

**REPORT TO: HOUSING, DUNDEE CONTRACT SERVICES AND
ENVIRONMENT SERVICES COMMITTEE - 28 SEPTEMBER
2009**

**REPORT ON: RESPONSE TO "PRIVATE HOUSING ISSUES" HOUSING
BILL CONSULTATION**

REPORT BY: DIRECTOR OF HOUSING

REPORT NO: 453-2009

1. PURPOSE OF REPORT

- 1.1. To seek approval of the proposed response to the consultation document issued by Scottish Government titles - Private Housing Issues Housing Bill Consultation.

2. RECOMMENDATION

- 2.1. It is recommended that the Committee approves the proposed response to Private Housing Issues Housing Bill Consultation - which is outlined at Appendix 1 of this report.

3. FINANCIAL IMPLICATIONS

- 3.1. None.

4. MAIN TEXT

- 4.1. The Scottish Government released **Draft Housing (Scotland) Bill** this set out their proposals for safeguarding social housing. At that time they indicated they were considering whether to include in the Bill provision about private housing and that they intended to consult with stakeholders separately on these before deciding whether it is appropriate to include them in the Bill.

This consultation paper **Private Housing Issues Housing Bill Consultation** was circulated on the 6th July 2009, the discussion document set a number of questions and this report, prepared by Director of Housing outlines the proposed response of Dundee City Council.

The issues for consideration are:

- Landlord registration
- Houses in Multiple Occupation (HMO) Licensing
- Powers in the Housing (Scotland) Act 2006 for local authorities to deal with disrepair in privately owned houses
 - Maintenance Powers
 - Charging Orders and Repayment Charges
 - Enforcement Powers

5. **POLICY IMPLICATIONS**

This report has been screened for any policy implications in respect of sustainability, Strategic Environmental Assessment, Equality Impact Assessment and Risk Assessment. As this is a response to consultation document from Scottish Government this is not required.

6. **CONSULTATION**

- 6.1. The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Head of Finance and all other Chief Officers have been consulted on this report. No concerns have been expressed.

7. **BACKGROUND PAPERS**

- 7.1. Private Housing Issues Housing Bill Consultation. The Scottish Government.

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DIRECTOR OF HOUSING

August 2009

In General

We welcome the opportunity to give a response to the proposed **Response to "Private Housing Issues Housing Bill Consultation"**.

The questions asked in the document and our response is set out below.

Private Sector Housing Issues for Possible Inclusion in the Housing (Scotland) Bill: A Consultation - Questionnaire

Part 1 - Landlord Registration

Question 1.1

Do you consider that a local authority should be able to require persons associated with a property to provide information to help it to carry out its landlord registration functions?

A. Yes. This would strengthen our ability to successfully progress enforcement action against unregistered landlords. It is further considered that this should extend to requiring all agents to provide a list of all properties managed by them and their owners.

Question 1.2

Do you consider that the maximum fine for failing to register as a landlord or communicating with another person with a view to entering into a lease or an occupancy arrangement without being registered should be increased, and if so do you consider that £20,000 is the appropriate maximum level of fine?

A. Yes. On the grounds of consistency with the provisions in licensing and on the basis that a realistic financial penalty reflecting the financial benefit that the landlord has gained from operating illegally should be imposed if it is to be a deterrent. The current levels do not achieve this. Consideration should perhaps be given to a minimum fine or fixed penalty fine in addition to the ability to impose a rent penalty notice.

Question 1.3

Do you consider that the landlord register should contain additional information indicating (a) that an application has been received but has not yet been processed or approved, and (b) that a landlord has been refused registration or has been de-registered?

A. Yes. Both (a) and (b) are supported.

Question 1.4

Do you think that a local authority should have the power to charge a registered landlord a fee for nominating an agent? If so, what do you think would be a reasonable charge?

A. Yes, however it is considered that it would be more appropriate to require all agents to register. The fee should be the same as for a landlord.

Part 2 - Licensing of Houses in Multiple Occupation

Question 2.1

Do you consider that Part 5 of the Housing (Scotland) Act 2006 should be amended to expand the definition of a licensable HMO to recover short-term lets? If so, should this be done (a) by counting for the purpose of licensing all occupants who have a main residence elsewhere, or (b) by counting occupants who have a main or only residence outside the U.K, or (c) by some other way?

A. Yes. Option (a) is supported. The argument is that no matter their background or whether they have a main residence in the U.K or abroad, all people should be equally protected and benefit from the same standards. Arguably those living in a property, sharing facilities for a shorter period of time and possibly constantly moving are at greater risk than those living in similar circumstances for extended period of time.

Question 2.2

What implication of any such changes do you think should be taken into account before deciding whether to amend the definition of an HMO?

A. Properties previously considered as not needing licensed will suddenly become licensable. As they may well already be occupied with a lease in place but not be compliant. A consistent approach amongst local authorities may be required. Consideration may also have to be given to the impact of any change on Bed & Breakfasts and Hotels. If excluded these may become an alternative (but unacceptable?) option to those landlords or gang masters currently using short term lets as a means of avoiding compliance. Perhaps an option would be to require compliance for such accommodation where it was not otherwise satisfactorily regulated through the Licensing (Scotland) Act 2005 or similar regulation?

Question 2.3

Do you consider that there is a problem with licensed HMOs operating without planning permission?

A. The operation of licensed HMOs without planning permission is not a major problem in Dundee.

The main reason for this is due to the good working relationship and the operating practices that are in place between Private Sector Service Unit dealing with the licensing of HMOs and the Planning Division Enforcement Team who deal with matters relating to planning permission.

Under the agreed operating practices all applications for a licence including renewals are copied to the Planning Enforcement Officers who monitor and check whether these have or require an application for planning permission. Where it is identified, by the Enforcement Officer, that planning permission is required they will then make the applicant aware of this.

The processing of the licence is not held up while the applicant is made aware of the need for planning permission for their HMO. This approach generally results in an application for planning permission being applied for by the applicant. The Enforcement Officers also monitor the granting of licenses and will pursue any that require planning permission, where no application for planning permission has been submitted.

Key to this operating practice is maintenance of effective communication between officers on the progress of the respective license and planning permission requirements.

This system has operated effectively with very few instances of licensed HMOs operating without Planning Permission (where required)

Question 2.4

Do you consider that having planning permission (where it is required) should be a requirement for the granting of an HMO licence?

A. Although there may be some benefits to this approach it is not considered to be necessary in a Dundee context.

The current system operated within Dundee generally works well with very little problems of HMOs operating without planning permission. Key to this is the system outlined above. In addition clear guidance in terms of Planning Policy and detailed Supplementary Planning Guidance covering HMOs has resulted in most applicants being aware of when planning permission is required. The supplementary guidance advises when planning permission will be required within a flatted property which is where most of the confusion tends to occur. Also good communications with the major landlords and making sure they are aware of the Policies has reduced conflict and confusion between the Licensing and Planning requirements.

There could be some negative impacts of making the grant of a licence subject to planning permission being in place. This requirement could lengthen the process as planning permission would have to be applied for then granted before a licence could be granted. This may affect the provision of private rented accommodation in an area.

Question 2.5

If so, should it be a mandatory requirement, or left to the discretion of each local authority?

A. As indicated in the response to question 2.4 it is not considered necessary to introduce the requirement for planning permission to be in place before granting a license. Therefore if it were to be introduced it probably should be left to the discretion of each local authority. This would allow those authorities without this type of issue to continue to operate as before but would allow the option of imposing this requirement if a problem were to occur in the future.

Question 2.6

If such a requirement were in place, do you consider that this requirement should relate only to new applications for licences, not to applications for renewals?

A. The requirement should be for new applications only or where a licence is varied to the extent that planning permission would now be required.

Part 3 - Matters Arising from Implementation of Local Authority Powers in the Housing (Scotland) Act 2006

Question 3.1

Where a local authority prepares a maintenance plan because the owner has (or owners have) failed to submit a satisfactory plan by the date specified in the maintenance order, do you consider that the authority should be able to charge the (or owners) the cost of doing so?

A. Yes. The costs associated with preparing a maintenance plan should be recoverable particularly when associated with non compliant owners. This is similar to the situation under the building (Scotland) Act 2003 s29 Dangerous Building where only "work" carried out by the local authority either to make it safe, or in default of a notice (after making it safe), can be charged to the owners. Often a local authority has to employ its own (or contract) engineers etc. and plant and equipment in order to simply to ascertain what the work is that is required and this can run to several thousands of pounds.

This local authority and, I believe some others, are however considering the provision of 'maintenance plans' to owner/occupiers as a form of practical assistance under the scheme of assistance, to encourage, inform and help owner/occupiers maintain their homes. When charging would be applied, under these circumstances, would have to be clarified.

Question 3.2

Do you consider that local authorities should have powers to charge owners their expenses in registering documents relating to maintenance? Should this apply to all the documents mentioned in paragraph 29 above, or only some?

A. Yes and for all three. With Charging Orders we have no power to pass on the cost of registering them (Registers of Scotland charges £30 each) but we do issue a £50 discharge fee (which could be more in terms of the legislation for drawingup/ revising deeds) for the preparation and/or revision of the deed, as this is for the owners benefit to clear the record.

Question 3.3

Do you consider that the situations in which local authorities can pay a missing share into a maintenance account should be extended to include situations where an owner is unwilling to pay?

Yes. It seems unduly harsh to expect all of the other proactive owners to pursue an unwilling owner through the courts and also that one unwilling owner should be able to take the control away from the others. There is a right of appeal if the unwilling owner(s) has good grounds for refusing. The proposal is also a more cost effective approach from both the local authority's and owner's perspectives as it leaves control of the work and costs in the hands of the owners of the property.

The Council would also take this opportunity to raise its concerns over its legal duty to deliver the Scottish Housing Quality Standards without having adequate legal powers to enforce this duty. The installation of secure door entry systems being a suitable example. In many instances this does happen as a result of unwillingness of, in some cases, a single owner. The impact on the remaining residents of lack of security can be acute.

Question 3.4

Do you support the restoration of the right of appeal against charging orders?

A. In the last 10 years this local authority have never once received a summary application (the method of appeal) against a Charging order. In any event, the grounds of appealing a charging order are extremely restricted and cannot include any of the grounds of appeal that could have been used beforehand (i.e. appealing against a Repair Notice or the invoice itself). Although a Charging order could be served on the wrong person, local authorities have access to Registers Direct nowadays and such mistakes are unlikely, but in any event the repayment notice is attached to the land, not the person.

Question 3.5

Do you support the proposal to allow (though not oblige) local authorities to pass on the expenses of registering repayment charges and discharge of repayment charges?

A. Yes, refer to 3.2 above.

Question 3.6

What are your views on removing the requirement that Scottish Ministers must approve draft Housing Renewal Area designation orders before they can be made?

A. This proposal is supported, it is considered that there are adequate safeguards in place.

Question 3.7

Do you consider that the situations in which local authorities can provide assistance under section 71 should be extended to include demolition? If so, do you think this should be restricted to non-financial assistance? Would this be demolition only in pursuit of demolition notices as part of an HRA, or demolition more broadly?

A. Yes, but restricted to non-financial assistance (except in cases of hardship). It would seem appropriate that this should apply to Housing Renewal Area's only.

Question 3.8

Do you support the specific inclusion of energy efficiency measures in "improvement" and "work" in the 2006 Act?

A. Yes.

Annex A - Draft Equalities Impact Assessment

Question A.1

What else do we need to know about private tenants to help us to understand their diverse needs and experiences in relation to landlord registration and short-term lets, and where can we get this information?

A. Reasons for moving within the PRS. Levels of knowledge of housing legislation (tenant and landlord responsibilities) Language issues. Information sources could include local and national house condition surveys, tenant surveys associated with Accreditation schemes.

Question A.2

Is there any information we need to know about private landlords to help us to understand their diverse needs and experiences in relation to landlord registration and short-term lets, and where can we get this information?

A. Motivation for becoming a landlord. Level of understanding of housing legislation. Capacity, ability, willingness to be trained. Common concerns and issues. Letting preferences. Reasons for unlet properties. Need for a model tenancy agreement. Information sources could include forums, accreditation, discussion groups and direct feedback through newsletters, training sessions, seminars and fayres.

Question A.3

What else do we need to know about private owners to help us to understand their diverse needs and experiences in relation to local authority power to deal with disrepair in private houses, and where can we get this information?

A. Levels of knowledge in respect of benefits, need for and how to carry out maintenance and repair of property and particularly responsibilities for common repairs. Financial status (ability to maintain and repair). Information sources could include private sector house condition surveys, questionnaires etc.

Question A.4

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

A. Possibly.

Question A.5

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

A. Landlords reaction to additional costs associated with registration. In some cases the relationship between landlord and tenant (persons associated with a property providing information).

Question A.6

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

A. Enhanced standards for migrant workers and short term lets. Higher profile for enforcement. Greater ability for a tenant to make an informed choice.

Question A.7

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

A. Adequate advertising information flow to tenants and landlords.

Question A.8

Do you think the changes to HMO licensing will have a disproportionately negative impact on any groups, of people?

A. Potential impact on some landlords and migrant workers.

Question A.9

If you think there will be an negative impact on a particular group, why is this?

A. Increased timescale to be granted a licence if planning required in advance of licence application being submitted. Increased rent costs to migrant workers and / or continuation of poor housing opportunity if landlords continue to avoid or circumvent legislation. Impact on legitimate B & Bs and hotels? Public perception of increased number of HMOs. Impact of expanding the definition on set provision levels.

Question A.10

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

A. Enhanced standards for all. Improved regulation benefiting tenants and neighbours.

Question A.11

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

A. Publicity targeted at specifically affected groups. Discretionary rather than compulsory powers offering flexibility.

Question A.12

Do you think the changes to the enforcement and assistance powers will have a disproportionately negative impact on particular groups of people in our target audience?

A. No.

Question A.13

if you think these proposals will have a negative impact on a particular group, why is this?

A. N/A

Question A.14

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

A. Greater ability for proactive and responsible owners, particularly owners of flatted properties, to maintain and repair their property timeously and cost effectively

Question A.15

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

A. Publicity and support to owners

Question A.16

When we complete our impact assessment to the changes to landlord registration, HMO licensing and the local authority powers to deal with disrepair in private housing, are there any other significant issues we need to consider in relation to:

- Age
- Disability
- Gender
- Sexual orientation (Lesbian, Gay, Bisexual and Transgender (LGBT))
- Race
- Religion and belief?

A. Language barriers