

**HOUSING BILL - IMPLEMENTATION OF THE SCOTTISH SECURE TENANCY, RIGHT TO BUY AND TENANT PARTICIPATION PROVISIONS (PART 2): AN OVERVIEW**

**INTRODUCTION**

1. This paper is intended to provide an overview of how the Scottish Secure Tenancy, right to buy and tenant participation provisions (Part 2) of the Housing (Scotland) Bill will be implemented, including advice on timetable.
2. The paper is intended to be of interest to local authorities, registered social landlords, tenant and other housing interests. The paper gives particular advice to councils considering stock transfer.
3. The paper is provided for information only and its contents are subject to further changes as a result of legislation and statutory regulation.
4. The paper refers to a working group to advise the Executive on the preparations of the relevant statutory orders and guidance to support the implementation of Part 2 of the Housing (Scotland) Bill.

**BACKGROUND**

5. In July 2000, the Executive published “Better Homes for Scotland’s Communities” which set out proposals for the Housing Bill. This consultation document drew on previous detailed consultations on the proposed new tenancy in December 1999 entitled “A new single social housing tenancy for Scotland: Rights, Obligations and Opportunities.
6. The Housing (Scotland) Bill was introduced in December 2000 and is currently subject to legislative scrutiny. It is anticipated that the Bill will receive Royal Assent in July 2001. The main provisions contained within Part 2 of the Bill are set out in Annex 1.
7. Much of the legislative proposals have been supported by the work of specific Scottish Executive led working groups. The Right to Buy Working Group reported to Ministers in December 2000 on matters relating to the implementation of a modernised right to buy, and in particular, the proposed designation of pressured areas where the RTB could be suspended for a period of time. In addition, the Tenant Participation Working Group, formed in May 1998 has been instrumental in the development of a statutory framework to support tenant involvement.
8. The proposed new tenancy regime “the Scottish secure tenancy” has been given detailed consideration by a working group, comprising landlord and tenant interest, which has produced a model tenancy agreement. This model was subject to detailed consultation and is currently being finalised in the light of comments received as well as to reflect final legislative proposals.

**BILL PROPOSALS - CONVERSION OF TENANCIES**

9. Section 9 of the Bill allows for Scottish Ministers to make an order which would have the effect of both ensuring that tenancies created before and after that date by relevant

landlords (primarily local authorities and RSLs) would become Scottish secure tenancies. This could be a single order applying to the whole of Scotland or separate orders for different local areas (or, indeed, for different categories of landlord at the national or local level). The Executive's preference is for, as far as possible, all tenants to transfer at the same date (often known as "big bang").

10. The Bill provides for these rights to be conveyed on a given date, irrespective of whether tenants have signed a new tenancy agreement, which reflects these new tenancy provisions. This means, in practice, that landlords will have time to agree a form of tenancy with tenants, and adopt either a whole-scale or phased sign up to the new agreement.

11. Whilst, as noted above, the Executive's policy preference is to achieve a 'big bang' approach to implementation, the flexibility to vary dates is intended to be particularly helpful in circumstances where stock transfer is scheduled to go ahead around the time of "big bang". This means that tenants and landlords affected by transfer will be subject to a change of tenancy arrangements on only one occasion.

12. In the case of the short Scottish secure tenancy, the Bill prescribes the circumstances under which this can be made available. Landlords must give notice to the tenant of its intention to offer this type of tenancy. Therefore it is envisaged that this will be done on a case by case basis as required, once the new tenancy regime is commenced.

13. In the case of short assured tenancies currently operating in the RSL sector, we propose to provide for these to continue until the end of their term (up to 6 months) through transitional provisions under section 9 of the Bill, thus enabling these arrangements to be protected. At the time of such tenancies reaching their term, it is envisaged that tenants will be entitled to a Scottish secure tenancy or its short tenancy derivative.

14. It is recognised that landlords and tenants will need time to prepare for the conversion of tenancies. The Scottish Executive, in preparing the model tenancy agreement at an early stage had anticipated that this would enable early discussions between tenants and landlords about the form of tenancy to be offered. This is especially important where a transfer is planned. We propose to have a final model available by September 2001, with a commencement date of 1 September 2002 for the tenancy and associated provisions. Supporting guidance will also be available in early 2002 to assist with these preparations.

15. A short tenancy model is currently being prepared to reflect these particular statutory arrangements and this will be available for consultation in December 2001, with a final model in June 2002.

#### **BILL PROPOSALS – NEW TENANTS**

16. The position of new tenants after the date of commencement is perhaps somewhat clearer. Any tenant granted a tenancy after the commencement date will be entitled to a Scottish secure tenancy or its shorter form.

**BILL PROPOSALS - PRESERVATION OF RIGHTS**

17. The provisions in the Housing Bill will change the rights and responsibilities for tenants and landlords in the social rented sector. For some tenants and landlords, the extent of the change will be dependent on the type of tenancy rights enjoyed before “big bang”.

18. The Bill enables Ministers to make particular provision for the preservation of existing rights where they could be affected by the provisions of the Housing Bill. Specifically section 9(2) provides for orders to be made to ensure that rights are not adversely affected. This is potentially a complex area. A separate paper is under preparation to begin to identify the areas in which this provision might possibly be used.

19. Ministers have given a particular commitment in relation to entitlement to the Right to Buy and the terms on which this can be exercised. The policy intention is that tenants with entitlement to the right to buy will continue to enjoy it on the same terms as before “big bang” The modernised right to buy introduced by the Housing Bill, will apply to all new tenancies (subject to certain exemptions and suspensions), and to tenants who take over tenancies

**BILL PROPOSALS - IMPLICATIONS FOR STOCK TRANSFER**

20. As outlined in paragraph 11, the Bill provides for the tenancy provisions to be commenced at different times in different areas to reflect the particular needs of tenants and landlords affected by stock transfer. The Executive is concerned to ensure tenants have clarity over what rights can be enjoyed following a transfer. It will also avoid some tenants and landlords being required to re-negotiate tenancy terms more than once, either as a result of a stock transfer or commencement of new legislative provisions.

21. Local authorities considering transfer should consider the relationship between proposed ballot date, transfer date and proposed commencement date for the new tenancy provisions to identify whether a different commencement date would be helpful.

22. During the informal and statutory consultation periods with tenants on transfer proposals, Councils should ensure that any comparison of tenancy rights takes account of the position post “big bang” when councils and registered social landlords will be required to offer a consistent package of tenancy rights. Section 2 of the Executive’s Guidance for Local Authorities on Housing Transfer to Community Ownership (issued in August 2000) requires a comparison of tenancy terms. This should be disregarded for consultation purposes where commencement of the new legislation is likely to have this effect of equalisation.

23. Registered Social Landlords receiving stock should consult as far as possible on the terms to be offered post transfer taking account of the Bill provisions. RSLs will have to be clear as to how far these may continue to be changed or refined through the conclusion of the primary and secondary legislative processes.

**BILL IMPLEMENTATION - WORKPLAN AND WORKING GROUP**

24. The Housing Bill will bring about significant changes for landlords and tenants in Scotland and further detailed work will be required to implement this change effectively.

This implementation phase will take the form of secondary legislation to effect orders and regulations as well as detailed supporting guidance to landlords. Tenants will also require information about the changes and how they are affected in a co-ordinated way.

25. A detailed implementation plan has been developed by the Scottish Executive which identifies the key tasks and associated timetable for this work. It is proposed that this work would be overseen by a working group of key interests who would act as a sounding board for the detailed work. In addition, it is anticipated that the secondary legislation and guidance will also be subject to widespread consultation and Parliamentary scrutiny in some cases.

### **BILL IMPLEMENTATION - RESOURCES**

26. The Executive has identified some key principles to underpin our approach to this implementation phase. Firstly we wish to avoid duplication of effort and achieve a degree of co-ordination and co-operation between key housing interests. It will also be necessary to build on existing expertise and guidance wherever possible.

27. The Executive recognises that there will be resource implications associated with implementing the new tenancy, provisions including the associated right to buy and tenant participation provisions. The Executive has already announced resources of £4.5m to support tenant participation and that approximately £10m over 3 years will be available to help local authorities and RSLs implement the Scottish secure tenancy.

### **CONCLUSION**

28. This paper has set out the framework within which the tenancy provisions of the Housing (Scotland) Bill will be implemented and sets out the intended approach and timescale.

Scottish Executive Development Department  
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**SCOTTISH SECURE TENANCY (SST) AND SHORT SCOTTISH SECURE TENANCY (SSST)**

1. A list of the key provisions of the new SST and SSST is set out in the following table.

<b>SCOTTISH SECURE TENANCY</b>	<b>SHORT SCOTTISH SECURE TENANCY</b>
<p><b>Who qualifies?</b>                      Tenants of local authorities, registered social landlords (RSLs); water or sewerage authority; tenants who are members of a co-operative housing association;</p>	<p><b>What is it?</b>                      ‘Short’ version of the Scottish Secure tenancy to be offered:                      Where there has been previous anti-social behaviour; or for                      Temporary letting to person seeking accommodation;                      Temporary letting pending development;                      Accommodation for homeless persons;                      Accommodation for person requiring housing support services;                      accommodation in property not owned by landlord.</p>
<p><b>Security of tenure</b> - The Tenancy Agreement can be ended by: 28 days notice from the tenant(s) and any spouse; written agreement between the tenant(s) and the landlord; Court Order where the sheriff is satisfied that it is reasonable to make an order for eviction; abandonment of the tenancy; death of the tenant, if it does not pass to somebody else or sale of the property to the tenant.</p>	<p>SSST created by notice from landlord prescribed by regulations - of 6 months duration in first instance. Landlords will be required to give 2 months notice before the tenancy is terminated and, in the absence of this notice, the tenancy will continue through tacit relocation.</p> <p>The landlord can repossess at any time by Court Order where the sheriff is satisfied that it is reasonable to make an order for eviction .</p>
<p><b>Conversion to SSST</b> - A SST can be converted to a SSST if the tenant or a member of the household is the subject of an anti-social behaviour order (ASBO)</p>	<p><b>Conversion to SST-</b> A SSST which is a ‘probationary’ SSST must be supported by the landlord, to enable it to convert to a full SST within 12 months.</p>
<p>Tenants have a <b>right of appeal</b> against the tenancy they are given .</p>	<p>Tenants have a <b>right of appeal</b> against the tenancy they are given .</p>

WGHBI-2: ANNEX 1

<p><b>Succession</b> -There are to be two rounds of succession covering three levels. The first is to the surviving spouse, co-habitee (provided the house has been their principal or only home throughout the period of 6 months ending with the tenant's death), or joint tenant. If no-one qualifies at the first level or a qualified person does not want to succeed, the tenancy may be inherited by another member of the family as long the house was their only or principal home at the time of the tenant's death. If no-one qualifies at either of the first two levels, it may be inherited by a carer who has given up their only or principle home to care for the tenant or a member of the tenant's household.</p>	No right of succession
<p><b>Information</b> - Tenants will have a right to a written tenancy agreement and to information on RTB, complaints procedures and other information on request.</p>	As SST
<p><b>Increase in Rent or Charges</b> - Tenants will have right to 4 weeks notice of increase in rent or charges. Landlords must consult those affected on proposed increases and take account of views expressed.</p>	As SST
<p><b>Repairs</b> - Tenants will have a right to have ceratin repairs carried out at the landlords expense and to be compensated for any delays</p>	As SST
<p><b>Improvements</b> - Tenants will have a right to compensation for improvements made to their homes with the permission of the landlord.</p>	As SST
<p><b>Right to Manage</b> - Tenants will have a right to manage their homes</p>	As SST
<p><b>Right to exchange</b> - tenants will have a right to exchange unless landlords refuse on reasonable grounds. In case of registered co-ops, tenant of other house must be member of co-op when exchange takes effect. Grounds for withholding consent laid out in statute but can be modified by Order</p>	As SST
<p><b>Assignment, subletting etc</b> SST can be assigned or sub-let or lodgers taken in, with the consent of the landlord (which may not be unreasonably withheld). Assignees will require to have lived in house as only or principle home for 6 months beforehand. In the case of a registered co-op, assignees, sub-tenants must be / become members of co-op. Grounds for withholding consent laid out in statute but can be</p>	As SST

WGHBI-2: ANNEX 1

<p>modified by Order</p>	
<p><b>Right to Buy</b> – for the duration of their present tenancy, existing tenants will continue to enjoy the current right to buy conditions. The modernised right to buy under the SST makes substantial changes to the present regime, particularly with regard to eligibility (longer to qualify) and discounts (reduced). As the SST will be applied to all social rented tenants, the modernised right to buy will be extended to most tenants in the sector, although charitable HAs will remain exempt and there will be a delay of up to 10 years for the extension to other HA tenants. Following a due process, certain areas may be designated as pressured areas, with the modernised right to buy suspended for up to 5 years and additional help provided for tenants in such areas to purchase on the open market.</p> <p>No RTB for tenants of co-operative housing associations in view of their unique status.</p>	<p>No RTB entitlement but tenants who convert from short SST to full SST will have the RTB restored, including discount entitlement.</p>
<p><b>Consultation</b> The new tenancy will include an obligation on landlords to consult tenants on the establishment of, or any significant changes to, housing management or maintenance policies which are likely to have an effect on the tenant.</p>	<p>As SST</p>