

CONSULTATION PAPER ON A PROPOSED HOUSING BILL: THE PRIVATE RENTED SECTOR, LICENSING OF MOBILE HOME SITES AND THE TWENTY YEAR RULES

FOREWORD



The Scottish Government recognises the role that the private rented sector can play in building sustainable communities. In *Firm Foundations* we outlined our intention to set the sector an agenda that would encourage it to flourish, and in our *Review of the Private Rented Sector* we identified the issues that need to be addressed. I want to see the private rented sector in Scotland prosper and provide high quality, well managed housing which offers choice and flexibility to a range of different tenants with varied housing needs.

I established a group of expert stakeholders to advise me on developing policy for the sector, in order to take forward the conclusions of our *Review*. The first task of the Scottish Private Rented Sector Strategy Group was to make recommendations on possible changes requiring primary legislation. The Group agreed on its *Consultation Recommendations Report* in December and I agreed to consult on its proposals for inclusion in a potential private housing bill. These proposals include a number of suggested improvements to both landlord registration and the houses in multiple occupation licensing regime. In addition, there are proposed changes to the tenancy regime and greater powers to tackle overcrowding.

These proposals build on the improvements we have included in the current Housing (Scotland) Bill and I believe they would be a further step towards a stronger private rented sector. I have asked the Strategy Group to continue its work, gather information and make further recommendations on how we can develop our policies in this area.

In relation to the licensing of mobile home sites, I announced in October last year that we would consult on more effective powers for councils, with the aim of improving standards for the consumer. A stakeholder group will be formed to discuss a wide range of issues affecting residents of mobile home sites. Many of these issues will not require consideration of primary legislation. However, examination of the licensing regime for mobile home sites does. For this reason, I'm keen to hear your views on this issue as part of the consultation.

I would also like to examine whether the time is right to make limited changes to the 20 year rules on residential leases and standard securities, as set out in the Land Tenure Reform (Scotland) Act 1974. I am keen to explore new ways of delivering affordable housing which offer good value for taxpayers' money, but it has been suggested that these rules may be acting as barriers to organisations wishing to deliver innovative projects to provide affordable and other types of housing.

I'd very much welcome your views on the proposals set out in this consultation document and invite you to submit a response.

Alex Neil MSP
Minister for Housing and Communities

CONTENTS

Introduction

Part 1 – Landlord Registration

Part 2 – Licensing of Houses in Multiple Occupation

Part 3 – Overcrowding

Part 4 – Tenancy Regime

Part 5 – Licensing of Mobile Home Sites

Part 6 – Facilitating Private Investment in Housing – the Twenty Year Rules

Annex A – Draft Equality Impact Assessment

Annex B – Partial Regulatory Impact Assessment

Respondent Information Form

Questionnaire

INTRODUCTION

In 2007 we explained in our position paper *Firm Foundations*¹ that we want to encourage the private rented sector to thrive and play a full role in meeting Scotland's housing need by providing good quality accommodation and improving choices for homeless people and others. We announced that we would undertake an extensive review of the private rented sector.

In March 2009 we published the *Scottish Government Review of the Private Rented Sector*², which includes externally commissioned research and analysis, as well as a range of analytical work carried out within the Scottish Government. In the Review we also set out the policy implications arising from this extensive evidence on the sector. Among other findings, the Review identified the key problems and concerns of many tenants and landlords. These cover such areas as dealing with repairs, enforcement of standards, regaining possession of properties and knowledge of rights and responsibilities.

In order to help us to take forward the issues raised in the Review, Ministers established the Scottish Private Rented Sector Strategy Group in October 2009. The remit of the Group is to advise the Scottish Government on how it can support tenants, landlords and others to grow a professional, high quality private rented sector equipped to provide sustainable housing solutions for Scotland in the 21st century.

The Group has an independent Chairperson, Professor Douglas Robertson, and consists of leading organisations with an interest in the sector:

- Association of Residential Letting Agents
- Chartered Institute of Housing
- Citizens Advice Scotland
- Consumer Focus Scotland
- CoSLA
- Crisis
- Local Authority representatives (Scottish Borders and City of Edinburgh)
- National Association of Estate Agents
- National Federation of Property Professionals
- National Union of Students
- Royal Institution of Chartered Surveyors
- Scottish Association of Landlords
- Scottish Council for Single Homeless
- Scottish Rural Property and Business Association
- Shelter

¹ <http://www.scotland.gov.uk/Publications/2007/10/30153156/0>

² <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/PrivateRenting/prsreview>

In the first phase of its work, the Strategy Group considered a range of proposals for primary legislation that arose from the Review or were put forward by a number of stakeholders. Its recommendations to Ministers on the proposals that should be the subject of consultation with a view to inclusion in a possible Private Housing Bill were published in January 2009³, following agreement by all members of the Group.

The first four parts of this consultation relate specifically to the private rented sector. The proposals in these parts arise from the recommendations made by the Strategy Group. They relate to changes that could help the landlord registration system to operate more effectively; improve the enforcement of the house in multiple occupation (HMO) licensing system; address overcrowding in the sector; and amend laws relating to aspects of the tenancy regime in order to facilitate the exercise of some landlord rights, clarify processes and improve tenants' knowledge of their rights and responsibilities.

These proposals should be seen as possible parts of an overall package of measures, including provisions in the current Housing Bill and future measures, aimed at making private renting more efficient, safeguarding the interests of both landlords and tenants, and helping to develop the sector's role in meeting housing need, including homeless households.

The next area covered by this consultation paper is licensing of mobile home sites. We are setting out a number of proposals aimed at modernising this regime and enabling local authorities to enforce revised minimum standards of management. The proposals aim to strengthen the licensing system to raise and maintain standards on sites, ensuring they are safe, well planned and well managed.

A range of additional matters such as security of tenure for residents and their ability to resolve disputes with site owners are governed by the provisions in the Mobile Homes Act 1983. Part 6 of the Housing (Scotland) Act 2006 strengthened elements of the 1983 Act. As such, action on these matters could be taken forward by amendment of the 1983 Act through enactment of secondary legislation. A group comprising key stakeholders formed to consider this in February.

Finally, the paper seeks views on proposals to change the two 20 year rules that currently limit the length of residential leases and allow the redemption of a standard security over a property in return for the payment of the outstanding amount of the loan plus any charges.

The issues for consideration in this paper are:

Landlord registration

- Expanding the list of offences to be declared by an applicant for landlord registration.
- Allowing a local authority to require a criminal record certificate to verify information.

³ <http://www.scotland.gov.uk/Publications/2010/01/15111047/0>

- Requiring the Private Rented Housing Panel to obtain and check landlord registration numbers.
- Requiring landlord registration numbers in advertisements of properties to let.
- Allowing a local authority to require an agent to provide a list of properties managed.

HMO licensing

- Allowing tenants and local authorities to claim back rent paid in an unlicensed HMO.
- Providing that failure to provide information when required will lead to the presumption that a property is an HMO.

Overcrowding in the private rented sector

- Allowing local authorities to require private landlords in a specified locality to issue a statement of the number of people permitted in a house.
- Allowing a local authority to serve an Overcrowding Abatement Order on a privately rented house where overcrowding was causing serious nuisance or seriously affecting the welfare of occupants.

Tenancy regime

- Allowing a private landlord to apply to the Private Rented Housing Panel when in dispute with a tenant about gaining access in relation to the Repairing Standard.
- Allowing a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body.
- Requiring a private landlord or agent to issue a pack containing specified information to a tenant at the start of the tenancy.
- Merging the documents at the start of a Short Assured Tenancy into one form.
- Making all pre-tenancy charges illegal apart from those specified as reasonable.
- Clarifying the notices issued to gain possession of a property subject to a Short Assured Tenancy.

Licensing of mobile home sites

- Giving local authorities more powers to improve practice and standards on sites.
- Allowing a local authority to revoke or suspend a site licence without court action.
- Requiring individuals to show that they are suitable to hold a site licence.
- Giving local authorities more enforcement powers without having to go to court.
- Requiring sites not requiring a licence to comply with model standards.
- Giving licensing authorities power to charge fees.

The 20 year rules

- Whether limited changes to the 20 year lease rule should be considered to encourage long-term private investment in affordable and other housing.
- Whether provisions regarding the redemption of standard securities (mortgages) after 20 years should be amended to encourage long-term lending and investment in affordable and other forms of housing.

We are eager to receive your responses to the questions in this paper. If you are not interested in all of the areas covered, please feel free to respond only to the relevant parts. As well as the questions on the legislative proposals, we also invite responses to the questions on the draft Equality Impact Assessment (Annex A) and any comments on the Partial Regulatory Impact Assessment (Annex B).

This consultation will last for six weeks. This is because of the tight timetable if any of the proposals are to be taken forward in primary legislation in the current Parliamentary session. However, most of the issues concerned have, as explained above, already been given detailed consideration by the group representing leading stakeholders in the private rented sector.

PART 1 - LANDLORD REGISTRATION

Landlord registration aims to protect tenants by preventing people who are not fit and proper from letting accommodation. This may involve refusing to register a landlord or removing a landlord from the register. When a relevant landlord breaches the terms of the registration system in the Antisocial Behaviour etc. (Scotland) Act 2004, they may be committing an offence which can lead to criminal prosecution, and local authorities can apply sanctions which lead to a cessation of the rent payable. These sanctions effectively act as a bar on a landlord's ability to let a house.

There are a significant number of landlords across Scotland who are under review because of local authorities' concerns about them. However, there is reluctance amongst local authorities to use the powers they have to refuse applications for registration. Some feel that additional powers are required, in particular to enable them to obtain information in order to give evidence in any prosecution of a landlord for letting while unregistered. Some feel they are unduly open to challenge if they refuse to register a landlord (or remove a landlord from the register) without sufficient robust evidence, particularly as the landlord has a right of appeal to the sheriff. This has led them to seek additional powers in order to ensure that robust cases against landlords can be developed where necessary.

This issue was discussed during a review of good practice in landlord registration in 2007, when stakeholder views on additional powers were mixed. Some felt that local authorities should be able to demonstrate how existing powers were being used and why they didn't work (if this is the case) prior to extending the powers available, while some local authorities made strong calls for additional powers.

The Scottish Government will be carrying out a full review of the landlord registration system later this year. However, we are taking this opportunity to consult on some proposals that could strengthen the enforcement of landlord registration.

Online application form: declaration of offences

Regulations require applicants for registration to declare the categories of offence mentioned at section 85(2)(a) of the 2004 Act, i.e. spent or unspent convictions for offences involving fraud or other dishonesty, violence, or drugs. Offences referred to in other parts of section 85(2), including contravention of housing or landlord and tenant law, must also be declared. Although the local authority may have regard to other offences if it considers them relevant, it may not be told about them in an application and it has no power to require this information. More specific provision in the legislation – by placing a duty on applicants to provide information on firearms and sexual offences – could help local authorities to judge whether an applicant is fit and proper. They would explicitly have to have regard to such offences.

It is therefore proposed to add firearms offences and sexual offences to the list of offences at section 85(2)(a), together with any other types of offence particularly causing concern. The application form would be amended as necessary to reflect these changes.

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.

Ability of the local authority to require a disclosure check

It has been suggested that there is a need for a local authority to be able to require an applicant for landlord registration to provide a disclosure check, specifically to allow the local authority to verify information in relation to whether the landlord is a fit and proper person.

It is therefore proposed to add a provision to the 2004 Act so that, if a local authority considers that a criminal record certificate in terms of Part 5 of the Police Act 1997 is required in order to verify information in relation to whether the landlord is a fit and proper person, the local authority may require the person to provide such a certificate. Refusal in these circumstances to provide a certificate could be used as evidence that the person is not a fit and proper person.

The local authority would need to have reasonable grounds for wanting to verify information about the particular landlord. The proposed power could not be used in order to require a disclosure check for every application.

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?

Notification by the Private Rented Housing Panel

The Private Rented Housing Panel (PRHP) does not routinely check if a landlord is registered when it receives a referral. The Housing (Scotland) Act 2006 does not explicitly say that it should do this.

It is therefore proposed to amend the 2006 Act to require the PRHP to request a landlord registration number from the landlord on receiving an application relating to the Repairing Standard and to notify the relevant local authority if the landlord is not registered. It would also have a duty to check that the number is valid and, if it is not, a requirement to report this to the local authority. Since the PRHP does not currently contact landlords at the stage of receiving an application, an alternative would be to request the information from the landlord in cases that were accepted, not in relation to all applications. In either case, where the landlord had made an

application for registration that had not been refused by the local authority, he or she would be asked to make a declaration to that effect.

If this proposal is adopted, there will be a need to ensure that local authorities do not assume that a landlord who is the subject of an application to the PRHP has breached the repairing duty.

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?

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?

Advertisements to include registration number

Local authorities have to identify properties that are not included in applications for registration. One method of doing this is from advertisements for properties for let, but often full addresses are not given.

It is proposed that all advertisements of properties for let (online, in windows, in printed publications, etc) should be accompanied by the landlord registration number(s) of the owner(s) of the property. (There could be an exception for To Let boards, since these are re-used.) This would help local authority registration teams to identify whether or not the property concerned has been included in a valid application for registration. It would help prospective tenants by confirming that the landlord is registered.

It would be an offence for a landlord who falls within the scope of the Antisocial Behaviour etc. (Scotland) Act 2004 to advertise his property without providing a registration number or to provide a false number. Consideration would need to be given to dealing with the situation where an application has not been determined and no number has yet been allocated.

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?

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

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?

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

Obtaining information from agents

The current Housing (Scotland) Bill includes a provision giving local authorities a power to require people associated with a property to provide information to enable or assist the local authority to carry out its registration function. Failure to do so is an offence subject to a fine not exceeding level 2. However, this does not extend to requiring an agent to provide details of non-specified properties they manage and of their owners, which would allow checks to ensure that the latter are registered.

The provision in the Bill could be strengthened by allowing local authorities to require an agent to provide a list of all properties they manage along with the owners' contact details, with failure to do so being an offence subject to a fine.

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?

PART 2 – LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMOs)

HMO licensing provides additional protection to residents of multi-occupancy accommodation where there are three or more occupants who are members of three or more families. It covers physical condition, safety and management standards.

The current system of HMO licensing was established by the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, as amended. This is due to be replaced by Part 5 of the Housing (Scotland) Act 2006, which has not yet been commenced. Any further amendments to HMO licensing would therefore be to the 2006 Act. The Part 5 system will considerably strengthen local authority enforcement powers.

Proposals for further amendments to HMO licensing came from the Scottish Houses in Multiple Occupation Network Group (the local authorities' working group on enforcement issues) and other stakeholders.

Rent repayment orders

Section 144 of the 2006 Act allows a local authority to make an order stopping rent being payable in an unlicensed HMO. However, a tenant's giving evidence that the property is an unlicensed HMO is likely to damage the relationship between the landlord or manager and the tenant. Furthermore, if the landlord reduces the number of tenants below the HMO level, the rent suspension order will be revoked and the remaining tenants may have to pay an increased rent. The tenant may not be inclined to stay in the premises or may be encouraged to leave by the landlord or manager.

If it is found that an HMO is not licensed, it would be possible to allow the tenants to claim back rent paid over the previous 12 months, as an additional penalty on the landlord and as compensation to the tenant for being denied the benefits of licensing and possibly losing a tenancy. Where the rent paid took the form of housing benefit, it might be possible for it to be claimed back by the local authority. The right to have a rent repayment order made (for example by the sheriff or a tribunal) would be either upon conviction of the landlord or manager or after the local authority's being satisfied that an offence had been committed, even though the landlord or manager had not been prosecuted. An order could only be made after the all the appropriate court processes had been carried out and no possibility of the landlord appealing the decision remained.

There is a precedent in section 73 of the Housing Act 2004, which gives similar powers to occupants of unlicensed HMOs in England and Wales. This measure would be a penalty upon the landlord for operating an unlicensed HMO, it would provide a degree of comfort for the tenant as they might need to find somewhere else to live, and provide compensation to the tenant as they had not received the benefits of HMO licensing.

This measure would therefore reduce barriers to tenants assisting in the prosecution of landlords and managers operating HMOs illegally and give them a degree of comfort, as well as discouraging the illegal operation of HMOs.

If such an order were introduced, it would only be applicable to cases where a licence had not been obtained, not where a licence had been revoked, and where the landlord had knowingly operated an HMO (not, for example, where he or she was unaware of subletting by a tenant).

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?

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?

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?

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

Refusal to provide required information

Section 186 of the 2006 Act gives a local authority the power to serve notice requiring a person with a defined association with land or premises (including the owner or a person receiving rent) to “provide the local authority with any other information about the land or premises that it may reasonably request” and, in the case of a suspected HMO, it “may also require the person to disclose the relationship (if any) between that person and any other occupants”. Failure to comply with this notice is an offence.

It would be possible to amend the 2006 Act so that non-provision of the required information by the owner in the case of a suspected HMO would lead to the presumption that the premises were licensable. This could also apply to agents. This would prevent the withholding of the information required to identify whether premises are licensable and prevent the landlord from hiding behind a manager and denying knowledge of the information required.

An agent in this context could be defined as in section 186 currently – a person who “receives rent, directly or indirectly, in respect” of the land or premises – but this is restricted so it might be better to specify that the new provision should apply to a

“managing agent”. This term would have to be defined; the definition contained within the Civic Government Scotland Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2003 could be used: “a person acts as an agent for an owner of a house if that person acts on behalf of that owner in carrying out any activity which directly permits or facilitates the occupation of that house”.

Landlords and agents would not be penalised if a tenant refused to provide 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?

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

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

The Scottish Government's *Review of the Private Rented Sector* quoted studies showing that there are problems of overcrowding among migrant workers. The landlord focus groups showed that, in some cases, the overcrowding is not due to the landlord, but to the tenants bringing in additional occupants. The *Review* recognised that there are limited ways of addressing overcrowding in properties that are not HMOs and said that the Scottish Government would consider ways of dealing with this.

Local authorities have various powers and duties in relation to overcrowded houses and their occupants, including carrying out inspections to identify overcrowded houses and taking levels of overcrowding into account in the preparation of local housing strategies (LHS).

The house in multiple occupation (HMO) licensing system allows local authorities to address overcrowding by specifying the maximum number of occupants permitted in a licensed HMO. Breach of this or any other licensing condition is a criminal offence. One of the uses of HMO licensing is thus the prevention of overcrowding.

Overcrowding in private rented sector accommodation in general terms falls within the provisions of Part VII of the Housing (Scotland) Act 1987, which relate to overcrowding in all housing tenures. Part VII provides the legal definition of overcrowding (sections 135 to 137). A house is regarded as overcrowded if it fails either of two tests.

The **room standard** (section 136) is contravened when two people of opposite sexes, who are not living as husband and wife, have to sleep in the same room. This does not apply to children under 10. The rooms regarded as sleeping accommodation are defined as being “of a type normally used in the locality either as a bedroom or as a living room.”

The **space standard** (section 137) sets limits on the number of people who can occupy a house, relative to both the number and floor area of the rooms available as sleeping accommodation. For this purpose, children aged at least one but less than 10 count as half of a person, while children under the age of one do not count at all. Rooms of less than 50 square feet are not taken into account. The prescribed numbers are set out in tables; for example, four rooms may be occupied by no more than 7.5 persons, but that number could be lower, depending on the size of the rooms.

Some sections in Part VII apply only in localities where action is taken under section 151(2) to bring them into effect (but the repeal of related legislation means that section 151(2) is now inoperable, so these sections cannot be brought into effect). One of these is section 144 (requiring a landlord to give the tenant a written statement of the permitted number of occupants in a house – i.e., the maximum permitted, obtain an acknowledgement and show it to the local authority on demand – failure to do so is an offence). (The local authority has a duty under section 148 to provide information to the landlord and occupier about the permitted number of occupants, which is defined in relation to the space standard).

There are two proposals on addressing overcrowding in the private rented sector.

Application of section 144 of the 1987 Act to private landlords

It is proposed that local authorities should be given the power to bring into effect the requirements of section 144 of the 1987 Act in relation to all private landlords within a locality specified by the local authority (which could be the whole local authority area or a part of it). A landlord would have the duties in relation to a written statement of the number of persons permitted to live in the house mentioned above. The local authority would be able to enforce this provision effectively, since failure on the part of a private landlord to comply with section 144 would be ground for withdrawal of registration. If this proposal were adopted, information on it could be included in the proposed pre-tenancy pack (see below). Under section 148 of the 1987 Act, the local authority would have to provide details of the permitted number of occupants to the landlord.

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?

Overcrowding Abatement Order

The intention of Overcrowding Abatement Orders would be to enable a local authority, in cases where overcrowding was causing serious nuisance or seriously affecting the welfare of occupants, to compel the landlord to reduce occupancy of a house to the statutory level within a time period to be specified by the local authority. It would be a discretionary power and there would be no obligation on the local authority to use it in any particular case. It is suggested that it would apply for five years and be renewable.

An Overcrowding Abatement Order could be served if a privately rented house was overcrowded in terms of Part VII of the 1987 Act, and the local authority, having made reasonable enquiries, was satisfied that the overcrowding was causing serious nuisance either to other residents of the neighbourhood or to the occupants or seriously affecting the welfare of occupants. Following issue of the Order and conclusion of any appeal, the local authority would be required to give advice and legally permitted assistance to the occupants where it reasonably considers it appropriate.

If section 144 were in force (see above), neither the landlord nor the occupants could claim that they did not know what the permitted level of occupancy was. The ability of the local authority to specify a time period within which the statutory occupancy level was to be achieved would enable re-housing issues to be handled sensitively.

Guidance would be provided to ensure local authorities sought tenants' views and considered the wider implications of any enforcement action proposed. This would include potential homelessness and the need to provide information and advice.

Overcrowding Abatement Orders would also be another way of dealing with difficulties in HMO enforcement, where the HMOs are overcrowded.

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?

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?

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?

PART 4 - TENANCY REGIME

The five volumes of the Scottish Government's *Review of the Private Rented Sector in Scotland* constitute a very extensive study of the sector and include major surveys of private tenants and landlords.

One aspect of the PRS that was examined was the tenancy regime. The *Review* concluded that the regime seems to be operating satisfactorily, as regards the short assured tenancy (SAT; by far the most common rental contract in the PRS). Findings that supported this view included:

- the great majority of tenants have a written tenancy agreement
- the flexibility of the SAT makes it popular with landlords and tenants
- a minority of tenants would prefer a longer minimum tenancy
- most tenancies are ended by tenants and many tenants who want to stay beyond the initial six month tenancy are able to do so
- the survey found high levels of satisfaction among tenants as regards landlords, agents, accommodation and its location
- landlords demonstrated a largely positive view of their experiences.

The main problems for tenants were getting repairs done and retention of tenancy deposits. Landlords were worried about rent arrears, gaining access to carry out repairs, and the lack of clarity in the procedures to regain possession of their properties, including difficulties if tenants refuse to leave and where the tenant may have abandoned the property. The *Review* recommended that policy development should focus on issues of tenancy sustainment, i.e. helping to prevent tenancies breaking down by addressing these problems, rather than on the length of the tenancy offered.

The *Review* also found that there is a lack of knowledge of rights and responsibilities among many tenants and landlords. It identified this as a major problem, which could be addressed in legislation and in other ways.

The proposals below are intended to address some of these issues. It should be remembered that a SAT does not have to be for six months; landlords are more likely to offer longer tenancies to those who want them if they are reassured that they can regain possession of their property if necessary. Improving rights of access could also assist landlords to address problems with repairs. Clarification of processes and more information for tenants will also help the sector to operate more effectively. In the longer term, the Private Rented Sector Strategy Group will consider other possible changes to the tenancy regime.

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

Landlords often express concern about their inability to gain access to their property in certain circumstances, particularly to carry out repairs. Results from the landlord survey suggest that 7% of landlords (or those working for them, such as an agent or a builder doing repairs) had been refused access to a property by a tenant in the previous two years (approximately 16,000 households).

Although landlords usually have a contractual right of access included in leases and they can take legal action to force a tenant to implement the terms of the lease, one of the main issues is the length of time it takes to get a court order to enforce right of access.

The Housing (Scotland) Act 2006 gives a landlord a statutory right of entry to check whether the property meets the requirements of the Repairing Standard and to carry out work to meet these requirements. Again, if the tenant refuses to grant access, the landlord may seek a court order requiring the tenant to permit access, but again some landlords advise that this can take months to obtain.

The 2006 Act gives landlords a defence as to why they have not carried out necessary repairs on the grounds that access was unreasonably denied. However, this does not help in getting repairs done. While repairs go undone, the damage to the property may be worsening. Strengthening a landlord's ability to gain access in relation to the Repairing Standard could help to improve physical standards in the PRS, one of the 2006 Act's aims.

It is therefore proposed that a landlord should have the right to apply to the PRHP when in dispute with a tenant about gaining access to the property in relation to the Repairing Standard, with the PRHP being given powers to help landlords to gain access. This could be done without having a full hearing by a Private Rented Housing Committee – for example, one member of the PRHP could consider a written application from a landlord and a written response from the tenant. A member of the PRHP could accompany the landlord (or a person authorised by the landlord) to the property, if necessary, to ensure that the necessary work was carried out. If the tenant still refused access, the PRHP might be able to obtain a court order or warrant to enforce entry. The tenant could also have the right to ask for a member of the PRHP to accompany the landlord.

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?

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)?

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?

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

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

The landlord survey found abandonment (i.e., when a tenant leaves a property without terminating the tenancy) to be a key problem for landlords, with one in ten tenants not informing their landlord before they left the property. Currently, if a tenant has abandoned the property, the landlord first has to wait to gain a court order for possession (which landlords advise can take up to six months) before they can assess and deal with any damage, perhaps start court proceedings against the tenant to try to recover money for damage caused, and re-let the property. This process involves considerable cost to the landlord, including loss of rent.

While there is evidence that many landlords do not go to the trouble of getting a court order (and are unlikely to be challenged), technically a tenant could return several months later and the landlord could be charged with illegal eviction.

The Housing (Scotland) Act 2001 provides for social landlords to give a four week notice period in cases of suspected abandonment. If the landlord has made efforts to contact the tenant, who has not responded in the four weeks, then the tenancy can be terminated without the need for a court order. In order to streamline the process, private landlords could be given a similar ability to social landlords to give a notice period in cases of suspected abandonment, by amending the Housing (Scotland) Act 1988.

However, it is suggested that private landlords should have to apply to a third party for permission to serve the 28 day notice to regain possession. The landlord would collect and provide evidence of suspected abandonment to the authorising body (e.g., a complaint from a neighbour, confirmation of the tenant's absence by neighbours or the witnessed service of a notice, possibly by a sheriff officer). After considering the evidence provided, the authorising body could undertake or allow the landlord to carry out an inspection to verify that the property has been abandoned. The authorising body would also be required to attempt to contact the tenant to give notification that the repossession procedures were underway.

Under this process a landlord should be able to gain possession of the house on confirmation of abandonment from the authorising body without a court order. However, there is provision in the 2001 Act for a tenant to raise court proceedings within 6 months of repossession, which can result in the social landlord having to make other accommodation available to the tenant. That safeguard would not be capable of replication in respect of private landlords. It is therefore further proposed that there should be a responsibility placed on the local authority to re-house a private tenant who returned within six months, which could fit in with responsibilities under section 11 of the Homelessness etc (Scotland) Act 2003.

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?

Pre-tenancy information pack

Pre-tenancy arrangements have been identified as a key area in which tenants' knowledge of their rights and responsibilities could be promoted. Consumer awareness among tenants is a key element of the new regulatory regime, which relies on tenants to pursue their right to have repairs done with the PRHP and report poor management to their local authority. It is also important that tenants are aware of their own responsibilities.

It is proposed that landlords and letting agents should be legally required to provide tenants with an information pack at the start of the tenancy. This would take the form of a standard pack, pulling together all the mandatory documents. Such a pack would help to inform tenants of their rights and responsibilities. Ministers would be given an enabling power to allow them to prescribe the information to be provided in the pack.

The pack could include, for example, a formal tenancy agreement, details on rights and responsibilities of landlords and tenants (including the repairing standard), transfer of energy supply details, how to spot harassment and unlawful eviction, an inventory and information about protection of deposits, etc.

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?

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

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)?

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?

Simplification of pre-tenancy notices

Landlords and tenants are sometimes confused by the notices that are issued at the start of a Short Assured Tenancy (SAT) such as the AT5 form; prior notification of grounds to recover possession; tenancy agreement; inventory; key agreement; Repairing Standard statement; gas safety check; Energy Performance Certificate; etc. It is suggested that it may be possible to simplify the paperwork at the beginning of a SAT by merging some or all of it into one form, which could be part of the proposed pre-tenancy pack.

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.

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

There are concerns about a lack of clarity regarding charges made to tenants to set up a tenancy by agents or landlords. Currently, the law prohibits charges for drawing up a tenancy agreement or placing a name on an accommodation list. Clarification might be beneficial with regard to the legislation (in section 82 of the Rent (Scotland) Act 1984 and section 27 of the Housing (Scotland) Act 1988) relating to the payment of premiums to agents (and landlords). Under section 82 of the 1984 Act (imported into the 1988 Act in respect of assured tenancies by section 27 of that Act) it is an offence to require any premium as a condition of the grant or continuance of a tenancy. According to section 90, a premium includes any fine or other like sum and "any other pecuniary consideration" in addition to rent.

Some agencies interpret this as meaning that it is illegal only for a letting agent to charge a fee to grant the tenancy, whereas others take the view that any fee (other than rent or a refundable tenancy deposit) charged by an agent is illegal. Many agents charge an administration fee to cover overheads, costs of background checks and references, etc. Good practice sets out that other administration charges must reflect actual costs incurred. However, it seems that some agents are charging tenants unjustifiably large administration fees. Other charges may be to cover the cost of carrying out credit checks or obtaining references. Tenants have very little awareness of what is legal or reasonable to pay.

It is proposed that all pre-tenancy charges should be made illegal, apart from exemptions for reasonable charges, which would be set out in subordinate legislation following consultation with interested parties. This would enable greater clarity and better regulation.

This would make clear the reasonable charges that agents could apply. The existing legislation on charges - section 82 of the Rent (Scotland) Act 1984 and section 27 of the Housing (Scotland) Act 1988 – would have to be clarified.

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?

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

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

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

Ending a tenancy can be a confusing process. The tenants survey shows that a significant proportion of tenants (20%) said they did not understand the legal processes that a landlord would have to go through to end their tenancy. The landlord survey showed that many landlords have concerns about regaining possession of their properties. A particular problem is that the Housing (Scotland) Act 1988 is unclear on whether Notices of Proceedings are required to be issued to tenants with a short assured tenancy (SAT). A Notice to Quit must be given and also a “Section 33 notice” (which says that the tenant is being evicted on the grounds that they have a SAT which has been terminated), but it is not clear whether the requirement in section 19 for a Notice of Proceedings before the landlord raises court proceedings is required only for tenants on assured tenancies or also for those on SATs.

It is therefore proposed that the legislation should be amended to clarify that a Notice of Proceedings is required to be issued to a tenant in a short assured tenancy. It does not cost the landlord anything to issue a Notice of Proceedings and it can be issued at the same time as the Notice to Quit, so does not necessarily extend the notice period.

Given the complexity of the current situation, we are also consulting on a proposal to clarify possession procedures in short assured tenancies as a whole, with one, clearly-worded notice to be issued to tenants when the landlord seeks possession.

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?

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?

PART 5 – LICENSING OF MOBILE HOME SITES

Licensing of mobile home sites by local authorities in Scotland is governed by the Caravan Sites and Control of Development Act 1960. Section 5(6) of the 1960 Act specifies model standards for sites. The standards were last updated in 1990.

It is the view of some stakeholders that the licensing regime in operation is inadequate and requires review. While the majority of sites are well maintained, stakeholders contend that some fall below acceptable standards of practice.

Research published by the Scottish Government in December 2007 informed that mobile homes provide permanent accommodation for a relatively small number of households in Scotland (circa 4,500). Highland Council had the highest number of mobile homes (501), followed by Midlothian (365), Aberdeenshire (345) and Glasgow (321). This type of accommodation is often referred to as a 'Park Home'.

Over the past couple of years, we have obtained the views of stakeholders representing a range of interests in the mobile homes sector, including site owners and residents (both owners and renters). Park home residents have expressed a requirement for higher standards of site management, services and security of tenure. Site owners want businesses to remain viable and to minimise additional costs and administrative burden associated with implementing amended legislation and revised standards.

Amending the licensing regime for mobile home sites requires primary legislation. For this reason, the matter is included as a proposal within this consultation. A range of other matters, such as security of tenure for residents and their ability to resolve disputes with site owners, are governed by the provisions in the Mobile Homes Act 1983. Part 6 of the Housing (Scotland) Act 2006 strengthened elements of the 1983 Act. As such, action on these matters could be taken forward by amendment of the 1983 Act through enactment of secondary legislation. A group comprising key stakeholders has formed to consider this and responses to this consultation.

Views are sought on the following areas:

Licensing

The 1960 Act makes it an offence for a site owner to operate a site without a licence. However, local authorities have no power to consider the suitability of an applicant to hold a licence. In addition, they cannot revoke a licence on statutorily established grounds of unsuitability. The licence term is unlimited and requires no renewal. It is linked to planning consent which can be in perpetuity.

Local authorities currently have powers to monitor and enforce compliance with site licence conditions. However, required checks are limited to determining that an applicant for a site licence has not had a licence revoked within the last 3 years. There is no means by which a licence can be refused to an individual with convictions for e.g. harassment, intimidation, violence or fraud. Stakeholders have also raised issues about who should be required to apply for a licence.

Under the 1960 Act, no fee is payable by the person applying for a site licence. This is unusual, as most licensing regimes enable the regulatory body to recover its costs in administering the regime.

The legislation does not take account of growing numbers of migrant and seasonal workers in some areas. Sites exempted from the legislation are not obliged to limit the numbers of caravans and occupants per caravan. Many migrant workers are housed in mobile accommodation on exempted sites.

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?

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

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?

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?

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?

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

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

Definition of a caravan

A site should only be licensed if it has caravans on it, not houses. A caravan is defined within the Caravan Sites and Control of Development Act 1960, but the subsequent Caravan Sites Act 1968 details the maximum permitted dimensions of caravans. Over the years, some park homes have undergone alteration. This has resulted in local debate over the status of particular dwellings.

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

PART 6 – FACILITATING PRIVATE INVESTMENT IN HOUSING – THE TWENTY YEAR RULES

The Land Tenure Reform (Scotland) Act 1974 (*the Act*) established several provisions, often referred to as the '20 year rules', two of which are particularly significant to the current provision of affordable housing. We are **not** proposing any abolition of these provisions but we are keen to gather views about the barriers to investment in affordable housing resulting from the 20 year rules. Radical change would need to be subject to a longer term review, perhaps by the Scottish Law Commission, and this is not currently being contemplated. There may be scope for relaxing the 20 year rules in a limited manner in relation to the provision of affordable housing, should consultation show that the rules are proving to be an obstacle to investment.

The first provision, in section 8 of the Act, states that a residential lease should not last for longer than 20 years (*the lease rule*). This rule was brought in, amongst other reasons, to prevent the creation of a second feudal system by means of long leases and to provide protection for tenants. It means that any lease, either on a house, or on land which will be used for housing, should not be entered into for longer than 20 years.

The second provision, in section 11 of the Act, states that after 20 years a borrower is entitled to redeem any standard security (mortgage) over their property(ies) in return for the payment of the outstanding amount of the loan, plus any reasonable interest or charges (*the standard security rule*). This does not currently cause significant issues for the provision of standard mortgage loans to individuals, but means any lender will either be prevented from, or at least restricted in, fixing or otherwise hedging interest rates for a period of more than 20 years, as well as in recovering breakage costs from borrowing organisations who repay a loan early, but after 20 years. For example, for any equity loan or equity investment secured over residential properties, the borrower might only have to repay the capital amount of the original loan rather than the agreed percentage of the value of the properties after 20 years – where the property values have increased, this could result in a significant loss of returns to the investor. Or, under a more traditional loan arrangement, after 20 years a lender may find, for whatever reason, that their contractual rights may be limited by the debtor's redemption of their standard security.

Both rules were enacted in a different market context, before private finance alongside public subsidy became the norm for social housing, prior to equity investment or shared equity lending being regularly in use, and before further legislative changes were made to abolish feudal tenure. Section 67 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 lays down that no new leases in Scotland can last more than 175 years so this prevents any new ultra-long leases from being created.

The 20 year lease rule

Feedback from stakeholders suggests that the **lease rule** causes a number of issues when looking at funding for housing projects – for example for institutional investment particularly in either affordable rented or private rented housing, but in some cases also for mixed tenure developments. Private investors might wish to finance or part-finance the building of homes and then lease them to a Registered Social Landlord or a property management agent for an agreed period of time, to be made available as rented accommodation. This and other similar types of innovative model currently affected by the lease rule could become important as the availability of public sector funding across the UK is likely to reduce significantly over the next few years, whilst the demand for housing of all tenures, particularly affordable and private rented housing, continues to increase. This type of model is unlikely to be financially viable for the provision of affordable housing without public subsidy if the lease can only last for 20 years.

Whilst the Act does not state that a lease is invalid if it lasts longer than 20 years, it does give the land owner the right to terminate the lease at any time after 20 years, which means that any organisation leasing the land would have concerns about the risk of the lease being terminated early. That lack of certainty currently prevents such arrangements from proceeding and it may be inhibiting the development of innovative funding options in Scotland that include the lease of homes from one investor or public sector body to another.

As a result of concerns being raised by stakeholders, the Scottish Government is considering whether or not to propose amendments to offer limited exemptions to the rule where an organisation is leasing land or properties with the intention of sub-letting these homes under a recognised tenancy (such as the short assured tenancy). However, any exemptions would only be considered where they would not impact on tenants' rights as their statutory rights based on the type of tenancy they hold as sub-tenants should be unaffected.

One approach to this could be to introduce limited relaxations for leases provided to certain specified categories of organisations, or for certain types of housing use, where the lease would be allowed to last for a longer specified period. Another could be that such relaxations require consent from Scottish Ministers.

We would also welcome views on other alternatives, such as whether the lease rule should be extended so that any residential lease could be offered for a longer period and, if so, what would be an appropriate maximum period. However, in considering this, the Scottish Government would need to bear in mind any wider implications for Scots property law – for example, any leases lasting longer than 20 years can be registered in the Land Register.

Therefore, the Scottish Government would welcome views on whether you feel that the lease rule creates a barrier to innovative housing projects and, if so, how it could best be amended without adversely affecting tenants rights.

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?

The Standard Security rule

In relation to the **standard security rule**, feedback from stakeholders suggests it is discouraging private investors from investing equity stakes in housing projects for longer than 20 years. In some cases, an investment of longer than 20 years may be required to make a project viable without significant public subsidy, particularly if rents are to be below market levels. The standard security rule means that investors may not be willing to put equity investment into a vehicle for providing housing for longer than 20 years, for fear of losing their right to full equity-based returns after the first 20 years.

There are also limits around the development of long term funding options on offer to the housing association sector, like bond finance, due to lenders' fears about the impact of the standard security rule. This is where the lender or investor takes a security over homes owned by the borrower and is reliant on having the loan in place for a certain time period in order to secure its returns. Therefore its profits would be affected if the loan were paid off after 20 years, but it may be unable to charge the borrower for breakage costs.

As noted in relation to the lease rule, these issues could impact on the feasibility of a number of the innovative housing investment models. Those that depend on long-term leases supported by long-term securities over the houses concerned, are not presently an option in mixed tenure models or the private or affordable rented sectors.

As a result, we would welcome views on whether there would be merit in amending the provisions in section 11 of the Act. One approach could be to require borrowers to pay the full amount owed under the terms of any loan agreement if they redeem their standard security after 20 years. Another approach could be varying or extending the rule for a period that is longer than 20 years for loans to certain types of borrowers, or for certain types of housing.

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?

ANNEX A: DRAFT EQUALITY IMPACT ASSESSMENT (EQIA)

PART 1: PRIVATE RENTED SECTOR ISSUES

We would like your views on this draft equality impact assessment (EQIA), which is part of the consultation on a proposed housing bill. Your responses to the questions included will help us to carry out a full equality impact assessment of the proposals.

Please note that the draft EQIA is divided into three parts which cover the three main subject areas in the consultation. Part 1 of the draft EQIA covers private rented sector issues, Part 2 covers licensing of mobile home sites and Part 3 covers twenty year rules.

This is **Part 1** of the draft EQIA on private rented sector issues which are landlord registration, licensing of houses in multiple occupation, overcrowding and the tenancy regime.

1. Aims of the policy

What is the purpose of the proposed policy (or changes to be made to the policy)?	To make the following improvements in the private rented sector (PRS): <ul style="list-style-type: none">• Strengthening enforcement of landlord registration and houses in multiple occupation (HMO) licensing;• Addressing the problems of overcrowding;• Clarifying and facilitating rights and responsibilities for tenants, landlords and agents in the tenancy regime.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	<ul style="list-style-type: none">• Private tenants.• Landlords and agents in the PRS. <p>These two categories of stakeholders will benefit from strengthening of existing systems and the protection of improved practices in the sector.</p> <ul style="list-style-type: none">• Local authorities will be given further powers and existing provisions will be clarified to assist them in carrying out their duties.

<p>How have we, or will we, put the policy into practice, and who is or will be responsible for delivering it?</p>	<p>These changes may be implemented in a proposed private housing bill but are dependent on the results of the consultation.</p> <ul style="list-style-type: none"> • Local authorities operate the landlord registration system and the HMO licensing system, and would enforce overcrowding provisions. • The PRHP would be responsible for some provisions relating to landlord registration and also in disputes between landlords and tenants. • Landlords and agents are responsible for tenancy regime provisions.
<p>How does the policy fit into the Government's wider or related policy initiatives?</p>	<p>The changes will protect private tenants, support responsible landlords and agents and assist local authorities and the PRHP in regulating the sector. This will contribute to the national outcome the Government has set for strong, resilient and supportive communities.</p>

2. What do we already know about the diverse needs and/or experiences of your target audience?

Do we have information on:	
Age	Yes
Disability	Yes
Gender	Yes
Lesbian, Gay, Bisexual and Transgender	Yes
Race	Yes
Religion and Belief	Yes

The proposed changes in the consultation will affect private rented sector tenants, landlords and agents.

2.1 The proposals we are consulting on are intended to:

- Strengthen and enforcement of landlord registration and HMO licensing with the intention of protecting tenants, assisting landlords, agents and local authorities and creating greater connectivity with the PRHP by;

Landlord registration

- Expanding the list of offences to be declared by an applicant for landlord registration.

- Allowing a local authority to require a criminal record certificate to verify information on a landlord.
- Requiring the Private Rented Housing Panel to obtain and check landlord registration numbers.
- Requiring landlord registration numbers in advertisements of properties to let.
- Allowing a local authority to require an agent to provide a list of properties managed.

HMO licensing

- Allowing tenants and local authorities to claim back rent paid in an unlicensed HMO.
- Providing that failure to provide information when required will lead to the presumption that a property is an HMO.
- Address problems of overcrowding in the PRS by:
 - Allowing local authorities to require private landlords in a specified locality to issue a statement of the number of people permitted in a house.
 - Allowing a local authority to serve an Overcrowding Abatement Order on a privately rented house where overcrowding was causing serious nuisance or seriously affecting the welfare of occupants.
- Clarify rights and responsibilities for tenants, landlords and agents in the tenancy regime by:
 - Allowing a private landlord to apply to the Private Rented Housing Panel when in dispute with a tenant about gaining access in relation to the Repairing Standard.
 - Allowing a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body.
 - Requiring a private landlord or agent to issue a pack containing specified information to a tenant at the start of the tenancy.
 - Merging the documents at the start of a Short Assured Tenancy into one form.
 - Making all pre-tenancy charges illegal apart from those specified as reasonable.

- Clarifying the notices issued to gain possession of a property subject to a Short Assured Tenancy.

2.2 Private tenants

About 8% of Scottish households, numbering about 233,000, live in the private rented sector and it is likely that this proportion will increase. We gathered a great deal of information in our *Review of the Private Rented Sector*, which included a tenant survey among other sources. The Review found that different groups of tenants have different needs and experiences and are represented in the sector in varying proportions.

Here are some findings from the Review about the diversity of private tenants:

- Characteristically, private tenants tend to be younger than the population as a whole. Almost 80% of licensed HMOs are occupied by students, who tend to be young (84% under 25 years old).
- About one in ten tenants have a disability or limiting long-term illness. The rate is higher in rural areas. These tenants are more likely to be dissatisfied with their home (21%).
- One in three non-white households live in the private rented sector, compared to one in fourteen white households.
- One in three non-white tenants experience problems accessing appropriate private rented housing, compared to one in five of all tenants.
- Migrant workers are highly likely to live in the private rented sector when they first arrive in Scotland. The Review quoted studies showing that there were problems of overcrowding among migrant workers and additionally that migrant workers had lower levels of awareness of key rights and responsibilities such as HMO licensing and the PRHP.
- There are reports of migrant workers living in overcrowded, unsafe and sub-standard private rented housing, including multiply-occupied short-term lets.
- One third of households identifying as Hindu, one in five Buddhist households and a similar proportion of Muslim households lived in the private rented sector in 2001.

Question A.1: We are interested in any further information regarding the diversity of private tenants that you think is relevant to the proposed changes outlined above in paragraph 2.1.

From your knowledge of the diverse needs and experiences of private tenants, can you provide any further information that you think we should know of for the purposes of our consultation? In addition, is there any other information

that you think we should obtain? How or where should we find this information?

2.3 Private landlords and agents

The number of HMO licences in force has increased year on year since the introduction of the mandatory licensing scheme in 2001. The most recent figures for 2008-9 show about 11,400 licences in force at 31 March, 12% more than the previous year.

A large majority of dwellings in the private rented sector are owned by individuals and couples. Only a small proportion are owned by full-time business landlords, although a large proportion of dwellings are owned for business and investment reasons. There is almost an exact male to female gender balance amongst individual and couple owners. Landlords are predominantly 'young' with 35% of dwellings being owned by those under 45 and 65% are owned by those under 54. About 5% of PRS properties are owned by landlords from non-white ethnic groups. In Glasgow this percentage is higher with 14% of PRS properties being owned by members of non white ethnic groups.

Question A.2: We are interested in any further information regarding the diversity of private landlords and agents that you think is relevant to the proposed changes outlined above in paragraph 2.1.

From your knowledge of the diverse needs and experiences of private landlords and agents, can you provide any further information that you think we should know of for the purposes of our consultation? In addition, is there any other information that you think we should obtain? How or where should we find this information?

3. What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?

3.1 Landlord registration

We consider that the proposed changes to the landlord registration process will enable local authorities and landlords to improve standards in the sector and encourage good practice.

Questions

A.3: Do you think the proposed changes to the landlord registration system will have a disproportionately negative impact on particular groups of people in our target audience?

A.4: If you think these proposals will have a negative impact on a particular group, why is this?

A.5: What positive impacts do you think the changes will have on particular groups of people?

A.6: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

3.2 HMO licensing

We consider that the proposed changes to HMO licensing will assist local authorities in the enforcement of HMO licensing, which will provide reassurance and protection to tenants, responsible landlords and agents.

Questions

A.7: Do you think the proposed changes to HMO licensing will have a disproportionately negative impact on any group, or groups, of people?

A.8: If you think there will be a negative impact on a particular group, why is this?

A.9: What positive impacts do you think the changes will have on particular groups of people?

A.10: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

3.3 Overcrowding

We consider that our proposals to address overcrowding (see paragraph 2.1) will protect tenants, and be of particular benefit to migrant workers.

Questions

A.11: Do you think the proposed changes to overcrowding legislation will have a disproportionately negative impact on any group, or groups, of people?

A.12: If you think there will be a negative impact on a particular group, why is this?

A.13: What positive impacts do you think the changes will have on particular groups of people?

A.14: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

3.4 Clarification and facilitation of rights and responsibilities for tenants, landlords and agents in the tenancy regime

We consider that the proposed changes (see paragraph 2.1) will promote a greater understanding of and facilitate roles and responsibilities for landlords and agents, and will be of great benefit to ensure tenants are fully informed of their rights and responsibilities.

Questions

A.15: Do you think the proposed changes which are intended to improve the private rented sector will have a disproportionately negative impact on any group, or groups, of people?

A.16: If you think there will be a negative impact on a particular group, why is this?

A.17: What positive impacts do you think the changes will have on particular groups of people?

A.18: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

4. Does the policy provide the opportunity to promote equality of opportunity or good relations?

Yes. The position of private tenants will be improved by higher standards of landlord registration and HMO licensing, by overcrowding being addressed more effectively than at present and by tenants being better informed of their rights. Improving living standards will particularly benefit groups with higher representation in the sector - young people, migrant workers, people from ethnic minorities and religious minority groups - helping to protect their rights and wellbeing and promoting equality of opportunity.

5. Do we need to carry out a further impact assessment?

This initial assessment forms part of the consultation on the possible provisions for inclusion in the Bill. We do not have all the answers and we would particularly welcome your comments on the questions above. We would also welcome any other views you have about how the proposed changes to (a) the landlord registration system; (b) licensing of HMOs; (c) overcrowding; and (d) the tenancy regime, will affect equal opportunities for all groups of people.

Question A.19: When we complete our impact assessment of the proposed changes to (a) the landlord registration system, (b) licensing of HMOs, (c) overcrowding; (d) mobile homes and (d) the tenancy regime, are there any other significant issues we need to consider in relation to:

- **Age**
- **Disability**
- **Gender**
- **Lesbian, Gay, Bisexual and Transgender**
- **Race**
- **Religion and Belief?**

We will publish the full equality impact assessment if the proposed private housing bill becomes law.

PART 2: LICENSING OF MOBILE HOME SITES

We would like your views on this draft equality impact assessment (EQIA), which is part of the consultation on a proposed housing bill. Your responses to the questions included will help us to carry out a full equality impact assessment of the proposals.

Please note that the draft EQIA is divided into three parts which cover the three main subject areas in the consultation. Part 1 of the draft EQIA covers private rented sector issues, Part 2 covers licensing of mobile home sites and Part 3 covers twenty year rules.

This is **Part 2** of the draft EQIA on licensing of mobile home sites.

1. Aims of the policy

What is the purpose of the proposed policy (or changes to be made to the policy)?	To modernise the licensing of mobile home sites.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	Mobile home site owners and residents. These stakeholders will benefit from strengthening of existing systems and the protection of improved practices in the sector.
How have we, or will we, put the policy into practice, and who is or will be responsible for delivering it?	These changes may be implemented in a proposed private housing bill but are dependent on the results of the consultation. <ul style="list-style-type: none"> The licensing of mobile home sites is operated by local authorities; they will continue to be responsible.
How does the policy fit into the Government's wider or related policy initiatives?	The changes will protect residents; support responsible site owners and also assist local authorities in licensing mobile homes. This will contribute to the national outcome the Government has set for strong, resilient and supportive communities.

2. What do we already know about the diverse needs and/or experiences of your target audience?

Do we have information on:	
Age	Yes
Disability	Yes
Gender	No
Lesbian, Gay, Bisexual and Transgender	No
Race	No
Religion and Belief	No

The proposed changes in the consultation will affect mobile homes site owners and residents.

2.1 The proposals we are consulting on are intended to:

- Strengthen the licensing regime for mobile home sites, increasing local authorities' powers to monitor and enforce compliance with site licence conditions.
- increase local authorities' powers to progress enforcement action where there are breaches of licence provision without having to approach the courts.
- strengthen the legislation to require individuals to demonstrate they are suitable to hold a site licence.

2.2 Mobile homes site owners and residents

Research published by the Scottish Government in December 2007 (*Residential Mobile Homes in Scotland*) shows that residential mobile homes have a diverse range of occupants and play a varied role in the housing market.

Residential mobile homes provide accommodation for circa 4,500 households in Scotland. Highland Council has the highest number of mobile homes (501), followed by Midlothian (365), Aberdeenshire (345) and Glasgow (321). This type of accommodation is often referred to as a "Park Home".

Here are some findings from the research about the diversity of residents based on respondents to a questionnaire:

- Household type - half the respondents in the park homes were single. 42.5% were couples and 7.5 % were couples with children.
- Age – 7.5 % of the respondents living in park homes were under the age of 49. 25% of respondents were between the ages of 50 and 59; 40% were aged between 60 and 69 and 27.5% were over 70.
- Economic status –given the age profile of the respondents it was perhaps not surprising that half of those living in park homes were retired. 17.5% were working full time, a further 17.5% were working part time, 2.5% student. 5% of respondents were unemployed and 7.5% of respondents noted that they were not working due to ill health.
- There is currently no evidence to determine how changes to the legislation would impact on the equality strands of gender, religion and belief, LGBT groups and race.

Question B.1: We are interested in any further information regarding the diversity of mobile homes site owners and residents that you think is relevant to the proposed changes outlined above in paragraph 2.1.

From your knowledge of the diverse needs and experiences of mobile homes site owners and residents, can you provide any further information that you think we should know of for the purposes of our consultation? In addition, is there any other information that you think we should obtain? How or where should we find this information?

3. What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?

Licensing of mobile home sites

We consider that the proposed changes to the licensing of mobile homes sites will enable local authorities to improve standards in the sector and encourage good practice.

Questions

B.2: Do you think the proposed changes which are intended to improve the mobile homes sector will have a disproportionately negative impact on any group, or groups, of people?

B.3: If you think there will be a negative impact on a particular group, why is this?

B.4: What positive impacts do you think the changes will have on particular groups of people?

B.5: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

4. Does the policy provide the opportunity to promote equality of opportunity or good relations?

Yes. Enabling local authorities to engage their powers and apply the mobile home licensing regime more effectively would improve standards of site management and services for all mobile home site residents.

5. Do we need to carry out a further impact assessment?

This initial assessment forms part of the consultation on the possible provisions for inclusion in the Bill. We do not have all the answers and we would particularly welcome your comments on the questions above. We would also welcome any other views you have about how the proposed changes to the licensing of mobile homes will affect equal opportunities for all groups of people.

Question B.6: When we complete our impact assessment of the proposed changes to the licensing of mobile homes, are there any other significant issues we need to consider in relation to:

- **Age**
- **Disability**
- **Gender**
- **Lesbian, Gay, Bisexual and Transgender**
- **Race**
- **Religion and Belief?**

We will publish the full equality impact assessment if the proposed private housing bill becomes law.

PART 3: THE 20 YEAR LEASE AND STANDARD SECURITY RULES

We would like your views on this draft equality impact assessment (EQIA), which is part of the consultation on a proposed housing bill. Your responses to the questions included will help us to carry out a full equality impact assessment of the proposals.

Please note that the draft EQIA is divided into three parts which cover the three main subject areas in the consultation. Part 1 of the draft EQIA covers private rented sector issues, Part 2 covers licensing of mobile home sites and Part 3 covers the 20 year rules.

This is **Part 3** of the draft EQIA on the 20 year rules.

1. Aims of the policy

<p>What is the purpose of the proposed policy (or changes to be made to the policy)?</p>	<p>We are not making any proposals at this stage. However, we are asking stakeholders to give views on whether current restrictions in the Land Tenure Reform (Scotland) Act 1974 to the provision of a residential lease or a standard security (i.e. mortgage) for longer than 20 years should be amended. The purpose of any changes, if they are proposed, would be to facilitate long-term private sector investment in affordable and private rented housing and, as a result, to increase housing supply.</p>
<p>Who is affected by the policy or who is intended to benefit from the proposed policy and how?</p>	<p>Institutional investors and other lenders who may wish to lend or invest money for longer than 20 years would be affected by any proposals, along with any organisation wishing to take a longer lease or deliver a long term housing project.</p> <p>People in housing need would be expected to be the ultimate beneficiaries as the removal of existing barriers should enable more affordable homes to be provided than would otherwise be the case with the limited available public sector resources. In addition, investors and lenders would be expected to benefit by these changes potentially making additional financial investment opportunities available to them.</p> <p>As the Scottish Government is still considering whether to make proposals and, if so, what the scope of the changes would be it is difficult to say exactly how people might benefit at this stage. However, any changes would be likely to impact on how housing projects are funded and deliver benefits through improved prospects for future</p>

	affordable housing supply. This should not directly impact on the types or locations where housing is provided or who is able to rent or buy the homes.
How have we, or will we, put the policy into practice, and who is or will be responsible for delivering it?	If changes are proposed, they would be taken forward through the proposed Private Housing bill. It would be the responsibility of the organisation entering into either a lease or any financial agreement involving a standard security to ensure that they comply with the requirements of the revised legislation.
How does the policy fit into the Government's wider or related policy initiatives?	Any changes would be expected to promote the provision of new affordable housing for rent (such as social or mid-market rented housing) and could also help to promote long term institutional investment in the private rented sector. It forms part of the Scottish Government's wider long term objectives of increasing overall housing supply across all tenures in Scotland

2. What do we already know about the diverse needs and/or experiences of your target audience?

Do we have information on:	
Age	Yes
Disability	Yes
Gender	Yes
Lesbian, Gay, Bisexual and Transgender	No
Race	No
Religion and Belief	No

As noted above, any proposed changes would affect the mechanisms for funding the provision of both affordable housing (such as shared equity, mid-market rent and social rented housing) and potentially also private rented and mixed tenure housing projects. However, the changes should not impact directly on decisions by local authorities, housing associations or the private sector about who would live in the housing provided and what types or locations the homes would be offered in. The target audience is difficult to define, particularly when the scope of any proposals is not yet known as it is dependent on the views of consultees.

The 2007-2008 Scottish Household Survey (SHS) shows that for tenure by age, the percentage of the population surveyed who were social renters remained reasonable well spread across all the age ranges at between 17% and 28% (on average, 21% of those surveyed were social renters). For private renters (who form around 9% of all households), around 20% of the population surveyed were in the 16-34 years age group, with only 2-7% of the population surveyed in the remaining age groups being private renters; this suggests that any private rented homes provided would predominantly attract younger people.

In terms of tenure by disability, the SHS shows that 35% of the 7.5% of the population surveyed who said they were disabled were social renters, but only 5% were private renters (suggesting that less than half a percent of private renters felt they were disabled). In relation to gender, the SHS indicates that only 20% of men are social renters and 10% are private renters, while some 22% of women are social renters and 8% are private renters. In relation to race, the 2007 SHS indicates that 97.9% in Scotland describe themselves as white.

While we can assume that some of the beneficiaries would be social and private renters, it is not possible at this stage to know in detail the likely impact on equalities groups, although we welcome views on any potential impacts that should be taken into consideration. Decisions on target tenant or buyer groups for the provision of any affordable housing by any housing provider should be taken by or in liaison with the relevant local authority who would have regard to its Local Housing Strategy in considering the target groups who would benefit from housing provided through any specific project.

If any new schemes (Scotland-wide or local) were able to be established as a result of any changes in the 20 year rules, then we would want providers to ensure that these would be accessible to all equality groups, and where any Scottish Government funding was provided, we would want to make sure appropriate monitoring was put in place to check that no equalities groups were facing particular issues in accessing a scheme.

2.1 The issues we are consulting on are:

- Whether changes should be made to the 20 year residential lease rule to encourage longer term private investment in housing by for example allowing land owners to offer longer leases in certain circumstances or to certain types of organisations.
- Whether changes should be made to the 20 year standard security rule to encourage longer term private investment in housing.

Question C.1: We are interested in any further information regarding the potential impact of any changes to the 20 year rules on any equalities groups who might be looking for affordable housing to rent or buy or for a home in the private rented sector. Is there any other information that you think we should obtain?

3. What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?

As noted above, the information currently available is very limited as we are not yet making any proposals and, as a result, there could be a wide range of potential customers benefiting from any changes in the way housing projects are financed.

Questions

C.2: Do you think any changes to improve the potential for long-term financing of housing projects would or might have a disproportionately negative or positive impact on any group, or groups, of people?

C.3: If you think there would be a negative impact on a particular group, why is this?

C.4: Do you suggest any proposals to help reduce any negative impact or enhance any positive impact that you have identified?

4. Does the policy provide the opportunity to promote equality of opportunity or good relations?

Potentially yes. If proposed, any changes should help in making more tools available to local authorities and local housing providers to meet the full range of housing needs of different groups in their area. Whilst the types of project offered as a result of any legislative changes could vary significantly and would still depend on the availability of willing funders, any increase in the number or types of housing available should to some extent assist local authorities in offering greater choice to housing customers and in meeting a range of different housing needs.

5. Do we need to carry out a further impact assessment?

Yes. This initial assessment forms part of the consultation on the possible provisions for inclusion in the Bill. We do not have all the answers and we would particularly welcome your comments on the questions above. We would also welcome any other views you have about how the proposed changes to the 20 year rules will affect equal opportunities for all groups of people.

Question C.5: When we complete our impact assessment of the proposed changes to the 20 year rules, are there any other significant issues we need to consider in relation to:

- **Age**
- **Disability**
- **Gender**
- **Lesbian, Gay, Bisexual and Transgender**
- **Race**
- **Religion and Belief?**

We will publish the full equality impact assessment if the proposed private housing bill becomes law.

ANNEX B

PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

PROPOSED PRIVATE HOUSING (SCOTLAND) BILL

2. Purpose and intended effect of proposals

2.1 Objectives

The objectives of the proposed Private Housing (Scotland) Bill are to:

- strengthen the landlord registration system
- strengthen the enforcement of HMO licensing
- address problems of overcrowding in the private rented sector
- amend the private tenancy regime legislation to allow better enforcement of rights of entry and possession, clarify processes and improve the provision of information to tenants
- improve the system of licensing of mobile home sites
- relax the rules, in limited circumstances, setting time limits in relation to residential leases and the redemption of standard securities.

2.2 Background

The proposals in relation to the private rented sector arise from recommendations made by the Scottish Private Rented Sector Strategy Group, which was set up by the Scottish Government to take forward the conclusions of its Review of the Private Rented Sector, published in March 2009.

The proposals on mobile home sites arise from the concerns of stakeholders – site owners and residents - about standards in the sector.

Stakeholders including institutional investors have raised concerns that the 20 year rules in relation to leases and standard security could present barriers to investment in housing.

The three Annexes attached set out full details in relation to the proposals on

- 1 – the private rented sector**
- 2 – the licensing of mobile home sites**
- 3 – the 20 year rules.**

The RIA contains some estimated costings, which we will work on in more detail during and after the consultation.

ANNEX 1

1. Title of proposal

PROPOSED PRIVATE HOUSING (SCOTLAND) BILL (PRIVATE RENTED SECTOR)

2. Purpose and intended effect of proposals

2.1 Objectives

The proposed Private Housing (Scotland) Bill will strengthen provisions on landlord registration and licensing of houses in multiple occupation (HMOs) to make them work more effectively. It will address problems of overcrowding in the private rented sector. It will also clarify and facilitate certain procedures relating to short assured tenancies, promote consumer awareness amongst tenants, and prevent unfair pre-tenancy charges. Specifically, it will:

Landlord registration

- expand the list of offences to be declared by an applicant for landlord registration
- allow a local authority to require a criminal record certificate to verify information
- require the Private Rented Housing Panel to obtain and check landlord registration numbers in relation to an application
- require landlord registration numbers in advertisements of properties to let
- allow a local authority to require an agent to provide a list of properties managed

HMO licensing

- allow tenants and local authorities to claim back rent paid in an unlicensed HMO
- provide that failure to provide information when required will lead to the presumption that a property is an HMO

Overcrowding in the private rented sector

- allow a local authority to require private landlords in a specified locality to issue a statement of the number of people permitted in a house
- allow a local authority to serve an Overcrowding Abatement Order on a privately rented house where overcrowding is causing serious nuisance or seriously affecting the welfare of occupants

Tenancy regime

- allow a private landlord to apply to the Private Rented Housing Panel when in dispute with a tenant about gaining access in relation to the Repairing Standard
- allow a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body
- require a private landlord or agent to issue a pack containing specified information to a tenant at the start of the tenancy
- merge the documents at the start of a Short Assured Tenancy into one form
- make all pre-tenancy charges illegal apart from certain specified, reasonable charges
- clarify the notices issued to gain possession of a property subject to a Short Assured Tenancy

2.2 Background

An extensive review of the private rented sector was announced in *Firm Foundations*, the Scottish Government's discussion document on future housing policy, in October 2007. It made clear that encouraging the development of the private rented sector forms part of the Government's strategy to improve supply and choice of housing across all tenures. The *Scottish Government Review of the Private Rented Sector*, which was published in March 2009, set out conclusions, including issues requiring legislative change, based on the evidence gathered.

The Scottish Private Rented Sector Strategy Group, which represents leading stakeholders in the sector, was established by Ministers. The Group met for the first time on 2 October 2009 with the initial task of considering how to take forward the conclusions of the *Review* and to make recommendations to Ministers on proposals for primary legislation. The Group reached consensus on 14 December 2009 on what it recommended should be consulted on for inclusion in a proposed Private Housing Bill and Ministers agreed to consult on these issues.

The consultation on these legislative proposals includes measures to improve the effectiveness of the regulation and operation of the private rented sector, specifically in the areas of landlord registration, the licensing of houses in multiple occupation (HMOs), overcrowding and the tenancy regime.

2.3 Rationale for government intervention

The Scottish Government has made clear that it recognises the importance of the private rented sector in the housing market. It wants to support the sector to provide good quality accommodation to meet a range of housing needs. As part of this, there have to be sufficient safeguards for tenants, which is why landlord registration and HMO licensing were put in place. The Scottish Government considers that further adjustments to these systems are necessary to improve their effectiveness. It also believes that measures to address overcrowding in the sector will benefit vulnerable tenants by giving local authorities a greater range of powers to provide protection. Amendments to the tenancy regime will help landlords to exercise their rights. This will provide reassurance to them, thereby encouraging them to give

longer tenancies. Other amendments will clarify processes for the benefit of tenants and landlords. The provision of additional information will increase tenants' and possibly landlords' awareness of their rights and responsibilities, which the *Review* found to be very low.

3. Consultation

A public consultation on the proposals will be carried out between March and April 2010. The results of the consultation will be taken into account in finalising this Regulatory Impact Assessment.

4. Options

4.1 Option 1: Do nothing

Landlord Registration

Despite a large number of good landlords across Scotland, who have been registered, there are a significant number who are under review because of local authorities' concerns about their practices. However, there is reluctance amongst local authorities to use the powers they have to refuse applications for registration, because of concerns about evidence. This has led them to seek additional powers in order to ensure that robust cases against problem landlords can be developed where there are concerns.

Doing nothing would mean allowing the landlord registration system to continue functioning as it is at the moment without addressing the specific concerns raised by local authorities and others about the effective enforcement of landlord registration, relating to the declaration of offences, criminal record certificates, requiring the Private Rented Housing Panel (PRHP) to check registration numbers, requiring registration numbers in advertisements, and requiring agents to provide lists of properties managed.

HMO licensing

Local authorities and other stakeholders have concerns about the effectiveness of the enforcement of HMO licensing. Doing nothing would mean that an opportunity to improve this would be missed. Tenants of unlicensed HMOs would not be afforded the reassurance and compensation of a rent repayment order and there would not be this additional incentive for landlords to apply for a licence.

There would continue to be difficulty in proving that a property is a licensable HMO because a landlord or managing agent withholds relevant information.

Overcrowding

Doing nothing would mean that the current problems of overcrowding, which particularly affect migrant workers and other vulnerable groups and have a range of deleterious effects, personal and social, could not be addressed so directly and effectively by local authorities.

Tenancy Regime

Doing nothing would mean that landlords would continue to experience delays and high costs in trying to enforce rights of entry and possession of abandoned properties. These were identified in the Review as reasons for their reluctance to grant longer tenancies.

Tenants would not benefit from the provision of more information and the resulting increase in consumer awareness. Tenants and landlords would not benefit from the clarification of the forms required at the beginning and end of short assured tenancies. Tenants would still be subject to unfair pre-tenancy charges.

4.2 Option 2: Adopt the proposals for primary legislation on the private rented sector

The proposed Private Housing (Scotland) Bill provides a legislative opportunity to –

- Strengthen enforcement of landlord registration and HMO licensing with the intention of protecting tenants, assisting responsible landlords and agents and local authorities, and creating better links with the PRHP.
- Address overcrowding in the private rented sector by allowing local authorities to require landlords in a specified locality to notify their tenants of the permitted number of occupants under the overcrowding legislation, and giving local authorities the power to serve an Overcrowding Abatement Order.
- Give private landlords the right to apply to the PRHP when in dispute with a tenant regarding access to the property in connection with the repairing standard.
- Streamline the process for private landlords to repossess properties in abandonment cases.
- Introduce an information pack at the start of a tenancy to promote knowledge of rights and responsibilities among tenants and possibly landlords.
- Clarify notices required at the beginning and end of a short assured tenancy.
- Clarify what types of reasonable, specified pre-tenancy fees letting agents and landlords can charge.

Landlord Registration

Online application form: declaration of offences

Local authorities are required to form a judgement on whether a landlord is a fit and proper person. Regulations require an applicant to declare spent or unspent convictions for a variety of offences, and court or tribunal judgements under discrimination legislation.

It is proposed to add firearms and sexual offences to the list of offences that must be declared, together with any other types of offence specifically causing concern. The local authority would then be able to take account of these offences in considering whether the applicant was a fit and proper person.

Ability of the local authority to require a disclosure check

The local authority is required to form a judgement on whether a landlord is a fit and proper person. Currently a local authority cannot insist that an applicant provides a disclosure check.

It is proposed to add a provision to the 2004 Act, so that if a local authority considers that a criminal record certificate in terms of Part 5 of the Police Act 1997 is required in order to verify information in relation to whether the landlord is a fit and proper person, then the local authority may request that the person provide such a certificate. Refusal could be used as evidence that the person is not a fit and proper person.

Notification by the Private Rented Housing Panel

The PRHP receives referrals from tenants and landlords; however it does not check whether a landlord is registered.

It is proposed to amend the Housing (Scotland) Act 2006 to require the PRHP to request a landlord registration number from the landlord when it receives an application relating to the Repairing Standard (alternatively the information would be requested in cases that were accepted by the PRHP) and to notify the relevant local authority if the landlord does not provide a number or the number given is invalid.

Advertisements to include registration number

Local authorities constantly attempt to identify unregistered landlords. One means of doing this is through checking advertisements for properties for let, but this is often impractical as full addresses are not given.

It is proposed that all advertisements for properties to let should be accompanied by the landlord registration number of the owner(s) of the property. There may be an exception for To Let boards which are reused, and recognition that an application for landlord registration might still to be determined with no number yet allocated.

Obtaining information from agents

Under the current Housing (Scotland) Bill local authorities would be able to require people associated with a property to provide information to enable or assist the local authority to carry out its landlord registration function. Failure to do so is an offence. However this does not extend to requiring an agent to provide details of non-specified properties they manage and of their owners.

It is proposed that the current Housing (Scotland) Bill be amended to allow a local authority to require an agent to provide a list of all properties they manage along with the owners' contact details, with failure to do so being an offence.

HMO licensing

Allowing tenants or local authorities to claim back rent money paid over the previous 12 months

Tenants are likely to be required to act as witnesses in any prosecution of a landlord.

Section 144 of the Housing (Scotland) Act 2006 already provides for the service of a notice to suspend rent at premises where there is no licence or where any condition included in the licence has been breached. It is proposed that if it is found that an HMO property is not licensed, then consideration should be given to the tenants being able to claim back rent money paid over the previous 12 months. Where this takes the form of housing benefit, it would be reclaimed by the local authority.

It is proposed that a rent repayment order be made, once all avenues for appeal have been exhausted:

- by a sheriff upon conviction of the landlord or manager, or;
- upon the local authority being satisfied that an offence had been committed.

It is proposed that such orders should be restricted to cases where a licence has not been obtained, rather than cases where a licence has been revoked, and where the landlord has knowingly operated an HMO (not, for example, where he or she was unaware of subletting by a tenant).

Amending Section 186 such that continued non-provision of required information will lead to the presumption that premises are licensable

A local authority will require information from landlords in order to enforce HMO licensing effectively.

Section 186 of the Housing (Scotland) 2006 Act already provides the power to serve a notice upon “a person” defined as someone who

- (a) owns or occupies the land or premises concerned, or
- (b) receives rent, directly or indirectly, in respect of the land or those premises.

This includes tenants and landlords but would exclude a managing agent who does not receive rent.

It is proposed that non-provision of the required information will lead to the presumption that the premises are licensable. It is also proposed that managing agents are included within this requirement.

We recognise the difficulties in defining a managing agent and are considering using the definition currently within the Civic Government Scotland Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2003; “a person acts as an agent for an owner of a house if that person acts on behalf of that owner in carrying out any activity which directly permits or facilitates the occupation of that house”.

Overcrowding

There are two proposals on addressing overcrowding in the private rented sector.

Allowing local authorities to activate section 144 of the 1987 Act, so that it applies to all private landlords within a specified locality

It is proposed that local authorities should be given the power to apply the requirements of section 144 of the 1987 Act to all private landlords within a specified locality (which could be the whole local authority area or part of it). Section 144 requires a landlord to give the tenant a written statement of the permitted number of occupants in a house, obtain an acknowledgement and show it to the local authority on demand – failure to do so is an offence. The local authority would be able to enforce this provision effectively, since failure on the part of a private landlord to comply with section 144, as a breach of housing law, would be grounds for withdrawal of registration.

If this proposal were adopted, information on it could be included in the proposed pre-tenancy pack.

Giving local authorities power to serve an Overcrowding Abatement Order

The intention of Overcrowding Abatement Orders would be to enable a local authority, in cases where overcrowding was causing serious nuisance or seriously affecting the welfare of occupants, to compel the landlord to reduce occupancy of a house to the statutory level within a time period to be specified by the local authority. It would be a discretionary power and there would be no obligation on the local authority to use it in any particular case. It is suggested that it would apply for five years and be renewable.

An Overcrowding Abatement Order could be served if a house was overcrowded in terms of Part VII of the Housing (Scotland) Act 1987, and the local authority, having made reasonable enquiries, was satisfied that the overcrowding was causing serious nuisance either to other residents of the neighbourhood or to the occupants or seriously affecting the welfare of occupants. Following issue of the Order and conclusion of any appeal, the local authority would be required to give advice and legally permitted assistance to the occupants where it reasonably considered it appropriate.

Guidance would be provided to ensure local authorities sought tenants' views and considered the wider implications of any enforcement action proposed. This would include potential homelessness and the need to provide information and advice.

Tenancy Regime

Making it a legal requirement that landlords and letting agents provide tenants with an information pack at the start of the tenancy

It is proposed that landlords and letting agents should be legally required to provide tenants with an information pack at the start of the tenancy. This would take the

form of a standard pack, pulling together all the mandatory and other specified documents. Such a pack would help to inform tenants of their rights and responsibilities. Ministers would be given an enabling power to allow them to prescribe the information to be provided in the pack.

The pack could include, for example, a formal tenancy agreement, details on rights and responsibilities including the repairing standard, transfer of energy supply details, how to spot harassment and unlawful eviction, an inventory and information about protection of deposits, etc.

Clarifying that a Notice of Proceedings is required and clarifying possession procedures as a whole

It is proposed that the legislation should be amended to clarify that a Notice of Proceedings is required to be issued to a tenant in a short assured tenancy. It does not cost the landlord anything to issue a Notice of Proceedings and it can be issued at the same time as the Notice to Quit, so does not necessarily extend the notice period.

Given the complexity of the current situation, we are also consulting on a proposal to clarify possession procedures in short assured tenancies as a whole, with one, clearly-worded notice to be issued to tenants when the landlord seeks possession.

Making clear the reasonable pre-tenancy charges that agents and landlords could apply

There have been complaints that some tenants have to pay unreasonable pre-tenancy charges. It is therefore proposed that all pre-tenancy charges should be made illegal, apart from exemptions for reasonable charges, which would be set out in subordinate legislation following consultation with interested parties. This would enable greater clarity and better regulation.

It would be made clear what reasonable charges that agents could apply, and the existing legislation on charges - section 82 of the Rent (Scotland) Act 1984 and section 27 of the Housing (Scotland) Act 1988 - would have to be clarified.

Allowing a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body

It is suggested that private landlords should be able to apply to a third party for permission to inspect a property that is suspected of having been abandoned and subsequently, if appropriate, to serve a 28 day notice to regain possession. The landlord would collect and provide evidence of suspected abandonment to the authorising body (e.g., a complaint from a neighbour, confirmation of the tenant's absence by neighbours or the witnessed service of a notice, possibly by a sheriff officer). After considering the evidence provided, the authorising body could undertake or allow the landlord to carry out an inspection to verify that the property had been abandoned. The authorising body would also be required to attempt to contact the tenant to give notification that the repossession procedures were underway.

Under this process a landlord should be able to gain possession of the house on confirmation of abandonment from the authorising body without a court order. However, there is provision in the Housing (Scotland) Act 2001 for a tenant in social housing to raise court proceedings within 6 months of repossession, which can result in the social landlord having to make other accommodation available to the tenant. That safeguard would not be capable of replication in respect of private landlords. It is therefore further proposed that there should be a responsibility placed on the local authority to re-house a private tenant who returned within six months, which could fit in with responsibilities under section 11 of the Homelessness etc (Scotland) Act 2003.

Providing private landlords with a right to apply to the PRHP when in dispute with a tenant in relation to access in connection with the repairing standard

It is proposed that a landlord should have the right to apply to the PRHP when in dispute with a tenant about gaining access to the property in relation to the Repairing Standard, with the PRHP being given powers to help landlords to gain access.

This could be done without having a full hearing by a Private Rented Housing Committee – for example, one member of the PRHP could consider a written application from a landlord and a written response from the tenant. A member of the PRHP could accompany the landlord (or a person authorised by the landlord) to the property, if necessary, to ensure that the necessary work was carried out. If the tenant still refused access, the PRHP might be able to obtain a warrant to enforce entry. The tenant could also have the right to ask for a member of the PRHP to accompany the landlord.

5. Costs and benefits

5.1 Sectors and groups affected

The categories of people affected will be

- (i) local authorities, who administer and enforce the systems of landlord registration and HMO licensing, and would use the overcrowding powers;
- (ii) private landlords, who are subject to registration and, where relevant, HMO licensing, and would be subject to new requirements;
- (iii) private tenants and potential tenants;
- (iv) agents of landlords;
- (v) neighbours of privately rented accommodation;
- (vi) the Private Rented Housing Panel.

5.2 Benefits

5.2.1 Landlord Registration

Online application form: declaration of offences

The addition of firearms and sexual offences to the categories of offence mentioned at section 85(2) of the 2004 would make sure that local authorities knew about

convictions for these offences when considering whether a potential landlord is fit and proper. Applicants would be under a duty to declare them.

Combined with the proposed ability for a local authority to require a disclosure check, this will significantly improve the ability of local authorities to consider whether a potential landlord is fit and proper, thus improving protection for private tenants.

Ability of the local authority to require a disclosure check

Giving a local authority the ability to request that an applicant for landlord registration provide a disclosure check, will allow the local authority to verify information in relation to whether the landlord is a fit and proper person.

Combined with the proposed addition of firearms and sexual offences to the categories of offence mentioned at section 85(2) of the 2004 Act, this will significantly improve the ability of local authorities to consider whether a potential landlord is fit and proper, thus improving protection for private tenants.

Notification by the Private Rented Housing Panel

Amending the 2006 Act to require the PRHP to request a landlord registration number from the landlord on receiving applications relating to the Repairing Standard (or accepted cases), to check that the number is valid, and to notify the relevant local authority if the landlord is not registered, will assist local authorities in identifying unregistered landlords and taking action. If these landlords are subsequently refused registration, they will have to cease operating or face prosecution.

This proposal will benefit landlords who have already registered for landlord registration, by increasing the credibility of the system, and will increase protection for tenants. Increasing the coverage of landlord registration and removing bad landlords will improve management standards in the sector.

Advertisements to include registration number

Amending the Antisocial Behaviour etc. (Scotland) Act 2004 to make it an offence for a landlord to advertise his property without providing a registration number, or to provide a false number, would significantly assist local authorities in identifying unregistered landlords.

Unregistered landlords are initially likely to be unaware of the requirements, so it may be easier to identify them. In time this measure will raise awareness of landlord registration amongst landlords and tenants.

This proposal will benefit landlords who have already registered for landlord registration and will increase protection for tenants. Increasing the coverage of landlord registration and removing bad landlords will improve management standards in the sector.

Obtaining information from agents

Amending the current Housing (Scotland) Bill to allow local authorities to require an agent to provide a list of all properties they manage along with the owners' contact details, with failure to do so being an offence, will significantly assist local authorities in identifying landlords who have failed to register for landlord registration.

This proposal will benefit landlords who have already registered for landlord registration and will increase protection for tenants. Increasing the coverage of landlord registration and removing bad landlords will improve management standards in the sector.

5.2.2 HMO Licensing

Rent Repayment Orders

Although the majority of HMO landlords comply with the licensing regime there are a small minority who seek to avoid compliance. The standards required for HMOs are more stringent than for other privately rented accommodation. The burden is on the local authority to demonstrate that the premises concerned meet the definition of an HMO. This is reliant on the testimony of tenants to demonstrate the number of residents and their relationship to each other.

Local authorities have found it difficult to ensure that tenants are willing to testify against their landlords. Tenants are reliant on their landlord for a roof over their head, and may find themselves under pressure to leave. Tenants leaving might well bring the premises under the threshold for HMO registration and could mean that other tenants face an increased rent.

It is therefore important to provide a degree of support and protection to tenants to support them in testifying against non-compliant landlords, particularly since 40% of tenants spend more than a quarter of their income on rent.

Section 144 of the Housing (Scotland) Act 2006 already provides for the suspension of rent where an HMO is not licensed or where any condition included within an HMO licence has been breached. This proposal is that if it is found that an HMO property is not licensed, then consideration should be given to the tenants being able to claim back rent money paid over the previous twelve months. (Alternatively where this takes the form of housing benefit then it could be claimed back by the local authority).

This measure would be a penalty upon the landlord for operating an unlicensed HMO, it would provide a degree of comfort for the tenant as they might need to find somewhere else to live, and provide compensation to the tenant as they had not received the benefits of HMO registration. It would also provide an incentive for non-compliant landlords to comply.

Presumption that premises are licensable where there is non-provision of required information

At present local authorities can face difficulties in obtaining information, in order to establish that a property is an HMO, from landlords or managing agents, or from landlords alleging that they cannot obtain relevant information from managing agents. Under these proposals, where there is non-provision of the required information it will lead to the presumption that the premises are licensable.

This will assist local authorities in the enforcement of HMO licensing, in particular for non-compliant landlords who are using the non-provision of information to frustrate enforcement action.

5.2.3 Overcrowding

Allowing local authorities to activate section 144 of the 1987 Act, so that it applies to all private landlords within a specified locality

Overcrowding can lead to problems in relation to health; living conditions; nuisance; noise; etc. Local authorities will be able to use the power to apply section 144 of the 1987 Act in localities where overcrowding is a problem. Tenants and neighbours will benefit from a reduction in levels of overcrowding resulting from private landlords having to supply a statement of the permitted number of occupants and produce an acknowledgement to the local authority on request. The *Review of the Private Rented Sector* showed that overcrowding can often be caused by the actions of tenants bringing in additional occupants, and tenants sometimes choose to live in overcrowded conditions because it is cheaper, but this does not make overcrowding acceptable.

Giving local authorities power to serve an Overcrowding Abatement Order

It would be at the discretion of a local authority whether to use an Overcrowding Abatement Order, so these could be used sensitively to alleviate overcrowding in cases of exploitation, where overcrowding was causing nuisance to neighbours or affecting the welfare of occupants. The local authority could set an appropriate timescale for reducing occupancy.

5.2.4 Tenancy Regime

Providing private landlords with a right to apply to the PRHP when in dispute with a tenant in relation to access in connection with the repairing standard

The right for a landlord to seek assistance from the PRHP to gain access in relation to the Repairing Standard, where a tenant is preventing this, would make it more likely that the landlord could get necessary work done. This would improve physical conditions in the sector, which is the aim of the Repairing Standard. It would also protect the landlord's investment in the property.

Allowing a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body

Giving private landlords a wider right to apply to a third party for right of entry in the specific circumstances of suspected abandonment and allowing private landlords to give a notice period in such cases to regain possession would have benefits for the landlords. This process would be likely to be faster and possibly cheaper than taking court action, and could also reduce the amount of rent lost by the landlord. In the longer term, the reassurance that landlords would obtain from being able to gain possession more easily could encourage them to grant longer tenancies.

Making it a legal requirement that landlords and letting agents provide tenants with an information pack at the start of the tenancy

The provision of a standard information pack would improve knowledge of rights and responsibilities among tenants and possibly among landlords as well, since it would provide a compendium of relevant facts and forms. The *Review of the Private Rented Sector* found low awareness among both groups. Consumer awareness among tenants, which is necessary for the proper operation of the Repairing Standard, landlord accreditation and other measures, would be improved.

Merge the documents at the start of a short assured tenancy into one form

Merging the documents at the start of a short assured tenancy into one may make them simpler and easier to understand for both tenants and landlords and ensure that no necessary part of the documentation is omitted.

Making clear the reasonable pre-tenancy charges that agents and landlords could apply

There are concerns about a lack of clarity regarding charges made to tenants to set up a tenancy by agents or landlords. There are reports of excessive charges being made in some cases.

The proposed change would provide protection for tenants from excessive charges and help responsible agents and landlords to know what they can legally charge.

Clarifying that a Notice of Proceedings is required and clarifying possession procedures as a whole

There is some confusion about whether a Notice of Proceedings is required to be issued in a Short Assured Tenancy. Clarifying this would be helpful to landlords, agents and tenants.

Merging the forms required to obtain possession of a property could also make the process simpler and easier to understand for tenants and landlords – again, there is some confusion at the moment about legal requirements.

5.3 Costs

5.3.1 Landlord Registration

Online application form: declaration of offences

There could be a very small one-off cost to the Scottish Government of amending the online application form. There would be no additional costs for landlords or local authorities.

Ability of the local authority to require a disclosure check

It is proposed that the landlord bear the cost of applying for a disclosure check. The cost of Basic, Standard or Enhanced Disclosure is £23 for each application. We recognise that this is an additional burden on landlords, but it is relatively modest compared to the average monthly rent of £400 in the private rented sector. We would envisage this to be a one-off cost and the local authority would need to have reasonable grounds for wanting the information relating to a particular landlord. This power could not be used to require a disclosure check for every applicant.

Notification by the Private Rented Housing Panel

There would be modest additional administrative costs for the PRHP, which is funded by the Scottish Government, and for local authorities caused by the additional checks against the landlord registration database and subsequent liaison. However we consider that these would be more than offset by the identification of unregistered landlords by local authorities.

Advertisements to include registration number

There would be modest additional costs incurred by landlords seeking to advertise their properties through the addition of the landlord registration number. However we note that only 14% of tenants found their property via newspapers and we would expect this percentage to drop, because of the increasing use of the Internet. Other means of advertising properties for rent would be less likely to incur a significant additional expense as a result of an increased word-count.

There may be an exemption for reusable To Let signs from the requirement to include the landlord registration number.

There would be modest additional administrative costs to local authorities in the additional checks required against the landlord registration database and any subsequent action required, but these would be more than offset by the additional effectiveness in identifying unregistered landlords.

Obtaining information from agents

There would be modest additional administrative costs to local authorities and to agents, but these would be more than offset by the additional effectiveness in identifying unregistered landlords.

5.3.2 HMO Licensing

Rent Repayment Orders

The main impact would be upon non-compliant landlords. Research Findings 29/2009 found that Private Rented Sector rents average around £400 per calendar month.

In England section 73 of the Housing Act 2004 gives similar powers to occupants of unlicensed HMOs where repayments of up to £20,000 have been made to tenants via the residential property tribunal. However it should be noted that mandatory licensing of HMOs in England and Wales operates to different definitions from the Scottish system.

Landlords - Working from these figures an individual tenant might receive on average
 $12 \times £400 = £4,800$, although unlicensed HMOs are likely to be at the cheaper end of the market.

An HMO will contain a minimum of three tenants, but can contain considerably more, for example a hall of residence which might contain over 100 residents. The potential cost for landlords is therefore estimated at £4,800 per tenant, with a minimum figure of £14,000.

Local authority returns suggest that the bulk of HMO tenants are in HMOs with 5 or fewer tenants.

If this measure is combined with a notice to suspend rent, then the landlord would potentially have to reimburse a year of rent for each tenant while receiving no rent until the issue is resolved. The Rent Repayment Order would only be applied when all right of appeal had been exhausted, and would not be capable of reimbursement. Similarly rent suspended under a rent suspension notice is permanently forfeited by the landlord.

It is recognised that a rent repayment order is a highly punitive measure and it would not be expected to be used widely. In 2008 only 167 HMO applications were refused. In 2009 only 179 applications were refused.

Agents - Representative organisations for agents have raised concerns that they would find themselves required to refund housing benefit or rent money that they had in good faith passed on the landlord. It is our view that a responsible agent would be expected to confirm that premises were appropriately licensed.

Where appropriate, protection could be provided to agents who had passed on housing benefit to landlords in good faith.

Local authorities - There would be additional administrative costs for local authorities and sheriff courts in raising Rent Repayment Orders, but these should be more than offset by the increased effectiveness of the enforcement regime in prosecuting non-compliant landlords.

The proposals could however have an adverse impact on housing supply by imposing cash flow demands upon landlords. This could in turn create an additional burden on local authorities in providing appropriate housing options.

Presumption that premises are licensable where there is a continued non-provision of required information

Landlords - The main impact would be on non-compliant landlords, through improving enforcement. Compliant landlords would not face additional costs.

Local authorities - There would be additional administrative costs for local authorities but these should be more than offset by the increased effectiveness of the enforcement regime in prosecuting non-compliant landlords.

Overcrowding

Allowing local authorities to activate section 144 of the 1987 Act, so that it applies to all private landlords within a specified locality

There would be a small cost for private landlords (and also some agents) within specified localities in finding out the permitted occupancy level for each property, issuing a statement of this and obtaining a written acknowledgement. There would also be a cost for local authorities who chose to use this power in issuing details of the permitted number of occupants in every new private tenancy of a house to landlords on request under section 148 of the 1987 Act.

Estimating that 5,000 new tenancies each year would fall within the terms of this provision and that the cost to a local authority would be between £10 and £50 per house gives a total indicative cost of about £50,000 to £250,000 per annum.

Giving local authorities power to serve an Overcrowding Abatement Order

The only additional costs on landlords would be where they were permitting overcrowding. Local authorities would incur some costs in issuing orders, but it is likely that few would be required to be issued.

Tenancy Regime

Providing private landlords with a right to apply to the PRHP when in dispute with a tenant in relation to access in connection with the repairing standard

There would be costs incurred by the PRHP in undertaking this additional work. Estimating that there were about 200 cases each year costing an average of £450 gives indicative costs of about £90,000 per annum. Who would bear these would depend on the funding mechanism adopted. If cases were dealt with in the same way as applications by tenants, the costs would fall on the PRHP, which is funded by the Scottish Government. If they were dealt with in the same way as court action, landlords would have to pay.

Allowing a private landlord to inspect and gain possession of an abandoned property by applying to an authorising body

There are about 7,000 cases each year of a tenant leaving without telling the landlord. Estimating that in about 1,000 cases the landlord used the new procedure and that the average cost was £500 gives a cost of £500,000 per annum. Who would bear the costs of the process would depend on the funding mechanism adopted. If cases were dealt with in the same way as court action, landlords would have to pay. Otherwise, costs would fall on the authorising body.

Making it a legal requirement that landlords and letting agents provide tenants with an information pack at the start of the tenancy

There would be costs of designing the information pack, making it available to landlords and agents (possibly online), and updating. It is likely that these would fall on the Scottish Government or local authorities.

Merge the documents at the start of a short assured tenancy into one form

There would be costs of designing the new form and making it available. It is likely that these would fall on the Scottish Government or local authorities, depending on who was responsible for it.

Making clear the reasonable pre-tenancy charges that agents and landlords could apply

There could be a loss of income for agents and landlords, but it may be that part of that income is currently not legally justified.

Clarifying that a Notice of Proceedings is required and clarifying possession procedures as a whole

There would be costs of designing a new form and making it available. It is likely that these would fall on the Scottish Government or local authorities, depending on who was responsible for it.

6. Small/Micro Firms Impact Test

Before completing a full assessment of the impact on small firms, we will, in the first instance, be consulting members of the Private Rented Sector Strategy Group. It has not been possible to carry out a full assessment yet, because of the time constraints in taking forward the consultation on legislative proposals.

As explained above, there will be some additional costs on landlords and agents, including small landlords and agents, arising from the changes. The Landlord Survey carried out as part of the Scottish Government Review of the Private Rented Sector found that almost 95% of landlords are individuals, couples or families, with an average of 1.3 properties per landlord.

7. Legal Aid Impact Test

The Bill may contain some new or extended offences (see section 10 below). The Legal Aid team advises that the numbers of prosecutions that have been assumed in relation to these are not significant enough to cause the Legal Aid Board any notable concern in terms of the overall impact on the Legal Aid Fund.

8. Test run of business forms

If any new or revised statutory forms result from the proposals, we will carry out a test run with businesses and individuals who will have to use them. We will first discuss how to do this with members of the Private Rented Sector Strategy Group

9. Competition assessment

Landlord registration already applies to all private landlords in Scotland, with a small number of exemptions. The proposed changes in Option 2 will allow local authorities to enforce the registration system more effectively, helping to ensure that landlords comply with the existing legal requirements. Landlords have to be judged to be fit and proper to let property in order to obtain registration. Better enforcement of the system will not have a negative effect on competition.

The HMO licensing regime already applies to all houses occupied by three or more people who are members of three or more families, apart from categories of properties exempted by law. Allowing tenants and local authorities to reclaim rent paid in an HMO where the landlord had failed to comply with the requirement to obtain a licence would not have a negative effect on competition. In fact, there could be a beneficial effect, since the change should encourage landlords who are not complying with the law to do so.

It is also proposed to provide that failure by the owner of a suspected HMO or the owner's agent to provide information when legally required to do so by a local authority in order to enable or assist the local authority to carry out its HMO licensing function will lead to the presumption that the property is a licensable HMO. Again, this is intended to deal with non-compliant landlords who attempt to conceal the need for an HMO licence by refusing to provide information that they are legally required to provide.

In order to obtain a licence, an HMO has to meet certain standards, including some relating to physical conditions, safety and management. Attaining these standards requires some expenditure by compliant landlords. Those landlords who are currently failing to meet their legal obligations may gain a competitive advantage by

not meeting the required standards and therefore being able to undercut the rents charged by law-abiding landlords.

The proposals in Option 2 would increase local authority powers to deal with overcrowding resulting from breaches of the statutory limits on occupancy. This would have no negative effect on competition, since the result would be to reduce the occupancy of such houses to the statutory level and there would be no effect on other houses.

The changes in the tenancy regime proposed in Option 2 would make it easier for landlords to exercise rights of access, inspection and possession; clarify documents at the start and end of a Short Assured Tenancy; and clarify pre-tenancy charges. These would have no effect on competition. The proposal to require a private landlord or agent to issue a standard information pack to a tenant would increase the knowledge and consumer awareness of tenants and also of some landlords. This should have a beneficial effect on competition, since it would make it more likely that tenants would seek out properties belonging to law-abiding landlords who provided a better service. In turn, this should lead to higher standards overall.

10. Enforcement, sanctions and monitoring

Responsibility for enforcement of landlord registration and HMO licensing already lies with local authorities, using powers under, respectively, Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 and Part 5 of the Housing (Scotland) Act 2006. Although local authorities have taken action against a number of landlords, some have concerns about exercising the powers relating to prosecution, especially with regard to the gathering of evidence. There are measures to strengthen these powers in the current Housing (Scotland) Bill and also in the proposals set out here.

Local authorities would be given powers to enforce the new overcrowding provisions. As explained above, the Private Rented Housing Panel would enforce a landlord's right to gain access to carry out work required to meet the Repairing Standard, which would be an extension of its existing powers to require landlords to carry out such work on application by tenants.

There may be new criminal offences arising from the proposals:

- Advertising a property to let without including a landlord registration number.
- Failure to comply with an Overcrowding Abatement Order.
- Failure to provide an information pack to a tenant.
- Failure by an agent to provide a list of properties managed when required by a local authority (or this could be an extension of an existing offence).

In addition, failure by a landlord to produce to a local authority a written acknowledgement of a statement of the permitted number of occupants in a property is already an offence under section 144 of the Housing (Scotland) Act 1987, but this is not in force.

ANNEX 2

1. Title of proposal

PROPOSED PRIVATE HOUSING (SCOTLAND) BILL (LICENSING OF MOBILE HOME SITES)

2. Purpose and intended effect of proposals

2.1 Objectives

The objective is to introduce a licensing system which would give the licensing authorities wider discretion on the grant of licences and the power to revoke them, whilst ensuring that the interests of licence holders and residents are also protected.

The key aims are:

- Modernise the licensing system giving local authorities increased powers.
- Revise the elements within the licensing system enabling local authorities to revoke or suspend a licence on specific grounds.
- Strengthen the legislation requiring individuals to demonstrate they are suitable to hold a site licence.
- Increase local authorities' powers to progress enforcement as appropriate.
- Consider the option of sites not requiring a licence to still comply with model standards.
- Consider the option of licensing authorities being given the power to charge fees in connection with licence applications and enforcement.

2.2 Background

Research published by the Scottish Government in December 2007 shows that residential mobile homes have a diverse range of occupants and play a varied role in local housing markets.

Mobile homes provide permanent accommodation for a relatively small number of households in Scotland (circa 4,500). Highland Council had the highest number of mobile homes (501), followed by Midlothian (365), Aberdeenshire (345) and Glasgow (321). This type of accommodation is often referred to as a 'Park Home'.

The current arrangements for licensing by local authorities for the provision and management of sites are outdated and often do not meet the higher expectations arising from changes to the sector. We have listened to the views of stakeholders representing a range of interests in the mobile homes sector, including site owners and residents (both owners and renters). Park home residents have expressed a requirement for higher standards of site management, services and security of tenure. Site owners want businesses to remain viable and to minimise additional costs and administrative burden associated with implementing amended legislation and revised standards.

2.3 Rationale for government intervention

While mobile homes only make up a small part of the housing market, they can play an important role in local housing markets in particular areas. In addition the Scottish Government recognises that given the popularity of park homes amongst older people, future demographic trends could imply an increase in demand for park home living.

It is therefore considered that there are benefits to both site owners and residents if early action can be taken in strengthening the licensing regime.

3. Consultation

A public consultation on the proposals will be carried out between March and April 2010. The results of the consultation will be taken into account in finalising this Regulatory Impact Assessment.

4. Options

4.1 Option 1: Do nothing

As the current mobile home site licensing system is outdated it fails to meet the needs of this part of the housing sector. As the option to reform site licensing requires primary legislation the matter is being progressed as part of the proposed Private Housing (Scotland) Bill. Doing nothing would mean that local authorities would be obliged to continue with current practice and grant licences to anyone owning a site regardless of their suitability. As local authorities cannot currently impose standards or conditions relating to management, without changes to current legislation we run the risk of a few sites being continued to be run by either unscrupulous or incompetent site owners.

4.2 Option 2: Adopt the proposals for primary legislation on the licensing of mobile home sites

The licensing of mobile home sites by local authorities in Scotland is governed by the Caravan Sites and Control of Development Act 1960. Section 5(6) of the 1960 Act specifies model standards for sites. The standards were last updated in 1990. Current legislation makes it difficult for local authorities to enforce standards and there is a view regarded by some stakeholders that it is no longer fit for purpose, given significant changes in the mobile home sector since 1960.

Although the 1960 Act makes it an offence for a site owner to operate a site without a licence, local authorities have no power to consider the suitability of an applicant to hold a licence. Also, they cannot currently revoke a licence on the grounds of unsuitability; e.g., where the licence holder has committed a serious criminal offence. Therefore, while the majority of sites are well maintained some do fall below acceptable standards of practice.

The Proposed Private Housing (Scotland) Bill provides a legislative opportunity to improve the licensing regime and the working of by -

Developing a licensing system that raises and maintains site standards in addition to ensuring that they are safe, well planned and well managed with appropriate facilities and services.

Enabling local authorities to engage their powers and apply the licensing regime more effectively. This would improve standards of site management and services for mobile home residents.

5. Costs and benefits

5.1 Sectors and groups affected

The categories of people affected will be

- (i) local authorities
- (ii) site owners
- (iii) residents living on licensed sites

5.2 Benefits

Modernising the licensing system giving local authorities increased powers

Improving the licensing regime, governed by local authorities, for mobile homes sites should be a popular measure which would contribute to improved safety and standards on sites where local authorities are proactive.

A modernised licensing system that raises and maintains standards on sites, ensuring that they are safe, well planned and well managed with appropriate facilities and services, will provide residential opportunities where people want to live.

Revising the elements within the licensing system enabling local authorities to revoke or suspend a licence on specific grounds

Revising elements within the licensing system enabling local authorities to revoke or suspend a licence on specific grounds will ensure local authorities can enforce reasonable standards and behaviour by site operators.

Giving local authorities wider discretion on the granting of licences and powers to revoke them would protect the interests of both licence holders and residents.

Strengthening the legislation requiring individuals to demonstrate they are suitable to hold a site licence

Strengthening the legislation requiring individuals to demonstrate they are suitable to hold a site licence will remove criminal and incompetent site owners from the sector. An effective licensing system would go some way to filtering out sites run by unscrupulous or incompetent site owners.

Increasing local authorities' powers to progress enforcement as appropriate

By increasing local authorities' powers to progress enforcement action, when there are breaches of licence provision, would enable action to be taken without the requirement to approach the courts.

In modernising the licensing system and giving local authorities increased powers it will be easier to ensure that site owners meet full compliance with the site licence conditions.

Considering the option of sites not requiring a licence to still comply with model standards

Sites not requiring a licence, still having to comply with model standards would support migrant and seasonal workers in some areas.

Considering the option of licensing authorities being given the power to charge fees in connection with licence applications and enforcement

If licensing authorities are given the power to charge fees in connection with licence applications and enforcement, the revenue generated would support resources in monitoring conditions. One possibility would be to set fees at a level to cover the costs incurred by a local authority in administering licensing, as is the case with licensing schemes under the Civic Government (Scotland) Act 1982.

5.3 Costs

We will be undertaking work on the detailed costs arising from the proposals.

Modernising the licensing system giving local authorities increased powers

There could be costs on some site owners in complying with higher standards, but these are justifiable in that residents will be better protected.

Revising the elements within the licensing system enabling local authorities to revoke or suspend a licence on specific grounds

Making it easier for local authorities to revoke or suspend licences would lead to costs on non-compliant site owners.

Considering the option of sites not requiring a licence to still comply with model standards

This proposal could lead to increased costs on some site owners in complying with higher standards, but these are justifiable in that residents will be better protected.

Considering the option of licensing authorities being given the power to charge fees in connection with licence applications and enforcement

Licensing authorities would be given powers to charge mobile home site owners fees in connection with licence applications and enforcement. They would be expected to use the revenue generated to monitor and enforce licence conditions.

As the number of park home sites vary considerably across local authority areas, this could impact on the fee rate to ensure there was not a disproportionate impact on those authorities with fewer mobile home residents. As yet there has been no costings attributed to fees.

Any fees charged will impact on site owners who want to ensure that their businesses remain viable and the additional costs of increasing standards are kept to a minimum.

6. Small/Micro Firms Impact Test

Some mobile home site owners are small businesses. Before completing a full assessment of the impact of the proposals on small firms, we will, in the first instance, consider with stakeholders how to do this. It has not been possible to carry out a full assessment yet, because of the time constraints in taking forward the consultation on legislative proposals.

7. Legal Aid Impact Test

We have confirmed with the Legal Aid team that we do not expect these proposals to have any effect on legal aid.

8. Test run of business forms

We do not expect to have any new statutory forms.

9. Competition assessment

Option 2 would not be expected to impact negatively on competition, since the proposed changes would apply to all licensed sites. Indeed, the improved standards of safety, facilities and management that would be intended to result from the proposals would help to ensure that owners who are already providing a good service would not be undercut by those who may not be doing so, thus promoting fairer competition.

10. Enforcement, sanctions and monitoring

Responsibility for enforcement of mobile home site licensing lies with local authorities, which would be given increased powers to do this under the proposals. They would be able to revoke or suspend a licence on specific grounds, and to progress enforcement action when there are breaches of licence provision, in both cases without needing to take court action.

ANNEX 3

1. Title of issue for consultation

PROPOSED PRIVATE HOUSING (SCOTLAND) BILL (20 YEAR RULES)

2. Purpose and intended effect of proposals

2.1 Objectives

No proposals are made at this stage, but if the views of consultees suggests that changes should be made in the proposed Private Housing (Scotland) Bill, these would aim to assist in removing barriers that currently exist for organisations that wish to invest, lend or borrow funds over the long term for the development of housing projects. This should assist in making more funding options available to housing providers and in allowing the housing sector and investors to develop more innovative models for funding housing projects.

2.2 Background

The Land Tenure Reform (Scotland) Act 1974 (*the Act*) established several '20 year rules', two of which are particularly significant to the current provision of housing. The first rule, in section 8 of the Act, states that a residential lease should not last for longer than 20 years (*the lease rule*). This rule was brought in, amongst other reasons, to prevent the creation of a second feudal system by means of long leases. It means that any lease, either on a home or on land which will be used for housing, should not be entered into for longer than 20 years.

The second rule, in section 11 of the Act, states that after 20 years a borrower is entitled to redeem any standard security (mortgage) over their property(ies) in return for the payment of the outstanding amount of the principal loan plus any interest and expenses (*the standard security rule*). This does not currently cause significant issues for the provision of standard mortgage loans to individuals, but means any lender will either be prevented from, or at least restricted in, fixing or otherwise hedging interest rates or making breakage cost apply for a period of more than 20 years. For any equity loan or equity investment secured over residential properties, the borrower might only have to repay the capital amount of the original loan rather than the agreed percentage of the value of the properties after 20 years – where the property values have increased, this could result in a significant loss of returns to the investor.

2.3 Rationale for government intervention

The Scottish Government wishes to receive views from stakeholders and examine in detail any wider implications for Scots property law before deciding whether or not to propose any changes to the existing legislation.

However, some feedback from stakeholders suggests that the **lease rule** causes a number of issues when looking at funding for housing projects – for example, for

institutional investment particularly in either affordable rented or private rented housing, but in some cases also for mixed tenure developments. Private investors might wish to finance or part-finance the building of homes and then lease them to a Registered Social Landlord or a property management agent for an agreed period of time to be made available as rented accommodation. This and other similar types of innovative model affected by the lease rule could become important as the availability of public sector funding across the UK is likely to reduce significantly over the next few years, whilst the demand for housing of all tenures, particularly affordable and private rented housing, continues to increase. This type of model is unlikely to be financially viable for the provision of affordable housing without public subsidy if the lease is for 20 years or less.

In relation to the **standard security rule**, feedback from stakeholders suggests that it is discouraging private investors from investing equity stakes in housing projects where an investment of longer than 20 years would be required to make the investment viable, particularly if rents are to be affordable to tenants. This is because for any equity loan or equity investment secured over residential properties, the borrower might only have to repay the capital amount of the original loan, rather than the agreed percentage of the value of the properties after 20 years. Where the property values have increased, this could result in a significant loss of returns to the investor.

There are also limits around the long term funding options on offer to the housing sector due to lenders' fears about the impact of the standard security rule. This might, for example, prevent the borrower from having to pay breakage costs after 20 years if they paid off their loan early. This is where the lender or investor is reliant on having the loan in place for a certain time period in order to secure its returns.

3. Consultation

A public consultation on these issues will be carried out between March and April 2010. The results of the consultation will be taken into account in finalising this Impact Assessment.

4. Options

4.1 Option 1: Do nothing

This option would ensure no unintended legal consequences of any changes. However, if the consultation suggests that the 20 year lease and standard security rules are causing legitimate barriers to longer-term lending and investment in housing, this option would not allow us to tackle these barriers and would make it more difficult and potentially more costly for the housing sector to develop longer term housing projects.

4.2 Option 2: Propose primary legislation to remove the 20 year lease and standard security rules

This would be a radical option. Removal of the 20 year lease rule would mean the maximum length of any residential lease increased substantially to 175 years (as set

out in the Abolition of Feudal Tenure (Scotland) Act 2000) and could therefore potentially lead to concerns around a return to a feudal-type system. In addition, such a change could lead to unintended consequences and increase substantially the number of leases which could be registered in the Land Register, giving the leasing organisation additional rights at the expense of the landlord.

Removing the standard security rule entirely should help to encourage private investment and lending for housing, but this could remove the individual borrower's statutory right to redeem their mortgage after 20 years if they paid off their loan. Although this is not likely to cause major issues as individuals already enjoy protection through the regulation of mortgage lenders which allows for early repayment, reducing borrower's statutory rights could impact on them in the event that the UK Government made any changes in the regulation of mortgage lenders.

Subject to the views of consultees, the Scottish Government does not propose such far reaching changes to Scots property law at the current time, although the Scottish Law Commission has been asked to consider some of these issues as part of its forthcoming review of heritable securities legislation.

4.3 Option 3: Propose limited amendments to the lease and standard security rules in order to remove barriers to longer term private investment in housing

This option could allow for limited changes to the rules, for example, allowing leases to certain types of organisation or for certain types of housing only to be provided for an agreed period longer than 20 years. It could also ensure that any redemption of a standard security after 20 years would still require the borrower to repay the full amount due under their agreement with their lender, including for example of any increases in the value of the equity (where appropriate) or any breakage costs.

We will await views from consultees before considering the most appropriate way forward, but limited legislative amendments might assist in tackling barriers while not leading to any large-scale unintended consequences.

5. Costs and benefits

5.1 Sectors and groups affected

If proposals were put forward, the sectors and groups affected could include:

- (i) lenders, including high street lenders, institutional investors and the bond market;
- (ii) organisations wishing to borrow to fund housing projects, such as housing associations, other property management companies, Special Purpose Vehicles set up to deliver regeneration or mixed tenure housing projects or house builders;

- (iii) local authorities who wish to encourage the development of innovative or additional affordable housing projects in their area or who wish to increase the supply of quality private rented housing in their area;
- (iv) individuals who may wish to be tenant in a housing project.

5.2 Benefits

Any changes to legislation along the lines of option 3 might offer benefits to lenders, investors and borrowers where they wished to enter into a longer term agreement for funding, although any such arrangements would be optional so existing arrangements for shorter term lending could still be used where the parties preferred this. As well as giving those wishing to provide housing more options to fund their project, especially where a project may only be financially viable without subsidy if funded over longer than 20 years, changes could also offer more options to investors who wish to invest in housing over the long term, such as Pension Funds or other institutional investors.

Although Councils may not be direct participants in any longer term financial arrangements, there could also be benefits for local authorities who are looking for innovative ways of developing more affordable housing in areas of high demand or of regenerating communities where the local authority cannot afford to fund developments itself.

Finally, any changes would not be designed to impact on individuals, but should have some benefits for them, in particular by potentially allowing more housing to be made available as affordable housing.

5.3 Costs

Any changes that were made would not be expected to lead directly to additional costs to any private sector organisations. Instead, the changes would be proposed to facilitate agreements which organisations wish to enter into so there would be no obligation to participate in any longer term financing arrangements. Longer term borrowing would be likely to result in higher interest costs over the lifetime of the project, depending on the precise financing arrangements, but it would need to be a business decision on the part of the borrower to determine whether or not longer term borrowing is the best option.

Although any changes to the standard security rule could mean that borrowers were in future required to repay all amounts due to the lender after 20 years (and not just the principal loan plus interest and expenses), in practice the Scottish Government's understanding is that lenders rarely, if ever, offer loans for longer than 20 years where the lender's returns could be affected after 20 years. This means that this should not involve additional costs for borrowers, but instead make longer lending available to them.

6. Small/Micro Firms Impact Test

Although no proposals are currently being made and therefore it is difficult to be sure what the scope of any eventual proposals would be until consultation responses have been received, as noted above there would not be expected to be any additional costs to small or micro firms who wished to borrow money. If the Scottish Government decides to propose any changes to legislation, potential impacts of any proposals would be considered in greater detail.

7. Legal Aid Impact Test

There should be no impact on Legal Aid. Any changes to legislation on the 20 year rules would not be expected to create any new offences; instead they would be likely to amend existing legislation and should not lead to any increase in the number of landlords raising action in court to seek the eviction of a tenant.

8. Test run of business forms

No new business forms are anticipated at this stage in relation to the 20 year rules, although if changes to legislation are proposed involving the use of new forms, the Scottish Government would test run the forms with those organisations that were likely to need to submit them.

9. Competition assessment

Option 3 would not be expected to impact negatively on competition, although if proposals are developed any potential impacts can be better assessed depending on their scope. If anything, any proposals would be expected to encourage institutional investors to invest in housing on a more substantial scale than at the moment. By increasing the range of finance options available to housing providers, this could assist in increasing competition between funders for business.

10. Enforcement, sanctions and monitoring

Under all the options suggested, the Scottish Government would expect the sanctions and enforcement to remain unchanged. There is no direct external enforcement of compliance with the Land Tenure Reform (Scotland) Act 1974 legislation on the 20 year rules, but where a lease lasting for longer than 20 years is found to be being used for residential accommodation, the landlord currently has the power to give the tenant 28 days notice to stop the use and, if the tenant does not comply, can raise an action in court to have the tenant evicted.



RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions

I am responding as...

Individual / Group/Organisation
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes
No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION PAPER ON A PROPOSED HOUSING BILL: THE PRIVATE RENTED SECTOR, MOBILE HOMES AND THE TWENTY YEAR RULES – QUESTIONNAIRE

We invite responses to the consultation paper by **19 April 2010**.

You can use this questionnaire for your response. It covers all the questions included in the consultation paper. You can download a Word version of the questionnaire from our website (<http://www.scotland.gov.uk/Consultations>)

Please reply by email to: housing2admin@scotland.gsi.gov.uk

or post your response to:

Housing Markets and Supply Admin Team
Scottish Government
Mail Point 19
Area 1-J South
Victoria Quay
Edinburgh EH6 6QQ

Please send your completed **respondent information form** with your reply (see 'handling your response' below)

If you have any queries about how to reply, please contact a member of the team on 0131 244 5528 or email us at housing2admin@scotland.gsi.gov.uk

Questions

There are seven sets of questions, on:

1. Part 1 of the consultation paper – Landlord Registration;
2. Part 2 of the paper – Licensing of Houses in Multiple Occupation;
3. Part 3 of the paper – Overcrowding;
4. Part 4 of the paper – Tenancy Regime;
5. Part 5 of the paper – Licensing of Mobile Home Sites;
6. Part 6 of the paper – Twenty Year Rules; and
7. Annex A – the draft equalities impact assessment.

You don't need to answer all the questions if you don't want to. Different questions may be more or less important to different groups of people or organisations. We want your comments on the areas that matter most to you, so please feel free to focus on as many or as few as you wish. However, we would particularly welcome comments on the draft equalities impact assessment.

