

GLASGOW CITY COUNCIL

WRITTEN SUBMISSION

General Introduction

Glasgow City Council welcomes the introduction of the Bill and the opportunity to comment on the general principles, as well of some of the practical implementation issues of the provisions in the Bill.

Glasgow City Council has previously identified amendments and additions to legislation particularly in relation to the private housing sector, and some of these provisions have been included in this Bill. Many of these provisions are discretionary and are a welcome addition to the toolkit available to local authorities to drive improvement in the private housing sector.

It is acknowledged that the Bill covers a wide range of topics, and is designed to tidy up, clarify or enhance existing legislation. However given the recent review of the operation of the Title Conditions (Scotland) Act 2003 by the Parliament, and the findings of the Glasgow Factoring Commission, the Council believes that there is scope to improve existing legislation in regard to common property and title condition burdens. Examples of this include clarity in law on the purpose and enforcement of the factor's float, the right to switch factors, the need to address title disparities where major repair works are being undertaken in common blocks, removal of the exemptions to the taking out of common building insurance within the Tenement (Scotland) Act and the definitions of common property in the West of Scotland context, especially where titles are shared between more than one tenement building in the same locus.

A specific additional section which the Council would wish to have considered as a matter of urgency is the introduction of enforced sales powers in terms of empty homes to bring the legislation in line with that currently operating in England and Wales.

In addition, the Council would ask for steps to be taken to provide plain English guidance which pulls together the key common property statutes arising from the all Scottish private housing sector legislation introduced since 1987. Whilst such an undertaking may not in itself be part of the Housing Bill, we would wish the matter of practical understanding and application of legislation brought to the attention of Ministers, given the complex nature of this type of legislation and the plethora of inter-related clauses contained in these various acts of parliament.

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

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

The abolition of the right to buy for social housing is welcome. Although right to buy sales in the city have diminished over a period of years, sales remain in the region of 150 per annum (SHR Landlord Statistics 2012/13) This is in the context of the Housing Need and Demand Assessment for Glasgow which identified a substantial need for socially rented housing, and the continued need, in particular for a supply of settled accommodation for homeless households presenting in the city.

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

It is important that tenants have sufficient time to consider whether or not they wish to exercise the right to buy, and it is also important that RSLs have a clear view of their asset base so as to inform their future business plans, particularly given the other uncertainties they face around welfare reform, pensions deficit and reduction in Housing Association Grant levels. A reasonable compromise position would be a 2 year timetable for the provisions to come into force.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

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?*

Social landlords generally have a great deal of flexibility in the allocation of housing so whilst not fundamentally changing the allocations regime for social housing, the clarification and minor amendments in the Bill are welcomed, and a few are particularly worth highlighting. These will allow RSLs to sensitively manage their housing stock and respond more effectively to the pressures and shortages in their communities. When used in specific circumstances, the ability for landlords to take account of the age of tenants in the allocation of housing should assist in the creation of sustainable and settled communities. The extension to the time period for succession to a tenancy, and the ability for the recovery of adapted property, recognises that social housing is a scarce public resource, and as a discretionary power, will allow RSLs to make judgements based on community needs.

The continued reasonable preference given to homeless households is welcome as it is imperative that social landlords have due regard to the level of homelessness in their area when considering waiting list applications. In a stock-transfer local authority such as Glasgow, it is especially important that

the responsibilities of RSLs complement the duties of the local authority in securing access to settled accommodation.

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?*

The proposals may support RSLs to reduce anti-social behaviour by signalling to tenants that sanctions will be imposed on those breaching tenancy agreements. However, the granting of a Short Scottish Secured Tenancy will do little to address problematic behaviour without appropriate support and guidance. Therefore, it is vital that households have access to appropriate levels of support, which will often involve multi-agency responses. This will place additional pressures on resources. The Scottish Government should set out what support should be offered to tenants in order that they are able to sustain their tenancies, and clarify who is responsible for securing that support.

It is important to highlight that if a tenancy is ended due to anti-social behaviour, the local authority may have a duty to accommodate those who have lost their tenancy through homeless legislation, which is particularly likely in cases involving children.

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?*

The amendments set out in the bill will go some way to enhancing the rights of tenants with short SSTs and will particularly benefit tenants who are engaging with services as this will encourage the provision of longer term support to be put in place. It is extremely important that sufficient resources are available to support tenants.

However, there will be tenants who will not engage with services and will not accept support, and for these households, the proposals are likely to lengthen the process for a resolution, which may have a negative impact on neighbouring tenants and the wider community.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff's existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to

the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

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?*

Glasgow City Council has lobbied for a considerable time for a 'housing court' with specialist housing expertise and which would expedite cases, and therefore, welcomes the move towards a first-tier tribunal in the expectation that the proposed system will prove more efficient and appropriate in addressing disputes between tenant and landlord.

In terms of supporting the expediency of cases through the tribunal system, it is suggested that the new Bill could amend the 2004 Act regarding the right to appeal under section 92. As it currently stands, this section does not restrict the right of appeal to errors in law. If section 92 remains as it currently, then the appeals process is likely to be long and extremely resource intensive. Local authorities will also need to know if expenses can be recovered from a Tribunal.

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?*

Glasgow City Council does not have an issue with the generality that private landlord applications over a year old are deemed to be passed as 'fit and proper'. However, one concern is that the local authority could be waiting on information from the landlord or having difficulties contacting the landlord, and therefore, tacit approval should only be granted at the 12 month point where the local authority has been furnished with all the information it has requested and is therefore, in a position to make an informed decision. Where the applicant refuses to respond to further questions or clarifications concerning application for landlord registration e.g by ignoring written requests or failing to provide a home or business address for correspondence, then the 12 month rule should not apply.

A clause could be added to clarify Clause 85(8) (a) of the 2004 Anti Social Behaviour Act by extending the criteria to include failure to pay for common property repairs.

The Council is strongly of the opinion that the "fit and proper person test" should be enhanced to address the problem of failure by some landlords to pay their share of common repair costs where it has been proven that the debt has not been paid following the issue of a court order. If the landlord refuses to pay for his/her share of common repair costs, then this should be an additional ground for refusal of the application.

The Scottish Government will need to work with local authorities to ensure that the central IT system can furnish reports which are nearing the 12 month deadline.

The amendments to allow third party reporting to the PRHP is welcomed by the Council, and is an issue on which the Council has lobbied. The Council is only likely to report to the PRHP in a limited number of cases, with the most likely circumstance being when the tenant has moved on but there is a value to making a report to the PRHP, particularly in cases where a landlord demonstrates persistent poor management.

There may also be cases where other organisations such as RSLs or universities/ colleges may wish to make reports to the PRHP.

In order to defend an appeal against a third party referral made on behalf of a tenant, Glasgow City Council firmly believes that local authorities would require powers of access at the time of the initial notification in order to demonstrate evidence of a breach of the Repairing Standard.

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?

The Enhanced Enforcement Area which the Scottish Government intends to introduce at stage 2 is something which Glasgow City Council have been keen to see developed, so that concerted and targeted enforcement action can be focussed on specific geographical areas which are experiencing a concentration of multiple problems, particularly in relation to poor property condition, and poor management and practice in the private rented sector.

The Scottish Government had indicated that it plans to include both power of entry and mandatory disclosure checks which are powers which will assist in building an evidence base to take enforcement action. This will support vulnerable tenants and owners, and the wider community in these designated areas, and will also make Third Party Reporting more effective.

The Council looks forward to seeing the detailed additional powers and procedures to be applied to make Enhanced Enforcement Areas effective alongside the process for designating such areas.

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

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?*

Through various consultation exercises, Glasgow City Council has asked for regulation of letting agents as there are no standards or guidance for practising as a letting agent, and therefore, no sanctions available to tackle poor practice.

Currently private landlord registration units register letting agents as they are acting on behalf of private landlords. Through the Private Landlord Register, around 700 letting agents can be identified as operating in the city from very small to very large operations.

The proposal for a mandatory register of letting agents is useful as it will be linked to a code of conduct and enforcement orders. The content of the code of conduct will be of prime importance and the involvement of key stakeholders to develop a practical, easily understood and enforceable code must be the objective. It is vital that the register is not just an information list, and that enforcement action is taken against poorly performing letting agents with enforcement orders followed up if not complied with.

The key to the success of effective *regulation* (rather than simply registration) of letting agents is that the fit and proper person test must be sufficiently robust. Experience of the test regarding private landlords is that test criteria is weak, it is often difficult to prove a breach of the test and the penalties for a breach are not sufficient. The fit and proper person test for letting agents must be robust and sanctions sufficient to deter poor practice. This may be best dealt with through the Code of Conduct which must be robust enough to allow effective sanction to be administered.

Results of FT Tribunal rulings should be made available to the relevant local authority. Local authorities must have a mechanism to be able to liaise with Government's Registration and Regulation staff. This may include information about letting agents which suggest a breach of the fit and proper persons test e.g the person has a criminal conviction.

It is extremely important that there are clear links and information exchange between local authorities who register private landlords and the Scottish Government who will register letting agents. As a letting agent register was never consulted on, there has been little discussion on how this interconnection will work. However, if a letting agent refused registration or is removed from the national register then this would affect all activity in Scotland irrespective of where the poor practice took place. This could have immediate implications for private landlords in each of the local authorities where the letting agent is registered, as they must be removed from the landlord's registration when the agent is not deemed 'fit and proper' according to s88(8) of the Anti Social Behaviour Act, 2004, whereas the Housing Bill appears to suggest that local authorities may remove the agent under s50(3).

In addition, local authorities must have a mechanism for referring poor practice by a letting agent, as the current drafting suggests that only tenants and landlords can refer letting agents to the tribunal.

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

Based upon the experience of dispute resolution between factored owners and property factors (referred to the Home Owners Housing Panel) and between private rented tenants and their landlords (referred to the Private Rented Housing Panel), there is a case to be made for extending the role of the PRHP to take referrals from tenants whose complaint is not with the landlord but with the letting agent operating on behalf of the landlord.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

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

The Council is broadly in support of the proposed licensing scheme, especially in terms of the consolidation of a national scheme which can be applied across all local authorities.

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

No comment to make.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

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?*

There are no major changes proposed other than conferring on local authorities a power to pay a share of the costs arising from the Tenement Management Scheme under the Tenements (Scotland) Act 2004. Local Authorities already have 'missing shares' powers under Section 50 of the Housing (Scotland) Act 2006 therefore the Council questions the relevance or need for this.

In certain circumstances, the Council will require that owners carry out repair and maintenance to their property, particularly to common parts. The streamlining of the maintenance order process is welcomed as are the proposals to allow local authorities to record repayment charges against commercial premises and increasing the scope of work to allow security measures to be included within Work Notices.

In terms of the key principles of the Bill, these welcome amendments highlight the wider issue of home owners being unable to fund essential repair and maintenance to their homes which is a considerable problem in the city. Previous Scottish Government guidance following the Housing (Scotland) Act 2006 highlighted the need for a national lending unit to support owners to carry out repairs. This unit was never established by the Scottish Government but the issue of the affordability of repair and maintenance of private housing stock remains, which has wider implications for the future of housing supply in the city.

Granting of renewable licenses for HMO should take account of the condition of the property. Renewal of licence (regardless of when it is due) should take into account the condition of common elements, with the licence only being granted once a maintenance plan is in place which applies to all proprietors of the (tenement) block.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator's powers and a repeal of certain enactments relating to defective designation.

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

It would be useful to Glasgow City Council to be consulted in the case of any housing association operating in the city which is currently subject to SHR intervention powers and has a current or pipeline scheme with the Council in respect of the receipt or potential for receipt of Transfer of Management Development Funding, Private Sector Housing Grant or other grant provided by the Council.

Other Issues

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

No further comment

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

There are some other areas within the Bill's overall policy objectives which could helpfully be included in this Bill.

These include:

- Amending the fit and proper test for private landlord registration to provide local authorities with the ability to conduct further tests in respect of gas safety, building insurance, fire safety, energy performance, plus the information made available to tenants on how to make a complaint to the private rented housing panel or equivalent – also non participation in common repair works, non payment of common repair bills
- Clarification on the ability of a landlord to re-apply for private landlord registration following refusal or removal from the register. Currently, an application need not be accepted within 12 months from the date it was refused or revoked by the local authority, however, it would be clearer if the effective date of any decision was the expiry of an appeal period or following the outcome of any appeal proceedings.
- This Bill requires evidence of letting agent impropriety to be validated by the FTT or Sheriff Court. It would be helpful if similar legislation e.g strengthening of part 8 of the ASB 2004 act or at least the provision of up to date Scottish Government Guidance could reflect this in relation to private landlord registration.