

Briefing

Proposals on Private Sector Housing Bill

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Shelter

Proposals on Private Sector Housing Bill

This briefing provides a description of the Scottish Executive's consultation paper, *Maintaining Houses – Preserving Homes*¹. It also sets out some initial comments from Shelter Scotland on the Executive's proposals.

The consultation was launched on the 22 July 2004 and will run until 29 October 2004. It sets out options for action to improve the quality of private sector housing and give local authorities powers to intervene to stop properties falling into disrepair.

Shelter welcomes the priority given to the private sector housing market. The private sector is important to the smooth functioning of the housing market as a whole and the rented sector, in particular, is a potential source of accommodation for those unable to access or sustain tenancies in the social housing sector. The Scottish Executive is right to highlight a real problem regarding the condition and quality of Scotland's housing in the private sector. Shelter believes it is vital that greater powers should be given to public authorities to intervene and make good repairs that otherwise would go undone.

Background

The tenure mix in Scotland has changed over the past couple of decades, so that owner occupation now accounts for over 64% of housing in Scotland, and private rentals for an additional 7%. This has raised a number of questions about how best to ensure that private sector housing is of suitable quality and properly maintained.

The Scottish House Condition Survey (SHCS) 2002 provides a profile of housing that falls far short of standards needed for people in Scotland in the 21st century. It found that approximately 20 000 houses in Scotland (1% of the total) fall below even the very dated Tolerable Standard, and about 494 000 (32%) require at least one urgent repair. The SHCS therefore highlighted that there are significant issues around defect and disrepair in Scotland's housing stock. It also showed that the majority of homes in both public and private sectors would not meet the new Scottish Housing Quality Standard.

The Scottish Executive's Housing Improvement Task Force (HITF) was established in December 2000. Its remit was to consider a comprehensive review of physical conditions in the private sector in Scotland. The HITF produced its final report, *Stewardship and Responsibility: a policy framework for private housing in Scotland*, in March 2003². Many

¹ The consultation paper can be accessed at: <http://www.scotland.gov.uk/consultations/housing/mhphcr-00.asp>

² Refer also to: Shelter's response to the HITF <http://scotland.shelter.org.uk/policy/policy-421.cfm/ct/2/pg/1/plitem/148>; Shelter briefing on The State of Scotland's Housing <http://scotland.shelter.org.uk/policy/policy-421.cfm/ct/2/sb/23/pg/1/plitem/122>; Shelter discussion paper on Developing the private rented sector in Scotland <http://scotland.shelter.org.uk/policy/policy-421.cfm/ct/2/sb/37/pg/1/plitem/147>

of its recommendations directly relate to the proposals within the *Maintaining Houses – Preserving Homes* Consultation Paper.

Outline of main proposals and initial comments from Shelter

The consultation paper sets out proposals for legislative change. The proposals have three broad strands: modernising the powers of local authorities to address disrepair and maintenance issues in the private sector; improving the operation of the housing market; and improving rights of private sector tenants. There is a final section on mobile homes. The main proposals are summarised by taking each chapter of the consultation paper in turn and providing initial comments from Shelter where appropriate:

Dealing with Defects and Disrepair (Chapter 2)

The HITF concluded that local authorities faced particular impediments in addressing disrepair. The Scottish Executive has therefore proposed the following in order to address these obstacles:

- **Mandatory assistance:** it is proposed that the current mandatory entitlement to a grant be replaced by a mandatory entitlement to assistance, with the precise nature of the assistance determined by the local authority.
- **Single notice procedure:** there should be a single statutory housing notice to address repair related defects. This should be used to require improvements where houses are below the Tolerable Standard and would, therefore, replace the current Improvement Order procedure. The intention is to bring a number of legislative provisions together into a single notice, to simplify the procedure used by local authorities to respond to disrepair.
- **Proposed maintenance orders:** it is proposed that local authorities are given the power to serve a maintenance order in situations where an ongoing lack of maintenance is likely to lead to future disrepair.
- **Powers to assist with implementation of works:** the Executive wishes to consider strengthening the control of occupation; giving local authorities the power to suspend work required under a notice, if necessary, until a change of occupation; extending existing powers of entry and examination, and enforcement action.
- **Insurance:** the Executive proposes to address concerns about insurance by building on the proposals in the Tenements (Scotland) Bill. But these proposals stop short of mandatory insurance or major repairs sinking funds.

Shelter welcomes the policy focus on disrepair in the private sector. While proposals for increasing standards in properties currently in use are laudable, the sector as a whole would benefit from a focus on the issue of

empty homes. The SHCS (2002) states that 87,000 dwellings in Scotland are vacant. Given the shortage of affordable housing, it is counter productive to have such high number of potential homes lying empty. Empty homes can also have an adverse impact on the local community as they can attract acts of vandalism, arson or antisocial behaviour. Shelter proposes that the housing bill introduces a mandatory leasing scheme for local authorities, to allow them to bring empty properties back into use. Such a scheme is currently being proposed as part of the Housing Bill in England and has received support across the housing sector.

The Tolerable Standard (Chapter 3)

- **Adding to the Standard:** The Executive proposes that the Tolerable Standard should be extended to include a requirement for thermal insulation and installations for the supply, distribution and use of electrical power. However, it does not intend specifying the presence of lead piping in the Standard, as recommended by the HITF. The effect of these proposals would be to increase the number of Below Tolerable Standard properties by at least a factor of three, from around 20,000 to over 60,000.
- **Interpretation:** there should be a power for Scottish Ministers to produce guidance on the interpretation of the Tolerable Standard and for local authorities to be under a duty to take account of this guidance in applying the Standard. Local authorities will be required to produce an action plan for the reduction in the number of below Tolerable Standard properties in their area.

Shelter welcomes the proposals regarding the Tolerable Standard, but has two main concerns. Firstly, questions remain over why serious disrepair is still excluded from the Scottish Standard, when it is included in the English Fitness Standard. This consultation is an opportunity to rectify this anomaly. The Executive must also recognise that, in adding to the Standard, the impact will be an increased number of homes that fall below the Tolerable Standard. Secondly, it is also vital that the Executive continues to measure those homes which continue to fall under the current standard, so that there is a ongoing onus to improving these properties.

Area Renewal (Chapter 4)

- **Housing Renewal Areas:** The main element of the proposed changes involves repealing the existing Housing Action Area powers and introducing a new power to allow local authorities to seek to declare more flexible and less narrowly defined Housing Renewal Areas³.

³ Page 17 of the Consultation Paper sets out how a Housing Renewal Area is defined and the criteria adopted.

- **The trigger** for the declaration of a Housing Renewal Area will generally be where 50% of properties in the area fall within the specific criteria adopted.
- **Consultation:** The proposed new powers include obligations on authorities to consult with residents on the implementation of the Housing Renewal Area plan and to provide advice and assistance where appropriate.

In relation to area renewal, Shelter has two initial comments. Firstly, it is important to recognise that housing cannot, and should not, be viewed in isolation from the external environment in which it is situated. For that reason, Shelter believes that the criteria for a trigger for the declaration of a Housing Renewal Area should be extended to include properties where the external area in which they are situated is of a poor quality. Account should be taken of the potential impact on the market value of properties in an area declared a Housing Renewal Area, as well as the potential stigma attached for those who live there. Secondly, and linked to the first point, Shelter would argue for there to be greater discretion on what the trigger for declaration should be, which extends beyond the physical condition of certain properties and includes both area management and housing management. This would mean that this flexible policy instrument could be used more effectively and in a wider variety of circumstances.

Financing and Supporting Repair Works (Chapter 5)

As noted above, there will be a mandatory requirement for local authorities to offer assistance. The Scottish Executive does not believe that financial assistance is always needed, nor is it always appropriate for financial assistance to be provided in the form of a grant. Public subsidy should be targeted to those who need it most.

- **Scheme of assistance:** the Executive envisages a hierarchy of assistance which reflects different needs. The proposed main elements of the provision are general advice and guidance, practical assistance, loans and grants. Legislative change is required in relation both grants and loans.
- **Purpose and form of loans:** assistance in relation to loans should be made available through local authorities in three sets of circumstances: facilitating commercial loans, equity loans, and subsidised loans as an alternative to grants.
- **Detailed provisions on grants and subsidised loans:** the Executive aims to achieve, as far as possible, a single grant scheme for all types of work⁴.

⁴ The tables on pages 24-27 of the consultation paper detail the effects this will have.

- **Charging orders:** the Executive proposes that, when local authorities pay for repairs and improvements to privately-owned houses or lend the money to pay for them, they can recover the costs by using a charging order⁵.

Better Information for Home Buyers (Chapter 6)

- **Single Seller Surveys:** the Executive proposes to take the necessary legal powers to enable Scottish Ministers to require the use of single surveys. A decision will have to be taken as to whether this survey should be introduced on a voluntary, market-led basis or a legal requirement. The information given to prospective purchasers should include a house condition survey and an associated valuation.
- **Energy Performance Certificates:** depending on the circumstances, there will be a duty placed on owners of residential properties and landlords to make available an energy performance certificate.

Shelter welcomes the use of single seller surveys and believes they should, after the current pilot, become mandatory. However, the Scottish Executive must also recognise the inflationary impact that the system of sealed bids has on the Scottish housing market. This impacts greatly on people whose incomes and savings are limited and who are left financially stretched by an artificially inflated housing market⁶. This has two impacts: first that, by having to finance purchases above valuation, it leaves little money to carry out repairs and maintain a dwelling in good condition. Secondly, this overstretching of finances can leave households at the lower-end of the market vulnerable to repossession. The Executive should consider options, such as Internet use, which would facilitate an accessible open bidding system.

Energy performance certificates are also a welcome innovation. It needs to be clear that, even where a landlord offers no or inadequate written tenancy agreement, the obligation to provide a certificate still applies.

Improving Standards in the Privately Rented Sector (Chapter 7)

The Executive intends to take forward the recommendations of the HITF, which suggested a number of measures to improve the physical condition of the privately rented sector. The one exception to this is the recommendation to give discretionary powers to local authorities to regulate this sector since it has, in effect, been overtaken by the provisions

⁵ A Charging Order is a means of placing an obligation on the owners of a property to repay money, usually at the point at which the property is sold.

⁶ A study by academics at The University of Edinburgh and Heriot Watt University 1999-2000, *The Anatomy of a Housing Boom*, has criticised the system of sealed bidding for resulting in such effects in the Edinburgh housing market.

in the Antisocial Behaviour (Scotland) Act 2004. The Act provides for a mandatory national registration scheme for all private landlords and their properties.

- **Repairing standard for private landlords:** the Executive proposed that certain elements of Schedule 4 of the Housing (Scotland) Act 2001 apply to private landlords. In addition, it is proposed that fixtures, fittings and appliances for making use of the supply of water, gas or electricity should no longer be excluded from the private sector repair obligation.
- **Empowering tenants:** a tenant will be able to refer a landlord who fails to meet the standard to a new Private Rented Housing Tribunal for Scotland. The Rent Assessment Committees will have their role developed in order to establish this tribunal. The Executive also seek views on whether tenants could exercise their rights more easily if the repairing obligations were made explicit in written leases.
- **Houses in multiple occupancy (HMOs):** there is a continuing need for HMO licensing but it should be based on new primary legislation to suit this housing sector. Every local authority will have a duty to implement licensing in its district. The authorities may suspend a licence on reasonable grounds and shall keep a register of licences.
- **National registration scheme:** The Executive seeks views on whether the ASB provisions should be strengthened and operate on the basis of a 'certification' approach, thus becoming more like a licensing scheme.

Shelter is pleased that the Executive has recognised the need for a policy focus on increasing physical standards in the private rented sector. Whilst the HITF suggested a number of measures to improve physical condition, it felt constrained by its remit not to look at wider management issues. Shelter feels that it is vital that the quality of management of the privately rented sector is tackled more thoroughly at this stage. It is certainly within the scope of this consultation to include a robust debate on management standards, especially since they are strongly linked to the physical condition of properties in the privately rented sector: landlords who are poor at carrying out repairs are often poor at more general management. The Executive is not subject to the same constraints as the HITF on remit. If it is possible to insert a national registration scheme for private landlords into a bill on anti-social behaviour, it is surely possible for the proposed housing bill to consider issues of management.

Shelter welcomes proposals to strengthen the position of tenants. A new Tribunal would be a big expansion of the role of Rent Assessment Committees and the Tribunals will need to be properly resourced, with both

lay persons and professionals who are willing to be trained and commit their time to tribunal work. The effectiveness of these tribunals will depend on identifying and training a much larger pool of tribunal members. But since only a fraction of problems in the sector will ever come before tribunals, they should also place as much priority on communicating decisions to landlords, as a means of influencing practice more widely. Furthermore, tribunals must have a wider remit than that proposed: as above, they need to be able to intervene in poor management practice as well as repairs.

Shelter welcomes the principle of developing HMO licensing more fully in primary legislation. Establishing a new legislative basis for the scheme provides an opportunity to discuss ways of tackling standards across the HMO sector. Since the introduction of HMO licensing, Shelter has consistently argued that the scheme should be viewed as a 'stop-gap' on the way to more comprehensive private sector regulation. Providing for the scheme within primary legislation would cover the sector as a whole more fully. However, Shelter sounds a note of caution. It is not clear from the consultation how reform of the HMO scheme will encompass improvement in standards of management, or what integration of HMO licensing and the registration and accreditation schemes will mean for a strategic approach to improving management standards. A new policy focus on HMOs should recognise the need for development of better physical conditions alongside improved management standards.

The National Registration Scheme for private landlords should be viewed as a starting point for regulation of the private rented sector, and as a framework to build upon. Shelter will wait for the consultation on guidance for the national registration scheme in the Antisocial Behaviour (Scotland) Act 2004 before setting out its views.

Mobile Homes (Chapter 8)

- **Increased protection:** as part of their proposals, the Executive wishes to extend the protection for people who buy a mobile home and let a space from a site operator.

Shelter welcomes the proposals for mobile homes; a policy focus on improving the lives of people living in mobile homes is long overdue. However the proposals reflect the fact that there has been no recent policy discussion in relation to mobile homes. They miss an opportunity to take a comprehensive approach to improving the lives of mobile home residents. While the Executive's specific proposals are welcome, they should be part of a more strategic approach to mobile homes.

Such an approach should recognise three key problems for mobile home residents. They have no defence against eviction, are not afforded protection under rent legislation, and face numerous obstacles to securing greater standards on site. The Scottish Executive must look more broadly at issues relating to ensuring enforcement action on poor standards, increasing physical standards and improving security of tenure for those living in mobile homes.

This description should be read as a summary of the Executive's proposals only; the actual consultation document should be referred to for further detail. Please note these are Shelter's initial views and a formal consultation response will be provided by Shelter at a later date.

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