

**WORKING GROUP ON HOUSING (SCOTLAND) BILL IMPLEMENTATION
NOTE OF FIRST MEETING: MONDAY 19 JUNE 2001
VICTORIA QUAY, EDINBURGH**

Present:

Richard Grant (Chair)	Scottish Executive
Beverley Francis	" "
Malcolm Clark	" "
Pat Tracey	" "
Fanchea Kelly	COSLA
David Bookbinder	SFHA
Linda Ewart	SFHA
Karen Watt	Scottish Homes
Michael Thain	CIH
Marion Gibb	Shelter
Lesley Baird	TPAS
Isabel Wilson	TIS

WELCOME AND INTRODUCTION

1. **Richard Grant** welcomed members to the first meeting of the Working Group on Housing Bill Implementation (WGHBI). He said that the purpose of the meeting was to go through preliminary papers and to discuss whether sub-groups should be formed to take aspects of the implementation work forward or whether WGHBI would prefer to be directly in control, meeting more frequently.

APOLOGIES

2. There were no apologies but **Mr Grant** noted that in future Alan McKeown and Elaine Zwirlein would represent COSLA and that Gavin Corbett would represent CIH.

REMIT OF GROUP

3. **Mr Grant** referred members to information paper WGHBI-1 which set out the proposed remit of the Group but said that there was still a question mark over the precise scope of the work of the Group. He said that 'allocation' had been added to the remit. Although it was not directly relevant to the implementation of the SST and associated rights, 'allocations' did not fit easily elsewhere and the Group might consider what guidance would be needed around the new allocation provisions, bearing in mind any separate regulations governing the matter.

4. He said that the Executive had had a working group overseeing the development of a model Scottish secure tenancy agreement (MSSTA). The last meeting of this Group had been held on 14 June. That Group had now been wound up and it was anticipated that the WGHBI would oversee the final stages of the MSSTA and the development of a model short SST which had now been commissioned.

5. **Mr Grant** said that Ministers saw this Group as a sounding board and source of advice on all aspects of Part 2 of the Bill and sections 7 and 8 of part 1. Specifically, the Group's advice would be sought on the content of secondary legislation, guidance and other supporting material, such as the model short SST agreement. He made clear that the Group were not expected to draft the necessary material. This would either be done in-house or commissioned by the Executive. He pointed out that Ministers had committed to consulting the Social Justice Committee on all guidance. He said he was not sure how the Social Justice Committee would approach this task and they may opt for a selective approach but the Group would, in any event, need to feed the results of its work to the Committee.

6. A discussion followed about the composition of the Working Group. Both **Isabel Wilson (TIS)** and **Lesley Baird (TPAS)** expressed the view that there needed to be direct tenant representation on the Group rather than simply representation through their agencies. **Richard Grant** said that it had been anticipated that TIS and TPAS would represent tenants on the main Group but that there might be scope to include further tenant representatives on any sub-group that might be formed to look at e.g. tenant participation. He stressed that TIS and TPAS were welcome to field one of their tenant members to the Group but that it was not intended to enlarge the Group any further, out of concern that it would become too unwieldy to operate effectively.

7. **Fanchea Kelly (COSLA)** said that COSLA would expect some input from SOLAG, their representative body of lawyers. **Richard Grant** said that the Executive lawyers were still to decide whether they would wish to sit on the Group and that perhaps lawyers could sit in on occasion or SOLAG could replace one COSLA representative, as required. In response to a question from **Ms Kelly**, **Richard Grant** said he would think about Glasgow in relation to any sub-group but reiterated that he did not want to keep adding to the number of representatives. **Beverley Francis** made the point that the Executive were happy for any WGHBI papers to be made widely available for comment and indeed it might be possible to arrange for these to be put on a web site.

8. In response to a question from **Lesley Baird (TPAS)** about the lifespan of the Working Group, **Richard Grant** said that a two-year lifespan for a group such as this would be considered the norm. Given that the indicative target for implementation was 1 September 2002, the Group could expect to wind up around that time.

HOUSING BILL: IMPLEMENTATION AND OVERVIEW

9. **Richard Grant** introduced paper WGHBI-2 which he explained was intended to look at the basic questions around implementation. The paper included an Annex which set out the main components of the Scottish secure tenancy (SST) and the short Scottish secure tenancy (SSST).

10. **Beverley Francis** took members through the paper highlighting the following key areas and seeking the views of members:

- The 'big bang' approach did not mean that all new tenancy agreements had to be signed up to a new tenancy by the implementation date; but it did mean that they would have the rights of the new tenancy in law. This would leave time for landlords for signing up wholesale or in a phased manner;

- An indicative date of implementation of 1 September 2002 was being suggested to enable sufficient time for conversion to take place effectively, with full understanding of the new rights and detailed guidance in place but at the same time recognising the importance of tenants enjoying those new rights as soon as possible.
- The position of new tenants was clear; after the commencement date they would be entitled to a SST or SSST.
- The proposal for current short assured tenancies was that these should continue until the end of their term (up to 6 months) through transitional provisions under s9 (2) of the Bill and thereafter convert to SST or SSST.
- The Bill allowed for the commencement date to vary for tenants subject to stock transfer to avoid tenants signing up to an assured tenancy on transfer and having to sign up shortly thereafter to the new SST. The Department's current thinking was that this was most likely to be relevant in the case of whole stock transfers, but landlords involved in stock transfer proposals around the time of commencement would be able to ask for a variation in the date.
- A detailed Workplan had been prepared to inform the work of the Group. It would be the subject of discussion later on the agenda
- Resources of £4.5 million had already been flagged up to take forward implementation of the tenant participation aspects of the new provisions. More recently, a further £10 million had been announced and there was an issue for the Group as to how these resources might best be deployed.

11. Richard Grant said the paper gave an overview of the basic principles involved but was intended only as a starting point. He asked whether it had contained any surprises for the Group. **Marion Gibb (Shelter)** pointed out in relation to conversion of short assured tenancies to SSST that not all current short assured tenancies were for a minimum 6 month period. Moreover, although some short assured tenants were in receipt of housing support services and would qualify for SSST but others were not and would probably require to convert to full SST. **David Bookbinder (SFHA)** said there would be tough decisions for SFHA members. Some 16 and 17 year old short assured tenants were subject to some sort of support package but these might not be relevant to SSST. It was not thought that there were many current short assured tenancies and that these could be dealt with on a case by case basis. **Karen Watts (Scottish Homes)** undertook to discuss further with SFHA and to provide figures.

ACTION: SCOTTISH HOMES & SFHA

12. The Group went on to discuss the implementation of the change to the modernised RTB and how this might relate, in particular, to tenants involved in stock transfers **Richard Grant said** he understood that there was a lack of clarity over how the existing PRTB regulations worked in practice; i.e. whether they applied only in respect of the house in which the tenant was living at the point of transfer or to other houses to which the tenant might subsequently move. The Housing Bill abolished PRTB; preservation in future would be through SST. Tenants would have either a RTB under existing terms and conditions or under the modernised RTB.

13. **Mr Grant** said Ministers would like tenants to move to the modernised RTB as soon as possible but for existing rights under RTB to be preserved at the point of conversion to the SST - rights would not change on stock transfer. The policy intention was that at conversion to the SST, tenants with entitlement to the right to buy would continue to enjoy it on the same terms as before 'big bang'. The current intention was that the modernised right to buy introduced by the Housing Bill, would apply to all new tenancies (subject to certain exemptions and suspensions), and to tenants who took over tenancies, e.g. on succession.

14. **David Bookbinder (SFHA)** asked whether a tenant who moved and was subject to the modernised RTB would run in to the 10 year exemption. **Richard Grant** said the 10 year exemption applied to the property. In such circumstances, the tenant would not be able to exercise the RTB but the time spent in the tenancy would count towards the calculation of the qualifying period and discount if the house became available in the future.

15. **David Bookbinder (SFHA)** asked whether there would be guidance clarifying questions such as whether on succession, a tenant succeeded to rent arrears etc. **Beverley Francis** said that guidance would set out the policy position on matters such as this but that case law would determine landlords' actions.

16. In response to a question from **Isabel Wilson (TIS)**, **Beverley Francis** confirmed that whilst individual tenant participation rights were implicit in the SST, collective rights were separate and a decision would need to be taken on when and how these would commence. Indeed, such decisions would need to be taken in relation to all aspects of the Bill provisions. **Michael Thain (CIH)** said that in the lead up to the new tenancy, CIH would want landlords to follow tenant participation even if the statutory provisions had not yet commenced. He asked if perhaps the tenant participation provisions should commence in advance of the SST. **Richard Grant** said that a tenant participation audit of local authorities and RSLs to be commenced shortly, would ascertain the practice.

17. Discussion turned to the position of whole and partial stock transfers. **Richard Grant** said that for local authorities going down the whole stock transfer route, it might be that the date of transfer should be the same as the date of SST; this was particularly the case where transfer was in advance of the SST commencement date. He said he wanted to clarify that this general principle was right but he was not sure if this should apply to a few hundred houses which might be the subject of partial stock transfer. He understood that there might be three whole stock transfers before September 2002; Dumfries & Galloway, Shetland and the Borders - and Glasgow possibly after that date. **Karen Watts (Scottish Homes)** thought there were unlikely to be significant numbers of houses involved in partial stock transfers. **Fanchea Kelly (COSLA)** suggested that information might be obtained on the number of NHP partial stock transfers and Scottish Homes LSVTs that might go forward over the next 18 months.

ACTION: SCOTTISH EXECUTIVE

18. Discussion followed on whether the Executive should make information available to landlords in advance of detailed guidance and the model SST agreement, to allay misconceptions by landlords that they would require to sign up all tenants on commencement and concerns over resource implications and the modernised right to buy. It was recognised that there was a great deal of confusion about what was involved and that there was a need in

particular to reassure landlords that the task was not as onerous as they might think, and that detailed guidance and adequate resources would be made available from the centre.

19. It was also agreed that landlords should be urged to begin immediately the process of providing information and going out to consultation on what the new tenancy might contain, what contractual rights might be included, what local arrangements would apply and what the process of signing up would entail. It was agreed that a user friendly version of the Group's workplan might form the basis of this advance information to landlords. The Group accepted that any advance paper might be short on answers, e.g. as to commencement dates, deployment of resources, etc. But it could provide reassurances and information on expectations behind the processes, what detailed guidance would be forthcoming and what resources might be available. **Isabel Wilson (TIS)** said it was important that any advance information to landlords should also refer to tenant participation, particularly in relation to the new regulatory regime.

20. On the question of resources, **Richard Grant** said that of the additional £10 million to be made available over the next 3 years, some might be needed centrally e.g. for publicity but that the bulk would be made available directly to local authorities and RSLs.

IMPLEMENTATION WORKPLAN AND FUTURE WORKING ARRANGEMENTS

21. **Richard Grant** introduced paper WGHBI-3. He said it was an attempt to look as comprehensively as possible at this stage at the tasks that lay ahead. The next stage would be to add timings, to decide who should take responsibility for individual components of the workplan; how much should be done in-house and how much should be commissioned. He said the key issue for the Group was to decide whether or not at this stage to establish sub-groups steered by the WGHBI.

22. The Group were disinclined to decide at this stage on the establishment of sub-groups, preferring to consider this further at the next meeting of the full group, together with the question of timescales for delivery of outputs on the workplan. It was agreed that any guidance to be developed should build upon existing guidance, such as Scottish Homes Raising Standards, existing allocation and RTB guidance, etc., and on material such as the CIH work on suspensions, recently commissioned by the Executive. Although clearly, new provisions in the Bill required new guidance. To date, Scottish Homes had been heavily involved in disseminating good practice in relation to RSLs, whereas for local authorities guidance generally came from the centre, with the addition that work commissioned of the CIH tended to apply to both local authorities and RSLs. The Group felt that its work should be primarily to consider what needed to be put in place in relation to the new provisions.

23. It was confirmed that this was not the guidance provided for in section 70 of the Bill which related to regulatory standards; it was guidance aimed at making the new tenancy regime happen, rather than on good practice which would be the subject of regulation, with an overlap to anti-social behaviour and tenant participation.

24. **Isabel Wilson (TIS)** said she had thought the Tenant Participation Working Group (TPWG) would be the appropriate forum to consider implementation of collective rights of tenant participation. **Richard Grant** said the TPWG had been in existence for rather a long time. It had been set up to take forward the specific tasks of drawing up a national strategy for tenant participation and producing codes of practice. This work was nearing completion

and the Executive's view was that the newly formed Working Group was well placed to take this forward.

It was agreed that the decision on sub-groups should be postponed and that the Executive would produce a paper for the next meeting on what sub-groups might be appropriate, what guidance was needed and what timescales should be incorporated into the workplan.

ACTION: SCOTTISH EXECUTIVE

SCOTTISH SECURE TENANCY: SECTION 9 (2) ORDER

25. **Richard Grant** suggested that discussion of paper WGHBI-4 could be postponed until the next meeting. He explained that its purpose was to consider what existing rights should be protected by order under section 9 (2) of the Bill. There was no requirement to protect every existing right, but the Group needed to look at the maximum scope for protection, bearing in mind that it covered rights not only of tenants but of landlords and others, so as to advise Ministers on which rights needed to be protected. **David Bookbinder (SFHA)** said the layout of the paper was helpful as it enabled an assessment to be made of what might happen if rights were not protected. On the question of liability for rent arrears following conversion to a SST raised by **Fanchea Kelly (COSLA)**, **Richard Grant** said that Executive lawyers had confirmed that the question of rent arrears on conversion would require to be protected under s9(2). He said he had written to Ms Kelly on this subject and undertook to circulate his response to other members of the Group.

ACTION: SCOTTISH EXECUTIVE

26. **David Bookbinder (SFHA)** said there was a need to ensure against successful legal challenge. **Richard Grant** said this was something for landlords to take up with their own lawyers. It was agreed that members of the Group would offer any comments on the scope of WGHBI-4 in time to allow it to be revised and re-circulated for consideration at the next meeting.

ACTION: ALL

27. It was also agreed that the Executive would undertake to draft two further papers for consideration at the next meeting; one on the allocation of the £10 million and one on tenant participation audits.

ACTION: SCOTTISH EXECUTIVE

A.O.C.B

28. None

DATE OF NEXT MEETING

29. It was agreed that the next meeting of the Working Group should take place on Wednesday 1 August at 2pm in Victoria Quay.

Scottish Executive Development Department
June 2001