



Housing (Scotland) Bill

**A Briefing Paper from
Tenants Information Service**

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The Tenants Information Service (TIS) is an independent national organisation providing information, training, advice and support to tenants and tenants' organisations across Scotland. As a leading agency promoting tenant participation, TIS does not promote views on housing policy, other than on tenant participation related issues.

The purpose of this briefing paper is to provide a short summary of the Housing Bill and highlight key issues for tenants.

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Section 1 Introduction

This paper provides a summary of the Housing (Scotland) Bill introduced to the Scottish Parliament on 13th January 2010. This Bill, introduced by the Scottish Government, has been amended following responses to the consultation held last year on the “Draft Housing (Scotland) Bill : a consultation” and the “Private Sector Housing Issues: Housing Bill consultation”.

The Scottish Parliament is looking for written submissions on the content of the Bill **by Thursday 4th March 2010**.

Your Views

It is important that you take this opportunity to submit your comments in writing to:

The Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh EH99 1SP

Or by email to lgc.committee@scottish.parliament.uk (in word format)

Submissions should be no more than four sides of A4 paper

The main policy objectives of the Bill include:

- to improve value for money that social housing delivers for tenants and taxpayers;
- to safeguard the future supply of social housing in Scotland for current and future tenants; and
- to improve conditions in private sector housing.

The Bill aims to achieve its policy objectives by:

- modernising the regulation of social landlords (local authority landlords and Registered Social Landlords);
- reforming the Right to Buy in social housing;
- amending the law on registering private landlords, licensing housing in multiple occupation and dealing with disrepair in private housing;
- amending the definition of local connection.

Contents of the Bill

The Bill is divided into the following 15 sections:

- **Part 1** sets out the basis for the Scottish Housing Regulator (SHR) to be an independent regulator;
- **Part 2** deals with the registration of Registered Social Landlords (RSLs);
- **Part 3** introduces the Scottish Social Housing Charter and the framework within which the Scottish Housing Regulator will operate;
- **Part 4** enables the SHR to undertake inquiries and obtain information from social landlords;
- **Part 5** gives the Scottish Housing Regulator a broader range of intervention powers;
- **Part 6** sets out how the SHR will decide accounting and audit requirements for RSLs;
- **Part 7** enables the SHR to safeguard the assets of an RSL in cases where it becomes, or is at risk of becoming, insolvent;
- **Part 8** allows the SHR to manage organisational and other changes in RSLs;
- **Part 9** provides for the SHR to safeguard the assets of RSLs through controls over RSLs ability to dispose of land and other assets;
- **Part 10** reproduces the “Tenant’s Choice” provisions of the Housing (Scotland) Act 1988;
- **Part 11** ends Right to Buy for new social housing and for new tenants to social housing and introduces more flexibility and local control over pressured areas;
- **Part 12** amends the landlord registration scheme to assist local authorities to ensure that all private landlords apply for registration;
- **Part 13** deals with local authorities powers to deal with disrepair in the private sector;
- **Part 14** includes amendments to protect tenants whose landlord is being repossessed and in the definition of local connection for people leaving the armed forces;
- **Part 15** makes supplementary and final provisions.

Section 2 Housing (Scotland) Bill overview

Parts 1-10 - The Scottish Housing Regulator and Scottish Social Housing Charter

Parts 1 to 10 of the Bill aim to modernise the regulation of housing by:

- Creating the Scottish Housing Regulator (SHR) as an independent organisation;
- Transferring to the SHR (with a number of changes), regulatory functions carried out by Ministers, including powers to regulate the governance and financial health of Registered Social landlords (RSLs);
- To introduce a new Scottish Social Housing Charter that will set out the key outcomes that all social landlords must deliver to its tenants;
- Giving the SHR new functions to regulate how RSLs and local authority landlords perform their housing services, assessing this against the Charter, and carrying out inquiries, gathering information from social landlords and issuing enforcement notices.

The Bill establishes the Scottish Housing Regulator as an independent regulatory body, which aims to safeguard and promote the interests of tenants, prospective tenants, homeless people and other housing service users. The Bill aims to introduce a regulatory system that is streamlined, more risk based to target poor performance in landlords and with an emphasis on self- assessment by landlords.

Why the changes are being proposed

In 2008, following the abolition of Communities Scotland, the Scottish Housing Regulator was established as an executive agency to exercise duties on behalf of Ministers. This was an interim arrangement and the Government stated that its longer term objective was to separate the role of setting standards, which it considers to be a Government responsibility, from measuring performance which should be taken by an independent regulatory body.

At the heart of the current regulatory framework are the Performance Standards set for all social landlords and homelessness services. The Scottish Housing Regulator, Scottish Federation of Housing Associations (SFHA) and Confederation of Scottish Local Authorities (COSLA) have agreed these national standards. The Government believes these performance standards have helped to improve landlord service delivery across Scotland. However the Government also considers that this planned approach to delivering inspection can put a disproportionate burden on landlords who perform well and can divert staff time from frontline services. The Scottish Housing Regulator has already started to move away from

inspecting landlords every five years to a regulation process that is more targeted. The Scottish Government believes that these changes in operational practice should be developed further and this requires legislative changes to replace legislation for regulating local authorities and RSLs as set out in the Housing (Scotland) Act 2001.

Part 1 – The Scottish Housing Regulator

Part 1 of the Bill provides the basis for the SHR to be an independent regulator. It will have its own board made up of the Chief Executive and non-executive members appointed by Scottish Ministers. This means that the regulator is independent and free from Ministerial control. The regulator will be responsible for:

- keeping a publicly available register of social landlords;
- monitoring, assessing and regularly reporting on the performance of social housing landlords of their housing functions and on RSLs financial well-being and standards of governance.

The Bill requires the regulator to perform its functions in a proportionate, accountable and transparent way that targets action only where it is needed. Under this Bill, the SHR must encourage and observe the requirements of law in relation to equal opportunities. The regulator also has to consult and involve organisations representing homeless people, tenants and other service users in its work and publish a statement about how it intends to do this.

To limit the regulatory burden on local authorities the SHR will be required to consult the Accounts Commission for Scotland on how it will carry out its powers and duties with regards local authority landlords. The regulator must publish a statement of how it will do this.

The Bill gives the SHR the ability to charge fees for any of its functions subject to Ministerial approval. This provision restates the current power under which Scottish Ministers are able to charge fees. However, to date Ministers have not used this power. It is the policy of the Scottish Government to continue to pay for regulation from public expenditure.

Part 2 – Registered Social Landlords

This part of the Bill deals with the registration of RSLs.

Part 3 – Performance of Social Landlords

Part 3 of the Bill sets out a statutory framework within which the SHR will regulate the performance of social landlords. It aims to modernise regulation and to encourage landlords to improve performance and value in service delivery.

Scottish Social Housing Charter

Part 3 of the Bill introduces a new Scottish Social Housing Charter to set out the key outcomes that councils and Registered Social Landlords should be aiming to achieve for their tenants, for homeless people and service users. The Charter will provide a framework for the SHR to assess and report on social landlord's performance against these outcomes.

Consultation on the Charter

The Bill requires Scottish Ministers to consult tenants, social landlords, the SHR and other stakeholders (including tenants) before setting the Charter outcomes and this must be approved by Parliament before it becomes legally binding on all social landlords. The Government is proposing a four stage consultation process:

Stage 1	Initial stakeholder discussions	Autumn 2010
Stage 2	Discussion paper published	Early 2011
Stage 3	2 nd stage stakeholder discussions	Spring 2011
Stage 4	Formal consultation on draft charter	late summer/autumn 2011

The charter will then be effective from April 2012.

The length of time that the first Charter remains in force until it is reviewed will be agreed during the consultation process but the Government suggests that it should run initially for four years. The Government also wants to consult on the principles of the Charter during the consultation process but suggests that the principles could include:

- the Charter being clearly set out in terms of the outcomes that landlords should be achieving;
- the outcomes set by the Charter must reflect the views and balance the interests of tenants, homeless people and other stakeholders;
- the outcomes set by the Charter should focus on the housing and related services that social landlords deliver;
- the outcomes set by the Charter should be straightforward to assess, but not require landlords to undertake too much reporting to the regulator;
- the outcomes set by the Charter should provide a benchmark that reflects what good well managed landlords are delivering at present;
- the outcomes set by the Charter should support and be consistent with landlords providing good value for money;
- the outcomes set by the Charter should not impose unfunded new burdens on social landlords.

National and local outcomes

Currently the Government sees the Charter as having two types of outcomes both being equally important. These would be **national outcomes** and **local outcomes**. All landlords would be expected to deliver the national outcomes but the local outcomes would be developed by landlords in consultation with tenants and the local communities. The Bill suggests that possible national outcomes could relate to:

- the housing needs for which landlords should provide;
- the prevention and alleviation of homelessness;
- the provision and management of sites for gypsies and travellers;
- the acquisition and disposal of housing;
- housing allocations;
- terms of tenancies and the principles upon which levels of rent should be set;
- housing quality and conditions;
- housing maintenance and repairs;
- the contribution of Registered Social Landlords and local authority landlords to the amenity of the areas in which social housing is situated;
- the prevention of harassment and anti-social behaviour;
- the participation of tenants and tenants representative organisations in formulating proposals concerning the provision of housing services;
- procedures for dealing with tenants' complaints about social landlords and for resolving disputes between social landlords and their tenants;
- provision of information by RSLs.

The Government suggests that local outcomes, subject to views from stakeholders could include;

- achieving effective tenant participation and involvement in decision making;
- providing a repairs and maintenance service that reflects tenants' priorities;
- providing housing and estate management services that reflect tenants' priorities;
- where appropriate, providing factoring and other services that are responsive to the needs of owners and other residents; and
- where appropriate, providing services that are responsive to the accommodation needs of gypsies and travellers.

The Charter will set out the minimum level which landlords are expected to reach and their performance against these will be assessed by the Scottish Housing Regulator. The question of which outcomes will be part of national or local standards will be explored during the Charter consultation process.

Monitoring and assessing performance

The Bill provides for the SHR to monitor landlords' performance against the Charter and to monitor, assess and report on landlord's performance. The

SHR will be required to provide guidance on how it intends to measure progress towards achieving the outcomes in the Charter and how it will assess if outcomes have been achieved. The SHR must consult key stakeholders including tenants and their representatives before issuing or revising this guidance. The SHR must also produce a code of conduct for RSLs setting out standards for governance and financial management. In addition, all social landlords are required to ensure that their practice is in line with equal opportunities legislation and good practice.

The SHR has a responsibility to publish, at least annually, assessment reports of landlords' performance in achieving the Charter outcomes and also guidance on the monitoring and assessment process.

Part 4 - Inquiries and Information

Part 4 of the Bill gives the regulator powers to carry out various types of inquiries into the social rented sector. These powers replace Ministers' powers to inspect and obtain information from local authority landlords and RSLs. These inquiries could include:

- planned inquiries;
- unannounced inquiries to check the performance and management of an individual landlord;
- inquiries into the governance and financial management of Registered Social Landlords; and
- studies and inquiries into performance by several landlords against a particular standard in the Scottish Social Housing Charter or across a specific geographical area.

In order to carry out these inquiries the Scottish Housing Regulator will be given the power to request information from a landlord to:

- enable it to assess the landlord's performance;
- meet the Scottish Housing Regulator's objective of safeguarding and promoting tenants' interests; or
- ensure the good governance and financial stability of the RSL sector.

The Bill provides the SHR with powers to carry out planned inquiries and gather information about social rented landlords. The Bill repeals Ministers powers under the Housing (Scotland) Act 2001 to inspect RSLs and local authority housing and homelessness services. This represents a shift to assessment based on annual reporting and self-assessment by landlords. This is seen as a way to minimise the burden on landlords who are performing well and concentrating on improving performance.

Section 42 of the Bill introduces a new power for the SHR to survey or to instruct a survey of the physical condition of housing stock. Section 45 of the Bill requires the SHR to make arrangements to support tenants to provide information on significant performance failures by their landlord. The SHR will be required to produce a code of practice on how inquiries will be conducted.

Part 5 - Intervention powers

Part 5 of the Bill incorporates the intervention powers included in the Housing (Scotland) Act 2001 and gives the regulator a broader range of intervention powers to serve an enforcement order and to require a social landlord to submit a performance improvement plan.

Minister's intervention powers in the 2001 Act that are transferred to the SHR include:

- appointment of a manager for housing activities (or for RSLs for financial or other affairs);
- appointment and removal of officers to RSLs ; and
- transfer of assets from one RSL to another RSL following inquiries.

The SHR will have discretion to decide how it will use its powers of intervention taking the circumstances of each case into account. The SHR will be required to consult and publish guidance on how it will use its intervention powers. The SHR will no longer be required to carry out an inspection before taking enforcement action against a local authority landlord, as was the case in the 2001 Act. This puts local authority landlords on the same footing as RSLs. Section 52 of the Bill provides the SHR with the power to require a social landlord to produce a performance improvement plan and this replaces the existing power to require the production of a remedial plan following an inspection.

The Bill will allow the SHR to require a social landlord to submit a performance improvement plan if:

- landlord is failing, or at risk of failing to meet an outcome of the Charter or a performance improvement target;
- where there has been misconduct or mismanagement of an RSLs financial or other activities;

An improved performance improvement plan must be put into practice by the landlord and must be made public with a copy going to any Registered Tenants Organisation (RTO).

Parts 6 – 10 Registered Social Landlords

A summary of parts 6-10 is given below;

- ❖ Part 6 – provides for the SHR to determine accounting and audit requirements for RSLs;
- ❖ Part 7 – provides for the SHR to safeguard the assets of an RSL in cases where it becomes, or is at risk of becoming, insolvent;
- ❖ Part 8 – provides for the SHR to manage organisational and other changes in RSLs;

- ❖ Part 9 – provides for the SHR to safeguard the assets of RSLs through controls over RSLs ability to dispose of land, housing stock and other assets. Ministers’ powers to grant consent to disposals of land by RSLs will be transferred to the SHR. RSLs must consult tenants included in a disposal/transfer area. The Government considers that RSLs should have to seek the SHR’s consent for the disposal of both land and assets by granting a standard security over them so that the SHR can safeguard the financial viability of the organisation. However, Ministers retain their powers to grant consent for disposal or transfer of local authority landlords in terms of the existing provisions of the 2001 Act.

RSLs who are proposing to transfer its housing stock are required under the Bill to conduct a ballot of tenants in the transfer area. However, Section 109 of the Bill outlines when an RSL is not required to conduct a ballot. That a RSL does not need to carry out a ballot of tenants if the transfer is considered to be a transfer of engagements under the Industrial and Provident Societies Act 1965. (A transfer of engagement is a process where a RSL decides that it will stop operating as an independent organisation and will transfer its staff, operations and housing stock to become part of another RSL organisation).

- ❖ Part 10 - Replicates the “Tenants Choice” provisions of Housing Scotland Act 1988

Modernising Regulation and the Scottish Social Housing Charter- Key Issues for tenants

The development of a Scottish Housing Charter provides an opportunity for tenants to participate with the Scottish Government to develop outcomes to raise housing standards and services. It is important that the Charter looks to enhance tenant participation arrangements to build on the legal framework for tenant participation as outlined in the Housing (Scotland) Act 2001 and. Issues to consider:

- ❖ Consider the opportunities provided in the Bill to strengthen the role of tenants and tenants and residents groups to develop tenant participation and involvement;
- ❖ How do tenants wish to be represented to work with the Scottish Government at a national level to develop the Charter;
- ❖ Should the outcome of “achieving effective tenant participation and involvement in decision making” be a national outcome that all landlords are expected to meet rather than a local outcome;
- ❖ How will tenants get involved in influencing the setting of local standards with their landlord? It is important to consider the level of involvement tenants and tenants and residents groups wish and how they would be involved;
- ❖ How will tenants be involved in evaluating if locally agreed outcomes are being delivered?
- ❖ Should better access to information, training, development support and independent information be available as required by tenants?
- ❖ Do you think the Scottish Government has taken sufficient account of safeguarding tenants’ rights to participate under its proposals for the new Scottish Housing Regulator and the Social Housing Charter?
- ❖ Should the outcomes of the Charter include services provided to whole communities and not just tenants?
- ❖ What role will tenants and tenants and residents organisations have in working with their landlord to carry out self-assessment of progress made delivering housing services?
- ❖ What involvement should registered tenants groups have in agreeing and monitoring a performance improvement plan?

Part 11 - Reforms to the Right to Buy

The Bill will not change the rights of existing tenants to buy their homes but includes three changes;

- to end the RTB for new supply housing;
- to end the RTB for new tenants entering the social rented sector; and
- to reform pressured – area designations.

Why the reforms are being proposed

Since its introduction the Right to Buy has resulted in the sale of about half a million properties. The proportion of owner occupation in Scotland has doubled since the Right to Buy was introduced with 67 percent of homes now being owned. This has resulted in reducing the number of houses for rent by councils and Registered Social Landlords. The case for reforming RTB rests on the case that it has resulted in more properties being lost from social rented stock than have been built and that this situation is unsustainable given the high level of demand for social rented housing.

Ending the Right to Buy for new supply social housing

Section 131 of the ends the Right to Buy for new social housing.

New Supply Housing is defined as newly built houses and also houses newly acquired by a council or housing association, rented for the first time with a Scottish Secure Tenancy. This will happen from the date the Housing (Scotland) Act 2010 comes into force and on houses which were not let on or before 25th June 2008 (this was the date that the Scottish Government announced in Parliament that it intended to end the Right to Buy in Scotland).

The Bill makes some exemptions to safeguard the rights of existing tenants and a tenant of a new supply house if:

- the landlord required them to move to a new house, for example if their current house was to be demolished ;
- the landlord did not inform them within the set timescale (at least 7 days before letting the house) that they would not have the Right to Buy in their new home.

The Bill will also, in some circumstances, protect social housing first let on or after June 25th 2008, but before the relevant date. This would mean that people who take up tenancies in new supply housing after 25 June 2008, but before the relevant date will keep their RTB entitlement over these properties.

In addition where a tenant with the Right to Buy moves to a new supply house and then moves to another house that is not regarded as new supply, then the tenant would generally be entitled to the Right to Buy on the second house.

The length of tenancy in the new supply house would also be counted when calculating the minimum Right to Buy qualifying period and discount.

These reforms would impact on Council and Registered Social Landlord budgets through falling Right to Buy receipts and this has been acknowledged by the Scottish Government in its consultation. However, the Government believes the rent income landlords will continue to receive from the houses that aren't sold will make up for any loss of receipts.

Ending the RTB for new tenants entering the social rented sector

The Scottish Government does not intend to make any changes to the Right to Buy entitlement to existing tenants. It proposes to end the Right to Buy entitlement of new tenants coming into the social rented sector or who return after a break after the date on which the Act comes into force.

Tenants who remain in their current tenancies would continue to have their existing Right to Buy entitlement over that property; either on preserved or modernised terms. Tenants who move voluntarily to a new tenancy would get modernised Right to Buy entitlements over that property. Tenants who are required to move by their landlord (for example, if their house is to be demolished) would keep their existing Right to Buy entitlement over the house they transfer to.

Under this Bill, first time tenants and those returning to social housing after a voluntary break will not be entitled to RTB in relation to a house they move to or subsequent move.

The Bill provides for tenants of other relevant landlords (such as those employed and housed by the regular armed forces or fire authorities) to ensure they continue to get modernised RTB entitlements if they transfer to the social rented sector without a break between tenancies.

Pressured Area status

Currently councils can ask Ministers to designate an area or part of an area as a “pressured area” for a period of up to five years. The Bill includes three key changes to amend the rules relating to pressured area status:

- to include house types as well as areas to be designated as pressured
- to increase the designation period from 5 to 10 years;
- to allow councils to make the decisions on pressured area status to respond to issues of demand and availability without having to make a proposal to the Scottish Government about this

However, there will be requirements that councils must follow in making these decisions. This includes consulting every Registered Social Landlord and tenant representative organisation and any other residents about the proposals.

Pressured Area Status Currently, this is usually applied for where it is considered by a council that the demand for social housing in that area is or is likely to be significantly higher than the amount of social housing available. When approval is given for pressured area status the Right to Buy is suspended for a period of up to five years for tenants with the modernised Right to Buy. Tenants with the preserved Right to Buy are not affected and therefore retain the Right to Buy entitlements.

The Scottish Government proposes to develop guidance to support Registered Social Landlords that apply to extend the ten-year suspension of Right to Buy entitlements for some tenants beyond 2012. The guidance will be based on criteria which emphasise the importance of meeting housing need and safeguarding houses. The criteria will also take account of the effect of Right to Buy on a landlord's ability to pay for priorities such as the Scottish Housing Quality Standard.

Reform of Right to Buy - Key Issues for tenants

Changes to the Right to Buy have received widespread support.

- ❖ Do you consider the reforms have gone far enough?
- ❖ Do you want to comment on how tenants and tenants' organisations get involved in local decision making on suspending the Right to Buy in specific areas and/or within certain house types?

Part 12 – Registration of Private Landlords

The system of landlord registration was introduced by the Antisocial Behaviour etc (Scotland) Act 2004. Registration is designed to protect tenants by making sure that only people who are fit to let out residential property can operate legally as private landlords. Local authorities are responsible for operating this register.

Part 12 of the Bill amends the landlord registration system to help councils ensure that all private landlords apply for registration, which checks that they are fit and proper, and to give information to tenants.

Part 13 – Amendment of Housing (Scotland) Act 2006

Part 13 of the Bill amends the Housing (Scotland) Act 2006 to:

- Strengthen existing powers for local authorities to ensure owners look after their own properties;
- Extend local authorities' powers to pay, and subsequently recover, missing shares in respect of an owner who is unwilling to contribute their share of maintenance costs;
- Give local authorities additional power to require landlords to comply with relevant planning requirements before they can obtain an HMO licence;

- Give Ministers powers to extend HMO licensing to other types of accommodation where there is a problem with standards.

Part 14 – Miscellaneous (Local connection and protection of tenants affected by repossession)

Part 14 of the Bill makes a number of miscellaneous amendments in relation to protecting unauthorised tenants and in relation to local authorities' duties in respect of homelessness;

- The Scottish Government has been consulting on whether to strengthen protection for unauthorised tenants whose landlord is being repossessed. The Bill indicates that more detailed proposals on protecting tenants affected by repossession action against their landlord may come forward at stage 2 if required;
- The definition of local connection in the Housing (Scotland) Act 1987 means that residence or employment in the armed forces does not by itself form a local connection under Scottish homelessness legislation. The amendments will enable people leaving the armed forces to develop a local connection in terms of their eligibility for social housing in the area in which they have lived or worked.



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