

BRIEFING

Renting Homes Draft Bill May 2006

Background

On the 5th May the Law Commission's final report on rented homes together with the draft bill was published. The next step is for the new Department for Communities and Local Government (DCLG) to agree to present it to the House of Commons. If taken forward, the proposals will affect the majority of the 6 million plus household who live in rented accommodation and represent a comprehensive reform of tenure law. The two key features of the scheme are a landlord-neutral approach creating a single social tenancy and a consumer protection approach incorporating the principles of fairness and transparency. Landlords and occupants should have a clearer understanding of their rights and obligations plus greater flexibility offered to both policy makers and landlords

The General Scheme

Agreements

The new regime aims to be as inclusive as possible and subject to a very limited number of exceptions, all (including existing) agreements (tenancies and licences) which confer on an individual right to occupy premises as a home will be one of two occupation contracts.

- The **secure contract** modeled on the present local authority secure tenancy giving substantial security of tenure protected by statute; or
- The **standard contract** where the length of stay will be largely determined by the contract modeled on the present assured shorthold tenancy. The key difference between the proposed and current arrangements is that the standard contract will allow the courts to order possession following an s21 notice within the first six months.

The new scheme will create a single social tenancy by bringing Local Authorities and RSL's together as 'community landlords'. The scheme will

require that 'community landlords' grant secure contracts unless a specific exception applies: among the exceptions is the provision of supported housing for two years, probationary contracts, housing the homeless, students or asylum seekers. Contracts let by private landlords will be standard contracts unless the landlord specifies that it is a secure contract.

SITRA welcomes the move to Landlord-neutrality and agree with the Law Commission that for social housing the secure contract be modeled on the existing secure tenancy enhancing rights for assured tenants rather than decreasing rights for secure tenants which would be untenable. The proposed arrangements will bring clarity to landlords and occupants reducing the reliance on costly legal advice for the sector.

Landlords will be required to provide a written statement of the contract with the Secretary of State having the power to prescribe model contracts: the Law Commission is recommending that a model contract for supported housing be prescribed. Landlords will not be required to use the model contracts. The model contracts will not be subject to unfair contracts terms regulations, an incentive for supported housing providers who have to negotiate terms on visitors, pets etc.

Terms

Both occupations contracts will contain four classes of terms

1. Terms relating to key matters, e.g. name and address of the property and amount of rent
2. Fundamental terms - in the most part containing the key rights of the contract holders
3. Supplementary terms - the practical matters to make the contract work such as the requirement to pay rent and look after the premises
4. Additional terms deal with specific issues to make a particular arrangements work, for example in a woman's refuge a term could require residents not to disclose the address

The Law Commission has recommended that there should be fundamental terms regarding nuisance and violent behaviour the breach of which is a ground for possession. Obtaining a contract by deception would also be a fundamental term. In the fundamental terms the landlord could not, without good reason, do anything that interferes with the occupier's right to occupy (currently the misleadingly named covenant of quiet enjoyment). Not all of the terms can be modified; for example, fundamental terms relating to ASB or obtaining a contract by deception. It is proposed that once a contract has been entered into, changes (variation) can be made following notice from the landlord (except for fundamental terms) or by agreement between the parties.

SITRA think that a model contract would be helpful to the sector though providers may require support to develop the additional terms necessary to reflect the unique needs of schemes. This is particularly important given the spectrum of arrangements that exist in supported housing as additional terms are required to be fair and transparent in accordance with the consumer protection approach.

Termination

Possession of a property will be streamlined with a no fault notice (s21) proceedings available on standard contract. Landlords will have to serve a notice on the grounds for possession for secure contracts (and can use this avenue for standard contracts). There will be 2 classes of ground for possession; breach of the agreement or estate management grounds (recovering property due to under-occupation etc). Once a notice is served it will lapse after six months. SITRA sees this 'use it or lose it' philosophy as a big improvement on the current arrangements where a s21 notice has no expiry period and a NOSP can last a year. Once a case goes to court it has been recommended that the Judge will have, in effect, a check list of questions s/he must answer before coming to decision. SITRA believes this could address concerns, voiced by members, about the inconsistent approach in the courts experienced by landlords and tenants.

The current mandatory ground for rent arrears (ground 8) will not be retained under the proposals for secure contracts as this is not currently available on secure tenancies. The structuring of Judges' discretion means that Judges will be required to consciously balance the interests of those threatened with eviction against the interests of the Landlord and other occupiers who do pay their rent on time.

The bill also recommends a procedure to enable the landlord to gain possession if the occupier abandons the property, allowing a notice to be served and possession without a court order. The occupier would then have remedies if the landlord failed to follow the procedure. SITRA feels this strikes the right balance between safeguarding the occupant whilst giving the landlord clearer procedures.

Supported Housing

A big challenge the Law Commission faced was the legal framework for supported housing. It has concluded that the philosophy underpinning *Supporting People* presents a good basis for developing this area as it allows '*the stepped progression of clients from housing dependency to housing independence*'.

The legal framework now differentiates between types of supported housing giving three levels of legal protection:-

1. Agreements excluded from the scheme (very short term accommodation)
2. Agreements included as standard contracts (temporary accommodation)
3. Agreements included as secure contracts (permanent or long term accommodation)

The definition of supported housing accommodation is based on the link between the provision of accommodation and the provision of support services and includes accommodation provided by charities as well as 'community' landlords. The scheme will apply to all occupiers aged 16 years and over removing the current uncertainty on agreements for under 18 years olds.

SITRA believes that current arrangements do not meet the needs of supported housing landlords who have been placed in the position of managing supported accommodation with occupancy agreements whose rules often relate to archaic common laws of property. This presents a much clearer set of arrangements that corresponds to the landscape within which landlords are operating. The inclusion of accommodation managed by charities is entirely appropriate and accurately reflects the provision of supported housing.

Agreements excluded from the scheme

Exemptions from the scheme in supported housing will be limited to

- Direct access accommodation or
- Supported housing intended to be provided for 4 months or less.

This is designed to exclude very short term direct access hostels where accommodation is provided on demand to anyone who meets the admission criteria and is available for periods of 24 hours or less (although may be provided for several periods in succession). Additionally respite accommodation and accommodation provided whilst the Landlord assesses the needs of a client before providing them with longer term accommodation are excluded. If an occupier however stays a day over 4 months, the agreement will automatically default onto a standard contract. Shared bedrooms will not be excluded from the scheme but will be treated as single rooms. The Law Commission is anticipating the number of excluded agreements to be relatively small.

This presents a huge change for the sector and SITRA welcomes the move away from licences unless the accommodation is very short term. This will legislate in line with Housing Corporation guidance that licences should only be used in exceptional circumstances. The current distinction between a licence and a tenancy is unclear with landlords and occupiers picking up the cost of legally dubious arrangements. SITRA would, however like the time period to be extended from four to six months for short term

accommodation, as this more accurately reflects the length of stay in this type of accommodation.

The standard contract

The scheme allows that supported housing provided by community landlords is excluded from the general requirement to use secure contracts. Landlords will be able to use modified supported standard contracts. The exclusion is time limited; initially it lasts for two years and is described in the bill as an 'enhanced management period' but can be extended in particular circumstances. Unless the landlord takes positive steps to extend the standard contract or terminate the contract it will automatically default to a secure contract. SITRA recognises the need for a time limit on short term agreements but the move on problem means that providers may be under pressure to terminate standard contracts to prevent agreements defaulting into secure contracts. This is an area that we will need to return to if the bill is to become law.

Tools available

Provisions in the bill recognise that many landlords must be able to temporarily remove a resident who is behaving violently or in a way that endangers themselves or others in the accommodation. The supported standard contract will allow a landlord or someone designated by the landlord (managing agent) to exclude an occupier after serving a notice setting out the reasons for the exclusion. This is subject to two limitations: firstly no exclusion can be for more than 48 hours; and secondly the landlord or designated person must believe the occupant has acted in a particular dangerous manner. The acts which justify a temporary exclusion are violence against any one on the premises, creating a risk of significant harm to anyone or impeding the ability of another resident to benefit from support. This provision cannot be used more than three times in any six month period although this may be subject to another public consultation. If the landlord then wanted to evict or exclude for longer they would have to go to court using anti-social behaviour.

SITRA believe excluding someone from their home is an extremely powerful tool and should allay the concerns of providers who currently use licences about managing dangerous behaviour. The limitations are critical to prevent abuse by landlords especially as this presents a substantial departure from the current assured shorthold tenancy arrangements

The bill will also give the landlord power to require occupants to move within a building so they can put the property to its best use. This could allow the use of some rooms cited near the office as observation suites where there is concern about the health and wellbeing of residents. Currently providers who require occupants to move use licence agreements for this purpose resulting in an overall lack of security for all occupants.

Extending the enhanced management period

The Law Commission have recognised that there will be some circumstances when the additional tools and restriction on rights available in the supported standard contract need to be available for longer than two years. Provisions will allow Landlords to extend the enhanced management period i.e. the standard contract in limited circumstances by serving an eight week notice as long as they can provide reasons for this decision. Occupiers will then be able to apply to court for a 'judicial' type review of this decision. There is no time limit set for extending the contract but it will be difficult for landlords to justify to the court the use of enhanced management periods for long periods of time (e.g. five years).

The extension of the supported standard contract will be appropriate for occupants who will not achieve the support objectives within two years. SITRA agrees that this decision should be scrutinised by the Courts but are concerned that defending decisions on a regular basis may be costly or result in landlord terminating agreements (see above).

Secure Agreements

If 'community' landlords provide long term supported housing then the secure contracts, whilst broadly reflecting the current Housing Corporation requirements, will give existing assured tenants more security. Charities are not included in the definition of 'community landlords'.

SITRA is confident that the bill proposes a positive way forward and is particularly pleased that for the first time the unique position of supported housing and the difficulties facing landlords and occupiers has been recognised in legislation. The current arrangements mean landlords are faced with the legal uncertainty as to whether their licences will stand up to being challenged in court and whether their tenancies allow the flexibility required in managing complex housing provision. We hope that the DCLG will use the proposals as the basis of reform to the current legal framework.

The final report and draft bill are available from www.lawcom.gov.uk