

Legislation and Policy Spotlight

On 8 March 2010, the Scottish Government published a consultation paper on a proposed Housing Bill. In fact, the 108 page document comprises a number of separate topic areas within the private housing sector each of which might require the passing of primary legislation. For this reason, the subject-areas are all dealt within a single document and they are as follows:

- Landlord registration
- Licensing of HMOs
- Overcrowding of private rented accommodation
- The statutory tenancy regime
- Licensing of mobile home sites, and
- The so-called “20 year rules”

The most noteworthy of these proposals include the following:

Landlord registration: Further checks to ensure that landlords are “fit and proper” persons and a requirement that their registration number be stated in all adverts, wherever they appear, with the exception of “To Let” boards. It is also proposed to introduce a local authority power to require a landlord’s agent to disclose a list of all properties it manages and the contact details of the owners of them;

HMOs: A presumption that a rented property is an HMO where the landlord refuses to answer questions in relation to it. More radically, responses are requested to the suggestion that a landlord in breach of HMO requirements, apart from any other sanctions, could be punished by giving the tenant a right to claim back the previous 12 months rent. Where the tenant’s rent is paid by way of Housing Benefit, it is suggested that local authorities could claim 12 months’ back rent by way of a Rent Repayment Order even where no prosecution has been brought for breach of the HMO regulations, so long as the *local authority* was satisfied that a criminal offence had been committed;

Overcrowding: This is considered to be an issue particularly in relation to migrant workers. Where a property is overcrowded as defined by statute, the local authority would have the right to serve an Overcrowding Abatement Order requiring occupancy of a property to be reduced to a specified number;

Statutory tenancy regime: It is proposed that there be a requirement imposed on private landlords to issue to tenants an information pack which would include a formal tenancy agreement, a statement of the tenants’ rights and responsibilities,

details on transfer of utilities and an inventory of items. All pre-tenancy charges such as those to cover administration costs, however, will be illegal, unless deemed reasonable (e.g. a deposit).

Mobile Homes: Again, an increase in local authority powers to ensure minimum standards are met, including the right to revoke or suspend a site licence without the need for court action, and the right to charge a fee for the issue of a site licence.

The 20 year rule: A suggestion that a restriction of 20 years on residential leases be eased and the right of a borrower to redeem a standard security after 20 years have elapsed, in order to encourage long term investment and potentially to increase the supply of affordable housing.

As will be seen, the main thrust of the proposed legislation is to increase the enforcement powers of local authorities, to introduce tougher penalties for breaches of statutory controls and to enhance the protection afforded to tenants of private landlords. Private landlords are to benefit to a certain extent in that there is some provision proposed for increased clarity regarding the circumstances in which possession of a rented property may be regained, particularly in cases of abandonment. Greater simplicity is also proposed in relation to the statutory forms required to commence and terminate an assured tenancy. Some of the proposals are quite radical, especially in relation to HMOs, and may adversely affect certain landlords, even if acting in good faith. Any members potentially affected by any of these proposals have the relatively short timescale of 6 weeks from the date of publication of the paper to make representations to the Scottish Government.