

ALACHO

WRITTEN SUBMISSION

General Observations

As the representative body for Scotland's senior local government housing professionals, ALACHO (Association of Local Authority Chief Housing Officers) is pleased to have this opportunity to respond to the Infrastructure and Capital Investment Committee's call for evidence on the Housing (Scotland) Bill.

ALACHO has been fully involved in the various consultations which took place on key aspects of the Bill prior to publication, and would commend the Scottish Government on the inclusive and comprehensive way in which consultation has been undertaken.

In general terms ALACHO welcomes many of the Bill's provisions. There is much with which we agree, including ending the Right to Buy, increasing flexibility in housing allocations, introducing measures to reduce anti social behaviour, and improving conditions for tenants in the private sector.

Due in large part to earlier consultations, there are no provisions in the Bill to which we are strongly opposed. However, there are some areas where we feel we might have gone further in trying to achieve the Bill's stated objectives. These relate to a failure to allow consideration in the Bill of

- Initial (or Probationary) Tenancies,
- taking income into account in the allocation of housing, and
- extending the proposed Housing Tribunal system for the private rented sector to the social housing sector

We have highlighted these perceived omissions where relevant, and have grouped our responses under the questions posed by the Committee.

Part 1: Right to Buy

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

1.1 ALACHO is in favour of abolishing the Right to Buy for social housing tenants, and said so in our response to the consultation on this proposal. We accept the legitimate aspirations of many Scottish households to own their own home, but feel that these are outweighed by the pressures resulting from the unprecedented demand for affordable rented housing for those on low to average incomes unable to purchase under current market conditions.

Similarly, we acknowledge the trade-off between the capital receipts accruing from the sale of council housing and the ensuing benefits if this is used for investment, (notwithstanding the significant reduction in income to councils from this source in recent years) and the benefits if the housing stock continues to be available for renting in perpetuity. Given the significant costs of providing new build housing, we are firmly of the view that retaining rented stock in the social rented sector is the most social and economically beneficial option.

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

2.1 Given that the Right to Buy has been in existence for almost 35 years and availability is well known, ALACHO believes that a three year period before abolition of this provision is too long. We believe that most people wishing to buy will already have done so, and there is no particular merit in a three year time horizon. We would wish to see this replaced with a maximum 18 month time horizon.

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?

4.1 ALACHO has consistently argued for increased flexibility for local authorities in the allocation of council housing, believing that this would facilitate the optimum use of housing and make a significant contribution to stable and sustainable communities. Although they do not go quite as far as would have liked, the provisions will certainly be of some assistance in pursuing this aim. Consequently, we broadly welcome the proposed changes set out in Sections 3-7 of the Bill. This includes the requirement for councils to consult on allocations policy priorities and publish reports on the outcome, which we believe many would do at present.

4.2 We particularly welcome, with appropriate equalities safeguards, removal of the prohibition on taking age into account in allocating property. Many social landlords believe this will permit more effective use of their housing stock e.g. through investing in particular blocks to better facilitate their use for older people.

4.3 We think it helpful that ownership of property can be taken into account in the allocation of council housing. Although not a frequent occurrence, this should address situations where applicants may be allocated scarce council housing, whilst owning and perhaps profiting from the rent on property elsewhere. That said, the provision (under Section 9) to allow the granting in certain situations of a short SST for homeowners is also helpful.

4.4 Under Section 7 we are happy to see clarification proposed on the circumstances in which an applicant may be suspended from receiving an

offer, the setting of minimum suspension periods before an applicant in certain situations becomes eligible for the allocation of social housing, and the prescription by Scottish Ministers of maximum periods. We are content too with a new right of appeal for applicants affected by suspension periods.

4.5 We welcome (under Section 13) the change to a 12 month qualifying period before tenants are permitted to request a joint tenancy, assign or sublet tenancies, as some councils believe the existing rules are potentially open to abuse. The proposals to make it a requirement for (non spouse) partners, family members and carers to have live at a property for 12 months prior to succeeding to a tenancy are also welcome, as many types of council advise that this too may have been subject to manipulation.

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

5.1 Yes, to some degree. The proposals in Sections 8-16 of the Bill propose changes to social housing tenancies and are intended at least in part to assist landlords in tackling anti-social behaviour. In common with local authorities, ALACHO welcomes any measures with the potential to reduce the significant adverse impact that anti-social behaviour has on our communities.

5.2 Under section 8, we welcome the increased flexibility to provide SSSTs (or convert existing SSTs to this form of tenancy) where applicants or existing tenants, or a member of their household, have a history of anti-social behaviour in the previous three years. This is likely to increase the resources needed to gather evidence in support of such action, but will still be broadly welcomed by tenants and landlords alike.

5.3 We welcome both the proposals at Section 10 and 11 of the Bill to extend the minimum period of a SSST granted for anti social behaviour from six to 12 months, and the proposal to allow for a further six months if more consideration is needed. With appropriate support for tenants, as required by the Bill, these proposals should provide landlords with some additional tools with which to tackle anti social behaviour, including additional time to ensure adequate support is given to tenants in the interests of sustaining tenancies.

5.4 We are also pleased to see under Section 15 of the Bill, a new requirement for a court to grant application for a possession order made within 12 months of a tenant's conviction for using their home for illegal purposes, or for an offence in or near the property punishable by imprisonment. The latter will provide some reassurance to tenants and other residents that anti-social behaviour is being taken seriously by local and national government.

Initial Tenancies- A missed opportunity?

5.5 That said, ALACHO believes that a significant opportunity has been missed by not including in the Bill a provision to introduce initial (or “probationary”) tenancies, and we regret the fact that the Committee have not been given the opportunity to consider this provision. In stating that “opinion was divided around the proposal” the Policy Memorandum (PM) supporting the Bill may be somewhat misleading in its analysis of responses.

5.6 The PM correctly states that “tenants were very supportive” (64 tenants’ groups responded to the consultation, and leaving aside the 14 “don’t knows”, 92% of groups expressing a view were in favour, while only four groups were against the proposal at that stage). Undeniably social landlords have differing views on the proposal, with councils no exception. However, in concluding that there was “less support for such a move amongst landlords” the PM could have pointed out that of the 63 landlords expressing a firm view on the proposal (i.e. excluding 17 “don’t knows”) 76% (48) were in favour.

5.7 Together with the organised tenants’ movement, ALACHO believes that Initial Tenancies offer a good opportunity to help ensure that in the first year of a tenancy, tenants fully understand their rights and obligations under their tenancy agreement and are supported to comply with these. We believe that could help reduce anti-social behaviour, one of the original aims of the Bill. Evidence from elsewhere suggests that this can be achieved with a positive effect on tenancy sustainment and no increase in evictions, (the latter a particular concern voiced by those who successfully lobbied the Minister to remove this proposal from the Bill).

5.8 Tenants and landlords have some difficulty with the arguments presented by those opposed to this initiative, particularly the apparent conclusion that the rights of tenants affected by anti social behaviour are out weighed by those of the perpetrators, but also the assertion made by some that councils and RSLs would use the opportunity presented by ITs to evict tenants subject to Initial Tenancies without regard to due process.

5.9 In common with social housing tenants, we still believe that the proposal has merit, and would wish to see further consideration given to the potential benefits of initial tenancies. Tenants and landlords wish to see not only prevention of anti social behaviour, but speedy resolution when such behaviour does occur. Initial tenancies would enable both objectives to be satisfied, at least in relation to new tenancies.

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?

6.1 ALACHO is content that the provisions in the Bill aimed at protecting tenants’ rights in light of potential tenancy changes are reasonable. Aside from the good practice we would expect councils to demonstrate, the Bill’s provisions will in any event require landlords to take account of relevant

guidance and be explicit and transparent on the reasons for their actions in suspending applicants for a period of time, in granting an SSST rather than SST, or indeed seeking repossession of the former on the grounds of anti-social behaviour. Permitting the right of appeal or review for tenants is a fair corollary to these provisions.

6.2 Taken together the provisions should help encourage clear communication between landlords and tenants in such situations, and facilitate the use of appropriate support mechanisms to maximise the potential for tenancy sustainment.

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?

7.1 ALACHO welcomes the proposal to transfer certain matters relating to the private rented sector to a new Tribunal. Indeed, together with CIH and SFHA, we argued strongly that the Tribunal system, and the principles on which it is to be based could usefully be extended to the social rented sector. In particular, the non-adversarial style of Tribunals is also likely to be helpful to the decision making process.

7.2 Having expert practitioners making speedy and effective decisions on occasionally complex issues, which hitherto may have taken considerable time to resolve to the frustration of those concerned, could also be of considerable benefit to the social sector. Nonetheless we welcome the introduction of a Tribunal system for the private sector, and shall watch with interest to see how effective it proves to be in operation, and whether lessons may be learned for importation into the social sector in due course.

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?

8.1 ALACHO supports the proposed amendments to private rented sector legislation intended to enhance local authority discretionary powers to improve housing conditions in that sector. However our experience is that such powers of enforcement work best when backed with adequate resources, without which any new powers are likely to be of marginal impact. For example, many councils who have indicated their intention to use the new power to take third party applications to the PRHP on behalf of tenants, have said they can only do so subject to sufficient resources being made available.

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?

9.1 In broad terms we welcome the provision of discretionary powers to target areas of poor condition in the private sector. However we would also restate the absolute necessity of backing powers with sufficient resources for implementation and enforcement, without which the hopes of local residents seeking much needed improvements to their neighbourhood may be raised in vain. The experience of ALACHO members suggests that effective approaches to improvement in the private sector contain a mixture of “carrot and stick” elements i.e. advice information and assistance (including financial assistance) on the one hand, backed with firm sanctions for non-compliance on the other. We know that several councils have been lobbying for this measure to be introduced, and look forward to engaging with further consultation on the detail of the proposal in due course.

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?*

10.1 ALACHO wholly supports the proposal to create a mandatory Register of Letting Agents in Scotland, together with measures to regulate practice in this area. We acknowledge that, with the growth in private renting, letting agents have come to play a much bigger role in that sector. Some letting agents play an important role in representing landlords and tenants interests through the setting and maintenance of decent quality standards for tenants. Sadly not all do so, and there is a pressing need to ensure that poorly performing agents are compelled to achieve minimum legal standards in letting and property management.

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

11.1 A prerequisite of any disputes resolution scheme is that it should be fair and equitable between both parties, but also have reference to the power distribution between the different parties concerned. It is essential therefore that tenants have access to the necessary information on their rights and responsibilities to hold letting agents (and landlords) accountable for the service they receive.

11.2 With these criteria in mind ALACHO notes that the proposed mechanism for resolving disputes will be based on a new Code of Practice, to be established by regulations following consultation with key industry stakeholders. The CoP will set out practice standards for letting agents, perceived breaches of which can be reported to the First Tier tribunal established - inter alia – to hear such cases, following which one outcome could be the serving of an enforcement notice on the letting agent . We are content that the proposed mechanism has the potential to improve the situation between letting agents and their customers through improving disputes resolution. The prior consultation which is proposed should help ensure fitness for purpose, and ALACHO will respond to this in due course.

Part 5: Mobile Home Sites with Permanent Residents

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

12.1 Within local authorities the main responsibility for dealing with mobile home sites and related matters lies with Environmental Health Officers and we are content to leave response to questions 12 & 13 to colleagues in this area with the relevant expertise. We are aware too that COSLA has responded to this issue in more detail.

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

13.1 See response to Q12 above.

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?*

14.1 As local authorities are well aware, achieving the necessary consents and consensus to facilitate essential repair and improvement to common properties can be notoriously difficult. The recalcitrance of individual owners, landlords or factors can be a cause of frustration for local residents and councils, particularly the former, who are often disadvantaged by the failure to act, despite themselves being committed to carrying out the necessary improvement work. In general terms therefore ALACHO welcomes any measures designed to improve the likelihood of successful outcomes.

14.2 Councils appear to be ambivalent regarding amendments to the tenement management scheme (TMS) to make it easier for local authorities to pay missing shares for necessary repairs and recover costs. Some believe the facility to do this already exists within section 50 of the Housing (Scotland) Act 2006. However others believe amending the TMS in the manner proposed could, subject to proper owner notification, increase the scope of work for which it is possible to pay shares and recover costs. As outlined in the preceding paragraph, this is likely to be welcomed, not least by those residents of a block affected by the refusal of certain parties to participate in improvement works.

14.3 Councils have generally given a cautious welcome to the other proposals in this section of the Bill, including enforcing security and safety improvements through the issue of work notices, and extending the use of repayment charges to include commercial premises with living accommodation above, and are having on-going discussions with counterparts in Scottish Government over the technicalities of implementation.

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?*

16.1 ALACHO has no specific comments to make on the miscellaneous housing provisions of the Bill. All would seem to be justified on the grounds of increasing the effective operation of those elements of the housing system to which the miscellaneous legislative provisions relate.

Other Issues

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

We have no observations to make further to those articulated above,

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

We have set out above three areas where we feel that Scottish Government should have given more consideration to proposals which were consulted upon but did not find their way into the Bill. These are the proposals for Initial Tenancies, the proposal to take income into account in the allocation of social housing, and the establishment of an independent Housing Tribunal for the social sector. Having covered these areas in some detail above we have nothing further to add at this point.

ALACHO

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