

Policy Briefing: Promoting Responsible Letting in the Private Sector

This paper details Housing Rights Service proposals for the private rented sector. It looks at how regulatory reform and the provision of information and training are much needed to improve tenancy management and physical standards of accommodation in the private rented sector in Northern Ireland.

Contents

1.0 Introduction	page 3
2.0 Northern Ireland Assembly	page 3
3.0 Premise for Change	pages 4-7
Profile of the Private Rented Sector	page 4
Issues around Access and Security of Tenure	page 4
Effectiveness of the Private Tenancies Order 2006	page 5
Client enquiries	page 6
4.0 Vision for Change	pages 7-11
Essentials of Responsible Renting	page 7
Making the Change	page 8
Landlord registration	page 8
Dispute Resolution	page 9
Tenancy Deposit Protection	page 10
Provision of Information and Training	page 10
5.0 Lessons Learned	pages 12-14
Scottish Experience - landlord registration	page 12
Republic of Ireland Experience - dispute resolution	page 13
Northern Ireland Experience – HMO registration	page 13
Appendices	pages 15-18
1 Landlord Registration – Scotland	page 15
2 Dispute Resolution – England and Wales	page 16
3 Dispute Resolution – Republic Of Ireland	page 16
4 Deposit Protection – England and Wales	page 17
5 Letwise – Edinburgh	page 17
6 HMOs – Northern Ireland	page 17

1.0 Introduction

The private rented sector plays an extremely important role in today's housing market and will continue to do so. With the shortage of social housing and home ownership still out of reach for many, government is looking increasingly towards the private rented sector to provide alternative viable housing options. In our view the sector is not yet fit for this purpose. Housing Rights Service believes that a strategic framework is needed to ensure responsible letting in the private rented sector. The aim of a new private rented strategy should be to promote the sector as a suitable housing option by improving management standards and physical conditions of accommodation. Having studied best practice in other jurisdictions, we recommend that the framework incorporates the following key complementary measures – all of which are aimed at driving up standards within the sector.

- **mandatory registration and compliance with an approved Code of Practice on tenancy management**
- **a landlord/tenant dispute resolution service**
- **tenancy deposit protection and**
- **information and training on tenancy law.**

Additionally it is crucial for any future strategy to address the problems associated with insecurity of tenure and accessibility in the sector. Without a fundamental review of these issues it is unlikely that any strategy will be effective.

In producing this briefing, Housing Rights Service in conjunction with the Department for Social Development NI conducted extensive research into other regulatory approaches used in other jurisdictions. Our recommendations are based upon the experiences of the other regions and specifically tailored for Northern Ireland. More information on these schemes has been included in the Appendices.

2.0 Northern Ireland Assembly

The Northern Ireland Assembly recently voted in favour of a motion which called for the Minister for Social Development to legislate for the mandatory registration of all landlords in the private sector (Oct 2007). The motion received unanimous cross-party agreement and issues raised by MLAs during this debate emphasised the need for government intervention in the private rented market. Housing Rights Service firmly supports the need for mandatory registration; however, we also believe that the reasons for doing so must be explicitly stated. Registration should not be used as a tool for gathering personal information on private landlords and their properties. Instead the register should be used as a reference point when enforcement action is necessary against landlords who fail to comply with their current legal obligations under the Private Tenancies Order and/or equality legislation. Moreover, it should lay the foundation for building upon the other key elements essential for promoting good practice and good relations i.e. dispute resolution service, tenancy deposit protection and provision of information and training.

3.0 Premise for Change

Housing Rights Service acknowledges the diverse range of accommodation that exists within the sector; at one end of the spectrum accommodation can be of very high quality with standards of management and maintenance excellent. However, our clients tend to be housed at the lower end of the spectrum, where they pay relatively high rents for badly managed accommodation in poor condition, with little security of tenure. It is these experiences that accentuate the need for change.

Profile of the Private Rented Sector

The number of properties in the private rented sector in Northern Ireland has almost trebled in the last 10 years – in 2006/07 the private rented sector accounted for 64,000 properties making up 9.6% of the total housing stock compared to around 22,000 or 3.6% in 1996¹. With the recent unprecedented rise in house prices, a severe shortage of social housing resulting in an ever increasing waiting list for social housing and continued pressure on the social housing budget, more individuals and families are being forced to consider the private rented sector as their only housing alternative. Many people who would have been traditionally housed in social housing now have little choice but to find accommodation in the private rented sector, normally at the lower end of the market. However, the private rented sector is not always a suitable alternative for many households, particularly individuals and families who are homeless, on low incomes or those with complex support needs.

Currently around 40,500 tenants living in private rented accommodation in Northern Ireland are in receipt of Housing Benefit. From April 2006 to March 2007 approximately £140-150 million of public subsidy was paid to private landlords yet the sector is largely unregulated and landlords are not held to account. Regrettably some take advantage of this by repeatedly exploiting the basic right entitlements of their tenants amongst whom are the most vulnerable and disadvantaged members of our society.

Issues around Access and Security of Tenure

Despite the private rented sector being increasingly promoted as a viable alternative, it is not accessible for everyone. There are a number of barriers that exist, mainly financial, which can preclude people from securing accommodation in this sector. The cost of paying large deposits, rent in advance, other hidden costs like reference and administration fees and the rent itself can make this form of tenure an expensive and inaccessible option for many. To improve accessibility, a number of measures need to be considered. These include wider availability of rent deposit/guarantee schemes, an end to all hidden rental costs that are involved when initiating a tenancy and more importantly the significant shortfalls that often exist between housing benefit and contractual rent.

Additionally, the lack of security of tenure in the sector is creating problems and we are regularly contacted by individuals and families who are being evicted from their private

http://www.dsdni.gov.uk/index/stats_and_research/housing_publications.htm

rented accommodation. In the past 5 years the number of households who have given loss of private rented accommodation as the main reason for becoming homeless has doubled to over 3000 in 2006/07.² For the vast majority of private tenants, security of tenure is limited. The legal status for many is 'periodic' meaning that they are occupying on a month to month basis, with the landlord only required to give 28 days written Notice to Quit. Tenants with fixed term leases (normally 1 year) often find they contain clauses allowing the landlord to terminate the contract mid term by giving 28 days notice. The Private Tenancies Order did attempt to address insecurity of tenure by introducing a 6 month default tenancy term. At the time Housing Rights Service argued that this was grossly inadequate and not nearly long enough to be considered as secure.

Retaliatory eviction is another example of bad landlord practices which is not uncommon or unlawful. This is where tenants are evicted for exercising their rights. Housing Rights Service advisers often find themselves in the frustrating position of being unable to challenge such actions leaving no other option but to advise clients on applying for homelessness assistance. Enhancing security of tenure and requiring longer notice to quit periods must be considered as part of a new private rented sector strategy.

Effectiveness of the Private Tenancies Order 2006

The most recent and significant policy change concerning the private rented sector was the introduction of the Private Tenancies (NI) Order 2006 which took effect from 1st April 2007. The main thrust of the legislation is to:

- tackle disrepair and unfitness (specifically in older pre-1945 properties)
- ensure there were no further controlled tenancies (i.e. with security of tenure and rent control introduced by the Rent (NI) Order 1978)
- require landlords to provide certain information to tenants (i.e. rent book, their contact details, and statement of tenancy terms)
- introduce a 6 month tenancy term in the absence of a fixed term agreement.

While Housing Rights Service welcomed the good policy intentions of the Private Tenancies Order we feel it was a missed opportunity to improve the situation for most of the private tenants who contact us for assistance. In our experience, this legislation is proving to be ineffective in terms of its ability to address poor management practices in particular. We also feel it could be more effective in dealing with unfitness and that the cut off date used for exempting dwellings from fitness inspections should be raised (from 1945 to at least 1956).³ Also the current fitness standards are very basic and are widely regarded as the minimal standard e.g. does not include thermal comfort. We want to see these standards

² NIHE Homelessness Statistics 2006/07

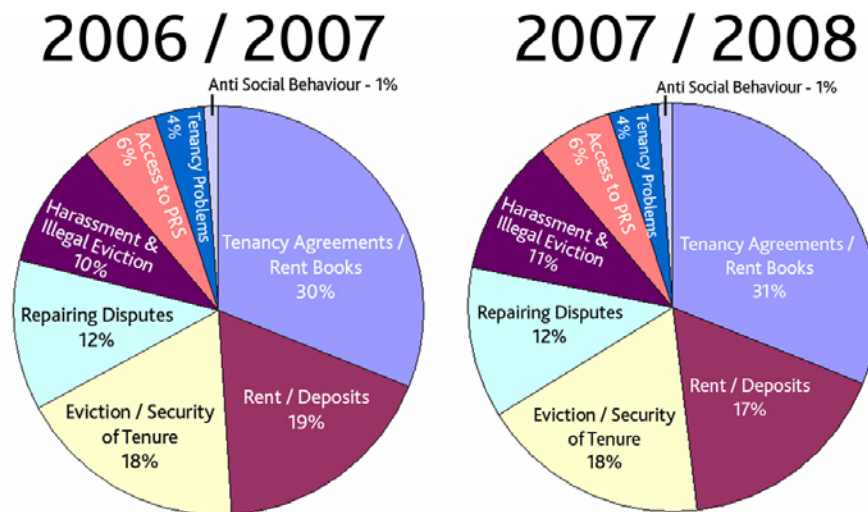
³ Under the Order, powers exist to require private landlords to apply to the district councils for a fitness inspection to be carried out where the property was constructed before 6th November 1956. However, the Prescribed Dwelling Regulations lowered this enabling properties constructed after 1st January 1945 to be exempt from fitness inspections. We feel this stipulation needs to be removed from the regulation so that all properties built before 1956 have fitness inspections carried out. This will improve standards of fitness in some of the older properties currently being let.

enhanced to include for example better heating, effective insulation and adequate internal arrangement.

A recent assembly question (March 2008) has clearly indicated that the level of enforcement action taken by local councils against private landlords under the Private Tenancies Order has been negligible. More ominously, a year on from the legislation coming into effect 16 councils have still failed to take any enforcement against landlords, despite the many and persistent problems faced by tenants. (Out of these 16 District Council areas, Fermanagh, Omagh, Limavady, Coleraine and Moyle all have more than 15% of their entire housing stock rented privately and are associated with concentrations of migrant workers.) Housing Rights Service appreciates that in some instances enforcement action may not be possible were the landlord's name and address is unknown. This can be a fundamental problem to District Councils when aiming to secure enforcement action. In these instances, Councils are powerless to enforce the legal entitlements afforded to tenants; therefore we believe mandatory registration of all private landlords will complement the Private Tenancies Order by enabling more effective enforcement.

Client Enquiries in the Private Rented Sector

Despite the introduction of the Private Tenancies Order, one year on Housing Rights Service is still receiving the same level of enquiries from clients concerning the same issues. One in four of all enquiries to Housing Rights Service relate the private rented sector. In 2007/08 we received almost 4,000 enquiries. The main areas of enquiry and common problems affecting our clients over two years are as follows.



Tenancy agreements/ Rent books

- Landlords often refuse to comply with their legal obligations to provide rent books and tenancy statements including their contact details
- Where tenancy agreements/statements are provided they quite often contain inadequate information or unfair terms.

Rent/ Deposit Matters	<ul style="list-style-type: none"> ▪ Landlords refusing to accept housing benefit. ▪ Landlords overcharging tenants is a prevalent issue within the sector.⁴ ▪ Tenants being charged fees for references, credit checks and administration costs by agents ▪ Tenants being charged 4 weeks rent in advance which is non-refundable when Housing Benefit is paid ▪ Landlords/agents unreasonably withholding deposits and refusing to refund at the end of the tenancy
Eviction/ Security of Tenure	<ul style="list-style-type: none"> ▪ Rent restrictions leave tenants in some areas with substantial shortfalls between the housing benefit they receive and their contractual rent. Tenants are then faced with eviction if they fall into rent arrears. ▪ Tenants are often unwilling to pursue their legal rights for fear of retaliatory eviction by the landlord. Landlords can quite easily evict tenants by issuing 28 days written notice to quit which raises the subject of increasing security of tenure.
Repairing Disputes	<ul style="list-style-type: none"> ▪ Tenants often experience difficulties in getting repairs carried out. ▪ There is substantial difficulty in enforcing landlords repairing obligations. Evidence to date shows that local councils have taken relatively little enforcement action. ▪ Tenants often fear notifying authorities for fear of retaliatory eviction or simply don't have that the landlord's name and address.
Harassment/ Illegal Eviction	<ul style="list-style-type: none"> ▪ There are issues regarding landlords entering properties without giving adequate notice. ▪ Landlords often fail to give adequate notice periods (i.e. 28 written notice to quit) when bringing a tenancy to an end.

4.0 Vision for Change

Essentials of Responsible Renting

Our principle policy aim for the private rented sector is to seek positive and improved change to the management and physical standards of properties. In order to achieve this Housing Rights Service believes that following elements are essential to any responsible renting initiative:

- Mandatory landlord registration for all private landlords and compliance with an approved Code of Practice, containing guidance on current statutory requirements
- Recourse to an accessible landlord and tenant dispute resolution service
- Tenancy deposit protection
- Provision of information and training (including accredited) for private landlords.

⁴ Housing Benefit is paid 28 days in arrears and 13 payments are made throughout the year. Landlords often charge rent on a per calendar month basis, creating a shortfall even though Housing Benefit covers the full contractual rent.

Making the Change

Sufficient investment of both time and resources are imperative when aiming to achieve the various proposed elements and in particular landlord registration. It is vital that key stakeholders are involved in their development. Where possible all contentious matters should be attempted to be resolved during the consultation stages to assist with a smooth transition when progressing from proposal to implementation. Without investing adequate time and resources major difficulties will undoubtedly be encountered.

Landlord Registration

We very much agree with Sir John Semple's recommendation in his Review into Affordable Housing that *"there is a case for registration of all landlords."* Landlord registration in itself is not the panacea, but lays the foundation for a more consistent and robust approach to addressing both the issues of bad management practices and poor fitness standards. A register would better enable local councils to progress enforcement action more effectively, help reduce time spent on searching out landlords' names and contact details and ultimately drive up standards in the sector. Once registered, landlords should be issued with a license. Part of this license condition would be to follow guidelines laid down by an approved Code of Practice recognised by the courts. Conforming to this Code of Practice would quite simply require landlords to abide by their legal obligations under relevant legislation governing both the private sector and equality law. In our view this in itself has the potential to significantly improve landlord practices in the sector.

Critical to the success of a registration scheme is that it must be mandatory. A voluntary system will do nothing to address bad management practices. It will be unable to provide sufficient incentives to persuade substantial numbers of landlords into self-regulation, not least the minority who persist in disregarding their legal obligations. This appears to be the case experienced by the Housing Executive when it introduced a voluntary registration scheme for Houses in Multiple Occupation (HMO) in 2001. Landlord participation in this scheme was poor with the majority of those registering being landlords with large portfolios of properties which already met HMO standards. Compulsory registration was subsequently introduced under the Housing (NI) Order 2003 in an attempt to address the very serious problems faced by HMO occupants and landlords' attempts to evade their responsibilities. (See the 'Lessons Learned' section for further information.)

Key Elements of Registration

- Mandatory for all private landlords. (i.e. compelling them to provide their name, a contact number and a contact address and details of their properties)
- A license to be provided to landlords on condition that they follow guidelines set down in an approved Code of Practice.
- Registration would provide landlords with access to a dispute resolution service. (If landlords fail to register, access would be denied.)
- Councils should assess the fitness of all properties constructed before 6th November 1956 of registered properties.
- Relevant information on rights and responsibilities should be made available to landlords and tenants.

- Powers to modify inclusions and exclusions of who should register should be included in the legislation.
- Failure to register should result in prosecution and fines.
- Post registration the enforcement body should have the power to de-register landlords if they fail to comply with their legal requirement /license conditions.
- The registration scheme should be introduced on a phased basis to avoid the massive influx of registration applications, which would be repeated on renewal.
- At development stage it should be widely consulted on by interested stakeholders.

Dispute Resolution

A tenant/landlord dispute resolution service, incorporating mediation and arbitration, should form an integral part of any responsible renting initiative for the private sector. Our experience has shown us that seeking redress through the court system can prove to be a hindrance and deter some tenants from pursuing their legal rights thus denying their access to justice. A dispute resolution service could minimise the stress, cost and reluctance of many to progress their issues through the court system. It would, in our opinion, save time and money for both landlords and tenants and free up court time.

The majority of landlords surveyed in the NIHE's research report "*The Private Rented Sector in Northern Ireland⁵*" stated they favoured an arbitration body to deal with disputes. Most were of the opinion a dispute resolution service would provide an unbiased resolution to disputes and that it would also offer greater protection to both landlords and tenants. Some landlords even stated they believed they would benefit financially by not having to employ a solicitor. There was some variation as to who should deliver the arbitration service, with 30% stating they would like to see a multi-agency approach developed, and 27% agreeing that a new body should be set up. The NIHE's Review and Perspectives 2008-2011 published preliminary findings of a tenant survey as part of phase three of "*The Private Rented Sector in Northern Ireland.*" Tenants indicated they too were very much in favour of various schemes that regulate the sector in some way.

Key Elements of Dispute Resolution Service

- Access to the scheme should only be available to those landlords who register. Tenants should still have access to the service where the landlord is not registered.
- It should be able to deal with all generic queries/disputes.
- It should be designed to encourage tenants to progress their issues. E.g. it should be informal and quick with no legal representation required.
- The service should appoint independent and experienced mediators and arbitrators to deal with disputes.
- Landlords should be prohibited from evicting tenants when a dispute is in progress.
- Landlords and tenants should be compelled to use the service before exerting the legal system.
- There should be a two tier system offered, mediation and then arbitration.
- Council/Public buildings should be used to reduce costs for dispute hearings.

⁵ The Private Rented Sector in Northern Ireland, Report to NIHE by the University of Ulster; Jan 2007

Tenancy Deposit Protection

The problem of tenancy deposit retention has long been a major concern for many private tenants. In our experience as availability of private rented accommodation has proliferated so too has the prevalence of deposit retention by landlords. The only recourse available to tenants at present is through the small claims court. We are aware that seeking redress through the court system can prove to be a hindrance and deter many tenants from pursuing what they believe to be a bona-fide claim on their deposit. Therefore Housing Rights Service believes that a tenancy deposit protection scheme should be devised to ensure deposits are safely managed and not withheld unreasonably.

A recent landlord survey carried out by the Housing Executive revealed that all but one landlord required a deposit from tenants, with tenants paying an average deposit of £307.⁶ The report expressed concern that the deposit methods used by private landlords is open to abuse, with some landlords unjustifiably holding on to deposits or withholding part of the deposit.

Having researched the various tenancy deposit schemes, Housing Rights Service recommends a custodial type scheme similar to the one legislated for in England and Wales. This scheme would be preferential as there would be no cost to either landlords or tenants for its use. The scheme is financed by the interest generated on deposits which are held in a designated bank account. (See Appendix 4)

Key Elements of a Tenancy Deposit Protection Scheme

- Private landlords should be required to pay deposits into a Custodial type deposit scheme.
- There should be no fee payable for its use, with the interest generated by the deposits covering the cost of the scheme.
- To reduce the likelihood of disputes over deposits, landlords and tenants should carry out a detailed inventory and also record the condition of the property when both are present.
- Tenants should receive information explaining the purpose of the deposit.
- Landlords should provide tenants with confirmation that their deposit has been paid into the schemes designated bank account.
- Information should accompany the above detailing what to do if a dispute arises relating to the deposit.
- Tenants should be made aware of the circumstances in which the landlord would be eligible to retain all or some of the deposit.
- Landlords and tenants would have access to the dispute resolution service.

Provision of Information and Training

The Housing Executive's publication "*The Private Rented Sector in Northern Ireland*" reported a lack of knowledge amongst landlords on key issues. It also emphasised that there is no

⁶ The Private Rented Sector in Northern Ireland (Jan 2007)

central contact point for landlords to obtain information regarding recent policy developments or legislative changes relating to the sector. Approximately half of landlords surveyed indicated that they did not receive any information on their rights and responsibilities as a landlord. Two thirds felt they had insufficient information on their rights and responsibilities as landlords and felt they required more information on how to deal with issues such as problem tenants. Out of the vast majority of landlords who believed more information was needed, they felt the Housing Executive could provide this. The report also stated that District Councils play a key role in providing information but landlords may not be aware of the role they play in the sector.

The survey identified gaps in good practice, with some landlords inadvertently failing to provide tenants with tenancy agreements and rent books due a lack of knowledge. One of the key issues to emerge was the need to further educate landlords on their rights and responsibilities. Several streams which could assist in disseminating information to landlords were identified including landlord forums and training courses. Housing Rights Service believe that the provision of information and accredited training courses would be of particular benefit to landlords.

Once again to achieve optimum success we believe mandatory registration should be devised to assist in dissemination of information to landlords and offering accredited training. By improving landlord practice through information and training the sector will invariably become more professional and reputable. Offering landlords easy access to information and training at reduced rates could act as an incentive for mandatory registration. Likewise it is equally important that tenants receive accessible information about their rights, responsibilities and how to obtain independent advice.

5.0 Lessons Learned

Landlord Registration – Scottish Experience

Issues identified by Scottish Government officials and Edinburgh City Council (ECC).

- The Scottish Government stressed the importance of a thorough consultation process involving all stakeholders and allowing sufficient time in which to address the main issues, avoiding late amendments to the legislation. It was considered that Anti-Social Behaviour legislation in Scotland was the best legislative vehicle for the introduction of landlord registration at a time when specific areas were experiencing extensive anti-social behaviour although it was questioned by many. Many stakeholders also voiced concerns regarding the insufficient consultation on the practical aspect of registration.
- Local Authorities have discretion over the 'fit and proper persons' test. Edinburgh Council believes policies need to be robust so that a landlord who is excluded from registering in one Local Authority area cannot register in another. The Scottish Government suggested that given the geography of N. Ireland it may be more practical for one central body to implement registration.
- There are advantages and disadvantages of who should administer the scheme. Data protection issues need to be fully explored. Considerations should be given to the provision of information-sharing which is integral in assisting with enforcement (e.g. would the NIHE be permitted to disclose Housing Benefit information with who administers the scheme?) and also any public information that is currently available on landlords.
- Local Authorities have encountered major problems with their I.T. system as the central website had to be compatible with 32 different local authority systems. The software is now on its 6th version and from April 2006-07 only 50% of landlord applications have been approved. There have also been problems with the software in recognising PO Box addresses and foreign post codes. This can prove problematic for landlords living outside Scotland and members of the armed forces etc.
- Discounts and registration fees should be kept simple and have also caused problems with the I.T. system.
- Given the problems experienced by ECC to date and due to a lack of resources there has been no real emphasis on enforcement which is imperative for a registration scheme to operate effectively.

Dispute Resolution; Private Residential Tenancies Board (PRTB) – Republic of Ireland Experience

- Landlords have voiced their concerns about the length of time it takes for disputes to be resolved. Due to the volume of disputes, resolution is very lengthy. The PRTB stipulated that this was due to an initial inadequacy of resources. The PRTB are also of the opinion that a tenancy deposit scheme would remove quite a substantial amount of their workload. Currently around 60% of dispute issues submitted to the PRTB are deposit retention related.
- A significant amount of resources were applied in providing and publicising a voluntary mediation service in advance of the full statutory dispute resolution service. Take up was low however, due to the requirement for joint landlord and tenant agreement to use the service. A considerable effort was invested in developing the dispute resolution service.
- Panels of some (200) mediators and adjudicators were assembled. It was recommended sufficient time be given when assembling a panel of mediators and adjudicators.

HMO Registration – Northern Ireland Experience

Issues identified by the Northern Ireland Housing Executive (NIHE)

Despite the particular circumstances and set of problems associated with Houses in Multiple Occupation, to date NIHE is the only body with any experience of landlord registration in Northern Ireland. Many of the problems regarding non compliance with the scheme mainly involve landlords of privately rented accommodation.

It is important to highlight that because of the health and safety risks attached to HMOs the management and physical standards which landlords are required to meet are significantly higher than those in general private tenancies. The cost of meeting these standards is also likely to be much greater (although grant aid is available in some cases). For a 2-storey 3-person house the cost of providing the fire standards is likely to be in the region of £1,600. This becomes more expensive for larger houses with more occupants.

- The Northern Ireland HMO Voluntary Licensing scheme was introduced while the Housing Executive was waiting for legislation containing provisions for mandatory licensing. While it was in operation the scheme attracted some 660 properties for licensing. However, most of these properties were either owned by SHAC or were properties that were head-leased to the Universities and already complied with HMO standards. Few other landlords were willing to participate (even though many of them had received grant aid to bring their properties up to HMO standards). The Housing Executive believes that the voluntary scheme had reached the limit of its achievements when it was discontinued.

- Even with mandatory registration a significant number of landlords are resisting registration and there are a number of reasons for this including:
 - There are not sufficient effective consequences or deterrents for landlords who avoid the registration scheme or fail to comply with aspects of it, or who fail to comply with all aspects of the HMO Management Regulations;
 - It is commonly the case that landlords do not fully comply with the HMO Management Regulations. This in turn makes it difficult for the Housing Executive to identify and take action on HMOs where there is avoidance of the registration scheme;
 - In some cases the current legislation is not sufficiently robust e.g. NIHE's powers to require landlords to provide information about all of their HMOs, to readily obtain information regarding landlords names and contact information, or to obtain information about the occupants of a house and the nature of their family relationships are somewhat restricted.

- Good Management Practice Guide was issued with the HMO Registration Scheme but it has no legal status. Therefore it is not taken into account in any court proceedings. It is apparent that landlords have generally not sought to comply with the Guide.

- NIHE feels that extending mandatory registration throughout the private rented sector could potentially assist it in its efforts to encourage HMO landlords to register with them. However, any such registration scheme would need to be carefully constructed and would need to carry sufficient deterrent to non-compliance.

Appendices

Appendix 1 - Landlord Registration – Scotland⁷

A landlord registration scheme was established as a result of the Anti-Social Behaviour (Scotland) Act 2004 and came into effect in April 2006. The purpose of this particular scheme is to ensure all landlords meet minimum standards and that the worst landlords are removed from the sector through a 'fit and proper persons test'. When assessing an applicant the 'fit and proper persons test' takes into account:

- any material which shows that the individual has committed any offence involving fraud, dishonestly, violence or drugs;
- practiced unlawful discrimination in any business activity; contravened any provision of the law relating to housing or landlord and tenant relations
- any material relating to any action (or failure to act) in relation to antisocial behaviour affecting a house which the person lets or manages.

All private landlords are required to have registered within the local authority area in which their property is located or with the local authority area in which most of their properties are located. The registration fee payable by the landlord is £55 for registration plus an additional £11 for each property registered. Registration covers a 3 year period and some discounts are available (e.g. for registering online). The scope of the scheme covers both landlords and letting agents although letting agents are not compelled to register. However, if landlords employ a letting agent the information must be declared by the landlord when registering.

Each Local Authority is required to each maintain a register of landlords and agents who are considered fit and proper to let property. The landlord register is the ultimate responsibility of each local authority area and displays:

- i. The name of the landlord
- ii. A unique registration number assigned to registered landlords
- iii. Contact address for the landlord (not necessarily their home address)
- iv. Address of the letting/management agency (if one is employed)

A public register is available online of all registered properties although this is broken down by local authority area. There is no national register.

Members of the public can use a search instrument on the website to establish whether a person or company is registered, where the name is known. On entering the properties address into the search field, the owner or agents name and contact details are listed. An entire catalogue of properties owned by the landlord will not be revealed to the public. Information available to the public is circumscribed to ensure there is no risk posed to the public or if the information is considered to present an unacceptable intrusion of a registered person's life. (e.g. the register does not identify women's refuges).

⁷ Registration of Private Landlords; Guidance of Private Landlords, Scottish Executive, 2006

Appendix 2 - Dispute Resolution Alternative Dispute Resolution (ADR) – England and Wales

ADR is provided by the tenancy deposit schemes and acts as a facilitator in dispute resolution for tenancy deposits. This mechanism offers an alternative to court and enables tenants and landlords recourse to a cheaper, speedier and more user-friendly way in which to resolve disputes. The scheme offers free, voluntary mediation services to both landlords and tenants who are in dispute over rent deposits.

Appendix 3 - Private Residential Tenancies Board – Republic of Ireland⁸⁹

The PRTB was established as an independent body on a statutory basis on the 1st of September 2004 following the enactment of the Residential Tenancies Act 2004. Two of the PRTB's core functions are tenancy registration and dispute resolution. The dispute resolution service replaces the courts in relation to the majority of landlord and tenant disputes.

The dispute resolution service consists of two stages:

- i. Mediation or adjudication as chosen by the parties which is confidential
- ii. A public hearing by a three person Tenancy Tribunal

The person instigating the dispute, either the landlord or tenant will have to pay a fee. The cost works out at €25 when referring a dispute to the PRTB where it is to be dealt with by mediation or adjudication. A €40 charge is payable when appealing a mediator's or an adjudicator's decision and referring it to a Tenancy Tribunal. A Tribunal decision can only be appealed to the high court on a point of law only. Examples of disputes dealt with by the PRTB would include lease terms, tenancy terminations, breaches of tenancy terms or obligations, deposit disputes and complaints regarding anti-social behaviour amongst others. Legal representation is not necessary as the resolution process is informal and intended to minimize the stress and expense to those involved. Both landlords and tenants can be legally represented, if they so wish, at their own expense. Where a landlord does not register a tenancy, the PRTB is precluded from dealing with any dispute relating to the tenancy that may be referred to it by a landlord. However, non registration does not affect the tenant's rights and they will have access to the dispute resolution service irrespective of whether or not the tenancy is registered.

⁸⁹ Residential Tenancies Act – A Quick Guide; Department of the Environment, Heritage and Local Government, 2004
Annual Report; Private Residential Tenancies Board, 1/9/2004-31/12/2005

Appendix 4 - Tenancy Deposit Protection – England and Wales¹⁰

The intention of the tenancy deposit provisions in the Housing Act 2004 is to give protection to the majority of private sector tenancies. The Act allows for two different types of tenancy deposit schemes which are Custodial and Insurance Based schemes. With the Custodial based scheme the Act provides that the interest generated by the deposits in the designated account can be retained by the administrator. It also provides that the scheme may allow for interest to be paid to the tenant on the deposit being returned to him/her at a rate specified by the government. Housing Rights Service believe the Custodial type scheme is a more suitable model to N. Ireland as tenants will be fully aware of where and why their deposits are held.

With a Custodial Scheme the tenant's deposit is held by a third party, rather than the landlord. The scheme is run and managed by a private organisation known as the 'scheme administrator' which contracts with the government. Under the scheme, all deposits are held in a single designated bank account which is managed by the scheme administrator. At the start of the tenancy, the tenant will still pay his/her deposit to their landlord. However, instead of the landlord retaining the money, he/she is required to pay it into the designated bank account. The deposit money then remains in the account until the end of the tenancy term and is then dealt with in agreement with the scheme. At the end of the tenancy, both the landlord and the tenant can inform the scheme administrator that they have agreed on how the deposit should be paid. Where an agreement can't be reached the scheme provides recourse to an Alternative Dispute Resolution (ADR) Service.

Appendix 5 – Letwise¹¹ (Edinburgh)

Edinburgh City Council's Letwise team provides support and tools for private tenants, landlords and letting agents in Edinburgh. The aim of Letwise is to *"improve and maintain the quality and management of private rented housing in the City of Edinburgh and help encourage the growth of diverse thriving communities."* Letwise provide an advice service for tenants. They also provide landlords with access to an advice service, training and information sessions, forms and templates for downloads, an Inside Lettings magazine and Letwise landlord guides. Training sessions cover issues of interest to landlords including recovery of possession, handling rent arrears, housing benefit, HMOs etc.

Appendix 6 – HMO Registration NI

In Northern Ireland compulsory registration of Houses in Multiple Occupation (HMO) landlords was introduced under the Housing (NI) Order 2003. This requires landlords of certain HMOs to register with the Northern Ireland Housing Executive (NIHE) and is being phased in on an area basis. Prior to this the NIHE operated a voluntary licensing scheme (since 2001) in preparation for a mandatory scheme.

The voluntary scheme was successful in that it provided useful information and insights into

¹⁰ Dispute Resolution Mechanisms in relation to Deposit Retention; Centre for Housing Research, PRTB, 2007.
¹¹ http://www.edinburgh.gov.uk/internet/Housing/Private_tenants_and_home_owners/CEC_letwise

landlord behaviour and compliance and in getting some 660 properties licensed. However, the majority of the houses licensed were either owned by SHAC or were houses that were head leased to the Universities, and these properties already complied with HMO Standards. Overall, landlord participation in the scheme was poor, even among landlords who had already received HMO Grant Aid to bring their houses up to the necessary standards. The voluntary licensing scheme was discontinued when mandatory registration of HMOs became available in legislation.

The Housing Executive currently has a database of around 10,500 HMOs which are probably owned by around 2000 landlords, but this is a moving target as houses can move into or out of HMO occupation at any time. There is also much anecdotal evidence that there are many more HMOs than this in existence. At January 2008 1,349 had been registered. According to NIHE there is considerable resistance among HMO landlords to registration. This is evidenced by figures extracted from the NIHE experience to date as below:

Registrations	100
Statutory Notices Issued	170
Landlords referred for prosecution	25

These figures show that for every 100 HMOs registered some 170 statutory notices have to be issued and enforced and 25 landlords are referred to the legal process for prosecution for non-compliance with some aspects of the scheme. The results of these prosecutions are usually fines of between £250-£500. It is therefore often in the interest of the landlord to avoid registration for as long as possible. NIHE believes that greater compliance could be achieved by a number of actions including:

- increasing the minimum financial penalties to act as an effective deterrent
- introducing robust legislation requiring all HMO landlords to identify properties for registration by a specific date and providing NIHE with additional powers to demand information (i.e. similar to provisions in the Anti-Social Behaviour etc (Scotland) Act 2004)

The management of HMOs could be improved by a range of actions including:

- introducing an approved Code of Management Practice for landlords which is recognised by the courts. (Currently there is Good Management Practice Guidance which has no legal status and is ignored.)
- Increasing the minimum fines for non-compliance with aspects of the existing HMO Management Regulations.
- Providing further relevant information and training to landlords.

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