

Consultation response
Registration of Private
Landlords:
Amendment of
Secondary Legislation

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Shelter

Introduction

It is timely to be revisiting the regulations on the operation of Landlord Registration. Starting in March next year, the first landlords to register will begin the process of re-registration. We are disappointed, however, that the opportunity is not being taken to review the impact of registration, particularly the impact on standards in the private rented sector (PRS).

Landlords and tenants alike have been encouraged to believe that Landlord Registration will raise standards, particularly standards of management, in private renting. We are disappointed that almost three years after the introduction of registration, landlords and tenants have had little reassurance that local authorities will act where mismanagement of tenancies is brought to their attention. Shelter has not seen evidence that registration is having any impact on standards¹. The focus so far has been on getting people on the register, rather than enforcement of standards through the fit and proper person test. Local authorities have a role to play in delivering a better quality sector for tenants, but we see many examples where local authorities and their partners aren't acting to protect tenants or send a clear message to rogue landlords. The Good Practice Report produced for the Scottish Government by Arneil Johnston² supports our assessment. They identify that "this is an area that is under-developed across all authorities interviewed."³

We believe that the Scottish Government should be looking more closely at where disputes occur between landlords and tenants, and talking to local authorities about whether landlord registration is the best means of dealing with them. Otherwise, we are in danger of sending out a message that local authorities can police the sector when they may not have the capacity or power to do so. If this happens, we risk undermining confidence in registration as a whole and losing the cooperation of landlords and tenants alike.

As part of the review of the Private Rented Sector that the Government is currently undertaking, Shelter would like to see a review of the impact of Landlord Registration on raising standards in the sector, and consideration of whether local authorities have the capacity to enforce standards and protect tenants from poor management by their

¹ Notwithstanding the high profile cases in Glasgow reported in the media:
http://www.theherald.co.uk/search/display.var.2445853.0.second_slum_landlord_is_banned_from_renting_flats.php

² Advice and Support for Local Authorities in Relation to Landlord Registration, Stage 1 Good Practice Report, Arneil Johnston, January 2008

³ Advice and Support for Local Authorities in Relation to Landlord Registration, Stage 1 Good Practice Report, Arneil Johnston, January 2008 (page 46)

landlords. We would expect this review to form part of an assessment of existing arrangements relating to management of private sector tenancies⁴ prior to the introduction of a Letting Code. Shelter calls on the Government to set out a clear timetable for considering the introduction of a Letting Code.

We are also keen to find out how the government intends to put in place or monitor the good practice recommendations made in the Good Practice Report produced for the Scottish Government by Arneil Johnston⁵ that are not covered by the changes to regulations; for example, requiring local authority departments to talk to one another about cases that come to their attention relating to the PRS. In particular, we are concerned that where a homelessness team takes an application from someone that has been unlawfully evicted by a private landlord, this should be reported to the landlord registration team.

Shelter participated in the consultation event held on 2nd May 2008 and contributed to the discussion about the legislative framework for landlord registration. We are limiting our written comments here and responding to Questions 9 and 10.

Questions

Question 9

Do you agree that the exemption for resident landlords should be reconsidered by Ministers? Do you have any evidence to underpin your view?

Shelter has considerable doubts as to the wisdom of widening the scope of landlord registration to include resident landlords **at this time**. This is because if the existing system is not yet working effectively, extending the scheme to cover new categories of landlords would just compound the problem.

The issue of resident landlords was considered during the passage of the Anti-social Behaviour Act 2004. Letting arrangements of resident landlords can often be informal and it was thought that the introduction of regulation to resident landlords could have a marked affect on supply. It was concluded that tracing and registering resident landlords could present a substantial logistical problem for local authorities and they were excluded by amendment to the Anti-social Behaviour Act.

⁴ Required by the Anti-Social Behaviour Act 2004 as amended by the Housing Scotland Act 2006 Part 8, Section 175 (3)

⁵ Advice and Support for Local Authorities in Relation to Landlord Registration, Stage 1 Good Practice Report, Arneil Johnston, January 2008

During the passage of the Act, Shelter accepted that inclusion of residential landlords in the registration scheme should not take place until after a period of review. There is still no reliable data on the number of landlords who would be affected and no review has been conducted on the impact it would have. In addition, we argue that the logistical and administrative burden involved in registering resident landlords would take resources away from the vital task of enforcing standards through the fit and proper person test. Given the difficulties local authorities have had in implementing registration, Shelter believes that there should be a concentrated effort to make registration credible for landlords and tenants before we consider extending the scheme further.

Question 10

Do you support the proposal to extend the current advice and assistance regulations to require local authorities to provide advice to tenants where they discover their landlord is not registered but they believe they should be?

Shelter supports the proposal to extend advice and assistance to tenants who report their landlord is not registered. As we discuss in our introductory comments, however, Shelter thinks that this proposal should go further. Shelter is disappointed that the opportunity is not being taken here to reinforce a requirement on local authorities to publicise the scheme to tenants and landlords and to encourage tenants to contact the local authority to report problems with their tenancy and seek advice.

In their Good Practice Review⁶, Arneil Johnston recommend that local authorities publicise the scheme widely to the general public and tenants and that any complaints made about landlords or tenancies that may result in a breach of the fit and proper person test are investigate and acted upon. They add that it is critical to the reputation of the scheme that landlords and agents comply, and that where a local authority has concerns that landlords or their agents are not acting appropriately they take action.

The emphasis on enforcement of Landlord Registration by both local authorities and the Scottish Government to date has been on ensuring compliance with the requirements of the administrative process of creating a database of landlords. Shelter argues that as we move forward into the next registration period, local authorities should be transferring resources to enforcing the fit and proper person test. A vital element of ensuring the

⁶Advice and Support for Local Authorities in Relation to Landlord Registration, Stage 1 Good Practice Report, Arneil Johnston, January 2008 (page 46)

success of registration is that landlords and tenants alike respect the scheme and work with local authorities to identify and improve bad practice.

Conclusion

This review of the regulations surrounding landlord registration is timely and appropriate. We hope that it leads to a registration system that functions more smoothly and enables local authorities to move from an emphasis on ensuring that local landlords have complied with administrative requirements, to enforcing the requirements of the fit and proper person test and tackling poor management in the sector.

Shelter is disappointed that three years into the scheme, tenants are largely unaware that their landlords should be registered or that they should be fit and proper to let. We are concerned that as we approach re-registration, landlords and tenants who are aware of registration believe that it has not fulfilled its promise to improve standards in the sector. In addition to improving the administrative arrangements set out in regulations, Shelter urges the Scottish Government to work with local authorities to use ensure that Landlord Registration is seen to increase standards in private renting.