

Consultation response

Draft Housing (Scotland) Bill: a consultation

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Shelter

Draft Housing (Scotland) Bill

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Draft Housing (Scotland) Bill. In this response Shelter has focused on a number of the questions which are particularly relevant to how homeless households are housed and supported to maintain tenancies. In light of this and the main purpose of the Bill, we have included a further set of topics which we believe should be in the Bill.

Shelter Scotland will also respond to the separate consultation paper on Private Rented Sector proposals.

Draft Housing (Scotland) Bill: a consultation — questionnaire

In this section we have sought to address the specific questions posed by the consultation paper. However, we have also put forward our own reform proposals which we think are simpler and have greater impact than the proposals as outlined. In order to avoid being repetitive, we have outlined these proposals first. However, any answers to subsequent questions should be seen in light of our overall proposals.

Part 1 - Reforming Right to Buy

The case for reform

Scottish Ministers have, quite rightly, made significant statements¹ about the overall impact of Right to Buy (RTB). While RTB has had some positive impacts for individual tenants and in specific neighbourhoods characterised by uniform social housing this has been at the cost of people on house waiting lists and in some communities which face dramatically reduced choices of affordable housing. Given the profile of current tenants and the shape of the housing market, it is very difficult to argue that RTB has any value in breaking up monopolies or in enabling individual prosperity, as we move forward. Rather it is likely to get in the way of regeneration strategies, reduce stock urgently needed to meet the internationally-acclaimed 2012 homelessness target and saddle increasingly marginal households with debt or responsibilities that they cannot sustain.

Shelter considers that further restrictions on the RTB are justified by the need to protect the existing social rented stock for tenants and prospective tenants. The new supply of housing stock would be protected too. The size of the social rented sector has fallen considerably over the past 29 years as a result of the sale of some half a million dwellings

¹ The Housing and Communities Minister has recently stated that '*Right to Buy has been a disaster for the provision of low cost social housing for rent. It has acted as a disincentive to construct replacement properties and Scotland has been left with a dreadful legacy.*' 10/07/09

through RTB. Shelter's recent report '**Building pressure: access to housing in Scotland in 2009**' has drawn attention to the large numbers of families and other households currently on the waiting lists of social landlords throughout Scotland.

Figures from the Shelter report show that:

- There are 142,000 households on council house waiting lists: enough to form a queue from Glasgow to Edinburgh and back again. House waiting lists have risen by 15 per cent since 2000.
- There are fewer social homes for rent than at any time since 1959. Most of that decline has been a result of Right to Buy. Since 1998 alone, 135,000 homes have been sold through Right to Buy.
- The number of lets of social housing has been declining as well as the total number of homes. In 2001, there were 3.9 people on council waiting lists for every let coming up. By 2008 this had risen to 6.6. This is a bit like saying it would take well over six years to house everyone on waiting lists, even if lists were completely closed to new entrants².

So RTB needs to be addressed urgently and the necessary changes implemented as soon as possible to protect social housing stock for people who are: homeless; those currently on housing waiting lists; and for those who will need social housing in the future. However, these changes will not be enough to address the current housing shortage and Shelter continues to call for more affordable houses for rent to be built in the next three years to meet the 2012 commitment.

But simply because RTB reform has a long term benefit, rather than providing short-term relief, does not mean its reform should be delayed. Indeed, there is a case in principle for ending RTB altogether. RTB no longer meets the objectives of housing policy and has served any use that it might have had. There is no legal barrier to ending RTB: arguments that this would mean removing rights to which tenants had a legitimate expectation are a red herring³.

We have not included this option among our proposals at this stage because it has not been explicitly considered to date. However, we do think it is a logical step from the observations that have been made about RTB. The Scottish Government should look explicitly at the implications of this most radical measure: for example, by considering who, in practice, might lose RTB by its application. The only real danger we can see is that of "stampede" in the period leading up to abolition. Experience in both England and

² 'Building pressure: access to housing in Scotland in 2009'

³ Providing tenants with a RTB are given adequate notification of prospective changes, there is no reason why the current regime should not be changed or the RTB abolished completely.

Scotland suggests that this is a modest and short term problem, quickly outstripped by medium to longer term gains.

In the meantime, our proposals are designed to simplify the RTB and deliver a bigger impact from the reforms. The Scottish Government's proposed RTB reforms head in the right direction, which we support, but create a more complex system for RTB, as the changes proposed will create multiple tiers with different rights/entitlements in each tier. We believe that Shelter's proposed reforms will introduce a much simpler system and give a better balance for all tenants, which is what the Scottish Government seeks to achieve through the proposed changes.

Shelter's proposals for RTB

In Shelter's proposal there would be two types of entitlement to RTB:

In **type 1**, all new tenants taking on a new social housing tenancy **will not be given the RTB** after the specified date. This includes:

- New tenancies created as a result of a transfer or succession after the specified date;
- All new tenants entering the social rented sector for the first time from any tenure.

We believed that this was the original intention of Ministers and were surprised that the proposals were set out as they are. Indeed, the logic which we have adopted was that which was used for the modernised RTB in 2001.

In **type 2**, all tenants who currently have RTB **will be given the modernised RTB** after the specified date.

- All tenants who continue to have the preserved RTB, should have this right amended to the modernised RTB terms and conditions, which were introduced for new tenancies following the 2001 Act. This would mean that all tenants in the social housing sector who currently have the RTB would have the modernised RTB after the specified date. As was widely agreed at the time, the modernised terms represent a much better balance between the interests of tenants, prospective tenants and the taxpayer. Those tenants who qualify for the "preserved" terms and conditions have already had considerable time to exercise their RTB if they should wish to do so.

Under our proposals, newly-built or newly-acquired social housing would be treated, in effect, in the same way as under the Scottish Government's reform proposals: that is, they would be exempt from RTB altogether (with a very limited number of exceptions such as compulsory transfer).

Right to Buy reforms and the impact on RTB sales

We have been discussing the impact of different reform proposals with officials and these discussions are continuing. The modelling which the Scottish Government has used to assess the projected impact of RTB reforms on RTB sales numbers has shown that the more modest reforms suggested i.e. a) ending RTB for new supply housing and new tenants and b) extending the 2012 suspension to 2022, would equate to a reduction in sales of around 21 per cent.

However, if the reform to remove RTB from existing tenants moving voluntarily to new tenancies is introduced as well, the reduction in sales would equate to around a **33 per cent** reduction on the base case. This substantial increase in reducing sales from 21 per cent to 33 per cent shows the positive impact the reforms will have on safeguarding housing stock. If we add the reform suggested by Shelter - of changing all preserved RTB tenancies to modernised RTB tenancies, this will have an additional impact on reducing the sales figures. We will seek to discuss if and how this can be modelled as well.

So, as well as simplifying RTB our proposals also deliver greater impact. As we say, above, there is a case for ending RTB altogether, but our proposals offer a significant way forward, building on existing reforms.

Question 1.1

What financial impact would our proposed reforms to RTB have on social landlords, particularly over the longer term? And what steps could landlords take to mitigate this?

Financial modelling for local authorities (LAs) carried out by the Scottish Government to project the investment capacity of LAs based on different RTB reforms and market scenarios has shown that the reform packages made only a marginal impact as compared to bigger changes in the housing market. That is, there is little to fear by reducing RTB. We understand that some landlords have built RTB receipts into the assessment of capacity to meet the Scottish Housing Quality Standard (SHQS) by 2015; however, to the extent that there would be reduced receipts, there would also be increased prudential borrowing capacity based on rents that would otherwise be lost.

Besides, Shelter believes that the Scottish Government's proposed restrictions and the additional measures suggested by Shelter should, in due course, help to strengthen the financial position of social landlords and any short-term impact from lower capital receipts is justified by the wider long-term benefits.

Question 1.2

Do you agree with the definition of new supply social housing provided at section 109 of the draft Bill?

Question 1.3

If not, what definition do you propose?

Question 1.4

Do you agree with the safeguards we are proposing for existing tenants?

Question 1.5

If not, which safeguards do you propose?

Response to Q1.2 – 1.5.

Shelter is content with the proposed definition of new supply social housing and the proposed safeguards for existing tenants. However, the proposed safeguard to protect housing let for the first time between June 2008 and the start date for the legislation would not be needed if the Scottish Government adopted our proposal to abolish the RTB for all new tenancies after the start date for the legislation (see above). Again, this simplifies the RTB.

Question 1.6

Do you agree that new tenants entering the social rented sector after the date on which the section comes into force should no longer have the RTB?

As indicated above, Shelter believes that this proposal, while heading in the right direction, introduces greater complexity than is necessary and considers that the RTB should be ended for all new tenancies after the starting date for the legislation. This would protect more houses from RTB and create an equitable position between those moving into the sector for the first time and those who voluntarily opt to move to a different house within the sector. We would retain the existing relatively narrowly-defined list of circumstances in which a transfer is considered to be a compulsory one.

For existing tenants, their RTB in their current house would remain, but all tenants with this right would have the modernised RTB.

The current proposal also lacks clarity in certain respects e.g. what constitutes a “break” from residence in the social rented sector and do successors count as new tenants entering the sector? Our proposal would avoid these difficulties.

Question 1.7

Do you agree that tenants of other relevant landlords should continue to be given modernised RTB entitlements if they transfer directly to the social rented sector?

We believe that any new tenants taking on social housing who come from any other relevant landlord should not be given any RTB entitlements. This is in line with our recommendations to have a simplified system as outlined above.

Question 1.8

Is the scope of proposed reforms to pressured-area designations appropriate?

Question 1.9

Do you agree that the maximum designation period should be increased from five to ten years?

Question 1.10

Do you agree with our proposal to allow particular housing types to be designated as pressured?

Question 1.11

Should Ministers devolve pressured area decision-making to councils?

Question 1.12

If so, what would be the best way to implement devolved decision-making in practice to deliver a transparent, balanced and soundly-evidenced process?

Response to Q 1.8 to 1.12

Within the context of the Scottish Government's initial proposals, we support the proposed reforms to the pressured area designations including the increase in the maximum period to 10 years, the proposal to allow particular house types (within designated areas) to be designated as pressured and the proposal to devolve pressured area decision making to councils.

We agree that proposals for pressured areas should emerge from the Local Housing Strategies of councils and that it is reasonable for councils to be accountable for their decisions on designations which should continue to be taken in the light of the statutory criteria and guidance from the Scottish Government.

We think there is merit in changing the maximum period – whether five years or ten years. Rather than having a specified period in the Bill we think the review point should be linked to the cycle of Local Housing Strategies, which, after all, is the policy objective.

More fundamentally, we also consider that 'pressured area' status should apply to all tenants in the designated area, rather than just those taking up a tenancy since September 2002. This would be a logical consequence of extending the modernised RTB to all existing tenants.

So this would mean that, since all tenants in the whole LA area, would at the very most be entitled to modernised RTB then the effect of adding, on top of that, a pressured area designation, would be to suspend RTB altogether in that pressured area. In our view, that would give added teeth to pressured area status and give a greater impetus to local authorities in pursuing it.

Question 1.13

Do you agree with the criteria/approach (to developing guidance for applications from RSLs to extend the ten-year suspension) set out in section 1.7 of the consultation paper?

Question 1.14

If not, what alternative criteria/approach would you suggest?

Response to Q 1.13 and Q1.14

Shelter agrees that relevant RSLs should be able to apply to extend the 10 year suspension and that the criteria need to be broadened to take account of meeting housing need and safeguarding the stock as well as financial viability (as set out in the earlier Scottish Executive guidance). Given that these tenants have never had the RTB, the estimated sales quoted in the consultation paper may be an underestimate if it is based on take up rates in the council sector.

Question 1.15

Do you agree that landlords should be encouraged to use their discretionary powers on the continuous occupation rule for ex-service personnel transferring to social housing?

Question 1.16

Do you think this should apply in other circumstances or to other groups of tenants?

Response to Q 1.15 and Q 1.16

We see no reason why the current guidance as set out in The Modernised Right to Buy – Housing (Scotland) Act 2001 should not continue to apply. Paragraph 14 of Part 2 of this guidance makes it clear that under the 2001 Act landlords are given powers to disregard an interruption in occupation where this resulted from circumstances outwith the control of the household in question. It also makes it clear that councils should consider cases on their merits, which seems reasonable. There may be no harm in reminding social landlords of this guidance, but we would be opposed to the abolition of the continuous occupation rule.

More broadly, we do not follow the logic of this proposal. In general, ministers are seeking to narrow the impact of RTB. This proposal is at odds with that approach.

Part 2 – Modernising regulation

In general, after eight years of the current regulation and inspection regime, it is timely to reflect on what kind of regime might best serve the future. While the current inspection – improvement plan system has been useful in its first cycle in setting a baseline, particularly for local authorities, Shelter agrees that it lacks the flexibility to deal with the different organisational cultures, arrangements and risks that face housing providers. We favour a system that spreads scrutiny and potential remedial action more evenly over time and we agree that any system needs to be careful about imposing too heavy a burden of regulation to the cost of service provision.

We are interested in regulation, generally, of both local authorities and RSLs; and of all aspects of services. However, naturally, our main focus in the last few years has been on the regime as it covers homelessness services of local authorities. This was an innovation for which Shelter strongly argued in the 2001 Act and we believe that subsequent events have backed this judgement. On the one hand we are in no doubt that homelessness inspection, coupled with strategic commitments like the 2012 commitment, has driven a will to improve homelessness services to a much greater extent than ever before. In our engagement with service staff, through our policy and practice work, information services and training, we see real evidence of a commitment to improve that was quite often utterly absent ten-fifteen years ago. On the other hand, the fact that the vast majority of council homelessness services have rated only poor or fair shows that

practice in frontline services still lags behind the will to improve. That, in turn, means that now is not the time to abandon the regulation of homelessness services in Scotland⁴.

So the top priority that Shelter has in looking forward to the new regulatory regime is ensuring that the interests of homeless people are given a high priority and that this is backed with meaningful tools to drive improvement in services. This informs much of what we say below. We recognise that some of this may be for how the regime works in practice rather than on the face of the Bill but we consider it important to signal these points at this stage.

Key Points

It is essential that the homelessness services provided by local authorities are independently regulated to ensure that high standards of service are applied across all authorities. This is crucial in the run up to the Scottish Government's commitment to providing permanent housing for all unintentionally homeless persons by 2012. In addition, it is also essential that all social landlords are monitored and regulated to ensure that they are following best practice in relation to the prevention of homelessness.

Shelter is broadly sympathetic to the Scottish Government's objective of reforming the legislation on regulation to create a more risk based system and to integrate the work of the housing regulator with other relevant statutory regulators. Shelter would however strongly oppose any attempt to limit the powers of the housing regulator to apply only to RSLs. The housing regulator must continue to apply to LAs and RSLs in order to ensure that all homelessness services are regulated.

In addition, Shelter would like to see the following changes to the current proposals:

- An amendment to the proposed statutory objectives of the Regulator in section 2 (1) so that safeguarding and promoting the interests of 'homeless people and those threatened with homelessness' is identified separately rather than included as some wider group of 'recipients of housing services'. While it is clear that the Scottish Housing Regulator has had a focus on homelessness, its recent report, **'Shaping up for Improvement'** relegates homelessness to the status of 'other services' and it, in no way, does justice to the range of lessons learned from inspections to date. This supports our argument that homelessness should be given greater prominence in the Bill.

⁴ This is especially true with the demise of the national Homelessness Monitoring Group which up until 2008 produced annual reports on progress with the implementation of the Homelessness Task Force's recommendations.

- The inclusion of a mandatory list of outcomes for the proposed Scottish Social Housing Charter on the face of the Bill with a power to add to these by order. This would provide a safeguard that key outcomes are included from the outset. The mandatory list should include 'the prevention and alleviation of homelessness'.
- Section 16 of the Bill should be amended to allow the housing regulator, notwithstanding the duty to co-operate with other regulators, to act independently if it considers that it is necessary to further its statutory objectives. This is essential to ensure that the regulator can act speedily if circumstances justify this⁵.
- There is very little on the face of the Bill to indicate how the powers given to the regulator will be used in practice. Shelter would be opposed to a wholesale shift to a tick box form of self regulation without adequate checks or auditing. We believe that the Scottish Government should publish a report indicating how it anticipates that the housing regulator will use the new powers to undertake inquiries in different circumstances. This 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' and when these might be used. This report should be made available to Parliament and stakeholders before the Bill is introduced. At the moment, in the absence of any such report, we feel that we are being asked to sign up to something of a blank cheque.
- In addition, we have noted that there is no definition of an inquiry in the Bill and we would wish to see clarification, on the face of the Bill, that inquiries can include direct inspections i.e. looking at case files and interviews with staff and clients, if the regulator considers that these are required in addition to directing questions and request for information to the regulator.
- We also consider that it is important that the housing regulator takes account of the views of tenants and prospective tenants in undertaking inquiries and that the report on regulatory procedures mentioned above should explain how this is to be done using the current powers.
- As well as the annual report, as set out in section 17, we believe that there should be provision on the face of the Bill for an independent review of the effectiveness of the new regulation regime. The review should take place five years after the commencement of the new powers and be placed before Parliament. This is analogous to the review of RTB which was conducted following the introduction of modernised rules in 2001 and 2002.

⁵ Section 16(1) of the draft Bill may ensure that this is done, but we believe that it could be made more explicit.

Question 2.1

Do you agree that the purpose of the modernised regime of regulation should be to focus social landlords' efforts on:

- ☐ meeting tenants' priorities;
- ☐ continually improving performance and value; and
- ☐ commanding the confidence of public and private investors in social housing?

Question 2.2

If not, what should be the purpose and why?

Response to Q 2.1 and 2.2

We agree with the proposed purposes, but consider that they should be expanded to include safeguarding and protecting the interests of homeless people:

An amendment to the proposed statutory objectives of the Regulator in section 2 (1) so that safeguarding and promoting the interests of 'homeless people and those threatened with homelessness' is identified separately rather than included as some wider group of 'recipients of housing services'.

Question 2.3

Do you agree in principle with the risk-based and proportionate approach to regulating social landlords that we have outlined in section 2.4 of the consultation paper?

Question 2.4

Do you have any proposals that would streamline further the regulation of social landlords?

Response to Q 2.3 and 2.4

We agree with this principle providing it is not interpreted in practice in a way which undermines the effectiveness of the regulatory process. We have concerns about this which are reflected in our general comments above. Most pressing, we strongly believe that local authority homelessness services should continue to be part of the regime. If there was any move to take homelessness services out then, coupled with the demise of the national Homelessness Monitoring Group, it would send a very unfortunate signal about the extent to which there was any real means to drive homelessness improvement in the run up to 2012 and beyond.

Question 2.5

Should we continue to use the term 'social landlord' to describe local authority landlords and RSLs

Question 2.6

If not, what term should we use?

Response to Questions 2.5 and 2.6

We understand the concerns that tenants have about the term 'social housing'. In May 2009, we undertook a brief consultation exercise with tenants in Edinburgh and found no real consensus as to an alternative term. Perhaps the worry is that whatever term is used it will rapidly attract the same degree of unfair stigma as the term which it replaces unless more is done to tackle the underlying problems of investment, high quality management and media portrayals of social housing neighbourhoods.

Question 2.7

Do you agree in principle with the proposal to set outcomes for social housing in a Scottish Social Housing Charter?

Question 2.8

If you agree, do you wish to suggest changes to any aspect of the proposal? If you disagree, how would you identify the outcomes and value that social landlords should be achieving for their tenants?

Response to Questions 2.7 and 2.8

We agree with the principle of setting outcomes for social housing in a Scottish Social Housing Charter but, as noted above, we consider that there should be a mandatory short list of key outcomes which are considered and debated by Parliament and stakeholders before the Bill is finalised. It is also important that the Charter goes beyond services provided directly to tenants and takes account of prospective tenants and services for homeless people.

Question 2.9

Do you agree that the modernised SHR should be established as a non-Ministerial department under its own Board?

Question 2.10

If not, how would you ensure that the SHR was independent enough?

Response to Q 2.9 and 2.10

We agree with the proposals for ensuring the independence of the Scottish Housing Regulator. We consider that there should be a majority of non executive Board members and that existing Board members of RSLs and Council elected members and officials should be excluded to avoid conflicts of interest.

Question 2.11

Should the modernised SHR have the statutory objective of promoting the interests of tenants and future tenants?

Question 2.12

If not, what objective do you think the SHR should be given?

Response to Questions 2.11 and 2.12

We consider that the objectives of the regulator should be expanded to include safeguarding and protecting the interests of homeless people and those threatened with homelessness to give a clear and unambiguous focus to this important area of work.

Question 2.13

Should the modernised SHR assume responsibility for regulating services in respect of homelessness, Gypsies/Travellers and factored owners?

We support the proposal that the SHR should retain responsibility for regulating these services and believe that the profile of the regulator's work on homelessness needs to be increased as suggested above.

Question 2.14

Should SHR work to improve value for tenants and taxpayers through powers to assess, report on and, if necessary, enforce performance improvement?

Question 2.15

If so, would the powers and duties that the draft Bill gives the SHR enable it to do that work?

Question 2.16

If not, what role should the SHR have in improving performance and what powers would it need to carry out that role?

Question 2.17

Do you agree that the current inspection powers should be replaced?

Question 2.18

If so, would the new provisions that we are proposing in respect of inquiries and information provide a satisfactory replacement?

Question 2.19

If not, what approach would you suggest?

Response to Questions 2.14 to 2.19

We are concerned about the reliance that is being placed on self evaluation questionnaires and annual reporting by social landlords. We have noted the new powers to undertake a range of inquiries which replace the existing powers to undertake inspections. We consider that the regulator needs to have explicit, fallback powers to carry out direct inspections (including scrutiny of case files and interviews) if it considers that these are necessary.

Understanding the effectiveness of the performance improvement proposals depends a lot on the scope of the Social Housing Charter which will drive performance requirements. In general, however, our experience of the current improvement plan process in homelessness services is that rather less weight has been placed on it than the inspection itself and, for third parties like Shelter, engagement with improvement plans has been more difficult. It is important that the new regime gives greater weight to performance improvement. Not only will that better reflect the interests of service users; it will also make the regime more palatable to those who see regulation as a burden.

Finally, we consider it important in the new regime, with greater reliance on secondary data than on primary inspection, that there is greater effort directed towards harmonisation of data collection frameworks between councils and RSLs. Eight years after the addition of councils to the regulatory regime there are still many examples of data collection inconsistencies which thwart efforts to look at social housing as a whole and to compare across different types of landlord.

Question 2.20

Do you think that the powers in the draft Bill provide the right balance and would allow the SHR to take prompt and effective action to tackle problems in financial viability and governance?

Question 2.21

If not, what powers would you suggest?

Question 2.22

Do you agree with the proposal to abolish the requirements in Part 1 of Schedule 7 on payments and benefits, and replace them with a code of conduct setting out standards of financial management and governance?

Question 2.23

If not, what would you suggest?

Response to Questions 2.20 to 2.23

We are content with the proposals which build on the current position.
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Question 2.24

Do you agree that Ministers should set the criteria for eligibility to seek registration as an RSL and that the SHR should set the criteria against which it tests applications?

Question 2.25

If not, what approach would you suggest?

Question 2.26

Do you agree that this power should extend to allowing profit-distributing bodies to become eligible for registration?

Question 2.27

If so, do you think it is right to have specific enforcement powers for profit distributing RSLs?

Question 2.28

Are the enforcement powers that we have set out for profit-distributing registered landlords the right ones?

Question 2.29

If not, what enforcement powers do you think would be right?

Question 2.30

Do you agree that RSLs should only have to seek consent for the three areas of rule changes set out in section 2.15 of the consultation paper?

Question 2.31

If not, what approach would you suggest?

Response to Questions 2.24 to 2.31 Other questions on RSLs

We are not opposed, in principle, to the widening of the range of bodies which might become RSLs. However, we do not think the Scottish Government has articulated the case for including profit-distributing bodies. If there is a case that such bodies would be able to secure additional money for social housing which more traditional RSLs cannot we would like to see that case spelled out. Further, it is difficult to support the proposal at a time when there is greater ambiguity about the nature of a future regime which would be required to ensure that new kinds of bodies were sticking to the rules.

In the meantime, we would not want reservations about profit-distributing bodies to dilute support for extending eligibility criteria more generally. For example, there may be bodies formed as a result of community right-to-buy who wish to develop social housing but are not currently eligible to register.

Finally, we note that the proposals to widen eligibility criteria do not cover the other situation which emerges, that of private bodies accessing grants like Rural Empty Property Grants or through the Rural Homes for Rent scheme. We do not think it is desirable to require such bodies to be RSLs before accessing grants; however, we do think it worth considering whether bodies accessing public money might be subject to a more proportionate form of scrutiny.

Additional topics to be included in the Bill

As well as the provisions set out in the consultation paper and draft 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: A 'Right to Support' for homeless or potentially homeless people

Shelter Scotland considers that duties towards homeless people requiring support to sustain accommodation should be strengthened in the Bill. This would help to prevent homelessness and so ease pressure on social sector lets. It would also reduce avoidable tenancy turnover within the social rented sector which is one factor in the poor reputation of social housing and which is referred to in the Bill consultation.

We would 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.

We see this new duty as an integral part of how homeless services and social landlords should be working with tenants to sustain tenancies, particularly when the households are facing difficulties such as financial, social, family and health problems. It also gives legislative substance to the increasing policy attention that has been focused, quite rightly, on the need to prevent homelessness and sustain tenancies⁶. It is widely accepted that appropriate support can play a key role both in preventing homelessness and repeat homelessness and in helping homeless families to cope. The recently issued SG/COSLA Guidance on the Prevention of Homelessness (June 2009) states that: -

'housing support has an important part to play in preventing homelessness and that, in some cases, more intensive and specialist support services such as family counselling may also be required.'

Households facing difficulties which could escalate into unmanageable proportions and result in homelessness should be supported to remain in their homes and sustain their tenancies wherever practicable. By introducing a duty to provide support where it is needed all homelessness services would have to reach acceptable standards of support and this would be a positive move to improving and strengthening prevention of homelessness strategies and work across all local authorities.

⁶ Research by Heriot Watt University in 2007 found that homelessness prevention while given a high priority was not yet easily embedded in homelessness practice.

Once households reach crisis point and become homeless, the support they will need to find and sustain another tenancy increases. The cost to local authorities increases, with additional resources needed for temporary accommodation and support for households. Homelessness can have a negative impact on physical and mental health and wellbeing as they cope with the stress and uncertainty of their situation. Children's lives are particularly affected by homelessness, potentially impacting on their health, wellbeing, development, education as well as their long term future prospects.

The proposal in practice

Shelter believes that there should be a statutory duty on local authorities to undertake a support needs assessment for homeless or potentially homeless households who, in the view of the authority may require support to sustain accommodation. The duty would then also be to secure the provision of services having regard to this assessment.

Support, in this context, covers a wide range of forms of assistance and can include, for example, financial advice (debt management, budgeting, welfare rights etc), assistance with neighbourhood disputes, support with health problems and specialist forms of counselling. There is already a statutory definition of housing support services in section 90(8) of the Housing (Scotland) Act 2001 which is drafted in very broad terms and should be sufficient to cover specialist forms of support not normally considered as 'housing support'.

Some homeless and potentially homeless households will not require any support beyond routine advice on housing options and, for those being rehoused in the social rented sector, advice on tenancy requirements and possibly housing benefits. Support needs will however vary from household to household and need to be determined carefully through an assessment by the local authority. This will ensure households receive the support they need to sustain their tenancy or be supported into a different/new tenancy.

Shelter also considers that councils should be under a duty to act on the results of this assessment and provide the necessary services. In some cases, councils may look to RSLs (or other bodies) to undertake the assessment or provide the services, but the duty would lie with councils.

Undertaking assessments and providing services will have significant resource implications for councils. However, councils in Scotland have received, in total, some £400m per annum of supporting people funding which was previously ring fenced for housing support needs generally and it is reasonable that homeless and potentially homeless persons should receive a fair share of this budget.

All councils already provide support services to homeless persons and with some success. The aim of this proposed legislation would be to ensure that all councils reach the standards of provision which meet the requirements of best practice in this area.

There are already precedents for a statutory duty of this nature. Under the 2001 Act, councils must provide housing support to certain households who are given Short Scottish Secure Tenancies and the consultation by the Scottish Government on the use of short assured tenancies in the PRS by councils to fulfil their duty to provide settled accommodation also proposed that there should be a duty to provide support. There is no obvious reason why such a duty should be limited to these situations.

Shelter's view is that a measure along these lines would help to improve the quality of homelessness services in Scotland and to ensure that the Scottish Government achieves its commitment to give all unintentionally households a right to permanent accommodation by 2012.

Proposal 2: Strengthening allocations

1. Developing homelessness referrals

Section 5 referrals were introduced in the 2001 Act. Seven years after the commencement of that part of the legislation there is still a mixed bag of practice. The 2007-08 APSR shows that, of homeless referrals housed by RSLs, 75 per cent are described as section 5 referrals and 25 per cent as other homeless referrals.

Reviewing the legislation, Shelter cannot see this distinction. The legislation simply says that if a statutory homeless household is referred to a RSL then it should be bound by the rules set out in section 5 (and section 6): that is there is no such thing as a non-section 5 referral.

Shelter believes that all statutory homeless referrals should be dealt with on the same basis and that this basis should be as set out in sections 5 and 6 of the 2001 Act. The advantages are as follows:

- The process sets out clear expectations for both the council and the RSL and provides come-back for the council should some RSLs be more reluctant to take responsibility than others.
- It produces a more transparent process than informal nominations
- It allows the council to compare the performance of RSLs and, equally importantly, allows RSLs to benchmark themselves against others.
- In practice, it is accompanied by better exchange of information which in turn increases the possibility of the let being sustainable.

In our view the legislation already requires all statutory homeless referrals to be governed by section 5. That being so, we ask all councils to stop labelling and counting some referrals as 'other homelessness referrals' and the Scottish Housing Regulator to ensure that this is complied with.

If, for reasons we cannot understand, there is a legal basis for some statutory homeless referrals to be conducted outwith the framework in section 5 then we will argue for the Housing Bill to reframe the legislation to make section 5 mandatory.

In this case, in practice, sections 5 and 6 would be amended to allow for the specification of procedures by way of regulations which local authorities and RSLs should use in connection with referrals. This could also incorporate and supersede the current power of Scottish Ministers to issue guidance on arbitrations in relation to referrals (section 6(5) of the 2001 Act.

Along with this, RSLs should continue to be required by the regulator to submit figures for the number of statutorily homeless households housed via section 5 referrals as part of the APSR. This allows the Scottish Housing Regulator to check to what extent RSLs are housing homeless households and therefore contributing to meeting the 2012 homelessness commitment. Furthermore, collecting and reporting this data will allow comparison between RSLs and will identify which organisations are making the necessary contribution to housing homeless people in their area. This data collection and reporting will be beneficial to RSLs as all organisations will be judged on the same criteria and to the same standards. In order to assess local authorities' use of section 5 referrals to fulfil their statutory duties councils should be required to report how many section 5 referrals they make each year, to which RSLs, and how many are successful.

Whether or not it is considered necessary to reframe section 5 in the way we suggest above, we also think it would be helpful to amend section 5(7) to incorporate provisions currently in guidance into legislation: that is, the provision on reasonable period would be established at not more than 6 weeks in the primary statute and the reason for refusal would be set at no accommodation available in the timescale, also in the primary law.

We have also considered if and how to strengthen the applicant's voice within the section 5 referral process. As above, the referral process at present relies on the local authority to act on behalf of the applicant: the applicant can appeal to the council but has no means of directly challenging an RSL. One option is to insert a provision that an RSL has a duty to respond to a request from a homeless applicant for information about the offer of housing by an RSL following a referral.

2. Reasonable preference criteria

One of the difficulties encountered in looking at legislation on housing homeless people is that the detailed duties outlined in part II of the 1987 Act interact with more general duties outlined in section 20. That is, in looking at section 5 it is useful to look at section 20 as well.

Section 20 of the Housing (Scotland) Act 1987 sets out groups of people which are to have reasonable preference in the allocation of social housing. A recent review of allocation policy by a Scottish Government Working Group concluded that these criteria are outdated (most of section 20 derives from 1960s legislation⁷) and should be reviewed with a view to the legislation being changed. Further, the application of the “reasonable preference” test is in itself, inherently difficult.

Our understanding is that the Scottish Government, at this stage, does not intend to act on this recommendation in the Housing Bill. That would mean the next opportunity to respond to this recommendation would be in 2012 at the earliest. We are not certain how important this is, as it may be that section 20 is no worse than a seldom-used provision that is cluttering up the statute book. If, on the other hand, it is felt necessary to replace the categories in section 20, it would be very consistent with the purposes of the Bill.

We envisage it being difficult to come to a consensus on what an updated list of allocation priorities should be as this gets to the heart of the contested question as to what social housing is and should be for. Certainly, the role of social housing is now very different to what it was in the 1960s.

One option would be to move away from the idea of specified groups of people altogether and seek to develop a statement which confirms that social landlords should allocate housing according to housing need: a statement which, while largely accepted in practice, is currently absent from legislation. This might be made with reference to the needs identified and prioritised within the local housing strategy. That is a social landlord would have to show some connection between its allocations practice and outstanding needs in its area, rather than having to observe nationally met criteria.

However, in setting any such statement, it would be important to recognise that social landlords’ discretion to respond to the needs within their area is framed within separate statutory duties: for example, to homeless people, children and young people and people with support needs to allow them to stay independently in the community.

We have no fixed view on this at this stage; we think it would be useful for the Scottish Government to convene a meeting of the main interests before the Bill is finalised.

⁷ For example, it refers to priority to be given to households occupying BTS housing – an enormous problem in the 1960s but much less widespread now.

Proposal 3: Modernising evictions policy

Social landlords take legal action against too many of their tenants. In 2007-08 over 20,000 tenants were taken to court, almost always for rent arrears. This excessive use of legal action is ineffective and unnecessary. It does not address the root causes of debt, undermines the use of legal action as a meaningful sanction, and clutters up court time with disputes that should be best settled out of court.

The Scottish Government has committed to setting up a working group to look at how evictions policy and practice should be reframed, following a similar process looking at mortgage possessions. We believe that this working group should be constituted so that its conclusions can be fed into the Bill. While we believe that many of the improvements to evictions policy can be achieved through “front-end” changes⁸, before legal action is even countenanced, it would be quite legitimate to consider changes to primary legislation: for example, the definition of reasonableness in whether a Sheriff can grant decree. Following the decision by Stirling Council, in June 2009, to end the practice of evicting for rent arrears, there is also a question as to whether eviction should be a sanction or whether, eviction as a sanction should kick in only if arrears have reached a certain level.

Shelter has not reached a final position on this but we believe that the working group should allow for the possibility that changes might be in the Bill to go before Parliament.

Proposal 4: Consolidation of the tenancy regime

The Scottish Secure Tenancy was introduced in the 2001 Act. While it was built substantially on the previous Secure Tenancy it introduced many innovations. Experience over seven years, suggests a few areas where minor reforms would be useful.

1. Payment of rent

Shelter believes that the legislation should clarify that rent should be payable to social landlords retrospectively, rather than in advance. The legal commentary on the Model Scottish Secure Tenancy notes that:

[There are] varying practices regarding rental periods. Rent is normally payable in advance; however, housing benefit is always paid in arrears. Approximately 70% of social tenants receive housing benefit. To insist on rent being paid in advance

⁸ On early indications, Scotland's largest landlord, GHA, has achieved a significant reduction in tenants taken to court, at the same time as reducing rent arrears, largely by focusing in on what happens early on in the tenancy and in debt history.

therefore raises the global figure for rent arrears and places tenants unnecessarily in arrears.'

We agree with this observation. It seems perverse to adopt practices which automatically place tenants in arrears at the same time as seeking to strengthen cultures of payment.

2. Dealing with succession

Currently, the law provides that alternative accommodation be offered to a succeeding tenant where the accommodation is specially built or adapted. Shelter believes that this principle should be extended to deal with situations where succession would result in significant under-occupation at a time when there is a shortage of accommodation for larger families. In this situation, the social landlord would be able to meet the request to succeed by offering suitable alternative accommodation. This would be a discretionary power rather than a duty and social landlords would have the option of allowing the succession in the existing house where they considered that there were special factors that justified this approach.

3. Rights of appeal for succession and joint tenancies

Currently there is no procedure to apply for succession or a right of appeal if it is refused. In the event of a dispute the applicant has to wait for the landlord to raise an eviction action against them on the grounds that they are an unlawful occupier and defend that on the basis that they have succeeded to the tenancy.

A process to apply for succession and appeal a refusal should be created: which could be based on schedule 5 (part 2) of the 2001 Act.

In Shelter we have experienced long drawn out disputes about succession that have resulted in the newly succeeding tenant accruing rent arrears: the above procedure will help avoid this by being quicker. The problem stems from landlords refusing to accept rent from an occupier where they are disputing succession lest it be implied that they have created a binding tenancy with the occupier. If the occupier requires Housing Benefit (HB) during a succession dispute their problems are multiplied: the eligibility rule for HB is obscure and not widely known, tenants are often told they cannot claim HB by the housing department, and the backdate time limit has been reduced to 6 months and may not cover long disputes.

Similarly, we believe that the provisions in schedule 5 should apply to refusals of applications for joint tenants.

Annex A – draft equalities impact assessment

Question A.1

What else do we need to know about tenants, prospective tenants and RTB purchasers to help us understand their diverse needs and experiences of social housing, and where can we get this information?

It is important for **all** tenants to be represented including, for example: younger tenants, older tenants, single parent tenants, BME tenants etc. Using different and appropriate methods to engage with and consult with tenants is vital to ensure that a full understanding of their needs is integrated into how the SHC and SHR will work in the future. People who have been homeless and re-housed and those who are at risk of becoming homeless must also be part of the consultation process to ensure their views on homelessness services and support are taken into account.

There also needs to be a robust and meaningful engagement with tenants on an on-going basis. Landlords must meet good practice standards, which should be outlined in the Charter and the results should form part of the reporting which RSLs have to do each year which includes:

- a) Monitoring their performance and progress against the outcomes set out in the SHC
- b) Successfully providing services which meet their tenants needs.

Question A.2

Do you think ending the RTB for new social housing will have a disproportionately negative impact on particular groups of people in our target audience?

No, we feel it will bring a better balance for all tenants in the social housing sector and for those who wish to enter the sector. Failing to rebalance RTB on the other hand will continue to exacerbate inequalities.

Question A.3

If you think the RTB proposals will have a negative impact on a particular group, why is this?

We do not believe that RTB proposals will impact negatively on any one group. By contrast, better preserving stock for future tenants will benefit people who are currently most disadvantaged by the housing market.

Question A.4

What positive impacts do you think ending the RTB for new social housing will have on particular groups of people?

Homeless households are particularly vulnerable and it is important that they have access to affordable homes for rent. By protecting the social housing stock, this will provide more homes for homeless households and also for other groups who are vulnerable.

Question A.5

What changes to the RTB proposals would you suggest to reduce any negative impact or enhance any positive impact you have identified?

Our reform proposals simplify the system and secure bigger impact.

Question A.6

Do you think the changes to regulation will have a disproportionately negative impact on any group, or groups, of people?

We do have concerns about the emphasis on self reporting and would like to see more information on how the social landlords and local authorities' services to homeless people will be monitored and inspected.

Question A.7

If you think there will be a negative impact on a particular group, why is this?

Homeless people are often unable to voice their concerns about poor levels of service from social landlords and local authorities. A move away from external inspection towards self reporting could reduce transparency and prevent systemic problems coming to light.

Question A.8

What positive impacts do you think modernising regulation will have on particular groups of people?

Modernising regulation should enable tenants to better understand what their rights are and what they can expect from a social housing provider. All tenants should be able to engage with and participate in how their RSL manages their property. A clearer understanding of what the key outcomes should be from the Social Housing Charter is a positive step and it should be clear how tenants can complain if these outcomes are not being achieved. If tenants are fully involved in the process of setting what local outcomes should be for their social housing provider the services should meet the tenants' needs.

RSLs and local authorities should be properly monitored, evaluated and supported to reach these outcomes.

Clarity on the role of the SHR, particularly in relation to under performing RSLs is needed. SHR needs to be able to operate independently of other regulatory bodies if necessary to ensure a rapid response for tenants in under-performing RSLs.

Question A.9

What changes to the proposals for regulation would you suggest to reduce any negative impact or enhance any positive impact you have identified?

Question A.10

When we complete our impact assessment of the changes to regulation and RTB, are there any other significant issues we need to consider in relation to:

- ☐ Age
- ☐ Disability
- ☐ Gender
- ☐ Sexual orientation (Lesbian, Gay, Bisexual and Transgender (LGBT))
- ☐ Race
- ☐ Religion and belief?

Please continue on a separate sheet if necessary

It is vital that people who at risk of becoming homelessness or are homeless already should be considered as part of the impact assessment, as it is crucial that any changes to Regulation and inspection should take their needs into account.