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Update – Recent Developments in Mandatory Landlord Registration

This paper is the third in a series of briefing papers provided to assist the Committee with its consideration of issues around mandatory landlord registration schemes for the private rented sector. The first [paper](#) provided an overview of the various private rented sector landlord and tenancy registration schemes currently operational in Great Britain and the Republic of Ireland¹. The [second paper](#)² provided a closer examination of the Scottish Landlord Registration model. It explored both the operational difficulties and best practice associated with the scheme and identified a number of key issues to be considered in the development of regulatory scheme for Northern Ireland. The purpose of this third paper is to assist the Committee in its consideration of the Housing (Amendment) (No.2) Bill by providing, for comparative purposes, a brief overview of recent developments in mandatory landlord and tenancy registration in Scotland, England and the Republic of Ireland.

¹ Northern Ireland Assembly Research and Library Service (2009) An Overview of Landlord and Tenancy Registration Schemes in the Private Rented Sector. www.niassembly.gov.uk/researchandlibrary/2009/7709.pdf

² Northern Ireland Assembly Research and Library Service (2010) Mandatory Landlord Registration Schemes – A Further Examination of the Scottish Model. www.niassembly.gov.uk/researchandlibrary/2010/1910.pdf

Key Points:

- Unlike the proposals for Northern Ireland, the Scottish Landlord Registration scheme was not part of a housing bill but rather was inserted by way of an amendment proposed by a MSP (and supported by the Executive) to a Bill dealing with issues around anti-social behaviour.
- It took just under two years from the time in which the legislation was enacted (July 2004) until the scheme became operational (April 2006).
- Following the passing of the Bill, the Scottish Executive set up a Working Group to consider the detail of the scheme. A consultation outlining proposals for regulation and guidance was issued in July 2005 followed by consideration of the regulations by the Scottish Parliament Communities Committee and the issuing of guidance to local authorities in 2006.
- Similar to the provisions contained within the Housing (Amendment) (No2) Bill, detailed information on the scheme is not contained within the Bill itself but rather is contained within regulations and guidance.
- One of the main differences between the Scottish legislation and the relevant provision of the Housing (Amendment) (No.2) Bill is that in the under Scottish law, registration is dependent upon the applicant meeting a 'fit and proper' person test.
- Significant amendments to the Scottish Landlord Registration scheme have been proposed via the Private Rented Housing (Scotland) Bill introduced in the Scottish Parliament in October 2010. These include imposing tougher penalties for series cases involving unregistered landlords from £5,000 to £50,000 and disqualifying a person from operating as a landlord for up to five years for series cases of bad landlord practice.
- Other proposed changes in the Scottish Bill include expanding the list of offences to be declared by an applicant for landlord registration by including firearms and sexual offences; making it easier for local authorities to identify unregistered landlords by making it mandatory for landlords/agents to include their registration number in advertising properties to let; and providing local authorities with the power to obtain information from letting agents about any house in the area in which the agent acts.
- The Bill will also expand public access to information on the Register by making available information on whether an application has been made by a landlord or agent but is pending and also by providing access to information on whether a person has been refused entry or removed from the register on the grounds of not being a 'fit and proper' person. It is believed that this information will alert both tenants and the relevant authorities to unfit landlords attempting to let properties.
- In addition to landlord registration, the Bill also proposes a number of other significant changes for the private rented sector including increasing the penalty for severe contraventions of the HMO licensing regime from £20,000 to £50,000; permits Ministers to designate additional categories of multiple occupancy accommodation as licensable (e.g. portacabins and other premises used by

seasonal workers); provides local authorities with the power to deal with overcrowding by serving on the landlord Overcrowding Statutory Notices; and introduces a mandatory requirement for landlords to issue tenants with a Tenants Information Pack.

- In England, plans for a mandatory 'light touch' landlord registration scheme had been made under the Labour Government. However, the new Coalition Housing Minister overturned this decision pledging that there would be 'no more red tape' for private landlords.
- In the Republic of Ireland, the Minister for Housing and Local Services has recently announced the intention to shift the registration focus from private rented tenancy registration to dwelling registration. It is hoped that this will go some way to address the issue of rent-supplements being paid to non-compliant landlords in the private rented sector.

1 Update on Proposed Amendments to the Scottish Landlord Registration Scheme

This section looks briefly at how the Scottish registration scheme was developed from its legislative origins to its implementation and provides an update on a number of significant amendments proposed for the Scottish Landlord Registration regime recently introduced via the Private Rented Housing (Scotland) Bill.

Legislative Origins of Scottish Landlord Registration Scheme

The statutory basis for the Scottish Landlord Registration scheme is set out in [Part 8 of the Antisocial Behaviour etc. \(Scotland\) Act 2004](#)³. The scheme itself came into effect on 30 April 2006 and was originally intended to be as 'light touch' as possible to minimise its impact upon the majority of landlords who provide good services to their tenants⁴. The registration scheme was part of a much wider drive by the then Scottish Executive to provide local authorities and other local agencies with the tools to tackle anti-social behaviour within their communities.

Other provisions contained within the 2004 Act included, for example, a new onus on local authorities to develop and publish anti-social behaviour strategies; new powers for local authorities to deal with noise nuisance, graffiti and fly-tipping; new powers for the police to disperse anti-social groups or to close anti-social premises (e.g. drug and drinking dens; and the introduction of Anti-Social Behaviour Orders (ASBOs) for those aged 16 and under⁵.

³ Antisocial Behaviour etc. (Scotland) Act 2004. www.legislation.gov.uk/asp/2004/8/contents

⁴ Scottish Executive (2005) Regulation of Private Landlords under the Antisocial Behaviour etc. (Scotland) Act 2004, p1. www.scotland.gov.uk/Publications/2005/07/08172434/24376

⁵ Scottish Executive (2004) Guide to the Antisocial Behaviour etc. (Scotland) Act 2004. www.scotland.gov.uk/Publications/2004/10/20146/45685

Widespread mandatory landlord registration across Scotland was not part of the original Bill. Rather the Bill proposed that local authorities be given ‘selective licensing’ powers whereby local authorities could designate (after consultation) specific areas for registration where there had been persistent problems of anti-social behaviour associated with private rented housing⁶. The shift towards wholesale mandatory registration for all private landlords (with certain exemptions) was introduced by way of a series of amendments by Cathie Craigie MSP at Stage 2 of the Bill. A research paper by the Scottish Parliament Research and Information Centre provides an insight into the thinking behind those amendments,

“Cathie Craigie intended that her amendments would give effect to one of the recommendations in the Communities Committee’s Stage 1 report, namely that a mandatory licence scheme should be introduced that registers each private landlord and each of their properties.

Regarding the Bill as introduced, Cathie Craigie was concerned that the discretionary nature of the scheme proposed would lead to different approaches being taken by different local authorities. She believed that there should be national regulation of private landlords.

...she argued that the amendments would give local authorities a tool with which they could challenge landlords who ignore or exploit ASB.

....Cathie Craigie was keen to stress that it was not her intention to propose an-all encompassing scheme that included property conditions and tenancy management. She believed that such measures would be best left to a future private housing bill”.⁷

Whilst there appeared to be general sympathy for what the amendments were attempting to achieve, debate within the Committee centred on the issue of whether or not it was appropriate to pass such a substantive measure at Stage 2 without consultation or whether the ASB Bill was the most appropriate vehicle for the registration scheme. Nevertheless, the amendments were passed by a majority of the Committee and the Bill received Royal Assent on 26 July 2004⁸.

The Development of the Scheme

It took just under two years from the time in which the legislation was enacted (July 2004) until the landlord registration scheme became operational (April 2006).

Similar to the provisions contained within the Housing (Amendment) (No2) Bill, detailed information on the scheme is not contained within the Bill itself but rather is contained

⁶ Antisocial Behaviour etc. (Scotland) Bill. Policy Memorandum, p21.

⁷ SPICe (2004) Antisocial Behaviour etc. (Scotland) Bill. Stage 2 amendments – Registration of Private Landlords, pp.7-8.
www.scottish.parliament.uk/business/research/briefings-04/sb04-44.pdf

⁸ Ibid, pp.10.14.

within regulations and guidance. Following the passing of the Bill, the Scottish Executive set up a Working Group to consider the detail of the scheme. A consultation outlining proposals for regulation and guidance was issued in July 2005 followed by consideration of the regulations by the Scottish Parliament Communities Committee and finally the issuing of guidance to local authorities in 2006 (updated in 2009)⁹.

Ministers have the following regulatory powers under the 2004 Act in relation to landlord registration¹⁰:

Power to -

- prescribe information that must be included in an application for registration;
- specify fee levels and how they are determined;
- modify exemptions for particular categories of dwelling;
- make regulations requiring local authorities to provide advice and assistance to landlords and tenants; and
- specify that the tenant is not required to repay any rent due for the period of a rent penalty notice.

The statutory instruments listed below were made in exercise of these powers.

- The Private Landlord Registration (Advice and Assistance) (Scotland) Regulations 2005, SSI/2005/557 - the '*Advice and Assistance*' regulations
- The Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005, SSI/2005/558. Updated by: The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2006, SSI/2006/28 - the '*Fees*' regulations.
- The Private Landlord Registration (Appeals against Decisions as to Rent Payable) (Scotland) Regulations 2005, SSI/2005/559
- The Private Landlord Registration (Modification) (Scotland) Order 2005, SSI/2005/650 - the '*Exemptions*' regulations.

Detailed [guidance](#) also has been issued to local authorities administering the scheme, including guidance on the use of sanctions and appeals¹¹.

Main Elements of the Scheme, Number of Registrations and Running Costs

The main elements of the scheme are as follows¹²:

⁹ SPICe (2006) Private Landlord Registration, p.3. www.scottish.parliament.uk/business/research/briefings-06/SB06-39.pdf

¹⁰ Scottish Government (2010) Registration of Private Landlords: Consultation on Amendment of Secondary Legislation under Antisocial Behaviour etc. (Scotland) Act 2004. www.scotland.gov.uk/Publications/2008/07/17092436/2

¹¹ Scottish Government (2009) General Guidance to Local Authorities to administer and manage the Private Landlord Registration Scheme. www.scotland.gov.uk/Publications/2009/10/08102524/0

- Landlords, their agents and any properties he or she lets must be listed on a **public register**;
- The landlord must be judged a '**fit and proper person**' to let houses. In making this judgement the local authority will consider any previous convictions, the landlord's track record on tackling anti-social behaviour and any other material believed to be relevant;
- If a person fails the 'fit and proper person test', their application for registration will be refused. Information which comes to light after a person has been registered can lead to them being removed from the register. However, there is a right of appeal against such decisions;
- Once registered, the landlord has a duty to make sure that the information they have provided is kept up to date; and
- A landlord who lets a property without being registered will be committing a criminal offence, the penalty for which will be a **fine of up to £5,000**. The local authority can also serve a **Rent Penalty Notice** that the tenant must not pay any rent until certain issues are resolved. Any housing benefit would stop as no rent would be paid. The landlord can appeal against the notice.

As of 31 March 2010 there were 155,272 landlord registrations approved and 213,188 properties approved. Around another 7,000 registrations and 9,900 properties were awaiting a decision¹³. It is not clear how many landlords or properties in the sector remain registered, however, estimates suggest that the scheme has achieved coverage of approximately 83% of private rented sector housing in Scotland¹⁴. In terms of enforcement, there have been no prosecutions for failure to register under the scheme, however, as of 31 March local authorities have applied over 1,300 late application fees linked to registration and issued over 1,200 Rental Penalty Notices to unregistered landlords¹⁵.

The Scottish Government has supported local authorities with the costs of implementing the scheme through the provision of grant funding. A total of £5.2m grant funding was made available to local authorities between February 2006 and March 2008 to support start-up costs. Under the Concordat arrangements between Local Authorities and the Scottish Government, baseline grant funding of £1.98m per annum in 2007-08 for landlord registration has been rolled up in the overall local government settlement for the period 2008-11. Ongoing funding arrangements for registration activity will be determined locally, in line with the Concordat. It is the Scottish Government's intention that the scheme moves to full cost recovery over time and that

¹² Scottish Executive (2004) Guide to the Antisocial Behaviour etc. (Scotland) Act 2004.

www.scotland.gov.uk/Publications/2004/10/20146/45685

¹³ Scottish Government (2010) Briefing for Local Government and Communities Committee. 20 April 2010. Unpublished. As cited in SPICe (2010) Private Rented Housing (Scotland) Bill.

¹⁴ Scottish Government (2009) Review of the Private Rented Sector: Volume 1: Key Findings and policy Implications, p64.

www.scotland.gov.uk/Resource/Doc/264996/0079349.pdf

¹⁵ Scottish Parliament Question S3W -33859, Mr John Lamont question to the Scottish Government.

local authority fee income supports the ongoing administration of the scheme. This is in line with other licensing regimes, in particular, HMO licensing¹⁶.

Implementing the Scheme – Findings from the Good Practice Review

In April 2009, Shelter Scotland published a report entitled '[Landlord Registration in Scotland: three years on](#)' which called for an urgent review into a registration scheme which it believed was failing to 'weed out' a minority of bad landlords and thereby failing to protect tenants from poor practice. The report called for a national publicity drive as research revealed that there was a lack of awareness amongst landlords and tenants about their rights and responsibilities¹⁷.

The Scottish Government has taken a number of steps in attempt to address many of the perceived deficiencies of the registration scheme. Firstly, in 2007 the Scottish Ministers appointed consultants to conduct a '[Good Practice Review](#)' of the implementation of landlord. The subsequent report, published in 2008, made a number of recommendations aimed at improving the management and enforcement of various aspects of the landlord registration scheme. In short, the review highlighted¹⁸:

- That each local authority had taken a **very different approach** to the management, implementation and enforcement of the scheme.
- That the scale of the **administrative function** associated with registration was **significantly underestimated** by most local authorities and that local authorities in general needed to assess and put into place both the resources and skills necessary.
- That there needed to be greater emphasis on linking landlord registration to **wider policies** (e.g. regional housing strategies; private sector housing strategies, homelessness). The consultants felt that in order to implement and enforce landlord registration it was essential that there was **greater collaborative working** between the following council functions – housing; homelessness; environmental health; building control; housing benefit; legal; anti-social behaviour teams; tenant and residents associations.
- That the **online application process** for landlord registration was not as straightforward as first envisaged, the report recommended that improvements to the user-friendliness of the paper and online applications forms was necessary.
- That a common problem was landlords **failing to submit key contact data** (such as telephone numbers or email addresses) and that this made it very difficult for local authorities to contact landlords if problems arose.

¹⁶ Scottish Government (2010) Registration of Private Landlords: Consultation on Amendment of Secondary Legislation under Antisocial Behaviour etc. (Scotland) Act 2004. www.scotland.gov.uk/Publications/2008/07/17092436/2

¹⁷ Shelter (2009) Landlord Registration in Scotland – three years on. http://scotland.shelter.org.uk/data/assets/pdf_file/0005/189734/Landlord_registration_3_years_on.pdf

¹⁸ Arneil Johnston (2008) Good Practice Review of the Implementation of Landlord Registration. www.scotland.gov.uk/Publications/2008/07/17153219/2

- That there was **no clear and consistent approach** to applying the **‘fit and proper person test** across local authorities. Landlords and agents with a number of properties across Scotland reported being subjected to different sets of checks and criteria for the ‘fit and proper’ assessment depending upon the local authority area.
- Relatively few local authorities had robust processes and procedures in place to **enforce landlord registration**. Generally, local authorities felt that pursuing court action and sanctions should only be used as a last resort. However, there was also evidence of good practice amongst councils with some issuing Rent Penalty Notices to landlords that have failed to pay for registration and cross matching the landlord register with Council Tax records to identify landlords that had failed to register.

A number of significant developments have occurred since the publication of the Good Practice Review of the landlord registration scheme. Firstly, the Scottish Government has made a commitment to conduct a full evaluation of the private landlord registration scheme and this is to be completed by March 2011. This will, amongst other things assess the impact of landlord registration on standards of service provided by landlords in the private rented sector¹⁹.

The second significant development is the recent introduction of the [Private Rented Housing \(Scotland\) Bill](#) (on 4 October 2010)²⁰. This piece of legislation not only proposes to introduce a number of fundamental changes to the registration including a tightening up of the fit and proper person test; increasing the maximum penalty; and introducing disqualification orders for unregistered landlords. In addition to this, the Bill also aims to address a number of other private rented sector issues including changes to the Houses in Multiple Occupation (HMO) licensing regime and new measures to deal with overcrowding in rented accommodation. This next section of this paper provides a brief overview of the proposals contained within the Bill.

2 The Private Rented Housing (Scotland) Bill - Landlord Registration

The purpose of the Private Rented Housing (Scotland) Bill is to “support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, but strengthening the regulation of the private rented sector”²¹. The Bill contains the following new provisions in respect to landlord registration²²:

¹⁹ Policy Memorandum, Private Rented Housing (Scotland) Bill www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-pm.pdf

²⁰ Private Rented Housing (Scotland) Bill - www.scottish.parliament.uk/s3/bills/54-prHousing/index.htm

²¹ Private Rented Housing (Scotland) Bill – Explanatory Notes. www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-en.pdf

²² Information in this section taken from Private Rented Housing (Scotland) Bill Explanatory Notes and Policy Memorandum.

Expanding the criteria of the ‘fit and proper person’ test

In order to improve protection for private tenants the Bill expands the list of offences to be declared by an applicant for landlord registration to include **firearms and sexual offences**. Under current legislation, applicants must declare spent or unspent convictions of offences involving fraud or dishonesty, violence, drugs, discrimination or contravention of housing law, and court or tribunal judgements under discrimination legislation. The Bill also specifies examples of information that a local authority may taken into account when making a decision about whether a landlord is fit and proper, e.g.:

- Previous convictions under legislation relating to landlord registration or HMO licensing;
- Breaches of the Repairing Standard²³;
- Complaints and information from tenants, neighbours and others in relation to financial obligations (e.g. non-payment of share of communal repairs);
- Anti-social behaviour by the landlord, the tenant, or at the property;
- Concerns and other information which come to a local authority’s attention through its other functions (e.g. when investigating noise nuisance or carrying out environmental health inspections); and
- Failure to produce a criminal record certificate where the local authority requires it.

There is reportedly a significant number of landlords in Scotland whose applications or status under the landlord registration system are ‘under review’ because of local authority’s concerns. However, some local authorities have stated that there is a reluctance to use their powers to refuse applications because of difficulties gathering evidence to ensure that robust cases against landlords can be developed. Therefore, the aim of these new measures is make it easier for local authorities to gather evidence by providing new powers to require information²⁴.

Imposing higher penalties for unregistered landlords

Sections 7 and 8 of the Bill give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. The current maximum fine for failing to register as a landlord is Level 5 or £5,000. Local authorities are concerned that the sanctions are not sufficiently high, as a result the Bill contains provisions to **increase the maximum to £50,000** (bringing landlord registration into line with HMO licensing). Additionally, the Bill contains provisions to **disqualify a person** from operating as a landlord in any local authority in Scotland **for up to five years**. The Bill’s Policy Memorandum in this regard states:

²³ The Repairing Standard applies to the vast majority of private tenancies in Scotland. It covers the standards expected in various aspects of the property including the structure and exterior, water, gas, electricity and heating supply, fixtures and fittings and fire safety.

²⁴ Private Rented Housing (Scotland) Bill. Policy Memorandum. www.scottish.parliament.uk/s3/54-prHousing/b54s3-introd-pm.pdf

“Ministers consider that a maximum fine of this size is justified because some unregistered landlords, with large numbers of properties and tenants, are making large amounts of money from their illegal activities. Furthermore, unregistered landlords’ properties are more likely to be substandard and therefore a threat to public health. In addition, unregistered landlords are more likely to have tenants who indulge in anti-social behaviour and may themselves be involved in other criminal activity, causing serious damage to their communities and therefore constituting a serious public nuisance.”

Landlord registration numbers and a duty to include certain information in advertisements

Landlord registration numbers are currently provided for administrative reasons when landlords are registered but they do not have any legal status. The Bill puts landlord registration numbers on a statutory footing and local authorities must provide landlords with a registration number when their registration has been completed. In addition to this, to prevent unregistered landlords from advertising their properties the Bill requires that all adverts for properties to let must include the landlord registration number (or to include the term ‘landlord registration pending’ in the case of a landlord whose application has yet to be determined. There will be an exemption for reusable ‘To Let’ boards due to the associated costs for landlords.

Failure to comply may result in removal from the register (if the landlord is registered) or refusal to register (for applicants). The purpose of this measure is to make it easier for local authorities to identify unregistered landlords and to progress enforcement activity as appropriate. However, local authorities can offer the landlord the opportunity to rectify the situation before applying the sanction.

Registration of, and information to be provided by, letting agents

To assist local authorities in identifying unregistered landlords, the Bill contains a power for local authorities to require a letting agent to provide **information in relation to any house in the areas in which the agent acts**, including the address of the house and the name and address of the owner.

In addition to this, a significant proportion of landlords entrust the management of their properties to agents, however, there is no requirement for agents to register in their own right (although they may do so voluntarily). Under current legislation, a landlord must include any agent in an application for registration and a fee is paid for this. However, where a landlord has been registered and then subsequently adds an agent, there is currently no power for the local authority to charge a fee for this addition. If the landlord nominates an unregistered agent, that agent will have to be assessed as fit

and proper which involves additional expense for the local authority. The Bill contains provisions to **allow a local authority to charge a fee** in these circumstances.

Expanding public access to information on the Register

Information on registered private landlords and their properties is held on a register maintained by the local authority for the area in which each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants, the Bill contains provisions to permit **two additional categories of information** to be made available to the public, i.e.:

- To make available information on whether a registration application has been made but is not yet determined. This is thought to be useful for landlords to demonstrate that they are operating legally despite not yet being registered.
- Whether a person was refused entry to, or removed from, the register as being not fit and property to act as a landlord or because the person's agent was found to be not fit and proper. This information will alert tenants and members of the public where someone has been found not to be fit and proper to be a landlord yet is attempting to let a property.

Developing Statutory Guidance

The Bill's Policy Memorandum states that the management of non-compliance with landlord registration varies immensely across local authority areas and that local authorities have varying commitment to the registration scheme. The Bill gives Ministers a general power to issue **statutory guidance** which local authorities **must have regard to**. This could include guidance in relation to a local authority taking proactive enforcement action including steps to tackle non-registration.

3 Private Rented Housing (Scotland) Bill – HMOs; Overcrowding and Tenancy Terms

In addition to the provisions on landlord registration, the Bill also proposes to introduce a number of other changes to the regulation of the private rented sector in Scotland which the Committee may be interested in:

Houses in Multiple Occupation (HMOs)

Penalties for certain HMO offences

According to the Bill's Policy Memorandum, local authorities have repeatedly raised concerns about difficulties in enforcing HMO legislation. Although cases are successful brought before the sheriff, the fines imposed are considered to be small and often less

than a month's rent or the licence fee that has been evaded. Within the current regime that maximum fine for the offences of owning an unlicensed HMO or acting as an agent in relation to an unlicensed HMO will be £20,000 (to come into force in August 2011). The Bill contains provisions to increase the **penalty for these offences to £50,000**.

Additional categories for multiple occupancy

The Bill provides for an order making power allowing Minister to designate specified additional categories of multi-occupancy accommodation as licensable HMOs (e.g. portacabins and other premises used by seasonal workers). The provision is the result of concern expressed by some local authorities that some landlords are avoiding HMO licensing because (or because they are claiming) that occupants are living in the premises for only a short time and have a principal residence elsewhere (there are particular concerns about the living conditions of migrant workers. This power may only be used after consultation with stakeholders.

Overcrowding in the Private Rented Sector

The Scottish Government acknowledges that overcrowding is an issue in some parts of the private rented sector in Scotland and is a particular problem for migrant workers. This is not always due to the landlord but as a result of tenant bringing in additional occupants to save money. The HMO licensing system in Scotland does also local authorities to address the issue of overcrowding by specifying the maximum number of occupants permitted in a licensed HMO.

The Bill contains provisions to give local authorities the power to serve an **Overcrowding Statutory Notice** on the landlord of a house which is overcrowded. The notice will set out the steps to be taken by the landlord to rectify the situation, the period within which the steps must be taken, and any other conditions considered appropriate. Failure to comply with a notice will be an offence subject to a fine not exceeding £1,000. The Bill also makes provisions to allow local authorities to provide advice and assistance to the occupants of a house in which an Overcrowding Statutory Notice has been served.

Introduction of a Tenants Information Pack

A review of the Private Rented Sector in Scotland found that there was a low awareness of the law governing the private rented sector. To improve tenant awareness, the Bill places a statutory duty on a landlord to provide specified documents and information (in the form of a **tenant information pack**) to a tenant at the beginning of an assured tenancy. Failure to do so will be an offence with a maximum fine of £500.

Ministers are given the power to make an order to prescribe the information and documents to be included in the pack. This may include documents containing

information about the tenancy (e.g. a tenancy agreement); about the house (e.g. permitted level of occupancy); about the landlord (e.g. landlord registration number; and about the rights and responsibilities of tenants, landlords and agents).

4 Rejection of a Mandatory Landlord Registration in England

Recommendations for a 'light touch' mandatory licensing scheme for landlords in the private rented sector were contained within the independent [Review of Private Rented Sector Housing](#)²⁵ published in October 2008. The review, known as the 'Rugg Review', was conducted by the Centre for Housing Policy at the University of York at the request of the Department of Communities and Local Government²⁶. On 13 May 2009 the then Housing Minister, Margaret Beckett announced that the Department for Communities and Local Government (DCLG) would consult upon proposals to introduce a 'light touch' national register for private landlords with a view to increasing protection for vulnerable tenants and good landlords²⁷.

It was envisaged that the national register would be run by an independent organisation and landlords will be required to register for a nominal fee to cover administration costs. It was also anticipated that the register will be web-based and would require minimal information such as the name of the landlord, their address and addresses of the properties being let.

However, the decision for a mandatory landlord registration scheme was **overturned by the new Coalition Housing Minister**, Grant Shapps. On the 10 June 2010, the Department for Communities and Local Government announced:

"Housing Minister Grant Shapps has today promised England's one million landlords that the Government has no plans to introduce new regulations on the private rented sector.

New regulations were proposed by the previous administration in response to the Rugg Review...but have been judged by the new coalition to introduce too much additional red tape. These included a National Register of Landlords, regulation of letting and managing agents, and compulsory written tenancy agreements.....

He said: "With the vast majority of England's three million private tenants happy with the service they receive, I am satisfied that the current system strikes the right balance between rights and responsibilities of tenants and landlords.

²⁵ Rugg, J. & Rhodes, D. (2008) The Private Rented Sector: its contribution and potential. www.york.ac.uk/inst/chp/publications/PDF/prsreviewweb.pdf

²⁶ The Department of Communities and Local Government is responsible for setting Government policy on housing in England.

²⁷ Department of Communities and Local Government Press Release. 'Real Help for Tenants – Margaret Beckett'. 13 May 2009. www.communities.gov.uk/news/corporate/1230528

So today I make a promise to good landlords across the country; the Government has no plans to create any burdensome red tape and bureaucracy, so you are able to continue providing a service to your tenants.

For the bad landlords, I am putting councils on alert to use the range of powers already at their disposal to make sure tenants are properly protected”²⁸

5 Proposed Amendments to the Regulation Scheme in the Republic of Ireland

On 8 November 2010, the Minister for Housing and Local Services announced details of a legislative initiative to address regulatory non-compliance by landlords. In particular he emphasised his intention to shift the registration focus from tenancies to dwellings. Under the current system there requirement under the [Residential Tenancies Act 2004](#) on landlords to register the details of their *tenancies* (as opposed to registering the landlord) within one month of their commencement and the register is maintained by a body known as the [Private Residential Tenancies Board](#) (PRTB).

The Minister expressed particular concern in ensuring that rent supplement payments do not ultimately end up with landlords who are non-compliant with the registration scheme:

“I believe that by registering dwellings with the PRTB we will go a long way to ensuring that only landlords who are in compliance with the regulations will receive rent supplement payments from the State. In addition, I believe that this could help yield significant administrative efficiencies for both the PRTB and for landlords, and will provide a platform from which compliance with the requirements of the RTA and with wider regulations will be enhanced”²⁹

An article in the Irish Independent in September 2009 had previously criticised the payment of rent supplements to tenants whose tenancy arrangements had not been registered with the Private Residential Tenancies Board. The article highlighted that the Department for Social and Family Affairs continued to pay rent supplements to tenants even if there had been a failure to register the tenancy³⁰.

²⁸ Department for Communities and Local Government. ‘Shapps promises ‘no more red tape’ for private landlords. 10 June 2010.

²⁹ Department of the Environment, Heritage and Local Government. ‘Minister for Housing and Local Services announces plan to address Regulatory Non-Compliance by Landlords. 8 November 2010.

³⁰ Irish Independent. ‘Unregistered landlords paid rent supplement: Department by-passes its own watchdog and subsidises rentals not on the books of the PRTB, 13 September 2009. www.independent.ie/national-news/unregistered-landlords-paid-rent-supplement-1885321.html

It has been suggested that a system whereby dwellings are registered with the PRTB would make it easier to ensure that only RTA-compliant landlords would receive rent supplement monies. Rent supplement-assisted tenants could see proof of RTA-compliance at the time of seeking accommodation as only such compliant dwellings would allow them to draw down rent supplement. It is also suggested that in the longer term, registration of dwellings could act as a platform onto which other 'good landlord' aspects could be bolted such as compliance with the Building Energy Rating system and inspections of minimum standards for houses in the private rented sector³¹.

Suggested Further Reading:

Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 -

www.legislation.gov.uk/asp/2004/8/contents

Scottish Landlord Registration website -

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³¹ Department of the Environment, Heritage and Local Government. 'Minister for Housing and Local Services announces plan to address Regulatory Non-Compliance by Landlords. 8 November 2010.