

Draft responses are indicated in italics to the consultation document 'The private rented sector: professionalism and quality, The Government response to the Rugg review'.

Section 2: The private rented sector in the future

A national register of private landlords

Listed below are some of the basic characteristics of the register together with some specific questions:

- The register would be nationally run by an independent organisation procured by government. It would primarily be web and telephone based with parallel arrangements for those without internet access
- landlords or their agents would register annually and pay a small administration costs, and, in return, would receive a unique landlord registration number
- Landlords would not have to meet any pre-set criteria in order to register. Only minimal data would be required – name, address and the addresses of the property holdings of the landlord at the time of registration

Is this the right amount of information? If not, what should also be added or removed? *I agree that minimal data should be required so as to not put an excessive burden on landlords and so as not to deter them from registering their properties. I would also add a contact telephone number and email address to the list of requirements.*

- Landlords would be given access to various services in return for registering. These could include a 'starter pack' for new landlords, standard forms (such as the appropriate form for possession proceedings and standard tenancy agreements) and electronic notifications linked to legal and other requirements

Are there any other services which could be linked to the register? *The register could provide useful links to local authority websites, landlord associations and information regarding accreditation schemes.*

- There would be a public-facing element of the register which landlords could opt into and use as a shop window for their properties. This could include additional information about properties for rent, such as whether a landlord was a member of a landlord association or accreditation scheme.

Would this be a helpful service for landlords? *Yes I agree this would be a helpful service and it would also give landlords an incentive to register their property.*

What information should it contain in order to make it as attractive as possible to potential tenants whilst not overburdening landlords? *The information could contain brief details on the number of bedrooms, if it is accessible for people with a disability, if you can take pets, the rent cost and the Energy Performance Certificate rating. Key codes could be used to denote this information, similar to those used when advertising properties through the Choice Based Lettings scheme.*

- The register will also be a valuable tool for making landlords more aware of the reasons to and mechanisms which are available to help them improve the energy performance of their properties, such as the carbon emissions reduction target and the forthcoming community energy saving programme.
- Energy Performance Certificates (EPC) data potentially provides a way to target offers for landlords and potentially also, information to local authorities in support of their enforcement work.

Do you agree that government should explore whether the EPC data should be made available in this way? *Yes I agree as it will provide useful information about the private rented sector in the local authority area and allow local authorities to target their enforcement work to improve these worst properties.*

Are there any other funding or grant based schemes that could be signposted in this way? *Supporting People funding for those tenants with support needs could be signposted in this way where landlords have indicated properties are suitable for people with a disability.*

- in order to ensure enforcement, we believe that the landlord registration number should be a prerequisite for all the mechanisms by which a landlord carries out his or her business (for instance, the registration number would have to be shown on tenancy agreements; it would have to be quoted during all court processes – including eviction; and to housing benefit offices where a tenant was in receipt of housing benefit or local housing allowance)
- In the event of persistent abuses and/or failure to comply with the regulatory regime, we would wish to remove a landlord from the register and use existing powers to take over the management of his or her stock. The process of complaint against a landlord and the decision to remove a landlord from the register would be carried out by an independent body with a right of appeal to a separate judicial body. The effect would be that a landlord would no longer be able to let out a property by his or herself. As part of this proposal, we might also want to consider whether the landlord should continue to be able to receive

housing benefit on properties which did not fall within the management arrangements put in place as part of the removal of the landlord from the register

- as we have said, our proposals are designed to drive out bad landlords and secure an improvement in the quality of the worst stock especially where category 1 hazards under the Health and Safety Rating System are found, as well as supporting good landlords. One of the key aims in developing future enforcement measures must be to ensure that such a strategy supports the elimination of poor landlords.

What sort of activities should be linked to removal from the register? *If the landlord is no longer a 'fit and proper' person or if there is repeated none compliance with enforcement notices these activities should be linked to removal from the register. The 'fit and proper' person test would be as for HMO licensing under the Housing Act 2004.*

Should this be a cumulative process (like, for instance, the points system for driving offences)? *Yes I agree this should be a cumulative process.*

Who should carry out these roles? Should either one of the Housing or the Estate Agents' Ombudsman have a role (perhaps in offering advice to a quasi-judicial body – possibly the Residential Property Tribunal Service)? *Yes I agree these organisations already exist and are working therefore why re-invent the wheel by introducing yet another organisation.*

Should the appeals process be carried out by the Lands Tribunal? *Yes, I agree. Do you see any alternative body for this role? I do not see any alternative body for this role as I believe the Lands Tribunal already have the necessary experience.*

Should only enforcement agencies and advice services run by the Voluntary sector be able to lodge complaints against a landlord within the context of this process? *Yes I agree as I believe this would cut down the number of vexatious and/or unsubstantiated complaints.*

- Careful consideration would need to be given to who should have access to the private part of the register. The landlord plus their letting or managing agent (if any) and enforcement officials would need to have access.

We think that current and potential tenants should also have access to the register – how can this be managed? *Access to certain areas of the register can be restricted and password protected. Similar to that used for accessing the Gas Safe Register.*

Which other individuals or organisations should have access to the data? *I believe access should be limited to those already mentioned above.*

Assessment of existing licensing regimes

The criteria for selective licensing regimes under the Housing Act 2004 currently limit them to areas suffering from, or likely to suffer from, low demand for housing and/or where there are significant issues with anti-social behaviour. With regards to anti-social behaviour, a direct link has to be established between the anti-social behaviour and the private rented stock.

When the legislation was drafted, these criteria reflected experience of private rented sector markets at that time. Whilst we would not want to remove them, we are conscious that current market conditions might have thrown up new challenges such as a greater emphasis on energy efficiency performance.

What additional criteria, if any, should be introduced for establishing selective licensing regimes? *I believe where there is high incidence of violations of the Housing, Health and Safety Rating system selective licensing regimes could be established.*

Is there merit in including criteria related to a high incidence of violations of the Housing Health and Safety Rating System (HHSRS) or low EPC rating? *The low EPC rating would contribute to an excess cold hazard and therefore already be counted under violations of the HHSRS.*

Written tenancy agreements

We propose that all tenancies should take the form of written agreements.

There appears to us to be two ways in which this could be achieved. One would be to introduce legislation that sets out the minimum requirements for a valid tenancy agreement and to allow individuals to base their tenancy agreements on these minimum standards. Another would be to set out a model tenancy agreement in legislation to which additional clauses could be added in order to reflect individual circumstances. In both cases, the aim would not be to change the existing legislation governing landlord-tenant relationships. The intention would be to model the new legislation on the existing requirements for an assured shorthold tenancy.

What would be the most helpful way for the legislation to set out a written tenancy agreement? *I believe the setting out of a model tenancy agreement in legislation would provide consistent and comprehensive*

advice and reduce the risk of landlords not having complete and legitimate tenancy agreements.

Ensuring the right coverage for the legislative framework

Currently, access to assured shorthold tenancies (AST) and the associated legislative framework and protections is limited to tenancies where the aggregate annual rent is less than £25,000. This threshold was established in 1990 and, as several commentators have pointed out, is now very out of date – the equivalent figure in 2008 would be over £50,000. Typically, a student house in London will have an aggregate rent which is higher than the current threshold and it has been suggested that, even where properties are let at rents above the threshold, the assured shorthold terms and conditions should be adopted as best practice.

We propose to increase the threshold for assured shorthold tenancies and see little merit in having a threshold that excludes significant numbers of tenancies.

We, therefore, propose to increase the threshold to £100,000. Is this is the right level for the threshold? *This threshold would appear reasonable but to make an informed response to this question I would need to see the evidence utilised to determine the £100,000 figure.*

Should there be regular reviews of the AST threshold? *Yes I agree there should be regular reviews.*

How frequently should these be carried out? *I would suggest this is undertaken annually.*

Regulation of private sector letting agents and management agents

In spite of all the measures outlined in this response to encourage landlords to become more professional, it is important to accept that some will simply not have the resources to act as full-time landlords or have become landlords through circumstances not of their choosing. For these 'amateur' or 'reluctant' landlords, letting and managing agents have a vital role in providing the professional input and support that the landlords lack. In many cases, even where a landlord has the basic skills and knowledge needed to carry out his or her business, there will still be advantages in using an agent because of the increase resources and coverage they can offer and, most importantly, the additional expertise they bring to the process of letting and managing a property. However, whilst this is true of the best letting and managing agents, it is unfortunately far from the norm, particularly in the current economic climate.

It is still possible to set up a letting or management agency with no qualifications whatsoever, with no need to conform to requirements as to conduct or to provide mandatory safeguards for the consumer. We do not think that this is desirable or appropriate in the modern age. We are aware of cases where quite large and well established agencies have run into difficulties and, because they had no client money protection, both landlords' and tenants' money was lost. In some cases, this has not prevented those associated with the defunct business subsequently resuming their activities.

This does not seem right both in the context of the regulatory framework already in place for estate agents (who often also act as letting and management agents) or in the context of the greater consumer focus and transparency which underpin the proposals in this paper.

We are, therefore, persuaded by the powerful arguments put forward not only in the Rugg Review, but by the Law Commission and Professor Carsberg, for **full mandatory regulation of private sector letting agents and management agents**. Our stakeholder engagement has underlined this as a key measure if we are to improve consumer confidence in the sector.

Government is strongly of the view that such regulation should be carried out by an independent body and that it should be compulsory.

In 2002 we established the National Approved Letting Scheme (NALS) as an independent voluntary regulatory body for letting agents and management agents and we have been encouraged by the way in which the organisation has grown and developed. Industry-led organisations such as the Association of Residential Letting Agents (ARLA) and the Royal Institution of Chartered Surveyors (RICS) have also done excellent work in introducing and encouraging a responsible, regulatory approach to residential managing and letting agents' work.

However, of the estimated 8,000 managing and letting agents in England, only about half belong to any of these organisations. Therefore, the voluntary approach to regulation has not been successful in ensuring that all agents reach the same standard and have the right protections.

If regulation is to be fully transparent and consumer-focused, it also seems right that it should be carried out by an independent body. This would not mean that the regulatory regime would be developed independently of industry. Far from it. We are very keen to build on the excellent initiatives already in place in industry – for instance the work led by RICS and ARLA to develop codes of practice for the industry and the work of NALS to informally gather views on the proposals in the Rugg Review.

Full regulation has many elements:

- entry requirements

- code of practice for members (including a requirement that they do not let properties which do not comply with decent homes standards)
- requirements to have in place business and consumer protection measures (such as client money protection, independent complaints procedures and linked redress, professional indemnity insurance)
- monitoring of compliance by the regulatory body
- enforcement powers and the ability to put in place sanctions.

We would envisage that the regulatory regime for letting and management agencies would encompass all these elements.

We do not wish to create unnecessary additional bodies to carry out these functions. We would rather draw on existing frameworks to deliver the new regulatory framework and we would wish to work closely with the industry as we develop our proposals within the parameters set out here.

Which of the functions above should be kept within the independent regulatory body? *All of the functions to regulate private sector letting agents and management agents should be kept within the independent regulatory body.*

Which of the functions above should be procured by the independent regulatory body from existing organisations? *Given the experience already available I believe the following functions should be procured:*

- ***entry requirements – NALS***
- ***Development of a code of practice – RICS, ARLA***
- ***Business & consumer protection issues – recognised landlord associations***
- ***Monitoring of compliance – NALS.***

What organisations could carry out the functions outlined above? *See above.*

Is there merit in establishing an entirely new organisation to carry out any or all of these functions independently? I believe that a new organisation to oversee the enforcement of letting agents and management agents would be able to act independently and be more readily accepted as impartial by agents.

Although the Rugg Review did not specifically look at managing agents in the context of other tenures, we believe that this represents an opportunity to bring all managing agents within the regulatory regime that emerges from these proposals. We would not wish to create dual burdens on agents that work across both the rented and owner-occupied sectors. However we recognise that the regulation model may need to be broadened to ensure that it captures the wider range of activities and responsibilities suggested by this extension.

Do you agree that managing agents operating in tenures other than renting should be included in the proposed regulatory regime? *Yes / agree this would be appropriate for consistency.*

Improved redress for tenants and landlords

We are aware that some stakeholders have significant concerns about the way in which existing redress systems, particularly the courts, serve both tenants and landlords.

The Law Commission's report *Housing: Proportionate Dispute Resolution* discusses many of these issues and the Rugg Review also makes suggestions.

We and the Ministry of Justice will work closely to make sure that tenants and landlords receive the best service possible. But we are not convinced that landlords always have to wait an unreasonable length of time to have their cases heard in court.

The court is an independent party in any dispute and must ensure that all parties in all cases are treated equally. As such, it is essential that parties are given an appropriate time in which to prepare for a case.

Under the civil procedure rules, a normal possession case should be heard no less than 28 days after the date of claim. The purpose behind this is to ensure that defendants are given an appropriate time to prepare their case while claimants do not have to wait a disproportionate time for their hearing after the court has taken into account the needs of other users. The average time taken in all possession cases (including mortgage, social and private rented claims) from the date of claim to the date that an order is made is 15 weeks.

However, the majority of claims from the private rented sector are brought using the accelerated procedure under section 21 as amended by the Housing Act 1988. This allows the landlord to bring a claim solely for the possession of the property. In most cases using this procedure the court will make its decision on the papers submitted and data from HM Court Services confirms that the average time taken from date of claim to the date that an order is made in the accelerated procedure is six weeks.

These timescales do not seem unreasonable to us. But are there any types of cases which typically take much longer? *I am not aware of any cases which typically take much longer.*

Are there any ways in which court procedures could be streamlined without jeopardising the requirement to allow all parties a proper

opportunity to prepare and support a fair hearing? *I am not aware of any ways in which the court procedures could be streamlined other than perhaps the accelerated procedure under section 21 could be heard by a Residential Property Tribunal but I am unsure as to whether this would accelerate the procedure.*

Private rented sector and the voluntary sector

Organisations such as Shelter and CAB tend to believe that there can be risks for tenants when engaging with the private rented sector. But some voluntary organisations have demonstrated the value of constructive engagement. In the context of improved regulation and professionalism, we would hope to see greater confidence in the sector from voluntary organisations.

As a first step, we endorse the proposal in the Rugg Review that staff in Voluntary organisations attend training in private rented sector housing management. We also intend to continue our own active engagement with key voluntary organisations as we develop the regulatory proposals in this paper.

Landlord organisations already offer much support and training to their members. For example, the National Landlords Association (NLA) offers an online training package to its members.

The NLA Landlord Library offers landlords direct access to information and advice on all aspects of letting residential property from issues affecting pre-tenancy through to ending a tenancy. The landlord library is available to all landlords to use, although non NLA members can access it at favourable rates. It is regularly updated and contains copies of legislation, guidance documents and links to other useful websites. The programme can also be used as a structured learning tool, offering landlords the opportunity to complete online modules and then review and test their knowledge in a short quiz. Competence in each module is automatically recorded as part of a landlord's continuing professional development (CPD) and could help gain recognition and accreditation from UK accreditation schemes.

We would encourage landlord organisations to make these services more widely available to enable better understanding of what is involved in truly professional private rented sector housing management. Are there other ways in which voluntary organisations can both engage more helpfully with the private rented sector and offer help and support to others? *By working together with local authorities through landlord forums and working together through accreditation schemes landlord organisations can make these activities more widely available.*

Local authorities and the private rented sector

Many local authorities have done excellent work to understand the private rented sector in their area and to build constructive relationships with landlords. This makes good sense: the private rented sector will form an important part of housing markets in all local authority areas.

Time and resources dedicated by local authorities to developing good relations with the sector are yielding dividends in a more professional local sector and reduced enforcement costs. Constructive engagement of this kind is not, however, universal: for many landlords (and tenants) their only interaction with the local authority centres on local environmental health officers and their enforcement activities.

We do not wish to discourage local authorities from ensuring that those living in the private rented sector have decent homes. The improved regulatory regime we have proposed is, in part, directed at assisting local authorities to achieve this.

But we also think that it is important for all local authorities to engage constructively with the landlords in their area. The Rugg Review and other commentators have made some sensible suggestions for how this could be achieved. All local authorities have to balance their activities within the resources available. The tension they often face is whether to focus on following up complaints or take a more strategic view and address the worst conditions in their area.

In looking to improve the private rented sector, which approach should be prioritised? *I believe by taking a more strategic view and addressing the worst conditions in the area it will allow local authorities to target their resources to those areas where it is most needed.*

Day-to-day engagement

We propose that local authorities should be actively encouraged to explore ways in which to improve their engagement with private landlords in their areas. The Rugg Review identifies the following approaches, which we endorse:

- engaging with landlords in the first instance through their small businesses unit, rather than through the environmental health department
- training local authority staff in private rented sector housing management
- active work by landlord associations to encourage local authority members

- including the private rented sector in local housing strategies
- improving local evidence bases on the private rented sector as part of a local authority's strategic housing assessment, including the establishment of specific private rented sector teams to lead on data collection on a cross-departmental basis and
- engaging with CIEH and CIH in developing skills and expertise

We will be actively working with LACORS to identify ways in which they can develop a programme of work to support local authorities in their engagement with the private rented sector.

Are there other models for constructive engagement with landlords? At Tonbridge & Malling we work in partnership with two other neighbouring authorities and the National Landlord Association to provide a combined landlord forum on a three times a year basis to engage with the private rented sector. External organisations are invited to attend and make presentations to landlords on topics of interest.

How can we best help and incentivise local authorities to work more constructively with the private rented sector in their areas? By assisting financially and/or developing National Performance Indicators will help local authorities to focus and provide an incentive to work more constructively with the private rented sector.

Local lettings agencies

The private rented sector has a key role in providing affordable housing to those on low incomes. Many local authorities use the private rented sector as an integral part of the housing options for those in housing need. In some areas it can give those who cannot afford to buy their own home a wider choice of housing in a wider range of areas than is available within the social housing sector.

More often than not, local authorities will look to the sector to house some of the poorest and most vulnerable households in their area. Some have developed constructive relationships with private landlords which have enabled them to find suitable housing for tenants who fall within the vulnerable groups identified under PSA 16, for example those with learning disabilities, and to sustain them in those tenancies.

Milton Keynes Council has over the last three years adopted a fundamentally fresh approach to its understanding of housing need (and 'housing want') in their area: in place of a very long waiting list for social housing and a high level of homelessness acceptances, the council now aims to house all those in housing need within weeks, while guiding those who are unlikely to be entitled to social housing in

the near future – if at all – to an alternative home in the private rented sector.

Often the ability to use the private rented sector in these ways will be constrained by local market forces and, in some areas, pressure on the sector has led to different agencies serving specific sections of the community who are in housing need effectively competing for the same, relatively small, number of privately rented properties. This can lead to ‘incentive inflation’ where landlords are able to play different Government-funded incentives off against one another.

At the same time, both landlords, potential tenants and housing organisations, including local authorities, can have a quite false idea of the risks involved in housing low income households in the private rented sector.

We are keen to build on the positive experiences in some local authority areas; to reduce both actual and perceived risks involved in this part of the private rented sector market. In order to do this local authorities need to build on an improved day to day engagement with landlords to provide support where that is needed and to ensure that any incentives are properly targeted and represent real value for money. Local authorities who already do this achieve more secure tenancies for low income households at lower rents and in better quality stock.

We therefore propose that each local authority should develop a more co-ordinated approach to securing private rented sector tenancies for low income households, particularly where this involves government funded landlord incentives.

This ‘local lettings agency’ (LLA) (based in large part on Rugg’s ‘social lettings agency’ concept) should also be the focus of local authorities’ engagement with private rented sector providers.

We do not wish to be prescriptive about what form the arrangements for a local lettings agency should take and are keen not to fetter local authorities’ discretion in setting them up. Local authorities would therefore be free to develop their own models for this purpose. Subject to local market conditions and priorities, an LLA could – for instance – involve a single local authority or several local authorities working together, and be run directly by the local authority (or group of LAs) or by a partner agency – from the public, voluntary or private sector – procured by the local authority, again building on existing schemes.

A holistic approach to a local authority’s engagement with the private rented sector would be central to this approach, preferably linking up with unified housing options appraisals and building on and complementing existing choice based letting (CBL) arrangements. Tenancy sustainment would be an important part of an LLA’s work

as would a focus on improving the quality of the local housing benefit market in the private rented sector. Providing grants to improve the quality of stock, and lending (or underwriting) the upfront costs of a tenancy (such as rent deposits) could also, if appropriate, be part of the package or packages on offer. Close co-operation and a shared sense of purpose between the housing, housing benefit and environmental health teams would also be vital, as would good liaison with social care teams and others supporting vulnerable people.

Portsmouth City Council is demonstrating how building up close and effective relations between the PRS, housing benefit and environmental health teams within a local authority improves outcomes for tenants and landlords, while also enabling effective enforcement where essential. The PRS team has built up relevant environmental health expertise internally, while carrying out joint inspections and co-opting more specialist EH colleagues when needed.

We are keen to develop and disseminate good practice in this area in order to help local authorities.

In late spring/summer 2009, we will be seeking opportunities to work closely with individual LAs or groups of LAs, on their own or with partners from other sectors, who are interested in leading the development of this comprehensive approach on the ground.

Which approaches have been shown to work best, and are there any which have been tried but shown to meet major hurdles? *The holistic approach has been shown to work but it can be resource intensive and require taking staff from their day to day work. Particularly if staff operate over a wide range of housing and environmental health functions.*

What could usefully be added to the “menu” of options set out above? *The holistic approach could be widened to work across neighbouring authorities by partnership working. For example, a reciprocal arrangement between local authorities for inspecting properties when providing rent deposits to tenants who wish to reside in neighbouring boroughs.*

Are there any barriers to the type of approach outlined above? *The main barrier to the above would be access to resources.*

Improved coverage for accreditation schemes

Alongside our proposals for a national register of all landlords, we would like to see improvements in professionalism and encouragement for those aspiring to higher standards.

The obvious vehicle for this is through access to accreditation schemes. For a number of years many local authorities have run very successful accreditation schemes for their landlords. These can offer training, experience sharing through forums and a clear quality 'kitemark' for potential tenants.

Decent and Safe Homes (DASH) East Midlands is a project funded by the Government Office for the East Midlands and was created as a regional facility to support the implementation of the Housing Act 2004. DASH currently works with 40 local authorities in the East Midlands providing training and best practice guidance. Landlords can take advantage of their events and accreditation scheme to enable them to understand fully property management and how to deal with tenancies.

However, accreditation schemes are by no means universally available and not all offer the same high standards. Some serve only to give prospective tenants a spurious assurance of quality with no sanctions against landlords who do not comply with the requirements of the scheme.

We would like to see accreditation being made available to all landlords wherever they operate. This could be by means of local authorities joining together to develop joint accreditation schemes. More universal schemes could also be developed by the industry either singly or in partnership with each other and/or local authorities and as part of an increased focus on continuous professional development within the sector.

In order to support the use of accreditation as a form of 'kitemark' for the industry, **we also think that consideration should be given to whether a national standard for accreditation schemes should be established.**

We do not want to lose the good practice already in place. But we are keen that accreditation should really mean something for tenants and landlords.

Is the time right to establish a basic standard for accreditation? Accreditation schemes are seen as good practice by the Audit Commission and the way forward for improving standards in the private sector. To enable landlords consistency to those who operate across multiple local authority boundaries, it would be good practice to develop a basic standard for all.

If so, should this be industry led, prescribed by government or carried out by an independent body (like ANUK)? An independent body would be as it says, independent, and not influenced by sponsors. Therefore, making it more acceptable to all involved.

What should a basic standard for accreditation cover? *A basic standard for accreditation should include requirements that the landlord/manager of the property is a 'fit and proper' person as defined in the Housing Act 2004, has undertaken basic training on how to be a professional landlord and undertakes a specified amount of continuing professional development per year.*

How can local authorities and landlord associations be encouraged to work together to develop continuous professional development schemes? *They can be encouraged to work together by providing access to funding where there is evidence of partnership working to enable the development of professional development schemes. A similar scheme could be operated as for the Regional Housing Board funding for private sector renewal.*

Should accreditation registration fees also be standardised? *I believe it would be difficult to standardise registration fees given the varying costs between schemes over the country in terms of resources. It would perhaps be appropriate for a maximum registration fee to be set and for the fee to be determined to be reasonable.*