Consultation response

Proposed housing bill: The private rented sector, licensing of mobile home sites and the twenty year rules.

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Shelter

Summary

- Shelter is broadly supportive of the modest changes that are proposed to the Landlord Registration Scheme which we hope will provide greater clarity to local authorities. However, we also see the need for the review of registration promised for 2010, to go beyond looking at implementation of the scheme and consider whether it is meeting its original objectives: to drive up standards in the sector and force unscrupulous landlords out of the sector.

- Shelter supports the proposals put forward to HMO licensing in principle, but we would like to see evidence from England about whether similar powers have been effective and how frequently the powers are used in practice.

- Shelter does not support the proposals to deal with overcrowding. We would like to see the issue of overcrowding examined more comprehensively with a range of both legislative and non-legislative solutions considered.

- Shelter is happy with many of the proposals made relating to the tenancy regime however we have some detailed comments in relation to landlords recovering possession of abandoned property. Shelter does not think the case for the Court process to be bypassed has been well set out. We do however, feel that this issue merits further discussion.

Introduction

The private rented sector (PRS) already plays a significant role in meeting housing need in Scotland, but we believe it could do more. As we get closer to implementing the 2012 commitment, we must ensure that all housing tenures in Scotland contribute to ensuring 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 long campaigned for improved standards of management, more informed and empowered consumers, and better regulation in the PRS. As a member of the 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[1]. This consultation includes these proposals, and additional measures relating to licensing of mobile home sites and the twenty year rules.

[1] http://www.scotland.gov.uk/Publications/2010/01/15111047/13

In general, we support the measures contained in this consultation as far as they contribute to developing more effective regulation of the PRS, more competent landlords, and better informed tenants. Notwithstanding our contribution to developing these, we have some comments on the specific measures contained in the paper relating to the PRS, in particular concerns about the impact of measures to deal with overcrowding on tenants.

Given the timescales involved in developing these proposals, we appreciate that the measures presented in the consultation paper are relatively modest in their scope. They seek to bring about changes to the existing arrangements relating to how the PRS operates, 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 thorough reform of the PRS. The PRS Strategy Group will continue to meet over the next year to discuss longer term reform of the PRS to enable it 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.

Part 1 – Landlord Registration

Despite Landlord registration 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. The powers proposed in this consultation emerged from the Scottish Government's review of private renting which was published in March 2009. We hope that they 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.

We note that the Scottish Government intends to carry out a full review of landlord registration during 2010. We question 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. Indeed, this is why we called for the review of landlord registration to be brought forward a year earlier than originally scheduled. Nevertheless, as we set out in answer to the questions below, Shelter supports the proposals put forward in this consultation, as far as they go.

We believe that informed consumers and effective regulation are essential to a well functioning PRS. Shelter argues that a full review of landlord registration should go beyond looking at implementation of the scheme and consider whether it is meeting its original objectives: to drive up standards in the sector and force unscrupulous landlords out of the sector. In the longer term we believe that the current dual system of mandatory registration alongside HMO licensing is open to question. We hope that the PRS Strategy Group will have input into this review and be able to consider its conclusions as part of its ongoing work.

Online application form: declaration of offences

Question 1.1 Do you consider that the list of offences that an applicant for landlord registration is specifically required to declare should be expanded to include firearms offences and sexual offences?

Question 1.2 If sexual offences were included, should the notification requirements of the Sexual Offences Act also operate?

Question 1.3 Please list any other types of offences that you think an applicant should be specifically required to declare and state your reasons for their inclusion.

Yes, the list of offences should be expanded in this way if local authorities feel that more specific provision in the legislation would enable them to take court action. This should be reinforced by guidance from Scottish Government that emphasises that local authorities

have discretion to apply the fit and proper person test in line with locally set policies, in addition to looking at information that landlords are required to disclose as relevant.

Ability of the local authority to require a disclosure check

Question 1.4 Should a local authority be able to require an applicant for landlord registration to provide a criminal record certificate in order to verify information?

Question 1.5 Should refusal by an applicant to do this be grounds for refusing registration on the grounds that the applicant is not a fit and proper person?

We think that this is a sensible way of enabling local authorities to verify self-certification by landlords. It should be accompanied by guidance to local authorities which states this power should not be used for every application, and sets out good practice in assessing when an application would warrant request of a disclosure check. Guidance should also cover recommendations for verifying a sample of applications submitted at random.

Notification by the Private Rented Housing Panel

Question 1.6 (a) Do you consider that the Private Rented Housing Panel should be required to request a landlord registration number from the landlord on receiving an application in relation to the Repairing Standard?

Question 1.6 (b) Alternatively, do you consider that the Private Rented Housing Panel should be required to request a landlord registration number from the landlord only in cases that have been accepted?

The Private Rented Housing Panel (PRHP) should request a landlord registration number for every case that it receives. Part of the justification for this is to embed the requirement to register more firmly in the minds of tenants and landlords, as well as to aid the work of local authorities in ensuring all landlords are registered.

Question 1.6 (c) Do you consider that the Private Rented Housing Panel should be required to check that the number is valid?

Question 1.6 (d) Do you consider that the Private Rented Housing Panel should be required to notify the relevant local authority if no number, or an invalid number, is provided?

Yes. This can be done through the online system or in cases where a landlord is recently registered, through direct communication with the relevant local authority. The volume of cases dealt with by the PRHP is low enough for this not to be a burdensome task. Local authorities and the PRHP should be encouraged to communicate with each other more effectively to reinforce each other's work in raising standards in the PRS. Care should be

taken in communicating with the local authority about cases that the PRHP are dealing with to ensure that they do not falsely assume that a landlord is being found in breach of the Repairing Standard because a case has been submitted to, or is being considered by the PRHP. However, if it does emerge that the landlord is not meeting the Repairing Standard, the local authority must be told of that conclusion.

Advertisements to include registration number

Question 1.7 (a) Do you consider that there should be a requirement for a landlord who falls within the scope of landlord registration to include his or her landlord registration number in any advertisement of a property to let?

Yes, this will help to raise awareness of the requirement for landlords to register among tenants. Tenants should be confident when considering whether to lease a property that their landlord is fit and proper to let. This requirement will also help local authorities enforce the registration scheme.

Question 1.7 (b) Do you agree that there should be an exemption for To Let boards?

We are happy that To Let boards are excluded from this requirement due to them being re-used.

Question 1.7 (c) Do you consider that failure to include his or her landlord registration number in any advertisement of a property to let should be made an offence?

Yes

Question 1.8 What should the maximum penalty for any such offence be?

It seems reasonable for the penalty to mirror the fine for non-provision of required information on request from a local authority which is proposed at level 2 in the current Housing (Scotland) Bill.

Obtaining information from agents

Question 1.9 Should a local authority have a power to require an agent to provide a list of all properties they manage along with the owners' contact details?

Question 1.10 Failure to comply would be an offence. What should the maximum penalty for any such offence be?

We agree that this proposal seems sensible and would enable local authorities to better enforce compliance with the requirements of the registration scheme. The maximum fine should be equivalent to the fine proposed in the current Housing (Scotland) Bill for failing to supply information on a specified property (level 2).

Part 2 – Licensing of houses in multiple occupation

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 proposals set out in the consultation to bolster the ability of local authorities to enforce the current licensing regime. In line with our comments on landlord registration, we think that there is a case for considering whether the interests of tenants is best served by a licensing regime which operates on a separate basis to landlord registration. We hope that the work of the PRS Strategy Group enables a more fundamental look at what is achieved by these schemes and considers the forms of regulatory intervention that are required in the PRS. Our comments below should be seen as interim comments, based on the current regimes.

Rent repayment orders

Question 2.1 (a) Do you consider that, where a landlord has knowingly operated a licensable HMO without obtaining a licence, tenants should be able to claim back rent money paid over the previous 12 months?

This appears to be a reasonable entitlement for tenants for the reasons set out in the consultation document. However, we would like to see evidence of the use of these powers in England to identify whether they have been effective and the frequency of use. We are not persuaded that, as set out, the system will be used any more than very occasionally.

In order to work as a disincentive to landlords to avoid licensing, making out a rent repayment order should not be dependent on tenants themselves pursuing it. Once the landlord or manager has been convicted of an offence, or the local authority is satisfied that an offence has been committed, the local authority should take the initiative in advising tenants that this power is available to them and pursue it on their behalf if necessary, regardless of whether they have given evidence against a landlord in court.

Question 2.1 (b) Do you consider that, where a landlord has knowingly operated a licensable HMO without obtaining a licence, the local authority should be able to reclaim housing benefit paid as rent over the previous 12 months?

Yes, housing benefit or local housing allowance (LHA) should be reclaimed from the landlord by the local authority. The principle that the penalty is being paid by the landlord should require that any excess LHA retained by the tenant should not be covered by the order. We have some doubts however, that a local authority would take the trouble of reclaiming housing benefit. It would be useful to see evidence from England about how

this has worked, and hear from the Department of Work and Pensions how it would view the use of this power.

Question 2.2 (a) Should a rent repayment order requiring such repayments be issued on conviction of the landlord or manager when all options for appeal had been exhausted?

Question 2.2 (b) Should a rent repayment order requiring such repayments be issued on the local authority being satisfied that an offence has been committed, even though the landlord or manager has not been prosecuted, when all options for appeal had been exhausted?

Question 2.2 (c) Have you any other comments on how a rent repayment order would operate?

Yes, it seems reasonable for a rent repayment order to be issued on both conviction of a landlord and when the local authority is satisfied that an offence has been committed. In both cases, the property would be subject to HMO licensing and the tenants will similarly be entitled to repayment of rent.

Question 2.3 Who should be responsible for making a rent repayment order (for example, the sheriff, the local authority, etc)?

Given our comments above, we believe that the responsibility should lie with the local authority as part of its role in pursuing landlords who fail to comply with HMO licensing requirements. The Sheriff could, however, be included in an appeals process.

Refusal to provide required information

Question 2.4 (a) If the owner of land or premises refuses to provide information sought by a local authority under section 186 of the Housing (Scotland) Act 2006 to help it to establish whether there is a licensable HMO on the land or premises, should this lead to the presumption that there is a licensable HMO?

Question 2.4 (b) Should any such presumption follow conviction or should the owner be given another opportunity to comply?

It seems reasonable that refusal to provide information should lead to an assumption of HMO status. It also seems reasonable that the owner convicted of failing to comply with a notice to provide information about an HMO would have another opportunity to comply before the presumption was made that the property was a licensable HMO.

Question 2.5 Should this also apply if an agent refuses to provide such information?

Yes, this should also apply to agents.

Question 2.6 If this is the case, should the new term "managing agent" be used in this context or should the existing reference to a person who "receives rent, directly or indirectly, in respect" of the land or premises apply?

Question 2.7 What are your views on how "managing agent" should be defined in this context?

Part 3 – Overcrowding

Shelter is committed to tackling poor housing conditions in Scotland, including overcrowding and the consequences it has for families and neighbourhoods. We recognise 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 force high levels of occupation. Local authorities that have a role in dealing with overcrowding and its impacts must do so sensitively and with regard to the impact on the tenants who are often living in precarious circumstances without many housing options.

These proposals set 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 simple 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.

Application of section 144 of the 1987 Act to private landlords

Question 3.1 The application by a local authority of section 144 of the Housing (Scotland) Act 1987 to private landlords within a specified locality would mean that each of them would be required to give a tenant a written statement of the permitted number of people allowed to live in the house (this number to be provided by the local authority in line with the statutory occupancy level); obtain a written acknowledgement from the tenant; and produce the acknowledgement to the local authority when required, with failure to do so being an offence subject to a fine not exceeding level 1. Do you consider that local authorities should be given the power to apply section 144 to private landlords within a specified locality?

Question 3.2 Have you any comments on how the proposed process would operate?

Shelter is not satisfied that the implications and operation of requiring a written statement of the permitted number of occupants in PRS accommodation has been properly investigated.

The proposal outlined in the consultation paper does not give enough detail to allow us to evaluate the impact on tenants of a local authority applying section 144. For example, it does not say at what point in a tenancy a written statement must be given. The implication is that it could be delivered at any point during the tenancy potentially resulting in homelessness if a landlord seeks to reduce occupancy to the limit set by the local authority before the end of the tenancy. We are also unclear as to the impact on tenants if the landlord fails to supply a written statement. As well as a more thorough description of the operation of this power, we would like reassurances from the Scottish Government that the impact on tenants has been properly understood and mitigated before this power is resurrected.

Overcrowding Abatement Order

Question 3.3 Should a local authority have a power to serve an Overcrowding Abatement Order in cases where overcrowding was causing serious nuisance or seriously affecting the welfare of occupants, compelling the landlord to reduce occupancy of a dwelling to the statutory level within a time period to be specified by the local authority?

This power should not be introduced until the Scottish Government has looked more closely at the nature of the problem of overcrowding in the PRS, and at the impact and operation of this power. Shelter has concerns, both in terms of how it would operate and how it would impact on tenants, which we think should be addressed before a decision is taken on introducing this power. We have particular concerns about the impact on vulnerable tenants with little knowledge of their tenancy rights and limited alternative housing options. We are also concerned about the consequences of using this power over tenants who have chosen for family reasons or cultural reasons to live in one home and whose housing options are limited, or the perhaps unintended consequence for families who are growing.

In the paper presented to the PRS Strategy Group outlining a case for these proposals, Glasgow City Council acknowledges a number of difficulties that it faces in managing poor housing conditions and overcrowding in communities of migrants with the powers that they currently have. These difficulties, such as sensitive community relations, language and communication barriers and cultural differences, would still be present with the new powers proposed by the consultation, but the balance would be swung towards dealing with the nuisance to stable residents and away from ensuring good housing outcomes for households who are living in overcrowded conditions. We appreciate the difficulty in balancing the needs of all members of the community; however, we do not think that these powers have been properly thought through to ensure that they strike the right balance.

Local authorities have a statutory duty to re-house people made homeless as a result of overcrowding. As a result of UK legislation, this duty is not interpreted as applying to many recent economic migrants and so some people who are made homeless as a result of an overcrowding abatement order would not receive help in finding a new home. At best, this may merely result in displacing the problem if the household finds alternative accommodation in the PRS, at worst; it could lead to homelessness, displacement or the inappropriate breaking up of family groups where alternative accommodation is not available.

Since the overcrowding abatement order would be served on the landlord to compel him or her to reduce the occupancy level, the local authority would have little control over the means the landlord took to do this. We would want assurances that tenants who are in a precarious position because of their lack of knowledge of their rights were provided with advice and assistance to prevent unlawful eviction or harassment. We are unhappy with the discretion given to local authorities to provide this advice where it reasonably considers it appropriate.

We would like the Scottish Government, as part of a broader review of the nature and scale of overcrowding in the PRS, to investigate further the impact of this power on various communities and circumstances, people with different eligibility for help with homelessness, and to look at how this power will be used alongside powers in relation to HMOs. We would like reassurance that the needs of tenants who find themselves served with an overcrowding abatement order can properly be met by the local authority.

Question 3.4 Please describe the evidence that you think ought to be taken into account in deciding whether to serve an Overcrowding Abatement Order?

Shelter does not think that the correct balance has been reached in presenting this proposal between the needs of the wider community and the tenants who would be affected by an Overcrowding Abatement Order. We recognise the impact that overcrowding of a property can have on neighbours and local amenities, however, these concerns should be balanced with the rights of the tenants to occupy their home, and the potential homelessness as a result of serving the Order.

Part of the justification presented to the PRS Strategy Group for this power was that existing powers under HMO licensing to deal with overcrowding were difficult to use because it was hard to establish how occupants were related to one another in households where English was not a first language or where extended families lived together. Overcrowding Abatement Orders are an attempt to sidestep the need to establish the circumstances of the household and look instead simply at the facts of the number of occupants. As well as highlighting a shortcoming in the approach to regulating

HMOs, the discretionary nature of this power could lead to serious inequality in the groups it affects. The selective way it could be applied could be viewed as discriminatory.

In addition, as part of the further investigation that we believe the Scottish Government should carry out before proceeding with legislation in this area, we think that the Scottish Government should consider the following requirements on local authorities prior to using this power:

- The extent and causes of the overcrowding and an objective assessment of the impact it has on the tenants
- A dialogue with the tenants that involves the landlord, to understand tenants' circumstances and whether housing alternatives can be found without the need for punitive measures
- As assessment of the local housing market and whether it can offer alternative accommodation that meets the needs of the tenants.
- An assessment of what advice and assistance could be given to tenants to help them find alternative accommodation that meets their needs and is affordable, including an assessment of the nature of any statutory duty the local authority might have towards them.

Finally, we think that the consultation is not clear on the issue of homelessness and what happens to excluded occupants. We think that the commitment to produce guidance is not enough to ensure that these powers are properly used. Excluded occupants may not be eligible for assistance from the local authority and be at risk of rough sleeping and destitution. Local authorities should be required to assess the eligibility for homeless assistance of the excluded occupants and there should be a requirement to make arrangements for access to temporary accommodation. Guidance is not enough given the lack of knowledge that many migrants will have about their rights to social assistance.

Question 3.5 (a) Should failure to comply with an Overcrowding Abatement Order be an offence?
Question 3.5 (b) If so, what should the penalty be?

Shelter would like further reassurance as detailed above about the need for and operation of this power before commenting on these matters.

Part 4 – Tenancy regime

The consultation paper refers to the Review of the Private Rented Sector in Scotland, published by the Scottish Government in March 2009 which concludes that the tenancy regime is operating satisfactorily. However, the Scottish Government Review did not explore the underlying reasons why tenants and landlords said they were satisfied with the tenancy regime or consider the strengths and weaknesses of alternative approaches and experience elsewhere. Nor did it attempt to consider whether the current tenancy regime might be fit for purpose in the privately rented sector that might be required in the future, given the fundamental changes in housing tenure and investment that will result from the credit crunch and the current general economic recession. The sampling methodology used for the tenants survey also resulted in an over representation of students who are generally interested in short term accommodation. For all these reasons, the Private Rented Sector Strategy Group has concluded that, notwithstanding the conclusions of the Scottish Government review summarised above, it will be essential to undertake a fuller and more fundamental consideration of the options in due course. The need for this further review does not detract from the short term proposals set out below.

Enforcing landlords' rights of access to their property to meet the requirements of the Repairing Standard

Question 4.1 Should a landlord have the right to apply to the Private Rented Housing Panel when in dispute with a tenant about gaining access to the property in relation to the Repairing Standard, with the Panel being given powers to enforce access?

Yes, to ensure that private rented property is maintained in accordance with the repairing standard, landlords should have the right to apply to the PRHP to gain entry. The panel must consider the landlords claim and the tenant's justification for refusing access. The balance of proof should lie with the landlord to justify why they need access and whether they have taken appropriate steps to secure access before applying to the PRHP.

Question 4.2 If a tenant still refused to allow access, how should the right of access be enforced (e.g., by court order or by giving the PRHP the right to enforce the entry by means of a warrant)?

The PRHP in these circumstances would have to obtain a court order. The process should be shorter due to the involvement of the PRHP.

Question 4.3 If a landlord was successful in such an application, should the tenant be able to request that a member of the Private Rented Housing Panel accompanies the landlord or a person authorised by the landlord when entering the property?

Yes, if appropriate and the tenant has concerns about the landlord having access to the property due to his conduct or a breakdown in relations with the landlord. If the PRHP considers it appropriate, it should also refer the tenant to the local authority landlord registration team who would be able to advise the tenant of his or her rights and investigate the management standards of the landlord.

Question 4.4 How should this additional work for the PRHP be funded?

Given that this extension of the PRHPs function is consistent with its role in ensuring that the repairing standard is met, we think that it should be funded through the general funds allocated to the PRHP.

Facilitating landlords' rights to inspect and gain possession of the property in abandonment cases

Question 4.5 Should a private landlord be able to present appropriate evidence of abandonment to an authorising body in order to obtain permission to inspect a possibly abandoned property and then to serve a notice to regain possession of it?

Question 4.6 What would be the appropriate evidence for a landlord to collect and present in order to show that a property has been abandoned?

Question 4.7 Do you agree that the possession notice should give 28 days notice?

Question 4.8 Which body should provide authorisation in such cases (e.g., the local authority, the Private Rented Housing Panel, the sheriff, etc)?

Question 4.9 If the Private Rented Housing Panel were to be the authorising body, how should this work be funded?

Question 4.10 Do you agree that, where the landlord had gained possession but it transpired that tenant had not actually abandoned the property and returned within six months, the local authority should have a duty to re-house the tenant?

Question 4.11 Please describe any specific safeguards that you think should be in place.

Question 4.12 Have you any other comments on the proposed process?

Shelter acknowledges that landlords identify the repossession of property in cases of abandonment as a key problem for them. We also recognise that this can be a problem for tenants. It is in the interests of tenants generally that property does not sit empty that could be let, and where a property is abandoned, the tenant still remains liable for rent. We also recognise that an unduly costly or complicated process for regaining possession

of property deters landlords from taking the legitimate route and potentially leads to illegal evictions. In genuine cases of abandonment, it is in everyone's interests for the landlord to legally regain possession and relet the property as efficiently as possible.

However, we would like the Scottish Government to look more carefully at the evidence that possession in these circumstances is taking too long or is unduly complex. The experience of Shelter's housing law service and Shelter's housing aid centres shows that often the problems that landlords encounter in regaining possession are a product of leases not being written properly. If a contract is properly drawn up, the time it takes to pursue recovery through the court does not extend to six months, and the risk of illegal eviction is remote if the landlord has acted diligently in finding out if their tenant is still occupying. Before seeking to legislate on these proposals, we would like the Scottish Government to provide further verifiable evidence that landlords who have well written tenancy agreements are experiencing lengthy delays in seeking possession through the courts.

In Shelter's view, tenancy agreements that are properly drawn up enable effective recovery of possession. For example Ground 13 of Schedule 5 of the Housing (Scotland) Act 1988 allows the landlord to go to court if any obligation of the tenancy is broken: occupation is an implied contractual duty in any tenancy[2] and can be written into the lease. Non-occupation and abandonment can also be written into a lease as contract breakers as per Section18 (6) of the Housing (Scotland) Act 1988 enabling landlords to raise an action two weeks from the AT6 being served.

The consultation document says that there is a risk to landlords of illegal eviction if the landlord takes the property back and it later transpires that the tenant has not abandoned the property, however our understanding is that Section 22 of the Rent (Scotland) Act 1984 qualifies the illegal offence where the landlord has reasonable grounds for believing the tenancy is unoccupied. Section 23 of the Rent (Scotland) Act 1984 (requirement to seek a court order) applies only where the occupier continues to reside after a contractual tenancy has been ended. Finally, Section 36 of the Housing (Scotland) Act 1988 also protects landlords from damages for illegal eviction where they had reasonable cause for believing the property unoccupied. Landlords can protect themselves by citing various issues in court and dealing with these issues in the lease.

If it is the case that landlords are not protecting themselves sufficiently in drawing up tenancy agreement, then the response should be to offer training to landlords to help them, rather than providing a route to enable them to evict more easily. Guidance to landlords in establishing whether a property has been abandoned should also be made

[2] Introduction to the Scottish Law of Leases, Angus McAllister

more widely available. Landlord registration and Landlord Accreditation Scotland offer opportunities to improve the professionalism of landlords in this regard.

This issue is just one of many that reflect the perception that the Civil Courts System in Scotland is inaccessible for disputes between landlords and tenants. The PRS Strategy Group will be considering access to justice and alternative dispute resolution mechanisms as part of its ongoing work. In the meantime, Shelter on balance, does not agree that the case has been made for the Court process to be bypassed. There is a significant risk that landlords will use this new power in situations where abandonment has not occurred and this will result in people losing their homes without proper scrutiny. We do however, feel that this issue merits further discussion.

Pre-tenancy information pack

Question 4.13 Do you consider that landlords and letting agents should be required to issue a standard information pack to the tenant at the start of the tenancy, with Ministers having the power to specify the information that must be included in it?

Yes, we welcome the introduction of a pre-tenancy information pack. The Scottish Government survey of tenants found a widespread lack of knowledge about rights and responsibilities among tenants. The pre-tenancy information pack would be a way of addressing this knowledge gap and promoting consumer awareness among tenants. 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 PRHP 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. This could be done by linking the current pre-tenancy duties that would become part of the pack to the landlord's ability to create a short assured tenancy (SAT). We envisage an amendment to section 32 of the Housing (Scotland) Act 1988 to add a requirement that a landlord must issue a pre-tenancy information pack in a form prescribed by Scottish Ministers in order to create a valid SAT. This approach would be an effective way to incentivise landlords to deliver the pack, since not doing so in the correct form could result in them entering into a full assured tenancy by default.

Question 4.14 What documents do you think should be included in such a pack?

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 of a Scottish Secure Tenancy which contains a summary of core information as well as the full contract. As such although we think that all mandatory documents and information that

a landlord or agent should provide to a tenant should be standard in a pack, they should be 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. Initial thoughts about other information that could be part of a pack include:

- Details about the transfer of energy supply (to be provided by the landlord)
- Information about tenancy deposit protection
- Inventory of the property
- Fact about the standards of management that should be expected from a landlord/agent
- A statement on the landlords right of access.
- How to deal with a dispute with your landlord
- Responsibilities of tenants
- Where to get help, advice and information.

Question 4.15 What role should the Scottish Government, local authorities and other relevant public bodies have in developing the standard information pack and making it available to landlords (e.g., online)?

Scottish Government should take a lead role in producing a standard pack of information. It should also be responsible for updating information as appropriate and enabling dissemination. This may be online or though hard copy. The pack should be developed through close consultation with stakeholders and once developed, piloted with landlords and tenants. Local authorities may be required to maintain additional contact information and details of local services in an accessible way that could be signposted in a pack.

Question 4.16 (a) Should failure to comply with the requirement to issue a standard information pack be an offence?

Question 4.16 (b) If so, what should the penalty be?

Following our suggestion above to make the pack a requirement of setting up a SAT, it should be unnecessary to make failure to comply an offence. If a pack is not delivered to the tenant in the correct format, then they will by default have created a full assured tenancy. However, in practice, landlords who are currently not properly setting up a SAT are also likely to be landlords who fail to provide a pre-tenancy pack. This would only come to light if the tenant challenged the landlord and the majority of tenants do not feel secure enough to do so, and these tenants in particular would not have had a pack to

inform them of their rights. There should be a concerted effort to ensure that landlords who are not currently giving SATs through bad practice are covered by the requirement. In addition it seems sensible to ensure that failure to provide pre-tenancy information packs is a factor that local authorities take into account in assessing whether a landlord meets the fit and proper person test.

Simplification of pre-tenancy notices

Question 4.17 Do you consider that there is scope for merging documents that need to be issued at the start of a Short Assured Tenancy into one form?

Question 4.18 If so, please state which documents you consider could be merged.

We agree that there is scope to simplify the pre-tenancy notices that should be issued to tenants at the start of a tenancy, and we think that this could be done as part of a pre-tenancy information pack as detailed in our response to the questions below.

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

Question 4.19 Do you agree that all pre-tenancy charges should be made illegal, apart from exemptions for reasonable charges, which would be set out in secondary legislation following further consultation?

Yes, we agree in principle that all pre-tenancy charges to the prospective tenants should be made 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-font charges can be prohibitive to entering up 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 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.

Question 4.20 Which pre-tenancy charges, if any, do you think should be exempted and therefore be legal to charge?

We agree that all pre-tenancy charges should be made illegal, however we accept that certain individually specified charges might be exempted. It should no longer be possible

for agents to charge a composite administration fee, for example. Agents who are contracted by a landlord to let a property should not be charging prospective tenants for their services as well. In principle, if a landlord requires references or credit checks then these should be paid for by the landlord, however, we are aware that letting agents argue that charges may prevent unnecessary work to assess prospective tenants who express an interest in letting but who are not committed to taking on a lease. We would welcome further discussion on ways to avoid this situation and the opportunity to contribute to developing secondary legislation that could set out the charges and a fee structure that landlords and agents must follow.

Question 4.21 How should the making of illegal pre-tenancy charges be dealt with?

Both landlords and agents should be subject to a fixed penalty for making illegal charges and required to repay the tenant or potential tenant a sum of money which could be set at three times the illegal fee that was initially charged. In addition, we propose that the local authority should be required to follow up and deal with the making of illegal charges, and take action under its landlord registration function.

Clarification of possession proceedings, including the issuing of Notices of Proceedings

Question 4.22 Do you agree that it should be made clear in legislation that a Notice of Proceedings is required to be issued to a tenant in a short assured tenancy?

Yes, we think that a Notice of Proceedings should be made compulsory in order to gain possession of a SAT. This would clarify and bring parity between an Assured Tenancy and a SAT and give tenants the added protection of knowing in advance that Court Proceedings were being brought against them.

Question 4.23 Do you consider that the three notices currently required to be issued to tenants when the landlord seeks possession should be replaced by one, clearly-worded notice?

Shelter is in favour of all notices that are issued to tenants being clearly worded, however, we have concerns about bringing together the notices required to gain possession into one notice. The Scottish Government's intention to clarify for tenants the process that landlords have to take to end their tenancy could be achieved through better information given to tenants about their rights and tenancy law. This could form part of the pre-tenancy information pack.

We recognise the attraction to landlords of replacing the three notices currently required with one notice but we have concerns about the implication of this for tenants. The PRS plays a far greater role as a cause of homelessness than it should. Figures for 2008-9 show that 14% of applicants to a local authority for homelessness assistance did so after

living in the PRS. Of those 39% cited action by their landlord as leading to their homelessness. These figures highlight that eviction from a PRS tenancy contributes to homelessness to a much greater degree than the scale of the sector warrants. This situation will be exacerbated by further simplification of recovery procedures.

The consultation paper deals very briefly with the justification for bringing together possession notices and does not comment on how this could be achieved. A notice to quit and a notice of proceedings serve very different purposes and could be used independently to different ends. For example, a notice to quit may be used to bring the contract to an end in order to introduce new terms, without the intention to regain possession. It is our understanding that designing a single notice would not be a straightforward undertaking. It would require significant redrafting of current legislation and should not be dealt with by amendment.

As part of this consideration, Shelter would like to see a comprehensive review of the operation of the tenancy regime that would look in more detail at why landlords bring tenancies to an end and the grounds for eviction, for example. In the Review of Private Renting and again in this consultation, the Scottish Government has indicated that encouraging landlords to offer longer term tenancies would be a positive spin off of making possession proceedings more favourable to landlords. We are not confident that in practice longer term tenancies would be offered by landlords. Since the Government accepts that an important part of encouraging the PRS to play a fuller role in meeting housing need is to ensure that tenants feel secure, we would like to see positive measures to enhance security of tenure considered alongside any simplification of possession proceedings.

Part 5 – Licensing of mobile home sites

Licensing

Question 5.1 (a) Do you agree that the licensing system should be modernised with the aim of giving local authorities increased powers to improve practice by site owners and standards of service experienced by residents?

We support the intention of modernising the outdated provisions for the licensing of mobile home sites and enabling local authorities to enforce higher standards of site management through the licensing regime.

Question 5.1 (b) If so, which alterations do you consider key to meeting this dual objective?

We agree that the licensing of mobile home sites should be brought into line with other licensing regimes to enable local authorities to charge for licensing, to assess the suitability of the license holder, and to revoke a licence where there are grounds for doing so. We are aware that more specific details of proposed changes are being provided to the Scottish Government by the Mobile Homes Working Group, of which Shelter is a member.

Question 5.2 (a) Do you agree a revised licensing system should enable local authorities to revoke or suspend a licence, on specific grounds, without the requirement to approach the courts?

Question 5.2 (b) If so, what should these grounds be?

We agree with the proposal that it should be possible for a local authority to suspend or revoke a licence. Possible grounds could be where the licence holder ceases to meet a fit and proper person test, where the site that is licences fails to meet the model standards or where the local authority has specific concerns about either requirement. In addition, we would like the Scottish Government to thoroughly consider the implications for park home residents of a license being revoked. It is possible for residents to invoke a Right to Buy the site, however, where this is not appropriate, alternative measures such as management control orders or appointing an agent to run the site should be considered.

Question 5.3 Do you agree there is a requirement to strengthen the legislation requiring individuals to demonstrate they are suitable to hold a site licence?

License holders should be found fit and proper to hold a licence to run a site. The requirements of this test should be at the discretion of local authorities to determine, but include reference to criminal offences and conduct of the licence holder.

Question 5.4 Do you agree that local authorities should have increased powers to progress enforcement action, when there are breaches of licence provision, without having to approach the courts?

Yes, revising the licensing system should allow local authorities to enforce its requirements. We agree with proposals to increase the maximum fine that can be applied to breaches of the licensing regime.

Question 5.5 Do you think that sites not requiring a Caravan Site Licence should still be expected to comply with model standards?

Changes to the licensing regime will allow model standards to be properly enforced, but model standards themselves need to be updated to reflect the changed conditions of mobile home sites across Scotland. It may be appropriate for model standards to be relevant to sites that do not require a licence, but perhaps not in every case

Question 5.6 Do you agree that licensing authorities should be given powers to charge fees in connection with licence applications and enforcement?

Yes, it is appropriate for local authorities to charge a fee for operating a licensing system for mobile home sites and the Scottish Government should draw up a reasonable scale of fees.

Definition of a caravan

Question 5.7 Do you agree the interpretation as to what may be classed as a caravan should be clarified?

We agree that the definition of what classes as a caravan, set out in the Caravan Sites and Control of Development Act 1960 should be updated and clarified to take account of the evolution of park homes over the last 50 years.

Part 6 – Facilitating private investment in housing – the twenty year rules

The 20 year lease rule

Question 6.1 Are you aware of any projects or borrowing for affordable housing which have been prevented, or made more difficult or costly, as a result of the 20 year lease rule? If so, please provide details.

Question 6.2 (a) Do you consider that there should be an amendment to the 20 year lease rule?

Question 6.2 (b) If so, do you consider that this should be limited to exemptions for the provision of certain types of housing projects or housing finance, or do you consider that an extension to the maximum lease period should be provided for all residential leases?

Question 6.2 (c) Please provide details of what types of providers and/or projects should benefit from any exemptions.

Question 6.3 What sort of controls, if any, should be placed over the length of any exemptions, extensions to the lease rule, or requirements for consent?

This is not an area that is core to Shelter's area of expertise, however, we think that it is important and merits close examination. The aim of the prohibition in the Land Tenure Reform (Scotland) Act 1974 was to prevent the back-door introduction of leasehold tenure into Scotland. This is an important objective so, although we cannot pretend to any specialist expertise in this area, we believe firmly that any relaxation of this prohibition should not undermine the original objective. We would like the opportunity to respond to any specific exemptions if these are taken forward.

The Standard Security rule

Question 6.4 Are you aware of any projects, or borrowing for affordable housing, which have been prevented, or made more difficult or costly, as a result of the 20 year standard security rule? If so, please provide details.

Question 6.5 How should section 11 of the Act be amended to help encourage longer term lending for housing, whilst protecting the interests of borrowers, lenders and tenants?

We have no comments on this at present, but we would like to have the opportunity to comment on any specific proposal that emerges in due course