

Consultation response

Private Housing Issues: Housing Bill Consultation

From the Shelter policy library

September 2009

www.shelter.org.uk

© 2009 Shelter. All rights reserved. This document is only for your personal, non-commercial use.
You may not copy, reproduce, republish, post, distribute, transmit or modify it in any way.

This document contains information and policies that were correct at the time of publication.

Shelter

Introduction

Shelter Scotland welcomes this opportunity to respond to the Scottish Government's supplementary consultation on the Draft Housing (Scotland) Bill. In this response we focus on issues relating to the Private Rented Sector (PRS). We also have some observations to make on the questions relating to the repair of privately owned houses.¹

We note the Scottish Government's intention to give further consideration to a wider range of issues related to private renting for inclusion in a possible Private Housing Bill. We welcome the opportunity to take part in a stakeholder working group and further consultation ahead of any future bill. We have therefore begun by outlining areas we think merit further discussion, but have limited our detailed responses to the specific questions and topics addressed in this consultation.

Areas for future action

Shelter believes that the private rented sector plays a vital role in the housing landscape of Scotland. Recent housing policy has encouraged the development of a sector which is good at meeting short term housing needs, but the sector has many shortcomings for those who are looking for longer term housing options and in, particular, people who are vulnerable or disadvantaged in some way. Shelter has recently produced a review of research on potentially disadvantaged households in the PRS in Scotland for Consumer Focus Scotland (forthcoming). This review alongside the Scottish Government's own research into the PRS has highlighted a number of key issues that need to be addressed:

Security of tenure and homelessness- While the Scottish Government review showed general satisfaction with the short assured tenancy (SAT) regime, for some groups of tenants, greater security of tenure is a key requirement: for example, tenants in the lower end of the sector or on housing benefit, rural tenants and homeless people re-housed in privately rented housing. If the Scottish Government wants to see the sector grow and play a greater role in meeting housing need, then the issue of degree of security of tenure and prevention of homelessness need to be addressed. There is merit at looking at whether other tenancy options might be introduced alongside the SAT.

Tenancy deposits- The Scottish Government review highlighted tenancy deposits as a pressing issue of concern. The value of unfairly withheld deposits could be up to £6 million which could leave a significant number of people in Scotland unable to fund a deposit for a subsequent tenancy. We welcome the Scottish Government's intention to draw up

¹ For our response to the main consultation on the Draft Housing (Scotland) Bill, please see http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/draft_housing_scotland_bill_a_consultation

regulations on a custodial tenancy deposit protection scheme and look forward to the opportunity to work with the Scottish Government on developing and publicising such a scheme.

Disrepair and energy efficiency- The Scottish Government review found widespread ignorance of the repairing standard and the Private Rented Housing Panel amongst landlords and tenants. Despite improvements in the condition of the sector, there remains a widespread problem of poor repair and energy efficiency standards. These problems fall disproportionately on tenants in the lower end of the sector, who are often deterred from raising them because of concerns about the security of their tenancy. The Scottish Government should consider whether additional compulsory powers are required to drive up standards.

Consumer information and awareness- The Scottish Government review found very low levels of awareness amongst tenants of their rights or recent initiatives such as landlord registration. Many of the recent improvements in tenants' rights are designed to drive up standards in the sector. The quality of the sector to some extent depends upon tenants being aware of their rights and how to pursue redress. There must be a focus on improving information and advice to tenants to ensure positive change in the sector is consumer led.

Management standards- Recent initiatives to drive up standards in the PRS can be said to have had only modest success. Landlord Accreditation Scotland has made little impact on tenant's choices so far, and seems likely to appeal to landlords serving the top end of the market. Landlord registration has been beset with administrative difficulties and after three years we still seem far from it being an effective means to ensure high standards are maintained throughout the sector. While neither scheme can offer tenants a means of redress, there is a need to consider how best they can be used to drive up professional standards over time.

Shelter Scotland welcomes the opportunity to discuss these issues in more detail as part of the Working Group ahead of the proposed Private Housing Bill.

Responses to questions

Part 1 – Landlord registration

Question 1.1 Do you consider that a local authority should be able to require persons associated with a property to provide information to help it to carry out its landlord registration functions?

We welcome the new focus on addressing the worst practices of private landlords through the registration scheme. Giving local authorities the means to implement the Fit and Proper Person Test and new enforcement powers is key to ensuring that the scheme is taken seriously by landlords and tenants as a means to drive up standards in the sector. We also recommend that the planned review of landlord registration should clarify its aims and assess whether local authorities have the means and resources to meet them

At the time registration was proposed, Shelter identified that local authorities may face difficulty in bringing a robust case to justify removal from the register. We felt that this could inhibit local authorities from using registration to enforce high management standards. We therefore support the proposal to require information to be provided by anyone with an interest in the property. This may go some way towards encouraging local authorities to act by enabling them to construct a more thorough case about a landlord's behaviour.

We do have some misgivings about requiring tenants to provide information with the threat of criminal offence. It is relatively easy for a landlord to bring to an end the tenancy of someone who has reported them to the local authority or given information about them. Tenants should not be put in the position of facing a criminal charge or losing their home. Recent changes require local authorities to provide advice to tenants where they discover their landlord is not registered and we would like to see this extended to those tenants who give evidence under the extension of section 186 of the Housing (Scotland) Act 2006. This advice should cover how to identify and report harassment or illegal eviction. The Scottish Government should also consider measures to protect tenants who are required to give information from retaliatory eviction.

The consultation refers to disagreement between local authorities about whether they need additional enforcement powers. We would like to see the Scottish Government set out a timescale for reviewing the use of enforcement powers and the effectiveness of landlord registration in raising standards in the sector. This review should also consider introducing a letting code as set out in section 92a of the Antisocial Behaviour etc

(Scotland) Act 2004² to clarify to local authorities the criteria against which the Fit and Proper Person test should be assessed.

In addition, the review should also look at the relationship between the other means of regulating private landlords and registration: for example, the relationship between HMO licensing, the Private Rented Housing Panel (PRHP) and a possible future tenancy deposit scheme. At the very least, these bodies should be enabled and encouraged to communicate with one another and to share information. For example, the PRHP does not routinely check if a landlord is registered when they take a referral. Their explanation is that the 2006 Act did not explicitly say that they should do this. Checking that a landlord is legally entitled to let should be a standard procedure for any organisation dealing with landlords. We would like to see added to this Bill an amendment to the Housing (Scotland) Act 2006 that explicitly requires the PRHP to request a landlord registration number on receiving a referral and to notify the relevant local authority if the landlord is not registered. We think there is also merit in considering whether the PRHP should also routinely notify the local authority when a case is referred to them, whether or not the case is investigated or heard by a panel. Local authorities should have as much information as possible about a landlord to judge whether they are fit and proper to let.

Question 1.2 Do you consider that the maximum fine for failing to register as a landlord or communicating with another person with a view to entering into a lease or an occupancy arrangement without being registered should be increased, and if so do you consider that £20,000 is the appropriate maximum level of fine?

We agree that it is reasonable to make the penalty for operating as a landlord without being registered equivalent to the penalty for operating an HMO without a licence.

Question 1.3 Do you consider that the landlord register should contain additional information, indicating (a) that an application has been received but has not yet been processed or approved, and (b) that a landlord has been refused registration or has been de-registered?

Shelter fully supports both parts of this proposal. One of the purposes of landlord registration is to give tenants confidence that they are renting from a landlord who is fit and proper to let. Enabling local authorities to accurately communicate the status of a landlord who has applied to register or one who has been refused registration will help to fulfil this purpose. The Scottish Government review of the PRS found very low levels of awareness of landlord registration among tenants. So while we support the legislative changes to enable local authorities to communicate better with tenants, this must be accompanied by an awareness raising campaign among tenants.

² As amended by section 175 of the Housing (Scotland) Act 2006.

Question 1.4 Do you consider that a local authority should have the power to charge a registered landlord a fee for nominating an agent? If so, what do you think would be a reasonable charge?

In principle, landlords should be encouraged to use reputable managing agents; we would not like to see landlords discouraged from appointing an agent because of increased costs. Charges for landlords to register should be kept to a minimum.

Part 2 - Licensing of Houses in Multiple Occupation

Question 2.1 Do you consider that Part 5 of the Housing (Scotland) Act 2006 should be amended to expand the definition of a licensable HMO to cover short-term lets? If so, should this be done (a) by counting for the purpose of licensing all occupants who have a main residence elsewhere, or (b) by counting occupants who have a main or only residence outside the UK, or (c) by some other way?

and

Question 2.2 What implications of any such changes do you think should be taken into account before deciding whether to amend the definition of an HMO?

The argument that accommodation shared by workers resident in the UK should be covered by HMO licensing is convincing. Migrant workers are usually poorly paid and often experience terrible housing conditions. We fully support the policy intention of bringing all shared accommodation within the scope of HMO licensing, with the exception of holiday lets. While we recognise that some neighbourhoods may suffer as a result of so called 'party flats' which are let to groups for weekend breaks, at present we do not see the argument for holiday lets to be brought within the scope of HMO licensing. Other powers exist to regulate and police the behaviour of people in renting for holiday purposes. HMO licensing is primarily designed to ensure high standards of accommodation and management for tenants. People renting holiday accommodation are able to exercise consumer choice more readily than tenants who are resident.

Our preferred position is that the definition of a licensable HMO should be extended to all occupants who have a main residence elsewhere. People living in shared accommodation for short times or alternating between shared accommodation and a main residence should have the right to expect the same standards of safety, professional management and repair that someone permanently resident in a shared flat would. The other suggestions for altering the definition would create an overly complex situation, especially when some residents of a shared flat may have a main residence in the UK, some may have a main residence overseas and some may be permanently resident.

Question 2.3 Do you consider that there is a problem with licensed HMOs operating without planning permission?

Shelter commented at length on proposals to amend Scottish Planning Policy 3 (SPP3) to promote the use of planning control over concentrations of HMO properties. In our response to the consultation on SPP3³ we questioned whether problems experienced by communities where HMOs existed were properly planning concerns, and where planning relevant issues exist, whether they can be associated with the use of the property by unrelated people as opposed to a family.

Well managed and well regulated HMO accommodation plays a vital role in meeting housing need in areas where there is a high demand for housing. Shelter recognises that in some communities HMOs can cause problems, but these problems often stem from poor management of an HMO rather than from planning implications. Local authorities have existing powers under the HMO licensing regime, landlord registration and anti-social behaviour legislation to intervene when poor management of an HMO impacts on the well-being of the community. For example, through neighbour nuisance, clash of lifestyles, badly maintained accommodation or accommodation that is unsuitable for the use that is made of it. Planning controls should not be used to plug the gap caused by lack of proper enforcement of HMO licensing or antisocial behaviour powers.

In addition, we do not support the use of planning policies to restrict the number of HMOs. Shared accommodation is vital in meeting the needs of a wide range of people from diverse economic and age groups including students, migrant workers and young professionals. The rise in number of HMOs, particularly in city centres, is symptom of an increased demand for affordable housing in a supply restricted market. Where property prices are high and new development is limited, flat-sharing represents an efficient use of existing housing stock to meet increasing demand. For many people entering the job market at a low level, their only option is to share.

Question 2.4 Do you consider that having planning permission (where it is required) should be a requirement for the granting of an HMO licence?

Shelter does not agree that planning permission should become a condition of granting an HMO Licence. This is for two reasons. Planning law as it relates to HMOs is not easy to apply and does not relate directly to the licensing regime and we are also concerned that creating a link between planning and licensing will undermine the licensing regime.

In preparing our response to the consultation on SPP3, we spoke to planners who told us that it is not straightforward to establish the basis on which planning permission is

³ Available from the Shelter Website:

http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/spp3_planning_for_housing

required for an HMO. The requirement for planning permission can only be justified if a change of use can be demonstrated, and not simply on the basis of the number of people resident. Planners must prove that an HMO has an impact on, for example, services or traffic that occupation by a family of the same number would not.

There is also the problem that planning law does not define an HMO in the same way as licensing. For licensing purposes an HMO is a property rented by three or more unrelated people. Planning recognises a house as an HMO if it contains five or more unrelated people, and it is within the discretion of the local authority to decide when occupation of a flat would require planning permission. From a planning perspective therefore, it is not justifiable to simply adopt the licensing definition of an HMO, and the formation of an HMO in licensing terms will not always require planning permission. Practically, landlords and prospective landlords may be confused about the application of planning rules to HMOs which may act as a disincentive to establish an HMO.

Shelter strongly supports the licensing regime in Scotland, which recognises that HMOs require more rigorous standards than other types of private rented accommodation. Any requirement that planning permission be a condition of applying for a licence may be counter productive in the drive to licence and regulate HMOs. It is possible that it may act as an incentive to evade licensing, especially among landlords who do not seek to ensure high standards. This may be due to the cost or trouble involved in seeking planning permission, or due to a perception (or policy) that planning permission would be refused. Evasion of licensing impacts disproportionately on tenants and communities at the lower end of the rental market. Glasgow, which has rigorous planning rules for HMOs, also has a substantial problem of unlicensed HMOs.

Question 2.5 If so, should it be a mandatory requirement, or left to the discretion of each local authority?

We do not agree that planning permission should be made a requirement of granting a licence.

Question 2.6 If such a requirement were in place, do you consider that this requirement should relate only to new applications for licences, not to applications for renewals?

While we disagree with the proposal, any move to require planning permission should only be for new licences. Landlords and tenants of existing HMOs which have been licensed and have operated as such for some time should not face the uncertainty of a planning decision. In many cases it would anyway be impossible to prove a change of use to an HMO where one already exists.

Some local authorities have set planning quotas for HMOs in certain areas, in line with Planning Circular 8/2009. We are concerned about the implications for existing tenants and the availability of affordable accommodation if planning permission became a requirement for existing HMOs renewing licences in areas where a planning quota is in operation.

Part 3 – Matters Arising from Implementation of Local Authority Powers in the Housing (Scotland) Act 2006

Questions 3.1 to 3.8

In principle we agree with the proposals in this section however we do have some observations:

Question 3.2 Do you consider that local authorities should have powers to charge owners their expenses in registering documents relating to maintenance? Should this apply to all the documents mentioned in paragraph 29 above, or only some?

The local authority should be able to recover costs for registering maintenance orders and plans but possibly not for revocations. In general, owners should be made to pay the full costs of both the work and the associated local authority administration costs including registration costs. An exception for revocations would only be justified if these are a result of change of mind by local authorities.

Question 3.3 Do you consider that the situations in which local authorities can pay a missing share into a maintenance account should be extended to include situations where an owner is unwilling to pay?

It is reasonable for local authorities to have this power providing they have adequate powers to recover costs.

Question 3.7 Do you consider that the situations in which local authorities can provide assistance under section 71 should be extended to include demolition? If so, do you think this should be restricted to non-financial assistance? Would this be demolition only in pursuit of demolition notices as part of an HRA, or demolition more broadly?

We agree that assistance should be extended to include demolition, but this assistance should be limited to non-financial assistance. We should not be giving grants for demolition.