

NORTH AYRSHIRE COUNCIL

WRITTEN SUBMISSION

Part 1: Right to Buy

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?*

North Ayrshire Council (NAC) supports the abolition of the right to buy. This proposal is in line with our Local Housing Strategy and increasing the supply of affordable social housing. NAC is committed to this through our council house building programme with which we aim to build 500 new homes over 10 years. From 2011 to 2013 we have completed a programme which produced 83 new homes; however, we lost 112 houses through the RTB Scheme in the same timescale. Three current projects will deliver 134 new homes with further projects identified for completion before 2015. This substantial investment in our housing programme goes some way to alleviate the pressure on the authority due to the lack of affordable housing in the area.

Our authority has also invested in the Mortgage to Rent Scheme which has seen demand for this increase over the last few years and resulted in further increases in capital budget to try and accommodate this demand. In 2011/12 we purchased 16 houses through the scheme, however, we found that demand was very high and as a result, we increased the capital budget for 2012/13. We also purchased 12 ex local authority properties from the open market in 2012/13 and we currently have funding to 'buy back' a further five properties.

Since the Scheme started in 1980, 46% of the housing stock has been lost to the Council and as evidenced above, we are trying to add to our current stock of housing however, schemes such as Right to Buy negate this good work. Demand for social housing is high and the Council would wish to protect these homes for future generations and as such we have made significant investment in several areas.

In addition to the above we have estate management issues with mixed tenure blocks. A great deal of investment is planned to ensure we meet the targets set for minimum housing standards, however, mixed tenure properties can be very problematic for our standard delivery plan. Ending Right to Buy would help to reduce such instances.

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

With publicity surrounding the changes preceding royal assent, a short notice period of between 6 months and one year would have been sufficient as tenants have already had a long period to exercise their right but for whatever reason, they have chosen not to do so. The modernised entitlement is less attractive due to the smaller discount offered and with the lack of mortgages available, the likelihood of there being a surge from this group, is fairly low. There is little chance of an upsurge in the economy over the next year; therefore the affordability of Right to Buy will probably not change much during this time.

A three year lead-in period is too long.

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?*

Part 2 of the Bill does marginally increase the flexibility that landlords already have when allocating housing and has the potential to allow them to make best use of their stock.

See comment on each section below:

Section 3 – It is noted that under-occupying is now included in the legal preference groups. This flexibility already exists and the North Ayrshire Housing Allocation Policy gives points to applicants that NAC and our partner RSL's consider to be under-occupying.

We also note that a duty to give reasonable preference to overcrowding applicants has been removed. The criterion used to calculate over-crowding and under-occupation is clearly linked and in North Ayrshire is calculated on an agreed occupancy standard.

In North Ayrshire there are almost twice as many applicants registered with overcrowding points than there are with under-occupation points.

The flexibility to include overcrowding will exist but some landlords may choose not to as there is no legal requirement that they should. Should landlords choose not to include overcrowding within their allocation policies this has the potential to have a negative impact on younger people and those with children who wish to live independently from their parents.

The benefits of this section appear limited and the likelihood of significant impact on flexibility is unclear.

Sections 5 – Taking applicants' age into account when allocating is a welcome amendment of some significance and will allow landlords to make better use of stock in certain

circumstances.

Guidance would be welcome to ensure landlords do not breach Equality legislation on grounds of age discrimination.

Section 6 - Taking property ownership into account is likely to be complex to administer but we do acknowledge that the public perception is that current rules are unfair when owners access social housing.

However, it is likely to have the potential unintended consequence of excluding owners who have an accessible housing need due to illness or disability but whose current accommodation does “not endanger their health”.

In North Ayrshire the proportion of owners housed each year is negligible and where this does occur they tend to be older people who have previously exercised their right to buy. The majority of owners who have registered for housing in North Ayrshire are aged over 60. If this flexibility is used it could result in a disproportionate negative impact on older people.

Flexibility cannot be used on a case by case basis but needs to be incorporated into a robust policy statement.

This flexibility is likely to create complexities in implementation that need to be carefully considered.

Section 7 – Allows landlords to impose a minimum period before an applicant is eligible for the allocation of housing. This amendment is welcome and legislates for the practice of suspending an applicant from receiving offers in specified circumstances.

This will have little impact in North Ayrshire as we already operate a suspension policy.

Section 13 & 14 - Introduces a qualifying period before persons qualify for joint tenancy, assignation, sublet and other changes around succession. These changes are welcome and will minimise the potential for abuse. Flexibility exists to allow approval of applications where refusal appears harsh.

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?*

We agree that, under the current legislation, very few cases meet the criteria for granting SSSTs for antisocial behaviour. Our normal approach (in line with the national antisocial behaviour framework ‘Promoting Positive Outcomes’) is to only use enforcement action, such as ASBOs and evictions, after other interventions – including other partners’ powers to act – have been unsuccessful. However, where we have been able to use SSSTs, our experience is that they have been an effective incentive for some (but not all) tenants to engage with the support offered and address their antisocial behaviour.

With regard to the proposal to allow social landlords to grant new tenants a SSST on antisocial behaviour grounds when they consider it reasonable, it is worth noting that the power already exists to establish any new tenancy as a SSST on support grounds. We have

used this option, with the offer of intensive support, in a small number of cases where there have been reasonable concerns about the sustainability of the tenancy, based on the applicant's history of antisocial behaviour, but where no court order has been obtained for either recovery of possession or an ASBO.

The ability to impose a SSST on an existing tenant at an earlier stage could assist with cases where the antisocial behaviour persists despite warnings, and the legal process is likely to be drawn out e.g. where the case is being defended and an application has been made for legal aid.

We broadly support the proposal to bring forward the use of SSSTs to address antisocial behaviour to an earlier stage than is currently prescribed. The legislation does, however, need to be clear on the definition of 'antisocial manner' and 'in or near their home'.

There have been discussions in the Antisocial Behaviour Officers Forum (ASBOF) regarding this being the procurement of an Interim Antisocial Behaviour Order. Using the Interim ASBO in this case may have an impact on the number granted by Sheriffs, given they will consider the impact it will have on a person's tenancy. This could potentially damage a useful and quick method of protecting tenants if the Interim ASBO becomes more difficult to obtain. Consideration also needs to be given to implications of the term 'antisocial behaviour' being defined as lesser than the offender having a related conviction. Unless allegations against a person have been tested in court, there may be human rights challenges in reducing a person's tenancy without adequate evidence of their behaviour.

We have some concerns about the suggestion that housing law on antisocial behaviour might be extended beyond behaviour which occurs in and around a tenant's property. Our concerns are primarily about reasonableness and the impact that this might have on household members – including the tenant – who are unconnected to or have no control over the behaviour in the wider community. Courts tend to have a narrow view of a locus where a crime is committed. A definition is required to clarify whether 'in or near their home' is the street in which they live, neighbourhood, town, or wider. How this is described will influence whether this will allow more use of the SSST.

Representatives of North Ayrshire Tenants & Residents Network generally supported the proposal to allow more SSSTs for antisocial behaviour, but they had mixed views on the suggestion that housing law might focus more widely than solely in and around the tenancy – some supported this while others felt it would be unreasonable.

We support the opportunity to extend SSSTs for a further 6 months after the initial 12 months. This will be useful in allowing additional time to monitor the situation, as in some cases reports of antisocial behaviour can recur after the 12 month period.

In terms of a more streamlined eviction process, it would be helpful in some Ground 2 cases where there has been a conviction for dealing drugs, particularly where it is the tenant who has been convicted, to allow decree for eviction without having to demonstrate that it is reasonable to do so. This would help to speed up the process and lessen the impact on

neighbours who have been affected by the drug-dealing activity over a long time.

ASBOF also suggest that this could be useful where someone is convicted of breach of an ASBO that is tenancy related – this could provide a quicker resolution than converting the tenancy to a SSST and then ending the SSST after a further 6 months.

Representatives of North Ayrshire Tenants & Residents Network unanimously supported this proposal as a means of speeding up the lengthy court processes.

It is, however, important to clarify what is considered to be both 'illegal activity' and 'in or around the property', to avoid unreasonable expectations from members of the public that landlords will act on criminal activity out with that linked to the tenancy.

Expectations could be raised about the type of criminal or antisocial behaviour which would trigger an 'automatic' eviction. Clarity would be required on issues such as behaviour committed 'in the locality of the house' e.g. would this include a tenant's son convicted of assault in the street where she lives? It would also be relevant to consider whether neighbours were aware of and affected or harmed by the criminal activity.

The courts are likely to be wary of the proposal to enable conflated decisions, where a decision in a criminal case could lead directly to a tenant losing their home. Sheriffs may view this as punishing a person twice for the same crime without being able to consider the reasonableness of the civil action to evict. For example, they would not have the opportunity to consider issues such as the tenant's knowledge of drug-related offences committed at their house by another household member or visitor. Our experience is that Sheriffs are not inclined to grant decree in such circumstances unless they are satisfied that the tenant would have known that dealing was taking place.

Decisions on intentional homelessness may be affected if there is no opportunity to consider whether it is reasonable to evict the tenant.

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?*

In terms of the extension of the SSST from 6 to 12 months, this will provide more protection for the tenant. It will allow more time for any supports in place to work on offending behaviour, with a view to sustaining the tenancy. Conversely, extending the period of the SSST may impact on the victims of antisocial behaviour, by effectively elongating the period that person has to endure their neighbour acting in an antisocial manner, in cases where supports provided are not successful in addressing the offenders' behaviour. Although there is the possibility of proceeding with eviction for a tenant in a SSST, this is a lengthy legal process and may not be quicker than ending the SSST.

We support the introduction of compulsion for social landlords to give reasons why they are recovering possession of a SSST, and NAC currently as a matter of course, provide this information to the court. The legislation does however need to be clear on the level of proof required to end the tenancy. Clarification is required on whether further reported incidents (as a reason for terminating the SSST) need to be corroborated, and if there is a minimum number of incidents that would define further offending behaviour. Without this clarification, there is a risk that 'the neighbour continues to report antisocial behaviour' could be brought into question as a reason to end a tenancy, and corroborated evidence requested.

Allowing SSST tenants to request a review prior to landlords seeking recovery of possession in cases where the tenancy will not be converted to an SST does provide further protection for tenants, but clarification should be given to the review process. Would there be an expectation that this review would be carried out by someone other than who made the decision not to convert the SSST? This could affect the current decision making process. Again, it is essential that clear definitions of antisocial behaviour and locus of offences are provided in the legislation, to provide transparency in the decision making process.

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?*

North Ayrshire Council welcomes the new private rented sector tribunal which will help resolve landlord/tenant disputes and which we see as an improvement to the current system. This new tribunal will free up sheriffs time to deal with other cases and help to bring consistency to housing enforcement matters. Not all Sheriffs are equipped with specialist housing knowledge whereas members of future tribunals will be chosen for their specific knowledge and experience in the private housing sector.

An additional benefit might be that it may free up more time in the Sheriff Court allowing local authority housing matters to be dealt with more quickly. This assumes that there will be the same resources remaining at the Sheriff Court to deal with the cases. As it is a new system it is hard to judge the effect that it will have. If a different approach is adopted to the Sheriff Court (either more lenient or stricter) this may have a corresponding effect on the local authority's homelessness duties.

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?*

The changes are minor and do not go far enough in terms of allowing local authorities to combat the problems of disrepair in the private sector. The powers are also discretionary and as such their use will be directly related to resources available and priorities within individual local authorities

We would like to see additional or amended powers in terms of Local Authorities reclaiming costs associated with paying missing shares or undertaking works (e.g. resulting from a works notice), as the current methods leave too much risk of money being unrecovered. Although there are existing powers to reclaim money, they have long repayment periods i.e. 30yrs. A system where the owners and Council can agree terms for repayment, such as over a 5 year or 10 year repayment plan, tied to the property title would give local authorities more confidence to pay missing shares and undertake work through a work notice.

Additional or increased enforcement, such as mandatory revocation of a landlords licence for properties below the tolerable standard (where the landlord has not brought them up to standard within a reasonable time) would also be welcome to give local authorities powers to combat disrepair in the private rented sector.

The discretionary powers to allow local authorities to make a Private Rented Housing Panel (PRHP) referral on behalf of a private tenant are welcomed and we expect this would be beneficial in cases where tenants are frightened or unwilling to make the application themselves for fear of reprisals from the landlord. If the referrals came directly from a local authority the tenant would then have no involvement in the process and this could mitigate the risk of a tenant being harassed by an aggressive landlord.

Currently if a private tenant makes an application to the PRHP and leaves the tenancy before the matter is settled this effectively withdraws the application. In future, if the application is made by a third party, e.g. Local Authority, then this would allow the case to progress to conclusion.

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?*

NAC welcome any additional powers that would enable local authorities to tackle disrepair in areas of poor quality housing in the private rented and owner occupied sector. However, resource issues will have a bearing on whether or not local authorities are able to prioritise them.

Many local authorities do not utilise current powers available to them within the Housing (Scotland) Act 2006. The 2006 act introduced the Housing Renewal Area designation (HRA) that could be used where local authorities identify a high proportion of properties deemed to be in disrepair. The local authority can then serve work and demolition notices that would allow them to implement the work required. These powers are not widely used and we look forward to the introduction of new powers that will make this process easier for councils.

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?*

Creating a register of letting agents and a fit and proper test to be a letting agent should help to protect tenants. A statutory code of practice should help to maintain a consistent level of service for tenants and landlords that use the services of a letting agency. Only allowing tenants or landlords to apply to the First-tier Tribunal may limit the effectiveness of this code. Many tenants may be unwilling or feel unable to take a case to the tribunal for fear of being evicted or other repercussion from the letting agent.

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

Tenants may well have to be supported through the tribunal application process. Many more vulnerable tenants may not be able to negotiate the tribunal process themselves.

Should the letting agent fail to comply with a notice from a tribunal then it would need to be taken back to the tribunal. Should the tribunal agree, they may notify the Scottish Ministers of the failure (presumably questioning the fit and proper test). There is no redress for landlords or tenants for failure to comply. The Letting agent may be deemed to be unfit but this would not assist the landlord or tenant at that point.

The requirement to go back to the tribunal to establish a breach, and have them determine it is a breach before the matter becomes a criminal offence seems a long and drawn out process. Also, if a decision by the Tribunal that a failure to comply with the code of practice does not create a presumption that the letting agent has failed to comply then the same facts will have to be established twice before different courts. This seems a duplication and

unnecessarily lengthy.

Perhaps a decision regarding a failure to comply should establish a presumption with the onus then falling on the letting agent to prove that it was not a failure/offence. This does not seem unreasonable given that a judicial body will have already established a failure to comply.

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?*

Generally

1. Consideration should be given to the question, whether or not the proposed scheme for licensing caravan sites is within the legislative competence of the Scottish Parliament. It authorises Councils to remove rights which licence-holders might have held for years, and it might be argued that this offends the European Convention on Human Rights 1950.

ECHR, Protocol 1, Article 1 (Protection of property):

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Bill proposes a major change to the existing legislation:

- a) At present, Site Licences are perpetual and free of charge (they do not require to be renewed, and there is no Annual Fee such as is found in more modern licensing legislation). With one exception from 2007, all the NAC Sites which are currently licensed obtained their licences many years ago (from the District Council or the County Council), when the sole issue was whether or not the owner had Planning Permission. There was no vetting of licence-holders, and no means of a Council intervening if, for example, it was alleged that the licence-holder was treating residents badly;
- b) The Bill proposes to replace these with new Licences, charging fees, and to introduce a 3-year renewable licence, with a "fit and proper person" test.

Supposing that a person has operated a Caravan Site for years but is now refused the grant or renewal of the Licence (he will apply for his first new-style Licence before the 2-year Transitional Period provided for in Cl. 71 expires). Does the Site have to close? Are the residents to be evicted? Will the Council face an appeal argument that it has breached the owner's Human Rights?

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

1. Site operators have to pay a fee every three years, and have to incur the costs associated with repeated applications (e.g. staff time, fees of solicitors and architects), whereas previously the licence was free and perpetual. If there are Hearings (below) then the legal fees for representation would increase.
2. The Bill does not propose to change the existing law: the old-style licence conditions cannot be enforced by the Council (e.g. suspending the licence), and can be enforced only by prosecution by the Procurator Fiscal (contrast other licensing legislation, e.g. Civic Government (S) Act 1982, Sch. 1, Para. 11 & 12; and Licensing (S) Act 2005, ss. 36-39). Perhaps the Crown might be asked to advise how many prosecutions have been taken under the 1960 Act.

Instead the Bill's scheme is:

- (a) Penalty Notices can be served after the Council has served an Improvement Notice (new sec. 32X(1)(b)),
- (b) The licence-holder's failures might be taken into account by the Council when considering whether or not
 - (i) to renew the licence after 3 years, or
 - (ii) to revoke the licence.

This is a cumbersome procedure which may disadvantage residents who have Site Owners who breach the expected standards since it is slow. The case would call at 2 separate meetings.

1. The Council has to decide whether or not to make an 'Improvement Notice'. If it does, the case is continued to the next meeting, to allow the Site Owner time to comply;
2. At the second hearing, the Committee must decide whether or not the 'Improvement Notice' has been complied with. If it varies the Notice, e.g. extending the time for

compliance, the case is continued again. If it is not continued, the Committee has to decide whether or not to revoke.

NAC's Licensing Committee only has 6 meetings annually

In contrast, the procedures for Suspension or Review in other licensing systems require only one hearing: assuming that the Licensing Authority decides, after hearing the licence-holder, that the complaint is justified, it can proceed immediately to impose a sanction (such as suspension of the Licence). It might choose to continue the case to a later hearing to allow the licence-holder to remedy the defect, or it might impose the sanction immediately and leave it to the licence-holder to seek recall of the Suspension if he later thinks that he has done what was required (as in Civic Government (S) Act 1982, Sch. 1, Para. 11(6) and Licensing (S) Act 2005, sec. 40), but under the Bill's system it would have no option but to hold two separate hearings.

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?*

The proposal and amendments clearly set out the intended process for progressing scenarios where owners cannot pay, refuse to pay or cannot be found and this will assist with progressing communal repair issues. However, the Bill states under Part 6, Tenement Management Scheme (4) that “before making payment under this section, the local authority must notify the owner who has failed to pay a share of any scheme costs.” Additional clarification on how to notify owners who cannot be found would be appreciated i.e. is it sufficient to serve notification on the property?

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?

exempt certain securities from the right to redeem after 20 years

This will allow lenders to participate in the Help to Buy (Scotland) Scheme and ensure that the Scottish Government is not exposed to the financial risks of the 20 year security rule i.e. that borrowers would be able to redeem their loan come year 20 at its original value by reference to pounds and pence, rather than by reference to property value.

Other Issues

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

N/A

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

N/A

North Ayrshire Council

3 March 2014