

ENCOURAGING RESPONSIBLE LETTING

SUMMARY AND CONSULTATION QUESTIONS

INTRODUCTION

- 1.1 The consultation paper, Encouraging Responsible Letting,¹ is the final part of the Law Commission's project to modernise and simplify housing law and practice. Its focus is on the private rented sector. It asks: how can the management of rental property within that sector be improved?
- 1.2 This project is not proposing major changes to the law. Rather, it examines ways in which the current law can be made more effective. There is a great deal of law that applies to the sector. But much of it, particularly relating to housing conditions, does not work as Parliament intended.
- 1.3 A consequence of this is that the private rented sector continues to suffer from a poor reputation which, arguably, prevents it playing as full a part as it should in both local and national housing markets.
- 1.4 This project adopts an approach that the Law Commission has not used before. Having analysed recent developments in regulatory theory and practice, it explores the extent to which a new approach to the regulation of the private rented sector might benefit both landlords and tenants.
- 1.5 In preparing the paper, the Commission makes two key assumptions, which it understands lie at the heart of current Government policy.
 - (1) The private rented sector plays an important role in many local housing markets.
 - (2) In many areas, it is desirable that the private rented sector is encouraged to expand its presence, rather than the reverse.
- 1.6 The consultation paper sets out provisional proposals which we think will – at reasonable cost – encourage better management of rental property. We propose that there should be a scheme of “enforced self-regulation” based on a partnership between those representing landlords and their agents and Government.
- 1.7 Through the consultation process, we want to test our ideas by asking questions and inviting comments from as wide a cross section of people as possible. We also seek information. Have we made the right starting assumptions? Is the evidence we have used accurate? Have we missed something important? In short we want to discover new facts and insights.

¹ (2007) Law Com CP No 181, available on the Law Commission website at www.lawcom.gov.uk/housing_renting.htm.

- 1.8 The consultation process is open to all. It lasts from the date of the publication of this summary and the consultation paper until 12 October 2007. We invite readers to send us their views. Do not feel you have to answer all the questions. We welcome partial responses as much as full responses.
- 1.9 In the paragraphs that follow, we outline some of the questions that consultees might like to address. Consultees may find it helpful to read and consider the questions we set out below before responding to any particular Part of the paper. We are not specifically asking for precise answers to each question. Rather, we hope it will stimulate consultees' own thinking.

THE SCOPE OF THE PROJECT

Part 1

- 1.10 Part 1 sets out our reasons for limiting the scope of the project to the private rented sector. We also explain why we focus on housing management issues, in particular those relating to housing conditions and to a lesser degree unlawful eviction and harassment.
- 1.11 Do you agree with the approach we have adopted? Are we right to concentrate on housing conditions, harassment and unlawful eviction? If not, what should we deal with in addition to, or instead of, these two issues, and why?

THE PRIVATE RENTED SECTOR TODAY

Part 2

- 1.12 Part 2 of the consultation paper notes that the modern private rented sector is growing and performs a number of important but very different functions in the housing market. There are both large and small landlords. Their goals and motivations for being landlords vary. The length of time they hold their investment varies. Many landlords are new to the market, others are well established. Although there are bodies representing landlords' interests, most landlords do not belong to one. Some engage agents to act on their behalf. But again, while many agents are members of professional associations, not all belong to professional bodies. All these factors make the sector difficult to regulate.
- 1.13 Do consultees accept the broad picture that emerges from our description of the private rented sector? Are there important facts that we have overlooked? Are our conclusions about the nature of the sector justified by the facts?

Part 3

- 1.14 Part 3 of the consultation paper outlines the current law and the official data that exists on the safety and condition of rental property in the sector. We conclude from the available official data sources that, particularly in relation to housing conditions, the law is not working as Parliament intended. Improved standards in housing management are needed to encourage compliance with the existing law. Failure to do this has adverse consequences for society as a whole.
- 1.15 Do consultees agree with these conclusions?

Part 4

- 1.16 Although increased regulatory effort could lead to some of the very poorest accommodation being taken from the market, it is important that in general, accommodation currently available in the private rented sector should remain in the market. Part 4 of the consultation paper details the costs and benefits of encouraging greater compliance. We estimate the costs of improving conditions in the sector and ask the policy question of where the burden of these costs should fall. We also take into account the costs of not taking any further action.
- 1.17 We seek to encourage all those, both within Government and outside, who are interested in the policy issues to let us have their views on the questions raised and the choices that might be made.

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Parts 5 and 6

- 1.18 Parts 5 and 6 outline theories of regulation and the different approaches taken by Government to regulate the sector during four key periods since the mid-1890s.
- 1.19 Many steps have been taken to try to regulate the sector more effectively. Local authorities are increasingly engaging with private landlords, offering a range of services from general support to accreditation schemes. In some areas, local initiatives are expanding into regional initiatives. Landlords' representative bodies and letting agents' professional bodies have developed codes of good practice. Most of these initiatives are voluntary. Many landlords and letting agents remain outside these frameworks. These initiatives therefore have less impact than could be gained from developing strategies across the board.
- 1.20 Consultees are invited to comment on the development of regulatory theory and the lessons this may have for the operation of the private rented sector.

PROPOSALS FOR CHANGE

- 1.21 Parts 7 and 8 of the consultation paper set out our proposals for change. Part 7 presents the case for reform of the regulatory structure for the private rented sector. We set out some general propositions, which we think must be borne in mind if the regulatory structure is to be reformed. Do consultees agree with these general propositions? Are there others we should have taken into account?
- 1.22 We take the view that the best approach is for the regulated community and the regulator to work in partnership. We propose that key standards would be set by Government – as it has already done in the law it has enacted. The industry should take responsibility for ensuring that those standards are met. Our aim is to encourage compliance by building on the existing good practice that already exists, and making sure that landlords have access to information and training when they need it.
- 1.23 Part 7 considers three options which we think might be the basis for a reformed regulatory framework. These range from voluntary self-regulation to a system of licensing. We set out the advantages and disadvantages of adopting each approach. Although voluntary self-regulation and licensing are possible options, we think the disadvantages of both outweigh the advantages.

- 1.24 We propose instead a system of enforced self-regulation. This approach combines the benefits of self-regulation with a mechanism of external enforcement. We suggest that all landlords be part of a professional association or accreditation scheme. They could choose from one of the following options:
- (1) join a local authority landlord accreditation scheme;
 - (2) become a member of one of the associations of private landlords (of which there are a number throughout the country); or
 - (3) let their premises through a letting agent who is a member of one of the letting agents' professional bodies
- 1.25 Do consultees agree with our analysis? Do consultees consider that we have properly assessed the advantages and disadvantages of the three principal options? What alternative approaches or variations might be considered? What other options should we consider? Or are there variations on our options that would make them more attractive?
- 1.26 Part 7 also discusses the costs that might be involved in moving to a reformed regulatory framework. Do consultees agree that the level of costs indicated seem likely? Are they a price worth paying for encouraging more responsible renting?

Part 8

- 1.27 Part 8 considers the need for, and powers of, a central regulator. We propose that a central body would approve and regulate the schemes of the associations and professional bodies. It would oversee the professional bodies themselves and ensure that the system worked effectively. Those running the relevant scheme or association would have the primary responsibility for securing compliance with their chosen scheme. If they failed to do so the central regulator could take steps to enforce the scheme. As a last resort it could take action against the body who did not comply with its obligations. It could also take action against landlords who did not join a scheme.
- 1.28 Is our account of the central regulator persuasive? Should it be configured in a different way? Are there other and better options for the body to undertake this function?
- 1.29 Part 8 also suggests that a new regulatory framework might enable Government to reduce some of the law that currently applies to the private rented sector. This is not considered in detail in the paper, but we would welcome views on whether consultees agree with these general sentiments and whether they have ideas as to which regulatory burdens might be removed.

Part 9

- 1.30 Part 9 makes a separate proposal for a form of home condition certification, which could be used to supplement enforced self-regulation or be used separately.

We welcome consultees' views on these ideas. Are there either theoretical or practical advantages or disadvantages to the suggestions made in this Part? Are there useful parallels elsewhere that would help us to assess the practicability of this option?

CONCLUSION

- 1.31 We hope consultees will find the paragraphs above of assistance in compiling responses. We hope we have made clear that the issues selected are not intended to imply that other questions are in any way closed, or that we would not be happy to receive responses that tackle the issues in quite different ways or from quite different starting points.

HOW TO RESPOND

- 1.32 The consultation period ends on 12 October 2007. Given our deadline for completion of this project, we will be unable on this occasion to accept any late responses. Responses should be sent:

by post to:

Richard Percival
Law Commission
Conquest House
37-38 John Street
Theobalds Road
London
WC1N 2BQ

by e-mail to:

public@lawcommission.gsi.gov.uk

- 1.33 It would be helpful if, where possible, comments sent by post could also be sent on disk, or by email to the above address, in any commonly used format.
- 1.34 All responses will be treated as public documents in accordance with the Freedom of Information Act 2000, and may be made available to third parties.

13 July 2007