

Maureen Watt MSP
Convenor
Infrastructure and Capital Investment Committee
The Scottish Parliament
Edinburgh
EH99 1SP

21 January 2014

Dear Ms Watt

Housing (Scotland) Bill – Officials Evidence Session

I undertook to write to you to provide further information and clarification in relation to a number of points discussed at the Committee session on 15 January 2014. These are as follows:

Part 2 - Social Housing

How many replies were received through social media (i.e. Facebook) during the public consultation?

20 responses were received through social media (Facebook) during the public consultation.

In addition:

- completed questionnaires were received from 219 individuals or organisations;
- written responses were obtained from 18 organisations; and
- responses to the consultation questions were obtained from seven regional workshops. During the regional workshops responses to questions were received from 154 individuals attending the events.

Further information on the consultation and stakeholder engagement is provide in the policy memorandum (paragraphs 83 to 92).

(n.b. it is possible that some individuals responded through more than one route.)

Can you give a bit more detail on why the categories of occupying overcrowded houses and large families have been dropped? Is there a shift away from giving priority to those who live in overcrowded conditions?

General effect

The general effect of the changes is to replace the existing specified priority groups with a broader definition more focussed on housing need. The Scottish Government's view is that the needs of communities differ and the changes will give social landlords more flexibility to meet the needs of local communities and make the best use of available social housing.

The case for modernising the reasonable preference framework rests on the view that the existing legislation no longer properly reflects contemporary housing needs. Research has indicated that the existing priority groups for allocating social housing were outdated and needed to be revised. For example respondents to research on *Reasonable Preference in Scottish Social Housing* (2011) suggested that the large family category was outdated, that there was a lack of clarity about what constituted a large family and that being a large family was not of itself indicative of any housing need.

The majority of respondents to the 2012 consultation were in agreement with the proposal to provide increased flexibility to social landlords in the housing allocation process.

Summary of Changes

The amendments to current legislation in the Bill mean that in future there would be three categories of people who must receive reasonable preference in the allocation of social housing:

- Homeless people and people threatened by homelessness and who have unmet housing needs (except where the person is only homeless or threatened with homelessness as a result of regard being had to a "restricted person");
- People who are living under unsatisfactory housing conditions and who have unmet housing needs;
- Tenants of houses held by the social landlord which the social landlord considers to be under-occupied.

People who are homeless or are threatened by homelessness remain a specified group which must be given reasonable preference in the allocation of social housing, as are people living under unsatisfactory housing conditions. In these cases there is the added requirement of having unmet housing needs. People have unmet housing needs where the social landlord considers them to have housing needs which are not capable of being met by other housing options which are available.

Unsatisfactory housing conditions will continue to cover a broad range of situations and, for example, would include housing needs arising from a health condition or other personal circumstances, in addition to factors stemming from the physical condition of the property.

Tenants whom the landlord considers to be under-occupying are a new specified group.

Groups no longer specified

The following priority groups are no longer specifically referred to in the list of groups who must be given reasonable preference in the allocation of social housing:

Persons:

- occupying houses which do not meet the tolerable standard;
- occupying overcrowded houses;
- with large families.

People in these groups would fall within the category of living under unsatisfactory housing conditions in circumstances where they have unmet housing needs, so they are no longer specifically referred to.

What would be the right of appeal for a tenant who had their tenancy converted to a short SST?

The Bill includes provisions at section 8 which allow a social landlord to either grant a Short Scottish Secure Tenancy (Short SST) or convert a Scottish Secure Tenancy to a Short SST on certain antisocial behaviour grounds. These extend existing provision in the Housing (Scotland) Act 2006. A person who is unhappy with the landlord's decision currently has the right of appeal to the courts and that will apply to the provision made by the Bill.

Part 4 – Letting Agents

Details of criminal offence if failing to register?

It will be an offence to operate as a letting agent without registration (at section 39). A person who commits the offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale, or to both. It is also an offence (at section 40) for a person who is not registered to use a number purporting to be a letting agent registration number in any document or communication, without reasonable excuse. A person who commits that offence is liable on summary conviction to a fine not exceeding level 3 in the standard scale.

Part 5 – Mobile Home Sites with Permanent Residents

What views did mobile home site owners and residents express in the consultation on the proposed revised licensing regime?

In response to the question regarding the views expressed by mobile home site owners in the consultation on the proposed revised licensing regime we would like to clarify that as a consequence of the concerns expressed in the consultation regarding the effect on the industry as whole, Ministers took the view following consultation that the new licensing regime should only cover mobile home sites with permanent residents and not apply across the board to all sites. In listening to the views expressed in the consultation it was considered that it would not be appropriate for mobile homes on holiday parks which are only occupied for part of the year to be covered by the new regime.

What impacts are there on Travelling People's sites?

The changes to the mobile home site licensing in Part 5 of the Bill will affect the licensing regime that applies to mobile home sites with permanent residents. The changes would apply to private Gypsy/Traveller sites with permanent residents, but would not apply to

private Gypsy/Traveller sites without permanent residents (e.g. those that are only open for part of the year). The changes would not apply to Local Authority Gypsy/Traveller sites.

Part 6 – Private Housing Conditions

How maintenance orders would work in practice?

Local authorities have powers to require private home owners to carry out work to repair and maintain their homes under the Housing (Scotland) Act 2006. These powers came into force in April 2009. The Housing Bill contains some provisions to amend the existing powers.

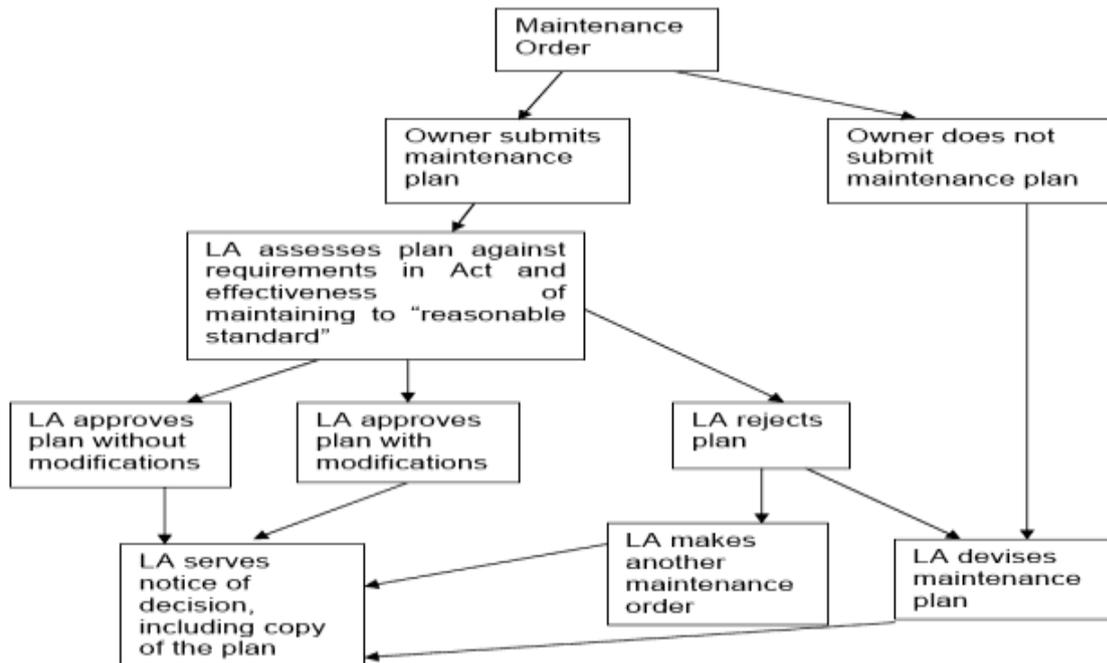
Owners are responsible for maintaining their properties. But where they are unable or unwilling to do so, the 2006 Act gave local authorities powers to make owners maintain them. Local authorities can issue a maintenance order in two circumstances –

- (1) Where owners have not maintained, or are unlikely to maintain, their house to a reasonable standard, or
- (2) If the benefit of a work notice or repairing standard enforcement order has been reduced or lost because of a lack of maintenance.

Maintenance orders require an owner to draw up a maintenance plan, or contribute to a joint plan with other owners in a tenement building, stating how the affected property will be maintained in a reasonable standard over a period of up to five years. Owners are responsible for implementing the maintenance plan, but the authority can step in to enforce it if the owner fails to do so.

When the home owner submits a maintenance plan, the local authority can approve or reject it. If the local authority rejects the maintenance plan, it can then devise a maintenance plan of its own for the house or it can issue another maintenance order to require the owner to submit a new maintenance plan. The local authority can also devise a maintenance plan if the owner of the house does not submit one in time. Local authorities also have powers to vary or revoke maintenance plans in different circumstances. They have to give home owners notice of the decisions that they make in connection with maintenance plans and, at the moment, these notices must be registered in the land register.

The following diagram from the Scottish Government guidance on maintenance of private homes (<http://www.scotland.gov.uk/Publications/2009/03/25154634/0>), summarises the process –



The Housing Bill makes three changes to this process –

- (1) Section 74 adds an additional circumstance in which a local authority can issue a maintenance plan, namely, where it has had to issue a work notice to require the owner to carry out repairs, and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed
- (2) Section 75 provides that documents required in relation to maintenance plans should be recorded in the building register rather than the land register. This is intended to reduce costs. The maintenance order itself will still be in the land register.
- (3) Section 75 also allows a local authority to revoke a maintenance plan if the owners appoint a property factor.

These amendments are intended to make the process of issuing maintenance orders more straightforward and to reduce costs – these costs are incurred by local authorities but can be recovered from home owners.

During the evidence session, I mistakenly stated that section 74 will amend the 2006 Act to allow a maintenance order to be issued where a previous maintenance order has been issued. In my letter to the Committee dated 20 December 2013, I advised that the Policy Memorandum for the Bill contains an error at paragraph 275. The situation I referred to was considered during policy development but was not included in the Bill. I apologise for my mistake.

What safeguards are in place for homeowners so the provisions in the Bill do not replicate the problems experienced by the Statutory Notice scheme in Edinburgh?

Separate from the powers in the 2006 Act there are local powers that only apply in Edinburgh. These are in Part 6 of the City of Edinburgh District Council Order Confirmation Act 1991 (the “statutory notice scheme”). We understand that following a recent investigation into the misuse of these powers, the Council has suspended the use of

statutory notices except, if there is a defect in a building which may be a risk to safety or health, to require “make safe” work to reduce or remove the danger and protect the safety and health of passers-by. These powers are not affected by the current Housing Bill.

Although City of Edinburgh Council has continued to use the 1991 Act powers, since April 2009 all Scottish local authorities have had general powers under the Housing (Scotland) Act 2006 to require home owners to carry out work on substandard property and for the local authority to carry out work themselves if owners are unable or unwilling to do so and to recover their costs (“work notices”).

The work notice powers in the 2006 Act have several safeguards for owners –

- The local authority must allow the home owner a reasonable period (which must be at least 21 days) to complete the work before carrying it out themselves.
- The work notice must specify what work needs to be done and if, in the course of carrying it out, the local authority find that additional work is needed, they must usually give the home owner another 21 days’ notice before carrying out any additional work.
- Home owners can appeal to the sheriff by summary application against the local authority's decision –
 - to serve a work notice
 - to carry out additional work when enforcing a notice
 - to recover expenses following enforcement of notices, or
 - to refuse to grant a certificate to confirm that work has been completed.

If a home owner appeals the decision to serve a work notice, the notice will not take effect until the home owner or the local authority abandons or concedes the appeal, or until it is finally determined.

- A local authority must provide assistance to home owners in respect of the work required under a work notice. Assistance can include financial help by way of grants and loans, practical help and advice. But it is up to each local authority to decide what kinds of assistance should be provided in different circumstances.

The amendments in the Housing Bill do not affect these safeguards for home owners.

What recovery options are available to Councils to manage outstanding repair bills where owners cannot afford to pay?

Local authorities are entitled to recover the cost of work undertaken to enforce work notices and maintenance orders. They can pursue these costs as a civil debt against home owners. In addition, local authorities have powers under the 2006 Act to create repayment charges. Section 72(2)(a) of the Bill ensures that the repayment charges will be available for recovery of costs incurred in respect of the new power to paying missing shares under the amendment in that section to the Tenement (Scotland) Act 2004. A repayment charge is repayable in thirty annual instalments.

The repayment charge is registered as a burden against title to the property in a land register and any person purchasing the property becomes liable for the debt outstanding at the time of the purchase, unless the repayment charge is redeemed before title is transferred to them.

The effect is that any sale of the property will usually result in the charge being repaid, if it has not already been repaid through the annual instalments that have fallen due.

Section 76 of the Housing Bill amends the 2006 Act to allow a repayment charge to be imposed on the non-residential parts of a building which includes housing, for example, the shops on the ground floor of a tenement building.

I hope this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink that reads "Linda Leslie". The signature is written in a cursive style and is underlined with a single horizontal line.

Linda Leslie
Housing Bill Team Leader