



## **Response to Scottish Government's consultation paper on a proposed housing bill: the private rented sector, mobile homes, & the twenty year rules**

### **Introduction**

Govan Law Centre (GLC) is a community controlled law centre with charitable status (SCO 30193) based in Glasgow. We undertake a large volume of defended eviction and mortgage repossession casework, with over 1,000 sheriff court appearances per annum. Clients contact us directly, or through referrals from social work, money advice, CABx, Shelter, and other agencies. We work to address unmet legal need including defending evictions and mortgage repossessions, housing disputes, homelessness, personal injury, debt, employment, sequestrations and consumer disputes.

We disseminate a large amount of free Scottish housing and debt law advice online at [www.govanlc.com](http://www.govanlc.com) and [www.additionalsupportneeds.org.uk](http://www.additionalsupportneeds.org.uk). We undertake prevention of homelessness casework across Glasgow, but mostly within the South West. In the South West of Glasgow we manage a pilot section 11 Prevention of Homelessness project in partnership with Glasgow City Council Social Work Department (South West) and Govan Money Matters. Govan Law Centre's Education Law Unit (ELU) is Scotland's expert legal resource in the field of school education, with a particular focus on the rights of disabled pupils and pupils with additional support needs.

GLC has won various national legal awards including Solicitor of the Year 2007 (Mike Dailly), Project Team of the Year 2008 (Prevention of Homelessness Project), Legal Website of the Year 2008 (on reclaiming bank charges) and the Chairman's Award 2009.

Govan Law Centre opened a branch office in Govanhill in November 2008 (GHLC). We provide free legal advice and representation to residents of the Govanhill area of Glasgow which has significant housing problems. Govanhill Law Centre has with a particular focus on minority ethnic communities, and the Roma community. We disseminate free information from our website [www.govanhilllc.com](http://www.govanhilllc.com). This includes information leaflets translated into many different languages.

There is a high level of private rented housing in Govan, and particularly in Govanhill. We have found that the vast majority of clients who seek housing advice from us are living in unregistered tenancies. Often our clients have no contact details for their landlord.

Problems faced by tenants include disrepair, harassment and unlawful eviction. Owner occupiers in tenemental properties also face problems arranging common repairs where several of the properties are owned by absent private landlords who fail to uphold their obligations to pay for common repairs

## **Summary**

As experienced practitioners in the field of housing law and tenants rights, Govan Law Centre welcomes the opportunity to discuss ways to improve private rented housing.

### **Part 1 - Landlord Registration**

Govan Law Centre supports the aim of the policy to make improvements in the private rented sector by strengthening enforcement of landlord registration.

We are concerned that the private landlord registration scheme does not currently operate effectively. The current legislation contained in the Antisocial Behaviour etc., (Scotland) Act 2004 places a duty on landlords to register, a duty on local authorities to deal with registration applications, to maintain a register, and gives a power to local authorities to remove landlords from the register. However, in our experience, many landlords fail to apply for registration. The very landlords who ought not to be landlords because they are not “fit and proper” people will simply operate under the radar – they will never be refused registration or removed from the register as they will never apply to be registered. As things currently stand therefore, the private landlord registration scheme is not an effective way of ensuring those not fit to be landlords are stopped from renting out properties.

Investigative powers are required to enable information to be obtained in respect of all tenancies and whether the landlords are registered or not. Unregistered landlords need to be encouraged to register and those who fail to register should be prosecuted.

Whilst it is a criminal offence for a landlord not to be registered we are not aware of any prosecutions yet. In our experience the police are reluctant to become involved in any matter which relates to housing as they see it as “a civil matter”. For example, we have had difficulty getting the police to intervene when offences under s22 of the Rent (Scotland) Act 1984 may have been committed.

We are also concerned that the level of resources deployed to private landlord registration varies dramatically from local authority to local authority, which results in inconsistencies across the country.

We believe that the scheme requires to be administered on a national level to ensure consistency and adequate resources. Social landlords all require to be registered with a single body, the Scottish Housing Regulator, and we would suggest the same should apply to private landlords. This would also save those landlords with properties in more than one local authority area having to make duplicate applications. The remit of the Private Rented Housing Panel could be extended to cover registration or a new body could be established. The existing legislation could be amended to change references to the local authority to the new national body.

In relation to establishing those landlords who have not registered, we would suggest that checks be carried out on all private landlords named on housing benefit forms to ensure they are registered. Housing benefit could be suspended in situations where the landlord was not registered and had not applied to be register but an order for eviction could not be granted on the basis of any resulting arrears.

We also believe that those registering to be landlords should provide proof that they own the property, that they have their mortgage lender's permission to let out the property and that they are up to date with their mortgage. We have experience of clients who have entered into tenancy agreements and paid rent in good faith only to discover that the property was not owned by the person who let it out to them or that the landlord had not been paying the mortgage and a decree for repossession had been granted.

We also believe there should be requirements on all those operating a letting agency to be registered. As the law currently stands only the agent of a registered landlord requires to be registered. Therefore, technically, if none of their principals register the letting agent has no obligation to register themselves. In many situations the tenant fails to realise the property is owned by a private landlord and not the agency themselves. We have experience of significant breaches of housing law by letting agents – including the crimes of unlawful eviction and harassment of tenants. We therefore believe that is vital the landlord registration scheme be extended to include the compulsory registration of anyone operating a letting agency.

## Part 2- Licensing of HMOS

We support the aims of the policy to strengthen enforcement of the licensing of houses in multiple occupation. Through our work in Govanhill Law Centre we have discovered evidence of a number of unlicensed HMOs in Govanhill. We welcome proposals to improve the condition of those living in HMOs. We have found the HMO Department at Glasgow City Council to be proactive in wishing to take action against landlords who fail to apply for HMO license.

We particularly welcome the proposal to offer financial protection to tenants in the form of rent repayment orders but feel that consideration needs to be given to the housing benefit implications. It needs to be ensured that a rent repayment order would not result in a recoverable overpayment of housing benefit from a tenant.

One other element that we have found is that a prosecution can only take place if HMO legislation is still being breached, even if statements have been gathered and copy leases show that more than 3 unrelated people were living there. Landlords seem to be able to harass and threaten occupiers to leave properties before enforcement bodies can carry out an investigation.

### Part 3 – Overcrowding

We support in principle the aim of the policy to address the problems of overcrowding. However we believe that account needs to be taken of the social and economic factors leading to overcrowding. In many cases the overcrowded property will be an unlicensed HMO and the tenants will be protected to a certain extent by rent repayment orders. However, we are concerned about large families who live in overcrowded conditions and have insufficient funds to pay for larger accommodation. We have concerns for the welfare of those tenants and occupiers removed from overcrowded accommodation. Our experience in Govanhill Law Centre indicates that many A8 and A2 migrants live in overcrowded accommodation. Only restricted categories of migrants from A8 and A2 countries are entitled to benefits and homeless assistance, for example when they are working. Such migrants are financially vulnerable as they are often denied benefits and homelessness assistance during periods of economic inactivity caused by redundancy, illness and other circumstances outwith their control. Whilst appreciating the health and social problems caused by overcrowding, we believe that consideration must be given to those living in overcrowded accommodation and what alternative accommodation is available for them. It is our experience that there is an extreme shortage of family homes, and clients often have to wait indefinitely in uninhabitable accommodation because no larger properties are available.

### Part 4 – Tenancy Regime

Whilst we support in principle the aim of the policy to clarify and facilitate rights and responsibilities for tenants, landlords and agents in the tenancy regime we have serious concerns in relation to some of the proposals made.

Whilst supporting the introduction of a pre-tenancy information pack, we do not agree that any of the other proposals would meet the aims of the policy. Indeed we fear that some of the proposals are regressive and could seriously damage tenants' rights.

We are especially concerned regarding the proposals to allow private landlords to use an abandonment process to recover tenancies without recourse to court. We have significant experience of dealing with abandoned properties in the social sector and have found the procedure contained within the Housing (Scotland) Act 2001 to be misused and even deliberately abused by social landlords on occasion. We fear that private landlords would be able to use this procedure as a quick and easy way of summarily evicting tenants they no longer wanted, seriously weakening private tenants' security of tenure.

We have been working in partnership with the police in the South West and South East of Glasgow for several years to press home the criminal laws relating to unlawful eviction. Police routinely tell client's "it's a civil matter" when they seek police assistance. Police have also attended the scene, and tried to make snap decisions about whether notices to quit are valid or not, forgetting that to forcibly evict a tenant a landlord requires an eviction decree from the sheriff court. One of our clients, after phoning the police to report that all of her belongings had been left on the street by her landlord was told by the attending officer "maybe next time you will pay your rent". Several police officers have told us first hand that they have received no training whatsoever regarding unlawful eviction, and are unsure of the legal provisions. Our work continues in this regard, and it is our strong belief that unlawfully evicting a tenant and family has a serious adverse effect on that family, and that it is a police priority.

We believe that all police in Scotland should be provided with training at all stages of their careers in relation to the crime of unlawful eviction, and that it should be a police priority to charge landlords with this offence.

We feel that the introduction of a process whereby a tenancy could be recovered without recourse to court is detrimental to all the work we have been doing to stress the importance of obtaining an eviction decree before evicting a tenant.

### **The consultation questions:**

We have answered only the questions we have views on, and therefore some of the answers are blank.

#### **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?**

We believe that the list of offences in s85(2) Antisocial Behaviour etc., (Scotland) Act 2004 should be expanded to include firearms offences and sexual offences. However, rather than stipulate the offences to be disclosed by applicants we feel it would be easier simply to require all those applying for registration to obtain a Disclosure Scotland check. The local authority will then have full, verified details regarding the applicant's criminal history which will better enable them to decide whether a person is a "fit and proper person".

In our experience, when a landlord is not registered and this is reported to the local authority all that seems to happen is that the landlord is contacted and encouraged to register. We are not aware of any landlords being prosecuted or fined for their failure to have registered. Further we are concerned that the local authority has no idea how many landlords are operating unregistered.

### **Question 1.2**

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

No response

### **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**

As stated above, we think a standard or enhanced Disclosure should be provided by the landlord with their application. Then all facts would be before the team when they made the decision. Landlords should have a duty to inform the local authority within a specified period if they commit an offence whilst registered.

### **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?**

We support the idea of the local authority requiring a criminal record certificate from applicants. However we believe that all applicants should be required to complete a Disclosure Scotland application form. It should be a compulsory requirement in order to be registered. The Law Society of Scotland requires every person applying to become a solicitor in Scotland to obtain a Disclosure Scotland check to help them to establish whether a person is a fit and proper person to be a solicitor. It is suggested that the same approach be taken by local authorities in respect of the fit and proper person test applied to landlords.

### **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?**

If provision of a Disclosure check was, as suggested it should be, a universal requirement for registration this would not be necessary. An application could simply be rejected as incomplete if it failed to contain a Disclosure Scotland check.

### **Question 1.6(a)**

**Do you consider that the Private Rented Housing Panel should be required to request a landlord registration number form the landlord on receiving an application in relation to the Repairing Standard?**

Yes. This is a good way of discovering unregistered landlords and encouraging them to register. It is not unreasonable for the PRHP to request this information, given that it is a legal requirement for landlords to be registered. It would not be difficult for landlords to comply with this request and it would not be difficult for the PRHP to put this proposal into practice.

**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?**

There is no reason to restrict this proposal only to cases that have been accepted. All landlords should be registered and it is not an unduly onerous request to make of them to provide a registration number- they could simply provide this over the telephone etc.,.

**Question 1.6 (c): Do you consider that the Private Rented Housing Panel should be required to check that the number is valid?**

Yes. We consider that this would be quick and easy for the PRHP to do and would not cause any undue administrative or financial burden. It would assist in discovering unregistered landlords and increasing the number of landlords becoming registered.

**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. We consider that this would be quick and easy for the PRHP to do and would not cause any undue administrative or financial burden. As it is an offence not to be registered, a failure to provide a valid number should be taken as an indication that an offence may have been committed and dealt with appropriately.

In our experience, when we have notified the Landlord Registration Team that a landlord is not registered the landlord has simply been contacted and asked to register. No action appears to have been taken in respect of his or her earlier failure to register.

Although the team must have discretion, it appears that no one who fails to be registered is penalised as things stand.

In short, there is little point of the PHRP checking this documentation and reporting breaches to the local authority unless this information is going to be used.

**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. We believe it is vital to investigate the number of unregistered landlords. This would be an excellent way of helping the local authority, or other agency, to carry out enquiries as to whether certain landlords and properties were registered.

**Question 1.7(b): Do you agree that there should be an exemption for To Let boards?**

No. Although we accept the submission that TO LET boards are often re-used we feel that a temporary sticker could be put on all to let boards showing the registration number. This would not cause a considerable amount of expense to landlords or letting agents and is important to achieve the aim of ensuring all landlords are registered.

**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. Again, however, this proposal will only be effective if the local authority or another body actually investigates that the properties are indeed registered and takes action in respect of landlords who fail to provide valid registration numbers in advertisements.

**Question 1.8: What should the maximum penalty for any such offence be?**

We have no view on the extent of the penalty, only that it is enforced, which is not happening at the moment. This is the major priority.

**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. We believe that it is vital for the local authority or another agency to be able to actively investigate whether there are unregistered landlords operating. This power would assist local authorities do so. We also believe that the agents themselves should be registered. We have experience of well established letting agents in Govan and Govanhill harassing and illegally evicting tenants.

**Question 1.10: Failure to comply would be an offence. What should the maximum penalty for any such offence be?**

See answer to Q1.3.

## **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?**

Yes. We fully support this proposal.

**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?**

No. If the local authority reclaimed rent paid by way of housing benefit this would mean that the tenant would not have the benefit of receiving the rent back. As the purpose of the rent repayment order is to compensate the tenants for potentially losing a tenancy it is important that all tenants receive the money themselves. As tenants on housing benefit are those with limited finances they are those most in need of the rent rebate, for example to help enable them to put down a deposit on alternative accommodation. We are concerned that tenants would be left in considerable financial difficulty if housing benefit was reclaimed from them rather than the landlord, in circumstances where they have difficulty obtaining the refund from 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?**

No. We do not believe that a conviction is necessary. For a criminal conviction the burden of proof is beyond reasonable doubt. A rent repayment order should be able to be made based on the civil test of the balance of probabilities. Therefore we believe that once all options for appeal have been exhausted, which may include an appeal to the sheriff, it would be fair to grant the order.

As we have stated above, there is little point introducing new offences if no action is taken to ensure the legislation is enforced.

**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. See answer 2.2(a)

**Question 2.2(c): Have you any other comments on how a rent repayment order would operate?**

See answer 2.3

**Question 2.3: Who should be responsible for making a rent repayment order (for example, the sheriff, the local authority, etc)?**

The sheriff. We propose that the local authority or any other interested party (i.e. a tenant) could raise proceedings in the Sheriff Court and if the sheriff was satisfied that the landlord had knowingly operated a licensable HMO without obtaining a license s/he would grant an order. This would be equivalent to a payment decree but time to pay would not be available. A charge for payment could then be issued in respect of the debt and normal enforcement by way of diligence would, if necessary, follow thereafter.

**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. However, we believe it would be in the interest of justice for the landlord to have a right to appeal to the sheriff and failing to allow an appeal could breach human rights legislation.

**Question 2.4(b): Should any such presumption follow conviction or should the owner be given another opportunity to comply?**

No response.

**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?**

Yes. We agree that a wider term requires to be used. The current definition could be taken to mean that if no rent was being paid (for example, where the tenant was withholding rent due to disrepair) the agent wouldn't be covered by the legislation.

Particularly in Govanhill, we have found that landlords with large property portfolios have appointed companies to act as letting agents, companies which have no experience letting properties and function primarily as employment agencies. The largest example involves Czech and Slovak migrants. These agreements appear to be fairly informal. In one example, as soon as there were problems with the tenancy, the landlord advised he had sacked the agent. Landlords think they can hide behind the actions of the letting agent, for example letting agents turning off electricity and gas, threatening to assault tenants and going into their homes without permission or warning.

**Question 2.7: What are your views on how "managing agent" should be defined in this context?**

We agree with the suggestion to use the definition used in the Civic Government Scotland Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2003, amended slightly :  
“a person *or organisation* acts as a managing agent for an owner of a house if that person *or organisation* acts on behalf of that owner in carrying out any activity which directly permits or facilitates the occupation of that house.”

**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?**

We believe that the requirements set out in section 144 should be made of all landlords in Scotland. We believe that this information could easily be given at little cost to the landlord. It could form part of the pre-tenancy pack mentioned in Part 4. We are concerned that making it a power of the local authority to require landlords to provide the information rather than a universal duty on landlords, will lead to inconsistencies between local authorities and within different areas of an authority. Tenants moving from one area to another would not know what to expect. There seems no reason why it would be required only in certain areas and not in all cases.

**Question 3.2: Have you any comments on how the proposed process would operate?**

It would be a requirement for all landlords to provide this information at the commencement of the tenancy. The information could be contained in the pre-tenancy information pack.

**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?**

We have concerns as to how this would work in practice. In many cases the only way a landlord would be able to reduce the occupancy of a dwelling would be to evict some or all of the tenants. We are concerned that this would increase levels of homelessness and destitution. It is our experience that many migrant workers live in overcrowded conditions. Many former migrant workers who have lost their jobs through ill health or redundancy have no right to homelessness assistance. Whilst appreciating the seriousness of the problems of overcrowding, consideration needs to be given to the welfare of the tenants and occupants of overcrowded houses. Many of our clients living in overcrowded tenancies have been on social housing waiting lists for many years waiting for a larger home. We do not believe the local authority could have this power without bringing in a large scale of larger house building first. We do not believe it would be fair to penalise families who are making every effort to obtain larger houses.

**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?**

We believe, for the reasons outlined in answer 3.2 that if Overcrowding Abatement Orders were to be introduced, they should only be used in circumstances where there was significant evidence of serious nuisance or danger to the health of the occupants e.g. severe, repeated infestation problems, significant, prolonged and intolerable noise, health problems etc. The local authority would be required to obtain reports from neighbours, environmental officers, health visitors etc.

**Question 3.5(a): Should failure to comply with an Overcrowding Abatement Order be an offence?**

Again, we feel this would cause difficulties in practice. A landlord may be unaware of the overcrowding prior to the service of the notice. In order to abate the problem s/he would then be required to evict some or all of the tenants or occupants. To do so s/he would be required to obtain a court order if the tenants/occupants refused to leave. A landlord will therefore be dependant on other people to be able to comply with the Order so it seems unduly harsh to make it a criminal offence not to comply with an order. It may be more appropriate to give the local authority power to raise proceedings for the removal of tenants/occupants of a house which was causing serious nuisance or endangering the welfare of occupants. This of course would be a power which would have to be subject to vigorous scrutiny.

**Question 3.5(b): If so, what should the penalty be?**

See answer to Q1.3 above.

**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?**

We are not convinced that this would be any easier than obtaining a court order. At present social landlords are required to raise court proceedings to gain access to effect repairs and we fail to see why the legal provisions should be different for private landlords.

**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)?**

See answer to Q4.1

**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?**

We appreciate that tenants may be more comfortable if the landlord or person authorised by the landlord is accompanied when carrying out the repairs. We are not convinced that the current procedure of raising a court action is not sufficient for the landlord's purposes. However we would support in principle any proposal to allow the tenant to request at the court calling that the landlord or a person authorised by the landlord be accompanied by a member or the Private Rented Housing Panel.

In practical terms, if this requirement is introduced, it would cause a huge burden on the PRHP. We would prefer to see resources of the Panel be concentrated upon making decisions, and if

powers extended, to seeing the panel be used for deposit disputes, complaints by neighbouring owner occupiers.

**Question 4.4: How should this additional work for the PRHP be funded?**

We believe it is uneconomical to fund the PRHP to undertake this work when we believe a landlord can obtain the remedy quickly and easily from the sheriff court. Social landlords are required to go to court to obtain such orders and we can see no reason why there needs to be a different procedure for Private landlords.

**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?**

No. We are extremely concerned in respect of proposals to allow private landlords to make use of an abandonment procedure. We believe that this process would be open to abuse by unscrupulous landlords and would lead to unnecessary evictions and homelessness. We fail to see why private landlords require this power. We accept that abandonment is a reality faced by many landlords and causes problems. However in the majority of cases the landlord should be able to obtain a court decree quickly.

We do not accept the assertion that it can take up to 6 months to obtain a decree in respect of abandoned properties as suggested. If a property has been genuinely abandoned landlords will stop receiving rent (in practice, if the landlord continues to receive rent, they would be unaware whether the tenant was there or not). Ground 12 of Schedule 5 of Housing (Scotland) Act 1988 allows the property to be repossessed on the basis of outstanding rent. There is no minimum level of rent that requires to be owed although the sheriff has to be convinced that it is reasonable that decree be granted. In circumstances where the landlord has evidence that the property is abandoned we submit that the sheriff would consider it reasonable to grant an order in respect of the arrears as it would be likely that they would continue to increase. Only 2 weeks notice is required in terms of the AT6.

Essential repairs are likely to be able to be carried out by the landlord by raising proceedings in terms of s181 Housing (Scotland) Act 2006 even if the property is unoccupied. If the landlord believes disrepair of common property was caused by the tenant not being in the property the tenancy could be repossessed under ground 14 of Schedule 5 Housing (Scotland) Act 1988. If landlords are concerned about the property being left abandoned for significant periods of time they should include a clause in the tenancy agreement requiring the tenant not to leave the property unoccupied for more than a specified amount of time. If the tenant breached this obligation, the landlord could then recover possession in terms of ground 13 of schedule 5 Housing (Scotland) Act 1988. In terms of the assertion that landlords who do not obtain a decree leave themselves open to prosecution for unlawful eviction, s22 Rent (Scotland) Act states that a person will not be guilty of an offence if he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

Furthermore, we have experienced significant difficulty engaging the police in situations of genuine unlawful eviction. To our knowledge there has never been a conviction for unlawful eviction in Scotland. We do not believe therefore that landlords have any genuine reason to be concerned regarding being prosecuted for unlawful eviction in situations where there has been an abandonment.

**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?**

As stated above we do not believe that landlords should be able to terminate a tenancy on grounds of abandonment alone. However, in circumstances where they were, they would have to have robust evidence that the property was unoccupied. This would include no rent being paid for a significant period, failure to respond to letters, no sightings by neighbours etc.

In reported court cases involving social landlords using the abandonment procedure, the social landlord is required to provide evidence of why they believed the property to be abandoned, for example statements of neighbours, giving evidence as to the furniture that was in the house, what food was in the fridge. They must also show the court that they served the correct legal documents timeously. Staff for social landlords are normally well trained and have rigorous procedures, and even then we have been forced to raise summary proceedings at Glasgow Sheriff Court. On 2 separate occasions in the past 18 months, a large social landlord carried out abandonment procedure when clients were currently being represented in court by Govan Law Centre in respect of rent arrears. This shows how the procedure can be used to bring about eviction by the back door.

The vast majority of Notices to Quit we see are invalid and we do not believe that landlords in general are able to understand the complex legal provisions in relation to Notices and therefore cannot be expected to follow abandonment procedures correctly.

**Question 4.7: Do you agree that the possession notice should give 28 days notice?**

28 days is not an adequate notice period. Many tenants will find themselves away from home, for example due to hospitalisation, family commitments and holidays, for more than 28 days at a 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)?**

As previously stated we are strongly opposed to authorisation being given at all. However, if the proposals were to go ahead we believe the sheriff would be the most appropriate person to give authorisation.

**Question 4.9: If the Private Rented Housing Panel were to be the authorising body, how should this work be funded?**

It would be uneconomical to fund the Private Rented Housing Panel to do this work when it is unnecessary. We have concerns also, that without significant extra funding, giving the Private Rented Housing Panel this extra function would create an administrative burden causing delays

in the system which may result in longer waiting times for tenants' repairs cases etc to be considered. We feel that this proposal would be hugely detrimental to private tenants' welfare.

**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?**

We are glad that the inability of private landlords to rehouse tenants in the way social landlords can has been recognised. This is another strong reason why private landlords should not have abandonment powers. The local authority already has a duty towards all homeless people. This proposal is worrying as it effectively creates a new category of priority need, the only one with a specified period of time in which the person must be rehoused. This could effectively mean a person who had had their tenancy wrongfully terminated through the abandonment process who would not otherwise have had priority need will be re-homed before a person, homeless for a different reason, who is in priority need. The local authority's duty towards homeless people should not be related to the reason why they became homeless.

Also at present, if a tenant has received Notice papers they will often go to their local Social Work Homelessness Casework team. If the notices are invalid, the casework team, certainly in the South West, advise the client that they are not required to leave.

We are concerned that the introduction of an abandonment procedure for private landlords would increase the number of people presenting as homeless and would create a further demand for urgent housing advice when law centres and advice agencies are already stretched.

**Question 4.11: Please describe any specific safeguards that you think should be in place.**

We have grave concerns regarding the scheme which we do not believe could be addressed by safeguards. The benefit offered to the landlords is totally disproportionate to the potential damage that could be caused to tenants.

**Question 4.12: Have you any other comments on the proposed process?**

As an organisation we have experience of representing clients in the social sector who have had their tenancies recovered through abandonment and we are often shocked to discover the circumstances in which this occurred. It is relatively common for tenancies to be recovered through the abandonment procedure only for it later to be discovered that the property was not indeed abandoned. On several occasions we have been able to secure the return of a tenant to their original accommodation but we fear this would not be possible with private landlords. We find that unlawful of eviction of tenants is a huge problem and we are working with local police to try to remedy this. We are extremely concerned that these proposals would allow the easy eviction of tenants and be used as a backdoor to eviction by unscrupulous landlords.

**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. We think that this is an excellent idea. The requirement to do this will also ensure that the landlord obtains the appropriate information to become aware of the duties incumbent on them.

**Question 4.14: What documents do you think should be included in such a pack?**

We would suggest that the following documents are included:

- Landlord's registration details
- Information on occupancy levels
- Information on repairing standard and tenants' rights
- Inventory
- Info on utilities and council tax including who is liable to pay them
- Info on how the tenancy must be ended
- Gas ( and electricity) Safety Check

**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)?**

The Scottish Government should produce a pack to ensure that the contents are consistent through all the different local authorities. Standard forms could be used to present the info which should be available online. There should also be an advertising campaign advising tenants of their right to receive one and landlords of their right to give them out.

**Question 4.16(a): Should failure to comply with the requirement to issue a standard information pack be an offence?**

Yes. However, there needs to be some way of recording whether one was issued or not otherwise there will be no way of recording whether it is an offence. We propose that as well as having a duty to register as a landlord, landlords should have a duty to register each tenancy that they enter into. When they submit details of the tenancy agreement they can also submit proof that they provided this information pack.

**Question 4.16(b): If so, what should the penalty be?**

See answer to Q1.8.

**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?**

No. If a tenancy pack was issued which contained all the necessary forms it does not seem necessary to combine the forms together into the same form. We believe it is important that an

AT5 remains a separate document so that the tenant is made aware that the tenancy will be a short assured tenancy and what this means.

**Question 4.18: If so, please state which documents you consider could be merged.**

See Q 4.17

**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?**

We cannot think of any pre-tenancy charges a landlord would incur which should be met by the tenant.

**Question 4.21: How should the making of illegal pre-tenancy charges be dealt with?**

Along with unreturned deposits, we believe this should be within the remit of the PRHP. We believe that the landlord or letting agent should be fined if they are found to have made an illegal charge.

**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?**

We agree that the law on the service of a notice of proceedings is unclear. The requirement to serve a notice of proceedings is currently contained in s19 of the Housing (Scotland) Act 1988 which states that the sheriff cannot entertain proceedings for possession of a house “let on an assured tenancy” unless a notice of proceedings is served. A short assured tenancy is an assured tenancy and therefore it follows that a notice of proceedings is required to be served in respect of a property “let on” a short assured tenancy. However once a valid notice to quit and s33 notice have been served the tenancy is no longer a short assured tenancy and s16 ensures that it does not become a statutory assured tenancy. It is therefore arguable that neither s 18 or s 19 apply in respect of a SAT which has been properly ended and that the phrase “let on an assured tenancy” must be taken to mean that the property is still let on that basis and not just that this was the basis on which it was originally let. S18 supports this proposition as it states that an order for possession of a property “let on an assured tenancy” can only be granted on one of the grounds in schedule 5. The service of a valid notice to quit and s33 notice is not currently a ground in the schedule; rather it is a special mandatory route to recover possession of a SAT We are therefore of the view that it is not currently necessary to serve a Notice of Proceedings to recover possession of a property that was let out under a short assured tenancy that has been ended by service of the appropriate notices. However we agree that it would be helpful for the law to be clarified and changed to require that a notice of proceedings be served in this situation. This could be done by amending the wording of s18 and s19 from “let on assured tenancy” to “let on

an assured tenancy, including circumstances where the property was let on an assured tenancy which has been ended in terms of s33”.

**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?**

No. There are very limited circumstances where it will be necessary for a landlord to serve all three notices. Even if the proposals discussed in Q4.22 are brought in, it would still only be necessary to use all three notices in the situation where a SAT was being recovered after the ish following service of a valid notice to quit and s33 notice. A landlord will often be required to serve a combination of different notices but these combinations will be different depending on the circumstances.

In any event, a notice to quit and s33 notice can already be combined as there is no requirement for them to be separate. The time limits for serving each type of notice are also different so legislation would be required to change the time limits if a single notice was to be used. The time limits in respect of serving notices to quit can also vary as can the notice required when serving a notice of proceedings depending on the ground(s) on which repossession is sought.

Without a complete overhaul of the law in general we do not think the use of a single notice would assist. Because the information required differs from situation to situation any universal form would be fairly lengthy and involve either a lot of deletion of irrelevant sections, or alternatively require the landlord to insert a lot of information into blank sections. Rather than the current problem of landlords failing to serve the correct notice the introduction of a single form would only lead to landlords filling it out incorrectly – failing to delete the appropriate parts or insert the appropriate information etc. We do not think the use of a single form will help landlords or tenants to better understand the procedures for ending a tenancy.

**Part 5 – Licensing of mobile home sites**

No response.

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

No response.

**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?**

We believe that it is important to gather information on the languages spoken by tenants. In our experience many tenants do not speak English. This means that they are often at a disadvantage and are not as aware of their rights. Any changes in the registration scheme require to be published so that landlords know their new duties and tenants know their new rights. If information is gathered regarding the languages spoken by private tenants it will assist prepare publicity materials. Information on literacy should be obtained for the same reason. Many of our clients who are private tenants cannot read and therefore alternative ways of conveying information regarding their rights need to be explored.

**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.**

As in A.1 we believe information regarding the languages spoken by private landlords is important so that the most appropriate way of conveying information regarding the changes in legislation is employed.

**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?**

We believe it would be useful to obtain information on the number of A8 or A2 migrants living in the private rented sector. In our experience these groups are particularly vulnerable as they can be left with no income if they become unable to work through sickness or unemployment before completing their first 12 months registered work. They are often not eligible for homelessness assistance and therefore can be left destitute. Therefore their only option often is to stay with friends or family members, which leads to overcrowding. We feel particular thought needs to be given as to how the proposal for overcrowding Abatement Orders (Q3.3) would affect this group.

**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 response.

**Question A.5: What positive impacts do you think the changes will have on particular groups of people?**

The proposals to make the private landlord scheme more robust should improve living conditions for many private sector tenants, which will affect the groups identified as living mainly in private rented housing. Unless investigative powers are used however, we feel that the situation will not improve much because, as previously stated, the worst landlords do not apply to be registered at all. We are concerned that the level of resources employed by local authorities varies and therefore it would be better to have a national scheme.

**Question A.6: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?**

Make landlord registration the responsibility of a national body instead of local authorities to help ensure that investigations are carried out to discover those landlords who are choosing not to register and deal with them appropriately. This will help increase the positive effects of the proposals to certain minority groups which tend not to be as aware of their rights and therefore would not necessarily know that their landlord should be registered.

**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?**

We feel that young people and minority ethnic groups, such as migrant workers are more likely to be affected because they are more likely to live in an unregistered HMO. We welcome the rent repayment order as a way of trying to address this.

**Question A.8: If you think there will be a negative impact on a particular group, why is this?**

No response.

**Question A.9: What positive impacts do you think the changes will have on particular groups of people?**

No response.

**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 response.

**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?**

We are concerned that the proposed changes to overcrowding legislation may have a negative impact on A8 and A2 migrants.

**Question A.12: If you think there will be a negative impact on a particular group, why is this?**

Please see answer A.2

**Question A.13: What positive impacts do you think the changes will have on particular groups of people?**

No response.

**Question A.14: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?**

A requirement to support people who had been living in overcrowded housing find alternative accommodation would reduce the negative impact on those who could potentially be evicted as a result of the proposed changes. We are concerned that the proposals may have a significant impact on A8 and A2 migrants.

**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?**

Yes.

**Question A.16: If you think there will be a negative impact on a particular group, why is this?**

We believe the proposed introduction of abandonment procedure will negatively affect some of the most vulnerable tenants. Those with disabilities are more likely to have to leave the property unoccupied at short notice due to hospitalization. Those who do not read English will be at a disadvantage if they have to reply in writing to an abandonment notice, as is the requirement in the Housing (Scotland) Act 2001.

**Question A.17: What positive impacts do you think the changes will have on particular groups of people?**

No response.

**Question A.18: What changes to these proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?**

The abandonment procedure should not be introduced for private landlords. Tenancy packs should be available in a number of languages.

**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.**

No response.

**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 response.

**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 response.

**Question B.3: If you think there will be a negative impact on a particular group, why is this?**

No response.

**Question B.4: What positive impacts do you think the changes will have on particular groups of people?**

No response.

**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 response.

**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 response.

**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 response.

**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 response.

**Question C.3: If you think there would be a negative impact on a particular group, why is this?**

No response.

**Question C.4: Do you suggest any proposals to help reduce any negative impact or enhance any positive impact that you have identified?**

No response.