Submission from the Council of Mortgage Lenders

Introduction

The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 111 members and 88 associates comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 94% of the residential mortgages in the UK. In addition, the CML members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing.

CML Scotland welcomes the opportunity to submit written evidence on the Long Leases (Scotland) Bill to the Scottish Parliament, Rural Affairs, Climate Change and Environment Committee.

General

We are supportive of the introduction of the Bill which would convert long leases lasting more than 175 years and with more than 100 years left to run into outright ownership. The report which the Scottish Law Commission produced into this matter did in our view set out valid reasons for conversion. Long leases of residential property are rare and historical and clearly the value of the tenant’s interest will reduce as the termination date approaches and this could clearly impact on the value of any Standard Security held by a lender over the tenant’s interest in the lease.

Our support outlined in 3 above is given on the basis that where a Standard Security is held over the tenant’s interest in the long lease prior to conversion it would remain in force following conversion. In section 6(2) of the Bill it effectively says that on conversion any real right which the qualifying lease was subject to the converted land is now subject to. This would therefore appear to allow a Standard Security over the lease to remain in force.

Our interest in this matter is restricted to residential mortgages but we note in terms of Section 6(4) any Standard Security granted by the landlord over the land subject to the long lease will be extinguished when the Bill becomes law although the landlord would remain personally liable to the creditor under the Standard Security. This in many ways makes logical sense given the nature of the Bill which effectively ends the rights of the Landlord. If it did not the Heritable Creditor could step into the shoes of the Landlord if they chose to call up their security. What we are not sure of is whether there could be any situations where lenders had lent on a commercial basis to a landlord and held a Standard Security from the landlord over the land subject to the lease. It may be worth obtaining the views of the British Bankers Association on this aspect of the Bill if you have not already done so.

This response has been prepared by the CML in conjunction with its members.