

# Housing Improvement Task Force Final Report

## Briefing on Improving Standards in the Private Rented Sector



### Introduction

This briefing outlines some of the proposals in the Housing Improvement Task Force (HITF) final report '*Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland*'. It focuses on the parts of the report that relate to improving standards in the private rented sector.

The parts of the report that relate to quality standards for the private housing sector and improving the operation of the housing market are covered in separate briefings from the CIH. The part of the HITF report that addresses the facilitation of common repairs and maintenance is covered in a separate CIH briefing relating to the Scottish Executive's consultation paper on the Tenements (Scotland) Bill. All briefing papers are available on the CIH Scotland website [www.cihscotland.org](http://www.cihscotland.org) or by phoning 0131 225 4544.

### Background

The HITF was established by the Scottish Executive and chaired by Margaret Curran MSP, Social Justice Minister. It was charged with carrying out a thorough review of housing policy in relation to the condition of the private sector in Scotland. Its first stage report published in March 2002, '*Issues in Improving Quality in Private Houses: The first report of the Housing Improvement Task Force*', set out the key issues and challenges in improving the condition of Scotland's private sector houses and modernising the buying and selling process. The first stage report is available on the Scottish Executive website at: <http://www.scotland.gov.uk/library3/housing/iqph-00.asp>

The findings of the first stage report were used as the starting point to draw up the range of proposals and recommendations contained in the final report. The final report has been presented to the Scottish Executive, which has now put it out for consultation. A copy of the full HITF final report is available on the Scottish Executive website:

<http://www.scotland.gov.uk/library5/housing/pfph-00.asp>

The CIH will be responding to the HITF final report and is interested in hearing your views on this important report. The consultation process is an ideal opportunity to influence the future direction of action on private housing in Scotland. Please respond with comments by **Monday 2 June 2003**.

Comments should be sent to:  
Nick Fletcher  
Policy and Public Affairs Officer  
Chartered Institute of Housing in Scotland  
6 Palmerston Place,  
Edinburgh  
EH12 5AA

Tel: 0131 225 4544  
E-mail: [nick.fletcher@cih.org](mailto:nick.fletcher@cih.org)

## **1. Improving Standards in the Private Rented Sector**

The section of the HITF report focusing on issues in the private rented sector looks to develop of policies for improving housing conditions and remedying disrepair in the sector. The HITF has produced the following proposals because property conditions in the private rented sector are worse relative to those in other tenures. There is also the issue that poor property conditions can jeopardise the safety of tenants. It believes solutions based solely on market mechanisms have only limited success.

The HITF approach is based on a belief that private landlords should bear the primary responsibility for ensuring adequate repair and maintenance of their properties. Private landlords need to increase their investment in repairs and maintenance and ways need to be found to encourage them, and if necessary, oblige them, to make the much-needed investment and to then maintain their properties in good condition.

## **2. The Repairing Standard for Private Landlords**

The HITF has proposed the future shape of three key housing standards:

- the Tolerable Standard,
- the Scottish Housing Quality Standard,
- the Repairing Standard for private Landlords

The first two are the subject of a separate briefing from the CIH – 'House Conditions - The Tolerable Standard and Scottish Housing Quality Standard'. Each standard addresses a different purpose with the proposed Repairing Standard being a minimum statutory standard that places a duty on private landlords to maintain properties in a habitable condition. It is a basic standard related to "fitness for human occupation".

### ***a. The Content of the Modernised Repairing Standard***

The statutory repairing obligation of social housing landlords have been modernised by Schedule 4 of the Housing (Scotland) Act 2001. The HITF now wants to see a similar modernisation of the statutory repairing obligation of private landlords, Schedule 10 of the Housing (Scotland) Act 1987.

The HITF proposes that the following elements should be adopted for a modernised Repairing Standard for private landlords:

- ensure property is wind and water tight and in all other respects, reasonably fit for human habitation,
- keep the structure and exterior of the property in a state of repair,
- keep in repair and working order the installations for the supply of water, gas, electricity and sanitation (including basins, sinks baths and sanitary conveniences) and the installations for space heating and heating water,
- keep in repair the fixtures, fittings, and appliances for making use of the supply of water, gas or electricity that are part of the contract of let,

- ensure that the furnishings and floor coverings that are part of the contract of let are fit for purpose,
- carry out a repair inspection prior to a tenancy's commencement, notify the tenant of any work required and carry out the repair work in a reasonable time,
- give 24-hour advance notice in writing of a requirement for entry for the purpose of inspection or carrying out repairs.

**Do you agree with the proposed additional elements for the Repairing Standard? Should any other elements be included?**

***b. Making the Standard Explicit in Written Leases***

Schedule 10 is *implied* which means that it has force even if it is not referred to in the lease. It also applies where a tenant has no written lease. There is currently no duty to incorporate a statement of the repairing obligations in leases for Assured and Short Assured Tenancies. The HITF believes that tenants will be better able to exercise their rights if the repairing obligations are made *explicit* in written leases. As not all types of tenancies require a written lease to be provided, the HITF concluded that the implied nature of the obligations should continue to apply in such cases.

**Do you agree that the modernised Repairing Standard should be included in leases? Should leases also include details of where people can go to get advice and assistance on enforcing these obligations?**

***c. The Types of Tenancies that the Modernised Repairing Standard Should Cover***

A modernised schedule has to be expressed in terms of the types of tenancies to which it applies. It cannot simply refer to "private landlords". The HITF has concluded that the simplest solution is to make a private landlord's repairing obligations apply to all tenancies that are not Scottish Secure Tenancies or Short Scottish Secure Tenancies. It wants to ensure the exact phrasing of the terms of the coverage includes tied tenancies in the private sector.

**Will the HITF's recommendation ensure all private sector tenants are covered?**

***d. Publicity***

Tenants and landlords need to know about the repairing obligations and what they should expect in their leases and the implications the changes have for their rights. The HITF therefore recommends that a significant publicity effort should be mounted by the Executive, local authorities, citizen's advice bureaux and voluntary organisations to get over to landlords and tenants the details of the changes (this should include clear statements about the responsibilities tenants have, as well as their rights).

**Who should be responsible for co-ordinating this publicity work? How should it be funded? What methods or mediums can be employed to ensure the publicity reaches its target audience?**

### **3. Repair Problems: Strengthening the Rights of Private Tenants**

In instances where private landlords have not adhered to their statutory repair obligations, The HITF wants to see an easily accessible agency made available for tenants to turn to for help and where tenants with genuine complaints about repair problems can obtain redress. It considered two options:

- developing the consumer rights approach through expansion of the role of Trading Standards Officers (TSOs),
- developing the role of Rent Assessment Committees (RACs).

The Office of Fair Trading (OFT) has ruled that the '*Unfair Terms in Consumer Contract Regulations 1999*' applies to tenancy agreements. "Policing" consumer rights legislation at local level rests with TSOs. However, there is very little experience in Scotland of them providing housing advice or applying their enforcement powers in the housing sector.

The RAC's main role is in determining the rent in relation to Regulated Tenancies and in dealing with applications from landlords or tenants for adjudication of the rent or tenancy terms for Assured and Short Assured Tenancies. The Committees are very familiar with the workings of the private rented sector and have developed a good understanding of how landlords operate and appreciate the issues that tenants can face in dealing with difficult landlords.

Based on these findings the HITF concluded that enhancing the remit of the RAC offers the most suitable route for tenants to seek help in resolving disputes with their landlords about repair and maintenance issues. To reflect the wider role of the RAC the HITF also proposes a name change to the '*Private Rented Housing Tribunal for Scotland*'.

The HITF also sees a role for consumer protection agencies making two further recommendations.

The OFT has produced guidance that sets out a wide range of terms within tenancy agreements that can be challenged in terms of unfairness but this only applies to England to Wales. The HITF recommends that OFT should produce a Scottish version.

There is not a comprehensive understanding of the how consumer protection legislation interacts with tenancy agreements and landlord / tenant relationships. The HITF recommends that the Scottish Executive should undertake or commission more detailed work to identify the contribution and benefits of consumer protection legislation, its overlaps with existing housing legislation and the viability of developing the role of TSOs in relation to residential leases.

**Do you support these recommendations? Are there other ways in which you would like to see private tenants rights strengthened? Is there a role for local authority housing information and advice services?**

The HITF also considered the rights of tenants with particular needs to make changes to their homes to meet those needs. It took the view that there was no overriding reason why such individuals should have any less right to a home that meets their needs simply because of the tenure of the home they occupy. To achieve this, it believes that an amendment should be made to the relevant sections of the Housing (Scotland) Act 1988 to provide that a private tenant shall have a right to carry out adaptations to their home to meet their particular needs, subject to the consent of the landlord, and that consent should not be

unreasonably withheld. The proposed Tribunal would be responsible for determining when consent has been withheld unreasonably.

**Do you support this recommendation? Is there more that can be done to promote the rights of tenants with particular needs? Is the Tribunal the most appropriate body to settle disputes?**

#### **4. Regulation and Accreditation**

The HITF looked at the local authority / private landlord relationship with regard to raising both the quality of accommodation and the standard of its management. Its key objectives were to identify what types of regulation, either mandatory or discretionary, would be most effective in raising standards in the private rented sector without having a detrimental impact on its scale of provision.

It concluded that a "one size fits all" approach was not appropriate. It recommends making available a range of options. These are:

- Voluntary Accreditation
- Compulsory registration through HMO licensing
- Discretionary registration

##### ***a. Voluntary Accreditation***

Accreditation implies a voluntary system of regulation. The HITF supports a concept of accreditation that is based on the establishment of a scheme by a local authority and landlord organisation (or a landlord forum) which landlords and agents choose to join. Such schemes require specific property and management standards to be met in order for the property or landlord to be accredited and if the application is successful, a certificate of confirmation of the standards having been attained is awarded. A voluntary accreditation scheme can target the whole private rented sector or a specific part, by geography or sub-sector but it would be expected there would only be one accreditation scheme operating in each local authority's area. The HITF supports the promotion of voluntary accreditation but accepts that other approaches such as registration, certification or selective licensing may be more of a priority for some authorities.

The HITF believes that voluntary accreditation must aim to raise and maintain standards. However, credibility is crucial to its success and there also needs to be tangible benefits to landlords. A national framework of standards and guidance should be developed to support voluntary accreditation schemes via a National Lead Agency.

**Do you support voluntary accreditation as one means of promoting high standards in the private rented sector? Other than the National Lead Agency should other support be made available to local authorities and private landlords wishing to implement set up accreditation schemes?**

##### ***b. Compulsory Regulation***

The HITF identified three main types of compulsory regulation: compulsory licensing, compulsory registration and compulsory certification. They are all

universal schemes which mean that if introduced all privately-rented property (or all private landlords and letting agents) must be regulated in order to lawfully operate and trade. HMO licensing is an example of compulsory regulation.

The HITF supports HMO licensing but would like to see it taken out of the constraints of the Civic Government (Scotland) Act 1982 and reintroduced through new legislation which could:

- Provide a national framework for risk assessment. Low risk HMOs could be moved out of licensing and into self certification or accreditation,
- Allow the Scottish Executive to set national minimum standards and fee structures,
- Allow for different sanctions.

The HITF rejected the idea of compulsory licensing for the whole of the private rented sector. It did endorse discretionary forms of regulation operated at a local level (see below).

**Do you support the proposed reforms to HMO Licensing? Would you like to see additional reforms?**

**Do you agree with the HITF that all private landlords should not be subject to national compulsory licensing?**

### ***c. Discretionary Forms of Regulation***

With discretionary schemes discretion would lie with the local authority as to what it wants to do (not with the landlord as to whether or not to join a scheme). If it wants to introduce additional regulation beyond that of its mandatory HMO licensing scheme, it has three options: to promote a registration scheme, or a certification scheme or a licensing scheme. The HITF supports the idea of discretionary schemes.

The HITF recommends that local authorities would have to seek Scottish Executive approval for any proposed regulation of the private rented sector. It also wants the Scottish Executive to make start up funding and guidance available. In doing so it should make mandatory some of the key parameters in terms of standards, enforcement, sanctions and charging.

It recommends that the Scottish Executive should review schemes after a time. It should also have the power to require any or all local authorities to establish a registration, certification or licensing scheme.

**Do you agree that local authorities should have discretion to set up their own schemes? Do you agree with the proposals for the Scottish Executive's Role? What grounds should the Scottish Executive have for refusing a scheme?**

## **5. Wider Issues**

### ***a. Changing Attitudes***

The HITF believes that the private rented sector suffers from a negative image and that this should be addressed. Much of the responsibility for changing the

image lies with landlords themselves in meeting their obligations. The HITF recommendations above are intended to help with this.

It also believes that attitudes of others who have a stake in the sector must also change. It therefore recommends that the Scottish Executive, including Communities Scotland, should take a much greater interest in the private rented sector including more contact with landlord organisations, landlords, letting agents and tenants and they should develop more sensitive monitoring of conditions in the sector. The HITF also concludes that local authorities should recognise the role of the private rented sector in their local housing strategies and development plans.

**Do you support these recommendations aimed at changing attitudes? Is there more that can be done?**

***b. The Importance of Advice and Information***

The HITF notes that two issues need to be tackled - knowledge of rights and responsibilities and the availability of appropriate advice services. This means private tenant rights can be undermined by a lack of knowledge. A similar lack of understanding of their legal responsibilities and duties can affect many landlords.

The HITF therefore recommends that the Scottish Executive, local authorities and other agencies should ensure that the implementation of new private rented sector legislation and the development of policies and good practice are accorded a significant publicity campaign and educational programme of dissemination to private landlords, letting agents and tenants.

**Do you support this recommendation? How can it be implemented successfully?**

***c. Developing a Model Private Tenancy Agreement***

The HITF not only wants repairing obligations spelt out in tenancy agreements but is concerned about the wider quality and accuracy of private sector leases and would like to see guidance developed further.

It recommends that in collaboration with stakeholders the Scottish Executive should develop a model private sector tenancy agreement (or different versions if necessary).

**Do you think a model tenancy agreement should be developed? Should anything new be included in it?**

***d. Property and Tenancy Management Review***

The HITF believes that there is merit in taking stock of the experience of the assured and short assured tenancy regime and recommends that the Scottish Executive carries out a review of the tenancy provisions for the private rented sector as set out in the Housing (Scotland) Act 1988. It recommends that this review should also cover landlords' approaches to anti-social behaviour.

**Do you support the proposal for a review of tenancy provisions? Are there any key elements such a review should look at?**