

SOUTH LANARKSHIRE COUNCIL

WRITTEN SUBMISSION

Introduction

South Lanarkshire Council welcomes the opportunity to respond to the Infrastructure and Capital Investment Committee questionnaire seeking evidence on the Housing (Scotland) Bill at Stage 1. We have responded to the pre-Bill consultation process and have also played an active role in stakeholder discussions of the Housing Policy Advisory Group. We have also recently submitted a response to the Finance Committee questionnaire on the Housing (Scotland) Bill's Financial Memorandum.

We are broadly supportive of the Bill's provisions and aims and believe the legislation will have a positive impact on both safeguarding social housing and helping to improve housing conditions of the Private Rented Sector (PRS). We have a broader concern, however, that the Welfare Reform Act 2012 could have a detrimental effect on the positive aspects that the Bill provides; aside from making it more difficult for councils to meet their duties under existing housing and homelessness legislation.

The provision may also help authorities in allocating properties which would sustain or create a balanced and sustainable community. For example, age compositions of residents within blocks could be taken into account to ensure that properties that are available to relet are allocated to tenants who would not have a detrimental impact on the lives of the current residents – therefore reducing likelihood of tenancies ending prematurely or anti-social behaviour (ASB) occurring.

This response answers the questions contained in the Committee template on the Bill, that are relevant to South Lanarkshire Council. Before addressing the specific questions, the response outlines additional views on areas that we feel it would be appropriate to include in the Bill, or in future legislation.

General comments: provisions not included in the Bill

Common Housing Register (CHR)

As noted in previous consultation responses, we remain strongly of the view that there should be a statutory requirement for all social landlords to participate in a CHR. As it stands, whilst we appreciate that the Bill's scope does not extend to include a provision to make this mandatory, since South Lanarkshire and our RSL partners established the CHR in June 2009, there has been real improvements in terms of service awareness and access. Establishing a clear statutory requirement on social landlords to actively participate in local CHRs would undoubtedly help further improve access to social rented housing across Scotland.

Introductory Tenancies

South Lanarkshire Council are of the view that establishing a system whereby introductory tenancies were more widely available to social landlords would:-

- help establish positive patterns of behaviour and promote personal responsibility by new tenants
- at the same time, the use of such tenancies would also give neighbours and the wider community reassurance that effective action could be taken against new tenants who fail to act responsibly at the outset of their tenancy
- emphasise that along with the rights associated with a council or RSL tenancy, come quite clear obligations on tenants

As noted in our response to *Affordable Rented Housing: Creating flexibility for landlords & better outcomes for communities*, we would propose that all tenancies which are commenced for people who are not currently a tenant of the same landlord should be established as introductory tenancies, and where an individual has lost their tenancy due to their inability or unwillingness to address their behaviour, councils should not be required to provide them with accommodation under the terms of the homelessness legislation.

In general terms we feel that it would give landlords and communities reassurance that action could more readily be taken to remove a household from their tenancy where they have failed to adhere to their tenancy conditions (especially in relation to those who engage in ASB).

Tribunal for the Social Rented Sector (SRS) and the Civil Court Review

Through previous consultations, we have argued the need for the establishment of a Housing Tribunal for the SRS. A key argument, amongst others, which we have consistently made in favour of tribunals in the SRS, is that they would afford sufficient time and expertise to be devoted to housing issues and in particular, eviction actions.

Although the Housing (Scotland) Bill does not (currently) introduce a Housing Tribunal for the SRS, we welcome the publication of the Courts Reform (Scotland) Bill earlier this month (7th February 2014). It introduces a provision to include a creation of a new judicial post – the summary sheriff - to resolve lower value civil cases, such as debt cases, more swiftly and efficiently in areas such as family and housing law.

It would be helpful if the Scottish Government would give a commitment to monitor and review the new arrangements and incorporate any findings into assessment of whether it has addressed the fundamental issues we and others (for example, the CIH) have routinely pointed to.

Taking into Account Income in Allocations

As noted in earlier consultations, taking into account income in allocations would allow landlords the opportunity to allocate houses to certain ‘income groups’ which might help achieve more balanced and sustainable communities and help landlords with their ability to meet identified housing need. However, we are clear that policies should avoid “means testing” access to the sector as this would undoubtedly further exacerbate the residulisation of the SRS. We are of the view that providing scope to consider

income (albeit within specified limits) could assist social landlords to facilitate appropriate community mix.

General comments on specific Bill areas

Financial capability of local authorities to implement the Bill's provisions

There is always a challenge for local authorities in meeting new legislative provisions with existing resources or being able to source new funds from additional borrowing. For some time now, however, we have been able to plan and take into account the financial impact of, for example, the abolition of Right to Buy (RTB). In this respect, there are a number of the Bill's provisions that we have no major concerns with and where the financial costs associated with them can be met.

However, there are a few areas of the Bill where we do perceive a potential for significant additional resource requirements by local authorities¹. Whilst we support the intention of the Bill's approach, the discretionary powers for local authorities to apply as a third party to the Private Rented Housing Panel (PRHP), where the private landlord has failed to comply with the Repairing Standard, could have considerable resource implications (aside from giving authorities ambitious new duties to enforce). For this reason, we believe it is necessary to exercise some caution in terms of the assumption inherent in the Financial Memorandum of the Bill, that local authorities can reasonably carry out this new role without identified new resources.

For the provision clarifying local authority powers to pay missing maintenance shares on behalf of owners, we have some concerns that by using this provision a local authority could find it both costly to meet the missing shares to enable the work to be carried out and onerous to recoup monies which arise from those owners who do not pay up.

The other area where we have some financial concerns relates to the cost to local authorities of resourcing housing support for tenants who have been provided with a (Short Scottish Secure Tenancy) SSST as part of the Bill's provisions relating to ASB. Since June 2013, homeless households have been assessed for their housing support requirements as part of a new housing support duty and this combined with the requirement to offer housing support to all tenants (as long as they have a SSST), will further increase the pressure on the housing support budget.

Consultation Questions

Part 1: Right to Buy

Q1. *What are your views on the provisions which abolish the Right to Buy (RTB) for social housing tenants?*

South Lanarkshire Council believes abolishing the RTB will remove continuing uncertainty in terms of future levels of supply of social rented housing. The

¹ For more information, please refer to South Lanarkshire Council's response to the Finance Committee Questionnaire on the Housing (Scotland) Bill 2013

change will also support local authorities to meet the continuing duty to provide permanent accommodation to homeless households and to help develop the supply of affordable rented housing in line with wider strategic objectives.

In our response to the Finance Committee questionnaire on the Housing (Scotland) Bill's Financial Memorandum, we outlined that RTB sales for South Lanarkshire Council have reduced very significantly over the last decade (where RTB receipts in 2012 accounted for 2% of funding for the Business Plan compared with 23% in 2004/5). However, recent figures suggest that the proposed policy change is already having an impact and that a 'spike' in RTB sales preceding the abolition of the policy is likely (where it is assumed that there will be a doubling of the 60 sales to 120 sales in 2014/15 to 2016/17).

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

South Lanarkshire Council believes that the three year 'grace' period before the RTB is abolished is too long and could exacerbate a spike in sales on top of what we have already seen locally, since the intentions of the Bill were announced. As outlined in our response to *The Future of Right to Buy in Scotland*, a shorter notice period as possible (12 months) would protect valuable council housing stock.

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?*

Broader Definition of Groups

In terms of how the Bill would amend the reasonable preference provisions in relation to allocation policies for social landlords, we feel the changes are more in line with modernising the language and context and will make little difference in how we allocate housing. Our housing allocation policy already ensures that those in the most acute housing need are prioritised. As a result, the Bill's amendment to clarify that homeless people and those living in unsatisfactory housing conditions have to be in housing need merely reinforces what we and other social landlords already carry out in practice (and which has been a clear focus of the regulatory framework).

Taking Age into Account in Allocations

We believe the provision that will allow social landlords to take age into account in allocations provides welcome clarity and will be useful in terms of giving landlords enhanced flexibility in housing, for example, older people as part of a 'sensitive' letting approach. Social landlords will need to consider what would be considered appropriate in terms of how to apply the policy locally, but certainly, the policy could be effectively implemented to enable certain age groups to access appropriate housing and maximise their chance of maintaining their tenancy.

Allocation Policy – Consultation, Reporting and regard to the LHS

South Lanarkshire Council believes that consulting with tenants and a range of other stakeholders regarding changes to the allocation policy (and other housing policy areas) is a matter of good practice. Although more detail is expected, the Bill's provisions to ensure local authorities consult and report in this manner and that their allocation policies have regard to the Local Housing Strategy are, therefore, welcomed.

Taking Home Ownership into Account in Allocations

We welcome the provision to allow social landlords to take into account home ownership in allocations. Although we would not want to prevent home owners from applying for social housing, consideration needs to be given to their financial circumstances. We believe this provision will enhance the ability of social landlords to appropriately target available housing to those in most need.

Awarding of a SSST as a Temporary Solution to Home Owners

The Council agrees with the Bill's provision to allow landlords to award a SSST to a home owner as a temporary solution. We do not expect this change to have a significant effect, but we are aware of situations where it could be useful, for example, where an applicant is making arrangements to bring their own property back into use (e.g. temporary repair or fire/flood) but require a temporary home in the meantime.

Qualifying Periods for Succession, Subletting, Joint Tenancy Requests and Assignment

We broadly agree that the introduction of a twelve month qualifying period before tenants can exercise these rights, along with a requirement that the prospective tenant must have informed the landlord that it is their main home, should address concerns around succession, subletting, joint tenancy requests and assignment.

However, we feel it is important that within the finer policy detail surrounding these changes, that the provision allows local authorities sufficient flexibility to take into account special circumstances, as not all decisions will be simple 'clear cut' cases. There is a danger that if this flexibility does not exist, there could be circumstances where some people may be disadvantaged (for example, in palliative care cases where a family member has moved in with a parent/grandparent etc).

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?*

Tenants being ineligible for an offer of housing for a minimum period of time due to ASB or outstanding rent arrears.

South Lanarkshire Council welcomes the provisions in the Bill which clarify the circumstances in which an applicant may be made ineligible for an offer of housing for a minimum period of time and agree it may help in deterring tenants from acting anti-socially or failing to meet their obligations to pay their

rent. In order to assist Councils implement the policy change, we feel it is important that supporting guidance² for this provision is developed soon after the legislation is finalised.

Allow landlords to grant a SSST to a new applicant where there is a history of ASB

South Lanarkshire Council agrees with the provision in the Bill that social landlords have the power to grant SSSTs to new applicants where they have a history of ASB. However, as with all of the provisions relating to the granting of SSSTs in cases of ASB, there is the duty to provide housing support to the client while they are in the tenancy. While we agree this is vital, we have some concerns that the expected extra provision (of the actual support and the prior stages of the referral process) will be particularly onerous on the Council when the budget for housing support is already stretched and that no new resources have yet to be identified or allocated to local, from central, government.

Like the previous provision, we believe it is important that guidance stipulates how challenges and appeals relating to ASB from prospective tenants can be effectively and consistently dealt with.

For existing tenants who have a history of ASB – landlords are able to convert their SST to a SSST

We agree with the provision which will allow social landlords to have the ability to convert a tenants Scottish Secure Tenancy to a SSST in cases where they have a history of antisocial behaviour. In its implementation, this provision could be used as another 'tool' to tackle ASB in tenancies – rather than using the lengthy processes involved in evicting the tenant. In essence, it is a way in which the tenant is offered another and a final opportunity to modify their behaviour before eviction is considered.

We don't believe that simply converting one tenancy to another is the answer to preventing anti social behaviour occurring, or that it will necessarily encourage the antisocial tenant or member of their household to change their behaviour. We do, however, feel that the provision would provide an additional tool to be used in appropriate circumstances.

Again, in common with the other ASB related provisions, there are the same resource implications for social landlords having to provide the housing support plans to tenants having converted their tenancy to a SSST.

SSST tenancy can be converted to a SST after 12 months and the extension of the SSST for a further one-off period of six months

South Lanarkshire Council agrees with the provision that will allow social landlords to convert a SSST tenancy to a SST after 12 months if the tenant refrains from acting anti-socially, and where the individual is ready to manage their tenancy without intensive support. Likewise, it appears reasonable that

² For example, on what type of ASB evidence would be considered appropriate or in what circumstances an applicant could challenge and appeal their ASB status.

where the individual does not refrain from acting anti-socially that the landlord can decide to extend the SSST for a further one-off period of six months (18 months in total).

As with the other provisions relating to ASB and use of SSSTs, we are aware that the availability of extended SSSTs may put further pressure on the housing support budget if this becomes a common route for some tenants.

Grounds for landlord eviction after criminal conviction of a tenant – where the landlord can evict without further court action

South Lanarkshire Council believes that the best means of tackling ASB is through a multi-agency approach and one which can't be dealt with effectively as a individual agency. Whilst we agree with the inclusion of the provision in the Bill, we do not feel the specific proposal will significantly simplify the eviction process. When appearing at court seeking eviction, we would already point to relevant convictions as a fundamental aspect of our application. The key consideration for the court and the part which can be most problematic, is the courts consideration of reasonableness of the action.

We believe some clarity is required on the type of conviction that should be specified – as it may be inappropriate for all convictions to be considered 'workable' under this provision.

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 policy documents which accompany the Bill for this section refer to the well acknowledged South Lanarkshire Council v McKenna case³. It confirmed that reasons did not need to be given prior to or at the time of serving, the notice to quit. If the tenant disputes the reasons, they are effectively being provided with defence akin to "not reasonable to evict". This and the compulsory 12 month term in ASB cases, may undermine the effectiveness of the use of SSSTs to deal with ASB for tenants while in this type of tenancy.

There is also a specific legal issue with the *Service of Notice of Proceedings* in SSST cases when using Section 16. The service of a NOP without reference to the 'ish' of the tenancy differs fundamentally from the usual practice in relation to service of notices and could cause confusion and error. This is because the date at which the tenancy ends (and can start again) could be associated with both the Short SST and the SST (as the Bill does not specify this). The Bill also removes the need to establish reasonableness in (ground 2) evictions. This may help councils to deal with serious ASB but could be open to challenge on human rights grounds, which could lead to lengthy and costly litigation.

³ <http://www.tcyounge.co.uk/blog/2012/social-housing/housing-law-scotland-significant-legal-judgement>

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 (FTT)?*

We are supportive of the policy objectives for this provision which aims to provide a more efficient, accessible and specialist access to justice for both landlords and tenants. It is important the FTT is funded appropriately and to ensure its effectiveness, we would support the use of full time tribunal judges – especially if the numbers of cases are expected to rise, as tenants and landlords become more aware of its functions.

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?*

South Lanarkshire Council welcome's the Bill's provisions to allow third party reporting to the PRHP and to enable local authorities to make a direct application to the panel where there is evidence that a landlord is not meeting the repairing standard. We believe it could helpful in circumstances where tenants have a difficult relationship with their private landlord – and now have an option to distance themselves from the situation.

Although we agree it is a positive measure, there needs to be a consideration that additional and specialised staff (within, for example, Environmental Services) may be required to provide this service. We are also unsure what the process would be if an officer requires access to properties to determine defects etc – as a result, guidance on matter such as this would be beneficial.

As pointed out within *General Comments* (above) we have some concerns relating to the continuing and costly responsibility for councils to ensure the support required to meet the provision is made available to the tenant

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?*

South Lanarkshire Council welcomes provisions to be brought forward at Stage 2 but believes the new provision will lead to only a marginal change and is not significant. However, the option to seek Enhanced Enforcement Area status, may in certain circumstances improve the enforcement capability.

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?*

South Lanarkshire Council agrees with the policy intentions behind the creation of a mandatory register of letting agents and understands it may help promote better letting practice in the PRS – where both landlords and tenants will benefit. However, we are unsure how the national mandatory scheme of letting agents will be monitored and enforced at a local level. When

considering an approach for registration, we would hope that the Scottish Government seeks that the appropriate balance is achieved between encouraging letting agents to provide a service and ensuring agents operate to a consistently high standard.

Q11. *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?* Before commenting on this provision at length we would like to see more detail on it.

Part 5: Mobile Home Sites with Permanent Residents

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

The suggested amendment to the Caravan Sites and Control of Development Act 1960, in respect of permanent residential sites, is welcomed (as per earlier local authority consultation). We believe the other provisions and the proposal for published guidance on setting fees, addresses the key issues.

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

We have no further comments to make on this Part.

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?*

South Lanarkshire Council agrees with the inclusion of the provisions which clarify the existing local authority power to pay missing maintenance shares on behalf of owners who are unwilling or unable to pay their share (to ensure that local authorities are able to use that power to support majority decisions by owners for maintenance works). However, we have some concerns that by using this provision, a local authority could find it initially costly to meet the missing shares to enable the work to be carried out and thereafter, onerous to recoup monies which arise from those owners who do not pay up.

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?*

South Lanarkshire Council have no specific comments to make on this part of the Bill.

South Lanarkshire Council
28 February 2014