

Briefing

Developing the private rented sector in Scotland

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Shelter

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Introduction

This paper sets out elements of a reform agenda for the private rented sector. It does so specifically as a contribution to the work of the Scottish Executive's Housing Improvement Task Force. However, it is intended to have relevance beyond the work of the Task Force. It looks at the mainstream sector rather than specific sub-sectors like tied housing.

Main points

1. The private rented sector is home to some of the poorest quality and most poorly-managed housing in Scotland. However, the sector also has some of the highest, most professional standards in the country.
2. Changes in the last fifteen years, designed to improve the functioning of the sector as a market, have, at best, halted the decline in private renting numbers. Pinning future hopes primarily on further market-based reforms seems optimistic. More active engagement with the sector is needed.
3. One key area for development is strengthening the hand of consumers to ensure that landlords are held to account over new minimum standards of repair. This could be done by setting in statute minimum standards for repair and ensuring that these standards can be enforced by an independent body.
4. Where possible, the sector should be seeking to promote longer term tenancies as a way of giving tenants an increased stake in their property and so an interest in better conditions. A model tenancy agreement should be developed. The assured tenancy regime should be made more attractive to private landlords now that it will no longer be used by housing associations.
5. A stronger bargaining position for tenants will improve the quality of individual properties. However, the key to better management standards lies in a simple form of registration and regulation, referred to here as "certification". This would require landlords to certify that they had met certain standards, coupled with sample inspections to validate those certificates.
6. The main thrust of this paper is to improve the quality of service that tenants receive. If that is the case, the case for rent control fades. The case for public financial support, indirectly, through tax reform, is strengthened.

The private renting problem

The private rented sector is important to the smooth functioning of the housing sector as a whole. It provides an alternative to owner occupation, particularly for younger and more mobile households and can respond more quickly to changes in demand for rented housing than the council or housing association sectors.

However, in Scotland, compared to other developed countries, the private rented sector does not work very well. Even in England, where the history of private renting is similar, there has been a modest increase in the size of the sector in the last fifteen years. The failings of the private rented sector in Scotland are well documented in the first report of the Housing Improvement Task Force, *“Issues in Improving Quality in Private Housing”*.

It is, on average, older and in poorer condition than other parts of the housing stock. The average disguises enormous variations in the quality of the sector.

- The relationship between rents and quality is weak: that is, contrary to market theory, one does not necessarily get what one pays for.
- Tenants lack bargaining power to secure higher physical standards and higher standards of management.
- The statutory and common law framework for landlords does not provide much of a steer as to acceptable property conditions.

Although it is not covered as fully within the Housing Improvement Task Force report, the quality of management, in Shelter’s experience also varies hugely, from highly professional modern management styles right down to the worst forms of arbitrary and negligent practices. The persistence of the poorest practice has a serious negative impact on the sector as a whole. Shelter believes that improvements to management standards in the sector are at least as important as driving up physical standards. While this is not strictly within the remit of the Housing Improvement Task Force, it seems sensible to drive up standards across a range of activities in a coherent way.

What can be done to make private renting better?

A healthier private rented sector rests on improving the quality of property and increasing the standard of management and, in so doing, linking both more clearly to price. The first can be done through better and more-clearly enforceable rights for tenants. The second can be done through a modern and “light-touch” system of regulation for the sector.

There are many other ways in which private renting can be developed. These include: giving the sector greater attention in the new local housing strategies; extending the work of the tenants’ movement into the sector; training and access to professional development

for landlords and agents¹; and putting rent deposit schemes on a new footing. Improvements in the delivery of housing benefit, although important for all sectors, would make a particular impact on smaller scale landlords who rely on cashflow. That these topics are not further highlighted below does not mean that they should be neglected as part of a reform agenda. In particular, they should form the menu of incentives for landlords to take part in accreditation schemes (see below).

Better rights, better redress

Research on the private rented sector commissioned by the Housing Improvement Task Force exposes just how weak the consumer voice is in private renting. Tenants, in the research, had virtually no understanding of their rights as tenants and many felt reluctant to press for repairs to be done because they did not have security of tenure.

Shelter believes that the consumer voice in a modern private rented sector can be strengthened in three areas.

- Improved rights to decent standards of property and management.
- Effective means of redress when these rights are not complied with.
- Arrangements for security of tenure.

The Housing Improvement Task Force is actively pursuing the first two areas, although we add some comments on the scope of those inquiries below. We also understand that the Housing Improvement Task Force has, for the time being, ruled out improvements to the Short Assured Tenancy regime, on the basis that its negative impact on supply would outweigh the positive impact for tenants. This conclusion appears to have been reached with a limited amount of evidence.

Improved rights to decent standards of property and management.

The main proposal which the Housing Improvement Task Force is considering is extending schedule 4 of the Housing (Scotland) Act 2001 to all landlords, but also expanding it to create a new single reference source which includes all of a private landlord's statutory repair and maintenance responsibilities. Schedule 4 applies at present only to landlords letting Scottish Secure Tenancies (from October 2002). It requires the landlord to ensure that a property is kept wind and watertight and reasonably fit for human habitation both at the start of and throughout the tenancy. It also requires the landlord to inspect the property before the start of a tenancy to identify any work needing done to comply with this duty.

¹ Shelter believes there is a major opportunity for sector representatives such as the Chartered Institute of Housing in Scotland and the Scottish Association of Landlords to get together to design and promote a programme of joint events and training on housing and repairs management and, in so doing, increase the sharing of skills between public and private sectors.

Extending and expanding schedule 4 would be an important measure in putting into statute some of the basic conditions that a landlord must meet. However, a number of steps need to be taken to make it work.

Firstly, there is the question of how the standard is defined. Although schedule 4 says that fitness for human habitation should include disrepair and sanitary defects, it still leaves a lot of room for debate about whether a property meets the standard or not. Where a landlord has let a property with appliances or furnishings there should be a basic general standard that these are in working order and safe to use.

Secondly, much of what Shelter sees as problematic in the private rented sector relates to management styles as much as it does to physical conditions. Statutory standards for repair should be coupled with some minimum standards of management; in some cases simply drawing together existing common law or statutory standards – such as the right to a written lease – but also taking the opportunity to set out any new minimum expectations that could reasonably be expected of a landlord in the twenty-first century. These could be distilled from existing codes of practice, such as those published by the Royal Institution of Chartered Surveyors in Scotland. These minimum standards would only contain some basic requirements for management practice. Advancing those further is the focus of regulation and accreditation which we look at later.

A model tenancy agreement, with core and optional clauses, would be a very useful way of drawing these standards together, for both tenant and landlord.

Thirdly, there is the important question of the leverage that tenants have to ensure that any new obligations placed on landlords are actually acted upon. This is covered below.

Rights of redress

The Housing Improvement Task Force is considering a proposal to extend the role of Rent Assessment Committees to act as an independent arbiter in situations where the landlord has failed to bring the property up to the standard set out in the revised and expanded schedule 4. This would be a considerable extension of the current role of Rent Assessment Committees, which is mostly about setting a “market” rent where there is a dispute about what that should be.

In its new role the RAC would issue a determination as to whether the property did indeed fall below the standard and whether it had done so to such an extent that the tenant should receive compensation or a reduced rent. The RAC might also be able to refer the matter to a local authority to take remedial action if the problem continued.

There is a lot of merit in this line of thinking; not least that it builds upon an existing process. Shelter’s experience of RACs has been broadly positive; our concerns have

been more about how few tenants know about them. The proposals above would be a considerable extension of the role of the RAC and – if coupled with better publicity – would mean a fairly dramatic expansion in the pool of people prepared to sit on RACs and how that work is supported.

So, while there is potential in developing RACs as arbiters of disputes, this can only be done by recognising the scale of the change that would be required to enable them to do so effectively. A tribunal which was seldom-used or unable to respond quickly would fall into disrepute.

Giving landlords a more formal set of obligations with regard to repair would also open the way for a statutory right to repair, similar to that enjoyed by council and housing association tenants. Although its use would be exceptional, it could act as an intermediate stage to disputes having to go to RACs.

The Scottish Executive should also support and fund a major publicity campaign, aimed at informing private tenants of their new rights.

Improvements to security of tenure

The short assured tenancy (SAT) regime was introduced by the Housing (Scotland) Act 1988. Since that time, SATs have come to dominate the private rented market. Shelter believes that continuing to have a system where, after six months, a tenant can be evicted by a landlord, whatever the circumstances, will undermine other improvements that the Housing Improvement Task Force is seeking to make. Fundamentally, we fear that many tenants will not exercise improved rights to better standards or redress if, at the end of six months, all the cards are stacked in the landlord's favour. We believe that the Housing Improvement Task Force's apparent rejection of changes to the short assured tenancy regime compares unfavourably to the more radical overhaul of tenancy law being overseen by the Law Commission in England. Before closing off changes to tenancy law, we would ask the Housing Improvement Task Force to consider the case for either a longer minimum period for tenancies or incentives to ensure that longer periods are chosen.

We recognise that six month tenancies are sometimes as suitable for tenants as for landlords so one option would be for one year tenancies to be the norm with the possibility of shorter lets being available by mutual agreement.

More comprehensively, there is an opportunity now to revise the assured tenancy regime, now that it will no longer be used by housing associations. This was always an anomaly, given that the letting practices of housing associations were always much closer to councils than to private landlords. If assured tenancies no longer have to fill such an

explicitly “social” role, it could be time to look again at the possession grounds in that regime. Instead of landlords seeking guarantees of possession by letting only on short-term tenancies a revamped set of possession grounds within the assured tenancy may offer sufficient assurance to landlords. For example, it is already a mandatory ground for possession where an owner is returning to occupy a property that he or she previously occupied. But that could be reviewed so that people letting out property which they plan to retire to could also guarantee possession. There may be other such examples.

Shelter believes that these changes should only apply to assured tenancies; not to short assured tenancies. They would help to make assured tenancies more attractive and hence decrease the number of short assured tenancies which we see as problematic if used serially to cover what is, in effect, a long term tenancy.

Finally, we are disappointed that both the Homelessness Task Force and the Housing Improvement Task Force have felt unable to make progress on the problem of unlawful eviction. Shelter has proposed that Scottish local authorities be given similar powers to those in England to prosecute landlords directly; indeed, we have argued, as has been argued in England, that this power be enhanced to be a duty to investigate and take action on instances of unlawful eviction.

Filtering out the worst practice: certification

The progressive modern landlord, who aims to provide a reasonable quality property and a decent standard of service has little to gain from the persistence of landlords who conform to worst caricatures. The case for some form of regulation of the sector rests with strengthening the image of private renting overall by filtering out the types of practice which taint that image².

The strengthened consumer agenda that we outline above will contribute to achieving that end. But greater consumer rights alone will not root out poor practice and certainly not in the short term.

Consumer rights might be seen as ways in which the basic standards of property and management in an individual house or flat might be raised. Regulation is about raising the standard of the managing agents of property, whether that manager owns one or a hundred properties³.

² The taxi trade generally supports licensing of taxis, even with controlled fares, because it prevents operators offering a good service being undercut by operators who do not offer safe conditions.

³ The analogy with registered social landlords is relevant here. Regulation in this sector focuses on the robustness of the way a housing stock is managed – maintenance, management, financial – rather than the condition of individual properties.

However, if regulation is needed, there is a question as to its form. There is reasonable consensus that the licensing regime for HMOs, which was introduced in 2000, is proving too inflexible. Responsible landlords are carrying out works which they regard as disproportionate to the benefit to the tenant, in doing so, reducing the credibility of the regime. Meanwhile, many of the worst landlords are avoiding licensing altogether.

In our response to the initial proposals for HMO licensing Shelter said that we regarded the scheme as simply a stop-gap on the road towards a more comprehensive scheme, covering the private rented sector more fully and based on primary legislation. We have now reached that stage.

Given the small scale and diversity of the private rented sector, Shelter sees the role of regulation being charged to local authorities rather than a national agency such as Communities Scotland. The regulated activity would be letting and managing property, rather than property ownership itself. That is, where an agent was carrying out this function it would be the agent who was regulated not the owner. We have called this form of regulation “certification” and envisage it working as outlined below.

1. Local authorities should be given a new duty to set up a register of all non-resident landlords. All landlords would be required to be on this register in order to trade and to be on the register they would have to meet some minimum standards which would be called the certification standard.
2. The certification standard would comprise the most basic standards that any reasonable landlord would meet anyway. It would include current statutory standards, such as gas safety, and an assurance that the landlord had issued a tenancy agreement, for example. There may be 10 or 12 such standards.
3. Registration would be by way of a certificate, submitted by the landlord, giving details of name and address and ticking boxes to confirm that he or she had met these basic standards for each of the properties that he or she let.
4. Of course, ticking boxes on a certificate would be no assurance that a landlord had actually done those things so the local authority would still have a system of sample inspections. The visits could be entirely random or they could be targeted on particular properties or areas where officers' judgement is that there is more of a problem. Since the register itself would be fully comprehensive, there would be no need to define in law the basis on which such focusing be done. This is an advantage over other forms of “risk assessment” which are not backed by a full register.

5. Having creating a register and therefore, for the first time, a tool for communication with all landlords in the area, the authority would be able to send round periodical updates to all landlords of the results of sample visits, particularly where certificates were found to be invalid - that is, the landlord did not meet the standard. This, in itself, would act as a prompt to raising higher standards.
6. Certification fees would be according to a sliding scale depending on landlord holding – for example, £30-£50 for a person letting out a property while abroad for a year; larger fees for bigger landlords. However, the fees should be set, not according to self-funding, but based on an assessment of what the market will absorb. An important lesson of HMO licensing is the funding regime. By making licensing self-funding, the HMO regime provides incentives to pursue the “easy to contact” (that is, generally responsible landlords) and no incentive to pursue the worst landlords. The scale of the fees can also be a significant deterrent to landlords notifying authorities; money spent on fees is money not spent on repairs. So a fee may be required but it needs to be set at a level that will not lead to evasion of licensing. Central government funding for a certification regime will be essential.
7. The public register of landlords, having been created could also be used to disseminate decisions by the revamped RACs, promote accreditation (see below), update on new regulations or law and promote training.
8. That would be the very basic registration standard. Above that one would have the accreditation standard or a series of standards, similar to the star or crown systems for hotels. Accreditation would be promoted to all landlords on the register but would be entirely voluntary. To be allowed to put an “approved landlord” logo (or number of logos) on its marketing, the landlord would have to show that it met higher physical standards but it could also include other aspects of tenancy management - for example, adopted model tenancy agreement; attending a training session on management; adopted a system of cyclical maintenance; or many other aspects of what might be thought of as higher standards. Market advantage should be a major impetus towards accreditation but other incentives could also be looked at, such as pooled (and therefore cheaper) insurance; or access to marketing services to people on council or housing association housing registers.

As suggested above, the sanction for not being on the register would ultimately be to cease trading. However, it would also be appropriate for local authorities to have powers to set up more comprehensive licensing schemes on a discretionary basis, targeting specific sub-areas or sub-sectors. This, in the short term, would allow the HMO licensing scheme to continue. However, a scheme could also target particular geographical areas.

One other alternative to a general scheme as outlined is one which targets applicants on housing benefit. This is based on the reasonable premise that people on housing benefit often occupy the poorest quality property. However, given that tenants can move in and out of housing benefit eligibility, it would be difficult to implement. For example, it could mean a landlord being required to be regulated because of a change in the tenant's occupational status rather than any change in property condition or management. Further, if regulation were to be linked to housing benefit, then it could simply reduce the supply of property available to people on low incomes: for example, by switching target market to students or selling into owner occupation.

The overall impact of such a certification regime would probably be to increase, quite significantly, the role of letting and managing agents. Some attention would need to be paid to ensure that there was capacity within agents to respond to new demand. Shelter envisages that there may be scope for housing associations to expand their activities into this area, particularly in localities where there is already a strong housing association presence. We have also already highlighted the value of joint training sessions with public, private and voluntary sector managers.

Providing financial incentives

There is under-investment in the private rented sector. The sector has been very low in the priority list for public funding assistance because it is has not been easy to trace how improvements in quality to people who most need it would flow from use of public funds. Housing benefit, in large amounts, does go into the sector but there often does not appear to be much of a link between that and better conditions. This has led in some quarters to calls for housing benefit to be restricted where the quality of property is poor. However, in Shelter's view, this would impact most negatively on tenants, without necessarily improving conditions.

The consumer and regulatory reforms outlined above would mean greater accountability for any public money going into private renting. This strengthens the case for public support. However, given the increased demand for public support which will be a consequence of the Housing Improvement Task Force's broader reform agenda, it is likely that the amount of direct public money in the form of grants to private landlords is likely to be small. For this reason, attention might be focused on tax reform measures, which, being UK-wide, draw from the overall Treasury budget.

There are a number of ways in which the tax system disadvantages individual private landlords, which, if reformed, would level the playing field with other forms of investment. Examples might include: tax exemptions for money which is set aside for future repairs or capital allowances to allow acquisition costs to be set against taxable income. These case for these changes lies in parity with other business activities. Most controversially,

would be to introduce capital gains tax for owner occupied housing, to give it parity with rented housing. This would have the highly desirable additional outcome of driving down house price rises. We have also called for an investment vehicle which allows institutions to invest in the sector without directly owning property.

The basic thrust of this paper is to create a better connection between what tenants get and what they pay. With these reforms, the case for rent control is not a pressing one.

Conclusions

Shelter is encouraged that the agenda being pursued by the Housing Improvement Task Force appears to be avoiding the polarities of previous approaches to the private rented sector. Above all, we believe that long term investment in the sector will flow from there being a consensus about its long term future. The key points Shelter wishes to contribute are as follows:

- Management standards are at least as important as physical property standards in putting private renting on a new footing.
- A new statutory standard of repair and minimum letting standard for all private landlords should be introduced.
- A new role for Rent Assessment Committees in adjudicating on issues of property and management standards would be welcome, but only if accompanied with fairly dramatic expansion in the pool of people available to serve on RACs and effective marketing of these new rights to tenants.
- Improvements to the short assured and assured tenancy regimes should not be dismissed. Incentives for longer letting periods, perhaps coupled with changes to possession grounds should be considered.
- A basic form of registration and certification should be introduced, based on a fairly basic minimum standard and monitored through self-certification and sample inspections.
- A higher accreditation standard should be developed, with incentives for landlords to reach it.
- Financial incentives for private renting should be developed through the UK tax system, rather than through housing benefit or direct grants.

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