

WEST LoTHIAN COUNCIL

WRITTEN SUBMISSION

Q	A
<p>Part 1: Right to Buy</p> <p>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</p>	
<p>Q1. <i>What are your views on the provisions which abolish the right to buy for social housing tenants?</i></p>	<p>This is a welcome change to abolish RTB entirely given the constraints already put on a dwindling resource.</p>
<p>Q2. <i>Do you have any views on the proposed 3 year timetable before these provisions come into force?</i></p>	<p>The view seems to be that three year timetable is a fairly lengthy lead in to abolishing the RTB, there is a potential to see an increase in RTB applications.</p>
<p>Part 2: Social Housing</p> <p>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</p>	
<p>Q4. <i>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?</i></p>	<p>We are supportive of this approach giving more flexibility on who should be allocated housing and in particular welcome the removal of the prohibition of taking age into account when allocating housing. This will help particularly in relation to reshaping the balance of care agenda and allocation of housing in particular locations. There are some concerns over the establishment of a right of appeal on being suspended from housing waiting lists and the administrative difficulties for the landlord in administering this.</p>
<p>Q5. <i>Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies</i></p>	<p>It is important to get the right balance between giving a measure of security for tenants and allowing a local authority the powers to manage situations effectively. Ideally the grounds for establishing a short SST should not be over prescriptive. With a measure of flexibility it is more likely that the desired</p>

<p><i>provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?</i></p>	<p>outcome of establishing a stable and responsible tenancy in the future can be achieved.</p> <p>While the proposal for probationary tenancies not taken forward this is a welcomed alternative however, it would be helpful to have a measure of guidance and criteria in place to ensure transparency and accountability.</p> <p>While the provisions to enable the conversion of a SST to a short SST are welcomed, there is no statutory form or guidance to be provided to tenants for conversion to short Scottish Secure Tenancy. (SSST) Under Section 35 of the Act, provision of such form/guidance would help provide clarity and consistency. It is not clear what might happen in the event of a short SST coming to an end and nothing being put in place, i.e. a person would not have a tenancy.</p> <p>The statutory form of notice for recovery of possession under Section 36 would also require to be updated to take account of the proposed changes.</p> <p>While the proposals on the concept of short Scottish Secure Tenancies is welcomed there is a concern over the staff and support resources that will be required to effectively manage these tenancies in the community. There will undoubtedly be high expectations from local communities that these arrangements are satisfactory.</p> <p>The equality considerations in relation to placing people on short Scottish Secure Tenancies (SSST) on the basis of new anti-social behavior grounds should be clear and on the basis of consultation with equality groups. There are a disproportionate number of complaints raised in connection with people with mental health disabilities, often through a lack of knowledge/ understanding of their condition. The stages providing checks and balances before instigating a SSST must be made very clear, and the route to appeal set out.</p>
<p><i>Q6. Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants,</i></p>	<p>Given the period for SSST has been extended it will give tenants strengthened rights however, it may be problematic to manage those cases which are anti-social from initial stages of the SSST. In these cases no action could be taken to recover possession</p>

<p><i>particularly tenants with short SSTs, by strengthening their rights?</i></p>	<p>under Section 36 of the Act for 12 months. During the initial 12 month period, the Landlord would require to take any action under Section 14 of the Act which is available for Scottish Secure Tenancies anyway.</p> <p>The changes regarding the tightening of restrictions and qualifying periods on assignments, sub-tenancies and joint tenancies are beneficial to social landlords in allowing for much greater clarity of the rules, and a stronger position to prevent abuse of the system, particularly around assignments.</p> <p>However, in practical terms, the clause which states that the 12 month qualification period can only apply where the individual has notified the landlord that they are living in the property as their only or principal home before the 12 month period begins may prove problematic in terms of deployment. This would need to be widely communicated and is likely to lead to a spike in appeals/ complaints whilst the new rules take initial effect. It also may present practical difficulties in that tenants are unlikely to know 12 months in advance that they wish to sub-let, assign or change to a joint tenancy. Indeed, circumstances such as a relationship breakdown, change in employment/redundancy may mean that a tenant wishes to make changes which were not anticipated in advance. Accordingly, clarity is required around this requirement and how this would work in practice.</p>
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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.

<p>Q7. Do you have any comments on the</p>	<p>The proposal is to be welcomed and should increase the access to justice for PRS tenants and landlords</p>
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<p>proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?</p>	<p>alike and enable cases to be dealt with more quickly. The removal from the court system will remove some of the ‘fear factor’ and will potentially reduce costs, depending on the degree of paid legal representation that parties engage. The option of a low cost, ‘easy’ approach to dealing with disputes may encourage some landlords to use it rather than adopt potentially illegal ‘resolution’ methods to disputes.</p>
<p>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?</p>	<p>We think there is a strong argument for returning to arrangements to regulate the levels of rent which can be charged by private landlords. We think that there should be a relationship established between social rents and private sector rents so that the latter do not get unrealistically and unreasonably high. Historically there was a well established rent officer process which managed this in local areas. With the recent growth in the numbers of private sector landlords and growth in the numbers of private rented properties, there are dangers in allowing unregulated rent levels to continue.</p> <p>Allowing Councils to undertake referrals to the Private Rented Housing Panel where landlords are failing to meet the Repairing Standard will be of benefit to private sector tenants. However, there may be a resourcing implication depending on the expectation of tenants that wish the Council to make referrals on their behalf. Local authorities will therefore have to adopt policy which makes it clear that the primary responsibility to take failures to meet the Repairing Standard to the PRHP lies with the sitting tenant. Examples where it may be useful or appropriate for a Local Authority ‘third party referral’ are:</p> <ul style="list-style-type: none"> • The is existing evidence of past or ongoing misconduct on the part of a landlord or his /her representatives towards the tenant; • The is a foreseeable likelihood of misconduct on the part of a landlord or his /her representatives towards the tenant; • The tenant is identified as being vulnerable; • The tenant is not capable of making an application; • The house is declared likely to ‘Below Tolerable Standard’(BTS);

	<ul style="list-style-type: none"> The matter has been reported by a vacating tenant and the property condition is such that the Local Authority does not view it as suitable for habitation. This could properties not yet declared as BTS or for matters which do not constitute a failure of the tolerable standard (such as a non-operational heating system) <p>From an equalities perspective, this is a welcome enhancement to powers for local authorities in tackling poor quality housing conditions – these properties have a higher proportion of vulnerable people from the protected characteristics groups protected within the Equalities Act. As these groups of people also tend to have a higher proportion of low paid workers and very often are in danger of poverty, social deprivation and isolation, the effect of poor quality housing on health, employment opportunities and social mobility is disproportionately damaging.</p>
<p>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?</p>	<p>The proposals have not yet been made explicit. It is therefore not possible to comment on them in any detail. However, the potential for area specific, time limited further enforcement powers could potentially be useful in arresting or 'nipping in the bud' the decline of an area. However, the absence of specific resources to accompany additional powers may limit their use, particularly as any declaration would create expectations which it may not be possible to meet. Once the provisions have been further outlined at Stage 2 West Lothian Council may wish to comment further.</p> <p>Whilst any enforcement powers to tackle areas of multiple deprivation, and in particular, areas featured on the Scottish Index of Multiple Deprivation is a bonus, the Scottish Government needs to provide more detail around the criteria and scope of these powers to ensure that LA's have the tools to accurately identify these areas. A framework for identification and scale of action required would be beneficial.</p>

<p>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.</p>	
<p>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?</p>	<p>Experience in West Lothian mirrors the variability in standards highlighted in the Policy Memorandum to the Bill. Provided that it is effectively enforced, lettings agents that are regulated by Scottish Government to ensure that best practice is achieved is desirable. However, it is the content Statutory Code of Practice which will determine whether the intent of the Bill is satisfied. Once this becomes clear, West Lothian Council may wish to comment further.</p>
<p>Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?</p>	<p>It is noted that only a tenant or landlord can request the First Tier Tribunal to enforce the Code of Practice. This may mean that vulnerable tenants or former tenants are denied justice. No third party referral exists.</p>
<p>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.</p>	
<p>Q12. Do you have any views on the proposed new licensing scheme?</p>	<p>The proposed changes go a significant way to addressing the existing regulatory deficiencies. However, the Bill does not:</p> <ul style="list-style-type: none"> • Provide any additional protection to residents living on non 'protected' sites. These residents may include the vulnerable and may have been mis-sold their mobile home as a permanent residence. The absence of improved controls on non-protected sites may encourage a shift in attention to these sites by unscrupulous operators; • Provide any additional enforcement powers for local authorities on non-'protected' sites. Given existing instances of operator instigated full time residence on non-protected sites, it is important that local

	<p>authorities are equipped to deal with such abuses. Sections 64-69 inclusive should apply to all sites.</p> <ul style="list-style-type: none">• Clarify the status of 'Model Standards'. The current wording of the Caravan Site and Control of Development Act is sufficiently ambiguous to result in considerable legal doubt and debate;• Require, in the minimum information requirements, evidence of consent to occupy land from the site owner. As the owner and occupier can be different, this is important to prevent unwitting or undesired development of residential sites. (It is possible to apply for planning consent for land which is not in your ownership); <p>With regard to the 'Fit and Proper Person' test, the Bill is insufficiently precise as to how this will operate where the applicant is not a natural person. In particular:</p> <ul style="list-style-type: none">• The Bill and Paragraph 244 of the Policy Memorandum appear to be contradictory in terms of who the F&PP Test will be applied to;• The way in which individuals applying on behalf of a company, partnership or some other 'non-natural' person will be treated needs to be made explicit. This is particularly important where the applicant is not the 'most senior manager' listed in amended Section 32D (1) (b) (ii) of the Caravan Sites and Control of Development Act 1960. <p>With regard to the licensing and re-licensing elements:</p> <ul style="list-style-type: none">• The Bill must require that the relationship between site owner and the site occupier is made explicit, where different;• The Bill leaves it open as to whether an individual can hold a license on behalf of a 'non-natural' body. This may be intentional, but leaves room for a person who can pass the F&PP Test holding a license on behalf of a body which might not due the person holding 'the most senior position within the
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	<p>management structure’;</p> <ul style="list-style-type: none"> • The criteria for issuing a license (amended Section 32D(1)(b) of the Caravan Site and Control of Development Act 1960) should include a requirement that the local authority is satisfied with the quality or voracity of information provided by the applicant and that there is no information (or absence of information) which would make issue of a license inappropriate). The current legislation does not allow the local authority to consider the quality, voracity, completeness or appropriateness of information provided and the Bill would appear to allow this to continue. Similar elements should also be added to (amended Sections 32D(2) and 32E(2) of the Caravan Site and Control of Development Act 1960); • The proposed Section 32G of the Caravan Site and Control of Development Act 1960 (Local Authority Power to Transfer License where no Application) should include at 32G (5) and explicitly require the information from the current occupier specified in amended section 32B (2), 32B (2) (d) and 32B (3), the minimum information requirements.
<p>Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?</p>	<p>The new scheme should assist local authorities to effectively regulate residential mobile homes sites, provided they are licensed for year round occupation. Where occupied illegally year round, local authority powers are unimproved as are resident protections.</p> <p>There will be an additional administrative burden for occupiers to apply for a new license and for re-application every 3 years.</p>
<p>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.</p>	
<p>Q14. Do you have any</p>	<p>The power to pay “missing shares” under the</p>

<p>comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?</p>	<p>Tenements Act is useful to empower the majority of owners in a building to pursue repairs or maintenance where a minority can't pay or won't pay. This would get work done sooner and with little or no local authority staff time commitment. No works in default procedures would be necessary, reducing the burden on local authorities. However, a Local Authority must be prepared to pay for the work up front but without any degree of certainty in regard to the timing of the money being repaid.</p> <p>The proposed changes to work notices and maintenance plans are welcomed, although may create expectation which resources do not exist to satisfy.</p>
<p>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.</p>	
<p>Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?</p>	<p>No Comment</p>
<p>Q17. Are there any other comments you would like to make on the Bill's policy objectives or specific provisions</p>	<p>No Comment</p>
<p>Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?</p>	<p>There may be advantage to the Scottish Government considering whether an Empty Dwellings Management Order could be employed in Scotland. This could help Local Authorities address issues with severe intractable difficulties in relation to individual empty homes.</p> <p>The Maintenance Orders provisions cannot apply to common infrastructure such as septic tanks. This is because they are usually separate from the 'house' concerned. Extending the circumstances in which</p>

	<p>Maintenance Orders can be used would usefully permit the use of 'Missing Shares' legislation. This would again assist with proactive maintenance and reduce demand for Work In Default activity by local authorities.</p> <p>We also suggest that you should give consideration to historic property title conditions which can inhibit proposals to develop a site. In some circumstances the existence of a condition can place unreasonably onerous restrictions on the council's ability to develop and fulfill its statutory obligations. An example of this in West Lothian was in relation to the Broxburn School annex where there was a contractual reversionary right.</p>
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West Lothian Council
04 March 2014