EXECUTIVE NOTE

1. **The Antisocial Behaviour Notice (Appeal against Order as to Rent Payable) (Scotland) Regulations 2005 SSI/2005/560**
2. **The Antisocial Behaviour Notice (Management Control Orders) (Scotland) Regulations 2005 SSI/2005/561**
3. **The Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005 SSI/2005/562**
4. **The Antisocial Behaviour Notice (Advice and Assistance) (Scotland) Regulations 2005 SSI/2005/563**
5. **The Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005 SSI/2005/558**
6. **The Private Landlord Registration (Appeals against Decision as to Rent Payable) (Scotland) Regulations 2005 SSI/2005/559**
7. **The Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005 SSI/2005/557**
8. **The Private Landlord Registration (Modification) (Scotland) Order 2005 (draft)**

Background

The instruments listed at 1 – 7 above were made in exercise of powers in the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act"), as detailed below. The Private Landlord Registration (Modification) (Scotland) Order 2005 is subject to affirmative resolution procedure. The remaining instruments are subject to negative resolution procedure.

Policy Objectives

These instruments serve two main purposes. The instruments listed at 1 – 4 above relate to Part 7 of the 2004 Act. That Part provides powers for local authorities to serve antisocial behaviour notices on landlords requiring them to take steps to manage antisocial behaviour at or around a house let by that landlord. The instruments facilitate the introduction, on 31 March 2006, of local authorities' powers to serve an antisocial behaviour notice where there are management actions the landlord can and should take but is failing to take, in relation to identified antisocial behaviour at or in the locality of a house let by the landlord. Linked minor adjustments to housing benefit regulations are being taken forward by the Department for Work and Pensions.

The instruments listed at 5 – 8 above relate to Part 8 of the 2004 Act. That Part makes provision for the establishment of a register of landlords who let houses. It is an offence under the 2004 Act to let a house without being registered unless the house is excluded from the requirement or the landlord's application is being processed. The instruments relating to Part 8 of the 2004 Act facilitate the introduction of the registration of private landlords by local authorities. The requirement to be registered will take effect from 31 March 2006 and these instruments determine some details of the registration system and allow the administrative arrangements to be finalised. Registration will give local authorities information that will help them engage with the private rented sector and plan for it to make a more effective contribution to meeting housing need in their areas. It will give tenants an

assurance that their home will be let to them by a person who fit and proper to be letting houses, and it will give local authorities the means of removing the worst landlords from the sector, improving the health of the sector and protecting tenants.

Instruments relating to antisocial behaviour notices

The Antisocial Behaviour Notice (Appeal against Order as to Rent Payable) (Scotland) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 72(4) of the 2004 Act. The particular purpose of this instrument is to ensure that, where a sheriff makes an order that no rent should be payable and the landlord appeals, the tenant is aware that the decision has been appealed so that he or she can set aside money that would otherwise have been payable as rent, in case the appeal is successful. If the landlord does not notify the tenant of the matters prescribed in the instrument and in the way prescribed, the Act provides that the sheriff principal, if granting the appeal, cannot order back-rent to be paid from the date on which the rent ceased to be payable.

Without this provision the tenant could, if the appeal was successful, become liable for a substantial sum when he or she had been given a notice that rent was not payable and was unaware that the notice had been appealed. The tenant would not necessarily be the person whose antisocial behaviour led to the service of an antisocial behaviour notice and the subsequent rent penalty, and a liability which arose in this way would in any case not be a considered and proportionate penalty authorised by law.

Ministers have decided not to make regulations at this stage using the powers conferred in section 72(6) of the Act to specify other circumstances in which the sheriff principal should not require payment of sums otherwise due. Those powers were intended to allow, for example, a requirement that the tenant be given the facility to pay money into a joint account pending the appeal, but further investigation has shown that such an arrangement would have a range of practical problems and it is more important that the tenant should seek appropriate money advice.

The Antisocial Behaviour Notice (Management Control Orders)(Scotland) Regulations 2005

These Regulations were made in exercise of the powers conferred by paragraph 3(3) of schedule 3 to the 2004 Act. The purpose of this instrument is to specify what expenditure local authorities may incur while a house is subject to a Management Control Order and how they can recover that expenditure. The instrument permits the local authority to incur necessary and reasonable costs for day-to-day management activities, whether it manages the house itself or through an agent, together with the cost of routine maintenance. The same applies to the cost of works to improve the house or elements of the house to the tolerable standard. If the house is below the tolerable standard, the local authority may well decide that basic works should be done to bring it up to that standard, although there may be cases where the work is not sufficiently urgent to justify their carrying it out during their short-term responsibility for the property. The cost of other works should not be incurred without the owner's consent. Costs incurred will be deducted from the rent but if they exceed the income from letting, they should be recovered in the normal way as a debt.

The Antisocial Behaviour Notice (Landlord Liability)(Scotland) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 78(3) of the 2004 Act. If a landlord fails to take action specified in an antisocial behaviour notice the local authority can take steps that it considers necessary to deal with the antisocial behaviour described in the notice. The purpose of this instrument is to specify when and how local authorities can recover costs that they have incurred in taking those steps. It requires the local authority to give notice that it intends to take those steps, with an indication of the cost, to encourage the landlord to take the necessary action. If the local authority decides to proceed it can recover its actual costs including administrative costs and overheads.

The Antisocial Behaviour Notice (Advice and Assistance)(Scotland) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 80 of the 2004 Act. The purpose of this instrument is to require a local authority to provide advice and assistance to a landlord before serving an antisocial behaviour notice. The intention is to avoid unnecessary formal action if the landlord's management of the situation can be improved by suitable advice and assistance as specified in the instrument.

Instruments relation to landlord registration

The Private Landlord Registration (Information and Fees) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 83(1), 83(3) and 87(4) of the 2004 Act. The purpose of this instrument is to specify further information that applicants should provide, beyond that already required by section 83(1), and to define the way in which the local authority should determine fees for registration and for alterations to the register.

Section 83(1) requires an applicant to provide, where relevant, the name and address of the owner and agent and the addresses of properties let. An amendment to the 2004 Act passed at Stage 2 of the Housing (Scotland) Bill will require an application to specify a contact address. The additional information specified in the instrument will assist the local authority with the fit and proper person test and facilitate the administration of applications and registrations. The information includes convictions which are relevant in terms of the considerations set out in section 85 of the 2004 Act. These do not include spent convictions. However, a local authority may, during its assessment of an application or of material that it receives in relation to a registered person, ask the person concerned to seek a standard disclosure from Disclosure Scotland which would include information on spent convictions. It is intended to make provision as part of an instrument under the Rehabilitation of Offenders Act 1974 to allow this to happen. None of the additional information would be made public.

The instrument lays down a standard method for a local authority to set a principal fee and then specifies how to determine, in relation to the principal fee, additional fees and discounts according to the nature and circumstances of the application. This will provide consistency of approach in the way fees are structured. The method requires the principal fee to be set at such a level that the authority's costs are balanced by the estimated income from fees and any grant made by Ministers in exercise of their powers in section 98 of the 2004 Act.

This method recognises that different local authorities will have different levels of cost according to the size and nature of the private rented sector in their areas. It limits the costs they can meet from fees to costs arising from the exercise of their functions under Part 8 of the 2004 Act. It also allows Ministers to influence fee levels in each authority by the amount of grant made under section 98 and by the conditions attached to that grant. The method allows for the fact that local authorities are unable to estimate their costs properly until the full details of the registration system are known. It is intended to be supported by negotiations between the Scottish Executive and local authorities through COSLA.

If despite this approach, local authorities set fees that Ministers consider to be unjustifiably high, it will be open to Ministers to regulate again to limit fees.

The Private Landlord Registration (Appeals against Decision as to Rent Payable) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 97(4) of the 2004 Act. The first purpose of this instrument is to ensure that, where the local authority serves a notice that no rent should be payable and the landlord appeals, the tenant is aware that the penalty has been appealed and that he or she should set aside money that would otherwise have been payable as rent, in case the appeal is successful. If the landlord does not notify the tenant of the matters prescribed in the instrument and in the way prescribed, the Act provides that the court, if granting the appeal, cannot order back-rent to be paid from the date on which the rent ceased to be payable.

The second purpose of this instrument is to make similar provision where a notice that no rent should be payable is in force and the landlord appeals against a refusal by the local authority to revoke the notice. If the landlord does not notify the tenant as prescribed, the court, if granting the appeal, cannot order back-rent to be paid from the date on which the local authority refused to revoke the notice.

Without these provisions the tenant could, if either appeal was successful, become liable for a substantial sum when he or she had understood that rent was not payable and was unaware that an appeal had been lodged. The situation would have arisen from action taken against the landlord and the tenant would be an innocent third party.

Ministers have decided not to make regulations at this stage using the powers conferred in section 97(7) of the Act to specify other circumstances in which the court should not require payment of sums otherwise due. Those powers were intended to allow, for example, a requirement that the tenant be given the facility to pay money into a joint account pending the appeal, but further investigation has shown that such an arrangement would have a range of practical problems and it is more important that the tenant should seek appropriate money advice.

The Private Landlord Registration (Advice and Assistance) Regulations 2005

These Regulations were made in exercise of the powers conferred by section 99 of the 2004 Act. The first purpose of this instrument is to require local authorities to provide advice and assistance to applicants on good practice in letting houses. The second purpose is to provide advice and assistance to tenants and occupants when the local authority decides to refuse or remove a landlord's registration or serve a notice that no rent is payable. The intention is to

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

The Private Landlord Registration (Modification) (Scotland) Order 2005 (draft)

This Order was laid in draft in exercise of the powers conferred by section 83(7) of the 2004 Act. The purpose of this instrument is to exclude types of houses from the registration requirement, in addition to those already excluded by section 83(6) (accommodation regulated by the Care Commission, used by religious orders, for holiday purposes or subject to a control order).

If a landlord lets any houses which are not excluded in terms of the 2004 Act as modified by this Order, he or she must register and must declare those houses in connection with the registration. This relates to any house subject to a lease or occupancy arrangement with a person who is not a member of the landlord's family. "Occupancy arrangement" has a broad meaning as defined in section 101(1) of the 2004 Act and includes, for example, housing tied to employment and housing provided rent free.

The intention in excluding properties occupied by resident landlords at this stage is to avoid the practical difficulties and potential impact on supply of requiring the registration of all landlords who take in one or two lodgers (if there are three or more unrelated lodgers the house is a "House in Multiple Occupation" and requires to be licensed). There is little information about the operation of this part of the rented sector and should evidence emerge that suggests that including this type of house in registration would on balance be beneficial, Ministers will consider regulating accordingly.

Consultation

A public consultation has been carried out on the proposals for these instruments and on related guidance for local authorities. The consultation paper, "Regulation of Private Landlords under the Antisocial Behaviour etc. (Scotland) Act 2004", has been placed in the Scottish Parliamentary Information Centre and available at:
http://www.scotland.gov.uk/Publications/2005/07/08172434/24352
A list of consultees is provided in Annex 6 of the paper. The proposals were developed and finalised in discussion with a working group whose membership is in Annex 5 of the paper.

One hundred and eleven responses were received. They are listed at:
http://www.scotland.gov.uk/Publications/2005/10/31111044/10452
Those responses for which the author gave consent for publication are available at the same location and have been placed in the Scottish Parliamentary Information Centre.

Financial Effects

The financial effects of these instruments on the Scottish Executive, local government and business are described in the Regulatory Impact Assessment attached to this note.

Scottish Executive Development Department
10 November 2005