

BELFAST CITY COUNCIL'S RESPONSE TO THE DEPARTMENT FOR SOCIAL DEVELOPMENT'S CONSULTATION PAPER:

**BUILDING SOUND FOUNDATIONS:
A Strategy for the Private Rented Sector**

Introduction

Belfast City Council welcomes the Department's initiative in bringing forward this Consultation Paper on a strategy for the private rented sector. The Council's historical and ongoing role in the regulation of standards in the private rented sector, along with its daily engagement in this sector through its statutory duties under the Public Health Acts, provides it with a unique depth of knowledge and experience of this sector. In addition, the recently enacted Private Tenancies (NI) Order 2006 has provided Councils with enhanced powers for dealing with private rented sector problems and further builds on that experience. Involvement with the private rented sector together with the proposed transfer of certain housing functions from the Housing Executive to district councils, in particular houses in multiple occupation (HMOs), clearly places Councils at the heart of engagement and regulatory control of this sector of the housing market.

The decisions taken by the Department therefore, for the development of a long term strategy for the private rented sector, will have a significant impact on the existing and evolving regulatory and advisory roles of the Council in relation to its statutory housing functions.

Background

This consultation is very timely in light of the significant changes that have taken place in recent years. The private rented sector grew rapidly during the economic boom. This was due primarily to the disproportionate and rapidly escalating price rises over the last 15 years and the growth in the buy-to-let market. Houses were often built and used as speculative assets rather than being built as homes for people to live in. Some houses simply remained unoccupied but many of these speculative purchases resulted in owners renting out their properties pending further price rises. The economic downturn however has left many of them with unwanted properties which they can't or won't sell but which they continue to rent.

In addition, owner occupation has increased significantly over the last 20 to 30 years with a commensurate increase in people inheriting a home from their parents. The stall on house sales, due to the economic downturn, means that many of these "accidental landlords" are renting out inherited properties pending an anticipated upturn in prices.

In light of the changing dynamic of the housing market, and the private rented sector in particular, any housing strategy must take account of a range of issues if it is to be fit for purpose. Whilst the sector straddles the full spectrum of socio-economic classes it is important to design private rented sector strategy to take account of the most vulnerable people who are likely to be accommodated in rented housing. The progressive reduction in social housing will result in more people from the poorest extremes of society requiring access to the private rented sector bringing with them all the inequalities that beset the most disadvantaged in society.

The Department's vision, as set out in the consultation document, of "...a professional, well managed, service driven sector, strongly grounded in high standards and good practice...", must acknowledge that there are many landlords or speculators, now burdened with properties that they don't want but can't sell, or "accidental landlords" who simply want an income from an inherited property before selling. These people will not easily fit with the Department's objective of developing a healthy private rented sector capable of responding more effectively to housing need. Regulatory control of this sector therefore must be capable of targeting those landlords who are not prepared to assume their responsibilities in managing their properties and the Council sees the developing regulatory role of district councils as key to fulfilling this objective.

General Comments

The Council has provided individual responses at the end of this report to the specific questions contained in the consultation paper, however, in light of the Council's existing and developing role in the private sector it is important that its views are not restricted and so it has taken the opportunity, in the first instance, to provide an objective overview and address the issues from the perspective of the Council's own experience of the private rented sector.

The Department's stated aim is to offer greater choice in meeting housing need, particularly for those people who traditionally look to the social sector for housing. The social sector, by definition, provides good housing, professional management and security of tenure, however, at present there is no specific incentive for private sector landlords to emulate this. Indeed, many private sector landlords fall well short of these standards. Bearing in mind that social housing often meets the housing needs of the poorest in society the Council is concerned that a move away from this to private renting would result in a lowering of standards for those who are most in need. Any housing policy that increases the number of people renting privately by reducing the availability of social housing must ensure that robust regulatory controls are in place to protect the most vulnerable.

It is apparent that previous housing policy failed to prevent problems around affordability or the relentless development of dwellings purely as speculative enterprises rather than as homes for people to live in. Consequently, whilst the Department's key principles appear to be sound, they need to be capable of underpinning a strategy that is sustainable through the economic cycle.

The problem of insufficient data, highlighted in the document, should prompt empirical research by the Housing Executive to provide the necessary evidence base that is required to inform housing policy. However, it is important to appreciate that district councils, and Belfast City Council in particular, have many years experience in regulating the private rented sector and have developed a corporate collective knowledge of the issues associated with privately rented houses. The Council also considers it appropriate that the Department consulted with the Chief Environmental Health Officers Group, through the Public Health and Regulatory Services Group, who represent Environmental Health staff from across the province including Belfast City Council.

Although reliable data sources are not always readily available, important information is available from the Housing Executive's House Condition Surveys (HCS). The 2006 HCS confirmed that there were 95,000 privately rented dwellings in the province (13.4% of the total housing stock). The number had doubled in 5 years and the 2009 HCS is likely to confirm that this number has increased yet again. The growth in the Private Rented Sector is likely to continue as more and more people experience

affordability problems along with a decrease in available social housing. The Department for Social Development Accounts (2007-2008) records £188m per annum in Housing Benefit paid to those living in the private rented sector, providing further evidence that this sector is accommodating some of the poorest and most disadvantaged people in society. Whilst there is no centrally available data to track changes in the sector, such as the number and types of tenancies, there is a wealth of information in the Council's recording systems as well as the subjective information from Environmental Health staff who engage on a daily basis with this sector of the housing market.

Private Tenancies (NI) Order 2006

The Private Tenancies (NI) Order 2006 (PTO) provided district councils with added powers for dealing with properties in the private rented sector and, in particular, for dealing with levels of unfitness through rent control. The Consultation document confirms the effectiveness of the PTO by reporting that three quarters of all unfit properties were made fit following rent control (paragraph 4.7). The suggestion in the document however that, where there is a high concentration of private rented property, the level of activity in relation to fitness is less than expected, is incorrect in respect of Belfast, as is clearly illustrated in Map 1, (p15). The low levels of unfitness generally however inevitably limit the effectiveness of the PTO in further driving up standards. In order to provide district councils with the tools to ensure that housing for low income families in the private rented sector is comparable with social housing there needs to be a review of existing statutory standards and their enforcement regimes.

Information

The availability of Guides for Landlords and Tenants on the Housing Executive's website is to be welcomed. This information however should also be hosted on District Councils' websites. The involvement of District Councils in the Regulation of the Private Sector would make them an obvious source for this type of information.

Enforcement

The document suggests that there is a lack of focused and consistent enforcement action across the Council areas. Whilst this may be true, as a generality, Belfast City Council would highlight its commitment to enforcement which is clearly demonstrated in Table 2 (p 19) of the document. It is also important to stress the additional work carried out by Belfast City Council particularly around investigations of harassment and illegal eviction. The development of a comprehensive register of private sector tenancies would however greatly facilitate the whole process of regulation and enforcement. Whilst the Department has expressed reservations regarding the extent of public investment required to establish and maintain a register it would be the view of the Council that such a register should, if possible, be delivered on a cost recovery basis. The need for robust enforcement must go hand in hand with a complete register of tenancies and landlords. Also, district councils require information and intelligence in order to target priority cases and discharge their regulatory functions consistently.

Tenancy management

The nature of occupancy in the private rented sector, particularly in the poorer end of the market, reflects a sometimes transient and often vulnerable section of society. These people are likely to have limited information about their rights, particularly relating to security of tenure, and they are therefore less likely to report their problems to a third party such as the Housing Rights Service (HRS). It is also unlikely that they will be aware of the availability of advice services such as HRS. The use of statistics therefore, regarding the number of enquiries from tenants to the

HRS as a quasi measure of the effectiveness of landlord management, may be misleading if not qualified and supplemented. Tenants may also be very reluctant to complain to the HRS for fear of reprisals such as being evicted or harassed. The Department's comment that "...a perception of bad management continues to exist" would also be the view of City Council staff, such as Environmental Health Officers, who operate in this area of the private rented sector on a daily basis.

Concerns expressed in the consultation document regarding consistency of enforcement across District Councils may be premature if not inappropriate. The move from 26 to 11 District Councils will facilitate more consistency in enforcement following the implementation of RPA. Belfast City Council would wish to stress however that its staff have always worked to ensure consistency across the city. There are routine and regular technical meetings and staff also represent the Council on the regional Chief Environmental Health Officers subgroups on Housing matters generally and on the PTO specifically.

Registration

Mandatory registration for landlords will have the effect of focusing attention on their responsibilities and will also aid enforcement for district councils. Since some landlords are simply speculators awaiting the sale of their property, mandatory registration, including a fee and contact details, will help encourage them to apply an appropriate standard of management pending the sale of their property. Good landlords should have no difficulty with registration. It should also be stressed that registration schemes already exist for HMO's. The fact that income from HMO registration fees does not cover the operating costs is not a reason to preclude registration from the rest of the private rented sector. Registration schemes, which go hand in hand with robust enforcement, should be designed to ensure that they generate sufficient revenue to significantly offset administration costs.

The Council would question the suggestion in the document that the mandatory registration of landlords would put "...an unnecessary and unfair focus on those landlords who are already complying," (paragraph 5.16, p. 27). There is an acknowledgement by the Department that enforcement procedures need to be improved and the Council would suggest that the mandatory registration of landlords would provide the necessary foundation. Mandatory registration would target all landlords and only those who are operating outside the statutory standards for private renting would have anything to fear.

The Department suggests that more targeted actions and wholesale registration are mutually exclusive (paragraph 5.17, p. 27). This is not the case. Wholesale registration would facilitate overarching regulatory control but would not reduce the need for specific targeted actions where unscrupulous landlords flout the law and place vulnerable people in danger or deny them their housing rights.

It would be the view of the Council that the Department's proposal for a voluntary landlord accreditation scheme is unlikely to have any impact in respect of poor landlords. Those who operate outside the law will see little benefit in signing up to a voluntary code. The suggestion that a voluntary code would provide a list of benefits to landlords such as access to legal advice, disputes advice, etc. could also form part of a mandatory scheme.

Security of Tenure

Speculative and "accidental" landlords often want short term leases for their tenants. The economic downturn however is likely to increase the number of people looking to rent long term as they can't afford to buy. These two situations are mutually

exclusive and would therefore tend to reduce security of tenure. This is particularly concerning when many of the people now looking to rent are those who have lost their homes and would require greater security of tenure than some of the more traditional transient groups.

The suggestion that people in the Private Rented Sector stay for shorter rental periods than those in the Social Sector fails to acknowledge that one of the Department's aims for the Private Rented Sector strategy is to offer the Private Sector as an option for those who traditionally look to the Social Sector for housing.

The Department may also wish to consider that the reason private tenancies come to an end in Northern Ireland earlier than would otherwise be expected may be more associated with the number of poor landlords than anything else. Stronger regulation is therefore more likely to result in improved management standards and tenants are more likely to remain for longer.

DSD Policy with regard to the private rented sector should reflect the precautionary principle. As there are no data on why tenancies often terminate before their end date it should not be presumed that it is unrelated to landlord issues. The suggestion by landlords that increasing statutory security is likely to be detrimental to the market and may restrict the scope to secure mortgages must be considered in light of the significant part that the ease of access to mortgages is reported to have played in the recent financial crisis. The Department is urged therefore to consider the wider economic impacts in finalising its strategy.

The suggestion that the Notice to Quit period should reflect the length of tenancy appears to provide a fairer approach than the current "one size fits all" policy. The Council would be supportive of greater flexibility in the Notice to Quit period.

Standard of Fitness

The current fitness standard no longer provides a suitable measure of housing conditions. The level of unfitness in the private rented sector is around 2.7% (2006 HCS) which suggests that a new approach with a better measure of suitability for occupation is required. The Council believes that the Department should be looking to standardise the assessment of housing conditions with the rest of the UK where a rating system, the Housing Health and Safety Rating System (HHSRS), applies. Also, the Decent Homes Standard, which is ultimately the target standard for all housing, suggests that this should be given a legal, and enforceable, standing.

Belfast City Council's responses to specific questions posed within the text of the consultation document

1. Do these proposals address the key points adequately?

The Department's proposals, although welcome, do not adequately address the general lack of knowledge and awareness of the legislation among tenants and landlords and the problems of enforcement experienced by district council staff.

If landlords were required to register this would aid the dissemination of information and would also assist District Councils to discharge their enforcement responsibilities. Nor do the proposals address the issue of resources for Councils in delivering compliance under the Private Tenancies (NI) Order 2006 (PTO). District Councils were given responsibility for enforcing the PTO but, other than being able to charge for certain notices and certificates, no additional resource was made available for the remaining statutory functions, despite the issue of new burden funding being raised with the Department before the legislation was implemented. The lack of proactive enforcement, referred to by the Department in relation to issues such as Rent Books should therefore serve to underline the need to provide appropriate additional resources.

2. What further action is required?

The lack of documented evidence of action taken in respect to rent books and tenancy statements may also be partly attributable to the Department's method of collecting information. Instances where Councils resolve issues informally without resorting to legal action are not currently being captured by the Department with the quarterly return system. Ways of improving this should be examined.

The document also refers to the fines and discharges, when enforcement action is taken, as not providing effective incentives for landlords to comply with the law. Whilst this may imply a need for awareness raising it is important to appreciate that Councils may decide not to seek a prosecution if it is felt that proceedings may not be in the public interest.

The issue of Housing Benefit information must also be addressed as a priority in light of the fact that the Housing Benefit Regulations were not amended to take into consideration the introduction of the Order and the requirement to have a Certificate of Fitness. This oversight has meant that the old system, which identified new tenancies that required the Rent (NI) Order 1978 Regulated Rent Certificate, has disappeared whilst leaving District Councils with no information to detect tenancies which require a Fitness Inspection. This could be very significant as at least 50% of tenants in the private rented sector are claiming Housing Benefit. The introduction of the 2006 Order resulted in District Councils taking minimal requests from landlords receiving Housing Benefit with the distinct possibility that many are receiving full Housing Benefit for a property which is unfit but not subject to rent control.

3. Should a register of tenancies be developed as the principal means to address the needs of the private rented sector?

A register of tenancies would assist District Councils in relation to their enforcement activities and a compulsory register would be the preferred option. If the register is voluntary it will be of little benefit as Councils already hold information on most, if not all, those landlords who comply with the current legislative requirements. Councils require information on tenancies whose landlords currently avoid the Certificate of Fitness process and whose tenants are either ignorant of the law or are too frightened to complain to their local council.

To be effective the register will require a common IT system for all District Councils to ensure clarity for landlords and uniformity for councils. Any scheme must be implemented in conjunction with a deposit/dispute resolution service (see Question 13).

4. With regards to the impact of the Private Tenancies Order are there any other issues apart from those in Annex 2 which the Department needs to consider (i.e. other discrepancies / gaps / anomalies?)

There appears to be widespread ignorance of the role of District Councils in relation to the enforcement of standards in the private rented sector. Whilst mandatory registration would improve the general awareness of the role of district councils the proposals to produce guides for tenants and landlords should also reflect this and should clearly profile the regulatory and enforcement functions of District Councils. The proposals also mention the NIHE and the Department websites as sources of information but on examination there is minimal reference to District Councils as the enforcing authority. Indeed some pages direct users to Housing Rights NI or the NIHE District Office for advice regarding tenants' rights when renting privately e.g.: (http://www.nihe.gov.uk/index/yh-home/renting_privately/advice_for_tenants-2/tenants_rights.htm).

District Councils are continually working to ensure that the public are aware of councils' enforcement responsibilities however there is also a responsibility on other agencies to ensure that all their information reflects this. Another example is the NI Direct website which has a specific section on Private Renting and which advises tenants to contact Housing Rights or Citizens Advice if there is a dispute regarding repairs. (http://www.nidirect.gov.uk/index/property-and-housing/buying-selling-and-renting-a-home/private-renting/repairing-your-home-private_tenants.htm)

With regard to Annex 1 of the document it is impracticable to require District Councils to act as the enforcing authority in respect of the provisions of Article 50 of the Private Tenancies Order. Disputes in relation to the overpayment of rent did not form part of any discussions with District Council staff leading to the implementation of the Order. Tenants already have civil re-dress to reclaim monies and it is inappropriate and prohibitive for District Councils to get involved in financial disputes between tenant and landlord. The appropriate enforcement authority should be the DSD through the Rent Officer. Similarly, with regard to 1(2) of Schedule 2, the Rent Officer should take enforcement action with regard to landlords or tenants who refuse to give information when requested to by the Rent Assessment Committee.

5. Is voluntary accreditation of landlords the appropriate approach to promoting and supporting good landlord management?

Voluntary accreditation would not be the best approach to promote and support good landlord management. Indeed, the consultation document states that "... *the market is relatively unregulated and there is no centrally maintained source of data to track changes in the sector*" (paragraph 3.7). A voluntary accreditation system would clearly not address this.

6. What further action is needed to achieve this?

The current arrangements allow non-compliant landlords to by-pass the system by renting unfit property whilst avoiding rent control. The system only regulates compliant landlords as would a voluntary accreditation arrangement, so the impact on enforcement would be negligible. This conflicts with the assertion in the document (5.16) which mentions that current enforcement procedures require to be improved first. The document states that "...*mandatory registration would place an unnecessary and unfair focus on those landlords who are already complying with legislation and acting responsibly*". However, if compulsory registration was linked to the tangible benefits for landlords referred to in paragraph 5.20 then the focus would be neither unfair nor unnecessary. It must be noted that many businesses across NI are required by law to be licensed or registered with their local authority so why should landlords, who are responsible for the homes of so many (often the most vulnerable people in society), be excluded from this?

7. What further action is needed to promote greater tenant responsibility, and address persistent bad behaviour?

The current legislation does tend to favour the tenant who may be guilty of anti-social behaviour or criminal damage to property or who has built up excessive rent arrears. The landlord, on the other hand, may be required to undergo prolonged civil action to gain possession of his property. Evidence of anti-social behaviour should be reported to district councils (along with the PSNI) where it will be investigated and verified and the Department should consider introducing an expedited eviction process. For example, documented rent arrears at a certain level could provide the necessary evidence to justify re-possession of a property.

The provision for any new expedited eviction procedure however must be combined with tougher penalties for cases of unlawful eviction. Vacant possession of a property is currently worth substantially more to a landlord than any financial penalties so far imposed by the Courts for unlawfully evicting a tenant.

The current problems with antisocial behaviour in the Holyland area of the city have led to calls from various statutory agencies and residents for more effective powers to require landlords to ensure their tenants do not cause a nuisance. The Council would support this view.

8. Do these proposals provide an appropriate response to the issue of security of tenure?

The flexibility of the current system is one of the attractions of the private rented sector for many tenants. The issue which has arisen recently is the lack of social housing, which has forced many into the private rented market who previously would have been catered for by social housing. Also, it does appear harsh that a family that has lived in a home for say ten years and which has roots in the area can be given only 28 days to find somewhere suitable nearby to live.

9. What further changes to existing security of tenure arrangements are needed?

The Council considers the suggestion of the involvement of Housing Associations in the buy-to-let market as a positive and innovative approach. Using a social landlord to effectively operate as a private landlord could bring several advantages, including greater security of tenure.

10. Should current fitness levels in the private rented sector be increased as proposed?

The current fitness standard is no longer a comprehensive enough measure of the suitability of a dwelling for occupation. Its incorporation into the definition of the Decent Homes Standard therefore compromises this as a measure of acceptable housing provision.

11. What further/alternative requirements are needed to ensure adequate private rented sector fitness standards both now and in the future?

The fitness standard needs to be replaced, as a matter of priority, by a Housing Health and Safety Rating System (HHSRS). This will provide a meaningful risk based assessment, which will be integral to a regulatory regime, and aimed at protecting the most vulnerable occupants. It will introduce a better way of measuring housing conditions and will allow a proper comparison with housing in England and Wales where the HHSRS has been operating for several years. The HHSRS addresses potential health and safety hazards and internal arrangement whereas the Northern Ireland Decent Homes standard, incorporating the current fitness standard, does not.

Housing Benefit Regulations should be amended to require landlords to produce a Certificate of Fitness or proof of exemption from the district council. This would improve the effectiveness of the PTO in further reducing unfitness and would also avoid any data protection concerns in relation to the release of information.

12. Should the same fire safety standard which applies to all new build property be applied to all private rented accommodation?

The HHSRS would address the issue of fire safety mentioned in paragraph 7.10 on a risk-based approach and would also address matters such as steep stairs, carbon monoxide risks and excess cold and heat. There would be no need for a requirement to have all private rented accommodation meeting the same fire safety standard as new build. Fire safety would be based on a risk assessment for that property so that only those failing the standard would be targeted.

13. Do these proposals provide an adequate response to the issues of affordability and dispute resolution?

The growth in speculative landlords over the last 10 to 15 years and the increasing numbers of people moving into the private rented sector, many of whom receive Housing Benefit, is likely to increase the potential for landlord/tenant disputes. Already many tenants allege that their deposits aren't returned yet there is no formal disputes service that aggrieved tenants can turn to. The consultation document acknowledges that informal mediation does occur through organisations such as Housing Rights Service and district councils. For example, Belfast City Council staff often intervene to have tenants reinstated after being evicted and prior to any formal investigation.

14. What additional action is needed?

As there is no obligation on landlords, or tenants, to co-operate to resolve areas of disagreement the Council would support the establishment of a formal disputes service. Such a service would ensure that landlords manage deposits in a professional manner and that tenants are made accountable for any damages arising from the tenancy. It should also link to landlord registration in that registered landlords, and their tenants, would be obliged to utilize the disputes service before seeking any redress through the courts.

15. How can the PRS fit with the Department's vision of a shared future?

The private rented sector accommodates all social, religious and economic groups within society. It is therefore already tailor made to facilitate the Department's vision of a shared future. This will not happen however if those people who own rented property are not provided with a regulatory framework that protects the rights and obligations of both tenants and landlords. The Council believes that its suggestions above would facilitate that objective.