

HOMELESS ACTION SCOTLAND

WRITTEN SUBMISSION

Introduction

Homeless Action Scotland is the national membership body in Scotland for organisations and individuals tackling homelessness. Our members include voluntary sector providers, housing associations, local authorities, academics and other professionals involved in homelessness prevention and alleviation.

We support the general objectives of the legislation but we have a number of concerns regarding the specific proposals in the Bill, specifically that they may lead inadvertently to an erosion of tenants' right. Our concerns are highlighted in the answers to the set questions.

Answers to set questions

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Homeless Action Scotland supports the proposals to end the right to buy.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

We feel strongly that the abolition of right to buy should happen sooner than proposed in the Bill. The abolition of right to buy has been trailed for some time and therefore the proposed change of policy should come as little surprise to those people wishing to exercise their rights.

Part 2: Social Housing

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing allow them to make best use of social housing?

Section 3 - Reasonable Preference

We are concerned that clause 1ZB undermines the role of social housing. Firstly, the clause defines housing needs as those 'which are not capable of being met by housing options which are available.' The implication appears to be that a social housing let should be considered only as a last resort when all other options have been exhausted. This reduces the role of social housing to that of residual welfare housing rather than as potentially the best option to meet the housing needs of the individual, considered equally among all options. It represents a further step towards the model adopted in England which regards social housing as residual. Scotland has a strong tradition of considering social housing as having a broad role in meeting housing needs, and in very many cases

providing the best option for successful outcomes for people in need, providing stability, affordability and security. Although accommodation may well be an option in other sectors, the essence of good quality housing options is to assess what provides the best long term opportunity for successful housing and inclusion in society. In our view, the term 'not capable of being met' should be reviewed and replaced with a term such as 'more appropriately met'.

Our second concern is that the whole issue of reasonable preference appears to rest with the decision of each social landlord as to whether or not someone's housing needs could have been met elsewhere. It remains vague and subjective as to how this assessment would be made, at what point in the process the assessment would be made, and what the objective factors might be against which a social landlord would be held to account if it was felt they were not giving appropriate priority to allocating properties to persons in housing need. We also seek further information on what measures would be in place to ensure that staff are sufficiently trained and equipped to make such an assessment. If Ministers wish social housing to remain accessible to all it is vital that these issues are fully explored.

In our view (and a view endorsed in research¹ commissioned by the Scottish Government into this issue) the existing reasonable preference legislation does not cause any problems to social landlords, but sets a clear benchmark and 'direction of travel' that has been well respected by social landlords and been beneficial to those assisted by them. The question is whether the revised version will lead to different decisions by landlords and whether those different decisions will be in the interests of the most vulnerable groups. Under the current framework most landlords make appropriate decisions and there appears to be no objective evidence to demonstrate that the existing legislation constrains them. Therefore there is no clear case for change.

We propose that there be no change to the current 'reasonable preference' framework.

Section 5 - Age

Homeless Action Scotland strongly opposes the provision to allow social landlords to consider age as a factor when allocating housing.

We view the proposal as introducing a power to discriminate on grounds of age. Age discrimination was outlawed for good reasons, and we would expect the Scottish Government to endorse both the spirit and letter of the equalities legislation enthusiastically. We are extremely disappointed that this proposal appears on the face of the Bill. We welcome the extension of the protections under the Equality Act to apply to 16 and 17 year olds, but cannot support the introduction of age as a factor that may be taken into account in housing allocations.

Age *per se* is not a housing need. Sometimes it can be a factor in exacerbating a need but this is not necessarily the case. People have different levels of capability and competence at the same age. It is therefore an arbitrary factor with no direct relationship to need.

Our only experience of age being taken into account, or of landlords seeking to take age into account, is in order to exclude young people from allocations. Young people already

¹ 'Reasonable Preference in Scottish Social Housing' Bretherton and Pleace 2011

face the biggest barriers in accessing accommodation and have been placed at a further disadvantage by some of the recent welfare reforms.

Homeless Action Scotland's Youth Homelessness Survey 2013² showed that around 38% of homeless young people moved into the social rented sector, only 7.5% moved into the private rented sector, and 55% had not moved on. The social rented sector therefore plays a crucial role in helping young people end their homelessness, and the introduction of the flexibility to discriminate on grounds of age is likely to lead to further barriers to young homeless people. We recognise that it may be argued that the measure could permit specific action in favour of young people. Our experience tells us that in practice it is likely to result in the reverse.

Existing guidance³ permits social landlords to undertake local lettings initiatives where there is a specific issue that needs to be addressed, and in some of these circumstances age has been used legitimately as a factor to help create balance in a particular localised area where a severe imbalance has emerged. The new legislation duplicates existing provision but extends it significantly by allowing age specifically to be taken into account in housing allocations. This erodes the protection that prospective tenants currently have against age discrimination.

We strongly recommend that the provision to allow social landlords to consider age as a factor when allocating housing is removed from the Bill.

Section 6 – Ownership

Homeless Action Scotland is broadly supportive of the proposals in Section 6, which permit ownership of property to be taken into consideration. We support the circumstances identified in 6(1)(2) where ownership of property would not be taken into account. There are, however, further circumstances that should be considered. For example, where the property has a large negative equity but the circumstances of the applicants have changed so that they can no longer afford the mortgage, it would neither be sensible for them to sell the property or to continue to live in it since it would quickly result in homelessness and substantial debt. There may also be cases where a household has to move to take up employment but is unable to sell their existing accommodation due to negative equity, and there can also be situations where the condition of the property is such that it would be unreasonable for a person to continue to occupy it. There are further, more general, issues around affordability, such as where a person becomes unemployed or experiences other unforeseen changes in their circumstances. These issues may be exacerbated over the coming years given the likelihood of a mortgage rate increase in the medium term and a slow recovery of house values.

We therefore support section 6 but propose a further circumstance be added to take account of situations where it would be unreasonable for the person to continue to occupy the property.

² <http://www.homelessactionsotland.org.uk/uploads/Youth/Youth%20Homelessness%20in%20Scotland%202013.pdf>

³ *Social Housing Allocations: a Practice Guide*, Scottish Government

Section 7 - 'Freezing' of applications

We recognise that this section is largely designed to formalise practices that have been undertaken by many social landlords for some time. However, three of the provisions in our view are too broad and may require some adjustment.

The first is 20B(5)(b)(ii). Offences punishable by imprisonment cover a broad range of circumstances. We understand that the main intention is to cover issues such as anti social behaviour and drug dealing. However, an accumulation of unpaid fines can lead to imprisonment, and there are other relatively minor offences not related to a person's behaviour or concerning their tenancy that might be covered. In order to protect tenants from an unfair imposition of a freeze we recommend that this provision is refined.

The second is 20B(5)(c). If not amended, this erodes the rights of prospective tenants quite unreasonably, and puts tenants in the private sector particularly at risk. For example, any Short Assured Tenancy that is ended in the private rented sector may be via an order for recovery of possession. A person wishing to enter the social rented sector who was previously renting in the private sector, and whose Short Assured Tenancy has come to an end through no fault of theirs, would therefore be open to having their application frozen at the whim of the social landlord. (Without being an expert on English or Northern Irish legislation we suspect the same may be true of those jurisdictions). In our view the balance here is tilted too far towards the social landlord at the expense of tenants' interests and rights. Consideration should also be given to how this clause in the Bill may affect joint tenants. In circumstances where a joint tenant is unable to prevent an eviction action but is not personally at fault, what rights will they have?

The third element is section 20B(5)(d) (abandonment). People abandon tenancies for a number of reasons including domestic abuse, external violence or harassment or simply to avoid court action. (In cases where there has been antisocial behaviour the matter is covered elsewhere in this section of the Bill.)

In all of the above cases there may be a perverse incentive for a person to make a homelessness application, and there is a risk that they may remain homeless during the period of their application being frozen. It would be a disappointing unintended consequence if the widespread freezing of applications were to lead directly to an increase in the homelessness statistics.

We therefore propose that 20B(5)(b)(ii), 20B(5)(c) and 20B(5)(d) be amended to restrict the circumstances in which they can be used.

As a further matter we share the concerns of the Legal Services Agency regarding the appeal procedure in Section 7 of the Bill, which risks a further erosion of tenants' rights.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Section 11 - Extension of term of SSST

We support the intention of this section. It is wise to have a provision where, in exceptional circumstances, when the landlord would otherwise repossess the tenancy, it may be beneficial to have a longer period to ascertain whether there is a genuine pattern of behavioural change. We have concerns, however, that as drafted the extension may simply be used as the norm rather than in exceptional circumstances. We would seek further conditions on its use, perhaps included in guidance issued by Ministers following the passing of the Act.

It is not clear how a tenant of a SSST that is subject to a 6 month extension could appeal against the landlord's decision. The tenant may believe it is unreasonable to extend for a further 6 months since he or she has complied with the requirements of the SSST and wish it to be converted after 12 months to a full SST, as originally intended.

Greater clarity on what does and does not constitute a valid reason for extension of a SSST is required, as well as a right for the affected tenant to appeal.

Section 14 - Succession

We are concerned that the changes proposed in this section could lead to increased levels of preventable homelessness. The imposition of a 12 month residency rule in order to qualify may well lead to family members being made homeless from the family home. It is a perfectly predictable scenario that a family member will give up secure accommodation to care for another family member who is ill. In this situation, if the person holding the tenancy dies within 12 months of their family member moving in to provide care, not only would the family member who has moved in face the loss of their loved one but also the uncertainty of where they might live.

A further circumstance that can be envisaged is where a new tenant has been allocated a house and the tenant dies within 6 months. In this case, how would succession rights affect family members who had been living with the tenant for less than 12 months? Under the current legislation there is a 6 month qualifying period for co-habitees. In our view 6 months would be more reasonable than 12 months for automatic succession.

Whilst we can accept that there may have been some cases where people have succeeded to a tenancy after staying at a property for a short time, there appears to be no objective evidence that there is a problem with existing succession rights. We therefore find no justification in the proposal, which would erode tenants' existing rights, and we propose that Schedule 3 of the Housing (Scotland) Act remains unchanged in this regard.

Section 15 – Eviction

We share the concerns of the Legal Services Agency regarding the removal of the test of 'reasonableness' and would consider this a fundamental erosion of tenants' rights.

Q6. Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

We refer to the above answer.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We generally support these proposals. We are extremely concerned, however, that this would reduce the right of a tenant under threat of eviction to have their case adjudicated by a sheriff. Furthermore, under the reforms that will be effected by the Tribunals (Scotland) Bill it is unclear to what extent legal representation will be encouraged or permitted, or what financial aid to obtain legal representation will be available for cases heard by tribunal, without both of which the balance will be tipped unfairly in favour of landlords. This is an important matter of human rights and needs to be addressed *before* any decision to permit evictions to be heard by a tribunal. In our view the above matters risk an erosion of tenants' rights. The loss of a home is a far more significant decision than many of the others being referred to a tribunal (e.g. disputes between tenant and landlord). The right to housing is a fundamental human right and removal of a home should therefore only be able to be decided by a senior legal figure (in Scotland's case, a sheriff). By clearing the sheriff courts of some of the less significant issues there should be space for eviction actions to be heard more quickly, whilst protecting tenants' rights to legal representation.

We note that tribunals can be presided over by a sheriff, but is not clear if that would be the case in every instance with regard to the proposals in the Bill. Allowing a sheriff to preside over a tribunal - for example in cases relating to evictions - would ameliorate some of our concerns.

We propose that amendments be made to this part guaranteeing access to legal representation, and either specifically excluding eviction hearings from the tribunal system or making a provision that eviction cases must be heard by a Sheriff under the tribunal system, and that consequential adjustments are made to Schedule 1.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

We are in favour of making it easier for tenants to enforce the repairing standard and we support the intention behind the provisions in the Bill. However, until greater security of tenure exists in the private rented sector it will remain unrealistic for tenants to exercise their rights without the risk of retaliatory eviction. This will remain the case regardless of whether access to the private rented housing panel is made by the tenant or by a third party, since in both cases the landlord may still end a tenancy following an initial six month term without giving any reason. We are working with Government and stakeholders through the Private Rented Sector Tenancy Review Group to address this issue, and we hope that the work of the group will lead to reform of the private rented sector so that tenants can enforce their rights without compromising the security of their tenancy.

Q9. Do you have any comments on the Scottish Government's intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Again, whilst we support the intention behind these provisions, the fundamental issues of lack of security for tenants and the risk of retaliatory evictions will only be addressed through reform of the private rented sector.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

There is a need to streamline the various registration and licensing procedures and we welcome the proposed establishment of a register of letting agents. However, we believe such a register would sit more logically together with the register of landlords and licences for houses in multiple occupation. Under the current proposals the former will rest with the Scottish Government and the latter with local government. This risks creating confusion for tenants about who is responsible for regulating the management of their property. The proposal for a register held by Scottish Ministers appears to be an expedient but *ad hoc* approach.

It is noted that section 49 permits Ministers to delegate functions relating to the register to other bodies. It is to be hoped that this anticipates the streamlining referred to above, and would in theory enable a quick transfer of this function to local authorities.

We seek clarification that it is the Government's intention to streamline the regulatory framework for the private rented sector, and urge the Government to consider transferring the proposed register of letting agents to local government.

We have a broader concern regarding the definition of letting agency work in section 51. There are likely to be quite varied situations in the private rented sector where, for example, a family member helps out the official landlord in dealing with/managing a property. In such a circumstance would this family member require to be registered as a letting agent? Where is the line drawn? There is the opposite extreme where organised crime is involved in the ownership and management of property through 'legitimate' landlords or agents. It does not appear that the current proposals would in any way address these problems.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

We have no particular views on these provisions. There remains the greater issue of lack of security for tenants in the private rented sector, and we refer to reader to the concerns highlighted in our answer to Q8.

Part 5: Mobile Home Sites with Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

No comment.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

No comment.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

No comment.

Part 7: Miscellaneous

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

No comment.

Other Issues

Q17. Are there any other comments you would like to make on the Bill's policy objectives or specific provisions?

No comment.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

No comment.

Homeless Action Scotland is happy to elaborate on any of the points raised and for the content of this response to be made publicly available.

**Homeless Action Scotland
26 February 2014**