

Consultation response

Regulations made under Section 32A of the Housing (Scotland) Act 1987

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Shelter

Summary of key points

- Shelter agrees, in principle, that there might be greater use of the private rented sector (PRS) by allowing local authorities, in some circumstances, to discharge their statutory duty to households who are homeless into a private let. We believe that this is an important additional means to achieve the 2012 target and, if used well, is consistent with greater applicant choice.
- We agree that use of this power should be limited by criteria designed to ensure that that homeless households are making an informed choice in accepting a private tenancy. It is important that affordability, and support needs are taken into account and management and repair standards are met within the tenancy. However, we think it is unlikely that these criteria can be satisfactorily assessed before the tenancy has commenced.
- Shelter does not think that the housing needs of homeless households can be met within a 12 month Short Assured Tenancy (SAT). A minimum fixed period of two years should be provided to enable tenants to feel secure and to become settled.
- We propose that to enable an accurate and meaningful assessment of the suitability of the tenancy and to ensure that tenants are given sufficient security of tenure, discharge of duty should be delayed until after the satisfactory completion of a review following an initial six-month tenancy period.
- Following an initial six-month SAT, the local authority should review affordability, management standards, repair, and any ongoing support needs. The review should also seek views from the tenant and the landlord about the tenancy. If the review concludes that the private sector tenancy is appropriate and the tenant gives informed consent, the local authority should negotiate a longer (minimum two year) fixed term tenancy with the landlord before discharging duty. Otherwise, the local authority would continue to have a duty to accommodate the tenant in a different private sector tenancy or in social rented housing.
- We have suggested ways in which the requirements on affordability, support and informed consent can be strengthened practicably. We believe that it is wrong to omit minimal physical standards and that all landlords with whom homeless households are being housed should meet national core standards.
- We see the amended regulations as a short-term measure designed to address immediate concerns about capacity to meet 2012. In the medium term (i.e. over the term of this parliament) we look to a new housing bill to revamp private sector tenancy law to give additional tenancy options, which promote longer term security.

Introduction

Shelter welcomes, in principle, making greater use of the private rented sector (PRS) by enabling local authorities to discharge their statutory duty to households who are homeless into a private let.

Changes to these regulations are being made in the context of the drive to reach the 2012 homelessness target. Scotland has taken a groundbreaking approach in expanding rights and eligibility for housing assistance. Removing the inequality in law that gives some people the right to a home based on criteria that have nothing to do with their immediate housing need is the right thing to do. But, in the short term at least, it will present challenges for local authorities and increased demand for social rented properties. Some local authorities are already saying that they may not meet the 2012 target without significantly restricting their ability to house other people on their waiting lists.

Of course, the answer to this is to expand the supply of affordable rented housing provided by responsible social landlords. Shelter has argued consistently for this and it is an indictment of thirty years of housing policy that we are in the position we are today. However, we also recognise that a reversal in the decline of social housing lets cannot be achieved overnight. Since the expansion and equalisation of rights is unquestionably the right thing to do, the spotlight falls on the other side of the equation: that is, what can we do to expand the range of options available to make those rights effective.

So, allowing discharge of duty to the private rented sector will open up new options to local authorities to help them meet their new duties, but the main driver should be about opening up new options for people who find themselves homeless, options that offer a solution to the crisis of homelessness and help them into secure and settled accommodation. The PRS may offer increased choice and be the best alternative for some, opening up opportunities that otherwise might not be available in terms of the accommodation type and location, but for most, their circumstances and needs are such that the best alternative for them will still be a social let.

It may well be that for some homeless people at certain points in their lives, a private rented tenancy will be a good option, but it is also the case that the loss of a private sector tenancy is the third most common reason for applying as homeless, and a high proportion of clients come to Shelter as a result of leaving the PRS. Over 20 per cent of our clients cite a problem with a private tenancy as a reason for seeking our advice. This is a disproportionately high number when the PRS only houses 7.5 per cent of households in Scotland. These data suggest that many landlords may not be in a position to take on greater responsibility for homeless people. This, in turn, means that use of the PRS is unlikely to offer a widespread response to homelessness. On the other hand, the data also suggest that there is a need to invest more in preventing homelessness in the PRS.

We are encouraged that the Government has recognised that use of the PRS to house vulnerable households should be limited by criteria designed to ensure that it provides an escape from homelessness rather than a temporary break from it. However, we think that these criteria should go further in ensuring that safeguards are in place, and that a more sophisticated understanding of the private rented sector underpins the Regulations and associated guidance.

We are being asked to comment on amending the wording of the existing interim accommodation Regulations, and the circumstances and conditions that should be met to enable Short Assured Tenancies (SATs) to be used to discharge duty. We begin by making some wider comments about the context for expanding the use of the PRS in this way, the implications for the role of local authorities in engaging with private landlords and proposing a change to Regulation 5 to delay discharge of duty until after a review of an initial period of a SAT. Following these general points, we answer the questions set by the consultation. We have made some specific comments about the drafting of the Regulations, including the conditions that should be met to allow discharge into a SAT and implications of changing the use of the existing Regulations. In addition to answering the questions we have provided additional evidence as to why we think an alternative model is needed.

Getting a better understanding of the PRS

One important consideration that has not been properly reflected either in Firm Foundations or this consultation is that it is very difficult to talk about the PRS as a homogenous group of landlords. Landlords vary greatly in their reasons for letting and how they view their role. From our understanding of the sector, it is clear that some landlords already view their role as semi-social. Many of these landlords already participate in rent deposit guarantee schemes, while others are rural landowners, some of whom have a recognised role in the local community. Landlords such as these are likely to be better equipped to work with local authorities in meeting their statutory duties to homeless households. The Government must gain a better understanding of the dynamics of the private rented market, and in particular, a picture of the awareness among tenants of the Private Rented Housing Panel and Landlord Registration. We are strongly supportive of the research the Scottish Government is carrying out that will go some way towards establishing a strong evidence base for policy making on the PRS, and we hope that this research will be reflected in policy thinking on how the PRS can best meet the needs of homeless people.

As well as direct research on the private rented sector we believe that the views of homeless people on the PRS should be sought. Glasgow Homelessness Network has carried out some preliminary work on this which could be built upon.

How much can the PRS contribute to meeting 2012?

As we have already argued, it is important to be realistic about the scale of the contribution that the PRS may make to meeting the needs of homeless people. There is considerable variation in the size and significance of the PRS between different areas. In large cities such as Edinburgh it accounts for a large proportion of housing stock and could probably make a significant difference, but in other areas it may only account for a tiny proportion of local stock and its contribution will therefore be limited. There is also no necessary correlation between the supply of private rented properties and housing need due to homelessness in an area. The extent to which a local authority can offer a private tenancy as an option will be partly governed by supply limitations.

That is not to say that the PRS could not play a specific and targeted role in meeting the housing need of people who are homeless or on low incomes, but that the contribution to meeting overall housing need should not be overstated. We agree that the PRS can play a larger part in housing homeless people than it currently does, but we do not think that the PRS would be a suitable choice for many households applying as homeless.

Success in encouraging landlords to let to households who are homeless, and take on what they might perceive of as additional risks when there is already a strong demand for PRS tenancies in their area, will depend on the support they receive in doing this and how they view their role as a landlord. There is some concern that use of the PRS in this way will displace other tenants from private tenancies. Shelter acknowledges that this is an issue that should be monitored, particularly in areas where the PRS is already small scale, but we do not anticipate it becoming a significant problem in areas where there is already a healthy supply. This is for two reasons. Firstly, we think that the number of tenants housed in the PRS as a discharge of duty will not be large. Secondly, as we explain below, we envisage that landlords will begin to specialise in housing people who are referred by the local authority, much in the way that they have begun to work with rent deposit guarantee schemes or private sector leasing schemes. This may, in turn, lead to new supply being brought into the sector.

A new type of private landlord

We would like to see a specific sub-sector of private renting made up of landlords with long-term motivations and a commitment to higher and consistent management standards. They would be letting on longer-term tenancies and entering partnerships with local authorities or social landlords to house people normally housed in the social sector (though not those with higher support needs). We are encouraged by the high levels of

demand among landlords for Private Sector Leasing Schemes, and changes in the housing market which promote a long term view of landlordism¹.

Shelter would like to see further in-depth consideration and consultation on the development and encouragement of such a sub-set of private landlords. We would be keen to work with the Scottish Government, landlords' representative and voluntary sector homelessness groups to set out firm proposals for providing incentives and supporting the role of private landlords in housing homeless people.

It is important to bear in mind that we do not need to engage all private landlords in the process: we imagine that, perhaps only five to ten per cent of landlords will want to work in this way. That is, we don't have to cater for the views of 90 per cent of landlords who might have significant reservations about housing homeless people.

A new partnership between local authorities and private landlords

Over recent years, the Scottish Government has encouraged local authorities to engage and communicate with private landlords. While we welcome this new approach, we would question whether local authorities currently have the capacity to do this well. Many are just beginning to develop private rented sector teams in response to registration and the level of commitment to engaging with landlords varies widely across Scotland.

Regulation 5 will create a new link between the local authority and the PRS based on statutory duties towards homeless households. It will mean that the teams responsible for homelessness will have to work more closely with their colleagues responsible for Landlord Registration and engaging with private landlords locally. This will create new challenges for local authorities which will require new ways of working internally as well as with private landlords. Inevitably, establishing these links takes time, but for Regulation 5 to fulfil its potential, partnership working should be a specific requirement. The guidance that accompanies the regulations should be specific in setting out the sort of relationships that will be required: for example, liaison between the private sector registration officers and homelessness officers when considering private sector tenancies into which to discharge duty. Private sector teams will have greater experience in working with landlords and so should have a role in assessing the suitability of the property, landlord and tenancy, and in establishing and maintaining links with local landlords. The

¹ It has been argued that the recent slowdown in the housing market will change investor motivations in the PRS. Short-term capital gain will be less of a motivation and greater focus will be placed on rental income as the means of return. In Shelter's view this will be a positive development as it will produce greater focus on professional tenancy management and reduce incentives for unnecessary tenancy turnover.

Government should also consider how it can implement ongoing support and monitoring for local authorities in the proper use of the Regulations.

Using Section 32A to allow discharge into a SAT

We have some reservations about allowing discharge of duty into a SAT by using Section 32A of the Housing (Scotland) Act 2001. The purpose of Section 32A was to define circumstances where accommodation which was not permanent could be provided to households who were in priority need and unintentionally homeless and therefore owed a full duty. The original intention was that this Regulation amounted to a suspension of the discharge of duty and the household's right to permanent accommodation as defined in Section 31(5) would remain. The interim accommodation Regulations have not been widely understood or used, even when local authorities have been operating support packages that match the conditions set out by the regulations.

It is possible that using these Regulations to introduce a full discharge of duties to a SAT will only add to confusion about their proper use. We accept that the decision to amend regulations, rather than legislate on the definition of permanent accommodation in Section 31(5), is partly pragmatic, and we therefore think it is vital to clarify and implement these regulations effectively.

One way of avoiding some of the confusion over the differing uses of Regulations 4 and 5 would be to adopt the proposal set out below. We suggest that there are compelling reasons to delay discharge of duty into a SAT until after the completion of a six month review. This would be similar to the process of reviewing support needs in transitional accommodation after six months, and would align Regulations 4 and 5 more closely.

Delaying discharge of duty under Regulation 5

Shelter would like to propose a change to Regulation 5, which would require a review to be carried out by the local authority following the end of an initial period of the SAT. There are a number of compelling reasons to support such a change and in our answers to the consultation questions we set these out in more detail. Before we respond to the specific questions, however, we thought it would be helpful to explain how delaying discharge of duty could operate.

We do not suggest that this is the final word on a possible process; rather, we set it out to demonstrate that an alternative model is practicable. We would welcome further dialogue on it.

Procedure

We propose that the local authority follow the procedure as set out in the consultation to establish the suitability of a SAT and the applicant's approval for being considered for a SAT. However, rather than discharge duty at the point at which the tenancy is created, we propose that the local authority retains a duty until after the initial period of tenancy has been completed. In this case, we suggest that six months, rather than twelve months would be an appropriate amount of time for a fixed period of SAT in the first instance. We should be clear that during the initial six months, the tenant would have a tenancy agreement with the landlord.

Once the six-month SAT has elapsed, the local authority would conduct a review with the tenant to establish:

- whether the original assessment of affordability was accurate and whether the tenancy remains affordable, taking into consideration any employment or education implications
- whether the tenant has encountered any issues with the management or repair of the property, which might make the tenancy unsustainable in future
- whether the support needs, which were identified at the start were met and if the tenant has any ongoing support needs
- a check with the landlord that the tenant does not need additional advice on their responsibilities and whether any housing benefit issues are outstanding.

If this review were completed satisfactorily, the local authority would then obtain the written consent of the tenant to negotiate a longer fixed term tenancy that would be acceptable for the landlord and the tenant before a full discharge of duty could occur. We suggest that the second fixed term SAT should be a minimum of two years, although it would be important to make sure that it met the needs of both the tenant and landlord. We are aware that some rent deposit guarantee schemes in Scotland regularly negotiate tenancies of two, three or more years where the tenant is properly supported in setting up and maintaining the tenancy.

If, however, the six-month review found that issues with affordability, support, management or condition of the property were such that the tenant was unhappy about continuing in the SAT, the duty of the local authority to find suitable accommodation would remain. In this instance, depending on the outcome of the review, they may consider whether another SAT in a different property was appropriate, or whether the tenant should be offered a Scottish Secure Tenancy (SST).

The mechanism for moving between a six-month short assured tenancy and a longer fixed term tenancy would need to be specified by guidance. It may be useful for the Government to draft template tenancy agreements to be used in these circumstances that allow for the end of the initial period, following the review, to enable either ending of the six month SAT and a move onto a new fixed term SAT if appropriate. This may involve a mechanism for formally serving notice to end the contractual and statutory tenancy at the right point.

As we have already said, this process would be workable within the framework of Section 32. However, we believe that a more thorough overhaul of tenancy law should be a core part of any housing bill in 2009 or 2010.

We turn now to specific questions that are raised in the consultation.

Questions

Language

Q1. Do you have any views on the language and terminology used in the draft Regulations and on their name?

Yes.

Shelter thinks that for Regulation 4, the language that is used changes the meaning and intention of the Regulation. The proposed change to **transitional accommodation** from the previous defined **interim** will help clarify the use of the S.I. 412 and emphasises the original intent, which was to provide short-life accommodation with support where the support was of such a nature that it could not reasonably be provided in a permanent tenancy. Once the household had moved through this high level transitional period the lower level support could move with them to their permanent offer. Originally, the focus was on the nature of the support and the building as opposed to the much wider concept of someone's ability to sustain a tenancy. This was in recognition that most support packages can be delivered in an ordinary housing environment and that, often, the most successful were those delivered in the accommodation that was to be the household's permanent home. This allowed the support package to be tailored to the individual and the realities of full responsibilities for a tenancy in the actual environment/community. Support given in specialised projects may yield positive outcomes, but when the person's environment changed they often failed to sustain their tenancy. This is backed up by research into tenancy sustainment for GHA that found that the quality of the offer was very significant in a household's ability to keep their tenancy.²

² Heriot-Watt University and Mandy Littlewood (2006) Investigating Tenancy Sustainment in Glasgow:

The change of the wording in Section 4(a) from *'which cannot reasonably be provided within permanent accommodation'* to *'requires a level of housing support services which makes permanent accommodation inappropriate'* substantially changes the concept and leaves it open to subjective judgement about the households' ability to cope. This could lead to practice where households have their permanent offer withheld and made conditional on a set of widely varying interpretations/standards.

We do not support this change in wording.

There is also some potential for practitioners to be confused between using Section 5 referral and Regulation 5. Section 5 involves discharge of duty to an RSL, and Regulation 5 would discharge duty to private sector tenancy. We think there is merit in changing the name or number of Regulation 5 to avoid confusion with Section 5.

Regulation 4

Q2 Do you support the proposed changes to this Regulation? Are any further amendments required to clarify its purpose?

As we have outlined above, we think the wording should be amended to re-emphasise that the judgement should be based on whether the accommodation available would be appropriate to provide for the tenant's support needs.

Q3 Do you agree that good practice guidance on use of Regulation 4 should be developed?

Yes

Q4 Do you have any suggestions regarding content of the guidance?

Our understanding is that some evidence gathering was undertaken on the use of interim accommodation regulations as they stand; if so, that could be used to inform good practice guidance. Further, some of our observations in relation to question 1 could also be used to frame good practice guidance.

Regulation 5

Q5 Do you support the proposals to enable local authorities to discharge duty using a SAT?

In principle, Shelter supports the discharge of duty into a SAT, but we would like to see changes made to the conditions attached. In particular, we suggest that full discharge of duty under homelessness legislation be deferred until completion of a review at the end of a fixed period six month short assured tenancy and upon negotiation of a longer term (at least two year) fixed period SAT³.

Discharge of duty should be postponed until after a review at six months and made dependent on the tenant and landlord being happy with the arrangements. This would allow the local authority to assess affordability more accurately, address any problems with management standards or property condition, assess the tenant's support needs and enable the tenant to give more informed consent. The six-month period would also allow the local authority to sort out any problems with the housing benefit claim and address any problems with the tenant's understanding of their responsibilities. The homelessness duty should only be discharged after the six-month period into a fixed tenancy that meets the needs of the tenant and the landlord and is negotiated by the local authority. This might vary in length, but would be a minimum of two years.

Q6 Do you support the 4 prescribed circumstances which must apply in order that Regulation can be invoked (minimum tenancy period 12 months; affordability; provision of support for applicant; and applicant gives informed consent)?

No – not in the form described.

We are encouraged that the Government is seeking to ensure that where a SAT is used as a substitute for permanent accommodation with a SST, the outcome is the best possible one for the tenant's circumstance and that steps are taken to ensure that the tenancy will be sustainable.

However, we do not think that the circumstances that must apply, as set out in the consultation, are sufficient to ensure that a SAT is the best option for the tenant or

³ At the stakeholder seminar arranged by the Scottish Government on 11 September it was suggested that lenders for buy-to-let mortgages at least would balk at anything longer than 12 months. However, we do not see this as a significant barrier. There are plenty of examples of buy-to-let mortgage conditions that are not enforced. More importantly, the only concern that the lender would have is being able to realise the asset in the case of mortgage default. Any SAT would have a clause which would allow possession action prior to two years being up where rent was not being paid. In this and other ways it should be perfectly possible to offer comfort to lenders around longer-term tenancies.

sustainable. In addition to delaying the discharge of duty as outlined above, we suggest that the circumstances are amended, and we deal with each one below:

Minimum tenancy period

Shelter does not agree that statutory duties to homeless people can be met with a twelve-month Short Assured Tenancy. Households moving on from a period of crisis need stability and to feel settled. Effective solutions to episodes of homelessness should mean that households are protected from repeat homelessness. A consultation with homeless service users in Glasgow conducted by GHN found that people felt that at least two years security of tenure would be needed to ensure they became settled.

Tenants with SATs have minimal security of tenure and under the proposed Regulations could find themselves homeless after one year simply because the landlord wants to recover possession. The SAT serves a particular market of people who may be more mobile and seeking short-term accommodation, such as students, young professionals or people renting between house purchases. These groups can usually be considered 'strong consumers' and able to assert their rights. A large percentage of homeless households on the other hand are financially and socially disadvantaged and so need the greater protection that longer security of tenure can offer. In particular, for a household with children, a SAT does not provide the security of a long-term stable home with continuity of schooling and other social factors unless the landlord makes a commitment to a long contractual period.

We recognise also that there needs to be a balance between the needs of the tenant and those of the of the landlord, but we do not think that, in terms of tenure, these are necessarily opposing. Tenants need security to feel settled in their accommodation. Landlords need to have a stable rental income and usually prefer low turnover of tenants. Some of our informal discussions with landlords confirm that for some, at least – bearing in mind our earlier point that this proposal only has to appeal to a minority of landlords – longer-term tenancies are not off-putting, provided rental income is secure.

As we have set out above, we believe that working more closely with local authorities to house homeless people will appeal to landlords who want to take on a semi-social role. These landlords will seek to be letting for longer periods and so would encourage longer fixed period lets. There is evidence that landlords who work with rent deposit guarantee schemes and private sector leasing schemes already work in this way. If you add to this the additional security for landlords under our proposal that a review will be carried out after an initial six-month period before a longer term is negotiated, we think many landlords will consider this a good model.

In addition, we think that as part of the wider review of the PRS, the Scottish Government should consider the ongoing suitability of the assured/short assured tenancy as the only tenancy type in the sector. This review should consider either revising the existing tenancy used in the PRS, or creating a specific tenancy option alongside the existing regime. We think there is merit in investigating a model similar to the 'Part 4' tenancy in the Republic of Ireland. The possibility of a housing bill in 2009-10 provides an ideal platform to modernise tenancy law in this way.

Affordability

Affordability is the most difficult issue to address. As well as practical problems in assessing affordability in a meaningful way, it raises a major hurdle in the wider use of the PRS for many low-income households. Rent levels in the PRS are significantly higher than the social sector, though these averages mask a wider variation in quality and type of accommodation. The Homelessness Task Force was committed to increasing employability and the DWP has made overcoming worklessness a key priority for benefit reforms. It is very difficult, given the low incomes of most homeless households, to see how to reconcile work incentives and employability on the one hand and ensuring a landlord receives a reasonable return from a decent quality home on the other. This is probably the largest faultline in the consultation and is additional evidence to support our earlier argument that the use of the PRS to house homeless people may be more modest than we might wish.

The relationship between housing benefit and income means that the guidance on assessing affordability accompanying the regulations will need to be very thorough. We have some doubts whether local authorities will be able to meaningfully or consistently calculate affordability and take into account changes in circumstances.

There are a number of considerations that must be taken into account when assessing affordability. Households in receipt of housing benefit often find it difficult to access PRS accommodation. These difficulties arise from a combination of high rents, the structure of benefits (for example, the steep taper) and poor benefit administration which can lead to delayed payments and subsequent rent arrears.

The implementation across Scotland of the Local Housing Allowance (LHA) in April 2008 may have added to the existing problems of affordability of PRS accommodation for people in receipt of housing benefit. LHA is paid according to average rent levels across a very wide housing market areas. The consequence of this may be that property in areas where rents are higher than the average will be out of reach of most people claiming housing benefit. This may concentrate lower income households in the parts of the housing market area where rents are lower than average. Thus a set of proposals designed to open up choice to wider areas and house types may simply end up

reinforcing the distribution of people on lower incomes in particular areas. We have yet to see an assessment of the impact of the roll out of LHA, but Shelter is holding an event on 20th October 2008 to look at these issues.

More generally, housing benefit tapers steeply as people's incomes rise, which creates a powerful disincentive to move into employment. The job opportunities available to people who are out of work are generally low paid and the consequence of accepting even these positions is that rent becomes unaffordable, creating an increased risk of eviction and homelessness. A further factor is that the Shared Room Rate restriction means people under 25 who are on housing benefit have difficulties accessing PRS accommodation at all. The 'Flatmates' scheme operated by the Cyrenians in West Lothian aims to overcome this problem, but a limited voluntary sector initiative cannot respond to the scope of the problem across Scotland. The Cyrenians model works because it takes place outwith a statutory setting: that is, it is a prevention tool rather than a means of discharging duty. In the Flatmates model, it is possible to take time to 'match-make' individuals into sharing households. In a homelessness assessment setting it is much more difficult to see how this could be done successfully. Unless the sharing household had 'pre-formed' – which would be unusual – then the local authority would be assessing two separate applications which it then, somehow, would have to match-make to discharge a duty. While this is not impossible, we consider that it would be very rare.

On this basis, we think the circumstances where discharge into shared accommodation would be an acceptable use of Regulation 5 should be carefully considered and specified by the Government.

There needs to be detailed guidance about what constitutes affordability, for example that the rent should be no more than LHA, and guidance should perhaps include a formula for assessing affordability. An assessment of affordability completed before the start of the tenancy should take into account the changing needs of the tenant. Our proposal for a review at six months would greatly strengthen an affordability assessment and enable the tenant to make a fully informed choice about whether a private let was truly affordable for them. It would also enable local authorities to assess any housing benefit problems and give them the opportunity to put them right before discharging their duty to the household, thereby contributing to preventing repeat homelessness presentations.

We think that guidance should suggest local authorities consider using the facility to make sure that Local Housing Allowance is paid directly to the landlord rather than the tenant. This can be used currently when a local authority believes that the tenant may have difficulty paying the rent themselves. Landlords whose tenants receive housing benefit but do not pay their rent are also allowed to apply to a local authority after eight weeks of non-payment for the direct payment facility to be considered. We are suggesting that local authorities, as a matter of course, consider giving private landlords the security of direct

rent payment from the start of a tenancy when they are housing homeless people. We understand that Dundee and Glasgow City Councils are already exploring this and that such arrangements may already be in place, at least in relation to rent deposit schemes in Glasgow.

Provision of support

We strongly agree with the consultation paper that the issue of support services will be crucial to preventing repeat homelessness presentations. We think that support should be available for as long as the household needs it.

As an initial point, the drafting of the regulations differs from the explanation in the consultation. The consultation specifies that support needs are identified and can be met within the accommodation provided, and *'a package of support is in place to meet those needs'*. This is missing from the wording of the regulations and should be included. Further, we argue that the regulations should specify that the support will continue to be provided for as long as there is the need.

As we have outlined above, Shelter does not think that the option of a SAT will be appropriate for people with high support needs. However, people re-housed in the PRS may well need varying levels of support for them to settle and sustain their tenancy. The model of floating support that this would require has been proven to be most effective for people; however, we have some concerns about whether this support will be available and how it would be funded, given the changes to the funding regime for housing support. We have some doubt about the ability of local authorities to guarantee support in a PRS setting when they often have difficulties providing it in a council/RSL setting.

As we said above, guidance should make clear that support should be available not just at the start of the tenancy but on an ongoing basis. Currently, when duty is discharged into a social let housing support is often only funded for a few weeks. We would want to see guidance make clear that housing support should be provided for as long as the person requires it and the financial package to enable this is available. We recognise that this requirement to provide support on an ongoing basis is a stronger requirement than would be the case in social housing. However, there might be some justification for this given the relatively untested nature of this new regime and that private landlords are unlikely to have some of the social care skills that at least some social landlords and voluntary sector providers possess.

Our proposal that a review be carried out after six months of a short assured tenancy before discharge of duty would allow the support needs to be reassessed and an evaluation of the delivery of the original support to be made.

Informed Consent

Shelter thinks that consent is an important indication that the applicant has understood the implications of accepting SAT as opposed to a SST. We are concerned however that consent should be properly informed. We do not think that the Regulations go far enough in suggesting that an applicant is given access to independent housing advice. At the very least this should be reworded to say 'referred' to independent advocacy and information services. The system as described should be strengthened to make sure that referral takes place, rather than the client being merely signposted.

Consent should be properly informed: one of the advantages of our proposal for the six-month non-discharge of duty period at the start of the tenancy is that it would lead a better-informed consent from the tenant.

We also think that the Government should consider whether independent advice and information services are available in every area and what the funding implications for independent advice would be.

Q7 Should any additional circumstances be prescribed?

Yes.

There should be an additional criteria that the local authority is satisfied with the physical standards of the property, the management standards of the landlord, and that the landlord meets the Scottish National Core Standards for Private Landlords. This should be reviewed at the six-month assessment and National Core Standards for Private Landlords should be made available to tenants and landlords before the start of the tenancy to raise awareness of them. Please see response to Question 8 for more detail about how management standards and property quality should be approached.

Q8 Do you support the proposed approach on property quality and management? If not please give details of your concerns.

No – they are not sufficient.

The Regulations do not specify the standards that local authorities must ensure that landlords and their properties meet before placing a homeless household in a tenancy with them. Shelter does not think it is acceptable to leave this to chance. Existing policy initiatives have not yet been proven and we think that just as the Government recognise that Landlord Accreditation Scotland is in its infancy, from the point of view of tenants and the **enforcement** of high standards, so too are the Landlord Registration scheme and the Private Rented Housing Panel (PRHP).

In some parts of the market, tenants may well be assumed to negotiate their own best interests. But for tenants who could be considered vulnerable following a period of homelessness there is a case for more consistent regulation and enhanced standards. The ability of a private tenant to hold their landlords to account through the PRHP or Landlord Registration relies upon their understanding of the system and upon the capacity of the local authority to enforce registration. We do not agree with the consultation paper that either of these initiatives has yet begun to make a positive impact on the experience of tenants renting privately. We have real doubts whether, even in the long term, all tenants will be able to use them to pursue their rights.

We agree that Landlord Accreditation Scotland (LAS) should not be used either to guarantee standards for tenants housed in the PRS as a result of a homeless application. LAS is designed to rely on self-certification and its effectiveness will be measured by how well it can enforce standards and respond to tenants complaints.

Households who are housed in the PRS as an alternative to a social sector lease should be entitled to expect a high level of management appropriate to their tenure. Social landlords are closely regulated to ensure the standards they provide to tenants. While this level of regulation may not be appropriate for all private landlords, tenants accepting a private lease in place of a social one should be assured that their landlord operates to high professional standards.

We think that the Regulations should contain an additional clause that landlords offering tenancies for housing homeless households should be required to meet the Scottish National Core Standards and Good Practice Guide for Private Landlords. Local authorities should satisfy themselves at the point at which the duty is discharged that National Core Standards are met, rather than accepting accreditation as a passport to the standards.

Beyond this, guidance that accompanies the Regulations should set out ways for the local authority to ensure that the National Core Standards are met. There is room for a variety of approaches drawing on existing initiatives that local authorities have taken to engage with private landlords. For example, expanding the remit of rent deposit guarantee schemes to act as an intermediary between landlords and tenants or establishing closer partnership working directly with landlords.

Finally, both management practices and property standards should be measured against the National Core Standards and the Repairing Standard at the six-month review. The local authority should seek to resolve any problems identified before discharge of duty can be made.

Q9 Do you agree that good practice guidance on the use of Regulation 5 should be developed?

Yes (see below).

Q10 Do you support the suggested coverage of the guidance outlined in this paper? Do you have any further suggestions regarding the content of this guidance?

No.

As we have outlined in answer to the above questions we think there are a number of areas where guidance is particularly important and should go beyond what is suggested in the consultation. In particular around affordability, provision of support, and ensuring management standards are met.

General

Q11 Do you feel the proposals promote equality? If not, please give details of your concerns.

Yes.

The underlying driver behind extending discharge of duty to a SAT is meeting the 2012 target. On this basis we do feel that the proposals promote equality, since abolishing priority need is about equalising rights between different categories of homeless applicants.

Q12. Do you have any suggestions about how to evaluate the impact of the Regulations?

Yes.

Monitoring the use of S32A is very important. Monitoring should establish not just the scale and circumstances of referrals to the PRS, but also the outcomes for applicants at the end of the six-month review. We would suggest that HL1 is modified to show the number of placements into a SAT, where people are placed pre-discharge and post-discharge, how many tenancies are extended following a six-month review, and the average length of the tenancy negotiated. Local authorities should also record whose views have been taken into account and to what extent have they been fulfilled following the review. Local authorities should also monitor repeat homelessness applications following discharge into a SAT.

Conclusion

Shelter believes that in order to meet the 2012 target, more options should be considered for providing safe, appropriate and secure accommodation for people who apply as homeless. In this context, we welcome moves to investigate conditions for the use of a SAT to meet homelessness duties. We are encouraged that the Government are consulting on criteria to limit the circumstances when a SAT can be used, but feel that assessment of these criteria would be more meaningful after an initial six-month period of the tenancy has been completed. In particular, we do not agree that a twelve-month fixed tenancy gives enough security of tenure to enable a tenant to become settled after a period of homelessness. We would like to see discharge of duty delayed until completion of a review by the local authority after six months, and negotiation of a minimum two-year tenancy period with the landlord.

We also believe that the forthcoming housing bill offers an ideal opportunity to revamp private sector tenancy law with a view to offering longer tenancies to those tenants who do not have market power.