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SCOTTISH EXECUTIVE HOUSING CONSULTATION:

**Regulation of Private Landlords
under the Antisocial Behaviour etc. (Scotland) Act 2004**

SUBMISSION BY

SCOTTISH ESTATES BUSINESS GROUP

22nd September 2005



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1. BACKGROUND

SEBG represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland's land resource in ways which deliver social, economic and environmental benefits. The Group seeks to secure a sustainable and prosperous future for rural areas.

Estates are proven business models that assist the development of smaller rural businesses, and landowners and estates have a vital role to play in the ongoing and future development and prosperity of Scotland. SEBG is committed to rural economies and its members work hard across Scotland to stimulate enterprise and economic development.

2. SEBG OVERVIEW

Members of SEBG currently manage in excess of 3,000 private let properties across Scotland, mostly in rural areas, so issues relating to the letting of housing are ones with which the organisation has much experience. In principle, we welcome measures by the Scottish Executive which aim to tackle issues of antisocial behaviour and endorse the view that such behaviour, whether by owners or tenants, is unacceptable and must be addressed.

However, SEBG is firmly of the view that tenants should be held responsible for their own behaviour. The Group believes that whilst landlords have an important role to play in ensuring good practice in letting property, they should not themselves be penalised for the antisocial behaviour of tenants in cases where that behaviour is outwith their control. In such cases, landlords themselves are also likely to be adversely affected by the antisocial behaviour of their tenants – perhaps in a lack of regard for or damage to their property, or rent arrears. Action by local authorities against landlords who may be trying to resolve problems with antisocial tenants through the legal means open to them may only exacerbate an already difficult social and legal position.

SEBG is fully supportive of measures to involve landlords in developing good practice and supporting tenants in the responsible use of let property, for the benefit not only of the tenant himself but for the property's neighbouring residents. But the Group has major concerns about the potential impact of this legislation.

The possession by local authorities of such powers as are proposed in the draft Regulations may have significant repercussions on the operation of the Private Let Sector (PLS), particularly in rural areas, where properties are often let, usually on a small scale, as a sideline to the main occupation of farming. It would exacerbate already difficult issues of availability of affordable housing to let if these small-scale landlords were to choose to sell rather than let their properties, for fear of becoming the subject of punitive action by local authorities in the event of their tenant(s) becoming troublesome to the local community.

There is also a danger inherent in the draft Regulations that private sector landlords may be expected, by the local authorities in which they offer housing for rent, to exercise a greater level of control over their tenants than their legal authority permits. Further, whilst we acknowledge that problems of antisocial behaviour by tenants may be exacerbated by a lack of active involvement in addressing them by a small minority of private sector landlords, the vast majority operate to standards which would be widely regarded as good practice.

To help counter these concerns, the Group suggests that local authorities should be given detailed guidance about the need to liaise closely with local landlords before any action against them may be considered and instigated. Local authorities must be required to ensure that they are fully aware of measures being taken by landlords to resolve difficulties with tenants and the legal restrictions imposed on them by tenancy contracts. Closer links between local authorities and landlords should help to ensure that the two can work together to find appropriate solutions to local difficulties at an early stage.

Ultimately, the problem of antisocial behaviour will not be solved by landlords being required by local authorities to evict badly behaved tenants if other measures they have been required to take have failed. This will only move the problem to another neighbourhood, where the whole process will begin again. Rather, SEBG would support the greater involvement of other agencies, including the police and social services, with landlords and local authorities in order to change poor behaviour rather than to move it on.

Following are SEBG views on the main aspects of the consultation with which we have particular concern.

SECTION B: COVERAGE

B1: Exclusions

Q: Is it appropriate to **exclude** resident landlords and agricultural and crofting tenancies from registration?

Yes. SEBG agrees that owners of houses which are subject to agricultural and crofting tenancies should not be required to register.

As the consultation points out, the main purpose of the let is agricultural land and business, with the house a secondary consideration. Responsibilities of landlords and tenants are set out clearly under Agricultural Holdings legislation, and are different from those required for residential letting. The authority of a landlord to control an agricultural tenancy is very limited. The tenancy cannot be terminated just because a tenant is difficult.

Q: Is it appropriate to **include** accommodation provided with employment in registration?

No – they should be excluded. Similar arguments apply as for agricultural tenancies. Tied housing is an adjunct of employment and as such must be secondary to the contract of employment. It is also irrelevant to the problem of blighting areas, which the Antisocial Behaviour legislation sought to address. Again, rights and responsibilities of landlord employers and tenant employees are very different from residential letting. Where accommodation is provided by an employer as part of the terms and conditions of contract of an employee, it cannot subsequently be treated separately from that employment.

Further, tied accommodation is generally provided because of the nature of the employment concerned – perhaps because of remote location or a necessity for the employee to be on hand outside normal working hours. In those circumstances, a requirement placed on the landlord by the local authority to address antisocial behaviour by recourse ultimately to eviction would necessarily impact on the performance of the employee of his contracted duties and could lead subsequently to loss of employment.

However, it would be open to question, legally, whether an employer could be required by his local authority to take action against, and perhaps eventually evict, a tenant whose employment record was exemplary, and with whose working performance the employer was entirely satisfied, but whose child's behaviour was considered to be antisocial. Bad behaviour of an employee's child is unlikely to be considered as gross misconduct and thereby a legitimate reason for dismissal. Such action could potentially leave the employer open to a breach of employment law and thereby subject to legal action by the tenant, exacerbating any attempt to resolve issues of antisocial behaviour.

It would be inequitable if a landlord employer were to be struck off the Register of Private Landlords by his local authority because of the time taken to go through the normal employment disciplinary procedures before being able legally to dismiss, and thereby evict, the tenant employee.

SEBG feels therefore that a more logical, equitable and defensible approach would be to exclude employers offering tied accommodation from the requirement to register. Concerns about the need for clear understanding and agreement on rights and responsibilities with regard to accommodation provided would better be resolved by inclusion of appropriate conditions in the contract of employment, since the tied accommodation and employment performance are necessarily inextricably linked.

SECTION D: COSTS AND FEES

D1. Local Authority Approach to Fees

Q: Is the fee structure proposed appropriate? What would be appropriate levels for discounts? Are there any other circumstances in which a discount should be applied?

SEBG has already raised its concerns about the potential impact of the Regulations on the operation of the Private Let Sector (PLS), particularly in rural areas. The Group has fears that small scale landlords may be put off continuing to make properties available to rent because of concerns about the increasing bureaucratic burden on landlords and apprehension about the risk of punitive action by local authorities for reasons outwith their control. Were this to be the consequence of the introduction of the Regulation of Landlords, then an already difficult issue of lack of suitable accommodation to rent in rural areas – and thereby availability of skills - would only deteriorate further.

Against this background, the registration fee would be a further disincentive to landlords to continue letting property, particularly in rural areas where rent levels mean that letting is often barely economically viable. Since registration is, according to the consultation, “intended to be a light touch process, to minimise any effect on the supply of rented housing or on rent levels”, SEBG suggests that maximum levels, or a cap, should be set for charges, with a requirement that charges be kept as low as possible.

Whilst there may be a danger that maximum levels of fees may encourage local authorities to charge more than they need, capping would serve to confirm a limit on the liability of landlords to charges. Measures to counter the risk of overcharging by local authorities could in any case be made the subject of regulation or guidance. In the same vein, the proposal to offer discounts for landlords with large portfolios is welcome.

SECTION E: ACTION ON BREACH

E2. Decisions on Applying Sanctions for Breach

Q: Do you agree that local authorities should be required by regulations to give advice and assistance to tenants whenever they refuse or withdraw registration or impose a rent penalty?

SEBG agrees it is appropriate that local authorities should be required to offer advice and assistance whenever an intervention in the landlord / tenant relationship is prompted by a breach of the requirements of the legislation on Regulation of Private Landlords. However, we would suggest that the main aim of the legislation must be to ensure landlords follow good practice, rather than to force landlords out of the letting sector, thereby reducing available housing for rent.

The Group suggests that advice and assistance should be available to landlords as well as to tenants. It may be that such support can more quickly and appropriately resolve the issue which led to the breach of the Regulation. Such guidance may, for example, cover the causes of refusal of an application for registration, what steps the landlord might take in order to meet the “fit and proper person” test, and advice on the steps required to avoid removal from the register.

E3. Processes

Q: Do you agree that regulations should be made so that tenants are alerted to the possibility of having to pay back-rent if an appeal is successful?

It seems appropriate that local authorities should be required to inform tenants when their landlord has been removed from the register. However, they should also be informed that the process can be reversed by a successful appeal, in which case rent can legitimately continue to be charged. It is essential that both tenants as well as landlords are made aware of their responsibilities and obligations, to ensure that intervention by the local authority does not resolve one problem, only to create another, that of rent arrears and the burdens of consequent debt.

ANTISOCIAL BEHAVIOUR NOTICES

SECTION G: PURPOSE AND COVERAGE

Q: Do you agree that regulations should be made requiring the local authority to provide advice and assistance to the landlord before serving an antisocial behaviour notice?

Such a requirement would in our view be essential if the Regulations are to work as intended. As stated earlier, SEBG believes the aim should be to address the antisocial behaviour of tenants, rather than to penalise landlords caught up through no fault of their own in the problems caused.

In those cases when a local authority elects to take action against a landlord, it will be important for the landlord to be offered guidance and advice by the local authority about what further actions he is expected to take beyond those he may already be exercising, if the problem is to be tackled successfully. Liaison between local authorities and landlords in such situations is essential, if the two sides are to be able to work together to resolve difficulties caused by an antisocial tenant.

In liaising with landlords in these situations, local authorities must be required to recognise that landlords are subject to legal process when dealing with bad behaviour by employees or tenants, which may take months or even years to remedy. During that process, landlords should not be penalised further by the stopping of rent or suspension of licences to let – which may in turn impact on other properties and other tenants.

Q: Do you agree that the Scottish Executive should not seek to make regulations relating to holiday lets until more evidence has been gathered?

SEBG believes that it would be more sensible to gather evidence from local authorities and others on *whether*, as well as when and how antisocial behaviour notices need to be applied in connection with holiday accommodation. There seems little merit in embarking on complicated arrangements to extend definitions and alter the basis on which notices might be served, in the absence of any evidence that such action is needed. We agree that evidence should be gathered and assessed before decisions can properly be taken on the need for regulations relating to holiday lets.

SECTION H: CONTENT OF ANTISOCIAL BEHAVIOUR NOTICE

Q: Is the proposed level and content of guidance appropriate?

If landlords are to be exposed to the possibility of having to comply with antisocial behaviour notices, then it is only equitable that they must first be informed fully about what is expected of them, the time frame within which that action is expected by the local authority to be taken, and the implications should they fail to act as set out by the local authority.

However, SEBG would be concerned if local authorities were to be able to issue an antisocial behaviour notice without first being required to work with the landlord concerned in attempting to address the antisocial behaviour of the tenant involved. The issue of an antisocial behaviour notice should be regarded as a measure of last resort after other avenues have been fully explored and have failed to address the problem.

SECTION I: ACTION ON FAILURE TO COMPLY

I2. Order As To Rental Income (Rent Penalty)

Q: Is the proposed guidance sufficient and appropriate?

SEBG is concerned that an Order as to Rental Income would appear to reward an antisocial tenant for bad behaviour. It should be remembered that the landlord is also a victim of an antisocial tenant, and the potential loss of rental income and the risk of removal from the register are harsh penalties for a situation which is not of the landlord's choosing or possibly control.

The law should not be permitted to allow a situation where a tenant ceases to be required to pay rent because they have been behaving badly. There is little incentive, in that case, to improve behaviour – indeed, quite the opposite. The Group believes it would be better if, instead, the tenant were to be required to continue to pay rent, but that this should be paid either into a separate holding fund or to the local authority for the common good, while problems are being resolved.

Guidance to local authorities should make clear that Orders as to Rental Income should only be issued as a last resort, when all attempts by that local authority to guide the landlord in taking appropriate action have failed to elicit an appropriate response.

I3. Management Control Order

Q: Do you agree with proposals for regulations on the costs which a local authority may incur under a Management Control Order and how it can recover those costs?

When all other measures and attempts have failed, then local authority intervention using a Management Control Order may be the only remaining avenue to resolving the problem of antisocial behaviour. However in that instance, the tenant, who should be responsible for his own actions, should be liable for rent *and costs*, since the local authority's management of the house is for the purpose of dealing with the antisocial behaviour described in the Antisocial Behaviour Notice.

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