

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

Thank you very much for a copy of the above report and the opportunity to submit comments. The Housing Improvement Task Force has covered a very broad remit and has certainly identified many of the significant issues in trying to ensure that private sector housing stock is maintained to a reasonable standard. In particular, we welcome the general points of principle set out in the report, namely that owners have primary responsibility for the repair and maintenance of their property, but that there are things which local authorities and other interested parties can usefully do to help in this difficult area.

Taking the issues raised in the same order as they are contained within the report, we would wish to make a number of comments as follows:

1. Quality Standards

The retention and extension of the tolerable standard is to be welcomed. However the report does recognise that this is a very basic standard and we note and welcome the recommendation for guidance to be produced. This will cover; thermal insulation, rising and penetrating dampness, condensation, definitions of electrical adequacy and safety, water guidance and the operation and interpretation of the revised Tolerable Standard. The issue is undoubtedly a question of resources necessary to encourage owners in the private sector to invest in their property. It would be a matter of some concern if large numbers of houses were deemed to fall below the tolerable standard. It is of some concern that various standards seem to be being developed and a particular concern would be of differentials between different sectors, ie a different social housing standard from that in the private sector. It is also unclear whether it remains appropriate for local authorities to seek to develop their own standard and how this might relate to national standards. The standards, as proposed, do also seem rather open and difficult to objectively measure against. Ie, there could be room for significant interpretation, which would seem to defeat the purpose of such standards in being able to compare situations across different parts of the country. We would expect to see future guidance, such as is proposed under the Tolerable Standard for operation and interpretation of the various parts of the Scottish Housing Quality Standard to ensure common assessment and benchmarking.

We are also concerned about encouraging all owners, but specifically elderly, disabled, single people to invest in their property. We are aware of the worries that some owners may have in selecting reputable contractors. We suggest that there is a valuable opportunity for council direct labour organisations to provide a quality and cost effective service in carrying out basic repair and maintenance work in the private sector in their communities.

2. The Repairing Standard for Private Landlords

It is recognised that there are growing numbers of private landlords who see the commercial opportunity for investment in stock. It is a concern for us that amongst a minority of these landlords the property is not maintained in even a basic condition. The recommendations contained in the report in trying to set out obligations on private landlords are to be welcomed. We query the use of definition of a duty in box 2 (pg25) "state of repair" and consider this needs more closely defined. We welcome making the implied Standard explicit in written leases. We also welcome the recommendation to publicise the repairing obligation of private landlords. However the difficulty here is in managing this process and implementing action in cases of default.

3. Operation of The Housing Market

a) Property Surveys

It is recognised that this is the area of the report which has attracted most public interest. Proposing a pilot scheme for single property surveys is welcomed. The principle of avoiding people having to spend wasted money on fruitless property surveys is welcome. However, of more concern is the content of such surveys and trying to make sure that there is equal access to substantial property information between buyer and seller and that this is properly reflected in the market price for properties. We therefore agree that building on the existing homebuyers survey would be the correct way to move forward, and that giving an indication of future maintenance and an energy efficiency report would increase buyer's understanding of the house as a likely home. We further agree that the minimising of exclusions and an increase in non-specialist legibility would be a significant move forward. We agree with the report conclusion that a hidden/latent defects guarantee should be available as an option or addition to the ultimate purchaser. The indicated level of cost is also appropriate.

We further agree that a valuation should form part of the single survey. It is accepted that there is no implied warranty as to the actual purchase price, and the benefits of a single valuation survey far outweigh what is likely to be short-term confusion on its purpose. We agree with the approach of piloting the single survey, aiming to allow market led adoption over the whole market, but acknowledge that legislation may be required.

b) Purchasers Information Pack – Right to Buy Properties

We do have some concerns over the Purchasers Information Pack, particularly where Councils are selling Right to Buy houses which are moving into the private sector for the first time. We are concerned over the administration time involved in amending and collating the information for hundreds or in some cases thousands of homes sold per annum. We are also cautious over the level of implied warranty and therefore implied liability, when the seller is a Council, which some would assume to have access to high levels of information. While this might or might not be the case for the Council as a whole, the level of knowledge at the point of sale, e.g. a house sales officer, or team, would have to be clearly defined. We propose that detailed guidance should be produced which gives clear liability restrictions, particularly for local authorities.

4. Common Repairs & Maintenance

In our experience this is one of the most difficult areas and one where we feel that there is a need to strengthen local authorities' statutory position. Given our experience in common with many authorities of substantial right-to-buy sales of flats with common areas, we do think it is important that there are powers to enable costs to be recovered from all affected owners. Whilst we do appreciate that there is a balance to be struck between such obligations and the right of individual owners, nevertheless we do feel that the current position, if it continues, can only result in significant deterioration of such properties and an adverse affect on all owners. We also think that it would be helpful to have clear direction and guidance on good practice on the contents of deeds of conditions for future Right to Buy sales. This would set out much more clearly future obligations and responsibilities for repair, maintenance and improvement.

a) Making Decisions on Communal Repairs and Maintenance

We support the idea of promoting owners associations, and in particular, if this was combined with a general principle of 'majority decides'. This would raise interesting discussions where a local authority was the majority owner in flats. What would be particularly useful would be to extend the majority decides proposal to "improvements" as against only repairs. We would expect that this would come with an obligation to offer a choice of funding routes, such as equity release or loans. The establishment of community mediation services is to be supported.

b) Funding Common Repairs - Attaching debts to the property

We welcome the provision noted as being within the Title Conditions Bill and the Tenements Bill, to allow for the financial liability for agreed common repairs and maintenance to be attached to the property.

c) Accreditation of Property Managers

We support the setting up of a national accreditation scheme and recognise your reasoning in proposing that the scheme should be run from within Communities Scotland.

d) Insurance

We support the proposal within the report and from the Scottish Law Commission that insurance should be made compulsory, and moreover that, wherever possible, this should be a common policy.

5. Public Sector Intervention & Support at Local Level

We think that this chapter fits very well with local authorities' other housing obligations in strategic planning terms and in developing local housing strategies. We welcome the proposal that local authorities should be responsible for improving the general condition of housing stock in their areas. In many cases, this need not be at the direct expense to the public purse but may be through use of equity release schemes and the availability of commercial loans. We do recognise that, for many people, there is a reluctance to release equity held in their property. This is often because of the desire of people to hand the property on to next generations and we must recognise this. However, we do think that there is an important education process here, including making people aware of the benefits and need for investment in their property.

The concept of housing renewal areas outlined in the report is an interesting one and we welcome the objectives that it seeks to achieve, however, many of the aspects of this process do seem extremely cumbersome and are not likely to deliver the outcomes which might be desired. While we do accept that there must be appropriate public consultation, we do feel that the eventual decision-making process should be left to local authorities and elected members.

a) Repurchase of RTB Properties (para 364)

Buy back of Right to Buy properties under the HRA Capital Improvement Programme is an interesting possibility, but we would perceive significant resistance to this depending on how such houses are valued in light of experience with owners in upgrading programmes. The expectation of owners to make a profit from buying their council house is often their prime consideration. This makes negotiations around financing of loans, grants and various levels

of advice and checking whether an owners has had access to suitable financial advice, an onerous burden for Local Authorities.

b) Process (para 370-373)

We would like to see proposals for the simplification of the administrative process in providing assistance to owners. Most of the processes have evolved to minimise the risk of fraud, and, in general, audits of procedures have resulted in recommendations to give further protection to the public purse. We would therefore be interested to see how the process could be simplified while still protecting the public purse. We particularly welcome the points about the co-ordination of housing and social work functions and targeting of resources in a person-centred way.

c) Resources (para 387)

We agree that the mandatory link between notices and grants aid should be removed. While this was appropriate in times of substantial grant we recognise, as does the HITF that the shrinking availability of grants has been reflected in a decrease in notices, against a backdrop of gradually deteriorating houses. We further agree that this break in the link is necessary to allow the full range of assistance options promoted within the report to be used.

d) Local Authority – Statutory Powers (para 389)

The extension of Local Authority powers to be able to enforce work to ensure that a house is brought up to the revised Tolerable Standard is attractive, but raises other issues. We would wish to see guidance on enforcement. Although in para391 the report proposes recovery of the costs from owners, in practice many of the BTS properties are occupied by persons unable to pay by any means, and this would have been ‘proven’ by the level of “assistance” that would have been offered up to this point. Again we look for guidance on how this would work in practice.

e) Proposed New Powers (para 393)

A new power to require works of improvement includes new Housing Renewal Areas. The report goes on to say that although such a power should not be “generally available”. “Where such a power is used the onus should be clearly on the Local Authority to demonstrate...cost effective and practical long term solution...” We ask you to consider a “hard to treat” property with serious and accelerating deterioration in the condition of the external wall, where the occupants can be demonstrated to be in Fuel Poverty, but an owner objects to a local authority proposal to envelope the wall in external wall insulation (EWI). The Local Authority could demonstrate that the provision of EWI would provide the only “cost effective” and ‘practical long-term solution’ to the problem being addressed, but from experience this would not be readily accepted by some owners.

f) Developing more flexible enforcement options

We recognise the value that a “suspensive” notice would have, to implement works at the next change of owner. We agree that this power should be given to Local Authorities.

g) Addressing minor repairs and maintenance issues

Again we recognise the value that a maintenance order would have, along with the powers to approve or impose, and strongly agree with the proposal to have the plan arising from the Maintenance Order set against the title with the Land Registers.

6. Improving Standards In The Private Sector

a) Expansion of the Rent Assessment Committee

We support the creation of the private Rented Tribunal (Para 455) and view the procedures and remedies to be wholly appropriate. We would support a statutory right of entry for inspection, the Repair Determination Notice and the Re-letting Restriction Order. More broadly, we support the HITF's call for early agreement with the OFT on unfair terms in tenancy agreements in Scotland. We would also wish to see some proposals to allow tenants, or ultimately Local Authorities, to ensure energy efficiency works such as upgrades could be applied to that house type, to minimise the risk of the occupant being put into, or maintained, in fuel poverty. Landlords could be further required to provide details, perhaps within a "tenancy pack " of details of fuel poverty definitions and how to self-assess, and information on benefit checking services and various local advice centres, including money and energy advice.

b) Private Rented Sector Relationship

We recognise the comments that Local Authority interaction with the private rental sector has been neglected but accept the need for development of a professional approach to both property and tenancy management. We think this is starting to happen and will be helped by the proposed model tenancy agreement and awareness of the private rented sector role.

In conclusion we welcome this report and appreciate the effort which has gone into covering a very broad and important range of topics. We hope the above comments are of help and look forward to hearing how these issues can be taken forward in partnership.

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