Dear Members

We have been asked to provide our suggestions and amendments to the latest version of the Landlord Registration (Private Housing) Bill 2020. Despite our reservations as to why it is that an unpaid committee should have to spend hours and hours of their free time to do so, we have obliged. Please see below some of our response and suggested amendments. However, please make no mistake, even with the proposed amendments, the fundamental issues with the Bill remain, such that it is entirely unworkable.

If this bill, in its present form, is passed. Then undoubtedly the following will occur in the coming months and years;

1. A housing crisis in the market resulting in homelessness becoming a very real and embarrassing issue on the Isle of Man;
2. Further reduction in the islands attractiveness to new businesses and attempts to grow our population;
3. Substantial and damaging reductions to the Treasury purse as a result of landlords exiting the market in large numbers, as indicated by our members; and
4. A substantial increase in the number of dilapidated buildings that already deface our towns on the Island as a result of them being uneconomical to renovate given the poor yields and the tax situation.

Having already endured one of the most damaging crises in the history of our island with this current devastating Covid outbreak and claims from certain quarters that the government failed to protect our community soon enough, to now create potential homelessness on the island is completely unacceptable and reckless in the extreme.

Seeking to ammend the Bill has been painstaking and has not resulted in a satisfactory resolution of the issues. Despite our best efforts, this Bill cannot be fixed by simple amendments as its fundamental issues are an infection inflicted upon the whole of the Bill. The Bill should be withdrawn until such time as these issues can be properly and appropriately addressed. At the very least, the Bill should be referred to committee for a thorough review.

Whilst there are many, many issues with the Bill, we set out some of the themes below, some of which will have the impact of creating a housing and homelessness crisis.

The Bill should not be considered without the Standards being considered in tandem;

It is impossible for MHKs or MLCs to consider the Bill and whether it is appropriate (including the level of fines to be imposed) without knowing what the standards are. The fines are up to £50,000!!

Similarly, the uncertainty which is being caused as a result of the fact that the Government is seeking to push through this "framework" without considering what the minimum standards may be is causing private landlords to exit the market. Whilst some may see this as a good thing making more housing available, the reality is that the housing market is buoyant. It is unlikely to affect property prices. It will, however, mean that greater pressure is put upon local authorities due to the shrinkage of the private rental sector. Demand already outstrips supply in the market, meaning those private rentals remaining are likely to be more expensive, in circumstances where many already complain that rent prices are high. There is much focus upon first time buyers, but there are many other reasons that people may wish to rent, rather than buy property. They may be in the IOM on a short-term contract, they may have sold their house, in order to

release equity for other purposes (e.g. travel, starting a business, retirement etc) or they may need to move out at short notice due to personal relationship problems.

The MLA are already aware of private landlords exiting the market as a result of the uncertainty caused. The minimum standards **must** be considered alongside the Bill and the Bill should not be passed until such time as there is clarity as to what they may be.

There must be exceptions where meeting the "minimum" standards is not practicable;

It will be impossible to apply some of the proposed minimum standards to certain types of housing. They will never be able to comply and/or the cost of compliance will not be practicable, or indeed affordable.

It should be possible for landlords to apply for exemptions where it is impossible or impractical that any one particular standard might be not capable of being met.

We have already seen what happens when inappropriate "standards" are applied to houses which are not appropriate for the type of property in question through "improvements" made to insulation in public housing, resulting in damp and other unintended consequences.

Private Landlords should not be discriminated against;

Private landlords are being held to a much higher standard than others, even employers.

The Bill and its associated clauses should be applicable to all landlords including local authorities. This will ensure that there is a level playing field and that the standards are truly limited to those which are the minimum to ensure safety etc. The current draft regulations go far beyond what would be required to ensure safety and good quality housing. In addition, they currently require, by way of example, electrical appliance PAT testing, which even employers of hundreds of staff are not *required* to carry out.

The current draft includes things which may be "preferable", but are by no means minimum e.g. locks on windows, provision of a bin shed, garden maintenance etc.

The terms of the Bill make it impossible for standards to be met;

The provisions of the Bill which mean that a landlord cannot ask a tenant to move out of the property or bring a tenancy to an end in order to carry out the works required. In those circumstances how does the landlord avoid prosecution or revocation of their licence if the works in question cannot be carried out without vacant possession? See Section 62(2)

Ability for Tenant to Avoid Rent / Recover Rent;

The Bill provides that a tenant can terminate the Lease in the event that a landlord's registration is revoked. It should be the tenant's choice to do so and we do not disagree. Equally the tenant may remain should they wish. However, what is entirely unacceptable is that a tenant may remain in the property (potentially for a very long time, depending upon the term remaining of the Lease), without payment of rent. This could result in a landlord suffering serious hardship and/or a property to be repossessed by a lender. Sections 45 and 46 **must** therefore be deleted.

Fundamental Issues with the use of "Landlord's Representative";

Under the terms of the Bill, a Landlord's Representative becomes personally responsible as though they were the property owner, meaning they are opening themselves up to liabilities including the need to carry out works to the property (at unlimited cost) and fines up to £50,000. This is likely to have a huge impact upon the fees that estate agents may charge and thus an impact upon rent. Additional insurance will be required. A landlord should also be able to contract with an estate agent to carry out certain aspects of property management. This evidently does not appear to be provided for within the Bill. Potentially therefore, there may not be any "landlords' representatives" available to provide this service, as the implications are just too onerous to consider.

The Bill ignores the reality of estate agency in the Isle of Man. It requires that where a landlord's representative is a legal entity (i.e. a company) that its key officers meet the personal conduct requirements. This ignores the reality that most estate agents do not deal purely with rental, but also have a residential sales aspect. Surely any personal conduct requirements should relate solely to those who are involved in the letting of houses, not their sale.

In circumstances where the landlord's representative becomes responsible to carry out the duties of the landlord, they must be provided with any Notices issued under the Bill. Currently, the provisions provide that any failure to provide notice to a representative won't affect validity of the Notice.

Reference to Licence must be removed from the Bill;

By way of example, the Bill seeks to provide that the same standards should apply to a licence as it might to a lease. It is totally unnecessary that the Bill should apply to a licence. When questioned about this, the Department has stated that the inclusion of a licence is an attempt to close a "loophole" whereby a landlord may seek to call a lease "a licence". There is no such loophole. Both a lease and a licence have a clear, well-established definition in law. As a result, a lease does not become a licence merely by naming it as such.

The definition of a lease has been established since 1985 and has been applied ever since. It provides that a tenancy is formed where a tenant is given exclusive use of the property, for a rent and the parties intend to create a legal relationship (i.e., a contract for the provision of housing for a rent). This means that a lease cannot be formed if exclusive possession is not given.

The issue of applying the Bill to licences infects the whole of the Bill and the current draft of the minimum standard Regulations. It seeks to apply the provisions of the Bill to a "separate dwelling". It is entirely unclear what this means. Is this exclusive possession? Similarly, the Bill seeks to suggest that it would apply to parties who share accommodation with the landlord. There is no such thing as sharing accommodation with a "landlord" under a "lease" (see Clause 8(4)), as no tenancy can exist without exclusive possession. Only a licence.

A licence is intended to be a much less formal arrangement and would ordinarily arise if for instance a party were to invite a lodger to live in their property. This often happens where a young person owns property and invites three friends to live with them at a reduced cost in order to share living costs. Under the terms of the current Bill they would need to register as a landlord and comply with the requirements of all the regulations. They would not fall under the exemptions (see Clause 8). This surely cannot be the intention of the Bill? If it is the intention, it is likely only to exacerbate the current housing crisis, particularly for young people who are seeking to join the property ladder. Similarly, if someone obtained a secondment to work in a different location for a period of time. They might not wish to vacate the property and rent it, but could be absent from the property for an extended period of time. Rather than rent it on the open

market, they may allow a trusted friend to occupy it at a reduced rate for their mutual benefit. They would need to register as a landlord and meet the standards, despite the fact that they will want to return to the property in due course e.g. 8 months later. Why should this be caught within the Bill if the occupier is a friend, rather than a close relative?

The reference to licence **must** be removed from the Bill in order for it to be workable. A tenancy named a "licence" is already dealt with by well-established legal principles. This Bill, in it's present form will apply to all leases, regardless of what they are named.

The above highlights only some of the issues with the Bill. We have spent a considerable amount of time trying to make constructive and workable changes to this bill and are very happy to share them with you if you would care to read them?

Thank You

Technical Committee
Isle of Man Landlords Association