

Department of Homes and Technical Services

18 June 2003

STEWARDSHIP AND RESPONSIBILITY: A Policy Framework for Private Housing in Scotland

Further to receipt of the final report and recommendations of the Housing Improvement Task Force, 'Stewardship and Responsibility: A Policy Framework for Private Rented Housing in Scotland', please find enclosed the Council's response to the proposals contained therein.

Thank you

Yours sincerely

Director of Homes and Technical Services

STEWARDSHIP AND RESPONSIBILITY
A POLICY FRAMEWORK FOR PRIVATE HOUSING IN SCOTLAND

The Council welcomes the opportunity to comment on the recommendations proposed by the Housing Improvement Task Force with regard to reviewing housing policy as it relates to the condition of private sector housing in Scotland.

While we recognise that this report covers private housing, nevertheless we consider that there should have been a more obvious link to the work contained within the consultation paper "Modernising Scotland's Social Housing". In particular we would argue strongly that every effort should be made to create a single housing standard across all tenures.

Chapter Two: Quality Standards for Private Housing in the 21st Century

Unchanged elements - The Council agrees with the list of proposed elements to remain unchanged and included in the standard.

Unchanged elements with improved specification - The test in the present standard in relation to rising and penetrating dampness should be enhanced, so as both to formalise the interpretation of the standard and to meet aspirations, particularly given the established links between dampness and poor health for the occupants.

Unchanged elements with improved specification - The measure of a wholesome supply of water should also be enhanced, so as to reflect the fact that where the water supply contains lead in excess of the limits set for the public water supply system, the house should fail to meet the standard.

Extensions to the standard - Given people's raised expectations with regard to the thermal efficiency and the links between fuel poverty and poor health, the Council agrees that a basic standard should be set to include the thermal insulation of the home.

It is noted that the Task Force is recommending the inclusion of a qualified statement with regard to the provision of a basic level of insulation. Whilst it is acknowledged that the provision of an overall house energy cost measure and a heat transmission measurement may be too prescriptive and impossible for older dwellings to achieve, as has been previously noted with flexible approaches, these are subject to interpretation. Again, it is noted that detailed guidance is being proposed by the Task Force to address this issue. However, as the document goes on to state, "the precise measure used can have a significant impact on the numbers failing the standard and as a result, the capacity of the standard to target the very worst properties."

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Without clarification of the detailed guidance proposed, it is difficult to establish how this element will be measured without recourse to either an overall house energy cost measure or a building material heat transmission measure.

With regard to condensation and mould, it is noted that the standard is not proposed to be extended to include these elements as they are indicators of a potential failure in relation to insulation, heating and ventilation, all of which are either contained in, or proposed to be subsumed within the standard.

Extensions to the standard - Given the potential danger of any substantial deficiency to the electrical wiring, it is noted that a new element is recommended for inclusion in the standard to the effect that the installations for the supply, distribution and use of electrical power should be adequate and safe in use.

Again, without clarification of the detailed guidance proposed to define 'adequate' and 'safe in use' at a given time, it is difficult to establish how this element will be measured.

In relation to radon gas, it is noted that the standard is not proposed to be extended to include this element as it is an indicator of a potential failure in relation to ventilation, which is already contained in the standard.

Extensions to the standard - It is noted that serious disrepair is not an element proposed to be included in the standard. Whilst it is acknowledged that serious disrepair may arise as a result of a lack of maintenance, if the level of disrepair is serious enough, it can indeed result in basic flaws in the property.

However, as the component parts of the likely cause of disrepair are already contained in the standard, such as structural instability or dampness, the inclusion of 'serious disrepair' would require to be properly defined, so as to establish that it is not one of the elements already contained in the standard.

Guidance on the Tolerable Standard - The Council supports the recommendation that the Scottish Executive should ensure that detailed and authoritative guidance is prepared in consultation with representatives of local authorities and other interested parties, given the interpretation of the Tolerable Standard has previously created problems in producing accurate estimates of the number of homes that fall below the standard.

Scottish Housing Quality Standard - The Council supports the introduction of the Scottish Housing Quality Standard, and the associated proposals with regard to developing the proposed contents of the standard, and the associated definitions and benchmarks. The Council is responding separately to the Scottish Executive in this regard, as detailed within the consultation document "Modernising Scotland's Social Housing". Within that response we have indicated that we should aim to create a common housing standard across all tenures.

The Repairing Standard for Private Landlords - The Council agrees with the proposal to extend the responsibilities of the landlord to include 'fixtures, fittings, and appliances for making use of the supply of water, gas or electricity,' where they are part of the terms of the lease. These items should therefore be included in the modernised standard. Again, it is agreed that the Repairing Standard should include a responsibility for landlords to ensure that furnishings and floor coverings provided in terms of the let are fit for their purpose and can be safely used by the tenant.

Moreover, the repairing obligations on all private landlords should be made explicit, so as to allow tenants to better exercise their rights than is currently the case, and also to focus landlords' minds with regard to their responsibilities.

Further, the Council supports the need to publicise the proposed changes widely both to landlords and to tenants. In this regard, the Scottish Executive should identify funds to promote the publication of materials through a range of agencies and in a variety of formats, so as to be as wide reaching as is possible, in advising interested parties of their rights and responsibilities.

Chapter Three: Improving the Operation of the Housing Market

The Council supports the development of the single survey, so as to avoid the current reliance on Scheme 1 valuations, which not only provide limited information, but also encourage the provision of multiple surveys and valuations. However, there will be concerns about the seller's survey, in promoting its independence, and if the seller will be required to settle the full cost of the survey, or will there be some recompense from the eventual purchaser.

As noted in the text, if the single survey is not to include a valuation, this piece of work would also require to be undertaken. It is noted therefore, that the proposed survey report will allow for the provision of a valuation.

The Council also welcomes the proposed inclusion of standard information on likely future maintenance requirements, energy efficiency and security, to assist prospective owners to better understand the commitment they are making, over and above their mortgage repayments. This information should also help to promote the condition of properties generally, rather than simply have regard to the internal fixtures and finishes, for the purposes of reselling the property.

The provision of information about security within the home could be extended to comment on the area, with regard to the provision of good street lighting, CCTV facilities, or Neighbourhood Watch initiatives etc, particularly given that crime and fear of crime features high on most people' priorities across Scotland.

The provision of information on disabled access should, in the longer term, encourage private developers to be more mindful of their building designs and promote the development of Housing for Varying Needs across sectors.

All of these proposed measures would help to focus the priorities of private sector housing developers more in line with those of the social rented sector, and the proposals for the private rented sector, thereby hopefully driving aspirations and standards up across all housing sectors.

With regard to the proposed cost of the survey, there would be concerns if the cost was to be in the region of the figures noted in the report, as the cost could be disproportionately high compared to the value of the property, at the lower end of the market. It is worth bearing in mind that the survey is one part of the buying and selling process, and that legal fees have still to be added to these figures, fees which already add significantly to the cost of the buying and selling process.

In terms of the provision of an insurance-backed latent defects guarantee, rather than assume that the cost of guarantee would drive the cost of the survey still higher, it would be worth approaching insurance brokers country wide to establish the effects of the cost on the survey itself. Otherwise, whilst the current proposal offers the provision of a guarantee as an optional extra, this scenario could lead to the introduction of a two tier system, with one type of survey seen as better than the other, to the detriment of the seller.

For the system to operate effectively there needs to be a mechanism which allows for effective monitoring and ongoing review. The existing compulsory arbitration scheme and proposed introduction of an ombudsman for Scotland for the RICS should offer the necessary safeguards for any dissatisfied customers. However, a system that also specifically monitors performance with regard to the survey process would provide the facility to better monitor, evaluate, and improve on the service over time.

In terms of the single survey being either a statutory requirement or market-led, whilst it is noted that a market-led system would be less bureaucratic, unless the system is endorsed by the Scottish Executive, it is unlikely to retain its effectiveness and therefore its robustness.

Finally, with regard to piloting the single survey, as well as receiving assurances that the pilot will receive the highest level of co-operation from all professional bodies involved, there will be a requirement for a significant amount of awareness raising and training, to inform front line surveyors, solicitors, and mortgage lenders of the new arrangement, both for the pilot, and for wider consumption, if and when the system is rolled out.

Proposals for a Purchaser's Information Pack

The proposal to provide a Purchaser's Information Pack is to be welcomed. However, it must be understood that the provision of the proposed information will lead to delays, as copy Warrants and Permissions will not always be either complete or available. The provision of a building standards inspection report instead of a letter of comfort, where Warrants are not available could lead to problems in themselves, in terms of: causing further delays; highlighting problems that require to be dealt with under current standards; and even cost implications for the inspector's time to undertake the survey as a result of a missing Warrant, which would have been issued to the owner of the property at the time of the works.

A similar scenario could apply with regard to Guarantees in that they are frequently unavailable or the company that issued the documentation is no longer in existence to supply copy information, sometimes resulting in a further delay or at a cost. Unless these Guarantees are insurance-backed, there is no form of redress with regard to missing guarantees as another company will not provide cover, without undertaking further disruptive surveys, and possible additional work to the property.

Further, with regard to the provision of common repair and maintenance burdens, these are also not always available, particularly where the property for sale is an older, tenemental one.

In terms of the provision of a Coal Authority Report, the framework is silent as to whether or not the Coal Authority was approached as part of this exercise to establish the impact of the provision of more reports than is currently the case, and the likely associated timescale and cost, if applicable.

The proposed provision of a log book for new houses, to include developers supplying buyers with a maintenance log book, and copies of the plans and architectural drawings is a good one. However, in practical terms, it is unlikely that owners will retain copy drawings, hence one of the reasons for the need to collate the Purchaser's Information Pack.

Finally, the proposals do not allow for the situation which exists in Scotland, where the current owner may opt to market the property, rather than pay an agent to undertake this part of the selling process on their behalf. This is particularly the case when there is a buoyant housing market, and purchasers are not difficult to attract to a property. Clarification is therefore required to confirm if the existing owner may assemble the proposed Purchaser's Information Pack, or if this requires to be prepared by one of the professional agencies, in which case sellers will be faced with additional fees they had not anticipated having to pay as part of the sale.

Other Possible Changes to the House Buying and Selling Process

The framework refers to a scenario to restrict the practice of setting low upset prices. In a buoyant market, as is the case at present, prospective purchasers currently spend a great deal of money bidding for properties that they cannot afford, as the upset price is set well below the final sales price. It would therefore be beneficial to restrict this practice, through the introduction of a test within the context of existing legislation, given that Trading Standards Officers suggest that legislation may already exist to cover this issue, but has never been fully tested.

With regard to the issues identified by both the Law Society's Conveyancing Committee and Trading Standards Officers at Fife Council, the Council would support the recommendation that the Scottish Executive should undertake a specific review of the issues highlighted, and that consideration should be given to introducing legislation to provide minimum safeguards for buyers.

The recommendation of the provision of an accessible complaints system for customers with regard to estate agents is also welcomed by the Council.

Improving Confidence in the Building Industry

The proposal for the Construction Licensing Executive is welcomed. However, it is important that this system is monitored, and if it is found not to be effective, further consideration should be given to the introduction of a licensing scheme for the building industry.

Tax and Benefit Incentives

The proposals with regard to owner occupation is to be supported, in terms of the VAT rules, the tax framework, the Consumer Credit Act, Income Support rules and the assistance with loans for additional improvement works.

Again, the private rented sector proposals are to be welcomed. However, the proposal to increase the improvement grant expenditure and tie to enforcement on poorest properties has cost implications for local authorities, insofar as the new Improvement and Repair Grant procedures will allow for greater eligibility, without any enhanced resources at the authorities' disposal to facilitate the effective use of the system.

Chapter Four: Facilitating Common Repairs and Maintenance

Making Decisions on Communal Repairs and Maintenance

The Council supports the proposal to introduce the provision for the establishment of an owners' association, where the owners are subject to burdens relating to communal repairs and maintenance.

These associations would help facilitate repair and maintenance work as part of wider regeneration works, as part of the Local Housing Strategy for a given area.

With regard to the proposals to extend the remit of SACRO and SMN to include disputes between owners on common repairs and maintenance issues, subject to clarification as to whether or not technical building training and expertise is required, the conclusions of the review are requested in this regard, as often it is the necessity for works to be carried out at all that is the cause of the dispute, together with the associated cost of the proposed works.

Funding Communal Repairs

In attaching debts to the property so as to allow solicitors acting for the purchasers to insist on the settlement of any outstanding debt prior to completion of the sale, clarification is requested as to whether or not this same proposed legislative change would apply solely to debts associated with the maintenance of the property, or if the rule would apply to any outstanding debt over the property, in which case the purchaser could be liable for any debts incurred by past owners.

In terms of the proposed land attachment method of recovery, whilst there is a buoyant housing market, there may be some merit in this type of measure as a last resort. However, in circumstances where owners face negative equity, there can be little or chance of debt recovery, resulting in enforced homelessness for the owner.

Again, in terms of setting up sinking funds and acting as a backstop, where the local authority is to be expected to provide grant aid to set up a reserve fund or to meet the cost of work and place a charging order and administration cost over the owners, there would be a significant cost implication to the authority that cannot be met from already limited resources. It would be almost impossible to forward plan these types of work, as the property condition may be established. However, the willingness of all owners to pay the cost of the work required to address the property condition cannot be assessed. To rely on the property being sold to recover the authority's outlay could result in significant amounts of outlay for the authority in the event that owners do not sell in the short term, or do not sell at all.

Managing Communal Repairs and Maintenance

The Edinburgh Stair Partnership initiative is one that could be replicated, as noted in the framework. However, having attended a presentation given by the Partnership staff, it is important to note the profile of the service users. They are, on the whole, more affluent than the majority of residents elsewhere, and living in Edinburgh, have very high value properties, all of which encourage residents to participate proactively in this type of project.

Again, with regard to the comment on pump-priming, local authorities would require funding to be provided to facilitate this process.

The Council supports the promotion of a national accreditation scheme for property managers, to complement that of Communities Scotland's property management regulatory function for social landlords.

Identifying Owners

Whilst the Registers of Scotland provide and maintain property registers that cover the names of almost all properties, it can take approximately six months to register the name of the new owner. Consequently, the register is not always accurate as the details it holds are not always up-to-date.

The proposed duty on an owner to notify other owners with a similar common repair and maintenance burden of a contact address appears a little naive, as one of the main reasons for not disclosing this information is to avoid the payment of common repairs bills and other associated costs.

Insurance

The Council supports the provision of common rather than individual insurance cover within a building with communal burdens. However, there requires to be a resultant duty on the property manager to ensure that the value of the cover is kept at an up-to-date level, and not allowed to fall short of the reinstatement value of the building.

Chapter Five: Public Sector Intervention and Support at the Local Level

Strategic Planning

The proposals to extend the Local Housing Strategy remit appear to sit within its framework. However, given that the strategies are to be ready for either September 2003 or April 2004, there is little time available at this stage to make changes with regard to some of the new guidance that is recommended in the framework, albeit the majority of the areas for development already are considerations for the development of the strategy.

Providing Assistance to Owners

The Council has commented on the provisions set out within this section of the framework in response to the consultation papers issued by the Scottish Executive with regard to the new Improvement and Repair Grant provisions. In general, the Council supports a system that provides for a more equitable provision of grant, but notes that in extending the eligible works, there will be a cost implication for local authorities on an area of activity that is already under significant pressure.

In terms of the specific detail within the Scheme of Assistance, the Council welcomes the proposed range of options described to assist in bringing properties up to the Tolerable Standard or the Scottish Housing Quality Standard, to reflect the priorities to be set out in the Local Housing Strategy for each area.

Modernising Local Authority Powers

Again, the Council is commenting on the provisions set out within this section of the framework in response to the Scottish Executive's Modernising Scotland consultation paper.

The removal of the mandatory link between notices and grant aid to one of assistance would help authorities to impose notices where these are required, and not incur mandatory grant costs, and that local authorities should have statutory powers to carry out work to ensure that a house is brought up to the Tolerable Standard, by carrying out the works in default and recovering the cost through sales. Where the housing market is buoyant, there will be sums to be recovered. However, in the event that the owner in question is facing negative equity, the local authority could face significant debts accruing as a result of the owner not having the wherewithal to fund the cost of the work.

The proposed 'suspense' notice would be subject to the same vagaries of the housing market as noted above, and the property condition could not only deteriorate further in the intervening period, but could also exacerbate the resident's existing health problems, in taking a property-centred rather than a person-centred approach, depending on the decision taken with regard to severity of the defect and the timescale for its rectification.

With regard to the proposed introduction of the Maintenance Order, the framework does not define how the local authority is to establish that 'future maintenance will otherwise be inadequate, because disrepair has arisen as a result of the failure of owners with common or shared obligations to co-operate in carrying out works or because enforcement action has been required to carry out works.' Unless the authority undertakes specific surveys of all property with common or shared obligations, this level of detail would not be known, even allowing for the provision of local house condition survey information.

In terms of broadening out this power to include other features of housing areas that have an impact on safety, security and area quality, it is noted that there is a proposal to develop and implement a maintenance plan. Details of the assistance that will be provided to owners to develop the maintenance plan are required, in addition to stating that where the plan is not implemented, the authority should have the power to prepare and implement the plan, and to recover costs from the relevant owners.

In terms of the associated formal procedure for notifying the completion of works to the local authority and for the authority to issue a notice of compliance, or take follow up action where it is not satisfied that the work meets the terms of the notice, there will be a significant resource required on behalf of the authority to implement this proposed system.

With regard to Housing Renewal Areas, the last feature identified does not rely on property condition to be eligible for the declaration of a Housing Renewal Area. Whilst the Council supports the view that sustaining the local community requires more than bricks and mortar solutions, it is not clear how this feature will be measured, given that the Task Force has taken the view 'that it is important to rely on quantifiable measures of housing quality problems'. The Council would therefore support the development of further consultation in this regard, particularly given that the proposals also allow for strong links between the process of declaring Housing Renewal Areas and Local Housing Strategies.

The proposal to subject Housing Renewal Area designations to clear time limits and action plans for improvement is also welcome given the experience of Housing Action Areas for Improvement which have effectively blighted the area for owners until works are completed to discharge the notices held over the properties, with the proviso that sufficient resources are made available for this purpose.

With regard to the proposed extension to the control order to facilitate the completion of works where the owner is unknown, cannot be traced, refuses to cooperate in carrying out works under a notice or it is deemed to be in the interest of the occupiers of the property or neighbouring properties, again, in light of the experience of missing or uncooperative owners in Housing Action Areas for Improvement, this extension to the control order is welcomed. However, further clarification is required where it is 'deemed to be in the interest of the occupiers of the property or neighbouring properties', to establish the applicable criteria in this regard.

Chapter Six: Improving Standards in the Private Rented Sector

Repair Problems - Strengthening the Rights of Private Tenants

Guidance on the terms within tenancy agreements should be available, as is the case in England and Wales, and further work should be undertaken with regard to consumer protection legislation, and the viability of developing the role of Trading Standards Officers in connection with residential leases. Further, the Scottish Executive should make resources available to promote the development of the proposed Tribunal for tenants, landlords, agents, advisory bodies and local authorities.

The Council supports the broad principles set out within the Tribunal procedures, and would welcome the opportunity to comment on the more detailed proposals.

Regulation and Accreditation

The promotion of local accreditation schemes, set within a framework of core standards, is welcomed in that they should consider both property standards and the landlord's management practices. However, to be effective, they must be of benefit to the landlords, their agents, tenants and local authorities, and must be properly resourced.

The Council supports the view that targeted action is the most sensible basis to effect improvements in the quality of the sector, and that local authorities should tailor their responses to local problems and concentrate their resources where they are needed most. This approach should also inform the development of the Local Housing Strategy, as it will provide evidence of the problems faced in a given area, the proposed regulatory approach, and the likely impact on the sector. To facilitate this process, funding and support requires to be provided by the Scottish Executive, with the appropriate guiding national standards, whether each authority opts for a registration, certification or licensing scheme within its area, in response to local issues and needs.

Wider Issues

The Council supports the need for strategic engagement with the private rented sector so as to inform the development and implementation of the Local Housing Strategy. To achieve this, there needs to be better communication across agencies, both in terms of the landlords and tenants knowing their rights and responsibilities and also with regard to the provision of information and advice to help signpost available services for landlords and tenants.

Associated with this information provision is the proposal to develop a model, private sector, tenancy agreement, based on good practice, legislation and a review of tenancy provisions, to reflect the improvements to the Scottish Secure tenancy agreement now available to all tenants in social rented housing.