

Affordable Rented Housing: Creating Flexibility For Landlords And Better Outcomes For Communities Consultation



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name or Organisation

Name or Organisation Name

Jim Hayton

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Hayton

Forename

Jim

2. Postal Address

125 Princes Street

Edinburgh

Postcode EH2 4AD Phone 07795 090211 Email jim.hayton@alacho.org

3. Permissions - I am responding as an...

Individual or Group/Organisation
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(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(a) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

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(c) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

Proposal 1: Create more flexibility for social landlords to decide who should get priority for their housing

1. Do you think social landlords should have the flexibility to decide who gets priority for their housing?

Yes No Not Sure

2. What do you see as the benefits of this proposal?

Housing needs are complex and vary between localities, and social housing is a scarce resource. Allowing social landlords greater flexibility in deciding who gets priority for their housing will allow them to design allocation policies which are flexible and responsive to local needs, and which contribute to the creation of stable and sustainable communities. ALACHO believes that, although some of the “reasonable preference” categories are still relevant, they are no longer the most helpful criteria for allocating the scarce resource which is social housing. For example, in the interests of promoting balanced communities, many authorities would wish to include an age criteria at the point of allocation in specific locations and for particular housing types.

3. What do you see as the problems with this proposal?

An obvious problem with a proposal to increase flexibility would be if, in trying to exercise discretion, social landlords implemented housing allocation policies which were in any way unfair or discriminatory, and took insufficient account of housing need. It would also be of concern if increasing flexibility were to result in a plethora of different local allocation policies negating the excellent work done in many areas to develop Common Housing Registers.

Moreover, although the consultation emphasises the continued priority to be afforded homeless households in priority for social housing allocations, local authorities may be concerned that if the new flexibility is misinterpreted by some landlords, it could hinder councils’ ability to discharge the onerous obligations placed on them to find settled accommodation for homeless households. Consequently, careful monitoring of allocations outcomes by the Regulator and others will continue to be required.

4. What can we do to overcome these problems?

With increased flexibility should come a responsibility for social landlords to demonstrate clearly the basis on which their housing is allocated. This should be achieved through the publication of allocation policies, following consultation with key local and national stakeholders and approval by a landlord's governing body. Allocation policies should demonstrate in a clear and transparent manner the factors used to prioritise housing allocation, and should be accompanied by regular public reporting of the outcomes resulting from policy implementation.

The development of clear national guidance to accompany a change in legislation, to include the Government's revised list of "statutory" priority groups, would also be an essential requirement. Such guidance should also clarify the requirement on landlords "to give reasonable preference to people whose needs are not met by the private housing market". Does this mean for example that those whose needs are currently met by the private sector but only at significant personal cost (e.g. in the private rented sector) are to be excluded from being allocated social housing? National guidance could clarify such issues and aid the development of flexible local policies, and ALACHO is willing to contribute to its formulation.

5. What housing needs do you think should be protected nationally?

Local authorities have continually supported the "2012 target" that all households who are unintentionally homeless should be entitled to settled accommodation. They have backed this with action in recent years resulting in a significant increase in the percentage of mainstream allocations afforded to homeless households, reductions in homeless applications, better advice and information on housing options, all resulting in improved outcomes for homeless households. ALACHO therefore supports the retention of homelessness as the primary factor in establishing a need for social housing. Serious overcrowding and urgent medical need not amenable to the adaptation of an existing dwelling should also be protected. Rural and remoter authorities are likely to argue with some justification that in times of scarcity local connection should also be an important factor in housing allocation, not least to secure affordable housing for essential local workers.

Proposal 2: Create the flexibility for social landlords to consider an applicant's income when deciding their priority for housing

6. Do you think income should be taken into account?

Yes No Not Sure

7. What do you see as the benefits of this proposal?

Although the proposal to consider applicant income is permissive in nature, it is difficult to see how greater flexibility in allocating housing would work in the absence of income based criteria. If the intention is to allocate the scarce resource of social housing primarily to those unable to meet their needs in the private housing market, the ascertainment of household income would be a pre-requisite in establishing "qualification". In a general sense, councils now have well developed housing needs and demands analyses which clearly demonstrate relationships between income levels and entry level participation to the owner occupied market. In other contexts, outwith the allocation of council housing, the consideration of household income is likely to be an essential factor in identifying appropriate and affordable housing options for those seeking housing, but where social renting may not be an immediate or even foreseeable option. Mid -market rent schemes or other initiatives where housing costs are likely to be significantly above those of social rents will also require knowledge of household income levels for their successful implementation.

8. What do you see as the problems with this proposal?

Establishing a formula for determining potential access to the owner occupied and private rented market based on income alone is likely to prove impossible. Affordability, in terms of the costs of housing in relation to overall household expenditure (and personal propensity to pay) is likely to be of greater significance than gross income in making such determinations. Consequently, it will be for local authorities, through published allocation policies, to demonstrate the ways in which (if at all) they intend to consider household income in deciding housing priority.

9. What can we do to overcome these problems?

In the absence of a rigid income based formula for housing allocations, social landlords are likely to look to government for the development of guidance, which would be useful not only in assisting landlords develop sensitive local policies, but in establishing national parameters and guidelines for the application of income based criteria.

Proposal 3: Create the flexibility for social landlords to consider whether an applicant owns property when deciding their priority for housing

10. Do you think social landlords should have the flexibility to consider whether an applicant or their family owns property when deciding their priority for affordable rented housing?

Yes No Not Sure

11. What other situations are there, if any, when an applicant owns property but is genuinely unable to access it?

Obvious examples of such cases would be where property is in a dangerous condition and the costs of remediation are unaffordable to the applicant; situations where applicants are fleeing domestic abuse; where property is seriously overcrowded and/or is endangering an applicant's health or that of a household member; where property is unsuitable to occupy due to a medical condition or disability, and not amenable to adaptation; or the applicant can demonstrate serious financial difficulties likely to lead to re- possession.

12. What do you see as the benefits of this proposal?

The permissive nature of this proposal would allow local authorities the flexibility and discretion to take property ownership into account , thus ending the potential for unfairness where applicants with suitable property which they would be entitled to occupy are allocated scarce social housing ahead of others with greater needs.

13. What do you see as the problems with this proposal?

If social landlords develop extensive bureaucratic procedures to deal with the new powers of flexibility the administrative costs of allocations could rise considerably..

14. What can we do to overcome these problems?

As with other areas the development of guidance should help avoid this and achieve consistency of outcome

Proposal 4: Change the law to stop living rooms being considered as rooms available for sleeping in

15. Do you think living rooms should be counted as being available for sleeping in?

Yes No Not Sure

16. What do you see as the benefits of this proposal?

Changing the law to stop living rooms being considered as rooms available for sleeping in would in principle be a humane and reasonable measure, and would help reduce levels of overcrowding.

17. What do you see as the problems with this proposal?

The proposal is unlikely to affect the social rented sector, as councils and RSLs are most unlikely to allocate on the basis that a living room is available to sleep in. However, some councils do have a number of bedsit type one roomed apartments within their stock and prohibiting bedrooms as places to sleep would prohibit the allocation of such dwellings, which can be a helpful resource in housing single people.

Similarly the proposal if enacted would be likely significantly to affect the private rented sector at a time when housing is scarce and waiting lists are at record levels. ALACHO would fully support the aspiration to discount living rooms as places to sleep in but believes that this is not the time to enact the proposal, well intended though it is.

18. What can we do to overcome these problems?

The problem can only really be resolved when housing supply is more closely aligned with housing needs and demand, a balance which does not exist at the moment. To overcome these problems, increasing the supply of affordable housing will clearly be essential, and perhaps announcing the intent to enact the proposal to discount living rooms as sleeping areas at some point in the future would give clear notice of intent to the private rented sector and help landlords prepare for this situation.

Proposal 5: Create a qualifying period before anyone can succeed to the tenancy.

19. Do you think there should be a qualifying period before succession to a tenancy?

Yes No Not Sure

20. Who do you think that qualify period should apply to? Tick all that apply.

A husband, wife, civil partner or joint tenant Yes No

A partner Yes No

A family member aged 16 or over living at the property Yes No

A carer who lives in the property Yes No

All of the above Yes No

21. How long do you think this qualifying period should be?

Some local authorities believe that six months is a reasonable qualifying period. Others believe that 12 months would be preferable, presumably in the interests of establishing genuine residence.

22. What do you see as the benefits of this proposal?

Many authorities believe that amending the legislation in this fashion will help to remove the (admittedly small) number of cases where the right to succession is abused e.g. known cases where family members move in to a property only a short time before the tenant dies with the express purpose of acquiring the tenancy.

23.

What do you see as the problems with this proposal?

Local authorities appear to see no significant problems with this proposal.

24. What can we do to overcome these problems?

N/A

Proposal 6: Create the flexibility for social landlords to consider previous antisocial behaviour when deciding an applicant's priority for housing

25. Do you think social landlords should have the flexibility to consider previous antisocial behaviour by an applicant or their household when deciding their priority for affordable rented housing?

Yes No Not Sure

26. What do you see as the benefits of this proposal?

In one sense this proposal does not represent a significant departure from current practice, where social landlords already occasionally suspend applicants for reasons of anti-social behaviour. However, the proposal sends a further clear signal, especially to tenants affected by anti-social behaviour and/or who consider it a serious concern that social landlords are not powerless to act in such circumstances.

27. What do you see as the problems with this proposal?

Establishing the nature and quality of evidence required to prohibit applicants from housing allocation lists is likely to be the biggest problem in enacting this proposal, although current guidance and practice in relation to waiting list suspensions will undoubtedly prove helpful.

Some councils foresee a conflict in practice, where councils will continue to have a statutory duty towards homeless families where a history of anti- social behaviour exists, and will seek clear guidance from Scottish Government on this issue.

28. What can we do to overcome these problems?

The production of clear guidance clarifying and prioritising between statutory homeless duties and the implementation measures to deal with anti-social behaviour is likely to prove helpful in this area would be of great assistance to social landlords.

Proposal 7: Create the flexibility to allow a Short Scottish Secure Tenancy to be granted in more cases of antisocial behaviour

29. Do you think Short SSTs should be an option for social landlords in tackling antisocial behaviour? Yes No Not Sure

30. Do you think housing law should continue to focus only on antisocial behaviour which occurs in and around a tenant's property? Yes No Not Sure

31. What do you see as the benefits with this proposal?

Subject to the quality of evidence test being established and met, most councils welcome this proposal as an aid to potentially reducing the incidence of anti-social behaviour, through demonstrating to perpetrators that sanctions will be imposed if tenancy conditions are not adhered to. It also re-assures existing tenants, who frequently become frustrated not only with the anti-social actions of a few, but with the apparent lack of effective powers available to councils to deal with those responsible.

32. What do you see as the problems with this proposal?

Tenants who are victims of anti-social behaviour usually wish to see the perpetrators removed from the vicinity and their tenancy ended. Despite the reduction in rights, many tenants will see the conversion from SST to short SST as simply allowing the problem to remain in situ, at least until such times as any further breach of tenancy conditions results in a recovery of the tenancy. Some will see the proposal as a reduction in the rights of those indulging in anti-social behaviour, although this needs to be balanced against the rights of others to peaceful enjoyment of their home. ALACHO appreciates the potential difficulties in framing regulations to cover the conduct which social landlords may take into account in determining whether to grant or convert a SST to a short SST. We note the Scottish government's intention to consult further on this matter and look forward to contributing to that process.

33 .What can we do to overcome these problems?

The development of effective guidance covering conduct which may be taken into account in granting or converting to a short SST is the most obvious means of overcoming any difficulties inherent in implementing such a new power.

34 What do you think all social landlords should take into account when considering whether or not it is reasonable for them to grant a Short SST or convert a Scottish Secure Tenancy to a Short SST?

Key factors to be taken into consideration will be the quality evidence on previous anti- social behaviour, the likelihood of repetition, the nature of the behaviour and its impact on neighbours, the assessed risk of re-occurrence, the availability of housing support, and critically the willingness of perpetrators to engage with such support .

35 What more could we do to help social landlords tackle antisocial behaviour by their tenants?

The presence of a co-ordinated multi-agency approach to this issue, which deals with problems in a multi-faceted manner is likely to be vital, particularly where children are likely to be affected. Some councils also see a role for fast track housing tribunals to reach speedy decisions, while many also mention the resource intensive nature of effective measures to deal with anti-social behaviour(especially in the provision of housing support) and the need to ensure adequate funding in this area .

Proposal 8: Simplify the eviction process where another court has already considered antisocial behaviour by a tenant or their household

36 Do you think we should examine ways of making evictions simpler where another court has already considered serious antisocial or criminal behaviour committed in the tenant's home or its locality?

Yes No Not Sure

37 What changes do you consider might be appropriate?

Councils would welcome any changes to current procedure which would make re-possession speedier in cases of proven housing related criminal or anti-social behaviour, and ALACHO would be happy to support Scottish Government in its intention to examine ways of making evictions simpler if another court has already considered serious anti-social or criminal behaviour committed in or near the house occupied by the tenant.

38 What do you see as the benefits of this proposal?

See 37 above. Tenants and elected members frequently tell housing officials of their frustrations at the length of time it takes to deal with anti-social behaviour through the courts. Quicker eviction of the perpetrators of anti-social behaviour would be a significant outcome of this proposal.

39 What do you see as the problems with this proposal?

Several councils have mentioned the need for clear government guidance on the definition of "serious housing related offence "

40 What can we do to overcome these problems?

See response to Q39 above

Proposal 9: Create an initial tenancy for all new affordable rented housing tenants

41 Do you think all new affordable rented housing tenants should be allocated housing using an initial tenancy?

Yes No Not Sure

42 What do you see as the benefits of this proposal?

As with the measures immediately above, this proposal is primarily related to improving social landlords' ability to deal with anti-social behaviour in the early stages of a tenancy, namely the first 12 months. To the extent that the proposal allows problems to be dealt with in a speedier manner than under the provisions of a SST it is likely to be welcomed by most councils, albeit that some may have reservations (see 43 below). The terms of an initial tenancy may also provide greater motivation for tenants to engage with social landlords at an early stage (and for appropriate support to be provided) if the threat of prompt legal action for recovery exists.

43 What do you see as the problems with this proposal?

Some councils see potential issues in the rights of new tenants being diminished, at least for the year of the *initial tenancy*, and question whether this is appropriate for certain groups, such as sheltered housing tenants, who are unlikely to engage in anti-social behaviour. Others, perhaps based on observation that anti-social behaviour is most likely to occur in the early stages of a tenancy when speedy resolution would be particularly helpful, believe those potential disadvantages are outweighed by the benefits of early engagement, together with action if necessary .

Some councils are also keen that statutory obligations be clarified in respect of households who become homeless as a result of breaching an *initial tenancy* or who voluntarily relinquish the tenancy.. In these circumstances councils believe that their statutory obligations are met with the offer of an *initial tenancy*, and end if a breach resulting in recovery of possession occurs or a tenant relinquishes the tenancy. They are particularly concerned that a “revolving door” is not created allowing such households to move from one *initial tenancy* to another.

44 What can we do to overcome these problems?

As with most of the proposals in the consultation, the framing of clear guidance will be vital to the effective implementation of the proposals.

Proposal 10: Allow social landlords to use Short SSTs to let intermediate rented housing

45 Do you think the law should be changed to allow social landlords to grant Short SSTs for intermediate rented housing?

Yes No Not Sure

46 If yes, how might we restrict the flexibility to only intermediate rented housing?

By drafting clear guidance and /or legislation on the definition of intermediate rented housing and thereby clarify the circumstances in which short SSTs could be used.

47 If you are a social landlord would you use the proposed flexibility?

Yes No Not Sure

48 What do you see as the benefits of this proposal?

Although ALACHO is a representative body rather than a social landlord, some councils have indicated that they would use the flexibility if available. Some councils' experience of the NHT scheme suggests that intermediate rent housing can provide for unmet housing needs and demands in some areas and that there is a demand for this type of housing in certain areas.

49 What do you see as the problems with this proposal?

Some councils fear that the participation of social landlords in mid- market rent provision, at rents significantly higher than social rents, will not only diminish their traditional role in providing housing for those on low incomes but promote an upward pressure on social rents towards mid-market levels, as has happened in England. Some councils also believe it would be preferable to create a different form of tenancy for the intermediate rented / mid-market rent sector, rather than use short SST.

50 What can we do to overcome these problems?

Ensure that the majority of provision continues to be in social housing at affordable rents and that social landlords are robustly regulated to ensure rents remain affordable to those on low incomes.

Equalities impact assessment

51 (a) Which equality groups, if any, do you think will be disproportionately affected by each of the proposals in this consultation paper ?

Younger people seeking to enter the social rented sector for the first time will be affected by the lesser rights conveyed by an initial tenancy (not necessarily disproportionately as all new tenants will have a similar tenancy) by the introduction of initial tenancies and the diminution of rights entailed for the year of that tenancy .

(b) How do you think they will be affected by each proposal (positively or negatively)?

To the extent that older people suffer disproportionately from anti-social behaviour they may benefit from the proposals to reduce the incidence of such behaviour.

52 What changes could we make to each of the proposals to address any adverse effect on the equality groups you have identified?

Changes to the proposals to address “adverse” effects would have the impact of diminishing the impact of the proposals themselves, the intent and outcomes of which ALACHO is in broad agreement.

Business and regulatory impact assessment – more questions for social landlords

53 In relation to each of the proposals we would like to know the following:

(a) What are the likely benefits for your organisation?

N/A (ALACHO is a representative organisation and potential benefits for members have been set out throughout this response)

(b) What difficulties, if any, would implement the proposal cause for your organisation?

N/A(see 53(a) above)

(c) What are the likely cost and resource implications and can you indicate these costs?

Councils will undoubtedly incur additional costs in implementing the proposals. Whilst they may set out estimates in their individual responses to this consultation it is likely that detailed estimates will not be quantified until more detail is available on the proposals.

(d) What savings, if any, would the proposal result in for your organisation?

N/A (see above)

(e) Do you envisage an effect on regulation and enforcement?

Regulation and enforcement will play a key role in ensuring that the proposals are implemented as planned, and that intended outcomes are not jeopardised by unintended consequences.

Finally

54 Do you wish to add anything that has not already been covered? Yes No

As the body representing Scotland's local authority chief housing officers, ALACHO supports the broad purpose and intent of the proposals and would be happy to work with Scottish Government and others to develop the proposals further and clarify some of the detail requested in this consultation.

Sending us your response

We need to know how you wish us to handle your response and whether you are happy for us to make your response public. **Please make sure you complete the Respondent Information Form (RIF) at the beginning of the consultation questions.** Your comments will still be taken into account if you ask us not to publish your response. Please reply by email to: socialhousing@scotland.gsi.gov.uk.

Or alternatively by post: Social Housing Team
Scottish Government
Area 1-H South
Victoria Quay
Edinburgh
EH6 6QQ

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The closing date for responses is **30 April 2012**.