

ANGUS COUNCIL

HOUSING COMMITTEE

7 OCTOBER 2004

**SUBJECT: CONSULTATION ON MAINTAINING HOUSES – PRESERVING HOMES  
PROPOSALS FROM SCOTTISH EXECUTIVE**

**JOINT REPORT BY DIRECTORS OF PLANNING AND TRANSPORT, HOUSING AND  
ENVIRONMENTAL & CONSUMER PROTECTION**

**Abstract: The Scottish Executive are considering introducing legislation to deal with the problems of keeping Scotland's private sector houses and flats in good repair. This report seeks Committee approval to respond to the consultation document issued by the Scottish Executive on how this can be achieved.**

**1 RECOMMENDATION**

It is recommended that the Committee agree to forward to Scottish Ministers the response to the consultation document, "Maintaining Houses – Preserving Homes" as per the appendix to this report.

**2 BACKGROUND**

2.1 The Scottish Executive are considering introducing legislation to ensure that private owners maintain their property in a condition fit for the 21<sup>st</sup> century.

2.2 There are three areas where views are being sought are:-

Local Authority Powers  
The Single Survey  
The Privately Rented Sector

**2.3 Local Authority Powers**

**2.3.1 Defects and Disrepair**

Legislation dealing with defects and disrepair of privately owned houses is outdated and complex. The Scottish Executive wish to simplify the powers available to allow Local Authorities to deal with these matters more effectively

A single statutory notice is proposed to replace the various Repair and Improvement Notices. The serving of a notice would result in a Local Authority having to give mandatory assistance, which will be determined by the Local Authority and may consist of advice, practical assistance, loans and grants. Presently the serving of a notice results in the requirement to award a grant.

A notice to repair would cover not only properties in serious disrepair but those which if left un-repaired would lead to serious disrepair or damage to adjoining buildings. It is proposed that Local Authorities be given powers to serve a maintenance order where future maintenance would be inadequate, owners have failed to carry out

previous common repairs, or enforcement action has been necessary. The notice would require owners to implement a maintenance plan, with access to mandatory assistance. Local Authorities are given powers to prepare their own maintenance plans and recover cost from the owners.

Local Authorities will be given powers to establish time limited sinking funds for future repairs and maintenance to communal areas.

A Local Authority will be given powers to prevent the occupation of a property, on it becoming vacant, in a Housing Action Area where Repair Notices have been ignored. It will become an offence for anyone who ignores a Repair Notice. A Local Authority can suspend the Repair Notice if the occupant(s) are elderly or infirm. This suspension would last until the property becomes vacant.

Powers of inspection are given to allow Local Authorities to inspect a property and if necessary carry out repairs. Further powers are proposed to allow Local Authorities to carry out additional works to return a building to a reasonable state of repair and recoup their costs. Where a Repair Notice has been served, occupiers without the necessary insurance cover can have their policies inspected by Local Authorities and if necessary a Local Authority can raise a civil action against the occupier without the necessary insurance cover.

### 2.3.2 The Tolerable Standard

The consultation document proposes that the definition of tolerable standard be extended to include adequate thermal insulation and safer electrical installation. This will have the effect of increasing the number of houses below the tolerable standard.

### 2.3.3 Area Renewal

The consultation document proposes that the powers available to Local Authorities to declare a Housing Action Area be made more flexible. Currently a Local Authority can declare a Housing Action Area where 50% of the housing in any given area fail the Tolerable Standard. The new powers will enable the Local Authority to declare a Housing Renewal Area where there are concentrations of 50% or more of houses in that area below the Tolerable Standard.

### 2.3.4 Assistance to Private Owners

Assistance to private owners will be extended to cover practical advice, assistance, loans as well as grant assistance.

### 2.3.5 Charging Orders

The rules covering Charging Orders will be made more flexible to increase the options available to Local Authorities in helping private owners. This will be particularly helpful when an owner(s) is/are blocking works of maintenance or repair in a tenement block which has been properly agreed by the other owners.

## 2.4 **The Single Survey**

#### 2.4.1 The Single Survey

The consultation proposes that a single survey be introduced for residential properties. This will reduce the number of surveys carried out when a property is bought. The survey will include details on the age of the property, condition, energy efficiency, basic accessibility for the disabled and valuation. The duty for producing the survey will normally rest with the marketer i.e. Solicitor or Estate Agent.

#### 2.4.2 Energy Performance Criteria Certificates for Residential Premises

The Scottish Executive propose to implement an EU Directive with regards energy efficiency for residential properties. These certificates will be made available when the property is constructed, sold or rented out.

The certificate will contain an assessment of the energy performance of the building which will be a number on a scale. The certificate will give details on the interpretation of the certificate along with details of how the energy performance can be improved.

This duty will apply to the sellers of all houses along with landlords whose tenants are exercising their right to buy. It will also apply to landlords and their prospective tenants.

### 2.5 **The Privately Rented Sector**

#### 2.5.1 The Repairing Standard for Private Landlords

The consultation document proposes to increase the responsibilities of landlords to require them to carry out a repair inspection before a tenancy begins, to notify tenants of work required, to carry out this work in a reasonable time and give 24 hours notice in writing of the need to gain entry.

Landlords would also have to ensure properties remain wind and watertight and that fittings and furnishings are fit for their purpose.

The requirements would apply to all tenancies with the exception of secure and short secure tenancies.

#### 2.5.2 Privately Rented Housing Tribunal for Scotland

Given that the introduction of a repairing standard for private landlords will only be effective if there is a way to enforce it, it is proposed to develop the role of Rent Assessment Committees to give tenants assistance with complaints with regards repairs. The Rent Assessment Panel from which the Committees are drawn will be renamed as the Private Rented Housing Tribunal for Scotland.

The Tribunal would have wide ranging powers to deal with disputes regarding repairs including the prevention of a property being re-let until the repairs are carried out.

#### 2.5.3 Protecting Tenants in Houses in Multiple Occupation

It is proposed that new primary legislation be introduced to give Ministers more powers to ensure the legislation is applied consistently.

The powers given to Local Authorities under Part VIII of the Housing (Scotland) Act 1987 will be repealed.

The licensing system in relation to HMO's will be changed so that:-

- Ministers will have powers to designate different categories of HMO for discretionary licensing with Local Authorities having the power to decide whether they will license them.
- Ministers will have powers to vary requirements for licensing.
- Applications for licence need not be publicly advertised/displayed where the occupants may be at risk.
- All licences will be valid for three years.
- Ministers will direct how fees are determined.
- Increased penalties for operating without a licence will include ceasing of rent liability.

#### 2.5.4 Adaptations for Needs Arising from Disability

It is proposed to give private sector tenants the right to alter their homes to meet any needs arising from a disability. They will require the consent of their landlord, whose consent should not be held unreasonably.

The Private Rented Housing Tribunal will have powers to intervene and decide if a refusal was unreasonable. Adaptations would be carried out at the expense of the tenant with any adaptations carried out which affect the letting potential of the property to be removed at the end of the lease.

#### 2.5.5 Extending the National Registration Scheme for Private Landlords

There are provisions in the Anti-Social Behaviour (Scotland) Bill to establish a national registration scheme for private landlords and their properties. Landlords and agents will be subject to a "fit and proper person" test.

A suggestion of the consultation document is that these powers be strengthened without causing more administrative and financial burdens to Local Authorities and landlords. Various suggestions are made and responses sought and which form part of the appendix to this report.

#### 2.5.6 Mobile Homes

The consultation document proposes that the protection to people who live in mobile homes be extended. Changes include proposals to alter leases, succession rights extended to same-sex partners, and protection of occupants of mobile homes from unlawful eviction and harassment.

### **3 FINANCIAL IMPLICATIONS**

- 3.1 Given the wide range to the proposals in the consultation document there could be significant resource implications for Local Authorities. This will become clearer when the final proposals are known and who is given the enforcement powers highlighted in the consultation document. Once this is known further reports will be placed before the Committee.

#### **4 HUMAN RIGHTS IMPLICATIONS**

- 4.1 There are no human rights implications arising from this report.

#### **5 CONSULTATION**

- 5.1 The Chief Executive, Directors of Finance and Law & Administration have been consulted in the preparation of this report.

#### **6 CONCLUSION**

- 6.1 The proposals, if implemented, as per the consultation document, will have a wide ranging effect on various matters affecting the maintenance of houses. They are likely to have resource issues for Local Authorities which will require attention if the proposals come into effect.

#### **NOTE**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/LM/KW  
14 September 2004

Alex Anderson  
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## MAINTAINING HOUSES – PRESERVING HOMES

### CONSULTATION SUMMARY

#### LOCAL AUTHORITY POWERS

##### Defects and Repairs

- 1. The proposed single statutory notice gives Local Authorities enhanced powers to deal with a wide range of condition problems. Is this the correct way forward?**

We agree that the framework should be simplified to enable a single statutory repair notice. However, there is a need for clear guidance in the use of such notices,( in view of the wide variation in degree of disrepair etc.), in order to avoid over zealousness and lengthy legal dispute over relatively minor matters.

- 2. Do you agree that Local Authorities should have the power to take out a maintenance order against a property or group of properties?**

We agree that Local Authorities should have the power to take out maintenance orders.

However, guidance would be appreciated on how to deal with situations where Councils may have a conflict of interest through owning or having an interest in a property which is affected by the provisions of the legislation. Particularly where a mixture of Council and private property is involved.

- 3. Should this maintenance order be limited to five years?**

We agree that maintenance orders should be limited to five years.

- 4. Do you agree that it is reasonable to require a sinking fund to be set up as part of the maintenance order requirements?**

We agree that it is reasonable for Local Authorities to have the power to require sinking funds, if it looks unlikely that a maintenance plan cannot be funded in any other way, but it should not be an automatic requirement.

- 5. Do you agree that there should be powers to control occupation of properties subject to statutory notices and, if so, how exactly should these powers be enforced?**

There is potential for increasing homelessness by closing properties unnecessarily. Again there is a resource issue for Local Authorities.

However, we see value in Option 3 ie. That houses should not be occupied until necessary works have been carried out.

- 6. Do you agree Local Authorities should be able to suspend a notice and, if so, that this suspension should be limited so it only applies until the property is sold or let?**

We agree that Local Authorities should have discretion to suspend notices until the property is sold or let.

- 7. Should Local Authorities be given powers to control occupation where**

**owners cannot be identified?**

We agree that Local Authorities should have the power to control occupation where no owner can be identified. The period of notice should be left to the Local Authority's discretion.

8. **Should Local Authorities have power to meet the costs of the share of communal repairs due from owners who will not contribute their share (to allow the works to go ahead), linked to a charging order to recover the costs of the works and administration costs?**

We agree that Local Authorities should have the power to meet costs of shared repairs from unwilling owners, linked to charging orders, but that this is not interpreted as a 'duty' on the Local Authority to do so. Local Authorities do not have the resources to act as intermediaries in communal disputes.

9. **Should Local Authorities have the power to inspect insurance policies of persons subject to the single notice?**

However, there is the potential for unnecessary bureaucracy.

**Tolerable Standard**

10. **Are our proposed extensions to the Tolerable Standard the right ones?**

This will be the case in older stone built properties which are in good condition but do not meet modern thermal standards. Guidance required on what is defined as basic thermal measures. And how electrical safety checks are to be carried out. This has the potential to be a significant resource issue.

11. **Should there be national guidance produced by the Scottish Executive on the interpretation of the Standard?**

We agree that The S.E should provide guidance on the interpretation of the standard, but that it is only guidance, and should not be prescriptive.

12. **Do you think that an action plan on below Tolerable Standard housing should be required in local housing strategies and that promoting the improvement of housing condition and quality should be a specified purpose?**

We do not agree that BTS action plans should be required in the LHS, as it is unclear what the practical benefits will be. An action plan infers a duty on Local Authorities to identify and monitor all BTS houses and take action where perhaps none is essential.

(ECP, on the other hand, feel that LA's **should** identify and monitor all BTS houses. Some form of action plan would therefore be necessary to decide what to do with them. The inclusion of 2 additions to the Tolerable Standard will have a significant resource implication in this regard.) It would also be beneficial to introduce a means of re-introducing houses which are the subject of a Closing Order back into the housing stock. Perhaps by withdrawing the CO and issuing the single statutory notice.

**Area Renewal**

- 13. Do you agree with the repeal of powers to declare Housing Action Areas and their replacement with powers to declare Housing Renewal Areas?**

We agree with replacing HAA's with Housing Renewal Areas.

- 14. Are the criteria for declaring a Housing Renewal Area the right ones? Should other criteria be included?**

We generally agree with the criteria for declaring HRA's, but have concerns with criteria 'e' – there would have to be indisputable evidence of market failure.

- 15. Are the proposed procedures for designating Housing Renewal Areas appropriate?**

We agree with the proposed procedures for designating HRA's.

- 16. Are the proposed powers for Local Authorities following designation reasonable?**

We agree with the proposed powers for Local Authorities except 'f' – the end section from 'to improve the amenity... to...specific objective of the action plan' should be removed. It is too open to interpretation and abuse.

#### **Assistance to Private Owners**

- 17. Do you agree with the introduction of a range of types of assistance?**

We agree with the introduction of the range of types of assistance.

- 18. Are the types of assistance proposed the right ones?**

We agree that the types of assistance are the right ones, but would suggest that Local Authorities have the discretion to make non-means tested grants available, for specific improvements identified through the LHS or through local community action plans.

- 19. Do you agree with the proposals for amending the legislation on grants?**

We agree with amending grant legislation, but see also above.

- 20. With the exception of adaptations for disabled persons and fire precautions, should eligible works for financial assistance be limited to those relevant to the Tolerable and Scottish Housing Quality Standards?**

We agree that eligible works be limited to tolerable and housing quality standards.



**21. Do you agree that subsidised load should be available as an alternative to grant?**

We agree that loans should be available as an alternative to grants, but are concerned that this will become the only option where Local Authorities have restricted budgets. Loans also impose a larger administrative burden on Local Authorities over a longer period than grants do.

**Charging Orders**

**22. Do you think that charging orders will be an effective means of releasing capital for carrying out repairs and improvements?**

We agree that charging orders could be a way of releasing capital for repairs, but only if Local Authorities have resources and intent to administer.

**23. Have we identified the circumstances in which it would be appropriate to use charging orders?**

We agree with the proposed circumstances where these could be appropriate.

**General**

Do you have any comments or suggestions in respect of any of the above proposals?

**SINGLE SURVEY**

**Single Survey**

**24. Should the Executive:-**

- **Take reserve powers to compel sellers to make a single survey available when marketing their properties; or**
- **Commence such powers along with the rest of the Bill; or**
- **Should this be left entirely to the market?**

The development of a single seller's survey for conveyancing is supported by Angus Council in principle, as one potential way of improving purchasers' understanding of their responsibilities, the energy efficiency, and repair and maintenance needs of a given property but it is not clear which would be the best way of introducing it; making it mandatory or voluntary. The former may be disproportionate, goes against principles of choice and poses significant resource issues for the body tasked with enforcing it. The latter approach, relying on market forces, presumably combined with the education of those involved in the buying and selling of houses about its merits, may take years to make a significant impact.

**25. Should there be exemption from the requirement to provide a single survey and, if so, what classes of property should be exempted?**

No.

**26. Should there be a time limit on the survey and what should these limits be?**

If the single survey is introduced then there should be a time limit on it. It is difficult to suggest what time limit should apply but six months may be appropriate.

**27. What is an appropriate enforcement mechanism if the survey is not made available as required?**

The question of enforcement will be difficult to control and careful consideration will have to be given if it is made mandatory and who is made the enforcing authority.

**28. Should any powers be wide enough to require sellers to provide other information, such as proposed for the Purchaser's Information Pack, or should it be restricted to a single survey?**

Yes.

**Energy Performance Certificates****29. There is the potential for sanctions to be applied where the EU Directive requirement on energy performance certificates is not complied with. What do you think would be appropriate sanctions?**

We do not think that any sanctions should be applied where energy performance certificates are not provided. To encourage owners and landlords to improve energy efficiency in properties, energy labelling should be voluntary, and used more as a marketing tool. Legislation forcing the issue is heavy handed. Alternatively, if it has to be a requirement, then NHER surveys should be free to home-owners, and landlords should have 10 years to supply them for all their properties.

**30. Should the energy performance certificate incorporate an A to G coloured banding energy rating, similar to the energy labels displayed when household appliances are retailed.**

Any energy performance certificate should be based on the NHER rating of 1-10. A-G would be confused with council tax bandings, whilst colour bandings would be useless in black and white house sale marketing info.

**General**

Do you have any comments or suggestions in respect of any of the above proposals?

There is insufficient capacity within the energy surveying profession to supply energy ratings to all houses for sale and rent in Scotland. In any case, the energy efficiency or otherwise of a house for sale is a minor consideration when potential buyers are assessing a house – it is the location that sells.

## THE PRIVATELY RENTED SECTOR

### The Repairing Standard

- 31. Are there any other elements that you would include in the modernised repairing standard for private landlords?**

We would not include any other elements in the repairing standard.

- 32. Do you agree with the proposed range of tenancies to which the new standard would apply?**

We agree with the proposed range of tenancies to which the standard would apply, but are unsure how holiday lets or mobile homes would be catered for. There is merit in including them in the requirement.

- 33. Should there be a statutory requirement that all written leases should include an explicit statement of the private landlords' repairing obligation.**

We agree that there should be a statutory requirement that all written leases include a statement of the landlords repairing obligation. Tenants would be better informed of their rights and expectations, and would also make these clearer to landlords.

### The Private Rented Housing Tribunal

- 34. What changes do you think would need to be made to the Rent Assessment Panel and Committees to equip them for their extended role?**

There could be a number of qualifications for panel members including: not being a landlord themselves, not acting in a capacity as a landlords agent or advisor. All members should be given basic training in building standards & housing law. There could also be a need to have a liaison officer from the Local Authority on each panel.

- 35. The name "Private Rented Housing Tribunal for Scotland" is a working title. Do you have suggestions for another name for the service?**

We suggest the name 'Private Rent Evaluation Panel (PREP)'.

### Houses in Multiple Occupation

- 36. Do you agree that a new legislative framework is necessary for houses in multiple occupation?**

We agree that a new legislative framework is necessary for HMO's.

- 37. Do you agree that the repeal of Part VIII powers is a good idea? If not, which powers would you retain?**

We agree that repeal of part VIII powers may bring benefits. However, we do not think this should take place until the new provisions are introduced. We also believe that there would be advantages in using the single statutory notice for minor breaches of licence conditions to obviate the need for more drastic action under licensing powers.

- 38. Are you in favour of the proposed changes to the legislative framework for**

**HMO licensing as set out? Would you add to, or question, any of these changes?**

We are in general agreement with the proposed changes to the legislative framework for HMO licensing.

The issue of enforcement in the case of absentee landlords should be addressed, however. And power of entry for authorised officers to reduce the need to apply for warrants.

**Adaptations**

**39. Do you have any comments on the possible introduction of a right for tenants with disabilities to carry out adaptations to their homes and how it would operate?**

We think that the right for private sector tenants with disabilities to carry out adaptations to their homes may bring potential problems for landlords, having to re-instate adaptations at their own expense, when tenants die or abandon properties. Re-charging is very difficult to operate in practice. Any allowance for this would also have to be restricted to adaptations which were required as a result of a condition having arisen during the course of a tenancy, and not being present before the tenant took on the lease of the property.

If the Housing Tribunal for Scotland decide that a refusal by the landlord was unreasonable, they should also have the power to require that the landlord and tenant investigate all other alternative local housing providers for appropriate adapted housing. The local authority liaison officer on the tribunal could facilitate this.

**Extending the National Registration Scheme for Private Landlords**

**40.** We do not agree that the registration scheme should be extended as it would impose too much regulation on landlords, and extra administrative burdens on Local Authorities, for questionable benefits. In fact, extra red tape may act as a disincentive to good landlords of single properties, (a large proportion of the private rented sector) who may be put off operating in the market, with the effect that availability could decrease, causing rents to rise; whereas unscrupulous landlords would still probably operate outside the regulatory regime in a cash based environment. We believe that the new registration scheme should be given a fair chance to bed down, and its success (or otherwise) be monitored over a three year period. A further evaluation could then be carried out to identify any problems or improvements necessary.

**41. If the registration scheme is to be strengthened should this be on the basis of “certification” approach set out above?**

The registration scheme should not be strengthened. See above.

**42. If the registration scheme is to be strengthened what conditions should be applied?**

The registration scheme should not be strengthened. See above.

**43. If the registration scheme is to be strengthened should this be as an alternative to the proposals for Private Sector Housing Tribunals?**

The registration scheme should not be strengthened. Instead the private rented housing tribunal could provide the monitoring role.

**Mobile Homes**

**44. Do you agree with these proposals and, if not, why not?**

We agree with the proposals for mobile homes. There would be merit in extending the requirements to deal with residential caravans.

**45. Will these proposals, taken with the existing legislation, adequately protect mobile home occupiers?**

We think that the new proposals, alongside existing legislation will address new tenants and owner mobile home occupiers, but not existing tenants or owners who may experience insecurity of tenure, harassment, or personal loss. We suggest that the legislation should also address these existing tenants where no lease is in operation, so that when sites are monitored by trading standards or other appropriate agency, there is a check done to ensure that the operator of the site must have a current lease agreement for each mobile home on the site.

Has any thought been given to boat and house boat dwellers and their lack of rights to a secure and adequately serviced mooring?

**General**

**Do you have any comments or suggestions in respect of any of the above proposals?**

The frustration of mobile home owners sales is non-transparent. In some cases the site owner does not specify his/her reasons Failure to consent after 28 days is appropriate, but the reasons for the failure should be available to the mobile home owner before application to the Sheriff Court.

All mobile homes tenants and owners should have the same rights to address any site management issues, to the Private Sector Housing Tribunal for Scotland. We suggest that the scope of this agency is widened to allow for this.

ECP feel that the review of legislation should be extended to the Caravan Sites and Control of Development Act 1960. The provisions of the proposed new housing legislation should embrace caravans and the single statutory notice should apply for equivalent situations. Enforcement of this Act is fraught with difficulties and licence conditions can only be applied to sites rather than the caravans themselves at present. If licensing is retained, the licence should be subject to renewal with a process for refusal and revocation.