

Consultation Response

Department of transport, local government and the regions: selective licensing of private landlords

From the Shelter policy library

January 2002

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Shelter

1. Shelter

1.1 Shelter is a national campaigning charity that each year helps over 100,000 homeless or badly housed people. We have two aims. One is to prevent and alleviate homelessness by providing information, expert advice and advocacy for people with housing problems through our national network of housing aid centres and through Shelterline, a free, national, 24 hour housing advice line. Our second aim is to campaign for lasting improvements to housing-related legislation, policy and practice.

1.2 In 2001, we worked with almost 18,000 private tenants in England. Over two-thirds of these tenants were renting accommodation on assured shorthold tenancy agreements with limited security of tenure.

1.3 In addition, we have in Shelter's Campaign for Bedsit Rights (CBR) a specialist unit that concentrates on policy and practice in the private rented sector. Through CBR, we network with organisations directly involved in private sector housing, including tenants groups, statutory and voluntary advice centres, private landlords and their associations, and local authority environmental health departments.

1.4 Last year Shelter set up a Commission on Modernising the Private Rented Sector, with the support of the Joseph Rowntree Foundation, which brings together individuals with expertise from all sides of the sector. Appropriate statutory and voluntary regulation of private rented housing management is one of the key policy aspects to which the Commission has given its attention. The Commission plans to publish a report in Spring 2002.

1.5 This response has two main parts. First, we raise those considerations that we consider are crucial to the design and implementation of the selective licensing scheme. Second, we respond to the 'Key issues' set out in Annex 1 of the consultation paper.

2. Selective licensing: key considerations

2.1 Shelter shares the concerns that the proposals in the consultation paper aim to address. We wish to see a thriving private rented sector in which landlords want to be in the business of long term letting, private individuals and institutions feel confident in investing in residential property, tenants can expect effective and sensitive customer services, and local housing authorities can work in partnership with landlords and agents to maximise the potential of their local private rented market to help meet a range of housing needs. We are keenly aware from the work of our direct services that too many aspects of private renting fall well short of that in practice. In particular, we know that there are neighbourhoods and areas in towns and cities, mainly concentrated in low housing demand areas, where individuals or companies purchase properties very cheaply

because prices are severely depressed and let them out to tenants with next to no responsible management or maintenance, causing nuisance to neighbours and destabilising an already blighted area still further. There is an urgent need for new initiatives to assist local communities and their authorities to turn these areas round.

2.2 We therefore welcome the proposal to allow local housing authorities to set up licensing schemes for private landlords in such areas, subject to the Secretary of State's consent. This will give authorities an additional tool to prevent the activities of unscrupulous or irresponsible operators from becoming a contributory factor to neighbourhood decline. It will also help to improve the profile of the private rented sector by controlling or removing irresponsible landlords. As stated in paragraph 4 of the consultation paper, the proposed power should not be seen as a panacea. Its use must be accompanied by robust arrangements to protect tenants from homelessness and hardship. Four key considerations need to be addressed in the design and implementation of the selective licensing scheme.

2.3 First, the purpose of the scheme should be to regulate irresponsible landlords and bring other landlords who may be in the business reluctantly (for example, a home owner trapped in negative equity who can secure an income by renting out the house but who has no management experience) up to standard, not to penalise responsible landlords or drive them out. In too many places, the relationship between local authorities as regulators of housing standards and private landlords as housing providers is riddled with suspicion, misunderstanding and conflict. The introduction of selective licensing has the potential to intensify these difficulties, if it is not targeted at the worst operators. *We recommend that authorities applying to the Secretary of State to adopt the new powers should be required to demonstrate that they have in place in their district active mechanisms for partnership and consultation with responsible private landlords, agents and their associations, and that they have involved them in planning the use of the powers.* The mechanisms could include projects run by voluntary agencies and funded from regeneration budgets or RSLs with a brief to encourage private landlords and agents to participate in community regeneration. An excellent example is the New Deal Private Rented Project in the west end of Newcastle upon Tyne. Having mechanisms in place would significantly increase the likelihood that the scheme would bite on the worst operators and enhance the contribution of responsible managers to the local rented market.

2.4 Second, the scheme must be designed to ensure that licensed landlords carry out their legal requirements and must mesh with other forms of statutory and voluntary regulation. We address these aspects in more detail later in this response.

2.5 Third, there must be safeguards to protect existing and prospective tenants from adverse consequences. The consultation paper is disappointingly weak in this respect.

- It contains no analysis of why people take up lettings in badly managed, poor standard private rented properties in an area where there is an over-supply of social rented housing, other than the statement in paragraph 3 that they 'may have been excluded from social housing.' A recent survey by ROOF magazine (ROOF January/February 2002) found that local authorities and housing associations in England and Wales in 2000 evicted 5.5 tenants per 1,000 rented homes, more than double the 2.1 repossessions per 1,000 mortgages that year. Over ninety-four per cent of these evictions were for rent arrears, and 3.3 per cent were for anti-social behaviour. Outside London, authorities in areas of low housing demand evicted significant numbers of households (for example, Manchester 306, Sheffield 276, Salford 172, Newcastle upon Tyne 129, Doncaster 98, Rochdale 95). In Shelter's experience, tough social housing exclusion policies are a key factor in the reasons why some people end up in private lettings in declining neighbourhoods. They have nowhere else to go locally. *We recommend that authorities applying to the Secretary of State to adopt the licensing powers should be required to detail their policies on exclusions from social housing, to indicate whether these will be reviewed in advance of being granted the powers, and to provide an assessment of the factors which lead households to live in the private rented properties to be covered by the licensing scheme.*
- The proposals are presented as a way of tackling anti-social behaviour by tenants living in the problematic properties. As discussed above, some of the tenants may have been perpetrators in social housing, and may have been evicted without being offered a programme to enable them to confront their behaviour and seek to change it. It is even less likely that private landlords will be equipped to address anti-social behaviour by some of their tenants. Local authorities' partnerships with private landlords should include shared initiatives in seeking to prevent and in tackling anti-social behaviour. However, one likely consequence of the licensing scheme is that tenants who behave anti-socially will be evicted from their homes. There is no indication in the consultation paper as to where those people will secure accommodation, especially if they are already on social housing exclusion lists. Since selective licensing schemes will not be in operation in all areas, unlike the planned HMO licensing system, there will be a great temptation for authorities adopting a scheme to take no account of the housing needs of those evicted and simply to push the problem into another authority's area. *We strongly endorse the statement in paragraph 29 of the consultation paper that it would be essential for authorities to demonstrate the agreement of neighbouring authorities to their use of the licensing powers.*
- Tenants may lose their homes not only because they are evicted for anti-social behaviour but also because their landlord is refused a licence. The Homelessness Act, expected to come into force this year, will require local authorities to devise and publish local homelessness prevention strategies, after conducting a review examining

all potential local causes of homelessness. *We recommend that authorities applying to the Secretary of State to adopt a licensing scheme should be required to demonstrate that their homelessness prevention strategies and services take full account of the potential consequences of the scheme and contain robust policies for securing accommodation for all who may be displaced.*

2.6 Fourth, local authorities need to ensure that the administration of the scheme is adequately resourced. The scheme will depend on a discretionary power, so additional funding from central government will not be negotiable, unlike the HMO licensing scheme where the Government has indicated it recognises assistance with start-up costs will be needed (Hansard, House of Commons, Col 124, 14 January 2002). The Department is aware that in many local authorities private sector housing activities are not given very high priority and staffing allocations reflect this. The DTLR research into local accreditation schemes for private landlords (2001) found that in many areas the responsibility for regulatory work in the private rented sector could be the job of only one or two officers. Statutory initiatives such as HMO registration schemes or voluntary programmes such as accreditation schemes often have to compete for scarce officer time, with the result all too often that positive intentions peter out and schemes fall into disrepute with landlords and tenants. This in turn leads to demoralisation among local authority staff and erosion of confidence in the authority's commitment among landlords. *We would like to see the Department raise the profile of local authority private rented sector activity and its outcomes, and suggest that now is not the time to remove the Best Value Performance Indicator relating to unfit private sector housing from the annual indicators. Indeed, we would like to see an indicator introduced to test the activities of local authorities to engage with all private landlords to achieve positive strategic outcomes for the area. Authorities applying to the Secretary of State to adopt the licensing powers should be required to demonstrate the allocation of sustainable staffing resources to the scheme.*

2.7 *We recommend that once the new legislation is in force the Secretary of State only gives consent for the adoption of the new licensing powers to those local authorities able to demonstrate that their schemes will satisfy the four key considerations we have raised. We also recommend that those schemes given consent are carefully monitored and evaluated, with the objective of issuing guidance on best practice to local authorities.*

3. Key issues listed in Annex I

3.1 Do you agree that there is a problem in Low Housing Demand Areas?

Yes, but as the DETR research study 'Low demand housing and unpopular neighbourhoods' (2000) found, low demand raises a number of difficult policy issues, relating not only to housing but to crime, education, economic development and resourcing. The consultation concentrates on the impact of unprofessional private landlords and their tenants on neighbourhoods experiencing decline. Shelter was closely involved in the Social Exclusion Unit's Policy Action Teams which produced the reports on unpopular housing (PAT7, 1999) and on anti-social behaviour (PAT8, 1999). We recognise that there are areas where comparatively high rents can be obtained, often from housing benefit claimants, for poorly managed, sometimes sub-standard private lettings while within the same or an adjacent area there is an over-supply of social rented lettings. We have noted the role of local authority and RSL policies on excluding households from tenancies at 2.5 above. The consultation paper does not provide specific examples of the role of private landlords in speeding the decline of particular neighbourhoods or of the optimum timing for the introduction of a licensing scheme if it is to avert irresponsible landlordism, but clearly this will be a crucial factor. Recently Shelter visited Beswick in East Manchester with our Commission on Modernising the Private Rented Sector to hear from council officers and local residents how the activities of irresponsible private landlords have affected their lives and community, and to listen to their ideas on the policies required. That area is now subject to demolition and rebuilding, and the moment when licensing could have provided some control and benchmark for responsible landlordism is some time ago.

3.2 Do you agree that licensing for such areas is appropriate to deal with it?

It would provide local authorities with an additional tool for controlling the most negative impacts of short-term, speculative private renting activity in areas of neighbourhood decline. It will need to form part of an overall strategy towards the local private rented sector, and in particular be matched by positive engagement with responsible landlords and their associations. Local homelessness prevention strategies must be in place and robust enough to provide a safety net to underpin the implementation of the selective licensing power, as tenants will clearly lose their homes where unscrupulous landlords are refused a licence. These initiatives should be an integral part of the authority's strategy to regenerate the area in question.

3.3 Do you agree with the Government's aims?

We agree with the primary aims set out in paragraph 5 that all landlords meet minimum management standards and participate with others in dealing with anti-social tenants (subject to our views at 2.5 above) and that those who will not meet minimum standards

or appoint suitable agents are excluded from letting. However, there is a need to link these aims to a wider local strategy to achieve positive outcomes for the areas. *We therefore recommend an additional aim of providing local authorities with a means to engage with all private landlords in their area to achieve positive strategic outcomes.*

3. 4 Do you agree with the wider objectives?

We broadly agree with the wider objectives of policy set out in paragraph 6 and expanded on in Chapter 2, but we have a number of specific concerns.

We agree with the thrust of paragraphs 20 and 21. It will be crucial for authorities to be able to use the licensing power well before an area or neighbourhood spirals into irrecoverable decline. We welcome the emphasis that paragraph places on the need for partnerships with responsible landlords and for robust resettlement arrangements for tenants. However, that emphasis is negated by paragraph 27. From our experience, any proactive intervention in the private rented sector must be co-ordinated with the local authority's harassment, housing advice and homelessness services, to safeguard the interests of tenants. The statement that there should not be an increase in homelessness because there is a surplus of accommodation in low housing demand areas is superficial. Paragraph 3 acknowledged that tenants renting from landlords who may be refused a licence may include those who are barred from a social housing tenancy, and we have already pointed to the impact of local exclusion policies.

Paragraph 29 sets out the criteria that would normally be used by the Secretary of State for considering the approval of applications from local authorities for the use of the licensing powers. We suggest that these criteria need to be made more robust. In addition to being asked to demonstrate an excess supply of housing in all tenures in their district and details of supply and demand in the areas or neighbourhoods earmarked for the licensing scheme, authorities should be asked to detail their policies on exclusions from social tenancies together with the number of persons currently excluded, as well as supplying that information in respect of local RSLs. They should be asked whether these policies will be reviewed as part of the introduction of licensing. They should also provide details of their programmes to secure alternative accommodation for any persons made homeless. This would assist the Secretary of State to assess the likely impact of the scheme on local homelessness. They should also be asked to provide details of their activities to promote cooperation with and support for responsible landlords. Finally, they should be asked to provide details of the staffing resources they plan to allocate to sustain the scheme.

3. 5 Do you consider that existing powers are adequate?

No. The selective licensing power would enable authorities to prevent abuses by irresponsible private landlords in an area, while existing powers are either property-

specific (for example, HMO registration schemes, HMO management regulations) or can only be used to tackle disrepair or sub-standard conditions when problems have developed.

3. 6 Do you agree with the powers that are proposed, focusing on landlords?

Yes, we broadly agree with the approach set out in paragraphs 34 - 36. We think that this strikes the right balance of requirements for those landlords who are unlikely to be professional, who will include reluctant landlords and who may not be members of a local accreditation scheme. *We would strongly support local authorities in making random or programmed checks on property conditions.*

3.7 Do you agree that the powers should normally be available only in areas of low demand, but that the Secretary of State should also be prepared to consider applications for licensing outside such areas in special circumstances if compelling reasons were advanced?

Yes. We accept that the main purpose of the licensing powers is to help authorities and communities to tackle the adverse effects of irresponsible landlordism in low housing demand areas, but we can envisage that they may have a beneficial role to play in declining neighbourhoods in areas of high housing demand. Where local authorities from the latter areas apply to adopt the powers, they should be asked to demonstrate particularly firm arrangements for securing alternative homes for all households losing their accommodation as a result of the scheme.

3. 8 Do you agree that private landlords should meet minimum tenancy management standards?

We support this aim and the specific proposals set out in paragraphs 45 -46. The adoption of the proposals in paragraph 46 (requiring landlords to provide tenants with a written statement covering relevant express terms of the contract and a summary of relevant implied rights and obligations) would not only bring positive benefits to landlord and tenant relationships and reduce disputes and friction in the sector; they would also assist local authority environmental health, housing advice and tenancy relations staff in their advisory and supportive work. Shelter recommends that all landlords should issue their tenants with written tenancy agreements. The guidance suggested in paragraph 46 would be useful, and could be part of overall guidance to landlords and tenants that we believe will need to be issued to accompany selective licensing schemes.

We support the proposal that licensees should be required to submit a gas safety certificate (annually), a certificate of safety of electrical installations (five yearly), a declaration that upholstered furniture meets safety regulations (at the start of the licence),

and a declaration that smoke alarms are provided and regularly checked (at the start of the licence). These requirements would reinforce existing legal requirements or, in the case of smoke alarms, strengthen good practice.

3. 9 Do you agree that landlords should have to be 'fit and proper' persons?

Competent management is the key to a healthy private rented sector in which people want to live. We agree that persons with unspent records of criminal or unscrupulous management (such as harassment or unlawful eviction, or breaches of housing legislation) should not be in a position to hold a licence, and we support the proposals set out in paragraph 44, though we feel these should be balanced by positive proposals.

It is important that the correct balance is struck between ensuring that people who are totally unfit to manage other people's homes are barred from doing so, and stopping arbitrary, unfounded exclusions. The licensing criteria should be used to enhance positive efforts to improve the competence of private rented housing management. We welcome existing and new initiatives by private landlords and managing agents to develop certification of private landlord competence, such as the recent initiative by the National Federation of Residential Landlords. If the 'fit and proper' person criterion is not just going to remove from renting criminal landlords but amateur landlords who need education and support, more resources need to be addressed to developing competency standards and to targeting landlords who will benefit from these.

The consultation paper makes clear that where an applicant for a licence is turned down on the grounds that s/he is not a fit person, an alternative manager can be proposed and granted the licence. Alternative management might be provided by a professional managing agent or by a local RSL, and the Department has been exploring the potential role of RSLs in offering low cost housing management to private landlords. Local authorities should be asked to show what local potential there is for alternative management from the private sector or from local RSLs, when they apply to adopt the new powers.

3. 10 Do you agree that landlords should have to deal with tenants' anti-social behaviour?

Landlords should have to deal with tenants' anti-social behaviour in so far as this is covered by their tenancy agreement, but we have already stated at 2.5 that many private landlords may be ill equipped to deal with acute forms of anti-social behaviour, particularly where this concerns complaints by neighbours. We are impressed by the capacity of voluntary projects such as the New Deal Private Rented Project in Newcastle upon Tyne (see earlier at 2.3) to exercise a mediation role on anti-social behaviour by tenants and consider that such projects need to be established as part of a local licensing scheme initiative. We welcome the suggested model tenancy agreement and inventory. These

could be based on examples already developed within the private rented sector. Indeed, they have a far wider value than their use within selective licensing.

We are concerned about the potential for discrimination and social exclusion in the suggestion that local authorities should work with landlords to ensure that prospective tenants provide references and that these are checked. As we have already discussed, some tenants now living in the bottom end of the private rented market include those barred from social housing. The reasons may not be categorised as 'anti-social'. If they are then vetted out of the private rented sector, where will they find accommodation?

3. 11 Do you agree with the need for landlord training?

Certainly, it will be crucial to the effectiveness of a local selective licensing scheme that training is available to local landlords, but again there is a need for landlord training to increase professionalism throughout the sector. We believe this is more likely to elicit positive participation by landlords, especially smaller landlords, if it has the active sponsorship of landlords' associations. We would like to see the Department work with the major landlords' and managing agents' associations to develop training initiatives at national and regional levels, and the introduction of licensing (selective and HMO licensing) could be used to give added urgency to this work. The major challenge, however, is to reach reluctant, sideline and speculative small landlords.

3. 12 Do you think the relationship with HMO licensing is clear?

Yes. We would simply stress that definitions and requirements need to be consistent, to avoid disputes, litigation or evasion. *We support the proposals for mandatory and discretionary HMO licensing and urge the Government to make time available for the two schemes to be introduced simultaneously.*

3. 13 Dealing with disputes - are you content with what is proposed?

We have no particular views on these ideas (paragraphs 59 - 61).

3. 14 Are you content with the proposed licensing regime?

We generally support the contents of paragraphs 62 - 64, subject to our remarks about local authority resources earlier in this response. We support the proposed five-year period for the duration of a licence and the power to issue provisional licences.

3. 15 Enforcement - do you support or oppose what is proposed?

We support the enforcement provisions being consistent with those for HMO licensing. We support the stringent penalties for non-compliance suggested in paragraph 69, with fines of up to £20,000 for health and safety offences and £5,000 fines for lesser offences.

3. 16 Are the proposals concerning Housing Benefit acceptable?

The proposals concerning housing benefit are the most unacceptable element of the selective licensing package to Shelter. In our response to the Housing Green Paper in 2000, we opposed the proposals that were floated for the payment of housing benefit to be conditional on the condition of the letting rented out by a private landlord or on the behaviour of the private tenant claiming benefit. The proposals set out in paragraphs 67 - 68 of the consultation paper give us no reason to change our view.

All tenants have a contractual liability to pay rent. If tenants who were dependent on housing benefit to pay their rent had their benefit withdrawn because their landlord was refused a licence to let, they would be put in a position where they would have a legal liability to pay rent but no ability to do so. Furthermore, although the consultation states that once a licence is refused, a letting would become 'illegal', no indication is given as to how existing lettings would be brought to an end. We can only assume that landlords refused licences who decided not to seek to continue to let through an alternative manager, subject to the licensing authority's approval of that person as a licensee, would have to take possession proceedings against their tenants. The liability for rent would continue until possession was granted. Tenants would therefore be forced into debt and hardship or forced to break their contract with their landlord, for which they would be liable.

The proposal discriminates against tenants in problematic properties who are housing benefit claimants compared with non-housing benefit claiming tenants. Though it may be intended to persuade landlords who let to housing benefit claimants to put their house in order, it is at least as likely to prompt some landlords not to let to housing benefit claimants at all.

A less discriminatory approach to prompting unscrupulous landlords to improve the condition of their properties would be to legislate for no rent to be payable on a letting in a property where a licence was refused.