

Local Government and Communities Committee

Housing (Amendment) (Scotland) Bill

Submission from UK Finance

Introduction

UK Finance is a trade association formed in July 2017 to represent the finance and banking industry operating in the UK. It represents around 250 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Scope of response and background

In addition to representing residential mortgage lenders, UK Finance members also lend to support the social housing/ RSL sectors across the UK nations, including Scotland. We welcome the opportunity to provide this submission to the call for evidence as part of the Stage 1 scrutiny inquiry by the Scottish Parliament's Local Government and Communities Committee, focusing on the general principles of the Bill.

General comments

As of March 2017, commercial lending and investment to the RSL sector in Scotland amounted to some £4.9 billion (total facilities).

Scottish RSLs are mostly seen by private funders as a sound and stable proposition, presenting low risk and with a track record of no loss.

In addition to its vital work to protect and safeguard the interest of tenants, the Scottish Housing Regulator also provides robust regulation, with a strong focus on governance strength and financial health.

This regulation, founded on a proportionate and risk-based approach, backed with the ability to effectively deploy statutory intervention powers, gives private funders great comfort in the sector's strength; it supports confidence in existing and new private lending and investment on terms that enable Scottish RSLs to maximise their contribution to the delivery of the government's target of 50,000 new affordable homes in the current parliamentary term to 2021.

RSLs are reliant on private finance and government grant to develop new properties. Non-social rental income subsidises further development. It enables RSLs to service existing borrowing and leverage further borrowing capacity.

The ONS decision to classify Scottish RSLs as public bodies means their existing and future debt becomes part of the public balance sheet. Because of the need for government to control public borrowing, it might be necessary for the Scottish Government to introduce caps on RSL borrowing, thereby limiting their capacity to develop and service existing debt.

Changes such as this will, over time, lead funders to re-evaluate their exposures in the sector and take account of what would be a fundamental shift in risk profile. There could be consequential changes in appetite and pricing for RSL debt, going forward. This would be counter-intuitive to the ambitions and purpose of RSLs and Government for the sector.

Specific comments

UK Finance and lenders have benefitted to date from constructive engagement on ONS classification issues across the UK's devolved nations. In England, we were extensively engaged with the Department for Communities and Local Government as it worked on the development of de-regulatory measures there, that were included in the Housing and Planning Act 2016.

We are encouraged to see that the proposed measures for Scotland are broadly consistent with measures now applying to housing associations in England, while still responding to the particular Scottish context in which, for instance, there are detailed arrangements for tenant consultation and tenant ballots.

In progressing the detail of the legislation, our overarching concern is to see the implementation of measures that are sufficient to enable the ONS to restore the sector's "private" classification, without going any further than is necessary.

Funders' perception of risk in the Scottish RSL sector; their appetite for lending/ investment to it; and the pricing available to Scottish RSLs are inextricably linked to regulation. We are clear that any regulatory changes that could go further than is necessary to address ONS issues would dilute the strength of regulation, and that this would have an impact on risk, appetite and pricing in the sector.

To maintain funder confidence in the sector at a time when there is increasing need for private finance to support the delivery of new development, we are clear that the regulator must still have access to viable statutory intervention powers that can be exercised in a timely and proportionate way to protect not only the interests of tenants but those of the sector's private and public funders.

We have responded to the questions in the call for evidence, below:

The need to restore the RSL sector's "private" classification

We are clear that if RSLs were to remain classified as public bodies, this would represent a fundamental and significant change in the overall profile and type of

funding/ investment proposition. Any application of public borrowing caps would impact on business plans, and ability to service existing (and new) debt. Funders would see changes to risk profile, and the likely response would be a review of exposures, which could lead to changes in appetite and pricing.

The implications could be a reduced ability of RSLs to attract new private investment at a time when more is needed to support delivery of the 50,000 homes target by 2021.

The appropriateness of reclassification measures

Our analysis of the measures to date is that they are broadly consistent with those already in place south of the border and with those that are planned both in Wales and Northern Ireland. This means that, taking a pan-UK view, there is consistency in measures, which is welcome and needed by national and international lenders and investors. On balance, and taking account measures implemented or planned in the other UK nations, we feel the Scottish measures are appropriate.

We have provided comments on the key measures are proposed in the Bill:

Regulatory intervention/ powers to appoint, remove or suspend officers (Sections 1 & 2): Changes to the timeliness of intervention have caused concern for funders, to the extent that an intervention might have to wait until an RSL has failed (which might be too late) rather than when an RSL is failing. Having discussed and analysed the provisions in detail, however, we expect funders could take comfort from a wide definition of failure, and the explicit linking of it to a failure to meet standards set out in the regulatory framework. We suggest that consideration be given to ensuring in the legislation that the failure of an RSL is clearly defined as including a failure to meet regulatory standards. On balance, we feel this should provide sufficient scope for regulatory intervention before an insolvency situation might arise. We expect funders might wish to keep the operation of this new approach, if implemented, under review to ensure there are no unintended consequences that might impact their interests and exposures.

Disposal consents (Sections 3 & 4): The measures are broadly consistent with the position elsewhere in the UK, and this is welcome. Government and RSLs should recognise, however, that the disposal consents regime is a powerful source of regulatory intelligence. Without it, we expect funders to ramp-up their own due diligence on a proposition, which could lead to increased costs for housing associations. In the absence of the consents regime, funders would expect association Boards, themselves, to strengthen their own self-assessment regimes.

Organisational changes (Sections 5, 6 & 7): Again, the measures are broadly consistent with the position elsewhere in the UK. We recognise, however, the different arrangements in Scotland where there are complex provisions in existing legislation in relation to tenant consultation and tenant ballots. While we recognise the rationale for these arrangements, funders would want to see the proposed

legislation constructed and operated in a way which does not delay or prevent the rescue or dissolution of an insolvent RSL.

Power to be taken by the Scottish Ministers to further modify the functions of the regulator (Section 8): While we understand the rationale for such a power, we are concerned that the power as proposed is open-ended. As the intention of the Scottish ministers and the will of Parliament is set on restoring the private classification as soon as practicable, and as the policy memorandum records the advice of ONS officials that the Bill provisions “are likely to be sufficient to remove public sector control”, we think it would be reasonable to limit the timeframe for the proposed Section 8 power. We suggest that that Committee might consider a sunset provision for this power, such that it falls away at the end of the current parliamentary term in 2021. Without this, we expect funders (particularly international investors who might be less familiar with the sector) might perceive an open-ended ability of Ministers to change the functions of the regulator as a risk of indefinite uncertainty. This could reduce investor appetite and increase the possibility of reticence among funders when considering Scottish RSLs as funding/ investment propositions within the wider UK and international context.

Changes to local authority representation (Section 9): The measures are broadly consistent and therefore appropriate, in our view.

Alternative means of achieving change

As regulation of the RSL sector is based in statute, and as the ONS has identified specific statutory provisions to be addressed so as to change the balance of control, we do not realistically see that there would be other ways of achieving the required changes with the required degree of certainty of outcome. While factors of influence might be addressed through the operation of softer mechanisms such as guidance and practice, our view is that only legislative amendment could change legislative controls.

John Marr