

# Report

# 13

Report to:	<b>Housing and Technical Resources</b>
Date of Meeting:	<b>2 March 2011</b>
Report by:	<b>Executive Director (Housing and Technical Resources)</b>

Subject:	<b>Housing (Scotland) Act 2010</b>
----------	------------------------------------

## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ provide an update on progress in relation to the implementation of the Housing (Scotland) Act 2010
- ◆ advise on the arrangements which have been put in place to prepare for changes to Right To Buy (RTB) legislation

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that progress on the implementation of the Housing (Scotland) Act 2010 be noted
- (2) that progress on the implementation of changes to Right to Buy legislation, effective from 1 March 2011, be noted

## 3. Background

3.1. The Housing (Scotland) Act 2010 was passed by the Scottish Parliament on 3 November 2010 and received Royal Assent on 9th December 2010.

3.2. The Scottish Government has noted that the main policy objectives of the Act are to:-

- ◆ improve the value for money that social housing delivers for tenants and taxpayers
- ◆ safeguard the future supply of social housing for current and future tenants

3.3. To achieve these policy objectives the Act introduces significant changes in relation to 3 key areas. These are:-

- ◆ the role of the Scottish Housing Regulator (SHR) and regulation of social landlords
- ◆ introducing a Scottish Social Housing Charter
- ◆ reforming the Right To Buy within social housing

3.4. In addition to the main areas covered by the Act, it also introduces changes in 2 specific sections, these are the:-

- ◆ introduction of a duty on local authorities to assess and provide for the housing support needs of persons who are homeless

- ◆ establishment of a new duty on landlords to follow a prescribed series of actions (the pre-action requirement) before raising proceedings for recovery of possession for rent arrears

3.5 The Act is being introduced over a period of time. To date 2 parts of the Act have been commenced which are the new arrangements for the regulation of social housing and the changes to the Right to Buy. Sections 4 to 8 below, provide details of the current position in relation to each of the key aspects of the Act noted above.

3.6 The scope of this Act before it became law also included reforms intended to improve conditions in the private sector. Following consultation, the Scottish Government decided to take forward proposals to reform the private sector through separate legislation.

#### **4. Scottish Housing Regulator (SHR)**

4.1 The Act establishes the SHR as an independent regulatory body, which aims to safeguard and promote the interests of tenants, prospective tenants, homeless people and other housing service users.

4.2 The changes to the way in which the Regulator operates contained within the Act, focus on a more risk based approach to future housing inspections and reflect a wider overhaul of the system of scrutiny and regulation of local authority services. In future, there will be a greater emphasis on self assessments by landlords, a risk based approach to target poor performance and on monitoring progress against outcomes which will be set out in the forthcoming Scottish Housing Charter (see section 5 below).

4.3 The Council was inspected by the SHR last year, representing the last of the 32 councils to have received a baseline inspection. Following the positive outcome of that Inspection, the Regulator has indicated that it will now assess any follow up action and areas of potential risk through the new joint scrutiny arrangements for all Council services.

#### **5. Scottish Social Housing Charter**

5.1 The Act introduces proposals for a new Scottish Social Housing Charter which will set out the key outcomes which local authorities and registered social landlords should aim to achieve for their tenants, homeless people and service users. It is intended that the Charter will provide a key component of the framework which the SHR will use to assess and report on the performance of social landlords.

5.2 The Scottish Government held a series of consultation events in late 2010 to encourage an open and inclusive process to develop the new Charter. To date feedback has pointed to the need to clarify the role of the Charter in the context of regulation and to avoid the establishment of unnecessarily onerous monitoring and reporting requirements.

5.3 The Scottish Government has confirmed their intention to undertake more detailed consultation in the period up to the autumn 2011 with the Charter scheduled to be introduced in April 2012.

## **6. Reforming the Right to Buy (RTB)**

- 6.1 The Scottish Government wrote to all local authorities in December 2010 noting their intention to introduce the changes in respect of Right to Buy at an early date, to protect social rented stock from being purchased. Following the introduction of the necessary statutory instruments, the provisions commenced on 1 March 2011. In summary, the main changes are:-
- ◆ an end to Right to Buy for new tenants
  - ◆ an end to Right to Buy for new supply social housing
  - ◆ protection of Right to Buy for tenants required to transfer to a new property by their landlord i.e. 're-accommodated' persons
- 6.2 While the Act does not change the rights of existing tenants to buy their current home, it will have the effect over time of removing the Right to Buy from a significant number of tenants and properties. In essence new tenants (see 6.3 below) and people moving in to new supply social housing (see 6.4 below) will no longer have the Right to Buy. Where an existing tenant moves into another social rented property, other than new supply housing by transfer or mutual exchange and there has been no break in their tenancy, they will continue to have the Right to Buy.
- 6.3 Anyone taking up a Scottish Secure Tenancy (SST) for the first time, on or after 1 March 2011, will no longer have the Right to Buy. The Act stipulates that individuals who were previously a tenant who return to the social rented sector, following a voluntary break (e.g. someone who terminated their tenancy and moved into a private rented property), would be considered as a new tenant and would not have the Right to Buy.
- 6.4 The Act defines new supply social housing as properties built since 25 June 2008 or properties bought or acquired by a local authority since 25 June 2008. For South Lanarkshire, this means new build properties in Catacol Grove in East Kilbride and properties acquired through the Mortgage to Rent Scheme. Tenants moving into these properties prior to 1 March 2011 have the Right to Buy, however, subsequent tenants will not.
- 6.5 Anyone taking up a Scottish Secure Tenancy in new supply housing on or after 1 March 2011 does not have the Right to Buy. It should be noted that the Act provides protection for existing tenants transferring to new supply housing whereby if they should subsequently move or exchange to another property (not designated as new supply) then they will have the Right to Buy. The Act also requires that tenants who are offered new supply social housing must be given 7 days notice that they will not have the Right to Buy.
- 6.6 The Act protects the majority of tenants who have a Scottish Secure Tenancy and are required to transfer to a new property by their landlord. This would include, eg, where a tenant's house is scheduled for demolition and the individual agrees to move at the landlord's request. However, the circumstances of some tenants transferring from a Council property to a new build RSL property in a regeneration area is, at this stage, unclear. The Scottish Government has undertaken to clarify the position as a matter of urgency. The complexity of the position arises primarily from the terms of the tenancy agreement which the existing tenant has and the date at which the RSL has achieved charitable status. Tenants of RSLs with charitable status currently do not have the Right to Buy.
- 6.7 A key focus of work within the Resource over the period preceding the commencement of the Right to Buy provisions has been to revise our procedures

and documentation to reflect the new legislative provisions. In advance of the commencement of these provisions on 1 March 2011, work has been carried out to ensure employees are appropriately briefed, as well as changing our operational procedures/publications to fully reflect the Act. A summary of circumstances affecting Right to Buy status under the Act is set out in Appendix 1.

## **7. Housing Support**

- 7.1 The Act introduces a new duty on local authorities in relation to persons found to be homeless or threatened with homelessness where there is reason to believe that the applicant may need housing support services. In these circumstances, the local authority must assess whether the applicant, and any other person residing with the applicant, needs housing support services. Following such an assessment, the local authority must ensure that required housing support services are provided to them.
- 7.2 During the passage of the Bill, COSLA argued strongly that the new duty places an unfair burden on local authorities to ensure that support services are provided to a specific group of households regardless of:-
- ◆ the impact on other households in need of the same services
  - ◆ the availability of resources to fund the services
  - ◆ whether it is in the gift of the local authority to meet the needs eg, health services
- 7.3 In response to consultations over the past 10 years, the Council has noted significant reservations regarding the continuing expansion of duties being placed on councils through homelessness legislation. The provisions introduced under the 2010 Act will further exacerbate the unreasonable expectations being placed on local authorities in the delivery of homeless services. Accordingly, it is proposed that during the consultation which will take place on the proposals the Council will confirm support for the position iterated by COSLA during the passage of the Bill.

## **8. Rent Arrears**

- 8.1 Section 155 of the Act sets out details of the process landlords require to follow before raising proceedings for the recovery of possession due to rent arrears (pre-action requirement ). The Act requires landlords to demonstrate that the tenant:-
- ◆ was aware of their obligations in relation to payment of rent
  - ◆ had been advised of the availability and their eligibility to receive housing benefit
  - ◆ had been advised of other types of financial assistance available
  - ◆ had been advised of sources of information and advice in relation to debt management
- 8.2 The Act also requires landlords to demonstrate that they had made reasonable efforts to agree a repayment plan and must not serve a notice if there is likelihood the tenant will make payment to the landlord in a reasonable period of time eg, through a housing benefit determination or other financial plan.
- 8.3 During the consultation, we indicated that we felt this was an unnecessary duty and that poor practice by landlords relating to rent arrears management should be picked up through regulation. To date no timescale has been set for the consultation on the draft guidance.

## **9. Next steps**

9.1 The next steps are:-

- ◆ to continue to monitor implementation of the Act
- ◆ to provide further updates to members as appropriate

## **10. Financial Implications**

10.1 Changes to Right to Buy legislation will have an impact on capital receipts. However, this has been factored into the Business Plan and will continue to be reviewed on an annual basis.

10.2 There is a potential impact on the homelessness budget as a result of the new duty in relation to housing support. However, this will need to be reassessed when more information is available from the Scottish Government.

## **11. Employee Implications**

11. None.

## **12. Other Implications**

12.1 As highlighted above, the legislation will impact on the capital receipts, however this has been factored into the Business Plan and will be reviewed on an annual basis. Also, as highlighted at paragraph 4.3 any potential risks will be assessed through the new joint scrutiny arrangements for all Council services.

12.2 There are no implications for sustainability terms of the information contained in this report.

## **13. Equality Impact Assessment and Consultation Arrangements**

13.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and, therefore, no impact assessment is required.

13.2 The new Act has been impact assessed by the Scottish Government. Local authorities have no discretion to amend the legislation and, therefore, cannot mitigate the impact. The Council will provide advice and information to applicants for housing and new tenants on the implications of the changes in legislation.

**Lindsay Freeland**

**Executive Director (Housing and Technical Resources)**

11 February 2011

## **Link(s) to Council Values/Improvement Themes/Objectives**

- ◆ Improve the quality, access and availability of housing

## **Previous References**

- ◆ None

## **List of Background Papers**

- ◆ None

## **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

Annette Finnan, Head of Area Services

Ext: 4406 (Tel: 01698 454595)

E-mail: [annette.finnan@southlanarkshire.gov.uk](mailto:annette.finnan@southlanarkshire.gov.uk)

Housing (Scotland) Act 2010 – Right to Buy changes from 1 March 2011

Landlord	Tenant status	Right to Buy entitlement
Local Authority	Tenant before 1 March 2011 (including new supply social housing).	Right to Buy
	Tenant transfers to another local authority property.	Right to Buy
	Tenant transfers to new supply social housing on or after 1 March 2011.	No Right to Buy
	Tenant (before 1 March 2011) of new supply social housing transfers to another local authority property.	Right to Buy
	Tenant is required to move to another local authority property /new supply social housing at landlord's request (i.e. demolition).	Right to Buy
	New tenant on or after 1 March 2011.	No Right to Buy
Registered Social Landlord (with charitable status)	Local authority tenant is required to move and chooses to move to RSL property at landlord's request (i.e. demolition).	Right to Buy
Registered Social Landlord (with non charitable status)	Local authority tenant is required to move and agrees to move to RSL property at landlord's request (i.e. demolition).	Right to Buy