

ABERDEEN CITY COUNCIL

COMMITTEE	Housing and Environment
DATE	13 th April 2010
CORPORATE DIRECTOR	Pete Leonard
TITLE OF REPORT	Consultation Response to the Housing (Scotland) Bill 2010

1. PURPOSE OF REPORT

The purpose of this report is to seek committee approval on the response by Aberdeen City Council to the Scottish Government consultation on the Housing (Scotland) Bill 2010. The consultation seeks additional views to the earlier consultation which was reported to committee on 26th August 2009. The current consultation is on specific sections of the Bill relating to issues within the private housing sector.

2. RECOMMENDATION(S)

It is recommended that committee instructs the Director of Housing and Environment to; submit the attached response on behalf of Aberdeen City Council.

3. FINANCIAL IMPLICATIONS

At this stage it is anticipated that any additional costs for the Council will be expected to be met from fees.

4. SERVICE & COMMUNITY IMPACT

In the event that the topics noted in our response are included within the Act, then this will provide the council with the ability to improve the quality of living conditions within the private rented sector.

5. OTHER IMPLICATIONS

Nothing arising from this report.

6. REPORT

6.1 Background

The Scottish Government issued the original consultation on the Housing (Scotland) Bill on 27 April 2009. That consultation dealt mainly with the proposals on housing reforms resulting from the earlier (green paper), "Firm Foundations", issued in January 2008. The current consultation will inform legislators on inclusions for the bill and on the need for any

further legislation directed at supporting the private housing sector. This consultation primarily focuses on reform of the private rented housing sector.

A copy of our draft response is attached as appendix 1.

A copy of the full consultation can be obtained from the author, or follow the link to the Scottish Government site, <http://www.scotland.gov.uk/Publications/2010/03/04140613/0>

NB: the private rented housing sector is currently known to account for circa 13% of the total housing stock in Aberdeen. This compares to 22% council housing and 4% RSLs, both of which are already well legislated for. The measures proposed for enhancing the requirements on private sector landlords would bring this sector more in line with the standards expected in the social rented sector.

6.2 Contents of the Bill

- 1 – Landlord Registration
- 2 – Licensing of Houses in Multiple Occupation, (HMO)
- 3 – Overcrowding
- 4 – Tenancy Regime
- 5 – Licensing of Mobile Home Sites
- 6 – Facilitating Private Investment in Housing – the Twenty Year Rules

While some of the topics covered in this consultation may be included in the current Bill, the government is trying to establish whether further consultation is required to inform a subsequent private sector housing bill.

6.3 Private Rented Sector

In the main, all of the questions surrounding Landlord Registration and HMO Licensing are exploring whether or not there is an appetite to strengthen the current legislation which would in effect enhance the current standards expected of landlords operating in the private rented sector. This in turn would improve standards for tenants. Consideration is also being given to enhancing the powers available to local authorities to deal with landlords that fail to comply.

While the potential penalties proposed for those who do not comply may sound expensive, it will in reality have no impact on those landlords who already abide by legislative requirements and provide good quality services for their tenants, but will instead target those landlords who consistently disregard their legislative duties.

6.4 Overcrowding

Overcrowding is an issue that has over the years, presented difficulties in trying to remedy, but is an ever increasing problem. The proposals contained within this consultation would, if implemented, provide local authorities an opportunity to address the matter where it is considered to be causing a problem either to the health of those in the affected accommodation, but also to neighboring properties and their occupants. Basically it will enact section 144 of the Housing (Scotland) Act 1987, which had reserved powers at that time for the secretary of state to invoke at a later date. Unfortunately this was never done; therefore this proposal will address a 23 year old oversight.

6.5 Tenancy Regime

This section seeks opinions on simplifying and tightening the rules around the issuing and serving of tenancy agreements in the private rented housing market

6.6 Licensing of mobile home sites.

There are currently 8 sites licensed within Aberdeen City for the use of residential caravans containing a total of 371 mobile homes. While the owner requires a licence to operate, this licence imposes no requirement for the owner to be a “fit and proper person” or for them to maintain the home to any reasonable standard.

This part of the consultation therefore seeks to improve and update the licensing requirements contained within the “Caravan Sites and Control of Development Act 1990”. Section 5(6) of the Act specifies model site standards which have not been updated since 1990.

In response, ACC are suggesting that a more onerous standard is adopted, to bring them more in line with landlord registration and HMO Licensing. The idea behind this is to afford the tenants of those mobile homes more assurances and protection with regards to tenancy agreements and standards of service surrounding their tenancy. In effect, we are suggesting that there is no differentiation between the types of home, and that it affords them the same expectation of landlord and tenancy standards and protection as those in the housing market.

7. REPORT AUTHOR DETAILS

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8. BACKGROUND PAPERS

APPENDIX 1

Proposed Housing Bill: A Consultation – Questionnaire

Part 1 - Landlord Registration

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?

Yes

Question 1.2

If sexual offences were included, should the notification requirements of the Sexual Offences Act also operate?

Yes

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.

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?

Yes

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?

Yes

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?

The PRHP should be required to confirm that the landlord has a valid registration for any referral made to them.

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?

Yes

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?

Yes

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?

Yes

Question 1.7(b)

Do you agree that there should be an exemption for To Let boards?

Yes

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?

Yes

Question 1.8

What should the maximum penalty for any such offence be?

Maximum of £20,000 as per failure to register as this will most likely be the reason for the omission. This will allow the sheriff scope to decide on what the appropriate level of fine should be to suit the offence and the frequency

of any omission.

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?

Yes

Question 1.10

Failure to comply would be an offence. What should the maximum penalty for any such offence be?

Maximum £20,000 as per failure to register. This will allow the sheriff scope to decide on what the appropriate level of fine should be to suit the offence and the frequency of any omission.

End of Part 1

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Proposed Housing Bill: A Consultation – Questionnaire

Part 2 - Licensing of Houses in Multiple Occupation

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?

Aberdeen City Council agrees with this approach while appreciating that in practice it may be difficult to achieve, even with a court order.

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?

Yes, but only from the landlord or agent and not from the tenant, (on the assumption that the tenant has paid the landlord).

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?

Yes

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?

Yes

Question 2.2(c)

Have you any other comments on how a rent repayment order would operate?

No

Question 2.3

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

The Sheriff

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?

Yes. The local authority should proceed on the basis that the premises are a HMO and the appropriate action to ensure compliance with the legislation and leave the landlord to prove otherwise.

Question 2.4(b)

Should any such presumption follow conviction or should the owner be given another opportunity to comply?

Following conviction

Question 2.5

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

Yes

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?

A definition incorporating both terms should be used as it is feasible that a Managing Agent may not be contracted to fully manage in that the rent may be directed to the owners bank account, therefore, the managing agent would not technically be receiving rent and the landlord would escape prosecution unless the term, receives rent, is included.

Question 2.7

What are your views on how “managing agent” should be defined in this context?

The term should be defined as per the 1982 Act.

End of Part 2

Proposed Housing Bill: A Consultation – Questionnaire

Part 3 - Overcrowding

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?

Yes

Question 3.2

Have you any comments on how the proposed process would operate?

This would require more time than currently available in order to give proper consideration.

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?

Yes

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?

The evidence will be based on physical survey data as compared to the space standards detailed in s137 of the 1987 Act. Number of beds, mattresses on floor etc. as identified during survey of the residence.

Question 3.5(a)

Should failure to comply with an Overcrowding Abatement Order be an offence?

Yes

Question 3.5(b)

If so, what should the penalty be?

Max £20,000.

Aberdeen City Council are of the opinion that a closure order will also be required to enable intervention where the occupants fail to comply. Where the occupants fail to adhere to the closure order then the local authority should be able to petition the sheriff to evict.

End of Part 3

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Proposed Housing Bill: A Consultation – Questionnaire

Part 4 - Tenancy Regime

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?

No, this should be done through legal redress to the courts.

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)?

Not applicable

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?

Not applicable

Question 4.4

How should this additional work for the PRHP be funded?

Not applicable

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?

Yes

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?

Evidence that they have endeavoured to make contact with tenant by phone records, email accounts, and/or postal confirmation.

In addition, where circumstances permit, then evidence from neighbours

should also be admissible.

Question 4.7

Do you agree that the possession notice should give 28 days notice?

This would seem to be an appropriate amount of time.

Question 4.8

Which body should provide authorisation in such cases (e.g., the local authority, the Private Rented Housing Panel, the sheriff, etc)?

The PRHP would be appropriate.

Question 4.9

If the Private Rented Housing Panel were to be the authorising body, how should this work be funded?

A fee would have to be charged to the applying landlord. Legislation may be required in order to allow them to pursue the tenant a later date for reasonable costs.

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?

No. As part of the case to recover the property the landlord would have to prove that rent payments had ceased, therefore if the tenant has failed to maintain their tenancy then they may be considered as having made themselves intentionally homeless, however the local authority will still have a duty to provide temporary accommodation and carry out an assessment.

Question 4.11

Please describe any specific safeguards that you think should be in place.

Belongings of any value should be stored for 6 months and then disposed of.

Question 4.12

Have you any other comments on the proposed process?

Not at this time

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?

Yes. On the basis that this would be a minimum requirement. This would lead to less confusion and remove any uncertainties around “not knowing what was expected”.

Question 4.14

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

Information on the types of lease/notices required (along similar lines to “assured tenancies in Scotland – rights and responsibilities as produced by the Scottish Government). –

- **Information on what tenants responsibilities are,**
- **copies of the gas safety certificate, EPC, HMO Licence, landlord registration details, (even although these are supposed to be displayed in the house),**
- **Lease**
- **PRHP info (leaflets already available)**
- **Illegal Eviction info (leaflets already available)**
- **Council Tax and Housing Benefit Forms - change of address details, student exemptions etc.**
- **Utilities info.**

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)?

For design purposes it would be as an advisory role and the pack should be developed as a partnership between Landlord Accreditation Scotland, Scottish Association of Landlords, LA's and any other appropriate Landlord representative groups.

For distribution purposes the Scottish Government should make the standard pack available online as a download package in partnership with those already mentioned.

Question 4.16(a)

Should failure to comply with the requirement to issue a standard information pack be an offence?

Yes.

Question 4.16(b)

If so, what should the penalty be?

As per failure obtain a Licence to operate an HMO. This will allow the sheriff scope to decide on what the appropriate level of fine should be to suit the offence and the frequency of any omission.

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?

Yes. Although there are both, advantages and disadvantages to this approach.

- **On the plus side it would mean that ALL appropriate papers were in place at the beginning of the lease and could result in less confusion at time of terminating the lease.**
- **Unfortunately, unless done correctly, could present a large and unwieldy document for the tenants to deal with and could result in them failing to read the full document. This may not prove any more of an issue than at present as we suspect that this is an issue with the current process. However, with a bit of forethought the document could be well designed to reduce this risk.**

Question 4.18

If so, please state which documents you consider could be merged.

**Notice to Quit
AT6
Section 33**

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?

Yes.

Question 4.20

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

Credit checks only.

Question 4.21

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

As per failure to obtain a licence. This will allow the sheriff scope to decide on what the appropriate level of fine should be to suit the offence and the frequency of any omission.

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?

Yes.

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?

Yes.

End of Part 4

Proposed Housing Bill: A Consultation – Questionnaire

Part 5 - Licensing of Mobile Home 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?

Yes.

Question 5.1(b)

If so, which alterations do you consider key to meeting this dual objective?

HMO Licensing and Landlord Registration were introduced to ensure standards within the private rented sector were improved, but, as mobile homes are not houses they are currently exempt from either of these regulations.

Therefore, Aberdeen City Council believe that in order for all rented accommodation, and practices around rented accommodation, to be of equal standard, the licensing system must also look to the mobile homes as well as site conditions. We would therefore suggest that: each mobile home requires to be in a reasonable state of repair and meet the tolerable standard .

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?

Yes.

Question 5.2(b)

If so, what should these grounds be?

Failure to comply with the model standards and/or any mobile home is sub-standard as described in the Housing (Scotland) Act 2006.

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?

Yes.

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?

Yes, and to be in a reasonable state of repair and meet the tolerable standard.

Question 5.5

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

Yes.

Question 5.6

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

Yes. However, we believe that the fee should be determined by Scottish Ministers in order to promote national consistency.

Question 5.7

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

Yes.

End of part 5

Proposed Housing Bill: A Consultation – Questionnaire

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

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.

There is no evidence locally of this being an issue.

Question 6.2(a)

Do you consider that there should be an amendment to the 20 year lease rule?

There is no evidence locally to support this.

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?

No comment.

Question 6.2(c)

Please provide details of what types of providers and/or projects should benefit from any exemptions.

No comment.

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?

No comment.

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.

There is no evidence locally of this being an issue.

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?

No comment.

End of Part 6

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Proposed Housing Bill: A Consultation – Questionnaire

Annex A - Draft Equality Impact Assessment

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?

No comment.

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?

No comment.

Question 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?

No.

Question A.4

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

No comment.

Question A.5

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

No comment.

Question A.6

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

No comment.

Question A.7

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

No

Question A.8

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

No comment.

Question A.9

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

No comment.

Question A.10

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

No comment.

Question A.11

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

No

Question A.12

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

No comment.

Question A.13

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

No comment.

Question A.14

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

No comment.

Question 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?

No

Question A.16

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

No comment.

Question A.17

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

No comment.

Question A.18

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

No comment.

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?

No.

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?

No comment at this time.

Question 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?

No.

Question B.3

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

No comment.

Question B.4

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

No comment.

Question B.5

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

No comment.

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?

No.

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?

No comment.

Question 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?

No comment.

Question C.3

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

No comment.

Question C.4

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

No comment.

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?

No.