

## HOMES FOR SCOTLAND

### WRITTEN SUBMISSION

Homes for Scotland is *the* voice of the home building industry.

With a membership of some 180 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from our members.

We are pleased to respond to the Infrastructure and Capital Investment Committee's request for written submissions on the general principles of the Housing (Scotland) Bill. (Please note: in January 2014, Homes for Scotland submitted a short response to the Finance Committee's call for views on the financial impact of the proposals. Overall we had no issue with the costs reported).

The Housing (Scotland) Bill aims to make a variety of legislative changes relating to the social and private sector housing sectors. Our response reflects the diverse membership base of HFS and whilst our focus is on the proposals that have the potential to impact on the future development of new homes, we have also provided comment from members on areas where the proposals will impact the housing system overall and may have a bearing on the housing markets across all tenures (namely housing allocations and the Right to Buy).

#### **Part 1: Right to Buy (RTB)**

*This part of the Bill 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?*

It could be argued that a reduction in capital receipts through RTB sales would have an impact on a landlord's funds to invest in building new homes, however we note from the consultation that the decline in sales in recent years has already done that. We are also aware that there is no obligation on a landlord to invest capital receipts into new supply. We note with interest the estimate that abolishing the RTB could mean that 15,500 houses could be

kept in the social sector over a ten year period. We hope that the absence of a RTB will give additional landlords the incentive to build more new homes, without the fear of losing good stock through sale in the future. Indeed we hope that the retained asset base will assist landlords in accessing additional private finance to support new build.

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

Our members have questioned the need to wait for 3 years before the change and have suggested that the Right to Buy should be abolished with immediate effect.

## **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?*

Homes for Scotland represents a wide and diverse membership base including many of the most significant Registered Social Housing organisations in Scotland. Our consultation responses to the issues in this section reflect this context. Notwithstanding the direct interests of our RSL members, the supply, location, management and approach to allocation of Social Housing is a key influencer on the Housing System overall and impacts Housing Markets across all tenures.

With this in mind we are in favour of the principle of giving RSLs more flexibility with regard to allocations but would suggest that clear guidance is created (by Scottish Government or perhaps by the Scottish Housing Regulator) to accompany the provisions. Members for example, have expressed concerns with regard to age bars and how they relate to equality legislation; the need to consult with tenants on the new provisions; and how the new provisions relate to housing options.

**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?*

Our members largely welcome the proposals however some members have expressed concern with the Bill as drafted in relation to the potential costs of additional housing support. Again our members have suggested that robust guidance to accompany the provisions would be helpful. Areas to be covered include the determinants of behaviour change; flexibility on suspensions; and how converting an SST to a SSST works with or without court.

**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?*

Some members have suggested that whilst this part of the Bill has the potential to provide further protection for tenants, they have suggested that tenants in SSSTs already enjoy significant rights and protections under the current arrangements both for SSTs and SSSTs.

### **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?*

**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?*

**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?*

In the period since 1999, the Private Rented sector in Scotland has more than doubled its share of the total housing stock, rising from 5% to 11%. Research carried out by the Building and Social Housing Foundation (BSHF) in 2010 indicated that if recent tenure trends continue, 20% of all households across the UK could be private renters by the year 2020.

If the private sector is to become a significant tenure of choice within the Scottish Housing system then HFS is supportive of standards being driven higher.

The nature of the private rented sector in Scotland make that challenging. According to the 2010 Private Landlords Survey, just 1% of landlords across the UK own more than ten properties. Recent evidence found that just over 4 in 5 (84%) of Private Rented dwellings were owned by 'individuals, a couple or a family', while 14% were 'owned by a company, partnership or property trust', and 2% owned by an institution. Many of these landlords, in particular

those entering the sector in recent years, might be described as 'reluctant' or 'accidental' landlords who are renting out a property they have been unable to sell. There are also a significant number of 'Buy-to-Let' landlords in the sector, who invested in the sector during the housing boom years and were a significant driver in the expansion of the sector.

HFS, supported by Scottish Government and Construction Scotland, has recently undertaken a research project exploring ways in which new, professionally managed homes could be delivered at scale to support strategic growth in the private rented sector, adding to the total number of new homes being built in Scotland (please see full 'Building the Rented Sector in Scotland' report [here](#)). This would involve attracting large scale institutional investors into the residential sector. The reputation of the Scottish private rented sector will therefore be very important to this. Badly managed stock, of poor condition could blinder views on the tenure and has the potential to disincentivise political will for growing the number of units available for private rent. HFS is therefore supportive of sensible proposals to a) consider ways in which the legal system could be made more effective in private rented housing disputes, introducing a housing tribunal and b) implementing a stronger role for Local Authorities to enforce improvements on poor standards on private rented homes within their area.

However, HFS would caution the Scottish Government on regulatory changes that could reduce the competitiveness or disincentivise Scotland's residential sector compared to other areas, particularly England. Institutional Investors will compare the yields that can be achieved in different sectors across different countries. They will also take account of potential risks to these yields. Traditionally the concern has been around the potential re-introduction of rent controls and increased security of tenure.

Recommendation 20 of the HFS Building the Rented Sector in Scotland report states that:

*One of the most important messages from this research has been the **need for stability in the policy, taxation and regulatory environments**. Although there is enthusiasm and considerable activity, there is also fragility. We therefore **recommend that the Scottish Government should ensure that all parties are fully aware of the very positive approaches taken in legislation with respect to the twenty-year rules and the introduction of Land and Buildings Transaction Tax in April 2015 (the successor to Stamp Duty Land Tax)**. There also needs to be a clear commitment to ensure that the tax and regulatory environment does not negatively differentiate Scotland from the rest of the UK. The value of continued commitment to maintaining a predictable transparent regulatory environment cannot be overstated.*

Therefore in efforts to increase standards across the Private Rented Sector, we would like to see proportionate and targeted regulation. Our members preference would in actual fact be to see Local Authorities use existing powers to ensure enforcement at local level.

## **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?*

HFS's interests here are again in relation to the delivery of new, professionally managed homes to grow the private rented sector in Scotland.

We note and support the policy objectives of this section of the Bill as "to promote high standards of service and levels of professionalism across the country" and "to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise".

We see no reason why legitimate Lettings businesses would be against a registration scheme if the cost impact to them is low. However, coming from an industry where an effective voluntary Consumer Code is in place, we favour and remain supportive of schemes that offer consumer protection without going down the legislative route. We are also of the view that regulation on the lettings industry will face similar challenges to the introduction of regulation on private landlords. We imagine that the 'Bad' or 'Rogue' agents are the ones that would avoid registering or complying with any statutory practice, with the ones already offering a quality service facing additional bureaucracy and costs as a result. It is more important that effort and resources are focused on enforcing any current powers to pursue organisations that do not comply with any current rules or standards of practice.

Again, we offer caution against introducing regularity changes that could create unnecessary burdens and have a negative impact on the competitiveness of the Scottish lettings market.

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

The home building industry operates its own Consumer Code and offers new build customers an approach to redress outside of the courts (please see [here](#)). HFS would be happy to share further details of this approach to the Committee.

The proposals for tenants or landlords to apply to a First Tier Tribunal after the letting agent has been given the chance to resolve the issue seems sensible and proportionate.

## **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?*

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

HFS has no comment to make on the proposals on Mobile Home Sites with Permanent Residents.

## **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?*

HFS has no comment to make on the proposals relating to Private Housing Conditions. However we would urge the Scottish Government to ensure any proposals for this link appropriately to the current review of Home Reports, given that any outstanding enforcements/shared costs may have an impact on the future sale of private homes.

## **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?*

### **Right to Redeem a Security After 20 Years (20 Year Lease Rule)**

In response to the change to the 20 year rule proposed in the Bill, to allow existing and any future shared equity schemes to fit within the mortgage market review, we give our absolute support.

We applaud the initiative shown by the Scottish Government in proposing this change to allow Help to Buy (Scotland) to be launched for home buyers in Scotland, with the minimum amount of delay. We appreciate that the Scottish Government were unable to consult fully on this proposal but are supportive of the approach that they took in engaging with key stakeholders whilst the Help to Buy (Scotland) scheme was being developed. HFS was party to this engagement and offers the Scottish Government our continued support.

However, in submitting written evidence on this 'miscellaneous provision' we feel it appropriate to draw the Committees' attention to our concern about the 20 year rule and its ability to act as a barrier (whether real or perceived) to any innovative housing funding models again in the future.

We understand that the Land Tenure Reform (Scotland) Act 1974 introduced 20 year limits around long residential leases and related standard securities as part of ending feudal tenure in Scotland. Whilst this rule may have served a purpose in the past, HFS find it hard to understand what it serves to do today. We are aware that a comparable rule does not apply in England, but note that the fact that there is a more established market of long residential leases in England and Wales means there is also a body of case law to govern relationships between landlords and tenants who enter into such arrangements. The fact that we do not have case law to refer to may to some extent justify an ongoing role for the 20 year lease rule, however if it is to be retained it must be fit for purpose and not inadvertently restrict the operation of the housing sector.

We understand that two recent legislative changes have occurred to increase flexibility within the rule: first in the Housing (Scotland) Act 2010 and then second in the Private Rented Housing (Scotland) Act 2011. The 2010 Act amended the 1974 Act so that social landlords, their connected bodies (i.e. subsidiaries) and rural housing bodies are exempt from the 20 year limit on residential leases. The 2011 Housing Act also amended the 1974 Act in order to assist other landlords, meaning there are now powers for Scottish Ministers to prescribe other bodies so that they are exempted from the rule as well. This requires the laying of a Statutory Instrument before the Scottish Parliament.

The combined effect of these changes is that leases between and amongst housing associations, local authorities and private landlords could now be possible. This means that long residential leases and innovative lease-back funding models have the potential to work in Scotland, in the same way they can work in England and other countries. However, research undertaken by the Cambridge Centre for Housing and Planning and the London School of economics through the HFS 'Building the Rented Sector in Scotland' project found that some investors were unclear of the implications of the rule (and/or recent changes to the rule) and still considered it a continuing problem. Hence the reference to the 20 year lease rule in Recommendation 20 of the Building the Rented Sector report copied above.

What is absolutely clear is that the 20-year rule is perceived to be confusing to those inside and outside the housing sector. If there is even a remote possibility that the delivery of housing in Scotland is being affected by this restriction, the rule must be fundamentally reviewed. Given that the Bill is proposing yet further change to the rule, we would suggest that the Scottish Government review it fully proactively rather than propose new changes on a reactive basis each time a Housing Bill is passed.

### **Scottish Housing Regulator: Transfer of Assets following inquiries**

HFS has no comment to make on this miscellaneous provision.

### ***Other Issues***

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

HFS has no further comment to make.

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

HFS has no other issues to raise.

**Homes for Scotland  
28 February 2014**