

**ANGUS COUNCIL**

**NEIGHBOURHOOD SERVICES COMMITTEE – 20 AUGUST 2009**

**DRAFT HOUSING (SCOTLAND) BILL 2009 – ANGUS COUNCIL RESPONSE**

**REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES**

<p><b>ABSTRACT:</b> This report sets out Angus Council's Response to the Consultation on the Draft Housing (Scotland) Bill.</p>
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**1. RECOMMENDATION**

- 1.1 It is recommended that the committee:-
- (i) Note the Response at Appendix 1.

**2. BACKGROUND**

- 2.1 Report 417/09 provided Members with details of the consultation on the draft Housing (Scotland) Bill and a link to the document. Members have also had the opportunity to meet and have cross party discussions on the Bill and inform the draft response. The attached response has been shaped by the views of Elected Members and also of the tenants who are at the heart of policy development in Angus Council.
- 2.2 The response highlights that Angus Council is supportive of amendments to the Right to Buy legislation but believes that local flexibility should be retained and exercised where appropriate. The Response also makes it clear that the amendments to the approach to pressured area status are broadly welcomed and the flexibility contained within these proposals are sensible and helpful.
- 2.3 On the issue of regulation and inspection, the response makes it clear that Angus Council remains committed to continuous improvement of its services and relationships with its customers. Angus Council also makes it clear that we remain supportive of the principles of the Crerar Review and the streamlining of inspection of public services and we believe that this must apply to the Scottish Housing Regulator (SHR). Further, we believe that the SHR and local authority housing regulation must operate within a single and consistent system across all local authority functions and statistical returns, as set out in the recent Best Value Inspection Regime.
- 2.4 The response also take the opportunity to make a number of comments on the impacts of the current housing management and homelessness legislation and reflects on the pressures local authorities are facing in meeting homelessness targets and wider housing needs and aspirations within communities. Finally the response makes some comments on the reform of the housing investment system and sounds a note of caution on chasing numbers of developments against the long term financial viability of our citizens financial viability of our citizens and of our housing revenue account.

**3. PROPOSALS**

3.1 Proposals are set out in attached Appendix.

#### **4. FINANCIAL IMPLICATIONS**

4.1 There are no financial implications for the Council arising directly from this report.

#### **5. HUMAN RIGHTS IMPLICATIONS**

5.1 There are no Human Rights implications arising from this report.

#### **6. EQUALITIES IMPLICATIONS**

6.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required

#### **7. SINGLE OUTCOME AGREEMENT**

7.1 This report contributes to the following local outcomes contained within the single outcome agreement for Angus:

- Good quality housing is available to all in communities throughout Angus
- Good quality housing is available throughout Angus

#### **8. CONSULTATION**

8.1 The Chief Executive, the Director of Corporate Services, the Director of Infrastructure Services, the Head of Finance and the Head of Law & Administration have been consulted on the content of this report.

#### **9. CONCLUSION**

9.1 Angus Council accepts the need to modernise the right to buy and welcomes the local control elements built in to the consultation. The Council also welcomes the debate on the scope and role of the Housing Regulator, backs the current agenda of streamlining and consistency and calls for the SHR to comply with this agenda insofar as it regulates local authority housing functions. The response sets out the case for a review of the impacts of the current housing legislation and makes some suggestions on how landlords could be assisted to meet housing needs and aspirations whilst maintaining balanced communities. Finally the response welcomes the debate on housing investment reform but sounds a note of caution on developing without consideration of the future impacts on citizens' individual finances and the costs to the wider public purse.

**RON ASHTON  
DIRECTOR OF NEIGHBOURHOOD SERVICES**

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

**Hsg/NS/RA/AMcK**

## **Appendix 1**

### **Angus Council**

#### **Response to Housing (Scotland) Bill 2009**

##### **August 2009**

###### **Introduction**

Angus Council is pleased to be able to respond to the draft Housing (Scotland) Bill 2009. The headlines of the Bill are dominated by proposals on amendments to the Right To Buy scheme, but equally, if not more important, for the long-term of the housing sector, are the proposals in relation to the Scottish Housing Regulator.

The draft Bill is also notable for what it does not include. It is important to recognise that after nearly ten years of the Housing (Scotland) Act 2001 and over five years of the Homelessness etc. (Scotland) Act 2003, there is a range of issues around the areas which these pieces of legislation govern that requires reflection before committing to further legislation. These issues (along with supporting legislation in the areas of anti-social behaviour and corporate parenting) highlight an urgent need for a review of the impacts of these Acts on individuals, communities and our society in general.

It is interesting to note that this is the first piece of housing legislation considered by the Scottish Parliament in times of financial adversity. Both the 2001 and 2003 Acts passed through Parliament during times of relative financial prosperity and promised much for individuals, largely on the basis of growing Scottish budgets. The financial climate has now changed significantly, and the current financial challenges coupled with the ongoing impacts of elements of current legislation on individuals and communities have led Angus Council to include two additional issues which we believe should be considered alongside this legislative draft. This has been influenced by the original consultative paper, Firm Foundations and by more recent discussions with our Communities and the Minister. The issues, which will be explored after the formal consultation questions have been addressed, are:

- Managing tenancies
- Housing Investment

Finally we can confirm that the Council's response has been heavily influenced through discussions with both Elected Members and our tenants and wider stakeholders who should ultimately be the judge of how good we are as we strive to deliver better services year on year.

###### **General Comments**

From the Local Government perspective considerable effort and resource has been directed towards managing information for the purposes of scrutiny and regulation and inspection. Angus Council has supported COSLA in its efforts to develop an integrated and proportionate inspection regime for local government and one which is based on focus, balance and proportionality.

We are committed to the Concordat and the Single Outcome Agreement (SOA) and the spirit of these mechanisms, and we wish to see these developed further locally to put our communities at the heart of everything we do. We recognise that the Outcomes approach will take time to deliver fully, but both in our wider corporate approach and delivery of our housing function, we firmly believe that this is the right way to go.

As a result, in regard to regulation and inspection we have one overriding principle to which we adhere, and that is that there should be one overarching inspection body for local government. The Scottish Housing Regulator (SHR) should take its lead and direction from that body in relation to how and when it undertakes inspections, streamlining the current processes further and freeing up valuable resources which can be redirected to improving frontline services with our tenants. Our response is shaped with this overriding inspection principle in mind.

## **Response to Questions**

### **The Right To Buy**

*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?*

The Right To Buy has had benefits in terms of facilitating home ownership and creating tenure diversity. However, it has also depleted the supply of social rented housing, contributing to current problems with a mismatch between housing need and supply. The proposed reforms to the Right To Buy have a number of possible impacts on social landlords.

Exempting new social rented housing from the Right To Buy (with some restrictions) has the potential to open up new routes for both the funding and delivery of social rented housing in Scotland. In particular, this proposed change would remove one of the major barriers to a resumption of house building on a significant scale by local authorities. Ideally, this would enable local authorities with the necessary resources and political commitment to bring forward new developments of social rented housing which would complement the current Registered Social Landlord (RSL) development programmes. Investment in new, more attractive housing stock could enhance the future viability of the landlord activities of local authorities.

One issue for concern would be if the Scottish Government had any expectation that local authorities will take on an increasingly significant role in physically developing new social rented housing once the Right To Buy issue has been addressed. New development by local authorities must be financially viable over the long-term, while also delivering genuinely affordable rents for tenants. There is a very real danger that as financial pressures continue to press, Scottish Ministers might view local authority borrowing capacity or reserves as public money and take a directive approach to its use. Ministers must be mindful of the mistakes of the past and the legacy of inappropriate housing for the long-term and must not chase completion rates at the expense of long-term community cohesion. Ministers must also be mindful of not placing financial burdens on current and future tenants in pursuing a development numbers game as this will simply create long term financial instability for social landlords and push rents up to the point where only those on benefits will be able to live in local authority and RSL housing. Even worse, would be a two tier system with newer, more expensive housing

only accessed by the few either with their own fiscal resources or entirely dependant on benefits.

Not all Scottish local authorities will be either willing or able (many have large scale bulk contracts in place to meet the Scottish Housing Quality Standard SHQS) to take on a lead role in delivering new development. This could lead to significant problems if funding for RSL development programmes is to be scaled-back as a result of any intended substitution via HRA budgets.

Simply substituting local authority development for RSL development is unlikely to achieve the desired overall increase in supply of new social rented housing, whatever the perceived financial benefits for national budgets at this particular time. Angus Council is currently working with local RSLs to address the planned £1 million reduction in development funding for 2010/11, which is already having a negative impact on RSL development activity and local employment.

The proposed changes to the Right To Buy are likely to stimulate a short-term increase in Right To Buy applications, which happened when the legislation was amended previously. The numbers of sales involved are still likely to be small in comparison with the peak sales rates of the early 1990's, and any financial benefit for landlords in terms of capital receipts will need to be balanced against a risk that local supply shortfalls could be exacerbated.

In the longer term the proposed changes to the Right To Buy are likely to accelerate the current downward trend in Right To Buy sales. While this will help to retain existing social housing stock, it may have a negative impact on delivery of stock improvements by social landlords. In many instances, capital receipts from Right To Buy sales form a useful source of funding for social landlords seeking to upgrade their existing housing stock to meet the SHQS. It is possible that a sudden reduction in receipts from Right To Buy sales could delay some landlords' programmes of works to achieve SHQS compliance. Whilst this is not a particular risk issue for Angus Council in the short term, in the long term adjustments to funding levels and tenant expectations will need to be carefully managed.

In the longer term, it might also be beneficial to give social landlords the option to introduce voluntary locally-developed Right To Buy schemes. Such schemes could enable landlords to dispose of stock in a manner which supports local communities while also facilitating home ownership and creating tenure diversity and could generate resources which could be directed to delivering new build housing in a variety of formats.

In summary, the proposed changes to the Right To Buy could deliver a positive impact in terms of meeting housing need over the longer term, but could also have a negative financial impact on some social landlords that will require to be managed in the short term. It is important that Scottish Government clarifies any expectations it may have re a resumption of large scale house building by local authorities, and how this will impact upon RSL development programmes. Without clarity on these issues, it will be difficult for landlords to plan for the future through the next round of Local Housing Strategies, Strategic Housing Investment Plans and Development Plans.

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

The definition of new supply social housing provided at Section 109 of the draft Bill is considered appropriate.

*1.3 If not, what definition do you propose?*

No amendments are proposed.

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

The safeguards proposed for existing tenants appear to be fair and reasonable. Further comments are made under the questions relating to pressured area status.

*1.5 If not, which safeguards do you propose?*

No amendments are proposed.

*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?*

We are in agreement that new tenants entering the social rented sector after the date on which the section comes into force should no longer have the Right To Buy. In the longer term this change will help to conserve the existing social rented housing stock, and will be particularly valuable in areas where there is already a shortfall in supply.

The actual numbers of properties retained within the social rented housing stock are likely to be relatively small, but this change could still be of value in areas with a shortfall in supply, pending increased new-build completion rates. We are however mindful that despite the current downward trend in Right To Buy sales, the Right to Buy has been a valuable option for those seeking an affordable entry into home ownership.

In this context, locally-developed Right To Buy schemes which aim to re-balance landlords' housing stock while facilitating home ownership may well have value. We will also be keen to see if the development industry and planning system are able to respond to the need for a greater range of options for low cost home ownership, beyond the shared ownership schemes currently being promoted.

*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?*

It seems reasonable to ensure that tenants of other relevant landlords will continue to be given the Modernised Right To Buy if they transfer directly to the social rented sector.

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

The scope of the proposed reform to pressured-area designations is considered to be appropriate, and the proposals put forward are to be broadly welcomed. There are some concerns re the loss of opportunities for existing tenants to access home ownership, and alternative mechanisms for Low Cost Home Ownership may need to be developed.

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

Increasing the maximum designation period for pressured-area designations from five to ten years is a move we would support. This would make the work of local authorities in obtaining pressured-area designations more valuable in terms of the retention of the existing social rented housing stock. Increasing the maximum designation period for pressured-area designations also has the potential to assist the planning of future development to reflect housing need and existing supply.

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

The proposal to allow particular house types to be designated as pressured is very welcome, as it would give local authorities an additional tool to tackle shortfalls in the supply of social rented housing. Experience suggests that the combined effects of the development policies pursued by former District Councils, etc, and subsequent Right To Buy sales, will have produced shortfalls in the supply of particular property types and sizes in many parts of Scotland. For example, there is a shortfall in the supply of larger family housing in many parts of Angus. We do, however, particularly welcome the ability to be flexible, and would not want to rule out the ability to sell certain property types and sizes at certain times where sales would be to the overall advantage of tenants, local communities and the Council.

*1.11 Should Ministers devolve pressured area decision-making to councils?*

In the context of the developing “strategic housing authority” remit for local authorities, it would be logical to devolve decision-making on pressured-area designation to local authorities within a framework of core national guidance or templates.

*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?*

If decision making on pressured-area designation is to be devolved to local authorities, it will be important to ensure that a consistent and justified approach to designation is adopted across Scotland. Guidance will be required to ensure consistency, and it would be logical to link pressured-area designation to the findings of Housing Need & Demand Assessments (HNDA’s) and Local Housing Strategy (LHS) objectives and targets.

For example, where an HNDA identifies a significant shortfall in the supply of social rented housing within a Housing Market Area, and the subsequent LHS views addressing this shortfall as a priority but also identifies resource constraints, designation of a pressured area would be justified.

*1.13 Do you agree with the criteria/approach set out above?*

It would be logical to provide updated guidance for RSL’s re applications to extend the ten year suspension of Right To Buy entitlements for some tenants beyond 2012. This does not apply to the majority of RSL’s operating in Angus at present.

*1.14 If not, what alternative criteria/approaches would you suggest?*

No amendments are proposed.

*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?*

Angus Council is firmly committed to supporting members of the armed forces through their housing need journey. The proposed revised guidance to social landlords on Continuous Occupation Discretionary Powers does create some room for debate with the overall direction of travel evident within the remainder of the draft Bill. In essence, social landlords would be strongly encouraged to take a more liberal attitude to the use of their discretionary powers in relation to the “continuous occupation rule” (Section 61 (10) (iv) of the 1987 Act). Whilst we would be open to discussion on this issue the idea does run contrary to the remainder of the proposals re the Right To Buy within the draft Bill, which actively seek to minimise Right To Buy sales. Some may view it as contradictory to seek to conserve the existing social rented housing stock by ending the Right To Buy for new tenants, while at the same time seeking to encourage Right To Buy sales to primarily ex-service personnel.

If there is evidence of a particular problem with the ability of ex-service personnel to meet their housing needs and aspirations, surely this should be addressed via the Scottish Government’s LIFT schemes, rather than by encouraging further depletion of the social rented housing stock?

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

If the draft Bill is intended to conserve and make “best use” of the existing social rented housing stock in Scotland, then social landlords should not be encouraged to take a more liberal attitude to the use of their discretionary powers in relation to the “continuous occupation rule” (Section 61 (10) (iv) of the 1987 Act).

### **Scottish Housing Regulator**

*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?*

We believe that any modernised regime which seeks to regulate local authorities must follow the Crerar principles, and operate within a unified and agreed framework. We believe that any regulatory programme should seek to focus social landlords’ efforts on the broad objectives outlined within the draft Bill, along with tenants’ priorities which are lawful, realistic and achievable. Measures of performance should accurately quantify performance improvement in a manner which makes performance information directly comparable.

*2.2 If not, what should be the purpose and why?*



See comments under 2.1, above.

*2.3 Do you agree in principle with the risk-based and proportionate approach to regulating social landlords that we outline above?*

In general terms, any move to lessen the resource requirements which regulation imposes on social landlords, and release resources for service improvement, development and delivery is to be welcomed. A greater role for tenants in assessing the performance of landlords would also be welcome in terms of ensuring customer focus. Our tenants are very clear in their own view which is that they should be at the heart of regulation of the services we provide to them. We support that approach and are developing new local performance scrutiny arrangements as well as policy development programmes with our tenants.

We believe that Scottish housing badly lacks co-ordinated investment in training and performance improvement. Local authorities in Scotland, and increasingly the RSLs, are investing time, resources and commitment to involvement in the Scottish Housing Best Value Network. Just as the Scottish Government has invested in improving training in the field of social work, we believe there is a compelling argument for a similar approach in housing. We believe that this would enable more comparable performance reporting to be developed and may encourage more unified policy development driving best value and continuous improvement while drawing on examples of excellence from within Scotland. This peer learning approach is already operating and is worthy of much more investment and promotion.

We support the proposed system of regulation based upon self-evaluation by social landlords and view this as consistent with the wider approach to scrutiny of public services being adopted by Scottish Government. We have just undertaken the Public Sector Improvement Framework PSIF model in Angus, and whilst it has led to the development of a comprehensive improvement model we are aware that as a model it may have limitation in its applicability and relevance for our tenants. We would welcome discussion on the development of a self assessment model which would allow our tenants and service users to be at the heart of a rolling programme of inspections aimed at improving specific and general services and performance.

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

The regulation of social landlords in Scotland should be based upon the outcomes and standards contained within the Concordat. Any additions proposed via the Scottish Social Housing Charter and locally-developed Charters must fit within the SOA approach.

*2.5 Should we continue to use the term 'social landlord' to describe local authority landlords and RSL's?*

It is acknowledged that the term "social housing" can in some instances have negative connotations, and can also attach an element of stigma to tenants. However, re-branding social housing is unlikely to prove entirely effective in addressing this. Those who currently seek to stigmatise "social housing" will quickly identify any new term adopted. Unless any re-branding exercise were to be linked to enhanced service

standards, it may also lead to cynicism amongst customers and the wider public, especially if there were to be significant expenditure on launching and promoting a new “brand”.

*2.6 If not, what term should we use?*

It is suggested the tenants themselves should be consulted on this aspect in line with the community led principles inherent within the consultation

See comments under 2.5.

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

We are very supportive of the Outcomes based approach advocated, and feel that the proposal to set outcomes and standards for social housing within a Scottish Social Housing Charter (SSHC) is to be welcomed, provided that it is set within the Concordat and Single Outcome Agreement approach.

*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?*

We believe that ultimately all landlords providing housing whether with public subsidy or not should be encouraged to sign up to the National and Local Outcome Agreement approach. If this were the case, and all organisations developed policies, practices, strategies and funding cycles national commitments such as the 2012 homelessness target might be easier to achieve.

*2.9 Do you agree that the modernised SHR (Scottish Housing Regulator) should be established as a non-Ministerial department under its own Board?*

The proposed establishment of the SHR as a non-ministerial department with its own board would be beneficial in terms of underlining the independence of the regulatory process and reducing any concerns re perceived “political influence”. Care would have to be taken with the appointment of non-executive members to the board to avoid any suggestions of conflicting interests, etc.

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

See comments under 2.9.

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

This is presently the job of local government, and one our elected members take very seriously. We believe that this can and will be achieved through the current Single Outcome Agreement model rather than the creation of a new approach. We are also concerned by the possibility of fees being charged, by the modernised SHR, especially when set against the cost of around £300,000 for our pilot inspection. These are valuable resources which we could dedicate to service improvement rather than funding an additional external body.

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

See comments under 2.11.

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

We are content that it is the job of Scottish Ministers in conjunction with their partners, including COSLA, to set national direction and national standards and would fully endorse the strength of this democratic mandate.

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

This is an agenda that local authorities have signed up to, and will continue to support and promote both locally and nationally. If there is to be an enhanced roll for comparing performance, it can only ever be reliable if the recorded performance is recorded using exactly the same methodology within each organisation. We would again emphasise that improved value for tenants is most likely to be derived from service improvement and development by landlords rather than a focusing of resources on regulatory systems. Both local authorities and the combined and streamlined inspection approaches have a role to play.

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

We believe the current Statutory Performance Framework (SPI) framework provides a stable platform for performance measurement.

There is uncertainty within the draft Bill as to how information on the performance of local authorities will be collected. Whilst we do not believe that the Scottish Housing Regulator should add to the current burden of reporting and regulation, we would welcome the early publication of detailed proposals for the collection of performance information from local authorities. It will be essential to ensure that information is collected with directly comparable methodologies (or agreed variants), and any reported performance adjusted so that the regulator and public could be certain that like for like is being compared.

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

See comments under 2.14 and 2.15.

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

In the context of a modernised system of regulation, it would be logical to seek to replace the current inspection powers of the SHR.

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

At an initial consideration, the new provisions proposed in respect of inquiries and information appear to provide a satisfactory replacement for the current inspection powers. However, the effectiveness of the new powers in practice is likely to be to a large extent determined by the approach to the use of the new powers which the modernised SHR would be required to develop.

*2.19 If not, what approach would you suggest?*

See comments under 2.20.

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

The Scottish Government is correct in highlighting the critical importance of the financial viability and good governance of RSL's. As such, it is entirely appropriate that the SHR should be required to assess and report on the financial viability and governance of RSL's, in the same way that local government currently has to account for the use of its resources via the Best Value regime. It will be important to strike a balance between the proportionate use of the powers outlined within the draft Bill and the need for swift corrective action in the event of problems with the financial viability or governance of a social landlord being identified.

*2.21 If not, what powers would you suggest?*

See comments under 2.20.

*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?*

Angus Council has no comment to make on this part of the draft Bill.

*2.23 If not, what would you suggest?*

Angus Council has no comment to make on this part of the draft Bill.

*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?*

Given the proposed establishment of the SHR as a non-ministerial department with its own board, and the benefits this would deliver in terms of underlining the independence of the regulatory process, it would be reasonable to establish a system in which Ministers set the basic criteria for eligibility to seek registration as an RSL, but the criteria against which applications are tested are set (and implemented) by the SHR.

*2.25 If not, what approach would you suggest?*

See comments under 2.24.

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

Little is said on the case for allowing profit-distributing bodies to become eligible for registration within the draft Bill. However, Firm Foundations outlined the Scottish Government's desire to make public subsidy for affordable housing provision available to organisations which do not conform to the traditional RSL "model". The expectation is that such a move could open-up additional sources of affordable housing supply. However, at a time when levels of development funding are proving insufficient to support current RSL development programmes, simply adding to the number of prospective developers seeking to access Scottish Government funding is unlikely to increase the number of new social rented properties completed.

If allowing profit-distributing bodies to become eligible for registration would allow additional sources of funding for the development of affordable housing to be accessed swiftly, such a move is not to be dismissed out of hand. However, appropriate safeguards would have to be in place, both in relation to access to public funding and in terms of ensuring a good standard of service for tenants. Angus Council is not against the proposal in principle and would be happy to see this debate progressed further, again, with the context of delivering outcomes.

*2.27 If so, do you think it is right to have specific enforcement powers for profit-distributing RSL's?*

There may well be additional risks attached to the distribution of public subsidy for the development of affordable housing to organisations which do not conform to the traditional RSL "model". As such, it would be appropriate to consider putting additional financial regulation and safeguards in place. If over time the distribution of public subsidy to profit-distributing bodies becomes the norm to increase the number of new social rented properties completed, there may well be a need to develop a safety net for those RSLs who participate, to prevent their over exposure to potential volatility in the market.

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

The specific enforcement powers proposed in relation to profit-distributing registered landlords seem reasonable. It would be prudent to specifically address the action to be taken to secure social housing assets in the event that a profit-distributing body were to experience a financial failure.

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

See comments under 2.28.

*2.30 Do you agree that RSL's should only have to seek consent for these three areas of rule changes?*

The proposed changes to current arrangements for rule changes by RSL's appear reasonable. Presumably the SHR will be able to monitor the impact of any rule changes by an RSL, even if consent for the change is not required?

*2.31 If not, what approach would you suggest?*

See comments under 2.30.

**Conclusions**

Angus Council is supportive of reforming the Right To Buy but believes that in having had the policy in place for such a lengthy period there remains a function for the policy within a locally determined framework. We are pleased that the consultation allows this to be developed and welcome the flexibility set out in the pressured area status section of the consultation.

In relation to the Scottish Housing Regulator we have noted and welcomed the risk and proportionality approach which has been developed. We are however part of the wider local government family and are a supporter and promoter of the Single Outcome Agreement approach and the streamlined audit system set out in the Best Value II programme. We believe that the SHR, in relation to its work with local government, should fit its work within this framework rather than looking to amend a separate or new framework. As a Council we support the democratic primacy of Scottish Ministers and locally Elected Councils to set national and local standards respectively and view this as democratic function rather than one to be carried out by an unelected body.

We have set out proposals to improve performance and professionalism and believe that housing in Scotland has much to learn from the significant focus on training and improvement the social work professional has undergone as a result of the Changing Lives report. Our view is clear that there are existing benchmarking mechanisms and bodies which we and others are participating in and if the burden and cost of regulation can be reduced more effort and resources can be dedicated to improving the use and outcomes of the benchmarking process.

Finally in the next section of our response we make the plea that housing professionals should be registered and that minimum standards of qualifications should be set and adhered to along with binding continued professional development. Given the most recent statements made in the Regulator's Shaping Up For Improvement report, this idea is now over due.

## **Additional Comments**

### **Managing Tenancies**

Following representations made to the Minister, by Angus Council, we wish to submit some observations on the challenges of managing tenancies and the creation of stable, attractive and thriving communities within the scope of current housing law and the world of corporate parenting.

The purpose of these comments is to provide some illustration of the challenges local authorities, RSLs and local communities are facing in the desire to provide housing for those in need, create and sustain balanced and sustainable communities and manage far reaching and enlightened legislation.

This section is not about attacking the housing or homelessness legislation which has very laudable principles and objectives but to set out how the implementation of housing law, in conjunction with other pieces of linked legislation, has created tensions within and between our laws and within our communities.

This section does however raise many of the challenges facing local government and social landlords in tackling the issues raised by the Scottish Housing Regulator in the report, "Social Landlords in Scotland: Shaping up for Improvement." The Regulator has failed to highlight the legal and social framework which provides the context and environment in which local authorities work and failed to recognise the challenges that this environment brings and the significant changes in the client groups to whom we now owe an ever increasing and lengthening responsibility.

If the Regulator and the Government are serious about improving the services to tenants and communities then the legal context and the issues and challenges currently being faced by landlords must be clearly understood and compromises or solutions found. Clarity on the intentions of the law and its interpretation and delivery through practice are essential and that is why we believe there is an urgent need for national investment in training which we believe should include the statutory registration of housing professionals in a similar manner to that of social workers.

### **Background**

Angus Council has embraced the 2001 and 2003 legislation and its principles and between 60% and 70% of new tenancies let in Angus currently are made to those from homeless applicants. In addition the priority need category has been removed and rather than ration allocations through notional categorisation, Angus Council weighs housing need through a holistic Single Shared Assessment Matrix. However, even within this embracing approach, Angus still only provided secure accommodation to just over 50% of those who applied as homeless and has found it challenging to meet the needs for temporary accommodation. We have, and will continue to seek, to deliver the law and its intentions in the knowledge that this is, at times, at the expense of those who seek Council housing because it is a positive and affordable choice, particularly within a lower wage economy. We do so in the knowledge that we will face challenges as a result of this approach but we do so because it is right to do so.

Our concerns are not that the direction the law has set us in is incorrect, our concerns are that the balance between rights and responsibilities (and needs and aspiration) is, in

the eyes of our communities, not effective and despite our efforts and desires we are no longer able to deliver our rightly held goal of creating balanced and sustainable communities, despite adhering to the law and its principles.

It is clear through engagement with tenants, tenants groups, community councils and neighbourhood watch groups that there is now considerable disquiet within a significant section of existing communities regarding the operation of the current allocation and social support policies and the manner in which the tenancy agreement is enforced.

These concerns are:

- Many tenancies are being allocated to households who do not have the home or life skills to sustain their tenancy in an appropriate manner
- A high proportion of tenancies being allocated to those with additional needs immaterial of community background and location, squeezing out those who seek affordable housing to rent within their existing stable communities but are not deemed vulnerable by the current legislation and guidance
- The never ending duty to accommodate and provide support and the consequent cycle of allocations based on the current law which, to communities, appears to reward poor, destructive or antisocial behaviour with further support, is sending a contradictory message to the majority within local communities
- The lack of statutory compulsion to accept and engage positively with the assessed support package
- The capacity of the Council and the Police to respond to people's complaints of antisocial behaviour is, for a variety of reasons, limited and slow. Notwithstanding recent service developments in the field of anti social behaviour such as community wardens and anti social investigation officers, many complaints are not resolved as rapidly as communities would wish and problems remain unaddressed, and where perpetrators are removed from the current situation the Council has a duty to, at the very least, provide temporary accommodation and support which adds to the perception of imbalance in the law
- In consequence many residents increasingly report dissatisfaction with their homes and their communities. This means that many residents are required to either put up with the problem or, in some instances, are forced to move away, or live in fear of antisocial behaviour
- The Scottish Housing legislation provides for the need for housing support to be assessed and offered but does not make the acceptance of that support in any way binding
- There are conflicts and challenges between and within individual pieces of legislation, management of tenancies (arrears, antisocial behaviour) and the desire not to evict, the legal option to evict versus the corporate parenting responsibility, the conflict between supporting the wider community right to a



settled environment versus managing and supporting challenging behaviour or a clash in lifestyles or the role of the Scottish Housing Regulator in making comments on allocations to specific age groups for specific properties

### **Reviewing the Impact of Legislation**

The Homelessness etc. (Scotland) Act is currently being implemented in stages. There is an expectation that it will be fully implemented by 2012, however it is important to note that this and other pieces of housing legislation were developed and passed when the economy was surging ahead and there seemed to be a continuing increase in the availability of public and private resources to drive ambitious legislation forward. As time has gone by there have been rapid changes to the economy at the global and local level and these financial challenges are now critical to timeframes within which legislation can be delivered or should be reviewed. It is presently safe to assume that the supply of affordable housing for rent will not increase at the rate of housing need, without some imprudent investment choices, and the abolition of priority need and intentionality is likely to be to the detriment of existing non-homeless households on the waiting list.

As a result of this, applicants on the waiting list, those who either aspire to being a council tenant or have a non urgent need for housing are likely to face increased difficulties in obtaining council tenancies. It is possible that this will lead to the increasing stigmatisation of council housing and further develop its reputation as being the tenure of the last resort whilst at the same time preventing those on modest incomes from realistically having the opportunity to access the most affordable homes within their communities.

### **Effects of the Legislation**

At the basic level, the effects of the legislation, for those authorities such as Angus who are attempting to operate with the law and the spirit of the law, are that an increasing number of applicants for housing through the homelessness route are from younger people both single and with families. The reality is that many (but not all) of these applicants have chaotic lifestyles and relatively poorly developed life and homemaking skills. It cannot be stressed enough that the fact that a household is homeless is not an indication of an inability to sustain a tenancy. However many homeless households have needs other than a requirement for housing. Indeed it is often the existence of these needs that contributed to the household becoming homeless and to their vulnerability. If these needs are not effectively addressed, the possibility of estate management problems occurring can be high and the threat to sustaining a tenancy can also be high, notably through non payment of rent, failing to complete housing benefit forms or failing to behave in a manner which contributes to the development of the community but challenges the cohesion of the community.

There is now a concerning perception that a high proportion of the problems which individuals, tenants, spouses/partners, children or visitors, exhibit are housing problems because the problems happen in and around the house and there is an expectation within the legislation that social landlords will be required to confront the behavioural problems of individuals that the medical profession, social work department and legal system have been unable to address - this despite the fact that often the only "stick" the law provides is to remove the right to a tenancy but then the law requires some form of other housing and support is once again provided.

### **Issues for Discussion**

The concept of housing need and the desire to meet housing need is not in question within the section of this response; the challenges are to do so in a manner which balances the proportion of those in housing need with those who aspire to rent from social landlords. The challenge is to provide accommodation and manage that accommodation and the wider community and tackle challenging behaviour preventing tenancy failure, but the challenge is when tenancy failure does exist, where that is through actions such as anti-social behaviour, failure to pay rent, failure to manage the tenancy or failure to accept support, then the loss of tenancy must mean something both in reality and in the perception of the community.

There are several areas and critical timeframes where discussion would be helpful:

### **Clarity of the Law**

The law must be clear and the intentions of the law clearly defined. The 2003 Act is based on no one being homeless or made homeless, but there is no debate to the overall cost to communities or to the system or public purse and there is now a sense that no cost is too high in the pursuit of this goal. Did the 2003 Act expect people who have not paid their rent to be almost immediately re-housed? Do Ministers expect those subject to a closing order for antisocial behaviour to be offered temporary accommodation whilst they are removed from their community as a punishment and to give the community respite? Did the law expect breaches of tenancy to be punished through the courts and then a new tenancy to be created via a joint tenancy route? These are some of the challenges and conflicts facing public services and some of the questions which require discussion and the questions our communities are putting to us

### **Conflicting or Complementing Law**

As Council departments work more closely together in the pursuit of outcomes there are some issues of legal "fog", most notably between the corporate parenting responsibility and breaches of tenancy, the issue can again be distilled into one of when can a duty be discharged. Is there a point, legally, or indeed morally, when all avenues are exhausted and, if so for how long? Finally, is one piece of legislation greater in strength than another? If so who is making that decision and what is the view of the Regulator Age discrimination and allocations is a good example of this.

### **Assessment**

All assessments for housing should be based on the single shared assessment, developed from the social work model. Where applicants fail to turn up for assessments should the case be legally closed and the duty ended with a right to appeal? Are there lessons to be learned from the NHS on the management of their waiting and treatment lists? Similarly where applicants fail or refuse to engage or supply the information needed to make a determination, should the case be closed and the duty ended?

### **Temporary Accommodation**

During temporary accommodation, where behaviour is challenging or rules broken (curfew or non residence), or non payment of rent, should the temporary accommodation cease and the duty be ended or is the cycle of continuity duty the accepted approach? Should the legislation stipulate circumstances under which the duty may be withdrawn such as non payment of rent, anti-social behaviour?

## **Housing Support**

Many individuals are assessed as needing housing support who do not participate in that support and then go on to present problems. Should/could accepting housing support be a statutory condition or a condition of the tenancy and if not accepted, what sanctions could be used?

## **Specialist Provision/Accommodation of Last Resort**

The legislation made provision for accommodation of last resort but this has never been explored further as to what it means and what it would mean if this was not successful, is it time to hold that discussion? Many individuals with assessed needs may well struggle to sustain mainstream tenancies in the short term but there is limited availability (or resources) for specialist supported accommodation, should this be a national priority for investment and again what rules or conditions could be linked to this? In this scenario applicants would be offered supported accommodation as an alternative to eviction but to strengthen the corporate community planning duty and to prevent such individuals falling through the net, legislation could be considered that places a legal duty upon the police, health professionals and the local authority to provide a package of care in a similar vein to the MAPPA system for sex offenders. Such a duty would also need to ensure that the individual's responsibilities are addressed in addition to their rights. Currently legislation can appear to the public to provide individuals with rights in a "consequence free" context.

There would be significant resource implications arising from the proposals. Supported accommodation is expensive and given the likely problems arising from the client group, staff numbers would need to be high. Continued delays in investigating this solution at the national level results in authorities having to manage continued community frustrations which simply adds to the negative view of social housing in Scotland.

## **Private Sector – Discharging Duty**

Angus Council would welcome further debate on the issue of discharging homelessness duty within the private sector. This previously floated idea would expand accommodation choice and increase the potential to meet the 2012 target.

## **Registration and Improvement of Housing Professionals**

As part of the drive to continuously improve, Angus Council believes that there is a great deal that can be learned from the investment and focus which the Social Work profession has secured in partnership with the Scottish Government and its predecessor. There has been a lack of national focus on overarching basic standards for housing professionals as opposed to the services they provide. Angus Council believes now is the time to enhance the professional image of housing by making it a statutory responsibility to be registered to practice in a professional setting and that that registration should be linked to agreed qualifications and career development. This is an agenda we are developing locally and would hope that this would generate support to become a national commitment, a commitment which would in part answer some of the criticisms levelled at the profession by the Regulator. The Regulator should participate in this programme and become a critical element of improvement rather than simply being critical.

## **Summary**

This section of additional comments does not attack, in any way the direction or goals of current legislation. It has set out some of the perceptions which communities have within

the current framework. It is accepted that this is a subject that can polarise views but to avoid a debate or not to accept that there are differing views would undermine the principles of good policy and indeed democracy. The issues raised in this section are done so for the purposes of debate and it is hoped that this will be seen in that light and not as an attempt to shirk the responsibilities placed upon us by the law but to enhance our understanding of them and to find ways in which we can make them work within a balanced approach to the law and to our respective communities.

## **Housing Bill Investment Issues**

In this section of our additional comments, Angus Council wishes to discuss issues of housing investment.

We recognise that we are in unprecedented financial times and that every public pound is subject to close scrutiny. We also recognise that the Scottish Government and its partners in Local Government and Registered Social Landlords have considerable challenges in meeting the current level of housing need whilst trying to deliver the challenges of the 2012 Homelessness target and the 2015 Scottish Housing Quality Standard and the need for new affordable housing for rent or low cost sale.

### **Whole System Response**

We support the principle of streamlining investment and ensuring that there are efficiencies in the procurement and development system. Our comments in relation to the management of tenancies and the review of the operation of the current housing legislation are relevant to this section. To reduce the potential impact on investment budgets, Ministers should see the need for housing investment in the round and as well as looking at making savings in the procurement and development process, Ministers should also be looking at whether or not the entire publicly funded housing system is delivering best value and being put to priority use.

Ministers should satisfy themselves that, in order to meet the homelessness targets, there is a greater focus on the use of existing housing stock. Currently Scottish Government research has shown that local authorities are making more direct efforts to house those assessed as homeless. In Angus 60% – 70% of our allocations are provided to those assessed as homeless. This still equates to only 50% of those assessed as homeless. We do have referrals under Section 5 of the 2001 Act with RSLs and are concluding work on our common housing register, but the greatest impact which could be made is on pushing for more commonality in allocations policies. Ministers could tie public money to participation in such schemes as a means of securing more houses to those assessed as being in most in need. This is certainly an area of community benefit Angus will tie into any selection process for a preferred developer.

### **Generating Investment**

Angus Council is concerned that there is an emerging view within Scottish Housing that Councils should be proactively using any prudential borrowing capacity and use this to fund new build housing developed either directly or through funding RSLs. Whilst the 2001 Act made provision for Councils to fund external bodies it is a moot point as to whether that provision was ever designed to act as a substitute funding source when the Scottish Government has difficulty in accessing capital finance.

Our concern is not that this avenue should not be explored but that there has yet to be an effective debate between COSLA and its members and COSLA and the Scottish Government on how to secure additional investment and what the price of this should be. Angus Council and its tenants would not be opposed to having that debate and could model the impacts of such a policy but the debate needs to be held openly and fully and any policy operated within a clear set of principles or rules designed to protect individual tenants and the wider housing revenue account for the long-term.

Angus Council and its tenants are also concerned that in order to raise prudential borrowing, rents must go up. Angus has managed to invest heavily in its stock and will meet the SHQS on or before 2015. To do so we have invested in bulk contracts which have accelerated the rate at which houses have been improved. This creates a cyclical investment need which is being planned for in an HRA Business model and will be confirmed through the development of an asset management strategy. Only through this detailed analysis will we be able to ascertain how much investment will be needed over a 30 – 60 year period, how much money can be raised from rents and how much borrowing will be needed to fund any shortfalls.

Our concern is that in a low wage economy we must maintain affordable rents or else we run the risk of creating an affordable housing sector which is actually only affordable to those on benefits. This will bring with it problems of balance within communities and may be a disincentive to work or at worst an incentive to no longer work or seek work. This in turn will lead to pressure on the housing benefit budget and it remains to be seen whether the Chancellor and his officials will allow increases in housing benefit to go unchecked. It would appear to Angus Council that any additional borrowing would simply push up public sector debt and impact on the wider Public Sector Borrowing Requirement.

The notion of this might be acceptable within a Keynesian financial model but this current period of increased government spending to try to lift the country out of a slump will end at some point and the legacy that it will leave will stay with us longer than the current problems. With that in mind we must think longer term than 2012 or 2015 when making these investment decisions. We hope this is something Ministers will consider if they are looking to find innovative ways of securing additional investment.

In order to protect the long-term finances of the Council's Housing Revenue Account and the finances of our current and future tenants Angus Council will be developing, with its Elected Members and Tenants, a set of financial principles upon which it can base future investment decisions. These will be enshrined in our local tenants' charter.

### **Revenue funding**

The final element we believe is worthy of exploration is transforming the funding system from a capital based model to a revenue support model (or perhaps some mid point). This has been raised before and we would be happy to hold discussions with Scottish Ministers to see how this could work, to support new build Council housing or a pilot funding for RSLs, as long as it was set within prudent financial principles.

### **Summary**

Angus Council recognises that the financial climate is now very different from when the Parliament started to legislate for housing matters. The debate in Scottish Housing has and remains polarised between investment vs. pressure on investment and RSLs Vs Local Authorities. That debate must move on. Scottish Housing seems to be unable to recognise that in such financial times we must look at the system we have to see if it is operating as efficiently as it can, not just in terms of finance but also in terms of delivering against the original objectives of the law or whether or not that law is either fit for the present and future or whether or not we can afford to deliver that law. There is no doubt that investment reform in a range of guises has to come, our plea is that it is openly debated and any changes are made clear and the housing system is allowed the time to make any changes work.

# EQUALITY SCREENING

## Policy Control Document

**Name of Policy, Procedure or Report** Draft Housing (Scotland) Bill 2009 – Angus Council Response

**Lead Department/Service** Neighbourhood Services – Housing Division

What is the aim of the policy, procedure or report?

To update Members on the latest Council's response to the Bill

Is this a new or a review of an existing policy, procedure or report?

No this is a consultation response.

### Screening Process

Has the policy, procedure or report already been assessed for its impact on people from different racial backgrounds, people of different genders and people with disabilities. No

Yes  No

**If Yes**, unless there have been significant changes, no further action is required. Please sign and date immediately below and retain for reference.

**If No**, does the policy, procedure or report involve or have consequences for the people the council serves or employs? No

Yes  No

**If yes, proceed to Step 1 of the Full Impact Assessment on page 2.**

If no, please state why not

The report is response to Government proposals only

**If no, The policy, procedure or report is not relevant and no further action is required.**

Please sign and date immediately and keep for reference

**Name:** Alan McKeown

**Signature:** \_\_\_\_\_

**Date:** 10/08/09