



SFHA Written Evidence to Local Government and Communities Committee

Housing (Amendment) (Scotland) Bill 2017

October 2017

1. Who We Are

- 1.1 The SFHA leads, represents and supports Scotland's housing associations and cooperatives, encompassing a wide and diverse set of organisations in different localities across the country. We want to see a thriving housing association and co-operative sector providing sustainable and affordable homes.
- 1.2 SFHA members own and manage 80% of the 280,000+ housing association stock across Scotland, providing housing for almost 500,000 people. Housing associations and co-operatives are not-for-profit bodies, and over 90% are charities. They are known as Registered Social Landlords (RSLs) and predominantly regulated by the Scottish Housing Regulator (SHR).
- 1.3 Housing associations and co-operatives in Scotland are private businesses. Public funding received is used to lever in private finance for the development of new affordable homes. Maintenance of properties and housing management services are met almost entirely through tenants' rents and, in respect of some planned maintenance and major improvements, private finance.
- 1.4 The SFHA welcomes this opportunity to submit evidence to the Local Government and Communities Committee regarding the Housing (Amendment) (Scotland) Bill 2017.

2. Executive Summary

- 2.1 The SFHA fully supports the aim of the Bill to reverse the Office of National Statistics (ONS) reclassification of RSLs as public non-financial corporations, so that RSLs once again have the status of private non-financial corporations. Failure to do so would mean the collective borrowing of RSLs – circa £3.5 billion – would be added to the Scottish Government's balance sheet, leading to Scottish Government control over RSL borrowing and greatly limiting RSL's ability to contribute to the 50,000 affordable homes target.
- 2.2 RSLs are not public bodies, but are private businesses who have voluntary governing bodies and are in most cases are charities. Public funding received is used to attract private finance to enable the development of new affordable homes.
- 2.3 The SFHA therefore supports the proposed changes to the powers of the Scottish Housing Regulator (SHR) designed to achieve this aim, and is confident that these changes will not have a detrimental impact on the effectiveness of the SHR to regulate, or mean any radical changes to how the sector functions in practice. The forthcoming review of the SHR's Regulatory Framework is a timely opportunity to ensure that the changes have minimal impact.
- 2.4 Further regulations will be drafted to limit any perceived control that local authorities may have over RSLs. The SFHA is comfortable that these regulations will have

minimal impact on RSLs and have no adverse impact on relationships between RSLs and local authorities. The SFHA is keen to feed into the drafting of these regulations.

- 2.5 The legislation has been drafted to allow further amendments to the powers of the SHR through regulations should the ONS' eventual reconsideration of the status of RSLs not yield the desired result. Whilst the SFHA is uncomfortable that there is still an element of uncertainty about what the ultimate ONS decision will be following the enactment of this legislation, it nonetheless acknowledges that it is not possible to get a definitive answer from ONS at this stage of the process. It is therefore sensible to include this provision.
- 2.6 We welcome the assurances that SFHA has received from Scottish Government about its commitment to reversing the ONS decision. Scottish Government has indicated (in so far that it can at this stage) that the legislation has been drafted to take account of all of the elements that will have a bearing on the eventual ONS reconsideration of RSLs' status. This is based on Scottish Government's own legal advice and its liaison with ONS.
- 2.7 SFHA welcomes further assurances from Scottish Government that should the Freedom of Information (Scotland) Act 2002 be extended to RSLs as is currently proposed, this will have no bearing on the ONS decision. We do not wish to see any factor impede the successful attainment of the Bill's overarching goal.

3. ONS Reclassification of RSLs

- 3.1 The SFHA fully supports the aim of the Bill to reverse the ONS' decision to reclassify RSLs as Public Non-Financial Corporations in September 2016.¹
- 3.2 It is essential that RSLs are returned to their status as private non-financial corporations as soon as possible, as failure to do so will effectively place the collective borrowing of RSLs in Scotland – circa £3.5 billion² – on the Scottish Government balance sheet.
- 3.3 This would effectively create Scottish Government control over RSL borrowing, greatly removing the independence of the sector and severely damaging its ability to contribute

¹ Office of National Statistics (Sept 2016) *Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland* available [here](#)

² Scottish Housing Regulator (March 2017) *Analysis of the Finances of RSLs Table 12 p17* available [here](#)

towards the 50,000 affordable homes target. As highlighted by the Scottish Government's Policy Memorandum accompanying the Bill:

“The financial consequences of RSLs continuing to be classified as public sector bodies would have immediate implications for the Scottish Government’s commitment to build 50,000 affordable homes. The commitment depends on the Government’s planned financial support of over £3 billion for the programme (during financial years 2017/18 to 2020/21) being augmented by the RSL sector undertaking private borrowing of about £300 million a year. If the RSLs’ borrowing can no longer be counted as private borrowing, the effective cost to the Scottish Government of delivering on the commitment would, by having to include the RSL borrowing, rise to £4.5 billion.”³

4. Amendments to the Powers of the Scottish Housing Regulator

- 4.1 The ONS decision to reclassify RSLs identified a number of aspects of the SHR’s powers that collectively shaped its view that RSLs were under the control of the SHR. The legislation seeks to address each of the points specified by ONS in its decision.
- 4.2 Once the legislation is enacted, RSLs will no longer have to seek consent from the SHR for certain activities, such as disposals of properties or restructuring. This will be replaced with a requirement to notify the SHR upon completion. Current requirements to carry out a tenant ballot when any of these activities lead to a change of landlord for tenants, will be retained.
- 4.3 The removal of the consents regime will not lead to an increase in any of these activities (such as disposals) across the sector, as these will still be approached on the same terms that they always have; just without the SHR approving them in advance. There will remain a necessity for every RSL to carry out necessary due diligence before undertaking such activities, to ensure that it has assessed any risks and has a clear business case to take forward.
- 4.4 The requirement to notify the SHR will also provide a means for the SHR to identify potential risks and any necessary further engagement. It is noted from the Finance Memorandum to the Bill⁴ that the SHR has requested further resources to engage more

³ Scottish Government (Sept 2017) *Housing (Amendment)(Scotland) Bill Policy Memorandum* available [here](#)

⁴ Scottish Government (Sept 2017) *Housing (Amendment)(Scotland) Bill Financial Memorandum section 14, p3* available [here](#)

closely with RSLs in different ways to make up for the loss of the consents regime. The SFHA look forward to feeding into the SHR's forthcoming review of the Regulatory Framework in order to shape how this might work in practice.

- 4.5 The legislation will also amend the circumstances in which the SHR can appoint a special manager, appoint members to an RSL's governing body or remove/suspend governing body members and senior staff. These will now only be possible in circumstances where there has been a breach of legislation or regulatory standards.
- 4.6 In practice, this will have little impact on the ability of the SHR to intervene in the rare circumstances where this is necessary. The SFHA has received assurances from the SHR that, had the terms of the proposed legislation been in place at the time, it would still have been able to intervene in the same way during the few cases where it has had to use any of these powers.

5. Further Regulations & Other Considerations

- 5.1 The legislation allows for further regulations to be enacted to limit any perceived control that local authorities may have over RSLs. It is noted from the Policy Memorandum of the Bill⁵ that Scottish Ministers intend to specify in regulations that local authorities may only nominate a maximum of 24% of the board members of an RSL, and may not exercise control over RSLs, e.g. by vetoing a change in an RSL's constitution.
- 5.2 The SFHA is keen to feed into the drafting of these regulations. Although we are confident that these changes will not have any detrimental consequences for RSLs or their relationships with local authorities, SFHA asks that the few organisations for which these regulations may require some constitutional changes to adopt, are consulted as part of the process.
- 5.3 The legislation has been drafted to allow further amendments to the powers of the SHR through regulations should the ONS' eventual reconsideration of the status of RSLs not yield the desired result.
- 5.4 Whilst the SFHA is uncomfortable that there is still an element of uncertainty about what the ultimate ONS decision will be following the enactment of this legislation, it nonetheless acknowledges that it is not possible to get a definitive answer from ONS at this stage of the process.

⁵ Scottish Government (September 2017) *Housing (Amendment) (Scotland) Bill Policy Memorandum Section 30, p6* available [here](#)

5.5 It is also proposed by Scottish Government that the Freedom of Information (Scotland) Act 2002 be extended to Scottish RSLs. ONS will not only be reconsidering its reclassification decision in Scotland following the enactment of the Housing (Scotland) (Amendment) Bill, but will also in due course be revisiting similar decisions to reclassify housing associations in England, Wales and Northern Ireland – to whom FOI legislation does not currently apply. SFHA welcomes the assurances that Scottish Government has provided indicating that potential extension of FOI will have no bearing on the final ONS decision in Scotland.

5.6 In its interim report regarding the consultation to potentially extend FOI to RSLs, the Scottish Government stated:

*“Given the clear intention of the Scottish Government to confirm by means of legislation the private status of RSLs we do not consider the proposal to extend Freedom of Information legislation to RSLs to cast any further doubt on the status of RSLs as private bodies”.*⁶

⁶ Scottish Government (June 2017) Consultation on Extending Coverage of the Freedom of Information (Scotland) Act 2002 to Registered Social Landlords – Interim Report [here](#)