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**Environment Scrutiny Committee – 18<sup>th</sup> March 2013**

**Report of the Director of Adult Community and Housing Services**

**Regulation of the Private Rented Sector**

**Purpose of Report**

1. To provide Environment Scrutiny Members with a current position statement relating to the regulation of private rented housing (PRS).

**Background**

2. In 2008 the Minister for Housing commissioned an independent review of the private rented sector (**Rugg Review**). The review was set in the context of change in the sector as failures in other parts of the housing market had focused attention on the growth of private renting and its interaction with owner occupation and social housing. Questions were being asked about whether it would be possible to increase the supply of rented housing to meet the overall growing demand.

The comprehensive review addressed areas where the sector had reportedly been underperforming namely:

- Delivering new and affordable property supply
- Securing higher levels of institutional investment
- Professionalising rental housing management
- Improving property quality
- Providing sustainable tenancies
- Homelessness prevention and discharging homelessness duty
- Managing problem private renting

The report concluded by outlining 6 policy 'directions of travel' including the need for a sound evidence base and a firm understanding of the PRS from local to national level, encouragement of a better understanding of managing rented housing, development of initiatives to 'grow' the sector and light touch licensing and effective redress to target the very worst landlords.

- 2.1 Regulations were proposed following this review but were later rejected following a change in Government policy. It was stated that as the vast majority of England's 3 million private tenants were happy with the service that they received it was considered that the current system struck the right balance between the rights and responsibilities of tenants and landlords. The Government had no plans to create any burdensome red tape and bureaucracy. Local Authorities were instead expected to use the range of powers currently available to them to tackle "rogue landlords" and aspiring homeowners would be at the heart of the governments housing strategy. A subsequent guide for Local Authorities to assist in dealing with rogue landlords was published in August 2012.

- 2.2 The national debate has continued and the issues raised by the Rugg review continue to be relevant in the current market. In October 2012 the Communities and Local Government Committee commenced an **Inquiry into the PRS** to consider issues relating to quality of accommodation, rent levels, regulation of landlords and lettings agents, tenancy agreements, licensing of houses in multiple occupation and discharge of homelessness duty in the PRS. The outcome of this inquiry is expected in mid / late 2013.
- 2.3 A **National Private Landlords Survey** was carried out in 2010 that provided some key information on the private rented stock. Some of the key findings were:
- 89% of landlords were private individual landlords responsible for 71% of all private rented dwellings, with a further 5% of landlords being company landlords responsible for 15% of dwellings.
  - 78% of landlords only owned a single dwelling for rent.
  - Only 8% of landlords were full time landlords.
  - 51% of all dwellings were acquired since 2000, 25% in the ten years between 1990 and 1999.
  - 97% of landlords made use of written tenancy agreements
  - 91% required a deposit
  - 84% required tenants to provide references
- 47% of landlords were happy to take tenants on housing benefit / local housing

### **Regulatory Powers**

3. The area of regulation within the PRS is a sometimes complex area governed by much primary and secondary legislation details of which are contained in Appendix 2. Each piece of legislation will identify who is responsible for enforcement and this will vary with subject area. The power of enforcement devolves not only to national and local bodies e.g. local authorities, Police and Fire and Rescue Services, Health and Safety Executive, HMRC, UKBA etc., but also provides a framework for landlords and tenants to take responsibility for pursuing their own action in some circumstances.

This paper will deal with the primary regulatory powers for this sector available to local housing authorities.

- 3.1 The **Landlord and Tenant Act 1985** details the responsibilities and repairing obligations of both the landlord and tenant. In general the landlord will be responsible for keeping in good condition the structure and exterior of the property together with its installations for the supply of water, gas, electricity and sanitation. The landlord would not be required to carry out repairs resulting from the tenants failure to use the property in a tenant like manner.
- 3.2 There are many different types of agreements available to landlords to let properties i.e. secure tenancy, protected tenancy, licence to occupy, leases etc. which will provide varying degrees of rights to the occupier. Some agreements will provide substantial rights to remain in occupation whilst others will not. The most common agreement used now by landlords is the assured shorthold tenancy. This will enable the tenant to remain in their home until the landlord has obtained a possession order through the court or until if they decide to surrender the tenancy after the initial tenancy term.

The substantial difference in terms of protection for tenants in assured shorthold tenancies is that no grounds for possession have to be stated by the landlord to obtain possession. This is very different to the other types of agreement where possession can only be granted on specific grounds which would have to be evidenced e.g. rent arrears, anti social behaviour etc.

- 3.3 The local housing authority i.e. Private Sector Housing Services, DMBC (PSH) would become involved if action was taken by a landlord to illegally evict or harass a tenant under the **Protection from Eviction Act 1977**. The correct procedure must be taken by the landlord to gain possession of the property which includes service of 'notice to quit', and obtaining a 'possession order' in the County Court. Unfortunately this is often time consuming and expensive for landlords which can lead to situations where tenants are deprived of their homes prematurely either forcibly or voluntarily either through lack of knowledge or frustration on behalf of the landlord. However any action taken by a landlord throughout the life of tenancy to deprive a tenant of services, or if they conduct themselves in such a manner as to affect the tenants occupation of the property etc. could be construed as harassment. Neither of these circumstances is acceptable and enforcement action would be taken against the landlord in accordance with the current Enforcement policy. A close working relation exists with the Homelessness Team to ensure appropriate action is taken to safeguard landlord and tenants rights in these circumstances.
- 3.4 Landlords are encouraged to attend local courses designed to increase their knowledge leading to improved professionalism and management of their property portfolio and to become an accredited landlord through the '**Midland Landlord Accreditation Scheme**'. This scheme is run by PSH in partnership with other Midland authorities and provides a consistent standard for landlords operating in our local authority areas and provides continuing professional development through attendance at regular local landlord forums and through newsletters.
- 3.5 Prospective tenants are encouraged to rent from landlords who are accredited which provide them with a degree of reassurance in an otherwise unpredictable and generally unlicensed market. PSH also provide a **Deposit Guarantee** for landlords to enable people in housing need to enter the private rented sector market for the first time where they are unable to raise the deposit. Subject to satisfying the eligibility criteria the scheme provides assistance in identifying suitable properties, ensures the property is affordable, sets up the tenancy and provides a guarantee certificate to the landlord. Tenancy support is also provided throughout the life of the guarantee to ensure that the tenancy does not fail. The tenant is encouraged to save during this period to enable them to replace the guarantee with a cash deposit when PSH withdraw the guarantee. The no. of deposit guarantees issued since its launch in 2010/11 has risen year on year and it is estimated that the increase this year will be at least threefold. This reflects the growing demand for accommodation in this sector by people with limited financial means struggling to find a deposit to access the sector.
- 3.6 All landlords taking deposits from their tenants under an Assured Shorthold Tenancy agreement must protect the deposit in a government authorised **Deposit Protection Scheme** within 30 days of receiving it from the tenant. The tenant must be provided with key information relating to the deposit, where it is, the amount and how to resolve any disputes at the end of the tenancy. If the

deposit is not protected then the landlord cannot serve a 'notice to quit' requiring possession. In these cases the tenant would have to take their own action in the County Court to recover the unprotected rent deposit. However the Court in these cases has the discretion to award up to three times the original deposit sum to the tenant.

- 3.7 During the life of the tenancy the landlord should ensure that the property is repaired and maintained to comply with the requirements of the **Housing Health and Safety Rating System (HHSRS)** which is enforced by the local housing authority i.e. PSH.

This system replaces the old 'fitness' standard which was based on structural condition and provision of facilities only. The HHSRS introduces an assessment of risk to the health and safety of occupants of the property as a result of hazards and defects found in the property. If defects are identified through either reactive or proactive inspection work then a range of actions is available dependent upon the severity of the hazard identified in accordance with the current **Enforcement Policy**. In general the actions available to PSH are:

- informal advice
- hazard awareness notice
- improvement notice
- prohibition notice

If an immediate danger to life was identified then powers are available for the work to be undertaken by the local housing authority i.e. PSH, to remove the danger and recover the cost from the landlord.

- 3.8 It should be noted that in some circumstances where assured shorthold tenants complain about the condition of their homes that landlords will in return serve notice to quit upon the tenant. This is known commonly as a '**Retaliatory Eviction**', and whilst widely discouraged by local housing authorities cannot be prevented provided possession is obtained legally. PSH will ensure that the property is satisfactorily repaired to the appropriate standard even if the originating tenant is no longer in occupation. The good working relationship with the Homelessness Team enables cases to be examined. Where possible preventative work can commence early to identify solutions to the potential homeless situation that could arise as a result of the landlords action.
- 3.9 Landlords must also ensure that gas appliances are maintained and that tenants are provided with a current **Gas Safety Certificate**. Failure to do this is enforced by the Health and Safety Executive (HSE). The HSE can also take action where works are carried out by uncertified persons.
- 3.10 In addition to this landlords must also provide an **Energy Performance Certificate** to give tenants an idea of how expensive it may be to heat the property. Enforcement action would be taken by the local authority Trading Standard departments.
- 3.11 In addition to the above there are also certain types of property known as '**Houses in Multiple Occupation**' (HMO) that are subject to more stringent regulation and licensing arrangements.

An HMO is a building that is either a single dwelling or a flat where one or more

separate households share facilities such as a kitchen, toilet and bathroom. HMOs that are over 3 storeys and are occupied by 5 or more persons comprising two separate households must be licensed by the local housing authority i.e. PSH.

The licensing scheme requires an application to be made for the property by a 'fit and proper person' for a fee. If a licence is granted then conditions are applied in relation to the provision of adequate sanitary facilities, means of escape from fire and suitable management arrangements. Where the property falls below the required standards then enforcement action (generally the same as those available under the HHSRS) may be taken. However where the standard of management of a HMO falls below what is required then if it is unlikely to improve the local authority may take over its management.

3.12 There has been much national discussion about the use of **Selective Licensing** and the Local Authority may designate all or part of its area as being subject to selective licensing subject to agreement by Central Government. The national guidance states that consideration would be given to granting designation for the area if:

- it is likely to improve the decreasing / low demand for housing in the area, or
- if the area is experiencing a significant and persistent problem with anti social behaviour, private landlords are failing to take action to combat the problem and that by taking action the problem will be reduced or solved.

3.13 Finally, HMOs that do not need to be licenced to operate are required to comply with the **Management Regulations** to ensure adequate facilities and arrangements for safety are provided. These regulations are enforced by the local housing authority, i.e. PSH.

3.14 Dudley Council is also signed up to **Homestamp** which is a partnership consortium with an interest in private sector housing comprising of Local Authorities, the Private Rented Sector, West Midlands Police and West Midlands Fire Service. The aim of the consortium is to:

- encourage the supply of good quality private rented homes
- provide and facilitate information and training for landlords
- consider and respond to regional and national issues affecting the private rented sector
- encourage joint working between all interested parties

Documents have been produced by Homestamp for owners, managers, letting agents and contractors with the necessary information which will help them provided their tenants with safe and high quality accommodation, and reduce the need for intervention from local authorities. In November 2012 the Consortium won the Public Service – Not for Profit Award in the national Landlord and Letting Awards (the letting industry 'Oscars').

### **Local Regulation Activity**

4.

In Dudley 7,976 households live in the private rented sector (6.2%) and the **Housing Needs Survey 2011** indicated that only 80.4% of private sector tenants reported that their homes were adequate for their needs. Most reported that improvements/repairs were required to make their homes more adequate.

4.1 The **Private Sector Stock Condition Survey 2007** indicated that 29% of private rented housing failed to meet minimum housing standards the worst areas being Central Dudley and Halesowen. Inadequate housing can result in poor health and where conditions fall below standards of decency their potential effect on health is clear. However other pressures such as accommodation that no longer meets a changed household requirement, for example households who become overcrowded can also trigger health related problems.

4.2 No detailed information is currently available in relation to local landlord portfolios in Dudley. However, local knowledge of the sector indicates that its operation resembles the national picture outlined in the key findings of the National Landlords Survey 2010.

4.3 Appendix 1 provides detail of some of the regulation activities carried out by PSH in private rented sector since 2008. This clearly shows a marked increase in activity in over 75% of the areas of activity, notably:

- illegal evictions
- poor housing condition complaints
- pre enforcement action
- formal enforcement action
- prosecutions
- deposit guarantee
- Housing advice

Much of this increase can be attributed to the fact that the profile of this sector has been highlighted in recent years both nationally and locally which has raised the expectations of tenants. This coupled with the availability of relevant information on the Councils website, worldwide web, clearer routes for reporting problems and a responsive service delivery may have also contributed to this increase.

4.4 Close working relationships and partnerships are continually being developed to share information and to enable complex problems in the sector to be resolved which involve multi agency approaches. The PSH team was also refocused in 2011 to provide a comprehensive service of enforcement coupled with coordinated tenant and landlord support to achieve sustainable solutions in this sector. Work in this area also underpins the preventative homelessness agenda.

4.5 There are clear links between Health and Housing and housing information relating to the private rented sector has been factored into the recently emerging **Joint Strategic Needs Assessment, 'All About Dudley', Homelessness Strategy and Housing Strategy 2013**. There are some clear themes emerging from these documents in terms of future focused work that relate to:

- raising housing and management standards in the private rented sector, and
- encouraging more landlords to enter the market to provide more homes to meet housing need

4.6 Finally, work has been in progress to develop a comprehensive **Private Sector Housing Assistance Policy** with the intention of bringing together all current initiatives and schemes operating in the borough for this sector. In addition to this there are also proposals to introduce a **Charging Policy** to recover the cost of enforcement action in the sector. It is suggested that this, coupled with the

proactive education and support programmes currently operating, may reduce the need for formal intervention by the authority. It is proposed to take this document to the **Housing Working Group** for full consideration in due course.

### **Finance**

5. There are no financial implications arising from this report.

### **Law**

6. The Councils constitution contains details of the relevant legislation and provides for the appropriate delegation to officers to enable them to carry out their statutory duties within the private rented sector.

### **Equality Impact**

7. There are no equality implication arising from this report.

### **Recommendation**

8. It is recommended that:
- The contents of the report are noted
  - Further reports be brought back to the committee to discuss elements of the service in greater details if required
  - The Private Sector Housing Assistance Policy including the Charging Policy be considered by the Housing Working Group



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### **List of Background Papers**

*Rugg Review 2008*  
*Dealing with Rogue Landlords: DCLG*  
*National Private Landlords Survey 2010 DCLG*  
*Housing Health and Safety Rating System*  
*Approval steps for additional and selective licensing designations in England DCLG*  
*DMBC Private Sector Stock Condition Survey 2007*  
*DMBC Housing Needs Survey 2011*  
*DMBC Draft Joint Strategic Needs Assessment; All About Dudley*  
*DMBC Draft Housing Strategy 2013 – 2015*

**Appendix 1**

<b>Subject area</b>		<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13 (est.)</b>
<b>Complaints received against private landlords relating to:</b>						
<b>(i) illegal evictions</b>		9	8	9	18	38
<b>(ii) harassment</b>		18	19	18	5	12
<b>(iii) poor housing conditions</b>	<b>No. of complaints</b>	85	74	52	269	320
	<b>Cat 1 hazards id</b>	186	171	99	136	208
	<b>Cat 2 hazards id</b>	258	271	172	103	48
<b>(iv) unlicensed houses in multiple occupation</b>		4	1	9	8	18
<b>No. of cases against private landlord where:</b>						
<b>(i) pre enforcement action taken</b>		215	170	124	281	370
<b>(ii) pre enforcement action resolved issue</b>		193	135	113	241	310
<b>(iii) notice served to remedy poor housing conditions</b>		n/a	n/a	n/a	19	30
<b>(iv) prosecutions taken</b>		0	0	1	5	4
<b>(v) prosecution success</b>		0	0	1	5	4
<b>No. of deposit guarantees issued</b>		n/a	n/a	8	25	116
<b>No. of housing advice enquiries</b>		36	124	135	165	238

## Appendix 2

Anti-terrorism, Crime and Security Act 2001  
Anti-Social Behaviour Act 2003  
Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003  
Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (Wales) Regulations 2003  
Building Regulations Part P: Guidance Booklet  
Consumer Protection Act 1987  
Control of Asbestos Regulations 2006 (SI no.2739)  
Control of Pollution Act 1974  
Council Tax (Additional Provisions for Discount Disregards) Order 1992  
Council Tax (Chargeable Dwellings) Order 1992  
Council Tax (Discount Disregards) Order 1992  
Council Tax (Exempt Dwellings) Order 1992  
Council Tax (Liability for Owners) (Amendment) Regulations 1993  
Council Tax (Liability for Owners) Regulations 1992  
Crime and Security Act 2010  
Data Protection Act 1998  
Defective Premises Act 1972  
Disability Discrimination Act 2005  
Electrical Equipment (Safety) Regulations 1994 (SI no.3260)  
Employment Rights Act 1986  
Energy Performance of Buildings (Certificates and Inspections) Regulations 2007  
Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No.2) Regulations 2008  
Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010  
Environmental Permitting (England and Wales) Regulations 2010  
Equality Act 2010  
Equality Act 2006  
Estate Agents Act 1979  
Finance Act 2003 (Part 4)  
Firearms Act 1968  
Firearms (Amendment) Act 1988  
Firearms (Amendment) Act 1997  
Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002  
Freedom of Information Act 2000  
Furniture and Furnishings (Fire) (Safety) Regulations 1988 (SI no.1324)  
Gas Safety (Installation and Use) Regulations 1998 (SI No. 2451)  
Health and Safety at Work etc Act 1974  
Health and Safety (Consultation with Employees) Regulations 1996  
Health and Safety (Training for Employment) Regulations 1990  
Home Information Pack (Suspension) Order 2010  
Houses in Multiple Occupation (Management) (England) Regulations 2009  
Houses in Multiple Occupation (Management) (Wales) Regulations 2009  
Housing (Interim Management Orders)(Prescribed Circumstances) Order 2006  
Housing (Scotland) Act 2010  
Housing (Scotland) Act 2006  
Housing (Scotland) Act 1988  
Housing Act 1985 Part 10  
Housing Act 1988

Housing Act 1996  
Housing Act 2004  
Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (England) Order 2006  
Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (Wales) Order 2006  
Housing Act 2004 (Commencement No. 3 and Transitional Provisions and Savings) (Wales) Order 2006  
Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007  
Housing Benefit (Local Housing Allowance, Miscellaneous and Consequential) Amendment Regulations 2007  
Housing Benefit (State Pension Credit)(Local Housing Allowance and Information Sharing ) Amendment Regulations 2007  
Housing Benefit (Amendment) Regulations 2009  
Housing Health and Safety Rating System (England) Regulations 2005 (SI no.3208)  
Housing Health and Safety Rating System (Wales) Regulations 2006  
Housing (Tenancy Deposits) (Prescribed Information) Order 2007  
Housing (Tenancy Deposit) (Specified Interest Rate) Order 2007  
Housing (Tenancy Deposit) Order 2007  
Income & Corporation Taxes Act 1988  
Income Tax (Trading and other Income) Act 2005  
Inheritance Tax Act 1984  
Land Registration Act 2002  
Land Registration Rules 2003 (Si no.1417)  
Landlord and Tenant Act 1985 (as amended)  
Landlord and Tenant Act 1987  
Landlord Registration Act 2002  
Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007  
Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007  
Licensing and Management of Houses in Mutiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006  
Licensing and Management of Houses in Mutiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006  
Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006  
Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006  
Local Government Act 2003  
Local Government Finance Act 1992  
Management of Health and Safety at Work (Amendment) Regulations 2006  
Management of Health and Safety at Work Regulations 1999 (as amended)  
Management of Houses in Multiple Occupation (England) Regulations 2006  
Management of Houses in Multiple Occupation (Wales) Regulations 2006  
Manufacture and Storage of Explosives Regulations 2005  
Money Laundering Regulations 2003  
Money Laundering Regulations 2007  
Mortgage Repossessions (Protection of Tenants etc) Act 2010  
Occupiers Liability Act 1957  
Plugs and Sockets etc. (Safety) Regulations 1994  
Prevention of Damage by Pests Act 1949  
Proceeds of Crime Act 2002

Protection From Eviction Act 1977  
Public Health Act 1961  
Public Health Act 1936  
Race Relations Act 1976  
Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003  
Regulatory Reform (Fire Safety) Order 2005 (Si no.1541)  
Regulatory Reform (Housing Assistance) (England and Wales) Order 2002  
Rent Act 1977  
Rent Acts (Maximum Fair Rent) Order 1999  
Rent (Scotland) Act 1984  
Rent Officer (Housing Benefit Functions) Amendment Order 2007  
Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007  
Rent Repayment Orders (Supplementary Provisions) (Wales) Regulations 2008  
Residential Property Tribunal Procedures and Fees (England) Regulations 2011  
Residential Property Tribunal Procedure (England) Regulations 2006  
Residential Property Tribunal (Fees) (England) Regulations 2006  
Residential Property Tribunal Procedure (Wales) Regulations 2006  
Residential Property Tribunal (Fees) (Wales) Regulations 2006  
Safety Representatives and Safety Committees Regulations 1977  
Selective Licensing of Houses (Specified Exemptions) (England) Order 2006  
Selective Licensing of Houses (Specified Exemptions) (Wales) Order 2006  
Selective Licensing of Houses (Additional Conditions) (Wales) Order 2006  
Serious Organised Crime and Police Act 2005  
Sewerage (Scotland) Act 1968  
Sex Discrimination Act 1975  
Taxation of Chargeable Gains Act 1992  
Terrorism Act 2000  
Town and Country Planning (Use Classes) (Amendment) (England) Order 2010  
Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010  
Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002  
Town and Country Planning (Use Classes) (Amendment) (England) Order 2006  
Town and Country Planning (Use Classes) (Amendment) (England) Order 2005  
Town and Country Planning (Use Classes) Order 1987  
Town and Country Planning (Scotland) Act 1997  
Town and Country Planning Act 1990  
Unfair Terms in Consumer Contracts Regulations 1994  
Unfair Terms in Consumer Contracts Regulations 1999  
Unfair Terms in Consumer Contracts (Amendment) Regulations 2001  
Water Industry Act 1991  
Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011  
Water Environment (Controlled Activities) (Scotland) Regulations 2011  
Welfare Reform Act 2007  
Welfare Reform Act 2007 (Commencement no 4 and Savings and Transitional Provisions) Order 2007  
Work at Height (Amendment) Regulations 2007  
Work at Height Regulations 2005 (as amended)