



Glasgow and West of Scotland
Forum of Housing Associations

The Scottish Government's consultation on its Rented Sector Strategy: GWSF response on the main implications for social housing

April 2022

1 Introduction

On behalf of its 64 member associations, GWSF welcomes the opportunity to comment on the proposed Rented Sector Strategy.

Noting that many of the most significant proposals are aimed at the private rented sector (PRS), we have largely restricted our comments to those proposals which would affect social landlords.

2 General comments: two distinct rental sectors

GWSF largely welcomes the direction of the draft strategy as part of the broader Housing to 2040 strategy.

The draft strategy is, however, an obvious example of the difference between rhetoric and reality as far as the overall rented sector in Scotland is concerned. Increasingly over recent years, ministers and officials, as well as some housing bodies, have seemed keen to refer to common, cross-sector standards and working towards a unified rented sector etc.

We believe that, for the most part, this is wishful thinking and has little grounding in reality. Standards of both property and service in the social sector are, and always will be, way ahead of those in the PRS, and so most of these proposals are effectively about the PRS playing catch up in some specific areas. The only way in which a unified sector could truly start to be created would be by reducing security of tenure and other standards in the social sector, which we assume would never be proposed or supported.

The Scottish Government is also referring to these proposals as being part of a human rights approach to housing. Again, though, applying this label does not

change the position that standards in the social sector are far higher and, unlike in the PRS, closely regulated.

2 Main proposals at a glance

For the convenience of our members reading this response, below we reproduce the five strategic aims of the proposals:

- 'to ensure that all homes for rent in Scotland are good quality and help deliver net zero aims;
- to provide affordable options, irrespective of the tenure lived in or where in Scotland a home is rented;
- to help enable growth and investment and help increase the overall supply of affordable housing;
- to contribute to tackling child poverty, eradicating fuel poverty, ending homelessness and ensuring the right to an adequate home; and
- to ensure a clear understanding of the needs of minority ethnic communities, women, people with disabilities and all people with protected characteristics – informs delivery of this strategy to promote equality of outcome and experience of the rented sector'.

GWSF welcomes these aims. There is, though, a sense of 'motherhood and apple pie' about them, and we do not believe that this Rented Sector Strategy alone can see all these aims achieved, for these reasons:

- The **quality of homes** and property management in the PRS is hugely variable. In the social sector, the Scottish Housing Regulator does not of course inspect individual homes just as no PRS regulator would. In the PRS, it is mainly complaints from individual tenants which highlight shortcomings: no systematic feedback is ever likely to be collected from PRS tenants in the way that it is collected through Charter returns in the social sector. There is a danger that lip service will be paid to new standards in the PRS, even with the proposed new regulator
- People needing homes are unlikely ever to be able to consider **affordability** in a tenure-neutral way as proposed in the draft strategy: this really is 'pie in the sky' and overlooks the fundamentally different way in which the two rental sectors operate
- We do not consider references to **ending homelessness** to be helpful, albeit we recognise the good intentions behind them. Homelessness will always occur as it is sometimes unavoidable: the challenge should be to prevent it wherever possible and then, where it cannot be avoided, reduce the amount of time people are in the homelessness system before being properly housed
- In relation to **equality** of outcomes, the focus should be on those protected characteristics where there are known issues and challenges: this would

definitely include minority ethnic communities and disabled people. We do not think it includes women as a single group, but very much recognise the need for progress on critical issues such as the housing sector's response to domestic abuse. Also, equality/inequality issues go well beyond the protected characteristics into issues around poverty, literacy, digital exclusion etc.

3 Proposals affecting the social rented sector

Creation of a new Housing Standard

The draft strategy states that a new Housing Standard would cover all homes and set minimum standards for energy efficiency and zero emissions heating.

GWSF looks forward to participating in discussions on a unified standard. We assume this will relate solely to physical property standards, but it would be good to know whether the plan is for the standard to cover energy efficiency and zero emissions heating alone or whether it would be broader – for example covering relet standards, space standards and other design issues.

We are not convinced that a new standard can be established without effectively reducing current standards in the social sector. Even if this can be avoided, we would argue that standards across the tenures will never really be common without a uniform system of regulation across all housing tenures – something we recognise is not possible across the social housing, private rented and owner occupied sectors.

Within the context that private landlords are much less likely to want or be able to meet improved property standards, there is an even more acute problem in communal blocks, including traditional tenement blocks. Here, private landlords often delay or prevent works being carried out, whether through intransigence or just straight refusal to co-operate with other owners.

Some local authorities are more able and willing than others to use available powers, such as those relating to paying missing shares and recharging owners, but few if any councils would say they had adequate resources to fully exercise these powers.

We are aware that the Scottish Government is looking at the tenements issue, partly by way of response to the 2019 report of the Tenemental Working Group. Changes eventually emerging from these considerations will need to 'up the ante' on private landlords if improved standards are to become a reality in commonly owned blocks.

The tenant voice

We note the main proposal as follows:

'For the social rented sector, we will further develop the Regional Networks to represent diversity within the sector by including people with protected

characteristics, younger people and people with a wide range of backgrounds (such as those who have experienced homelessness).'

Many social landlords would probably say that most of their more active tenants, including those serving on the governing body, do not come from as diverse a range of ages and other characteristics as they would like, so we would imagine that achieving a much greater degree of diversity will be challenging.

GWSF's recent membership research found that most associations have been struggling to replace retiring tenant members of their governing bodies. On the one hand this illustrates the challenges of maintaining tenant input and influence, but on the other it could be said to have led to some governing bodies becoming at least a little more diverse because historically, most tenant members have tended to be from a particular (older, white) demographic.

We note that the draft strategy asks about a potentially strengthened role for tenants' unions in tenant participation and influencing decision making processes and policies. GWSF believes that, in theory, tenants' unions could operate in/across both rental sectors, with advocacy support important for any tenant to be able to access.

However, there is an important distinction between advocating for an individual or group of individuals, and wider activism/campaigning. With the latter in particular, there can be a blurring of the lines where it is sometimes unclear how many people acting under the name of a tenants' union are actually tenants themselves.

Domestic abuse

Whilst there are no new proposals for the social rented sector on domestic abuse, we welcome the reminder about the social housing tenancy provisions in the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#), which, when implemented by the end of 2022, will give social landlords greater control to end a perpetrator's interest in a joint tenancy, transfer tenancies to a victim/survivor, and take a more proactive role in supporting and protecting victims/survivors of domestic abuse.

Although not directly related to this draft strategy, and taking account of the likelihood of homelessness prevention legislation (in 2023) introducing a requirement on social landlords to have protocols on domestic abuse, during 2022 and beyond we expect to see a greater focus on social landlords' approach to this issue. This is within the overall context that many landlords appear not yet to have developed a specific policy on this.

Keeping pets

Whilst the proposals on this relate mostly to strengthening rights in the PRS, the consultation asks whether there should be a legal right to keep pets in the social sector.

GWSF is not aware of any evidence that the current system in the social housing sector is not working well, i.e. that permission to keep a pet is needed and usually granted. An unqualified legal right to keep pets would remove the current, important element of discretion for landlords to withhold consent in a small minority of cases, and this would not be in the interests of tenants or residents/neighbours more widely.

Winter evictions

We welcome the fact that there are no firm proposals on outlawing winter evictions (in either rental sector), and we note that the Scottish Government wants to learn from the temporary Covid ban on evictions in order to consider the need for any further protection from eviction in the winter period. We note too the range of potential interventions listed in the consultation:

- restricting the service of notices during the winter period;
- pausing or extending notice periods so that notices do not expire during the winter period;
- pausing or extending the period (following expiry of the notice period) during which eviction proceedings can be raised; and/or
- restricting the ability of landlords to raise eviction proceedings (following expiry of the notice period) during the winter period.
- introducing a specific requirement for the Sheriff Court to consider delaying the enforcement of eviction orders and decrees during the winter period?

GWSF would not support any restrictions on the ability of social landlords to *instigate* action during any designated winter period, not least as actions can take many months to progress. This issue is separate from any consideration of restricting the *enforcement* of decrees during a winter period. Generally we are satisfied that the current discretion sheriffs have over enforcement of eviction action at any time of the year is sufficient.

The consultation asks what time period any winter restrictions on eviction should cover. GWSF does not have a firm view on this, not least as we are unsure as to the validity of introducing any further restrictions on eviction. We would note, though, that if a key aim is to protect people from eviction over the festive period when many services are not fully operational, a period of no more than 3-4 weeks should suffice.

Rent affordability

We note that most of the proposals on rent affordability relate to the PRS, not least in relation to introducing a system of rent controls. We welcome the signal that there is no intention to apply any such controls in the social sector, but to 'explore what further action we can take to ensure rents in the social rented sector are affordable by the end of 2025'.

To this end we look forward to working with the Scottish Government and social sector housing bodies to consider how rent affordability for social housing tenants can be maintained. We have recently accepted an invitation to join a Scottish Government working group on this issue.

Supply of rented housing

The draft strategy asks about the balance between building new homes and acquiring existing ones. Specifically it asks about where the acquisition of existing stock for the Affordable Housing Supply Programme has worked well and whether there are other opportunities to engage with owners/landlords to allow first refusal to those delivering the Affordable Housing Supply Programme.

GWSF has always welcomed support for local housing associations to acquire and rehabilitate flatted property, as it both boosts social supply and helps address disrepair and poor approaches to maintenance by owners. We believe there is significant scope for increasing the proportion of the investment programme spent on supporting acquisitions, especially as this will help address poor levels of investment by owners in energy efficiency measures and, in the coming years, renewable heating systems. Subsidy levels, though, will need to reflect the increasing costs of meeting zero emissions targets, including structural repair work where necessary.

We are not clear exactly what the reference to 'first refusal' means, but would welcome discussions with the Scottish Government on this. It may seem unlikely that an owner's freedom to sell could be fettered in any way, but clearly a social landlord with an ongoing interest in a block would often be keen to have the opportunity to purchase.

Allocations and access to housing

We note that whilst there are no specific proposals on allocations of social housing, there is a question about the balance between rehousing existing tenants and those not yet in social housing.

We are not sure why this question is being asked, not least as a let to an existing tenant generates a further let, and so there is already an in-built balance in this approach. We would observe that every so often, over the years, the practice of giving a degree of priority to transfer applicants is questioned. The practice is a

critical element of good housing management, helping landlords respond to genuine housing need, make best use of stock, and support the maintenance of cohesive communities.

In this part of the draft strategy there could potentially have been a greater recognition that a significant (and in some areas, a growing) proportion of housing association lets go to homeless applicants, and that this means associations having little influence or control over how many of its lets are allocated.

The consultation also asks what more can be done to support people with protected characteristics trying to access social rented homes. There are at least two key areas where attention may helpfully be focused here. The shortage of larger family housing has a particular impact on associations' capacity to assist minority ethnic households (albeit other households too are affected by this).

And more detailed examination is needed on addressing the shortage of accessible and wheelchair standard housing: on the face of it the apparently dire shortage does not always chime with the difficulties social landlords often face in reletting adapted property.

There are some protected characteristics, however (such as marriage/civil partnership etc.), which are not linked in any known way to discrimination in access to housing.

Disability

We note that three specific issues around disability are covered. On the accessibility of new homes, we welcome the reference to the forthcoming review of Housing for Varying Needs, and look forward to contributing to this proactively, through the experience and expertise of members.

Whilst in principle the commitment to 'increase the supply of accessible and adapted homes' is welcome, it does seem pretty meaningless, as no number is committed to and there is no sense that the commitment is to ensure that a *greater proportion* of the programme is made up of more accessible homes.

More significant could be the commitment to establish 'an inclusive programme of retrofitting social homes'. As this statement lies within a section on disability, we assume it relates to addressing disability (rather than energy efficiency) through retrofit. If so, it is not clear whether it is a reference to general disability-related retrofit or retrofitting/adapting homes with the needs of a specific household in mind. We look forward to participating in discussions on taking this proposal forward.

Regulation

Whilst this section focuses mainly on the proposed new PRS regulator, it also makes reference to a new emphasis to the work of the Scottish Housing Regulator:

‘We will develop a greater improvement role for the Scottish Housing Regulator similar to that of Healthcare Improvement Scotland. We intend to expand the regulator’s role to build on their current thematic studies improvement work and lessons learned from statutory interventions to further improve standards across the social housing sector. We would expect this work to lead to the production of recommended practice guidance for social landlords to improve practice and service standards.’

Our sense is that it is a combination of Covid and wider resource issues which has meant no thematic studies have been undertaken since the May 2019 report on repairs services. The studies were generally popular as they usually looked in depth at a relatively small sample of social landlords (or local authority homelessness functions) and aimed to highlight good practice as well as areas for improvement across the sector.

In the absence of these, one mechanism SHR has used is to issue a detailed questionnaire to social landlords on a specific area of activity, including one on health and safety in January 2022. GWSF has expressed concern to SHR that this mechanism is not conducive to SHR gaining a full and clear understanding of what may be happening in a particular housing association, and yet responses given to SHR can result in associations becoming subject to engagement, and in some cases, categorised as not compliant with standards.

On the issue of SHR producing ‘recommended practice guidance’, we are comfortable with this, with the proviso that such guidance is seen as advisory and does not lead to landlords being criticised for not following certain aspects of it, as has been known to happen with some existing ‘recommended practice’, particularly on business planning. In very recent discussions with SHR on new or revised guidance, we have been pleased to receive firm assurances that such guidance is very much advisory and that regulation staff will not adopt a ‘comply or explain’ approach when engaging with associations.

The draft strategy says that the Scottish Government has a vision for cross-rented sector regulation:

‘Our vision for regulation is that defined outcomes and standards will apply across the rented sector as a whole, whilst recognising that different approaches may be needed to achieve these outcomes given the significant differences in scale, structure and the legislative basis within which the sectors operate.’

GWSF regards this too as somewhat 'pie in the sky'. The intervention powers SHR has over social landlords, and over housing associations in particular, cannot begin to be replicated for thousands of private landlords. This does seem like another example of loose talk around common standards and cross-sector equity when the reality is, and always will be, a long way from that.