

Local Government and Communities Committee

Housing (Amendment) (Scotland) Bill

Submission from the Glasgow and West of Scotland Forum of Housing Associations (GWSF)

Summary of GWSF position

GWSF, which represents 66 community controlled housing associations in Glasgow and the west of Scotland, welcomes the Bill. We are clear that the measures in the Bill are necessary in order to prevent all housing association debt being deemed to be public debt. This would need both the UK and Scottish Governments to set aside huge amounts of public money which would otherwise be spent on housing investment.

It is also the case that, as a matter of principle, housing associations – and community controlled housing association in particular – do not want to be classified as public bodies, even if the classification is primarily a statistical one for the purposes of assessing how debt is to be treated.

We have therefore always been clear that we would be supporting the measures as we see them as the only way of achieving an eventual reversal of the reclassification.

There are, however, some practical issues we would want to discuss with the Scottish Government and in particular with the Scottish Housing Regulator about any changes which may be made to the regulatory framework as a response to the Bill's legislative changes, especially around the ending of the consents regime. We comment further on this in our detailed comments later in this submission.

Our submission describes the main measures in the Bill and then provides GWSF's view on each one in turn.

GWSF would be very happy to provide any further information the Committee might find helpful, and we would hope to have the opportunity to appear before the Committee at the appropriate stage of the Bill's passage through Parliament.

Proposed measure – Limiting SHR's powers to appoint special managers and management committee members (Section 1 of the Bill)

The amendments to Sections 57 and 58 of the 2010 Act will mean that a special manager can be appointed only where SHR has evidence that the RSL has actually failed – rather than is merely at risk of failing – to:

- Achieve a Charter standard or outcome
- Meet a performance improvement target
- Implement an agreed improvement plan

- Comply with an enforcement notice
- Comply with a statutory requirement in respect of its financial or other affairs

The power to appoint a manager is limited to situations where SHR believes this is needed to ensure that one or more of these failures identified under 57 is rectified, with the appointment(s) lasting only for the time necessary to secure that rectification.

This will have the effect of (a) narrowing the purposes for which the SHR can appoint a manager to the matters relating to the failure that triggered the appointment, (b) making the appointment temporary, and (c) removing the SHR's ability to appoint a manager indefinitely or for the wider-ranging, general purpose of ensuring that an RSL manages its housing services or other affairs to an appropriate standard.

The amendment to Section 65 of the Act will mean that SHR can appoint a new management committee member only if it believes this is needed to rectify any breach of any legal duty or statutory requirement in respect of its financial or other affairs. SHR would no longer be able to appoint a management committee member for the wider-ranging and more general purpose of achieving "the proper management of the RSL's financial or other affairs."

GWSF comment

GWSF's long-standing position is a wish to see intervention powers which are robust where they need to be, but are used in a proportionate manner. In practice, we believe that the SHR's appointment powers are already used in much narrower circumstances than the 2010 Act provides for. In fact, some observers have expressed surprise at just how widely the 2010 Act powers were drawn, apparently without challenge.

So whilst these changes may seem significant on paper, in practice we believe they will continue to enable SHR to take intervention action involving appointments where there are serious problems, hence continuing to provide tenants, lenders and the sector itself with reassurance that appropriate regulation is in place. It is also worth noting that the changes do not impact on SHR's powers to make enquiries of RSLs.

The measures also provide some comfort to the sector that where intervention involving appointment of managers or management committee members occurs, SHR will be more mindful of the need to for the intervention to have a very specific purpose and be time-limited.

Proposed measure – Limiting SHR's powers to suspend or remove board members (Section 2 of the Bill)

The amendments to Sections 60-62 of the Act will mean that:

- SHR can remove a management committee member (described as an 'officer' in the Bill) only where s/he, through absence or other failure to act, is failing to

ensure that the RSL is being managed in accordance with its statutory duties. SHR will no longer be able to make a removal in response to the wider-ranging and less specific test of “impeding the proper management” of the RSL.

- SHR can suspend a management committee member only if s/he has been responsible for, or facilitated or otherwise contributed to, or been privy to, the RSL breaching any legal duty or requirement under the 2010 Act or any other legislation relating to its financial affairs or housing activities. SHR will no longer be able to suspend by applying the wider-ranging and less specific test of “misconduct in or mismanagement of” an RSL’s financial or other affairs.

GWSF comment

GWSF is happy with these limitations. We note that the powers to remove or suspend management committee members have not been used in the current regulatory regime.

Proposed measure – Removal of SHR’s powers to consent to the disposal of RSL land and assets (Sections 3 and 4 of the Bill)

Sections 107-109 of the 2010 Act are amended to provide that RSLs may dispose of land and assets without the consent of the SHR, subject only to a duty on RSLs to notify the SHR of any disposals (the notification to be made in advance of the disposal where practicable, and in any event not later than 28 days after the disposal has been made).

Section 110 and Part 10 of the Act are amended to provide for:

- The SHR to issue guidance on the means by which RSLs may consult tenants who would cease to be their tenants as a result of a disposal;
- RSLs to consult – in accordance with the SHR’s guidance – all tenants who would be affected by a disposal;
- RSLs to be able to proceed with a disposal only where they have obtained approval of the disposal from a majority of those who respond to a consultation;
- RSLs to notify the SHR of the outcome of a consultation that would lead to it making a disposal.

These arrangements will remove the SHR from the process by which an RSL disposes of land or assets that would result in tenants ceasing to be tenants of the RSL, while ensuring arrangements are in place to enable tenants to continue to be consulted about such disposals.

GWSF comment

In seeing disposal consents go, GWSF’s main aim is to see tenant consultation and ballots in stock transfer, merger and group structure changes protected. We

recognise that the current provisions for consultation and ballots are inextricably linked to SHR's consent powers and so cannot be maintained in their current form.

The new provision enabling RSLs to proceed with a disposal of tenanted stock only where they have obtained approval from a majority of those affected can only be achieved through a ballot process. This is something that the statutory SHR guidance referred to in the Bill will set down in detail, and GWSF looks forward to detailed discussions with SHR on the content of that guidance.

No consultation or ballot is needed where an association plans to dispose of stock which is *not* tenanted. As with acquisition, disposal of stock from time to time is likely to be part of any association's asset management approach. GWSF believes its members, as community controlled housing associations, will continue to make sensible, appropriate decisions on managing their assets in the best interests of their community.

It is possible, however, that some other housing associations may, over time, seek to make excessive disposals of social housing stock once the consents regime has gone. GWSF will therefore be keen to discuss with SHR what checks and balances can be put in place – short of such measures being deemed to be 'public control' – to minimise the prospects of such sell-offs.

We will also want to urge lenders to avoid making excessive information demands on associations in an attempt to 'compensate' for there no longer being a need to get consent from SHR.

Proposed measure – Removal of SHR's powers to consent to RSL rule changes (Section 5 of the Bill)

Sections 93-95 of the 2010 Act will be repealed altogether, removing SHR from the process by which RSLs make changes to their constitutions, including any change to their articles of association, and leaving these matters entirely to RSLs. [To ensure that the SHR has an up to date register for public inspection, and that it knows which bodies it is regulating, it is proposed to retain the duty on RSLs, at section 92 of the 2010 Act, to inform the SHR of all such changes.]

GWSF comment

GWSF is happy with these changes. Whilst we understand the history of the sector which got us to a position where all rule changes have to be approved by SHR, we believe the system of seeking consent for all but the most routine of changes has become too controlling on SHR's part and onerous for RSLs.

We do not believe the changes will lead to RSLs suddenly deciding to make wholesale changes to their rules etc., as the sector in Scotland will not move away from the key values of supporting people and communities with addressing housing and related issues.

The provisions may, however, make it more straightforward for sensible changes to be made, where these, for example, will help associations prevent potentially disruptive individuals or groups having undue influence or control over an association's affairs.

In conjunction with members and other relevant bodies, GWSF will be happy to consider the merits of producing guidance for associations on dealing with rule changes if this would be helpful to our members,

Proposed measure – Removal of SHR's powers to consent to the voluntary winding-up, dissolution or restructuring of an RSL (Sections 6 and 7 of the Bill)

Sections 96-99 and 100-194 of the 2010 Act are amended to remove all of the SHR's powers of consent over voluntary winding-up, dissolution and restructuring. In doing so, amendments are proposed to protect tenants of an RSL who would become tenants of another RSL as a result of voluntary winding-up, dissolution or restructuring.

As with the changes relating to disposal of stock, the 2010 Act provides for tenants in a winding-up, dissolution or restructuring to be consulted. The Scottish Government's policy is for this right to continue when the SHR loses its powers of consent. Along with the removal of the consent powers, the changes will involve introducing a duty on RSLs to notify the SHR, following any consultation by the RSL of its tenants as required under these sections, when it has taken any of these steps.

Amendments to Section 110 and Part 10 of the Act will provide for:

- SHR to issue guidance on the means by which RSLs may consult tenants who would be affected by a voluntary winding-up, dissolution or restructuring proposal;
- RSLs to consult – in accordance with the SHR's guidance - all tenants who would be affected by any of these steps;
- RSLs to be able to proceed with any of these steps only where they have obtained approval for the disposal from a majority of those who respond to a consultation;
- RSLs to notify the SHR once it had taken any of these steps following a consultation.

These arrangements will remove the SHR from the processes of voluntary winding-up, dissolution or restructuring, while ensuring arrangements are in place to enable tenants who would be affected by any of these steps continue to be consulted before they are taken.

Specifically on subsidiary-related changes, further amendments to Sections 104A and 124A of the 2010 Act (as amended by section 98 of the Housing (Scotland) Act 2014) will provide for:

- SHR to issue guidance on the means by which RSLs may consult tenants in cases where a RSL would become a subsidiary of a body of which it was not already a subsidiary;
- RSLs to consult – in accordance with the SHR’s guidance – all tenants who would be affected by RSLs becoming such a subsidiary;
- RSLs to be able to become such a subsidiary only where they have obtained approval of the disposal from a majority of those who respond to a consultation;
- RSLs to notify the SHR once it had become such a subsidiary following a consultation.

These arrangements will remove the SHR from the process by which a RSL becomes a subsidiary of another body of which it is not already a subsidiary, while ensuring arrangements are in place to enable tenants to continue to be consulted before a RSL becomes such a subsidiary.

GWSF comment

GWSF is happy with these changes. Again our main interest has been in seeing tenant consultation and ballots protected where a change of landlord or a group structure move to a parent body is being proposed. And again we look forward to discussions with SHR on the content of the statutory guidance.

Proposed measure – A power to make further changes to the powers of the Scottish Housing Regulator should such changes be necessary, without the need for further primary legislation (Section 8 of the Bill)

GWSF comment

On the face of it, this power is an open-ended one and gives the Scottish Government significant powers to amend SHR’s powers without recourse to Parliament. However, GWSF is entirely satisfied that the sole purpose of this measure is to allow for further changes to be made as quickly as possible should the Bill’s changes prove insufficient to persuade ONS that the level of ‘public control’ over RSLs has been adequately reduced. This measure is, therefore, in the interests of all parties, and is in any case subject to consultation.

Proposed measure – A power to make Regulations that will limit a local authority’s influence over an RSL, which exists mainly through the right to nominate representatives to the RSL’s governing body (Section 9 of the Bill)

GWSF comment

The main aim of these provisions is to ensure that ONS is persuaded that no local authority has undue control or influence over the affairs of any RSL. Any such undue

control could be deemed by ONS to be 'public control' and could lead to a failure to reverse the reclassification decision.

Generally, RSLs most likely to be affected by this provision are 'large scale voluntary transfer' RSLs which came into being after the transfer of some or (in six cases) all of a local authority's housing stock to an RSL. Such transfers were usually accompanied by up to a third of the new RSL's management committee members being local authority nominees.

Our understanding is that regulations are likely to stipulate that no more than a quarter of any RSL's management committee members should be local authority appointees. As far as we are aware this does not affect any GWSF member associations, and our understanding is that those associations potentially affected by the proposed measures are relaxed about them.

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