

# Written Evidence from Shelter Scotland at Stage 1 of the Private Rented Sector (Scotland) Bill

## Summary

- Shelter is broadly supportive of the changes that are proposed to the Landlord Registration Scheme which we hope will provide greater clarity to local authorities. However, it is expected that further refinements will emerge from the Scottish Government's review of Landlord Registration which has only just started.
- Shelter supports the measures put forward to HMO licensing in principle. However we do not agree that the planning system should be used further to control HMOs. In our view this will make management and conditions worse, not better.
- Shelter does not support the measures to deal with overcrowding which we think are hastily-conceived and likely to simply displace the problem, at best, or result in homelessness, at worst. We would like to see the issue of overcrowding examined more comprehensively, with full consideration of the impact on tenants of any proposed new powers.
- Shelter is happy with the measures made relating to the tenancy regime in particular the requirement for a pre-tenancy information pack and clarification of the law around charges for setting up a tenancy.

## Introduction

The private rented sector (PRS) already plays an important role in meeting housing need in Scotland, but it could, and must, do more. As we get closer to meeting the 2012 commitment, we must ensure that all housing sectors in Scotland help people find and keep a home. Local authorities will be increasingly looking to the PRS to find solutions for people who are homeless. We must also ensure that private landlords do more to prevent homelessness.

Shelter has campaigned for improved standards of management, more informed and empowered consumers, and better regulation in the PRS. As a member of the Scottish Government's PRS Strategy Group, Shelter has been involved in developing proposals relating to the PRS which were submitted to the Minister as legislative recommendations in January 2010<sup>1</sup>. In general, therefore, we support the measures contained in this Bill in so as far as they contribute to developing more effective regulation of the PRS, more

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2010/01/15111047/13>

competent landlords, and better informed tenants. However we have some particular concerns about the impact on tenants of measures to deal with overcrowding.

Given the timescales involved in developing this Bill, we appreciate that the measures are relatively modest in scope. They seek to bring about incremental changes to the existing policy arrangements for the PRS, rather than comprehensive reform of the sector. Shelter sees these legislative measures as a ‘halfway house’, the first phase in a longer process that we believe will lead to more strategic reform of the PRS. The PRS Strategy Group is continuing to meet to consider longer term reform to enable the PRS to play a more significant role in meeting housing need. We are pleased to note the Minister’s recognition that the work of the PRS Strategy Group may result in further measures to improve the sector, including further legislation. Key changes that Shelter would like to see in the longer term include:

- Reform of the tenancy regime to help tenants view private renting as a longer term option, in the absence of social housing and in light of the risks and costs associated with home-ownership.
- Improvements in access to justice for private tenants.
- Strategic review of the systems for regulation of private landlords.
- Ways to encourage more investment in the PRS.
- A new approach to providing tenants with information and advice to ensure that they become better-informed consumers by knowing about their rights and responsibilities and how to get help when they need it.

## Part 1 – Landlord Registration

Despite operating for nearly four years in Scotland, we have not yet seen widespread and consistent use of the powers under landlord registration to prevent the worst landlords from letting property. We hope the measures in this Bill will provide greater clarity to local authorities and go some way towards addressing some of the barriers that local authorities argue are preventing them refusing registration on the grounds that a landlord is not fit and proper to let. The Scottish Government has just begun a full review of landlord registration. It is a legitimate question as to whether these proposals, coming ahead of a comprehensive review, are being brought forward at the right time. The review may identify additional or better ways of enabling and encouraging local authorities to enforce their powers under the scheme. Nevertheless, Shelter supports the measures in this Bill as far as they go, though they will depend a great deal upon local authorities having the resources necessary to enforce them.

However, it is important to recognise the scale of the task in seeking to regulate 100,000 landlords. It is wise not to put all one's eggs in the basket of regulation which, inevitably, will have limits faced with such numbers and diversity. This is why we believe that the flip-side of better regulation is empowered consumers. Both informed consumers and effective regulation are essential to a well functioning PRS.

The Government has indicated that the full review of landlord registration will go beyond looking at implementation of the scheme and consider whether it is meeting its objectives “to reassure tenants and remove the worst landlords from the market and encourage other landlords to improve standards in order to be registered, and stay registered”<sup>2</sup>. We hope that the PRS Strategy Group will be able to consider its conclusions as part of its ongoing work, and look more strategically at whether landlord registration, in its current form, is the best way of regulating the PRS in order to drive out rogue landlords and protect tenants. In our view the “genie” of regulation is out of the bottle and we do not agree with suggestions that registration should be scrapped. However, there are reasonable questions as to how registration in the future might dovetail with other forms of regulation such as HMO licensing and, indeed, how regulation as a whole can respond to new challenges such as improving energy efficiency and reducing carbon emissions.

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<sup>2</sup> Specification for research – ‘Evaluation of the Impact and Operation of Landlord Registration in Scotland’ Scottish Government 2010

## **Part 2 – Licensing of houses in multiple occupation**

The licensing of houses in multiple occupation (HMOs) plays an important role in ensuring a high standard of rented accommodation and protecting tenants in this part of the private rented sector. In general terms, we support the measures set out in the Bill to bolster the ability of local authorities to enforce the current licensing regime, however, we have some misgivings about creating a link between the licensing and planning regimes in relation to HMOs.

Well managed and well regulated HMO accommodation plays a vital role in meeting housing needs 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 – planning control should not be used to plug the gap caused by lack of proper enforcement of HMO licensing or anti-social behaviour powers. Indeed, it is difficult to see how being an HMO, per se, is a legitimate concern of the planning system.

We do not support the use of planning policies to restrict the number of HMOs – the rise in numbers of HMO property, particularly in city centres, is a symptom of increased demand for affordable housing in a restricted supply market. Where property prices are high and new development is limited, flat sharing represents an efficient use of existing housing stock to meet increased demand. For many people, entering the job market at a low wage, their only option is to share. With the changes recently announced in the CSR – to extend the shared room rate in housing benefit from under-25 year-olds to all under-35 year-olds – then, after 2012, many thousands more single people will be reliant on shared accommodation to meet their housing needs in Scotland. In that context, seeking to impose caps on shared flats is ill-conceived and risks greater number of rented properties seeking to evade licensing.

## **Part 3 – Overcrowding**

Shelter considers that it is important for the Scottish Government and local authorities to tackle and reduce overcrowding given the negative consequences for the households concerned and for the wider neighbourhoods in which they live. Shelter believes that overcrowding is essentially a symptom of housing shortage and social and economic inequality. Attempts to tackle this problem must avoid stigmatising vulnerable households by blaming the victims and making their living conditions worse.

We recognise the argument that overcrowding is a particular problem in some parts of the PRS, particularly in areas where migrants have sought to live and where low incomes coupled with high rents or house values can often lead to high levels of occupation. The data on overcrowding rates are not very robust; however, indications are that overcrowding is more prevalent in the PRS than in other sectors, with around 7 per cent of

PRS homes overcrowded compared to 4 per cent in the social rented sector and only 2 per cent of owner occupied homes<sup>3</sup>.

The Bill sets out some very specific measures to tackle overcrowding in private rented housing in Scotland. We understand that this is to respond to problems in parts of Glasgow and in general, we do not believe that sufficient thought has been given to the full consequences of these measures. Legislating for powers to crack down on overcrowded flats may simply displace overcrowding, or lead to homelessness. These discretionary measures do not replace the need for a more comprehensive look at the problem of overcrowding in Scotland. This might involve a review of the standards for overcrowding as set out in Part VII of the Housing (Scotland) Act 1987 as well as research that looks at the nature and causes of overcrowding in the private rented sector in Scotland.

Our concerns about the proposals are as follows:

1. It confers powers on local authorities to take action on landlords or properties with little thought as to what will happen to tenants as a consequence. The only provision is that the local authority may give the occupants information and advice.
2. While an Overcrowding Statutory Notice cannot override statutory rights of tenants – in other words a landlord, by law, cannot use the Notice as an excuse to evict a tenant prematurely – we already know that landlords at the bottom end of the sector pay little heed to the letter of the law so summary or unlawful eviction is likely to increase. At best, the tenancy will be left to run to the end of its contractual period and the tenant then evicted.
3. The result will be increased homelessness or simply moving the problem from one property to another.
4. While official Code of Guidance on Homelessness makes clear that it is possible for households who are overcrowded to apply to local authorities as homeless there are a number of caveats to this:
  - Such applications can only be made if the health of the occupants is at danger (admittedly, this is likely to be the case where Overcrowding Notices are issued)
  - The options available to households who apply as homeless from being overcrowded may not bear any resemblance to the areas in which they want to live

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<sup>3</sup> Scottish House Condition Survey 2008

- To the extent that overcrowding is an issue linked to recent migration of people from central and eastern Europe, it is important to recognise that their entitlements to assistance under homelessness legislation are complex and contested.

Put simply, we do not see how a power to serve an Overcrowding Statutory Notice will do anything to address the underlying reasons why people live in such crowded conditions. At best, the power will be hardly used and, at worst, they will shift people around and cause homelessness.

We would urge the Committee to do two things

1. Say in the stage 1 report that the Committee is not satisfied that the Scottish Government has made the case for or put forward credible proposals for reform.
2. Recognising that overcrowding is a problem, request that Scottish Government comes back with fuller evidence on
  - The scale, nature and distribution of overcrowding
  - The reasons why people live in overcrowded conditions
  - The range of policy options that would help to address it – in all sectors.

If the Committee is minded to back the proposals in the Bill, we suggest that, at a very minimum, it is strengthened by giving local authorities:

1. A duty (not just a power) to provide occupants with advice and assistance if they are affected by a Notice.
2. A duty to rehouse a household or persons which lose accommodation as a result of a Notice, such rehousing to take account of any reasonable preference to live in a particular locality.

## **Part 4 – Tenancy regime**

### **Pre-tenancy information pack**

Shelter welcomes the introduction of a pre-tenancy information pack. The Scottish Government surveyed tenants as part of the Review of the Private Rented Sector published in 2009<sup>4</sup> and found a widespread lack of knowledge about rights and responsibilities. The pre-tenancy information pack would be a way of addressing this knowledge gap and promoting consumer awareness among tenants.

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<sup>4</sup> <http://www.scotland.gov.uk/Publications/2009/03/23153402/0>

We also consider that it would support recent measures to regulate and improve standards in the PRS, such as the right of appeal to the Private Rented Housing Panel over repairs and the role that local authorities have in dealing with poor management standards. As well as raising awareness among tenants, the pack also offers the opportunity to promote good practice amongst landlords.

It should be a basic requirement of a pre-tenancy information pack that it is presented in a way that is accessible and straightforward. It is essential that tenants read and understand the pack. It should reflect the ethos of the Home Report and perhaps reflect the Model Scottish Secure Tenancy which contains a summary of core information as well as the full contract. As such, we think that all mandatory documents and information that a landlord or agent should provide to a tenant should be standard in a pack, and presented in a clear and distilled format. This information could include the landlord's registration number or HMO licence, a simplified AT5, gas safety check certificate, a Repairing Standard statement and Energy Performance Certificate. This information should be at the core of a pack. However, we would welcome the opportunity to be involved in developing any additional discretionary contents further through subsequent discussions.

#### **Pre-tenancy charges – payment of premiums to agents and landlords**

We strongly support the move to make all pre-tenancy charges to prospective tenants illegal. This measure would clarify the existing situation which tenants, landlords and agents alike find confusing. In 2008 Shelter undertook a 'mystery shopping' exercise in which we contacted 23 letting agents around Scotland. This research showed that 18 out of 23 agents made some form of charge to tenants, often in the form of a standard 'administration' charge.

For tenants on low incomes, up-front charges can be prohibitive to entering a tenancy in the PRS. During the discussions that led to the Housing (Scotland) Act 1988 the rules around illegal premium were originally omitted and were put into the legislation as an amendment. The Government at the time accepted that pre-tenancy charges would affect those on lower incomes disproportionately. Consideration of charges that could be exempted from the prohibition should now be assessed in terms of how they would conflict with the Scottish Government policy to open up the use of the PRS to people on low incomes, including people who are homeless.

To complement this area of work Shelter has raised with the Scottish Government the possibility of immediate improvements to the availability of information to tenants.

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