84	<ul style="list-style-type: none"> • Revoke registration status and remove from the register (Right of appeal)
De-registered/refused person continues to let property	Section 93	<ul style="list-style-type: none"> • Rent Penalty Notice (Right of appeal) • Report to the Procurator Fiscal • £50k fine

Registered landlord's agent is found not FPP		<ul style="list-style-type: none"> • Report to the Procurator Fiscal • £50k fine
Failure to notify appointment of an agent or giving false information	Section 88	<ul style="list-style-type: none"> • Review Fit & Proper status • Remove from the register if not Fit & Proper (Right of appeal) • Summary offence fine £1k
Failure to include required information in an advert	Section 92B	<ul style="list-style-type: none"> • Review Fit & Proper status • Refuse/revoke registration if not Fit & Proper (Right of appeal)
Failure to comply with LA request for information	Section 97A	<ul style="list-style-type: none"> • Review Fit & Proper status if offence committed by landlord/agent • Refuse/revoke registration if not Fit & Proper (Right of appeal) • Summary offence fine £500

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	An EPC 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.
Fit and Proper test	The fit and proper person test means that the private landlords have to meet a certain standard before they can legally rent out a 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.

<p>Landlord Registration</p>	<p>Every council in Scotland holds a formal register of all landlords and letting agents in their area. This is called the landlord register. This 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 have not applied for registration, its a criminal offence.</p>
<p>Late Application Fee</p>	<p>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>
<p>Housing and Property Chamber First-tier Tribunal for Scotland</p>	<p>The First-tier Tribunal for Scotland gives tenants an effective way of forcing landlords to 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>

Rent Penalty Notice	<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>
Repairing Standard	<p>The repairing standard came into effect in September 2007. It extends the legal duties of a private landlord to repair a house. Rented property must now meet a repairing standard before it is let and at all times during a tenancy.</p> <p>A house meets the repairing standard if -</p> <ul style="list-style-type: none">• The house is wind and water tight and in all other respects reasonably fit for human habitation.• 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.• the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable

- state of repair and in proper working order**
- **any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order**
 - **any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are intended**
 - **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 Housing and Property Chamber First-tier Tribunal for Scotland.

Contacts

**Clackmannanshire Council
Housing and Community Safety Service
Kilncraigs
Greenside Street
Alloa
FK10 1EB**

**privatelandlords@clacks.gov.uk
01259 450000**

**Housing and Property Chamber
First-tier Tribunal for Scotland**

**4th Floor
1 Atlantic Quay
45 Robertson Street
GLASGOW G2 8JB**

Telephone: 0141 302 5900

Fax: 0141 302 5901

**Shelter Scotland
6 South Charlotte Street
Edinburgh
EH2 4AW
0808 800 4444 (calls are free from UK landlines and main
mobile networks)**