

## TENANCY AND ESTATE MANAGEMENT SERVICE

### WRITTEN SUBMISSION

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

Increase in housing stock to meet demand.

Improved access to social housing when people's personal circumstances need it the most.

Safeguard housing stock for future generations, helping to build more cohesive and sustainable communities.

Assist Scottish Government's investment in housing and deliver on their target of 30,000 new affordable homes over the lifetime of this Parliament.

Safeguard an estimated 15,000 homes over the next decade for future generations to access social housing.

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

Deemed to be fair under Human Rights consideration for tenants to be given reasonable time to exercise their right to buy the property.

Provide tenants time to way up financial options.

Some authorities have asked for Ministers to concede to reduce the timescale for provisions to come into force from **3 to 2** years.

A 3 year lead in time may lead to a spike in applications over this period.

The impacts of this on business plans will need to be modelled.

#### **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?**

Changes to rules and procedures around the allocation of social housing are welcomed, as they will enable social landlords to be more flexible and make best use of available stock to allocate tenancies which are more sustainable, particularly where issues around lifestyle clashes can be foreseen (elderly / young / vulnerable tenants). The ability to seek recovery of adapted properties also contributes to an overall improvement in use of stock.

It would also be helpful if we could take into account location of previous ASB / or where people involved in previous ASB now reside (i.e. if their friends, who were previously involved in ASB at their property are now living near where a new tenancy is available for them). This would help us prevent more ASB occurring in future.

The introduction of a minimum period before an applicant may be eligible for housing will be helpful in certain circumstances, e.g. previous tenant who has abandoned a tenancy; previous tenants with rent arrears still to pay; those with history of ASB. This would have to be considered on a case-by-case basis though.

The need for an occupant to inform the landlord when they move into a property and to qualify for the longer 12 month qualifying period for succession will mean that the succession process is less open to abuse.

**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?**

There are a number of points under this section, so comments have been split as follows:

- Minimum period before applicant eligible for housing:  
Good when there are ongoing issues at tenancy. Minimum period can be placed on someone wanting to move / MX if they have been behaving anti-socially. This may help reduce ASB levels and act as an incentive to adhere to tenancy conditions.
- Able to put tenant on SSST if there is evidence of ASB during the last three years in locality of property:  
Makes conversion process easier, and would mean we could possibly do this prior to an ASBO being gained.
- For allocation of SSST on basis of previous ASB:  
Helps us in situations where ASBO has not been granted or has not been suitable at a previous tenancy. Often persons will abandon or terminate a tenancy before an ASBO can be obtained, and this will give us additional tools to tackling anti-social behaviour if a person reapplies for housing.
- Can extend SSST's for ASB or previous eviction for further 6 months but tenant needs to be in receipt of HST:  
Gives Housing longer to establish / ensure that a person is able to sustain a tenancy. Extra 6 months with support will help us tackle ASB but also help sustain tenancies at the same time. The tenancy can be ended during this period if the tenant fails to engage in support.
- Same procedure for recovery of possession in SST.  
This makes sense and reduces the period of time to give a tenant notice to 4 weeks instead of having to wait 8 weeks to terminate the SSST. Quicker process to take action.
- Removes requirement that court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The tenant retains a right to challenge the court action:  
Is only likely to be used in cases where a tenant has received a prison sentence for a crime committed. Will be on a case-by-case basis, however, this means less onus on Housing to prove that an eviction

order is reasonable. Onus more so on the tenant to prove eviction order is not reasonable.

Also gives housing 12 months from date of sentencing to act. This is a good period of time, especially if we do not become aware of a conviction at the time of sentencing.

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

The introduction a minimum SSST period of 12 months will be of benefit to tenants, as it gives them longer to demonstrate their behaviour and ability to manage a tenancy. Also more security for tenants, and more time to settle in an area.

The changes to the repossession process should also be of benefit to the tenant, the shorter period for notices to be served being less stressful since they do not have to wait two months for a final decision.

If the tenant decides to appeal the decision, they will be better informed as to why the SSST is being ended as the landlord will have to notify of the reasons the tenancy is being ended, and there will be a national standard to be met by the landlord.

**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 welcome the introduction of the First-Tier tribunals to deal specifically with private rented sector cases. It is felt that the new process will give sufficient weight to existing issues, not solely related to property condition, which will allow private rented tenants accessible and efficient recourse against landlords who are potentially avoiding dealing with problems.

Although the Tribunals Bill is current before Parliament, therefore not finalised at present, will the Scottish Government be providing publicity information for a new Tribunal which will be available to private sector tenants.

Given the proposed changes in this Bill with regards to third party referrals to the Private Rented Housing Panel, clarification would be appreciated in relation to who can approach a tribunal. As with third party referrals to the PRHP, the same issues can apply to making a case to a tribunal against a landlord. Many tenants may feel unable to do this themselves, for a range of reasons, and will require assistance to put forward an effect case. If this were to involve local authorities, the question of resources to deal with the influx of this type of work.

**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?**

Clackmannanshire Council fully supports the amendment to legislation introducing third party referrals to the Private Rented Housing Panel. From experience we know that some private tenants are unwilling or unable, for a range of reasons, to approach the PRHP with concerns about the condition of their home. As much as possible we currently provide assistance to tenants in these situations but it is still very much in the hands of tenants, potentially vulnerable at times, and they do not always follow through with the guidance provided. Therefore leaving them still in a position of having a home which may not reach the repairing standard.

By enabling local authorities to make applications on behalf of private tenants, effectively in an advocacy role, will hopefully help to put some 'weight' behind an application and make a landlord take the claims seriously. It will also ensure consistency in approach, making the sure the tenant responds accordingly to each part of the process.

**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**

We welcome the intention of the new Stage 2 provisions to implement enhanced enforcement areas. Although we do not have any significant issues within Clackmannanshire at present where these provisions could apply there are certainly benefits to having them available.

**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?**

The creation of a mandatory register for letting agents, along with the introduction of statutory provisions (code of practice) is welcomed. At present there is a wide variation in the level of service provided by letting agents to both private tenants and landlords.

It will be beneficial to all involved to have a standard which Agents are expected to attain. However information will require to be available as to how this will be monitored. Will there be a similar 'light touch' approach as per Landlord Registration?

At present it seems unclear as to who will administer the register of Letting Agents. Will this be done by the Scottish Government or will be a role for local authorities? If this is the case then the resource implications of this role will need to be clearly examined. Particularly in relation to enforcement issues when a letting agent does not comply with the code of practice.

Lessons should be learned from the Landlord Registration scheme in terms of operation of the IT system and how useful this will be. It will be beneficial to be able to carry out full reporting options, such as producing reports to identify

the number of properties managed by agents in a particular area, number of agents operating in an area, etc. Currently the registration system makes it difficult to identify numbers of properties owned where there are joint owners, properties can be double counted.

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

We welcome the ability for both landlords and tenants to be able to apply to the FFT if they feel there has been a breach in practices by an agent. However, we are cautious as to the impact this will have. How will agents be monitored if they have an enforcement order placed on them? Will this be the local authority assuming this role?

Also if an agent is subsequently removed from the register due to non compliance with the Code of Practice what will the implications be for their landlords and tenants? For example, will they be entitled to compensation if the issue relates to a financial matter handled incorrectly by the agent?

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

And

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

Clackmannanshire has a limited presence of licensed sites.

We have licensed sites at; Woods Caravan Park, Diverswell, Coalsnaughton and another private site at Riverside Dollar. In addition we have a Council owned site at Westhaugh.

Beyond these sites we have had small privately owned sites for individual families at Marchglen and Gartlove, though both of these sites appear to subsequently been vacated.

Finally, we have an issue with agricultural sites with individual vans for farm workers. These are currently exempt under Schedule 1 of the 1960 Caravan Sites and Control of Development Act 1960 where a licence is not required. We think there may be a couple of caravans at the Poultry units at Blackgrange and Gartmorn for staff working there, but will check this out. There was also a planning application/enquiry for siting a caravan at Harviestoun Home Farm, which is exempt from Licensing.

*“for the use as a caravan site of agricultural land for accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation”.*

Most of our licensing and enforcement under current legislation is dealt with by our Environmental health Service. Current activity is simply related to ensuring a licence is in place as well as ensuring basic Health and Safety and

Environmental concerns are addressed- such as eclectics and adequate sanitation or supply of fresh water. For Clackmannanshire only one site is known to have permanent residents- other than the Council site at Westhaugh. The additional requirements therefore should not present a significant challenge and may be an inherently positive step to ensure a consistent standard of behaviour is evident. The controls and standards now increasingly common in private rented accommodation should be enjoyed by those permanent on private sites. Powers to take action and enforce improvement are particularly welcome as is the power to revoke licence.

The only remaining exemption may relate as said above to agricultural workers on smaller farm sites, or on small privately owned Gypsy/Traveller sites. Again Clackmannanshire has only evidence of a couple of such sites.

The implication for residents would add to existing powers and have to be positive guarantee of basic constant minimum standards for the management of their site. For the owners it will mean having to pass a fit and proper test and ensure their permanent residents enjoy at least those standards applicable to wider private residents. We respect the views expressed in the consultation that the system should seek to avoid onerous bureaucracy and that for the more malicious site owners there is often a difficulty in identifying from complex business and family structures, who should sit the fit and proper test.

**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 tenement properties.**

Statistics show that there are around 1.8 million private homes in Scotland 80% of which have some form of disrepair. Improving the condition of Scotland's private housing stock would contribute to goals for housing quality, climate change and economic growth. Increased annual spending by owners on maintenance may reduce the long term repair costs and possibly improve the value of the property.

Disrepair should be addressed to ensure that people are able to live in good quality homes and encouraging home owners to invest in maintenance may benefit the Construction Industry.

Granting discretionary powers to local authorities will ensure that they have a range of powers to tackle poor condition in the private sector. This also incorporates a new section in the Tenements(Scotland) Act 2006 allowing Local Authorities to pay a missing share when the majority of the owners in a tenement block have agreed to carry out work repair or maintain their property and one or **more** of the owners has not paid their share of the work. This ensures that the other owners are not liable for the costs of another owner which are met by a share paid by the Local Authority

There is also additional grounds where a work notice can be issued where work is needed to improve the safety and security of any house, regardless of

whether or not that it is situated in a housing renewal area. Local Authorities also have discretionary third party reporting rights to enable them to make a direct application to the Private Rented Housing Panel where there is evidence that a landlord is not meeting the repairing standard.

There has been broad support for these additional measures, but this brings with it significant concerns about how this may work in practice. This could lead to substantial additional enforcement costs for Local Authorities. The Private Rented Housing Panel itself would have to incur set-up costs for the first year, this would have to include the cost of judicial recruitment and training of panel members, president fees, general office expenses and staff salaries for these involved in the set-up. Also, research into the private sector tenement properties suggests that maintenance is a relatively low priority and the first priority is to protect the function and appearance of the home.

The power to pay missing shares in relation to the tenement management scheme of a block is useful with regards to helping proactive owners proceed with works in particular situations, however, there are concerns over the resource implications of this.

The proposed changes to work notices and maintenance orders are welcomed and hopefully they will make things smoother in the aim of encouraging owners to take responsibility towards property maintenance.

We welcome the amendment to repayment charges being applicable to non-residential part of a building including housing. Hopefully this will make reclaiming costs from commercial properties easier, however, it does still have a potential repayment period of up to 30 years. This again will have a possible impact on the resources available from local authorities to fund works in the first instance.

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

No

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

No

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

No

**Tenancy and Estate Management Service  
27 February 2014**