

Housing (Scotland) Bill – written evidence at Stage 1

Shelter supports the aims of the Bill: to improve the value of social housing and safeguard its supply. In this submission we have focused on how homeless households are housed and supported to maintain tenancies. We have included a further set of proposals which we believe strengthen the Bill. The text below is a brief summary of our suggestions. We have more detailed policy papers which amplify the arguments.

Summary:

- Shelter supports the proposals to create an independent Regulator, and in particular that homelessness services continue to be a specified part of the Regulator's objectives. We think that the Scottish Housing Regulator should explain to the Committee how the new powers will be used in practice.
- Shelter supports proposals to curtail the right to buy, but considers that the changes proposed in the Bill could be strengthened to safeguard the remaining rented stock. We would like to see the right to buy suspended for all new tenants, including tenancies created through transfers and successions, and the modernised right to buy extended to all existing tenants.
- Shelter supports provisions to allow a private tenant to see out a tenancy where a mortgage lender is seeking repossession from a private landlord who has not declared they are letting the property.

Additional proposals:

- **Access to support** - All homeless or potentially homeless people should be given access to housing support if this is required. We envisage local authorities providing a) an assessment of support needs and, then, b) securing services which meet these households' needs based on the assessment.
- **Homelessness referrals** - Shelter believes that all statutory homeless referrals to registered social landlords should be dealt with on the same basis using the powers within the 2001 Act. The Housing Bill should reframe that legislation to make the use of these powers mandatory.
- **Pre-action requirement for evictions:** Social landlords should have to demonstrate that they have complied with certain requirements before being granted a decree for eviction of a tenant for rent arrears. This is analogous with the protection for owners in the Home Owner and Debtor Protection (Scotland) Bill which is awaiting Royal Assent.
- **Consolidation of the tenancy regime:** After seven years of the Scottish Secure Tenancy regime we suggest a few minor reforms which would be useful.

1. Regulation

Shelter supports the intention to create an independent housing regulator with the responsibility for driving up standards across the social rented sector as a whole; and that the regulator should continue to oversee local authority homelessness services. Shelter is pleased to note that the Bill clearly identifies regulation of homelessness services as part of the Regulator's objectives. We also understand the move away from cyclical inspections of services to a more risk-based approach. However, since homelessness regulation was introduced, the majority of council homelessness services have only been rated poor or fair by the regulator and although we see clear evidence of a commitment to improve, we consider that the regulator will need to continue to assess the delivery of homelessness services thoroughly in light of the Government commitment to give all unintentionally homeless households a right to permanent accommodation by 2012. The Bill provides a range of powers for the regulator, but in moving away from the previous reliance on inspections, it is important to know how the new powers will be used in practice. For example, a simple reliance on self completed questionnaires by landlords is unlikely to reassure tenants or homeless applicants. **We recommend that effective scrutiny and examination of the Bill would be enhanced by asking the Regulator to explain how inquiry powers would be used.** The Regulator should indicate how information provided by self assessments is to be checked and audited and what forms of "inquiries" are envisaged under the powers for exceptional audits (section 43) and when these might be used. Without the reassurance of a report along these lines we think that Parliament is being asked to support a regulatory regime, the workings of which are unknown.

2. Reforming Right to Buy

While the right to buy has had benefits for some households, it has also been at the same time as rising house waiting lists and huge numbers of people stuck in temporary accommodation. Over the thirty years of right to buy the quality and range of choice of social housing has been squeezed. Shelter believes firmly that the priority must now be to safeguard the remaining social rented houses for those households for whom home-ownership is either not sustainable or what they would wish.

Shelter strongly supports proposals for curtailing the right to buy set out in the Bill and we believe that these can be further strengthened. In our initial submission we set out two ways of enhancing the Scottish Government's proposals that would simplify them and ensure that they have even greater impact:

- All tenants taking on a new social housing tenancy, including new tenancies created through transfers and succession should no longer have the right to buy.
- All remaining tenants with the right to buy should be able to exercise that right on "modernised" terms and conditions only rather than the very generous preserved terms and conditions. This would build on the welcome reforms introduced by the previous Scottish Executive in 2001.

This would also have the beneficial effect of giving real meaning to the concept of “pressured areas” since it would ensure that all homes in designated pressured areas the right to buy would be suspended for the duration of the designation.

3. “Unauthorised Tenants”

The Scottish Government issued a consultation paper last autumn on possible reforms to this area of law. In our response,¹ Shelter argued that if a tenant was paying rent in good faith then he or she should not lose out as result of failures on the part of the landlord. Section 142 of the Bill makes provision for additional protection of tenants where their landlord is in default with mortgage payments but has not notified the lender that they are letting out the property. Shelter supports action in this area and we are taking part in a series of working group meetings organised by the Scottish Government between March and May. Our priorities remain as set out in our response to the consultation but it may be that they will evolve through the working group process.

Additional proposals for the Bill

Shelter has a number of other suggestions that we consider are consistent with the Bill’s purpose to secure the future of social housing.

Proposal 1: Access to support for homeless or potentially homeless people

Shelter Scotland considers that duties towards homeless people who require support to sustain accommodation should be strengthened. This would help prevent repeat homelessness. It would also reduce avoidable tenancy turnover within the social rented sector, which is one factor in the poor reputation of social housing. We have welcomed the positive discussions we have had with tenants groups, housing professionals and senior figures in local government on this proposal.

We envisage local authorities providing a) an assessment of support needs for potentially homeless or homeless people and, then, b) securing services which meet these households’ needs based on the assessment.

There is already a statutory definition of housing support services in section 90(8) of the Housing (Scotland) Act 2001. Under the 2001 Act, councils must provide housing support to households who are given Short Scottish Secure Tenancies. Further, the regulations – recently approved by the Committee – on the use of the private rented sector by councils to house homeless households, include a requirement to provide support. We would like to extend these provisions to cover all homeless households.

¹http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/repossession_of_residential_property_protection_of_tenants_consultation_response

It is already recognised good practice to assess the support needs of homeless people, so our proposal simply gives legislative substance to prevent homelessness and sustain tenancies so the standards set by the best local authorities are shared by all.

Shelter recognises the pressure that local authority budgets are under. We believe that this proposal is about improving the way councils work rather than developing new programmes that demand additional budgets. This proposal would reduce tenancy turnover and very quickly allow councils to make efficiency savings as a result.

Shelter also believes that this would help to improve the quality of homelessness services in Scotland and ensure that the Scottish Government achieves its commitment to give all unintentionally homeless households a right to permanent accommodation by 2012. We have prepared a briefing which makes a more detailed case for this proposal.²

Proposal 2: Developing homelessness referrals

Many RSLs already play a leading role in preventing and tackling homelessness. Overall, Shelter believes that there is an appetite for all RSLs to do even more as the 2012 commitment looms: in particular in ensuring greater consistency in the way that RSLs take referrals of homeless people. Section 5 of the Housing (Scotland Act) 2001 introduced a system of referrals of homeless households by councils to RSLs. Seven years after the commencement of that part of the legislation there is still mixed practice. Data from 2007-08 shows that, of homeless referrals housed by RSLs, 75% are described as section 5 referrals and 25% as “other homeless referrals”. “Other” referrals are generally informal nomination arrangements. The Scottish Housing Regulator, in its thematic report on RSLs and homelessness published last year, said:

*“We have also identified some specific areas where current practices could be improved, to help councils move towards the 2012 target and RSLs to make more of a contribution. We recommend that councils should work more effectively with RSLs to agree evidence-based targets for their contribution to housing homeless people, and share information to maximise the availability and suitability of lets. This may mean setting aside their current reluctance to use section 5 powers”.*³

We would like to see a simple amendment to the 2001 Act to ensure that section 5 is used for **all** homelessness referrals. We believe that this will lead to a better service for homeless households in the following ways:

- Households will be assured that all the various landlords in their area are making accommodation available;
- In practice, section 5 is accompanied by better exchange of information, especially in relation to support needs, which in turn increases the possibility of the let being sustainable.

²http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/access_to_support_to_prevent_homelessness_proposal_for_the_housing_bill

³ “RSLs and Homelessness”, Scottish Housing Regulator, 2009

- Section 5 produces a more transparent process than informal nominations and allows the Council and the household to better understand and negotiate a referral decision.

In addition, the process sets out clear expectations for both the council and the RSL and provides a framework for action for the council should some RSLs be more reluctant to take responsibility than others. This is of benefit to those RSLs who are most committed to action.

We also think it would be helpful to amend the 2001 Act to put certain matters which are currently in guidance into primary legislation: namely what constitutes “good reason” for declining a referral; and how long an RSL has to respond to a referral.

Proposal 3: Pre-Action Requirement for Evictions

We propose that the Housing Bill include measures which reform the Scottish Secure Tenancy Regime such that social landlords will have to demonstrate compliance with specific “Pre Action Requirements” before applying to the court for decree to evict. Our proposal, which is detailed separately in a policy paper, would apply only to rent arrears actions and mirror as far as possible the requirements that mortgage lenders will now be expected to adhere to in the Home Owner and Debtor Protection (Scotland) Act 2010⁴. Shelter believes that tenants of social landlords are no less likely to be the victims of recession than home-owners and should receive comparable protection. The proposed Pre Action Requirements simply give legislative life to the policy commitment to use “eviction as a last resort” to which progressive social landlords are already adhering.

4. Consolidation of the tenancy regime.

The Scottish Secure Tenancy was introduced in the 2001 Act. Shelter’s casework experience since then suggests that a few minor reforms would be useful such as payment of rent retrospectively rather than in advance and changes to the rules over succession.

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⁴ At the time of writing this is still a Bill awaiting Royal Assent. By the time of our oral evidence session we assume that its status will have changed.