

## Briefing for Stage 2 of the Private Rented Housing (Scotland) Bill 2011

23 February 2011, Local Government and Communities Committee

Shelter Scotland has observations on the following 18 amendments, which are set out in the order in which they will be taken.

### Summary

#### 1. Linking HMO licensing to the planning system

Shelter Scotland believes it is important to find solutions to the problems of bad management and inappropriate adaptations of some HMOs, which the amendments from Pauline McNeill (1,2,3,4,5,6 and 30) and Alex Johnstone (28) seek to address. However, we are convinced that these amendments will **NOT** meet the aspiration to have well managed HMOs, and ensure the HMOs have a positive impact on local residents and communities. We would therefore like to see these amendments withdrawn and for Jim Tolson's amendment 29 to be supported, which seeks to lift out subsections (2) to (5) in section 13 of the Bill. We would ideally have asked the Minister to come forward at Stage 3 with measures which better reflect what members are seeking to achieve. However, due to the time constraints, we would ask instead that the Private Rented Sector Strategy Group consider these issues in detail.

#### 2. Discretionary power to serve an overcrowding notice

Shelter Scotland **strongly supports** the amendments from Mary Mulligan (23, 24, 25 and 26) and **supports** Alex Neil's amendments 16 and 17. We believe the amendments complement each other, but Mary Mulligan's go a crucial step further and will ensure that local authorities engage with the tenant/s before issuing an overcrowding notice. This is **not intended to be a duty** to re-house tenants; instead they will require the council to carry out a housing options assessment in order to assist the tenants/occupiers, if necessary, to find alternative accommodation in either the **private rented sector** or **social housing sector**. **Amendment 24** will ensure that the Government reviews how effectively this power reduces overcrowding, the impact on tenants and take into account other measures to reduce overcrowding.

#### 3. Power to Obtain Information from Landlords and Tenants

Amendment 19 in name of Alex Neil. Shelter Scotland is concerned about the impact this amendment may have on tenants and believes that it is in the tenants' interest that statutory guidance be produced which will outline best practice with regard to obtaining information from vulnerable tenants.

#### 4. Twenty year restrictions on leases and securities

We have some misgivings about the case for and the consequences of amendments 32 and 33 in the name of David McLetchie. Shelter Scotland agrees with the Scottish Law Commission that before any changes are made a broader and deeper review and an evaluation of the consequences is needed.

## 1. Linking the HMO licensing and the planning regime.

The following amendments have been submitted by MSPs to link HMO licensing to planning and address the problems constituents have raised with regard to the management of and internal adaptations to HMO properties. It is estimated that we are likely to see a requirement for a further **7500 HMOs** due to UK Government's welfare reform. It is therefore vital we ensure the HMO licensing regime is robust and able to enforce effectively and that any changes do not reduce the numbers of HMOs licenced.

### Linking HMO licensing and Planning Amendments

Pauline McNeill's amendments 1,2,3,4,5,6,30

Alex Johnstone's amendment 28

Jim Tolson's amendment 29 seeks to remove sub sections (2) to (5) in section 13 which links HMO licensing to the planning regime.

Shelter Scotland agrees with Members that there can be serious problems with how some HMOs are managed in some areas. We agree it is vital that we ensure communities have well managed HMOs, which are meeting the needs of tenants, and having a positive impact on the community and local residents.

So Shelter Scotland is sympathetic to seeking solutions to the problems which lie behind the amendments from Pauline McNeill and Alex Johnstone. **However, we are convinced that the amendments will not meet the aspiration to have well managed HMOs, which do not negatively impact on local residents.**

We believe that the powers in the 2006 Act in section 131 take account of a wide range of factors which MSPs are seeking to address.

The significant concerns we have with the amendments are:

- Pauline McNeill's and Alex Johnstone's amendments seek to create stronger links between the HMO licensing regime and the planning regime. However, we believe this will take one system (HMO licensing), which struggles to meet all its enforcement obligations and add to it another (planning), which equally lacks capacity to enforce its current obligations.
- The planning system is not an appropriate mechanism to regulate HMOs. It is concerned with development and not management, and it is the latter than is behind most of the problems that HMOs cause.
- One consequence of creating a stronger link between planning and licensing is that more landlords will seek to evade licensing altogether. This has happened in Glasgow which is the part of Scotland which has made the most pervasive planning policies on HMOs to date. This makes matters worse, not better.
- This will lead to an additional unintended consequence with a lack of information on how many HMOs operate in each area. The council will not be able to monitor and assess the impact they are having on local communities.

Shelter Scotland recognises that there are serious issues which must be addressed. In order to ensure we have effective legislation which addresses the problems effectively we would argue for:

- all amendments from Pauline McNeill and Alex Johnstone to be withdrawn at Stage 2
- Jim Tolson's amendment 29 to be supported to remove the section which links HMO licensing to the planning regime from the current Bill.

We would ideally have asked the Minister to come forward at stage 3 with measures which better reflect what members are seeking to achieve, however due to the time constraints, we would ask instead that the Private Rented Sector Strategy Group consider these issues in detail. Areas which should be considered are: further strengthening of HMO licensing and guidance; developing a strategy for young people's housing needs to ensure the increased need for accommodation is planned-for and managed appropriately and extending the proposed powers for party flats to HMOs generally.

## 2. Overcrowding

Shelter Scotland believes that overcrowding is essentially a symptom of housing shortage and low incomes relative to housing costs. Attempts to tackle this problem must avoid stigmatising vulnerable households by blaming the victims and potentially making their living conditions worse.

Shelter Scotland therefore supports Mary Mulligan's amendments 23, 25 and 26 which complement Alex Neil's amendments 16 and 17, but go a step further and require the council to provide an **alternative housing plan**. It should be noted that these amendments are **not** intended to be a duty on councils to provide accommodation, as mentioned in the COSLA briefing to the committee. Instead they require the council to carry out a housing options assessment in order to assist the tenants/occupiers, if necessary, to find alternative accommodation in either the private rented sector or social housing sector. This may result in a homelessness application in the normal way, but might equally mean help with finding a suitable private let. The duty to provide an alternative housing plan **only** applies as a consequence of a council exercising **discretionary powers**, which therefore still gives councils flexibility.

The Committee raised concerns in its stage 1 report about the practical application of the power and we believe these amendments will ensure tenants are not vulnerable to becoming homeless or ending up in other overcrowded or unsuitable accommodation as a result of an overcrowding notice.

### **Amendments 23, 25 and 26 in the name of Mary Mulligan MSP**

Shelter Scotland **strongly supports** these amendments from Mary Mulligan MSP, which refer to the **discretionary** power to issue a statutory notice for overcrowding. We believe these amendments are necessary to provide safeguards for vulnerable tenants.

Tenants are likely to be vulnerable in a number of ways:

- many will be unable to afford higher rent elsewhere

- some are likely to have difficulty communicating in English
- most will have little understanding of housing law and what the implications of the overcrowding notice are for them
- many will not know what their re-housing options are
- many will not know what help and advice they could ask for.

It is vital therefore that the LA understands whether tenant/s are likely to need information and advice to help them find alternative accommodation. In order to do this they must engage with the tenants to discuss what alternative housing arrangements they would need and explain their housing options.

In particular, amendment 23 from Mary Mulligan complements amendment 17, as it adds to what Alex Neil is proposing by specifying the type of information and advice which **must** be given to produce an alternative housing plan, rather than relying on the tenants to request the information.

An alternative housing plan is a firmer and more tailored response to the potential risk of homelessness than the more general provision of information and advice. In other words, it requires the local authority to look specifically at where people will go if they are displaced by statutory action on overcrowding. However, it is intended to stop short of giving people a right to access council accommodation or be a duty on the local authority to secure another form of housing for the tenant.

In effect what these amendments will do is ensure that good practice is carried out to prevent homelessness using the established housing options route.

### **Amendment 24 in the name of Mary Mulligan MSP**

The Local Government Communities Committee and other housing organisations have raised concerns about:

- the impact of the application of the overcrowding provisions
- the lack of available figures on how many people will become homeless due to this power
- what the consequences will be in relation to the levels of homelessness and impact on housing stock.

As there has been no systematic review of the nature and causes of overcrowding in Scotland, it is important that the Scottish Government captures the relevant information on the impact of this power. Shelter Scotland therefore **supports** this amendment, which will require the Scottish Government to produce periodic reports on the operation of the Act for each period of 3 years from the commencement of the relevant part of the Act on the impact of the provisions. This would include information on the use of overcrowding notices by local authorities, the extent to which they have reduced overcrowding, the extent to which persons have become homeless as a result of their use and any other measures considered for reducing overcrowding.

## **Amendments 16 and 17 in the name of Alex Neil**

Shelter Scotland supports these two amendments (16 and 17) from Alex Neil but, as already stated, they should be taken together with Mary Mulligan's amendments (23, 25 and 26), which complement them, but go an important step further. We believe vulnerable tenants **must** be provided with the advice and information they may need to find suitable alternative accommodation.

### **3. Power to Obtain Information from Tenants**

#### **Amendment 19 in the name of Alex Neil**

This amendment may seem quite benign, but it needs to be seen in its context of applying to that part of the private rented sector where standards of management are poorest. It is quite possible that a tenant will face retaliatory action if required to give information to a council, which the landlords regards as being against the landlord's interest. The same issue was raised by the Committee when they were looking at the Housing (Scotland) Act 2010 and the Committee noted in the stage 1 report for this Bill that it 'is pleased to note that the concerns it raised in its Stage 1 report on the Housing (Scotland) Bill over the provisions for tenants to provide information have been acknowledged by the Scottish Government. The Committee further notes the Scottish Government's commitment to include such issues in statutory guidance.'

So, Shelter Scotland believes that it is in the tenants' interest that **statutory guidance** be produced, which will outline best practice with regard to obtaining information from vulnerable tenants.

### **4. Twenty year restrictions on leases and securities**

#### **Amendments 32 and 33 in the name of David McLetchie**

Shelter Scotland does not believe that the case for these changes has been fully made nor the consequences fully understood. The 20 year restrictions on leases and securities were introduced in the 1970s for good reason – to prevent a kind of pseudo-feudal arrangement being brought in at the same time as aspects of feudalism were being abolished. While we support the general intention of freeing up barriers to investment it is not clear if those advantages outweigh the potential adverse impacts.

The Scottish Law Commission is also concerned that any changes to the 1974 Act require proper evaluation and a broader and deeper review as there is a risk of long term problems and unforeseen consequences. For example there could be issues of how tenants are protected in the future and problems with how to identify bodies which should benefit from the changes.

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