

THE DESIGNATION OF PRESSURED AREAS

Introduction

1. Section 45 of the Housing (Scotland) Act 2001 inserts new sections into the 1987 Act which allow Scottish Ministers to designate any part of a local authority's area as a "pressured area" following a proposal submitted by the local authority itself. The broad effect of designation is to suspend the right to buy for certain tenants living in the area for a period of up to 5 years.

2. The policy objective behind these provisions is to establish a mechanism for safeguarding the continued availability of social rented housing where the right to buy could otherwise lead to serious shortages. The guidance below explains:

- the statutory criteria for designation;
- the precise effect of designation;
- the procedures that should be followed by local authorities in relation to the selection of areas and consultation on proposals;
- the information that should be submitted to Scottish Ministers in support of any proposals for designation;
- the action which the Scottish Executive will take following receipt of proposals for designations;
- action by the local authority following designation.

The criteria for designation

3. The 2001 Act sets out 2 specific criteria which Scottish Ministers must take into account in considering proposals:

- the need for social rented housing, ie houses provided by the local authority or RSLs, in the area in question is or is likely to be substantially in excess of the social rented housing; and

- this situation is likely to be exacerbated by tenants in the area exercising their right to buy.
4. The shortfall referred to in the first of the 2 criteria may be a current shortfall or one that is expected to arise in the future.
5. It is necessary for both criteria to be met. Scottish Ministers only have authority under the Act to designate areas where they are satisfied that these criteria apply.

The effect of the designation

6. The effect of the designation is to suspend the right to buy for the following tenants living in the area:
- those who have taken out a new tenancy in the area on or after the introduction of the Scottish secure tenancy for that landlord (this is expected to be 30 September 2002 in most parts of Scotland);
 - those with tenancies created before the introduction of the Scottish secure tenancy who did not previously have the right to buy - these will be principally tenants of RSLs with assured tenancies who do not have a preserved right to buy. Please note that a person has a right to buy entitlement in this context even if he or she has not yet fulfilled the occupancy requirement;
 - those who have succeeded, following the introduction of the Scottish secure tenancy, to tenancies initially created beforehand.
7. Tenants in tenancies created before the introduction of the Scottish secure tenancy and which were converted to Scottish secure tenancies will, therefore, not be affected by the suspension providing:
- before the introduction of the Scottish secure tenancy they had the right to buy;

- they have not succeeded to their tenancy after the introduction of the Scottish secure tenancy.

8. Tenants who have taken out a new tenancy in the area (and will, therefore, be covered by the designation) will include those who occupy their house as a result of a transfer from another house owned by the landlord or as a result of an exchange with a tenant occupying a house owned by another landlord, providing this transfer or exchange has taken place after the introduction of the Scottish secure tenancy.

9. The suspension will be for a period of 5 years or less. Although 5 years is the maximum period allowed for each designation, it is open to local authorities to propose a further designation.

10. The suspension has no effect on notices to purchase under the right to buy which have been served prior to the designation of the area as a pressured area even if this application is still being processed by the landlord.

Selection of areas and consultation

11. Under the provisions of the 2001 Act, it is for local authorities to make proposals for the designation of pressured areas. In drawing up proposals, the Scottish Executive will expect local authorities to take account of their local housing strategies or, if these have not yet been finalised, any preliminary work that has been undertaken. Although the process of approving proposals for the designation of pressured areas is separate and distinct from the submission of local housing strategies to Scottish Ministers under section 89 of the 2001 Act, the Scottish Executive will expect such proposals to be consistent with the local housing strategy or the draft housing strategy if it has not yet been finalised.

12. The 2001 Act allows local authorities to propose the designation of any part of its area providing the specified criteria are met. Although the precise boundaries must be a matter for local determination, the Scottish Executive view is that the aim should be to identify recognised localities or neighbourhoods. In most circumstances, relevant areas are likely to

be a contiguous group of houses, but this is not a statutory requirement and there may well be cases where an alternative approach is appropriate.

13. There is a statutory duty on local authorities, before submitting proposals in respect of specific areas, to consult:

- every RSL with houses in the proposed area;
- bodies representing the interests of tenants or other residents living in the area;
- any other persons as the authority think fit.

14. As a matter of good practice, the Scottish Executive will expect local authorities to undertake wide-ranging consultations before finalising proposals for pressured areas. These discussions should be about the need for a designation as well as amendments relating to the details of the boundaries and timing. Local authorities will need to bear in mind that RSLs, in particular, may wish to suggest the designation of a particular area.

15. As well as consulting groups of tenants and residents, local authorities should also ensure that all individual tenants affected are informed of the proposal and its likely effect on them and given an opportunity to offer and seek further information.

Submission of proposals to the Scottish Executive

16. Local authorities who wish to put forward proposals for the designation of pressured areas should submit the following information to the Scottish Executive:

- A paper map showing the boundaries of the proposed area, a digitalised map of same and a full listing of the Census Output Areas and Unit Postcodes included in the area. The map should be in sufficient detail to be able to clearly identify those houses which will fall within the designated area;

- A statement of the number, type and size of local authority and RSL houses within the proposed designated area and an estimate of the initial number of tenants whose right to buy will be suspended as a result of the designation;
- The period (not exceeding 5 years) proposed for the designation;
- Information of the consultation undertaken identifying the organisations and persons consulted together with a summary of their responses;
- Sufficient information to allow Scottish Ministers to satisfy themselves that the statutory criteria for designation set out in the 2001 Act are met.

17. It will be for local authorities to decide what information should be submitted to demonstrate that the statutory criteria are met. The precise nature of the information required is likely to vary according to the size and nature of the proposed pressured area. It is anticipated that local authorities will want to draw on the assessment and analysis of housing needs which underpins their local housing strategies where these are available and current.

18. Nevertheless, the Scottish Executive will expect the information submitted in support of the designation to address both criteria. Taking account of the conclusions of the earlier Working Group on the Right to Buy which reported in December 2000 and the Rural Partnership for Change National Steering Group which reported in May 2001, the Scottish Executive will be looking in the first instance for information along the following lines:

Evidence of a substantial shortfall in social rented accommodation in relation to need

- The number of social rented houses expected to become available for let to households not currently in the social rented sector in the area through relets and new building over the period of the proposed designation;
- An estimate of the need for social rented housing from households not currently housed in the sector over the period proposed for the suspension;

- Evidence of pressure in the private sector arising from the demand by households for the available private housing stock.

Key indicators are likely to be:

- average waiting times for waiting list applicants for houses in the area relative to the local authority as a whole (along with evidence that the waiting lists are being actively managed);
- recent trends in average house price increases as compared to the local authority area as a whole.

Evidence on the impact of the right to buy on the shortfall of social rented housing in relation to need

- the number of right to buy sales in the area in question (both in absolute numbers and as a percentage of the social rented sector in the area);
- estimates of likely future sales over the period of the designation (with the basis of the estimates clearly explained and reasons given for any assumptions made) identifying those likely to be affected by the designation;
- evidence on the impact or likely impact of right to buy sales and, in particular, whether re-sales have led or are likely to lead, to the housing in question no longer being available for local resident households on modest incomes who might otherwise have been looking for housing in the social rented sector.

Two potentially relevant indicators may be:

- local estate agent/solicitor views on the number of right to buy re-sales anticipated and the likely demand for these;
- the number of re-sales as a proportion of total right to buy sales made in the preceding 5 years.

19. Two copies of the relevant information as set out in paragraph 16 above should be submitted to:

Action by the Scottish Executive following receipt of proposals for designation of pressured areas

20. Following receipt of proposals for a designation, the Scottish Executive will check to ensure all the necessary information has been submitted and providing this is the case, it will ask Communities Scotland to carry out an assessment of the proposals. It may be necessary to have discussions with the local authority to clarify certain aspects of the proposals.

21. In the light of this assessment which will be made available to the local authority, Scottish Ministers will decide whether to make the designation if the proposals are approved or approved with modifications and will write to the local authority formally designating the area under section 61B of the 1987 Act. (Ministers have the power under the terms of the 2001 Act to make the designation on terms of the proposal or on such terms as they see fit). The designation letter will:

- confirm the boundaries of the pressured area;
- specify the date on which the designation takes place;
- specify the period for which it has affect.

22. If Scottish Ministers decide not to approve the proposals, the Scottish Executive will write to the local authority explaining the reasons for this decision.

23. The Scottish Executive will aim to process and respond to applications within a period of 2 to 3 months from the initial receipt of proposals.

Action by local authorities following designation

24. Once an area has been designated, the local authority should take any further steps necessary to publicise the decision and its effect. There is a statutory duty on landlords (both

local authorities and RSLs) under section 23(5) of the 2001 Act to notify the tenants directly affected that the designation has been made and the effects of the designation on their right to buy. They may also wish to notify those bodies who were consulted before the proposals were submitted.

25. Once the designation has been made, both local authorities and RSLs as landlords are placed under a statutory duty by section 23(4) of the 2001 Act to notify prospective tenants of houses in the area of the designation and its implications.

26. If the local authority wishes to amend or revoke the designation during the specified period, it should write to the Scottish Executive with the details of the proposed amendment or revocation and the reasons for proposing this.

27. Scottish Ministers will consider these proposals and decide if the designation should be amended or revoked in line with the local authority's proposals. If necessary, they will issue a revised designation for the remaining period of the designation or written confirmation that the designation is to be revoked from a specified date. Local authorities will need to ensure that tenants and other interested parties are fully informed.

28. It is also open to local authorities to propose a further designation for up to a maximum of 5 years for all or part of the area that was originally designated. The local authority should undertake consultation before making such proposals and submit information as at paragraph 16 above.