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**SCOTTISH EXECUTIVE HOUSING DIVISION
CONSULTATION:**

Maintaining Houses – Preserving Homes

SUBMISSION BY

SCOTTISH ESTATES BUSINESS GROUP

29th October 2004



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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 the issues of maintaining rural housing are ones with which the organisation has much experience. In principle, we welcome measures by the Scottish Executive to address issues of below tolerable standard housing and believe landlords have little to fear from the measures proposed.

The private let sector (PLS) has an important role to play in both urban and rural areas. The vast majority of the PLS is run responsibly and contributes significantly to Scotland's housing needs, particularly in the countryside where potential for expansion of the housing stock is limited. It will be important, when implementing measures to help the local authorities enforce maintenance legislation, that they are able to continue to work constructively with the majority whilst having the powers necessary to address the minority. SEBG believes an effective way to achieve this would be for the closer involvement of the PLS in the development of Local Housing Strategies, with representation on Local Housing Forums forming part of that approach.

The ultimate aim of the proposals – improvement of the Scottish housing stock to above Tolerable Standard – is to be applauded. However, delivery of this objective will depend

not only on the commitment and ability of landlords to complete required repairs and improvements timeously, but on the availability of suitably skilled contractors to carry out the work. Most landlords do not employ building, plumbing, electrical staff etc but subcontract local suppliers – generally in short supply. Local authorities must take account of the availability or otherwise of relevant skills when considering the use of their enforcement powers.

One approach to help tackle this difficulty might be for the PLS to develop closer links at the local level with those social landlords with access to maintenance contractors, in the management and maintenance of let property. Such links might see, as a quid pro quo, certain newly vacated properties in the private sector being offered to social landlords for the placement of prospective tenants. In any event, closer liaison between the different sectors and the local authorities should help support a constructive and unified approach to providing available and affordable housing of a suitable standard.

It will also be important not only that landlords are given a period to comply with the new repair requirements, but that local authorities use discretion in enforcement, to allow for local or regional factors.

The consideration of whether to extend the national registration scheme for private landlords, even before it is in place, is of concern. Schemes have yet to be developed by local authorities and it is inevitable that they will be applied by different authorities in different ways and can be expected to throw up different teething difficulties. It would be far better to wait until the new system has been introduced and allowed to bed down, so that a proper assessment can be made about whether any changes are needed and if so, what they might best be.

Whilst we welcome measures to improve standards and resolve disputes, SEBG suggests that any further consideration of the certification process be delayed until registration measures are up and running and the effect of voluntary accreditation has also been properly assessed.

We should point out that the Housing (Scotland) Act 1988 and the introduction of short assured tenancies with rents at market levels gave considerable confidence to landlords to let houses. In many rural areas, landlords now provide rented accommodation for those who cannot afford to buy and have become the providers of affordable housing, which is widely acknowledged as an increasingly scarce resource. Whilst it is right to tackle those who fail to live up to their proper obligations, it should be remembered that in general, the majority of the PLS works very well. SEBG would be concerned that were the burden of regulation and enforcement to become too great, then a number of landlords may be dissuaded from letting at all and this when affordable rented property is already in short supply. It is inevitable also that increased regulation and accompanying administration will bring upward pressure on rents.

Following are SEBG views on the specific questions posed in the consultation.

3. RESPONSES TO CH. 2: Dealing with defects and disrepair

Q1. The proposed single statutory notice gives local authorities enhanced powers to deal with a wide range of condition problems. Is this the correct way forward?

Agree with the approach. However, it will be important to recognise the availability of skills required to complete work deemed necessary, and to allow sufficient time for completion. It will also be important that local authorities themselves are sufficiently equipped to carry out their expanded responsibilities, and their use of those powers to be appropriate to circumstances prevailing locally.

Q2. Do you agree that local authorities should have the power to take out a maintenance order against a property or group of properties?

Agree – but the circumstances in which maintenance orders should be served should be clearly defined and supported by mandatory assistance for owners.

Q3. Should this maintenance order be limited to 5 years?

Agree, assuming the order can be lifted after repairs are carried out and not governed by time. There should also be a suitable right of appeal process.

Q4. Do you agree that it is reasonable to require a sinking fund to be set up as part of the maintenance order requirements?

This should only apply where there is common ownership.

Q5. Do you agree that there should be powers to control occupation of properties subject to statutory notices and, if so, how exactly should these powers be enforced?

Agree, so long as there are to be appeal provisions. Penalties might be applied as enforcement sanctions, including fines, rent arrests, suspension in accreditation and registration.

Q6. Do you agree local authorities should be able to suspend a notice and, if so, that this suspension should be limited so it only applies until the property is sold or let?

Agree that local authorities should be able to suspend a notice – this is an important provision which will allow individual circumstances to be taken into account, so should not be limited until the property is sold or let, but decided on the merits of individual cases.

Q7. Should local authorities be given powers to control occupation where owners cannot be identified?

Once landlord registration is in place, this should not happen.

Q8. Should local authorities have power to meet the costs of the share of communal repairs due from owners who will not contribute their share (to allow the works to go ahead), linked to a charging order to recover the costs of the works and administration costs?

Agreed – this would benefit other parties and reduce the delay of communal works, ultimately benefiting the property.

Q9. Should local authorities have the power to inspect insurance policies of persons subject to the new notice?

Agreed – in the majority of circumstances, property with mortgages / loans will in any case require to be insured.

4. RESPONSES TO CH. 3: The Tolerable Standard

Q10. Are our proposed extensions to the Tolerable Standard the right ones?

Clarification is needed as to what constitutes “basic” in the context of provision of thermal insulation. However, investment in appropriate levels of insulation would support other energy saving measures and wider measures to tackle fuel poverty.

Q11. Should there be national guidance produced by the Scottish Executive on the interpretation of the Standard?

Guidance would be useful and helpful to both landlords and tenants, as well as ensuring consistency of interpretation across Scotland.

Q12. Do you think that an action plan on below Tolerable Standard housing should be required in local housing strategies and that promoting the improvement of housing condition and quality should be a specified purpose?

Agree that action plans to implement the improvement of housing conditions within local authority strategies must be recognised as best practice. However, it must also be recognised that the problem of Tolerable Standard will differ from region to region.

5. RESPONSES TO CH. 4: Area renewal

Q13. Do you agree with the repeal of powers to declare Housing Action Areas and their replacement with powers to declare Housing Renewal Areas?

If the repeal of existing Housing Action Areas means identifying and redirecting resources to a more targeted area concentrating on housing that fail Tolerable Standards, this must be more beneficial than the existing broad-brush approach. If replacement with powers to declare Housing Renewal Areas is the vehicle providing this flexibility then this should be embraced.

Q14. Are the criteria for declaring a Housing Renewal Area the right ones? Should other criteria be included?

There should be a degree of flexibility within the criteria in declaring a Housing Renewal Areas again to direct resource where they are most needed.

Q15. Are the proposed procedures for designating Housing Renewal Areas appropriate?

It should be for Local Authorities to identify Housing Renewal Areas in consultation with local communities with procedures to allow for this.

Q16. Are the proposed powers for local authorities following designation reasonable?

The proposed powers following designation have to be sufficient to implement an action plan for a Housing Renewal Area, although these powers should not be unlimited. We are concerned that the proposed powers to require the specific dwellings that do not meet the Tolerable Standard to be demolished, and powers of compulsory purchase should be clarified and consulted on before being finalised.

6. RESPONSES TO CH. 5: Financing and supporting repair works

Q17. Do you agree with the introduction of a range of types of assistance?

Whilst there is merit in the proposals, SEBG believes they should not be implemented as a replacement for grants which can be vital in protecting the viability of affordable housing in remote areas.

Q18. Are the types of assistance proposed the right ones?

Whilst SEBG supports the types of assistance proposed, grants should not be considered by means testing alone. Consideration of the property type and location may mean any improvements to the property might not be economically viable within the context of the local economy. So if a landlord is required to undertake repairs and fails the “test of resources”, there should still be an incentive to carryout improvements, even if the grant is based only on gap funding.

Q19. Do you agree with the proposals for amending the legislation on grants?

Increased flexibility would be of benefit, but local authorities should be given the right to derogate from means testing particularly where the property is serving a key priority within the local housing strategy (LHS).

Q20. With the exception of adaptations for disabled persons and fire precautions, should eligible works for financial assistance be limited to those relevant to the Tolerable and Scottish Housing Quality Standards?

Agreed, though there needs to be an element of discretion to incorporate other unforeseen circumstance.

Q21. Do you agree that subsidised loan should be available as an alternative to grant?

In certain circumstances. Equity loans could be an alternative particularly when the property use serves a low priority within the LHS.

Charging Orders

Q22. Do you think that charging orders will be an effective means of releasing capital for carrying out repairs and improvements?

A useful tool for local authorities in some circumstances, as a means of releasing capital, so should be an available option.

7. RESPONSES TO CH. 6: Better information for home buyers

Energy performance certificates

Q29. There is the potential for sanctions to be applied where the EU Directive requirement on energy performance certificates is not complied with. What do you think would be appropriate sanctions?

For tenants the appropriate sanction would appear to be loss of accreditation if that route is chosen in future. There should however be steps allowing a landlord to rectify the error.

Q30. Should the energy performance certificate incorporate an A to G coloured banding energy rating, similar to the energy labels displayed when household appliances are retailed?

This would be a logical step.

8. RESPONSES TO CH. 7: Improving standards in the privately rented sector

The Repairing Standard

Q31. Are there any other elements that you would include in the modernised Repairing Standard for private landlords?

It is not always practical for landlords to give 24 hours advance notice in writing of a requirement for entry. SEBG suggests a more flexible approach be taken, with the removal of the 24 hour restriction and for contact by e-mail, telephone, or fax to be acceptable as an alternative to written notice. The requirement for notice should be waived in the case of emergency.

Q32. Do you agree with the proposed range of tenancies to which the new standard would apply?

Yes.

Q33. Should there be a statutory requirement that all written leases should include an explicit statement of the private landlords' repairing obligation?

Yes.

The Private Rented Housing Tribunal

SEBG is concerned that the proposed Tribunal would be the only housing tool to be overseen at a national rather than a local level. We support measures to resolve disputes but this should be done in a way which complements other actions currently being taken relating to housing standards and doesn't cause harm to the sector as a whole.

The present policy direction is for powers relating to housing to be devolved, with local authorities being given more influence through their mandatory housing strategies, greater involvement with allocation of housing grant and the development of housing forums. Landlords should be encouraged to become more involved with their local authorities and engage in the Local Housing Strategy process through representation on the Local Housing Forums.

Q34. What changes do you think would need to be made to the Rent Assessment Panel and Committees to equip them for their extended role?

In our experience Rent Assessment Committees have worked fairly and served the PLS well with the correct balance of professional and lay members and this balance should be repeated with the proposed Tribunals. Given the proposed function of the Tribunal it is clear that suitably qualified surveyors are going to play a key role. Training for all whether professional or lay member will be essential.

Q35. The name "Private Rented Housing Tribunal for Scotland" is a working title. Do you have suggestions for another name for the service?

No.

Adaptations

Q39. Do you have any comments on the possible introduction of a right for tenants with disabilities to carry out adaptations to their homes and how it would operate?

We suggest that landlord permission should be mandatory when the request is made by the social services, so long as social services would also be responsible for the reinstatement of the property at the conclusion of the lease.

Extending the national registration scheme for private landlords

Q40. Is it sensible to consider extending this scheme or will this place too great a regulatory burden on landlords?

SEBG is concerned that changes are already being considered for the new registration scheme, despite the fact that they have yet to be developed and rolled out by the local authorities. Until these schemes have been put in place, it will be impossible to assess how effective they are in delivering their objectives. Any consideration of change should instead await a full evaluation to highlight the strengths and weakness of the new system. In addition, voluntary accreditation has yet to be developed fully. It would be better, we suggest, to resist change until both systems can be properly evaluated and perhaps coordinated.

We are also concerned at the prospect of duplication with enforcement through the Tribunal. It is important that not only is the regulatory burden on landlords constrained, but also that the measures be proportionate to the problem. We should not lose sight of the fact that the PLS generally works very well and provides an important resource.

Q41. If the registration scheme is to be strengthened should this be on the basis of "certification" approach set out above?

See above – it is too early to consider strengthening a system which has yet to be introduced, let alone assessed.

Q43. If the registration scheme is to be strengthened should this be as an alternative to the proposals for Private Sector Housing Tribunals?

It would appear that under the proposals as set out, there would be duplication of responsibilities and powers in relation to repair enforcement, which would necessarily be wasteful of limited resources. SEBG sees no need for both a strengthened registration scheme and the Tribunals and, as set out above, believe it will be too early to assess the effectiveness of the registration schemes before they have been up and running for some time.

However, we do urge caution over the extension of regulation of the industry. We suggest the increased participation of the PLS with the local housing forums, allied with the voluntary accreditation scheme, would be the most effective way to encourage the PLS in the protection of property. Further measures should only be considered later if evidence emerges that this approach was not working.

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