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Guidance on the “fit and proper person” test for licensing of landlords and agents

**Guidance issued to the Licensing
Authority under section 20(6) of the
Housing (Wales) Act 2014**

October 2015

Introduction

The National Assembly for Wales passed the Housing (Wales) Act 2014 (“the Act”) on 8 July 2014 and Royal Assent was received on 17 September 2014. Part 1 of the Act relates to the regulation of private rented housing. The intention of the legislation is to improve standards of letting and management in the private rented sector and raise awareness of the respective rights and responsibilities of landlords, agents and tenants. The Welsh Ministers, by Order (S.I. 2015 No. 1026 (W. 75)) has designated the County Council of the City and the County of Cardiff as the Licensing Authority for Wales.

In summary, the main features of Part 1 of the Act are:

- private landlords must be registered with the Licensing Authority and must register the address of each of their rental properties in Wales;
- private landlords must not undertake certain letting or property management activities in relation to their rental properties in Wales unless they are licensed to do so;
- agents must not carry out certain lettings & management activities unless they are licensed to do so;
- in order for an application for a licence to be approved, a person must either be, or become, adequately trained and be deemed ‘fit and proper’ by the licensing authority;
- the licensing authority, or with the consent of the licensing authority the local authority for the area in which a rental property is located will be responsible for enforcement of Part 1 of the Act; and
- the licensing authority will establish and maintain a register of all private landlords and their rental properties, and of agents. Certain information, which is set out at Schedule 1 of the Act, will be available for public access.

The fit and proper person test

1. In deciding to grant a licence the licensing authority (operating under the branding of “Rent Smart Wales”) must be satisfied that “the applicant is a fit and proper person to be licenced”.¹
2. This requirement is to ensure that those responsible for letting and managing a property in the private rented sector are of sufficient integrity and good character to be involved in the management of the property to which the licence relates. In addition, that they do not pose a risk to the welfare or safety of persons occupying the property.
3. A licence should not be granted if it is considered by the Licensing Authority that the applicant is not a fit and proper person to manage the property or properties which relates to the application for a licence, in accordance with the requirements set out in Part 1 of the Housing (Wales) 2014.
4. When considering whether a person is “fit and proper” the licensing authority must have regard to any evidence that the person concerned has².
 - committed any offence involving fraud or dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
 - practised unlawful discrimination on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business; or
 - contravened any provision of the law relating to housing or landlord and tenant.
5. This list is exhaustive³ and the Licensing Authority must have regard to all matters it considers appropriate. Any evidence considered should be relevant to the person’s fitness to hold a licence and let and manage rental properties in Wales.
6. In respect of criminal offences, the Licensing Authority must have regard to any convictions, unless the person is not obliged to disclose those convictions in accordance with the Rehabilitation of Offenders Act 1974 and the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023)* (as variously amended).
7. Each application should be considered on its own merits and if a licence is to be refused on the ground that a person is not fit and proper, the Licensing Authority must be able to justify its decision with clear reasons.

¹ Section 19(2) Housing (Wales) Act 2014 (“the Act”)

² Ibid. Section 20(3)

³ See Section 20(1) of the Act

8. The Regulation of Private Rented Housing (Information, Periods and Fees for Registration and Licencing) (Wales) Regulations 2015⁴ requires that in an application for a licence, must provide (amongst other things) details of the following in relation to themselves:
 - any convictions of the applicant relating to offences involving the matters listed in section 20(3)(a) of the Act;
 - any court or tribunal judgment against the applicant under the Equality Act 2010⁵, and
 - any convictions relating to offences in connection with any matter relating to the provisions referred to in section 20(3)(c) of the Act and any finding of a court or tribunal that the applicant has contravened any of those provisions.
9. When considering an application for a licence, the Licensing Authority must be satisfied that it has sufficient information from the applicant in relation to their convictions, in order to decide whether a person is fit and proper based on their application. If the Licensing Authority is not satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details⁶. In some cases the Licensing Authority may wish to invite the applicant to a meeting to discuss and clarify any issues arising⁷. If an applicant provides false or misleading information about unspent convictions, they commit an offence and can be fined⁸ on summary conviction. If an applicant has provided false or misleading information (without reasonable excuse) that may be a clear indication of their unfitness.
10. Where there is reasonable doubt about the accuracy of the information available or insufficient information to make a determination, it may be appropriate for the Licensing Authority to seek further information on whether a person has relevant convictions. Currently this can be done through the basic disclosure service offered by, amongst others, Disclosure Scotland. That service will give details of all unspent convictions. However, the service is only available to the person whose record is being sought. As there is no requirement in the 2014 Act for an applicant to seek or provide the information to the Licensing Authority, the Licensing Authority must have good reasons for asking a person to provide such information. Such reasons may include that:
 - the Licensing Authority or a Local Authority has had a history of complaints about the applicant (which in themselves might not amount to 'evidence' of unfitness to meet the test), but may raise question regarding possible relevant convictions, and further investigation may be required;

⁴ S.I 2015/1368

⁵ Section 4 of the Act

⁶ Section 37 of the Act

⁷ Although the applicant cannot be compelled to attend

⁸ Section 39(3) of the Act

- the applicant has been evasive or untruthful in their application for a licence;
or
 - the Licensing Authority has reasonable grounds to suspect that the applicant has committed an offence which is relevant to the determination of whether they are a fit and proper person and the applicant has not disclosed relevant details on their application form.
- 11.** The Licensing Authority may consider that an applicant’s refusal to provide such additional information may be an indication that the applicant is not a fit and proper person and potentially may be concealing relevant convictions.
- 12.** In deciding whether a conviction is relevant to a person being a fit and proper person for the purposes of a licence, the Licensing Authority may wish to consider the following factors:
- the relevance of the conviction in relation to the applicant’s character and integrity to let or manage residential properties;
 - the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community, including if more than one conviction is involved, the cumulative impact;
 - the length of time since any conviction; and
 - any mitigating circumstances.

Consideration of ‘persons associated or formerly associated’ with the proposed licence holder

- 13.** If there is evidence that a person associated, or formerly associated⁹, with the person applying to be licenced, has done any of the things listed under section 20(3) of the Act, that evidence must be taken into account in determining whether the applicant is a fit and proper person. The purpose of this requirement is to ensure that only fit and proper persons hold licences. It would not be appropriate for a licence to be granted to someone, if that person was acting as a ‘front person’ for someone else who, if they were not unfit, would be entitled to be a licence holder.
- 14.** However, a refusal to grant a licence in these circumstances should only be made having considered all evidence including:
- evidence of offences having been committed by the associated person¹⁰; and
 - the associate’s fitness is directly relevant to the applicant’s fitness to let and manage under the terms of the Act.

⁹ Section 20(4) of the Act

¹⁰ Ibid. Section 20(5) of the Act.