

# CHARTERED INSTITUTE OF HOUSING

## WRITTEN SUBMISSION

A tabular summary of CIH Scotland's provisional views on each of the main measures in the Bill is attached in the second part of this submission. Our Board is meeting in early February to consider the measures in detail.

In December we published a detailed briefing on the Bill, which can be seen [here](#)

To complement the summary table, below we make some general comments on the Bill and then highlight some particular areas on which we are especially keen to highlight our views to the Committee.

### General comments

Overall there is much to welcome in this wide-ranging Bill. As a member of key Scottish Government working groups, CIH Scotland has been closely involved in the development of some of the main provisions, particularly in relation to social sector allocations and tenancies and the private rented sector.

The social sector allocations and tenancy changes are broadly welcome. Some are aimed at helping landlords tackle anti social behaviour (ASB): CIH Scotland supports all of the proposed measures, but no-one should overplay the extent to which they will make ASB easier to deal with. Serious ASB will always be very challenging to deal with, as in most cases there are few, if any, speedy remedies.

CIH Scotland welcomes the changes relating to the private rented sector, including the creation of a new Housing Tribunal to consider all landlord/tenant disputes. We are disappointed, though, that the Tribunal is to cover only the private rented sector and not the social sector, as the current shortcomings of the court system impact much more significantly on social sector tenants and landlords.

### Comments on specific provisions

#### *Sections 1 and 85(4) – Abolition of the right to buy*

CIH Scotland warmly welcomes the measures to abolish the right to buy. We recognise that when an existing right is being withdrawn, a reasonable notice period is required. However, we believe that a period of three years from the date of Royal Assent is longer than is necessary. A shorter period will help social landlords plan for the future with greater certainty, and will limit the size of a peaking of sales in the period before abolition. **CIH Scotland believes that a period of two years would be more than sufficient to enable tenants to consider their options, plan ahead and make the purchase if that is what they decide to do.**

### *Section 5 – Removal of prohibition on taking age into account in social sector allocations*

This measure was requested by CIH Scotland, as it removes an unnecessary and unhelpful barrier to landlords wanting to allocate to particular groups in specific situations, as recently suggested to us with the following example from a local authority:

*“Lifting the age restriction would be very useful to us in dealing with fairly complex neighbourhood issues where, say, we may have a higher than average concentration of young, inexperienced, complex or vulnerable households within close proximity to each other and where an interim policy not to allocate anyone under 40 may achieve a more balanced community.”*

We are aware that some organisations appear to believe that this measure could result in younger people being unfairly discriminated in social landlords’ allocations policies, but we cannot see that this will be the case. The Bill makes it explicit that removing this age bar does *not* mean that landlords can discriminate against particular age groups – such as younger people – within their overall allocations policy as this would contravene the Equality Act 2010. The Bill promises to provide greater flexibility for councils and housing associations **and this is a common sense measure which will enable landlords to deal with very specific situations without impacting on the overall spread of allocations they make across the age groups.**

### *Section 7 – Suspensions*

This part of the Bill, which applies to housing list applicants and not to those being housed as a result of homelessness, helpfully clarifies the circumstances in which an applicant can be temporarily suspended from receiving an offer of housing. The measure provides for regulations to set out (a) how long a suspension can remain in force and (b) how far back previous conduct can be considered. CIH Scotland has reservations about the latter, as this will mean that a landlord has no discretion at all in any case to consider conduct which goes back more than the specified period. So, for example, the actions of a former tenant may have led to him being imprisoned for a period which is longer than the period specified in the regulations and so a landlord has no way of knowing if the applicant’s conduct has changed and improved.

CIH Scotland produced good practice guidance on suspensions in 2010, in which we emphasised the importance of landlords not unduly punishing tenants for poor conduct many years ago, and we have every reason to believe that landlords currently act very reasonably in assessing how far back previous conduct should be taken into account. **But for legislation to completely remove a landlord’s capacity to exercise discretion is an unhelpful straitjacket and we do not support this measure.**

### *Section 10 – Increase in minimum term of a Short SST*

This provision extends from six to 12 months the minimum term of a Short Scottish Secure Tenancy given for on grounds of anti social behaviour. This is to enable a

longer period in which to address any conduct issues prior to conversion to a full tenancy. As now, housing support must be offered to the tenant during this period.

CIH Scotland has reservations about this measure. Whilst it is well intended, it will mean that where serious anti social behaviour occurs at an early stage, the landlord will normally have to manage the situation until 12 months has elapsed and will not be able to end the tenancy any earlier, even if the behaviour is causing difficulty and distress for neighbouring tenants and residents. With good intent, the Bill amends the 2001 Act to enable a landlord to take recovery action through the courts as if the tenancy were a full tenancy. However, with all the inherent delays in the current court system, it is highly unlikely that this process could be completed before the point at which the landlord could automatically end the Short SST.

#### *Section 15 – Grounds for eviction – anti social behaviour*

This introduces a new requirement for the court to grant a possession order made within 12 months of a tenant's conviction for using the property for illegal purposes or for an offence in or near the property punishable by imprisonment. **This measure could make a significant difference in those long standing and difficult cases where landlords have not been able to secure eviction**, for example because of lack of willing witnesses.

Some reservations have been expressed about the possibility that landlords might seek eviction after a tenant has been convicted of a relatively minor offence, such as possession of a drug where no other household was involved or harmed. CIH Scotland does not believe that landlords are interested in seeking eviction in such cases, and any concerns about this should be considered in the context of the key aim of this measure, which is to address more serious cases of anti social behaviour.

#### *Sections 17 to 21 – New housing tribunal for the private rented sector*

CIH Scotland very much welcomes the prospect of a new, specialist and more modern approach to dispute resolution in the private rented sector (PRS). Neither tenants nor landlords in the PRS see the current sheriff court system as user friendly or efficient, and so we recognise the Scottish Government's wish to introduce the new system into this sector initially.

However, having instigated the case for a tribunal system across all housing tenures as long ago as 2004, we remain disappointed that the social rented sector in particular is not to benefit from all the advantages that the tribunal approach can bring. It has always been the case that the greatest impact of a tribunal system would be on this sector, where there is immense scope for a quicker, expert and more user friendly redress system for tenants and landlords alike.

**Whilst it would not be practicable to seek to amend the Bill, we will be seeking reassurances from the Minister that the door has not been closed on a future extension of the tribunal system to the social sector.**

*Section 23 – the Repairing Standard in the private rented sector*

The Bill's amendments to the Repairing Standard all relate to the very welcome proposal for third parties to apply to the Private Rented Housing Panel to enforce the Repairing Standard.

CIH Scotland has long supported calls led by the Electrical Safety Council for the Repairing Standard to be amended to introduce a requirement for five-yearly electrical safety checks by a registered electrician, covering both fixed electrical installations and any electrical appliances supplied with the let. Over two thirds of accidental fires in residential property in Scotland are caused by electricity, and private tenants are more likely to be at risk than any other tenure.

We recognise that the Scottish Government has not consulted on such an amendment to the Repairing Standard, and so may feel that it might not be appropriate to legislate at this stage. If this is the case, **we would want to see an indication from the Minister that consultation on this issue will be undertaken at the earliest opportunity.**

*Stage 2 amendments on the private rented sector*

The Committee will be aware of the Scottish Government's intentions to table amendments at Stage 2 to enhance local authority enforcement powers, including strengthened rights of inspection. CIH Scotland very much welcomes this, as powers to inspect individual property are currently very limited.

**Chartered Institute of Housing  
28 February 2014**

## Housing (Scotland) Bill – CIH Scotland views on main provisions

January 2014

Bill section	Proposed measure	CIH Scotland provisional comment/view
	<b>Abolition of right to buy</b>	
1 and 85 (4)	Abolition proposed to come into force three years from the date of Royal assent, i.e. probably around summer 2017.	CIH Scotland strongly welcomes abolition. We recognise that a reasonable notice period is needed but can see a case for a period which is shorter than three years.
	<b>Social sector allocations</b>	
3	Amending 'reasonable preference' categories in allocations to allow more flexibility - adds under occupying tenants to existing homelessness and badly housed categories.	A relatively minor change, and in practice very little change to the flexibility which already exists.
4	New duty to consult applicants and tenants when reviewing allocations policies, and to report on the outcome (jointly with others, if appropriate).	This is probably in recognition of the flexibility landlords have had for some time over who is prioritised. Will be resource implications for landlords but hard to argue with the measure.
5	Removal of prohibition on taking age into account in allocations, along with reassertion of landlords' Equality Act duties not to discriminate on age grounds.	This measure was requested by CIH Scotland, as it removes an unnecessary and unhelpful barrier to landlords wanting to allocate to particular groups in specific situations. It does <i>not</i> mean landlords can discriminate against particular age groups within their overall allocations policy.
6	New power to take an applicant's ownership of property into account, subject to certain (sensible) exceptions such as where occupying the property could lead to abuse.	This will enable landlords to take into account property ownership which, for example, enables applicants to make profit from renting property out.
7	Clarification of circumstances in which an applicant can be suspended from receiving an offer. Doesn't apply to homeless referrals or nominations. Regulations will set out how long a suspension can remain in force, and how far back previous conduct can be considered. New right of appeal against suspension.	Clarifications are welcome, though little change in practice, unless the regulations on suspension period etc. lead to landlords needing to significantly amend policies. New right of appeal will mean landlords need to be very clear on reasons for suspension. Regulations specifying exactly how far back previous conduct can be taken into account will remove all discretion from landlords in this difficult area, and CIH Scotland does not support this aspect of the provisions.

	<b>Social sector tenancies</b>	
8	Makes more flexible the existing power to give, or demote an existing full tenancy to, a Short SST for ASB: will now apply where there has been ASB in or near the property in last 3 years. [Note – this is already subject to a right of appeal to the court.]	Enhanced flexibility helpful, but landlords will need robust evidence of ASB and this may not always be easy to obtain, particularly in relation to new applicants.
10 and 11	Increases minimum term of Short SSTs given for ASB from 6 to 12 months, and allows for a further 6 months (making 18 in all) where landlord is not ready to make a decision on making tenancy a full tenancy or ending it.	Allows a longer period of engagement and support before decision. But will mean that where serious anti social behaviour occurs at an early stage, the landlord will have to manage the situation until 12 months has elapsed and is unlikely to be able to end the tenancy any earlier, as court action (as if the tenancy were a full tenancy) is unlikely to be completed before the 12 month period of the SSST has elapsed.
12	New duty to give tenants reasons why a Short SST given on ASB grounds is being ended, and a statutory right of review (by the landlord) for the tenant.	Sensible and fair measure, but will need to be handled efficiently by landlord and other parties so that process can be completed prior to the end date of the Short SST.
13	New 12 month qualifying period before tenant can assign or sublet tenancy, and any beneficiary of an assignation, sublet or application to join the tenancy must have lived in property for 12 months and must have notified landlord when they moved in. Also stronger landlord rights to refuse assignation.	Sensible tightening up of the law to prevent abuse such as assignation to people not in housing need. Landlords will still be able to use discretion in cases where minimum requirements are not met. [CIH Scotland had wanted to see the right to assign a tenancy scrapped, creating instead a landlord power to allow it where it fitted with best use of stock.]
14	New 12 month qualifying period for all level 2 and 3 successors, i.e. family members and carers, and increase from 6 to 12 months in qualifying period for co-habiting partners. Person claiming succession must have notified landlord when they moved in.	As above, sensible changes to address abuse such as children moving in just prior to a relative's death. Landlords can still use discretion where it is felt appropriate.
15	New requirement for court to grant possession order made within 12 months of tenant's conviction for using the property for illegal or immoral purposes or for an offence in or near the property punishable by imprisonment.	This could make a significant difference in those long standing and difficult cases where landlords have not been able to secure eviction, for example because of lack of willing witnesses.

	<b>Private rented sector</b>	
17 to 21	Introduction of a new Housing Tribunal for the PRS, removing all disputes cases from the sheriff courts.	CIH Scotland has long called for a tribunal system, so this is very much welcomed, but we are disappointed that only the PRS is to be covered at this stage.
23 to 25	Measure to allow third party application to the Private Rented Housing Panel.	Welcome measure which will particularly allow LAs to go to PRHP on behalf of a tenant who does not want to go direct or who has moved on but LA still wants to pursue the landlord.
26 to 52	Regulation of letting agents: a national registration scheme, dispute resolution scheme and statutory code of practice.	Welcome measures, similar to those which now cover property factors.
	<b>Regulation of mobile home sites</b>	
53 to 71	A range of measures aimed at strengthening the licensing regime covering sites on which people live permanently, including a 'fit and proper person' test for site owners.	Welcome measures which have been long awaited by park/mobile home residents. May be resource issues for LAs in terms of enforcement but legal changes are sensible and proportionate.
	<b>20 year rule – shared equity schemes</b>	
77	Technical, but important, amendment to the 20 year rule to facilitate provision of the SG's £220m Help to Buy new build shared equity scheme.	Welcome as it provides lenders with the necessary assurances to enable them to participate in the Help to Buy (Scotland) scheme.
	<b>Scottish Housing Regulator – transfer of RSL assets</b>	
79	Removes requirement on SHR to consult tenants and lenders before a transfer of assets to another RSL, where there is an imminent threat of insolvency. Also removes duty on SHR to always obtain a valuation, and to direct a transfer at an open market valuation in insolvency cases.	These changes were not the subject of previous consultation. There may be some concerns, for example among lenders anxious that a transfer could be conducted without consultation and at a below market valuation. Our sense at this stage, though, is that in practice, in most cases it would not be necessary for the SHR to act with such speed.
	<b>Defective property designation</b>	
80	This measure removes the 'defective property' tag from 12 types of PRC houses classed as such in the 1980s so that owners qualified for grant assistance.	A straightforward measure: financial assistance ended some time ago and so the designations are obsolete.