



# **Housing (Scotland) Act 2014**

**Briefing paper from CIH Scotland**

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## **The Chartered Institute of Housing**

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. We have a diverse and growing membership of over 22,000 people who work in both of public and private sectors.

CIH Scotland has more than 2,500 members working in local authorities, housing associations, housing co-operatives, Scottish Government and Government agencies, voluntary organisations, the private sector, and educational institutions.

CIH aims to ensure members are equipped to do their job by working to improve practice and delivery. We also represent the interests of our members in the development of strategic and national housing policy.

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## Introduction

The Housing (Scotland) Act (the Act) received Royal Assent on 1 August 2014 following a series of amendments during the parliamentary process.

Various provisions within the Act require secondary legislation or the publication of further guidance which, in most cases, will be developed by the Scottish Government in partnership with key stakeholders. The exact timetable for implementation is not yet known.

This briefing covers the provisions within the Act as passed and how these are likely to impact on the housing sector in Scotland.

The Act is in eight parts covering the following:

- Part 1 - Abolition of the Right to Buy (RTB);
- Part 2 - Social housing allocations and tenancy management including additional powers for tackling antisocial behaviour;
- Part 3 - Private rented housing, including changes to the repairing standard and the introduction of a new Housing Tribunal;
- Part 4 - Regulation of letting agents;
- Part 5 - Licensing of mobile home sites with permanent residents;
- Part 6 – New powers for local authorities to improve the condition of homes in the private sector; and
- Parts 7 and 8 - Miscellaneous and general provisions including greater powers for the Scottish Housing Regulator (SHR) to transfer the assets of registered social landlords under certain circumstances.

### Part 1: Right to Buy

The Act abolishes RTB for all social housing tenants in Scotland. The official date for abolition has not been announced yet but it will be no sooner than 1 August 2016 giving tenants with existing RTB two years to decide whether to buy their home.

It is anticipated that the abolition of RTB will lead to an increase in sales in the short term as existing tenants exercise their RTB before it is withdrawn. In the longer term, this will result in a reduction in capital receipts for social landlords but will preserve social housing stock for future generations and ensure steady rental income for social landlords.

#### What does this mean?

The Act does not make any changes to RTB rules. Tenants who currently have RTB (preserved or modernised) will retain this on the same terms until RTB is abolished.

The Scottish Government will develop guidance for tenants before RTB is abolished but it is not clear when this will be published or how widely it will be publicised. In the

mean time, a list of [Frequently Asked Questions](http://bit.ly/1s7YlnB) (<http://bit.ly/1s7YlnB>) is available on the Scottish Government website which may help to address some questions from social housing tenants.

Social landlords may wish to think about developing their own communication plans to inform tenants with RTB of their rights and the timescale for abolition when this is announced.

Communicating with tenants will present an opportunity to include information about the process of buying a home and the responsibilities that this entails. It is important to ensure that tenants are financially able to meet the costs of maintaining their home and providing information at this point may help to avoid issues with maintenance of mixed ownership blocks in the future.

Additional staff resources may be required over the next two years to deal with increased RTB enquiries.

## **Part 2: Social Housing**

### Social Housing Allocations

The Act makes several changes to allocation rules for social landlords. The policy memorandum for the Bill, as introduced, indicated that the changes are intended to increase flexibility for social landlords and allow them to make the best use of social housing. In reality, it does not appear that the changes will have a significant impact on social housing allocation policies.

The Act replaces current reasonable preference categories with three groups:

- Social housing tenants who are under occupying their home;
- Homeless persons with unmet housing needs; and
- Persons who are living in unsatisfactory housing conditions with unmet housing needs.

As is currently the case, social landlords will be able to specify additional groups who will be given reasonable preference in response to local circumstances.

The Act allows social landlords to take ownership of housing into account except where the owner cannot access the home in question or where occupying the home could lead to abuse or endanger the health of the occupant. This will allow local authorities the discretion to prevent social housing being allocated to those who are not in real housing need while offering protection to those who genuinely do not have the option to occupy their home. While this scenario may not be a common one, this measure will help to ensure that best use is made of limited social housing stock.

A provision which would have allowed age to be taken into account was revoked during Stage 2 of the parliamentary process.

The Act introduces a duty for social landlords to consult specific groups and publish the results of the consultation when amending their allocations policy. Landlords

must also take into account the Local Housing Strategy and any guidance published by the Scottish Government.

#### **What does this mean?**

Social landlords will have to review their allocations policies in line with the new duty to consult and any additional guidance published by the Scottish Government. Although the Act does specify the groups that must be consulted, it does not detail the extent of the consultation or how the results must be published which should allow some flexibility in social landlords' approach to the consultation although further details may be specified in guidance.

The new duty to consult reflects the direction of the SHR regarding tenant engagement and participation in the development of services as set out in the Scottish Social Housing Charter.

#### **Short Scottish Secure Tenancies and Antisocial Behaviour Powers**

The Act allows social landlords to grant a short Scottish secure tenancy (Short SST) to homeowners who cannot occupy their home on a short term basis. For example, if an owner needs to move out while repairs are carried out to make the home safe. This provides a further safety net for home owners who may be in genuine housing need given that the Act will allow social landlords to take home ownership into account when allocating homes.

In addition, social landlords are given the power to convert an existing tenant's Scottish secure tenancy (SST) to a Short SST or to grant a Short SST to new tenants in cases where there is evidence that the tenant, a member of their household or a visitor has been involved in antisocial behaviour in or near their home within the last three years.

This extends current powers for the issue of Short SSTs for antisocial behaviour which require the tenant to have been evicted for antisocial behaviour or subject to an ASBO within the last three years.

The length of a Short SST in cases involving antisocial behaviour has been increased from six months to a minimum of 12 months with provision for the landlord to request a further six month extension if antisocial behaviour issues persist. The extension of short SSTs is intended to allow more time for landlords to work with tenants with a view to encouraging positive changes in behaviour as an alternative to eviction proceedings.

When issuing a Short SST for antisocial behaviour, the landlord must state the reasons for the decision and the tenant will have the right to appeal.

During the initial 12 month Short SST, the landlord must provide, or ensure the provision housing support services which are deemed to be appropriate. If the Short SST is extended, support must be provided.

If antisocial behaviour persists or the tenant is in breach of their tenancy conditions, the social landlord may seek recovery of the home through the usual channels. Again, social landlords will be required to give reasons for the decision to recover the home and the tenant will have the right to appeal.

If the landlord does not seek recovery of the home, the Short SST will revert to a SST at the end of the period.

The Act aims to simplify the eviction process in cases involving serious antisocial behaviour by allowing social landlords to make use of an existing conviction as grounds for possession. The tenant must have been convicted within the last 12 months.

The Act clarifies that a social landlord can suspend an application for social housing under the following circumstances:

- There is evidence that the applicant, a member of their household or a visitor has been engaged in antisocial behaviour in or near their home or towards the landlord's staff;
- The applicant has previously been evicted by a court order;
- The applicant has lost a previous tenancy through abandonment;
- The applicant has been evicted under the Housing (Scotland) Act 2001 for damage to the home or its contents;
- The applicant has outstanding rent arrears and there is no arrangement in place;
- The applicant has previously provided false information to obtain a tenancy;
- The applicant has unreasonably refused the offer of one or more homes.

Applicants will be given the right to appeal and social landlords will have the ability to review the suspension if circumstances change. Additional guidance from the Scottish Government will specify the timescales for suspension and the previous timescales that a landlord can take into account when assessing an applicant's behaviour.

Suspensions cannot be applied to a homeless household which the local authority has a duty to rehouse.

#### **What does this mean?**

The powers to issue Short SSTs in cases involving antisocial behaviour are discretionary and it is not clear how widely they will be used.

There are wide ranging perceptions of what constitutes antisocial behaviour. Clear guidance is required from the Scottish Government outlining the circumstances under which Short SSTs for antisocial behaviour and suspension of an application for housing can be issued.

If a landlord decides to use the powers, it will have to develop a clear policy outlining how the powers will be used. Tenants and social housing applicants need to be

informed of the consequences of their actions and there is a need to manage expectations of how the powers can and will be applied.

The provision of support to tenants issued with a Short SST is welcome and will ensure that vulnerable households are given assistance to make positive changes to sustain their tenancy. However, there will be resource implications associated with any increase in the provision of support.

### Assignment, Subletting, Joint Tenancies and Succession

The Act specifies that any person seeking assignment, subletting or joint tenancy of a social rented home, must have been living in that home as their main residence for a period of at least 12 months prior to the application.

Previously, a minimum period of six months applied to applications for assignment. No qualifying period applied to applications for subletting or joint tenancy.

The qualifying period for succession by a co-habiting partner (where there is no marriage or civil partnership) has been increased from six months to 12 months. The minimum 12 month qualifying period will also be applied to carers and family members.

The 12 month qualifying period only begins when the person in question, or a tenant of the home, notifies the landlord that they have moved in.

The Act specifies that assignment may be refused where the applicant would not be given reasonable preference under the landlord's allocations policy or where assignment would result in the home being under occupied.

### **What does this mean?**

Restrictions on assignment, subletting, joint tenancies and succession will help social landlords to make best use of their stock. In the past, social landlords have expressed concern that existing rules did not do enough to prevent scarce social housing stock from being handed over to people who did not genuinely need it.

There is some concern that the restrictions may adversely affect carers in situations where they have given up their main residence to care for a social housing tenant but the tenant passes away before the 12 month qualifying period is reached. This will not be a common situation but one that will have to be dealt with very sensitively. It is hoped that this will be addressed through Scottish Government guidance.

Tenancy agreements should already state that tenants have a duty to inform their landlord if another person moves into the home. However, landlords may want to emphasise this point and the fact that failure to notify may affect tenancy rights.

## Recovery of Adapted Properties

The Act clarifies that a social landlord may take possession of an adapted property where the tenant no longer requires the adaptation or did not require the adaptation in the first place. Possession of the home is dependent on the provision of a suitable alternative for the household.

### **What does this mean?**

Adaptations can be expensive to install and to remove and the process can take time. It makes sense that, wherever possible, homes which have already been specially adapted should be made available to people who can make use of those adaptations.

While this provision is only likely to apply to a small number of cases, it will be helpful in ensuring that social landlords are able to make best use of adapted housing stock.

## **Part 3: Private Rented Housing**

### Private Rented Housing Tribunal

The Act introduces a new Housing Tribunal (the Tribunal) to deal with civil private sector housing disputes outwith court. This will incorporate the existing Private Rented Housing Panel (PRHP) and Home Owner Housing Panel (HOHP). Establishment of the Tribunal is linked with wider reform of the court system in Scotland and it is not expected to be in place until late 2016.

The Tribunal will be able to make decisions on evictions but will not deal with criminal cases.

### **What does this mean?**

Moving some cases to the Tribunal should help to speed up the decision making process and may help to increase access to justice as some people will find the set up less intimidating than the formal court system. It will also free up time for the courts to deal with other cases.

Tribunal members will have more experience in dealing with housing issues which should lead to more informed and consistent decision making.

There is some concern regarding how people will be supported to use the new Tribunal system given that they will not have access to legal aid as they would in court. As a result, advice services may experience an increase in demand for their services.

### Time Limit for Determining Landlord Registration Applications

Where a local authority has not made a decision on an application for landlord registration within 12 months, the landlord will be given tacit approval, entered onto the landlord register and legally permitted to act as a landlord. The applicant will



remain on the register for 12 months (rather than the usual three year period) after which they will be required to submit a new application.

If a local authority has not reached a decision on an application within the time limit, they may seek an extension through the Tribunal.

**What does this mean?**

It is unlikely that there will be many cases where an application cannot be processed within the 12 month time limit. However, where this is the case, local authorities will have to meet expenses for having the time period extended.

Increasing Standards in the Private Rented Sector

The Act introduces new requirements for private landlords to provide carbon monoxide detectors and have electrical fixtures, fittings and appliances tested for safety every five years.

In addition, Scottish Ministers are given powers to vary or extend the repairing standard and a landlord's duty to ensure that a home meets that standard.

**What does this mean?**

CIH Scotland welcomes the introduction of additional safety standards in private rented homes. However, it should be noted that the general condition of homes in the private sector is much lower than that of social rented homes and more needs to be done to bridge this gap.

It is possible that the new powers to vary the repairing standard could be used to improve standards further but it is not clear whether any further changes will be implemented.

Third Party Applications to the Private Rented Housing Panel

The PRHP deals with breaches in the repairing standard and has the power to issue enforcement orders requiring landlords to carry out repairs. Previously, if a private rented home was thought to be in breach of the repairing standard, only the tenant could approach the PRHP.

The Act extends the power to make a representation the PRHP to local authorities.

**What does this mean?**

Allowing local authorities to approach the PRHP will be helpful in cases where the tenant may not have the knowledge or skills to make a case themselves, or where the tenant feels they may be penalised by their landlord for approaching the PRHP.

Local authorities will also be able to approach the PRHP independently of the tenant. For example, where a tenant has moved to a new home but the local authority still wants to pursue a case or where a neighbour is being affected by poor conditions in a private rented home but the tenant is unwilling to engage.

There will be resource implications for local authorities as preparing a case for the PRHP can be a lengthy process. However, this does provide an opportunity for local authorities to take a more strategic approach to improving conditions in the private rented sector.

It would be helpful for other organisations such as registered social landlords (RSLs) or advice agencies to be able to make a representation to the PRHP. Tenants may not always be keen to approach a local authority for assistance or may prefer to work with an organisation where they already have an established relationship. The Act does allow Scottish Ministers to review the organisations that can make a third party representation to the PRHP and this matter may be further explored in the future.

### Enhanced Enforcement Areas

Local authorities will be able to seek additional powers to help tackle problems in areas characterised by poor conditions in private rented homes. These areas will be designated as Enhanced Enforcement Areas (EEAs).

To be defined as an EEA, the local authority must show that there is a prevalence of private rented homes in a specific area exhibiting poor environmental standards, overcrowding and antisocial behaviour.

Additional powers will be granted as Scottish Ministers see fit but may include powers for background checks on landlord registration applicants and additional powers to inspect private rented homes.

### **What does this mean?**

During parliamentary debates, it was suggested that additional powers to inspect private rented homes would assist local authorities in preparing cases for the PRHP in relation to third party representation. However, in order to gain these additional powers, local authorities would first have to have the area designated as an EEA and it is not clear how resource intensive this will be. This will also offer no assistance in tackling isolated cases of poor private rented housing.

The Scottish Government will be launching a public consultation on the operation of EEAs in autumn 2014.

## **Part 4: Letting Agents**

The Act introduces mandatory national registration for all letting agents operating in Scotland. Applicants will be required to provide details of their organisation and evidence of fitness and propriety to operate as a letting agent. The register will be established and maintained by the Scottish Government.

The Act also allows for a Code of Practice to be developed following consultation. When the Code of Practice has been introduced, a tenant, landlord or the Scottish Ministers may apply to the Tribunal if it is felt that a letting agent has failed to comply.

#### **What does this mean?**

Although some letting agents currently choose to adhere to voluntary associations or codes, until now there has been no mandatory industry standard. The new measures should help to standardise practice across the sector.

Social landlords who manage Mid Market Rent homes may have to register as a letting agent if they are seen to be carrying out letting agency work as specified in the legislation. Clarification on this point will be sought from the Scottish Government as guidance is developed.

### **Part 5: Mobile Home Sites with Permanent Residents**

The Act introduces a range of measures to provide further protection to permanent residents of mobile home sites. There are currently over 90 such sites in Scotland covering 22 local authority areas and housing approximately 3,300 people.

A new licencing system will require site owners to pass a fit and proper person test and to reapply every three years. The system is intended to be self financing with local authorities given the power to change a fee for licence applications and recover costs relating to enforcement action.

#### **What does this mean?**

The residents of mobile home sites can often be overlooked in the development of housing policy and legislation. Although this group only makes up a small proportion of the population, it is essential that their needs are recognised and taken into account.

CIH Scotland welcomes the introduction of further protection for the 3,300 people who are living on mobile home sites, many of whom are older people. It is hoped that these measures will lead to improved standards across the sector.

### **Part 6: Private Housing Conditions**

#### **Local Authority Powers to Cover a Missing Share**

The Act updates the Tenancy Management Scheme (TMS) (within the Tenements (Scotland) Act 2004) to allow local authorities to cover the cost of a missing share where the majority of owners have agreed to carry out a common repair but one or more owners cannot be located or cannot cover their share of the work. The local authority can then recover the costs directly from the missing owner through repayment charges.

Previously, under the TMS, if the local authority had to cover a missing share, the cost would be split between the remaining owners who would then have to pursue the absent owner for their share.

The Act also makes amendments to repayment charges which previously had to be recovered in 30 equal annual instalments. Local authorities will now be given the power to determine a reasonable repayment period of between five and 30 years. Where a period of less than 30 years is proposed, the owner will have the right to appeal.

#### **What does this mean?**

Allowing local authorities to cover the cost of a missing share can help to facilitate common repairs where the majority of owners have agreed to carry out work but are being prevented from progressing by a minority of owners. This may help to prevent further deterioration of common areas and avoid potentially dangerous situations and the need for emergency interventions.

The powers to cover a missing share are discretionary and local authorities may be reluctant to make use of them because of a lack of available finance to cover the upfront costs and uncertainty over when the costs may be recovered. However, giving local authorities some flexibility over the repayment period will make it more feasible for them to use the power.

#### **Powers for Registered Social Landlords to Recover Expenses**

The Act makes provisions for RSLs to be given similar powers to recover the cost of missing shares through repayment charges where they have carried out a common repair in a mixed tenure block. Further consultation will be carried out by the Scottish Government before any powers are put in place.

#### **What does this mean?**

This may help RSLs in the general maintenance of their homes as well as their statutory duty to meet minimum standards, especially in circumstances where owners are reluctant or unable to cover the upfront costs of maintenance or improvement work.

#### **Work Notices and Maintenance Orders**

The Act extends the remit of work notices to include work to improve the safety or security of any home, not just those within a Housing Renewal Area (HRA) as is currently the case.

Where a work notice has been issued and the owner, or owners, cannot produce a certificate to confirm that the work has been carried out, local authorities will be able to issue a maintenance order requiring owners to prepare a maintenance plan for the property.

**What does this mean?**

These are relatively minor amendments to existing powers but should, in theory, help local authorities to support improvements to private housing.

**Part 7 – Miscellaneous and Part 8 – General**

Parts 7 and 8 include some minor and general amendments to existing legislation as well as the following provisions.

**The 20 Year Rule for Shared Equity Schemes**

The Act allows Scottish Ministers to exempt certain housing developments from the “20 year security rule” in the Land Tenure Reform (Scotland) Act 1974. This is intended to ensure that the Scottish Government can offer schemes such as Help to Buy (Scotland) without being exposed to the financial risks associated with the 20 year security rule which allows borrowers to redeem their equity loan at its original value after the security has been in force for 20 years.

**What does this mean?**

While CIH Scotland supports the decision to abolish RTB, it is important to ensure that people are supported to access home ownership through other routes. This provision will give the Scottish Government the financial security required to continue to offer assistance through existing schemes with the potential to develop and offer new models of assistance for home buyers.

**Membership of the Tribunal and Private Rented Housing Panel**

The Act outlines circumstances under which certain people can be disqualified from carrying out certain functions or becoming a member of the Tribunal or PRHP as well as the delegation of certain functions.

**Scottish Housing Regulator – Transfer of Registered Social Landlord Assets**

The Act introduces an exception to the requirement for the SHR to consult tenants and lenders before ordering a transfer of assets from an RSL in cases requiring urgent action. This exception will only apply where a quick transfer would avoid insolvency.

The Act removes the duty for the SHR to obtain an independent valuation of assets being transferred and to direct a transfer at market value under certain circumstances.

The Act also makes provision for the SHR to direct an RSL to consult with their tenants, to carry out a ballot or to obtain written agreement from their tenants before becoming the subsidiary of another organisation.

**What does this mean?**

Allowing some flexibility over the SHR's ability to transfer assets is intended to avoid situations leading to insolvency which would not be in the best interest of tenants or any lenders involved. The SHR will be required to consult on and issue guidance outlining the circumstances under which it would use these powers.

**Repeal of Defective Designation Provisions**

In the 1980s, 12 types of precast reinforced concrete (PRC) homes were classed as defective in order for owners who had bought their home through RTB to qualify for grant assistance with repairs or to sell their home back to the Council. This assistance is no longer available and therefore the Act repeals this function.