
SUBJECT: WELFARE REFORM BILL - SECOND READING IN THE HOUSE OF LORDS

1 Who We Are

- 1.1 The Scottish Federation of Housing Associations (SFHA) is the national representative body for housing associations and co-operatives in Scotland.
- 1.2 Housing associations and housing co-operatives in Scotland own and manage 47% of the country's affordable rented housing stock. This represents around 279,144 homes across Scotland, concentrated in some of the poorest communities in our country. Approximately 60% of social housing tenants in Scotland receive either full or partial Housing Benefit to help pay their rent.¹
- 1.3 This briefing focuses upon the SFHA's principle areas of concern about the Welfare Reform Bill as it reaches its Second Reading in the House of Lords.

2 Summary

In summary, this briefing outlines:

- 2.1 Our opposition to the **under-occupation penalty** that is being introduced through both clauses 11 (housing costs element of Universal Credit) and 68 (Housing Benefit).
- 2.2 Our opposition to any break in the **relationship between housing costs subsidy and actual rents**, which could be introduced via secondary legislation related to clauses 11 and/or 68.
- 2.3 Our concerns about the overall **benefits cap** in relation to housing costs (clauses 93 & 94).
- 2.4 Our call for **direct payment of the housing costs element of Universal Credit to social landlords** where the tenant chooses or where there are rent arrears and the landlord wishes to receive direct payment.
- 2.5 Our concern about the new provision which was introduced into clause 102 at the Commons Report Stage regarding **deduction of Housing Benefit (and other benefit) overpayments from earnings**.

¹ Scottish Housing Regulator, "Registered Social Landlords in Scotland Summary Facts and Figures 2008/09, page 2. Downloadable at http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr_registeredsociallandlords.pdf, (accessed 14th July 2011)

2.6 Our welcome of the Government's confirmation within clause 43 that they will use the **affirmative resolution procedure** to agree the forthcoming secondary legislation relating to specific elements of the Bill, including clause 11 on housing costs.

3 Under-occupation Penalty

3.1 Clause 68 is the means by which the Secretary of State will introduce a restriction on the Housing Benefit paid to tenants who occupy a larger property than it is deemed they require, in an attempt to encourage them to move to a smaller property. Clause 11 is intended to achieve the same for the housing costs element of Universal Credit.

3.2 The potential impact of imposing this penalty was discussed in detail during the Committee stage in the Commons, in respect of both clauses. The Minister clarified that the purpose of the measure is not to force people to move but to encourage claimants to take responsibility for their financial decisions.² SFHA contends that this is neither reasonable nor practical and, indeed, is unworkable in the social rented sector, where tenants' options are severely constrained. We contend the actual consequences will be (a) spiralling rent arrears, as households struggle to make up the rental shortfall from already tight resources and ultimately (b) increased homelessness.

3.3 Our own recently published Welfare Reform impact assessment study³ has found that:

- Just under a third of working-age tenants under-occupy their tenancies by at least one bedroom. These households will lose an average of £11 a week in Housing Benefit according to DWP estimates. The number of tenants affected is likely to be somewhere between 24,000 and 31,500. This would cost tenants of housing associations and co-operatives between **£13.6 million and £18million** in lost benefits over a year.
- Tenants will be penalised for under-occupying, but they have little option but to do this, because there is a significant lack of 1-bedroom properties. 44% of working-age HA/Co-op tenants need a one-bedroom property but only 24% occupy one. Across all tenants, 62% need one bedroom but only 34% have this. This represents chronic under-supply.

3.4 Scottish housing associations and co-operatives already seek to make the best use of their housing stock and meet housing needs effectively through their allocation policies and/or Common Housing Registers. We have evidence from an association operating in a rural area that, because vacancies in their area of operation are so scarce, they

² Welfare Reform Bill Committee Stage Report, pp. 39-40

³ Littlewood, M (2011) "*The Impact of proposed Welfare Reform on HA/Co-op tenants: Final report to the Scottish Federation of Housing Associations*", SFHA. Downloadable at http://www.sfha.co.uk/component/option,com_docman/itemid,82/gid,1288/task,doc_download/ (accessed 14th June 2011)

typically offer properties larger than household size to accommodate changing circumstances of the household. These can include the addition of children through birth or new relationships, the inclusion of older family members no longer able to live independently, the need to have space to work at home. We also have evidence from other associations, typically working in regeneration areas, which let larger than required properties to those presenting as homeless because housing of a suitable size is in short supply and because larger sizes *are* available but in low demand.

- 3.5 SFHA supports housing associations and co-operatives in their initiatives to incentivise those who are under occupying to move to smaller accommodation, where suitable accommodation exists. We are opposed to proposals to introduce a financial sanction on those deemed to be under occupying, as this will penalise both those who are already in tight financial circumstances and landlords who are already focused upon making the best use of existing stock.
- 3.6 In previous stages of this Bill, calls have been made to exempt disabled people living in adapted properties from any restrictions to Housing Benefit. We support this but we would also urge consideration of the impact of an under-occupation penalty on a whole range of households, as discussed during the Commons Bill Committee's scrutiny. Further impact information is provided in the Annex to this briefing.

4 Relationship between Housing Costs Subsidy and Actual Rents

- 4.1 We are concerned that under the terms of the legislation as currently drafted, both clauses 11 and 68 could be used to introduce a standard housing allowance for social tenants, with fixed rate payments. We note that, in the Explanatory Notes accompanying the Bill, it states:

"In the short to medium term, housing benefit for social rented sector tenants....will continue to be based on the actual rents in both housing association and local authority properties" (subject to the new size criteria mentioned in the same section of the Notes)⁴

- 4.2 Whilst it is welcome that assistance with housing costs will continue to be based on actual rents, the use of the phrase "in the short to medium term" above rings alarm bells for us. We would be concerned if the concept of a fixed rate housing element for social tenants appeared at a later stage via secondary legislation. The Minister sought to reassure the Commons Bill Committee in this respect, but the potential to introduce a standard housing allowance remains.
- 4.3 The relationship between the amount of housing costs paid to a benefit claimant and the actual rent is an important one. Housing Benefit and its predecessors have been developed to ensure that any tenant, irrespective of their experience of threats to

⁴ Explanatory Notes, p. 46, section 325

income, can continue to make rent payments in full. For social landlords, a stable rental income is critical to ensuring that they can continue to access competitive borrowing to assist with building much needed new affordable homes and to maintain existing stock and services to tenants. Any change to this direct relationship between housing costs paid and actual rent has the potential to create spiralling rent arrears, increased homelessness and threaten the financial viability of social landlords.

- 4.4 As drafted, we understand that both Houses will have the opportunity to see a draft of any statutory instrument relating to Clause 68 and to approve it by resolution. This is welcome, providing sufficient time is allowed for its consideration and for housing industry experts to make representations on the content prior to this.

5 Benefits Cap

- 5.1 Clauses 93 and 94 introduce a cap on total household benefit paid to working age households. When this was debated in the Commons Bill Committee, it was clarified that the cap will operate by reducing Housing Benefit entitlement where a household's total benefit exceeds the cap. It was also clarified that the cap will be carried forward into Universal Credit, although the impact on the housing costs element was not explained.
- 5.2 We have outlined in section 4 above the critical importance of retaining a direct relationship between housing support subsidy and actual rents. The proposed operation of the cap will undermine this.
- 5.3 We have ongoing concerns about the impact that a benefits cap will have upon homelessness in Scotland and right across the UK. The Scottish Government has set an ambitious target that all homeless people in Scotland will be in settled accommodation by 2012. Our own impact study suggested that the proposed benefits cap will affect 1,700 tenants in Scotland, but notes that the losses that could be accrued will be significant, at an average of £66-£93 a week. Larger households with children will be most at risk of this measure, and so child poverty may worsen.⁵ Our concern is that the impact of the benefits cap in Scotland is to place around 1,700 tenants potentially at risk of homelessness, thus exacerbating an already challenging target.

6 Direct Payment of Housing Costs Element

- 6.1 Under the current Housing Benefit arrangements, tenants of social landlords can choose to have their Housing Benefit paid directly to their landlord. There is also a provision for a social landlord, where a tenant is in arrears of rent by eight weeks or

⁵ Littlewood, M (2011) *"The Impact of proposed Welfare Reform on HA/Co-op tenants: Final report to the Scottish Federation of Housing Associations"*, SFHA

more, to request that the Housing Benefit is paid directly to the landlord. It is critical that the arrangements that exist currently for direct payment of Housing Benefit to social landlords are preserved in the provisions for payment of the new Universal Credit.

- 6.2 If the arrangements that exist currently for direct payment of Housing Benefit to social landlords are not preserved for the housing costs element of Universal Credit, the income streams of social landlords risk being significantly reduced. Households who will be eligible to receive Universal Credit will have tightly constrained incomes requiring careful management. Tenants who experience cash flow problems (e.g. due to higher utility bills) may spend the money received on items other than rent. Many tenants in social housing do not have bank accounts, and cannot easily access affordable credit. They may resort to expensive door step lenders or even loan sharks in times of difficulty.
- 6.3 Clause 11 of the Bill as currently worded does not provide any assurance to social landlords that the existing arrangements will prevail under Universal Credit. Indeed, the wording of the Universal Credit White Paper implies that the direct debit system is being viewed as part of the solution.⁶ It is not. The direct debit system cannot guarantee that a landlord will receive the payment. In fact, there is a risk that households on constrained incomes who do have bank accounts and set up a direct debit for rent payments could find themselves with insufficient funds to meet the payment on the due date. If this happens, in addition to the rent arrears that will accrue, they will also face significant bank charges for the missed direct debit, especially if the landlord tries to get the payment more than once. So there is a significant risk that both rent arrears and general indebtedness will increase amongst tenants of social housing.
- 6.4 Significant reductions in rental income will constrain social landlords' abilities to repay the private finance borrowed to build houses and to fund the maintenance of existing houses. This will result in lenders viewing housing associations and co-operatives as higher risk, thus impacting on the availability and terms of private finance in the future. One lender has already made public its concerns on this point⁷ and the Council of Mortgage Lenders highlighted the same to Members of the House of Commons in the Report Stage debate. In a worst case scenario, the viability of some social landlords may be threatened if rental income reduces very significantly.

⁶ *Universal Credit: welfare that works*, DWP November 2010, page 20, paragraph 31

⁷ Housing benefit paid direct to tenants 'our primary concern' – Santander: <http://www.24dash.com/news/housing/2011-05-30-Housing-benefit-paid-direct-to-tenants-our-primary-concern-says-Santander>

- 6.5 Evidence from our Impact Assessment study⁸ shows that even before benefit reform, 20% of HA/Co-op working-age tenants on Housing Benefit say they are “in some financial difficulties”, and 5% are “in deep financial trouble”, while 15% “don’t manage very well”⁹. We are concerned that if 40% of working-age tenants on Housing Benefit are finding finances difficult to manage *before* the cuts, the impact on arrears could be very significant.

7 Deduction of Overpayments from Earnings

- 7.1 At the Commons Report Stage, new provisions were incorporated into clause 102 of the Bill to allow benefit overpayments, including overpayment of Housing Benefit, to be deducted from a claimant’s earnings.
- 7.2 SFHA is concerned that the clause as currently drafted does not make it clear whether any judicial process would be required for the Secretary of State to serve a notice of earnings arrestment. If the intention of the new provision is that judicial process would not be required, then we would find this excessive and unduly punitive.
- 7.3 Clarity is also required about the amount of administration charge that an employer could make in process such an arrestment.

8 Affirmative Resolution Procedure

- 8.1 SFHA has been concerned that the wording of some of the Bill gives the Secretary of State too wide a power to introduce a major restructuring of the benefits system without detailed parliamentary scrutiny. As currently worded, major changes could be introduced via secondary legislation to the calculation and payment of Housing Benefit and the housing costs element of Universal Credit for tenants in both the private rented sector and the social rented sector.
- 8.2 Such changes have the potential to affect the ability of significant numbers of tenants to pay their rent. These will not only increase rent arrears and homelessness, but will also impact on the ability of housing associations and housing co-operatives to borrow money to build new homes and to maintain existing housing stock.
- 8.3 We therefore welcome the amendment already made to the Bill which adds provision to clause 43 to ensure that the detailed regulations relating to specific clauses of the Bill (including clause 11 on housing costs) will be subject to the affirmative resolution

⁸ Littlewood, M (2011) “*The Impact of proposed Welfare Reform on HA/Co-op tenants: Final report to the Scottish Federation of Housing Associations*”, SFHA

⁹ Data obtained from Scottish Household Survey data 1999-2008 and referred to in Littlewood, M (2011) “*The Impact of proposed Welfare Reform on HA/Co-op tenants: Final report to the Scottish Federation of Housing Associations*”, SFHA

procedure. We would add the caveat that there should be sufficient time prior to the scrutiny of such regulations in each House for housing industry experts and others to make representations on the content.

9 Concluding Comments

- 9.1 We have outlined above our serious concerns about the potential impact of specific elements of the Welfare Reform Bill on housing policy and practice in Scotland. Our sister federations will have briefed on the potential impact in other parts of the UK. SFHA seeks to assist and support Scottish housing associations and co-operatives in preventing and alleviating homelessness across Scotland. Aspects of this Bill as currently drafted have the potential to undermine this by increasing rent arrears and, ultimately, homelessness. It also has significant potential to reduce the revenue streams which social landlords rely upon to build much needed new homes and maintain the existing housing stock.
- 9.2 SFHA agrees with Professor Kenneth Gibb of Glasgow University, that: *“if the long term goal is to move to a much simpler universal type allowance with an embedded housing allowance within it.....then the shift from one system to the new one has to be managed and the transition made acceptable to all parties.....Housing Benefit on this scale directly affects the poorest in society but also the very bodies whose purpose is to provide aid and support to those people. If the outcome of reform is to make private finance even less accessible [for housing investment] it will be self defeating.”*¹⁰
- 9.3 We urge you to take account of our concerns when considering your contribution to the forthcoming Second Reading in the House of Lords.

SFHA

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¹⁰ Professor Kenneth Gibb, Joseph Rowntree Foundation's response to 21st Century Welfare, pp 30-31. Downloadable at <http://www.jrf.org.uk/sites/files/jrf/DWP-welfare-response-Oct2010.pdf> (accessed 14th July 2011)

ANNEX

SUBJECT: SUMMARY FINDINGS FROM MANDY LITTLEWOOD'S IMPACT ASSESSMENT STUDY FOR SFHA

INTRODUCTION

- SFHA commissioned and recently published independent research on the potential impacts of Welfare Benefit Reform on tenants and landlords.
- The main aim of the research was to assess the possible impact of different elements of the Welfare Reform Bill including the proposed changes to Housing Benefit and broader changes to different groups of benefits.
- The research also considered possible policy measures to offer savings while reducing the detrimental impact of the reforms.
- The outputs of the research will also include a web-based calculator for landlords to use with tenants to assess the impact of benefit reform on them.

PROPOSED WELFARE REFORM

- The scope of the Welfare Reform Bill and associated legislation is considerable, with numerous strands. Although Housing Benefit has the most direct impact on social landlords, all of the potential reforms might impact on tenants and so the impact assessment needs to consider these.
- The welfare reforms announced so far are:

Benefit changes	Implementation
Up-rating of non-dependent deductions	April 2011
Local Housing Allowance (LHA) is capped based on property size, with a maximum of £400 a week for a 4-bedroom property. The £15 LHA excess is removed.	April 2011
Disabled private renters with an overnight carer may be eligible for an additional room allowance on their Housing Benefit.	April 2011
Changes to Working Tax Credit - a drop in childcare costs paid from 80% to 70% as well as changes to thresholds/tapers	April 2011
The re-assessment of Incapacity Benefit and Severe Disablement Allowance claimants with the expectation that a further 5% will be found fit for work (saving an estimated £77.7mn a year, net of costs).	April 2011
Up-rating benefits by the Consumer Price Index (CPI) rather than the retail price index (RPI)	2011-2013
LHA rates will be set at the 30th percentile of local rents (instead of the 50th percentile)	October 2011

Extend the Single Room Rate for LHA from age 25 to age 35 (HB to cover a room in accommodation with shared facilities)	January 2012
Caps on Housing Benefit based on property size for under-occupying social tenants of working age.	April 2013
All working-age benefits will be replaced with a Universal Credit with a benefit cap of £350 a week for single people and £500 per week for couples. More conditions and sanctions, also.	2013-1017
Replacing Disability Living Allowance with Personal Independence Payment, with the aim of reducing the amount payable to working-age claimants by around 20%	2013-2017
The localisation of the Social Fund and Council Tax	2013-2017

This is a fast-changing and complex policy area, with new announcements about proposed changes being made periodically. Not all the changes are being made as part of the Welfare Reform Bill. For example, the up-rating of non-dependent deductions was part of secondary legislation. Changes to Working Tax Credit were also made through secondary legislation and without a full impact assessment.

THE POTENTIAL IMPACTS

- The analysis is based on benefits data from the DWP, Scottish Government data, APSR data, Scottish Household Survey data and SCORE data. The findings provide some sobering reading:
- Looking across the proposed changes to Housing Benefit, Universal Credit and other benefit reforms, as many as 1 in 5 tenants may have their incomes adversely affected, with some very substantial income losses for some tenants.
- Rates of non-dependent deductions have already been increased significantly, by secondary legislation. A household with a non-dependent on the minimum-wage for a 40 hour week will lose £48.45 a week in Housing Benefit - an additional £10.25 a week compared to 2010-11 rates.
- Just under a third of working-age tenants under-occupy their tenancies by at least one bedroom. These households will lose an average of £11 a week in Housing Benefit according to DWP estimates. The number of tenants affected is likely to be somewhere between 24,000 and 31,500 tenants. This would cost HA/Co-op tenants between £13.6 million and £18million in lost benefits over a year.
- Tenants will be penalised for under-occupying but have little option but to do this. There is a significant lack of 1-bedroom properties – 44% of working-age HA/Co-op tenants need a one-bedroom property but only 24% occupy one. Across all tenants, 62% need one bedroom but only 34% have this. This represents chronic under-supply.
- Universal Credit will set a cap on benefits to working age households, which will affect an estimated 1% of the caseload – an estimated 1,700 HA/Co-op tenants across Scotland. Although the numbers affected are low, the losses are significant, at an average of £66-£93 a week. Larger households will be most at risk of this measure.
- The DWP aims to reduce expenditure on disability benefits from 2013-14 by 20%. Almost one in five HA/Co-op tenants and one in six working-age tenants receive Disability Living

Allowance so the impact on the sector could be hard. The tenants of specialist providers will be most significantly affected by these cuts.

- 15% of tenants receive Working Tax Credit, of which about 12% have children. The 10% cut in childcare payments will affect many of these tenants. A further 16% receive Incapacity Benefit/Employment Support Allowance and we would expect eligibility to fall by 5%, based on DWP estimates.
- DWP propose to pay Universal Credit directly to tenants, monthly, in arrears. This poses a significant risk to household budgeting which could impact on landlord rental income and is likely to affect the confidence of lenders.
- Even before benefit reform, 20% of HA/Co-op working-age tenants on Housing Benefit say they are in 'some financial difficulties' and 5% are in 'deep financial trouble' while 15% 'don't manage very well'¹¹. If 40% of working-age tenants on Housing Benefit find finances difficult to manage before the cuts, the impact on arrears could be significant.
- Any cuts to the Social Fund are also likely to affect a tenant's ability to maintain a tenancy without getting into debt to buy white goods, furniture, homeware, etc.

SFHA
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¹¹ Scottish Household Survey data 1999-2008