

COUNCIL OF MORTGAGE LENDERS

WRITTEN SUBMISSION

1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 115 members comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 95% of the residential mortgages in the UK. In addition, the CML's members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing of which just under £4 billion is in Scotland.

2. CML Scotland welcomes the opportunity to respond to the call for views by the Scottish Parliament Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill.

General

3. We have restricted our comments to those Parts of the Bill in which our members have a direct interest and are generally supportive of other parts of the Bill which we have not commented upon.

Part 1 Right to Buy (RTB)

4. When the Scottish Government last consulted in 2009 on proposals relating to the RTB which found their way into the Housing (Scotland) Act 2010 which ended the RTB for new supply social housing and for any new tenants entering the social rented sector we welcomed the fact that the RTB would remain for existing tenants. Nothing has happened in the intervening period to change our stance in this regard, particularly in light of recent research which still demonstrates a strong desire for home ownership.

5. Having said that we fully recognise RTB sales have fallen dramatically in recent years and RTB could be regarded as a policy which is effectively coming to a natural end as the majority of tenants who wished to buy and could afford to do so will have already exercised their right. We also recognise the demand which there is for all types of affordable housing and that ending the RTB will allow houses which would otherwise have been lost to the social rented sector to be retained in it.

6. While we recognise the strength of aspirations to home-ownership and the many benefits it delivers, we also acknowledge that it is not the tenure for everyone all of the time. The real challenge is to deliver a healthy balance of tenures, providing a choice of affordable housing. There is a need for diversity and for the balance of tenure to respond to economic and social change. Lenders do, of course, help fund housing across all tenures and have a considerable interest in both the private rented and social rented sectors.

7. The proposals either to end the RTB will undoubtedly impact in a negative way on some people who aspire to homeownership and in response to this the Scottish Government should consider the development of an intermediate tenure for households to be able to lower or raise their level of home-ownership according to

their changing personal circumstances. This would also be one way of managing the higher risk profile of mortgage lending which has occurred over the last decade as a result of extending home-ownership lower down the socio-economic spectrum.

8. We believe that a 3 year period before the RTB ends is more than an adequate notice period for those affected by the withdrawal of the RTB.

Part 7 Miscellaneous

20 year rule

9. We are supportive of powers being given to Scottish Ministers to exempt certain Standard Securities from the provisions of Section 11 of the Land Tenure Reform (Scotland) Act 1970. It is our view that this is an area of the law which is now outdated and requires fundamental review.

10. Section 11 previously caused issues in terms of long term private funding for the Housing Association sector and the Housing (Scotland) Act 2010 exempted Standard Securities granted over Housing Association assets from the provisions of Section 11.

11. More recently it has caused issues in relation to the Scottish Government shared equity loan schemes in that the owner of the property could repay the original equity contribution from the Scottish Government after 20 years without any uplift in the value of the property. While this is an issue for the Scottish Government it is also creates an issue for mortgage lenders in that the new Mortgage Conduct of Business Rules due to be introduced by the Financial Conduct Authority in April 2014 require a lender to take into account in assessing affordability any foreseeable event which could impact on the ability to repay the mortgage during its lifetime. This would mean that if the mortgage was for 25 years the lender would have to consider how the shared equity loan would be repaid at the end of year 20. Most lenders have indicated that they will not lend under the Scottish shared equity schemes unless the length of the shared equity loan matches the length of the mortgage.

Scottish Housing Regulator (SHR) powers

12. The Bill's provisions amend Section 67 of the Housing (Scotland) Act 2010 and would allow the SHR in certain circumstances in a potential insolvency situation to transfer the assets of an RSL without consulting tenants or secured creditors. It also allows the SHR in a partial transfer situation to transfer assets without a valuation.

13. While understanding the need of the SHR to move quickly in potential insolvency situations the current obligation on the SHR under Section 67(4) to consult with secured creditors is not an onerous one. There is no minimum consultation period and no specification as to the level of consultation required. There is also no obligation on the SHR to comply with the views of secured creditors. Any decision still rests at the discretion of the SHR. Secured creditors therefore currently enjoy very limited protection and safeguards and it is therefore difficult for us to understand why they are now being removed even if they are restricted to the situation where the viability of an RSL is in danger for financial reasons.

14. We know of no case in Scotland where the SHR has not consulted with the lender to an RSL facing financial difficulty and we can think of no circumstance in which it would not be appropriate to do so. In practice in rescue situations we cannot see how a transfer can be conducted without involving a lender where it holds security over the assets of the distressed RSL. In addition where the rescuing RSL is also borrowing there will also be a need to consult with their lender/s to ensure that their lender/s is happy for them to take on additional obligations and that their loan covenants are not being breached. In rescue situations it needs all parties to be working together—the SHR, the distressed landlord, the receiving landlord and lenders to both landlords. It is only by this happening that the interests of the tenants of the distressed landlord can be protected.

15. It is therefore hard to understand why the obligation to consult with secured creditors is being removed.

16. As regards the obligation to consult with tenants, we can foresee issues arising if urgent action is required, but again simply removing the obligation in its entirety seems draconian. We would have thought an obligation to consult to the extent viable in the circumstances taking into account the need for urgent action would have been a more appropriate approach.

17. So far as the removal of the obligation to obtain a valuation in the event of a partial transfer is concerned we cannot see how a partial transfer could possibly be structured in the absence of an indication of the value applying to the stock to be transferred. In the absence of any linkage to a valuation, it would be open to the SHR to direct a transfer at a nominal value (or any other figure chosen). This provision is a major concern for lenders.

18. We have a number of specific reservations relating to where a lender held a security over assets subject to the partial transfer:

- Is it assumed that any transfer would be free of security? If so, then the relevant bank debt would need to be refinanced.
- If alternatively the transfer is to be subject to security, then this would create a situation where a transferee RSL would acquire stock subject to security for debt owed by the transferor RSL. The transferor RSL would lose the benefit of the stock (and the rents arising from it) but retain the debt obligation.
- We are also not clear on the insolvency position. Transfers of assets at less than their market value can normally be challenged as gratuitous alienations or fraudulent preferences.

19. Overall it is difficult to envisage why a partial transfer should ever be at less than 'market value' and if a valuation (full or desk-top) is required for this purpose, this should be a condition to such a transfer. As with whole transfers, there would appear to be other adequate controls and powers presently available to the SHR to ensure appropriate interim management of the relevant stock pending a properly structured partial transfer.

20. We would call on the Scottish Government to reconsider this matter.

Repeal of defective designation

21. In our submission to a consultation on this matter we advised the Scottish Government that we do not believe the removal of the designation “defective” from Precast Reinforced Concrete (PRC) homes in Scotland would improve the availability of mortgages on these types of property. There is little doubt that the problem and stigma attached to these properties is fairly deep rooted. Lenders will still adopt a cautious attitude to them and unless approved repairs have been carried out to them they will still be regarded as not being suitable as security.

22. The present proposal has also the ability to create a confusing picture so far as our members are concerned. The majority of lenders operate on a UK wide basis and many of the PRC house types exist in both Scotland and England and Wales. It will raise questions going forward of why in Scotland these house types are not considered defective but in England and Wales they are.

23. The development of new approved repair schemes in conjunction with the Buildings Research Establishment is in our view more likely to bring long term benefits in relation to PRC homes although it cannot be guaranteed that such schemes will meet all aspects of every lenders’ individual lending policies.

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30 JANUARY 2014