

Respondent Information Form

Overcrowding Statutory Notices, Private Rented Housing (Scotland) Act 2011, Part 3



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Scottish Property Federation

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Catterall

Forename

Mandy

2. Postal Address

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Postcode EH1 2BB

Phone 0131 306 2222

Email mcatterall@bpf.org.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes **No**

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

RIF Questions

1. Does the notice contain the right information? If not, what should be added or removed?

Yes No

If no, please explain your answer

Comments

2. Do you have any suggestions to improve the layout of the document to make it clearer and easier to use?

Yes No

Comments

3. Who do you think should be given a copy of the notice?

Landlords and their agents, as well as occupiers. Our members question how local authorities will be able to establish the correspondence addresses for landlords and whether an agent is involved, in the absence of the property being registered with the landlord register. The expectation is that landlords that knowingly accept overcrowding will be the unscrupulous landlords that operate outwith the regulatory regime.

4. Do you agree that this information and advice should be included in the notice to the occupier?

Yes No

Occupiers should also be made aware of the definition and consequences of overcrowding at the start of their tenancies. This could be incorporated in the proposed model tenancy agreement.

5. Is there anything else that should be included?

Yes No

Evidence to support the notice, and any other offences established while the overcrowding claim was being investigated as relevant, e.g. the absence of landlord registration, tenancy deposit registration, repairing standards, immigration checks, HMO licensing.

6. How can a local authority ensure that the notice is understood by the occupants,

The SPF welcomes these powers but has concerns about the unintended consequences of the substantial responsibilities. The duties lie across all tenures and space, size of rooms, gender and age of tenants all have an impact. Our members are firmly of the view that the consequences of overcrowding and inclusion of unauthorised additional tenants should feature in the proposed model tenancy agreement.

However, 'overcrowded' living conditions may not be considered unusual, particularly in the case of some migrant workers, where such conditions may be considered standard, and acceptable to them. We anticipate there will therefore be problems of understanding.

7. In what circumstances do you think a request for information and advice from the occupier would be unreasonable?

Migrant workers are unlikely to be aware of the regulations or understand their rights and any alternatives, and may feel they have limited options.

8. How can a local authority respond efficiently and effectively to such requests?

Our members have raised concerns about the lack of resources in Local Authorities to implement fully and effectively the proposals. We understand that provision was requested by Local Authorities with a West of Scotland Authority in mind although the provision is open to all local authorities and are concerned about potential displacement.

9. How should a local authority measure and define reasonableness and proportionality in relation to overcrowding in a privately rented house?

Our members would wish to see clear guidance on the definition of overcrowding and would not wish to have to seek legal advice incurring further costs.

10. What circumstances could justify a house being overcrowded?

Emergency or very temporary accommodation pending re-housing at most.

11. How should a local authority ensure that it effectively gathers the views of the landlord, occupier and others living in the house prior to serving an overcrowding statutory notice?

The views of any letting/managing agent should also be gathered.

Much well intentioned regulation has suffered through patchy enforcement, Landlord Registration being the clear example. Better communication from government and local authorities, backed up by enforcement of existing provisions by local authorities and the government would be effective in routing out unscrupulous landlords and tenants who breach occupancy rules.

12. How should a local authority go about ensuring it has identified the circumstances of the occupier and others living in a potentially overcrowded house?

Evidence of overcrowding could be spotted on inspection by letting/managing agents. However, overcrowding is not necessarily apparent to landlords or their agents. For example one case of overcrowding was only picked up by a responsible landlord because neighbours drew attention to overcrowding that was not apparent to the landlord/agent. This was because the tenants were 'hot bunking' and neighbours had noted the frequency of numerous familiar visitors.

Enquiries could also be made with neighbours to support any concerns of overcrowding, albeit they may have been the source of the alert in any event. However, care needs to be taken to ensure that any evidence is proven in order to ensure neighbours are not being vindictive or discriminatory.

13. How can a local authority decide if the service of a notice is likely to cause homelessness?

Our members should **not** be forced to breach regulations and commit an offence in order to avoid making vulnerable tenants homeless. Sufficient, alternative support would also need to be in place and very clear guidance would be required for local authorities, landlords and their agents.

14. To what extent do you think the serving of overcrowding statutory notices will have an impact on creating homelessness?

Our members have long argued that the single greatest problem in today's housing market is lack of supply. If overcrowding statutory notices are served and law abiding landlords could potentially be committing an offence, by keeping vulnerable tenants in situ, then there is a substantial risk of creating homelessness.

The Private Rented Sector (PRS) can make a significant difference to the number of new homes provided in Scotland. Additional supply is essential to give choice to tenants who otherwise have no option but to share accommodation to put a roof over their heads and/or seek accommodation with unscrupulous landlords.

It is vital that reforms to the tenancy regime do not undermine potential investment in the sector. The multiplier effect of new investment would bring enormous economic benefits and should, be actively encouraged and incentivised.

15. How can local authorities ensure that those living within an overcrowded, privately rented home are supported to move into alternative, suitable accommodation?

Availability of alternative, suitable accommodation. Please see our response to question 14 about the need to stimulate an increase in supply.

16. How could harm affecting occupants, neighbours or other people in the locality be defined in the guidance? Worth giving examples?

As already stated in our response to previous consultations on a new tenancy regime for the PRS, our members have strong concerns and are disappointed that despite as the second consultation notes most industry bodies, landlord, letting agent, and legal respondents raised objections at the first consultation to the suggested removal of the 'no fault' ground for possession, the Scottish Government remains committed to its removal. Our members have significant concerns about the potential for reprisals taken against adjacent occupiers and landlords / agents when it becomes known that they have supported a Notice to Leave action – this unsavoury and potentially dangerous situation was avoided under the anonymity provided in the very few occasions, when a no fault notice would be served under the existing system to address antisocial behaviour.

Landlords have a duty of care to other residents and face the risk of other neighbouring tenants moving out pending the antisocial tenant being moved on.

There remains no evidence that the use of the 'no fault' ground is being abused by anyone other than those operating irresponsibly outwith the regulatory environment, and its removal is therefore not going to address this abuse. We have evidence from existing and prospective investors that removal of the 'no fault' ground (and/or rent regulations/limitations of any kind) will result in existing landlords exiting the PRS, and prospective investors withdrawing interest. This will mean that the sector will be left with fewer homes for rent, lower standards, less choice and consequently higher rents - effectively leaving a 'black market' allowing those operating outwith

the regulatory environment. This would be disastrous for the PRS, exacerbate the crisis in housing supply, and damage the wider Scottish economy.

17. How should local authorities go about identifying and evidencing 'harm' being caused as a result of overcrowding?

Please see our response to question 3. In the absence of the property being registered on the landlord register, the occupier could be asked for the contact details for their landlord and/or agent. Neighbours could also be approached if necessary.

18. How can a local authority ensure the right people receive a copy of the notice and accompanying documents? What would constitute reasonable enquiries?

Comments

19. What mechanisms could local authorities put in place to ensure the information they need is obtained efficiently from a person from whom they want information?

Comments

20. Do you agree that the guidance should cover all the areas mentioned in this document?

Yes No

Comments

21. Is there anything else the guidance should contain?

Yes No

Clear definition of overcrowding and alternative solutions and support.

22. Is it helpful to include examples or case studies such as those given above in the guidance?

Yes No

Yes, to help define overcrowding and the dangers it can place on occupiers and the antisocial consequences for neighbours.

23. What groups do you think would be affected – positively or negatively? (Think about listing the groups covered by the legislation, for ease of reference?)

Both tenants and landlords may be negatively affected due to the unintended consequences of the proposals. Our members have long argued that the single greatest problem in today's housing market is lack of supply. If overcrowding statutory notices are served and law abiding landlords could potentially be committing an offence by keeping vulnerable tenants in situ then there is a substantial risk of creating homelessness.

There is also a risk of displacing the problem. Unscrupulous landlords operate outwith the regulatory system and the proposals are unlikely to deter these landlords. Overcrowded occupiers could be left with no option but to seek accommodation with unscrupulous landlords that operate outwith the regulatory environment.

24. What could we do to avoid or mitigate any negative effect? Or increase the positive impact?

The SPF is firmly of the view that all other powers should be exhausted before implementing overcrowding notices. If the local authority has become involved our members are firmly of the view that the authority should use the time to enforce all powers e.g. immigration checks, repairing standards, landlord registration, tenancy deposits, HMO licensing, etc. and not focus on individual and separate powers. Local authorities need dedicated resource for enforcement, e.g. Housing Enforcement Officers.

Agents also have a duty and should be registered, which should be checked before going to statutory notices. Agents should also periodically inspect the properties they manage.

The provisions in the 2014 Act to have areas designated as an Enhanced Enforcement Area were made to address the issue of overcrowding and our members therefore question the need for this further regulation. It is disappointing to note that there is concern that the provisions in the 2014 Act will not achieve this aim.

25. Do you have any comments on the partial Equality Impact Assessment?

Yes No

Comments

26. Do you have any views on the effect preparing and implementing Overcrowding Statutory Notices may have on your business?

Yes No

Additional time and effort (and therefore cost) will be incurred by landlords and agents in dealing with the consequences of notices, and this could be an offence unknown to them. There will be costs in defending any notice and potential fine.

For those knowingly overcrowding, a fine of up to £5k could be deemed too low to act as a deterrent.

There will also be costs in bringing properties back to a lettable standard (on the basis that overcrowding is likely to cause atypical wear and tear/damage). There is also a cost to re-advertise the property (with associated costs) to find a replacement tenant.

27. Do you have any comments on the partial BRIA?

Yes No

Our members welcome this consultation however they continue to be strongly of the view that enforcement of existing provisions by local authorities and the government should be effective in routing out unscrupulous landlords and tenants who behave badly. It is widely acknowledged that Landlord Registration is not rigorously applied thus leaving 'rogue' landlords to continue to operate outwith due process.

As stated above the provisions in the 2014 Act to have areas designated as an Enhanced Enforcement Area were made to address the issue of overcrowding and our members therefore question the need for this further regulation. It is disappointing to note that there is concern that the provisions in the 2014 Act will not achieve this aim.