



**Glasgow and West of Scotland Forum of Housing Associations (GWSF)
Response to the Draft Housing (Scotland) Bill
August 2009**

Introduction

1. Introduction

1.1 GWSF's response to the draft Housing (Scotland) Bill and the accompanying Consultation Paper is provided in the form of a set of four papers:

- **Paper 1** is the standard response questionnaire, dealing with the proposed reforms to the Right to Buy and the regulation of social housing
- **Papers 2, 3 and 4** set out GWSF's proposals on broader housing and regeneration policy issues that we would like the Housing Bill to address:
 - **Paper 2:** A statutory community right to ownership
 - **Paper 3:** Enhancing the role of community-based housing associations in regeneration and neighbourhood management
 - **Paper 4:** Promoting and assisting registered housing associations in Scotland.

2. Context

2.1 The Housing Bill is the first major legislation to address social housing as a whole since 2001. Along with the Government's proposed national debate on the role of social housing, it is a great opportunity to set a positive agenda for the future. In particular, how can social housing contribute to the Government's strategic objectives of a Scotland that is wealthier and fairer, safer and stronger, healthier, smarter and greener?

2.2 Community-based housing associations (CBHAs) already make a major contribution to meeting these strategic objectives. But we can do more in future, with the right legislative framework and support.

2.3 We would like the Government to broaden the scope of the Housing Bill, because we think it is too narrow in its present form. Regulation is an important part of the overall framework for social housing, and it can bring benefits for both tenants and landlords. But it will not be a catalyst for achieving our own objectives, the Government's aim of developing safe, attractive and sustainable neighbourhoods, or the Government's overall strategic objectives for Scotland.

3. Summary of Proposals set out in this Paper

3.1 GWSF welcomes the Government's plans to hold a public debate about the future role and purpose of social housing, and how it can contribute to wider policy objectives. With this in mind, we have developed proposals about how the Housing Bill could address a number of wider policy objectives.

3.2 Our additional proposals cover three key areas:

- **Making provision within the Housing Bill for a statutory community right to ownership of social housing**

The aim of this proposal by GWSF is to deliver the step change needed in the transfer of housing owned by the Glasgow Housing Association (GHA) to local community ownership and control.

- **Strengthening the part community organisations can play in community regeneration and neighbourhood management**

We have set out ideas about how CBHAs can contribute more to the Government's wider policy objectives relating to regeneration and community empowerment, working in partnership with local communities, local authorities and others.

- **Giving positive recognition and support to Scotland's locally based housing associations**

CBHAs and other types of locally based housing associations have made a substantial contribution to improving housing and communities throughout urban and rural Scotland for more than 30 years.

We want to ensure that locally owned and community led organisations continue to flourish. To help achieve this, we have proposed that the new Scottish Housing Regulator should have a statutory duty to promote and support housing associations in Scotland. This would provide the foundation for more positive and productive relationship between the new Regulator and regulated bodies, to deliver the best outcomes for tenants and communities.

3.3 Our proposals focus on areas where community-based housing associations have distinctive strengths and the potential to make a real difference to the achievement of the Government's strategic objectives.

3.4 In developing our ideas, we have been aware of public expenditure constraints and the need to make the best use of existing resources. So none of the proposals we have put forward are dependent on significant levels of additional public spending.

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**Paper 1
Scottish Government Consultation Questionnaire**

Part 1 - Reforming the Right to Buy

Question 1.1

What financial impact would our proposed reforms to RTB have on social landlords, particularly over the longer term? And what steps could landlords take to mitigate this?

- a) The primary motivation for this aspect of the reforms appears to be to provide incentives for local authorities to undertake new house-building. Our assumption is that the “new supply” exemption will not have a general negative financial impact on social landlords.
- b) For RSLs, the financial impact is likely to be greatest on LSVT housing associations, whose ability to fund stock improvements could in some circumstances depend on Right to Buy levels and receipts. The Scottish Government should assist these housing associations to make improvements to their housing stock by allowing them to keep surplus Right to Buy receipts.

Question 1.2

Do you agree with the definition of new supply social housing provided at section 109 of the draft Bill?

- a) Yes, but we would welcome clarification of how the proposed safeguards for existing tenants would operate where a move to a new supply house involves a change of landlord (see question 1.4).

Question 1.3

If not, what definition do you propose?

No response

Question 1.4

Do you agree with the safeguards we are proposing for existing tenants?

- a) No. There are a range of views among our members, with some in favour of the proposed safeguards. But on balance, the majority view among our members is in favour of measures that will protect all new houses from future loss through Right to Buy.
- b) In addition, some of our members would like the proposed reforms to go further. For example, by abolishing the Right to Buy for existing as well as new tenants. Or by allowing tenants with the Right to Buy to keep the right, but on the basis that discounts are abolished and sales take place at market value prices.

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- c) The proposed safeguards relating to tenants moving as a result of demolitions etc will have a particular effect in Glasgow. This is because GHA tenants whose homes are being demolished will in some cases be re-housed in a new supply houses built and owned by another RSL.
- d) Based on legal advice obtained by our members, we understand that the effect of existing legislation is that:
- There would be no Right to Buy entitlement at all, if the new landlord obtained charitable status before 18 July 2001.
 - But otherwise, tenants with a preserved or modernised Right to Buy relating to their GHA tenancy would be entitled to a modernised Right to Buy when they move to a new supply house provided by another landlord.
- e) Our members are concerned that whole developments of new supply houses in Glasgow could come within the scope of the safeguards for existing tenants proposed in the present Bill. This would be at odds with the Government’s policy objectives in proposing the new supply restrictions. It would also mean that the risk of losing new supply houses through Right to Buy will be greater in Glasgow than in other parts of Scotland.
- f) The Consultation Paper states (page 16) that a tenant could move to a new supply property and lose their Right to Buy, but that their Right to Buy could subsequently be restored if the tenant subsequently moved to a property that was not a new supply property. This is unnecessarily complex. It would be more logical for the right to buy to end with the first move to a new supply property.

Question 1.5

If not, which safeguards do you propose?

No response.

Question 1.6

Do you agree that new tenants entering the social rented sector after the date on which the section comes into force should no longer have the RTB?

- a) Yes, on balance we agree that this should be the case to meet the overall aim of safeguarding social rented housing. But again there are a range of views among our members, with some favouring more radical measures to restrict the Right to Buy for existing tenants (see response to question 1.4).
- b) While the Right to Buy has generally had a negative impact on social housing supply, this has not always been the case.

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- In a number of regeneration areas, the Right to Buy has often provided the only affordable route to home ownership for people wanting to buy and to stay in their local community.
 - In such areas, the Right to Buy has provided choice and helped to promote more mixed communities, without substantially reducing the availability of housing for rent.
- c) So while we support this aspect of the proposed reforms on balance, we would like to see the Government considering how to promote alternative routes to affordable home ownership in regeneration areas. For example:
- HAG-funded low cost home ownership is one option, but it depends on such schemes being regularly available. This is often not the case.
 - So alternatives, focusing on the demand side, need to be considered. For example, the re-introduction of the previous tenants' incentive scheme or examination of flexible tenure schemes.

Question 1.7

Do you agree that tenants of other relevant landlords should continue to be given modernised RTB entitlements if they transfer directly to the social rented sector?

- a) We think it would be more logical if these entitlements applied only to transferring tenants who already had a Scottish Secure Tenancy with their previous landlord. As described in our response to question 1.4, we have particular concerns about Right to Buy entitlements being retained in the event of a move to a new supply house which also involves a change of landlord.

Question 1.8

Is the scope of proposed reforms to pressured-area designations appropriate?

- a) We support all of the proposals the Government has made in respect of pressured area designations.
- b) The impact of these changes will depend on whether the Right to Buy is removed altogether for new tenants. If this happens, the pressured-area arrangements will only apply to existing tenants with a modernised Right to Buy.

Question 1.9

Do you agree that the maximum designation period should be increased from five to ten years?

- a) Yes.

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Question 1.10

Do you agree with our proposal to allow particular housing types to be designated as pressured?

- a) Yes, this aspect of the proposed reforms would be very useful as a way of safeguarding high demand house types and sizes.
- b) It could prove equally useful in pressured areas, and in areas where the Right to Buy might still have a role to play in promoting more mixed communities.

Question 1.11

Should Ministers devolve pressured area decision-making to councils?

- a) Yes, this would be compatible with the strategic role of local authorities.
- b) It should be made explicit that an RSL can initiate a request for pressured area designation of its area. And that RSLs can seek an independent review of decisions to reject such a request.

Question 1.12

If so, what would be the best way to implement devolved decision-making in practice to deliver a transparent, balanced and soundly-evidenced process?

- a) The Local Housing Strategy should set the overall context and criteria for designation applications and decisions.
- b) Individual landlords should be responsible for developing and evidencing the case for suspension at local level.

Question 1.13

Do you agree with the criteria/approach (to developing guidance for applications from RSLs to extend the ten-year suspension) set out in section 1.7 of the consultation paper?

- a) Yes
- b) It is possible that the less favourable discount terms that are available under the modernised scheme will substantially reduce the future take-up of the Right to Buy after 2012, particularly in less pressured areas. So it would be sensible to base the new arrangements on case-by-case consideration, as is proposed.

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Question 1.14

If not, what alternative criteria/approach would you suggest?

- a) See 1.13

Question 1.15

Do you agree that landlords should be encouraged to use their discretionary powers on the continuous occupation rule for ex-service personnel transferring to social housing?

- a) We agree that landlords should be flexible in applying the continuous occupation rule.
- b) We are less convinced why legislation should make a special case for particular groups.

Question 1.16

Do you think this should apply in other circumstances or to other groups of tenants?

- a) See 1.15.

End of part 1

Part 2 – modernising regulation

Question 2.1

Do you agree that the purpose of the modernised regime of regulation should be to focus social landlords' efforts on:

- **meeting tenants' priorities;**
- **continually improving performance and value; and**
- **commanding the confidence of public and private investors in social housing?**

- a) No. There are two significant gaps in the purposes suggested (see response to question 2.2).
- b) The three purposes described above are not well-defined and in some respects they are too narrow.
- c) We agree that **meeting tenants' priorities** should be a primary purpose of regulation. But the way this is addressed in the Consultation Paper relies heavily on recent policy thinking in England. The proposals for meeting tenants' priorities are not well-attuned to the Scottish context.
- d) Our main concern is that the proposals define tenants' interests primarily as those of individual consumers, with the idea that regulation exists mainly to compensate for a lack of individual choice and bargaining power.
- e) These ideas may be relevant to tenants of very large landlords lacking a local community focus, or tenants whose landlords do not provide good services. They have much more limited relevance for our part of the sector:
- CBHAs are locally owned and community led landlords.
 - Our smaller scale, community focus and tradition of resident control are very different from most of the housing associations in England and some parts of the sector in Scotland. In our organisations, tenants are leaders and decision-makers, not just consumers.
 - Locally-based housing associations generally perform better than larger landlords as housing service providers. The issues of greatest concern to our tenants frequently relate to the realities of living in disadvantaged communities, rather than the provision of basic housing services. The proposals in the Consultation Paper do not address these wider issues, which are hugely significant in terms of "meeting tenants' priorities".
- f) The concept of **improving value** is poorly defined in the Consultation Paper. This

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is partly because the Paper offers a simplistic view of what value actually is, and partly because the suggested ways of measuring and reporting on value are unsatisfactory. We have commented in detail on improving value at question 2.14.

Question 2.2

If not, what should be the purpose and why?

- a) The modernised system of regulation should have two additional purposes:
- To promote the development of safe, popular and sustainable communities, and
 - To promote and assist the development of registered housing associations

Safe, popular and sustainable communities

- b) The suggested purpose of housing regulation lacks connection to wider policy issues, in particular:
- The Government’s strategic objectives of a Scotland that is wealthier and fairer, safer and stronger, healthier, smarter and greener
 - Its housing policy aim of developing safe, attractive and sustainable neighbourhoods
 - Its policy on community empowerment, as set out in the March 2009 Community Empowerment Action Plan, published jointly with COSLA.
- c) The present Scottish Housing Regulator has focused largely on how “consumer focused” social landlords are. Issues relating to community regeneration and community empowerment have not been on its radar. This needs to change in future.
- d) In this regard, we very much welcome the Scottish Government’s intention to initiate a national debate about the future role and purpose of social housing and how it can contribute to wider objectives. We have addressed this in a separate policy paper, provided along with this questionnaire.

Promoting and assisting the development of registered housing associations

- e) The promotion and development of housing associations was part of the regulator’s statutory duties until 2001. Legislation gave the regulator the following responsibilities:

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- promoting and assisting the development of registered housing associations
 - facilitating the proper performance of the functions, and publicising the aims and principles, of registered housing associations.
- f) We would like to see an equivalent statutory duty re-introduced as part of the present Housing Bill. The reasons for our proposal are described in detail in the policy paper we have submitted along with this questionnaire. In summary:
- The regulator’s main focus should be on outcomes for tenants and communities. To achieve this, we need a regulator that is committed to working in partnership with landlords to achieve improvements and better outcomes for tenants and communities.
 - Landlords understand that engagement with regulators should be challenging. But it should also be based on regulators understanding and valuing the sector they regulate, and providing practical and useful support to help landlords deliver good outcomes for the benefit of their tenants.
 - We are concerned that the present Scottish Housing Regulator does not recognise the strengths and diversity of the housing sector in Scotland. It has recently set out how its views on the future agenda it wishes to promote for the housing association sector. The views expressed on issues such as mergers, restructuring and competition are deeply worrying. The manner in which the present Regulator has chosen to express its opinions are an obstacle to effective partnership working with regulated bodies.

Question 2.3

Do you agree in principle with the risk-based and proportionate approach to regulating social landlords that we have outlined in section 2.4 of the consultation paper?

We agree with the general principles of a risk-based and proportionate approach, but fresh thinking is needed about how to put these principles into practice.

- a) Section 2.4 of the Consultation Paper suggests that the new SHR’s role will be scaled down considerably in relation to local authorities. COSLA has already stated its view that the SHR should have no such continuing role in regulating local authority housing and homelessness services.
- b) Depending on how the proposals are taken forward, there is a risk that RSL housing services will be far more intensively scrutinised than those of local authorities in future, despite the much larger scale of local authorities as service providers. This does not meet the principle of proportionality.

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- c) We are also concerned that the present Scottish Housing Regulator’s recent statements on the future organisational management of RSLs will result in a much heavier burden of scrutiny and intervention than is assumed in the Consultation Paper. The impression is that for a number of housing associations, future engagement will be defined by a need to justify their continued existence to the Regulator.

Question 2.4

Do you have any proposals that would streamline further the regulation of social landlords?

- a) Yes. The draft Bill refers in several places to the new SHR having the flexibility to carry out its functions in different ways for different areas, types of landlords etc. We would like to see this much more fully developed, so that the streamlining of regulation for housing associations becomes a reality not just an aspiration.

We make the following suggestions to promote further streamlining.

Flexible approaches to regulation

- b) At this stage, the Consultation Paper focuses on the different approaches that might be taken in future to regulating local authorities and RSLs. It does not yet address **different approaches to regulation for different types of RSLs**.
- There are fundamental differences between different types of RSLs, based on factors such as their size, purpose, scale, geography and community accountability arrangements. The present regulatory system is not good at recognising these differences.
 - The part housing associations play in local housing systems and their contribution to wider policy objectives such as regeneration varies widely, according to local context.
 - Methods for assessing performance and value should reflect these differences.

Self evaluation

- c) We welcome the principle that there should be greater reliance on self-regulation, through landlords evaluating their own performance.
- d) We accept that self-evaluation methods need to be robust and reliable, but they also need to be avoid being bureaucratic and burdensome. So regulatory expectations will be critical, if opportunities for streamlining regulation are to be

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achieved in practice.

- e) To manage these risks, we would propose:
- That self-evaluation frameworks should relate to the outcomes described in the Scottish Social Housing Charter. The present SHR’s self assessment guidance is too wide-ranging, with the result that it is not always applied well by housing organisations.
 - That the new SHR should be obliged to **agree** guidance on self evaluation methods with the housing sector, not simply to consult the sector
 - That the new SHR should recognise that organisational capacity and resources to carry out self evaluations is variable, particularly for smaller organisations
 - That as part of the support role we have proposed, the SHR should provide practical assistance with self-evaluation where required.

Regulators in other sectors are more proactive in providing such assistance. For example, HM Inspectorate of Education provides regulated bodies with practical support through a process known as Assisted Self Evaluation. We think this is more useful than regulators simply issuing guidance and then carrying out desk-based assessments of the information returned to them.

Information returns

- f) A root and branch streamlining of regulatory information returns is required.
- g) The present Scottish Housing Regulator publishes a fraction of the data it collects from housing associations. If information is not sufficiently important to be published, this calls into question whether it is important enough to be collected.
- h) The new Regulator should consider what information it needs to collect from different types and sizes and landlords. Under the present arrangements, for example, APSR return requirements are the same for a housing association with 260 houses as one that owns 70,000 houses.
- i) The new Scottish Housing Regulator should be obliged to **agree** its arrangements for collecting information with the housing sector, rather than simply consulting with the sector.

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Tenant satisfaction information

- j) It is important that the new Scottish Housing Regulator should genuinely focus its attention on the issues that matter most to tenants, not just pay lip service to this or apply its own views to what is most important.
- k) The new Scottish Housing Regulator needs to have a better understanding of what matters to tenants. Better use of tenant satisfaction information would help streamline regulation.
- l) If housing associations – particularly smaller housing associations – have identified their tenants’ priorities and have good evidence about tenants’ views of their performance in meeting those priorities, we think this could significantly reduce what the Regulator needs to examine to gain assurance.
- m) A consistent national system for assessing tenant satisfaction could be helpful in this regard. Such a system is in operation in England (the Status system).

Question 2.5

Should we continue to use the term ‘social landlord’ to describe local authority landlords and RSLs?

- a) We do not have strong views on this question, other than that the term “affordable housing” is too broad and lacks meaning.

Question 2.6

If not, what term should we use?

No response.

Question 2.7

Do you agree in principle with the proposal to set outcomes for social housing in a Scottish Social Housing Charter?

- a) We have no problem with the general principle, but we are reserving our views until an initial draft of the Charter has been produced for discussion.
- b) We do not think the Consultation Paper explains clearly how the Charter would, as suggested, result in something that is “more systematic and unified” than the current Performance Standards.
- c) We welcome the suggestion that different outcomes could be set for different

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types of landlords, or to reflect different operating contexts (see our response to question 2.4, on the need for more flexible approaches to regulation).

- d) We note that the Charter would be approved by Parliament. If responsibility for setting standards is to pass from the Regulator to the Government, we agree that providing for parliamentary approval is appropriate.
- e) A **corresponding requirement for parliamentary approval** should be set in respect of the proposed code of conduct dealing with RSL governance and financial management (Section 34 of the draft Bill). The Government has taken the view that there should be a clear separation in future between determining policy and standards and responsibility for assessing performance against standards. The same principle should be applied to RSL governance and financial management, as to the delivery of services to tenants.
- f) Our views on this point are underpinned by recent statements by the present Scottish Housing Regulator about the governance and financial management of housing associations. A number of these statements deal with policy rather than regulatory matters, for which it does not have proper public accountability. Providing for the new SHR to have its own board will not fill the accountability gap.
- g) Page 31 of the Consultation Paper is confusing, in the statements made about Charter outcomes needing to take account of public expenditure priorities, targets for building new housing etc.
 - Page 32 of the Paper says that the Charter will have no bearing on resource allocation.
 - This in turn is at odds with the Government’s recent investment reform announcement (25 June 2009) which states that the Government “will not fund regulated bodies where the Regulator has significant concerns about its governance, service quality, stock investment or financial viability”.

Question 2.8

**If you agree, do you wish to suggest changes to any aspect of the proposal?
If you disagree, how would you identify the outcomes and value that social landlords should be achieving for their tenants?**

Charter Outcomes

- a) Section 30 of the Bill lists 12 possible outcomes areas that the Scottish Social Housing Charter might address. None of these are significantly different from the present “Performance Standards”.

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- b) As stated in our response to question 2.2, we think the focus should be broader and that the Charter should deal much more directly with issues relating to neighbourhoods and community regeneration. These may not be relevant for all social landlords, but they are frequently a critical part of what locally based housing associations do.
- c) The proposal that landlords should set local outcomes in consultation with tenants could have a positive impact, if it is based on what genuinely matters at local level. There are also some risks to be avoided:
- Using the requirement to set local outcomes as a way of imposing government policies in an inappropriate way
 - Creating a process that is burdensome for smaller organisations, and disproportionate in relation to the value of the process.

Identifying the value that social landlords should be achieving for their tenants

- d) “Improving value” is a recurring theme throughout the Consultation Paper. We do not disagree with the principle, but:
- “Value” is not defined in a meaningful way in the Consultation Paper, beyond broad statements about “outcomes in relation to the Charter”;
 - The suggested methods for assessing value are rudimentary.
- e) The way that value is defined and measured is extremely important, viewed in the context of the present Scottish Housing Regulator’s July 2009 report on the performance of the social housing sector. The SHR is highly critical about housing organisations’ efficiency and effectiveness. But the information and assessment methods that underpin many of its conclusions are extremely broad brush, even where it has carried out inspections of regulated bodies.
- f) Current assessment methods are typically based on comparison of high level performance and financial data in relation to sector or peer group averages. These should be a starting-point for assessing value, but are instead used by the present Regulator to formulate ostensibly authoritative judgements.
- g) In relation to the work of CBHAs, there are many types of “value” that need to be much better recognised in future. These include:
- Tenant satisfaction

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- Neighbourhood management
- The wider social and economic impacts of both core housing services and other types of activities
- The long-term effectiveness and sustainability of investment
- Integrating specialist accommodation and low cost home ownership into existing communities
- Community empowerment and cohesion
- Partnership working with statutory and voluntary service providers, for the benefit of individual tenants
- The impact that engagement with individual tenants has in linking some of the hardest to reach people in society to other services.

Question 2.9

Do you agree that the modernised SHR should be established as a non-Ministerial department under its own Board?

- a) Yes, but with a number of important qualifications (see 2.10).
- b) The principle of an independent Regulator is sound. But it is not clear how the new SHR would be publicly accountable for its work, other than by having its own board.

Question 2.10

If not, how would you ensure that the SHR was independent enough?

- a) The Consultation Paper deals with the new regulator's independence, but much less with its accountability.
- b) Regulation boards under both Communities Scotland and the present SHR have had a largely ceremonial role. If the new SHR is to work in a different way, its non-executive directors must play a far more active role in setting the policy and strategic direction of the organisation and in holding its management to account.
- c) There is, in our view, merit in considering whether the chairperson of the new SHR and/or its chief executive should have a direct accountability to Parliament. For example, the Auditor-General has such accountability.
- d) As already stated in our response to question 2.7, we are fundamentally opposed to the new SHR having responsibility for both standard-setting and assessment in relation to the governance and financial management of housing associations.

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- e) In some respects the Bill is proposing a concentration of power and decision-making within the SHR. For example, by removing the requirement that there should be independent scrutiny before the new SHR could require a housing association to transfer its assets. We think the existing provisions under the Housing (Scotland) Act 2001 provide useful safeguards for all parties, including the Regulator.

Question 2.11

Should the modernised SHR have the statutory objective of promoting the interests of tenants and future tenants?

- a) Yes, but the SHR should have additional statutory objectives (see response to question 2.12).

Question 2.12

If not, what objective do you think the SHR should be given?

The new SHR should have additional statutory objectives and duties:

- a) **A duty to promote and assist the development of registered housing associations** (see our response to question 2.2)
- b) **A duty to exercise its functions in accordance with relevant Scottish Government policies**

For example:

- In its recent July 2009 report on Scottish social landlords, the present Scottish Housing Regulator makes statements about tenant involvement in the governance of housing associations that are at odds with the Government's policy on community empowerment.
- In the same document, the present Regulator has asked whether its role should include promoting competition in the development of new social housing. This is at odds with the Government's June 2009 announcement that it does not intend to promote such competition at the present time.

Clearer ground rules are needed for the way the new SHR engages in policy matters for which it has no responsibility or proper public accountability.

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- c) **A duty to encourage registered housing associations to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.**

This is a statutory duty of the housing regulator in England, under the Housing and Regeneration Act 2008. An equivalent provision within the Bill would recognise the part that housing associations play in relation to achieving wider policy objectives. We have provided more information about this proposal in a separate policy paper that accompanies this submission.

Question 2.13

Should the modernised SHR assume responsibility for regulating services in respect of homelessness, Gypsies/Travellers and factored owners?

- a) Yes

Question 2.14

Should SHR work to improve value for tenants and taxpayers through powers to assess, report on and, if necessary, enforce performance improvement?

Improving value for tenants and taxpayers

- a) Yes, but subject to the comments already provided in response to question 2.8 (the need for more meaningful definitions and methods of assessment)

Reporting on performance

- b) Page 36 of the Consultation Paper suggests that this would be based on “the standards of service delivered weighed against the rents charged”.
- c) Such methods might allow “league-table” type reporting based on desktop reviews of high-level data. But they will not produce a meaningful statement of value, unless the right things are measured and the assessment methods are appropriate. So we have fundamental reservations about this aspect of the consultation paper.

Enforcing performance improvement

- d) See our response to question 2.16

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Question 2.15

If so, would the powers and duties that the draft Bill gives the SHR enable it to do that work?

- a) Yes – the draft Bill provides the SHR with more than enough powers.
- b) The new powers for the Regulator to set performance improvement targets could be appropriate if there were a serious performance problem that a housing organisation had failed to address.
- c) But these powers could also involve the Regulator becoming involved in operational management, so the circumstances in which they will be used must be very clearly defined.
- d) More generally, it is important that powers should be used in a consistent and transparent way. We note that the new SHR would be obliged to publish information about its intervention policy. But the bigger issue is how the new SHR is accountable for decisions about when it uses the powers, or elects not to.
- e) We note with concern that the overall effect of Sections 51-54 of the draft Bill would be to give the new Scottish Housing Regulator enhanced powers to intervene directly in employment matters, through the powers it would have to remove or suspend employees of a registered social landlord.
- f) Some of these powers are carried forward from the Housing (Scotland) Act 2001, but with some important changes. For example, the meaning of an “officer” within the proposed Section 51 of the draft Bill is wider than under the 2001 Act. And the proposed Sections 52 and 53 of the draft Bill remove the 2001 Act provisions about statutory inquiries. The effect of those provisions was that action to suspend or remove employees could only be taken in response to the findings of a statutory inquiry, which the 2001 Act specified should be conducted by an independent person. While we think it is very unlikely that the new Regulator would use these powers because of its own exposure to legal challenge, the removal of the previous legislative safeguards is a matter of concern.

Question 2.16

If not, what role should the SHR have in improving performance and what powers would it need to carry out that role?

No response.

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Question 2.17

Do you agree that the current inspection powers should be replaced?

- a) Yes, but the proposals do not involve replacing current inspection powers.
- b) Instead, they involve formalising a change that has already taken place for housing associations (the ending of a programme of cyclical inspections) and ending the Regulator's role in inspecting local authority services.
- c) The consultation paper over-states the extent to which ending cyclical inspections will result in a streamlining of regulation for housing associations. In the 8 years since the Housing (Scotland) Act 2001, only around 40% of Scottish housing associations have been inspected, excluding small housing associations owning less than 250 houses. So the majority will not see the benefits of ending an inspection process they have not experienced for a decade or more.
- d) The Government has not invited views on the draft Regulatory Impact Assessment provided with the Consultation Paper. We have not commented on this in detail, since the assessment is very tentative. For example, it is not possible to assess the impact of a new system of regulation when the Bill outlines the broad framework, but the actual supporting processes are as yet unclear.
- e) Similarly, the statements made about the small/micro firms test are far too generalised. This test applies to businesses employing less than 50 people. Based on 2007/08 APSR data, only 23 out of 154 Scottish RSLs employ more than 50 office-based staff. The majority of RSLs (82) employed 20 or less office-based staff. So much more robust analysis of regulatory impact will be essential as the new regulation framework is further developed.

Question 2.18

If so, would the new provisions that we are proposing in respect of inquiries and information provide a satisfactory replacement?

- a) The proposals relating to inquiries and information formalise changes that the present SHR has already made in relation to housing associations.
- b) We note that the Bill makes provision for charging regulated bodies. The Housing (Scotland) Act 2001 made similar provisions but these have never been used.
- c) Our members are strongly opposed to charging by the Regulator. We would welcome early clarification of when charging proposals will be brought forward. If such proposals are not to be published, they should be deleted from the Bill.

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Question 2.19

If not, what approach would you suggest?

No response.

Question 2.20

Do you think that the powers in the draft Bill provide the right balance and would allow the SHR to take prompt and effective action to tackle problems in financial viability and governance?

No.

Question 2.21

If not, what powers would you suggest?

- a) We agree that it is important that the Regulator should be able to intervene quickly and effectively in cases where there are genuine issues relating to poor governance and/or financial viability.
- b) But as stated in our response to question 2.7, we are concerned about the risks of inappropriate interventions, based on wider policy agendas the Regulator may wish to pursue.
- c) The effect of the draft Bill for housing associations will be that the Regulator would have powers power to set standards/policy, assess performance, and determine statutory interventions. Checks and balances are needed. It is not acceptable that these should exist for local authorities, but not for housing associations.

Question 2.22

Do you agree with the proposal to abolish the requirements in Part 1 of Schedule 7 on payments and benefits, and replace them with a code of conduct setting out standards of financial management and governance?

- a) No.
- b) The majority of our members are in favour of reforming Schedule 7 but not abolishing it altogether.
- c) Some aspects of Schedule 7 and the associated Special Exceptions guidance provide committee members with protection within their local communities. For example, if a committee member or one of their relatives is re-housed by their housing association. So we would like a statutory framework to be kept for housing allocations as a minimum.

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- d) On other matters, for example in relation to employment matters and commercial contracts, the present Schedule 7 and Special Exceptions guidance have become difficult to interpret and administer. They add a level of complexity that is not found in other sectors. So we would be prepared to consider alternative approaches, if these can be shown to safeguard the integrity and reputation of the housing association sector.
- e) This could be addressed either by simplifying the present guidance on special exceptions or through a code of conduct as is proposed in the Consultation Paper.
- f) If a code of conduct is the preferred option, we think it is essential that this is seen to have statutory force and that the decisions of housing associations are open to public scrutiny. Following recent events on MPs' expenses, the public are rightly concerned about standards frameworks that rely entirely on self-regulation and/or restrict access to information. We will offer further views on this aspect of the Bill as and when more detailed proposals have been prepared.
- g) We would also have strong concerns if the effect of repealing Schedule 7 is to allow RSLs to pay their committee or board members. We believe this would be fundamentally at odds with the values of the Scottish housing association sector.
- h) The Consultation Paper suggests that responsibility for issuing a code of conduct on RSL governance and financial management would lie with the new Scottish Housing Regulator. As stated in our response to question 2.7, responsibility for approving a code of conduct on these matters should lie with Parliament, not the Regulator.

Question 2.23

If not, what would you suggest?

See response to 2.22.

Question 2.24

Do you agree that Ministers should set the criteria for eligibility to seek registration as an RSL and that the SHR should set the criteria against which it tests applications?

No.

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Question 2.25

If not, what approach would you suggest?

- a) At present, the basic legal requirements for registration as an RSL are set out in primary legislation, they are not decided by Ministers. If it is necessary to legislate about which organisations can be RSLs, it follows that only Parliament can be responsible for approving the legal eligibility criteria.
- b) We have serious concerns about the requirement in Section 29 of the draft Bill that existing RSLs must be re-assessed against new registration criteria. The reasons for this part of the Bill are not explained.
- c) In effect, this provision would require every existing RSL to seek re-registration. This would be bureaucratic and inefficient. In view of recent statements by the present Scottish Housing Regulator about the need for mergers and re-structuring within the housing association sector, we are deeply suspicious of this aspect of the Bill as currently presented.

Question 2.26

Do you agree that this power should extend to allowing profit-distributing bodies to become eligible for registration?

- a) No, absolutely not.
- b) This proposal did not form part of the policy described in “Firm Foundations”, beyond noting that profit making bodies might become eligible at some future stage for funding to build social housing. The Consultation Paper does not provide any explanation of why the Government now wishes to make such a fundamental change.
- c) If the purpose of a modernised system of regulation is to promote tenants’ interests, we are surprised that the draft Bill should propose a change of this magnitude without any prior discussion or explanation. We are not aware of tenants in any part of Scotland pressing for such a change to be made.
- d) We view this aspect of the Housing Bill with particular concern, in light of the Scottish Housing Regulator’s recent statements about whether its role should include ‘promoting a mixed economy of providers and greater competition’. We believe that the Regulator is suggesting a role for profit making bodies not only in relation to the construction of new housing, but also in relation to becoming landlords and providing all or some management services on behalf of established social landlords.
- e) We also wish to comment on the statement in the consultation paper that registration as an RSL must in future be opened up to organisations from outside Scotland. This is presented as a requirement of EU law.

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- f) In practice, the main effect of the proposal will be to encourage very large housing associations from other parts of the United Kingdom to seek registration in Scotland. A number of these organisations are actively seeking to become established in Scotland, as part of business expansion strategies.
- g) We view this with concern, particularly in light of the present Scottish Housing Regulator’s wish to place RSL mergers and re-structuring onto the agenda for social housing Scotland.
- h) In addition, the large-scale programme of takeovers and mergers that has taken place in England over the last 5 years has produced poor results, in relation to a loss of focus on residents and communities and poorer quality partnership working with local authorities and others.
- i) The proposed change in eligibility for registration is presented as a legal necessity, but this is inconsistent with recent legislative changes affecting Wales:
 - Section 61 of the Housing and Regeneration Act 2008 amends the Housing Act 1996. The effect is to limit eligibility for registration as a social landlord in Wales to “**Welsh bodies**” whose registered office must be in Wales.
 - In addition, bodies seeking registration in Wales must demonstrate that they are “**principally concerned with Welsh housing**”. To meet this latter test, the body must show that it owns housing only or mainly in Wales or that its activities are principally undertaken in respect of Wales.
- j) Overall, the legislation introduced for Wales in 2008 indicates that the Scottish Government could, if it wished, **strengthen rather than weaken** the existing requirement that Scottish RSLs must have their registered office in Scotland.

Question 2.27

If so, do you think it is right to have specific enforcement powers for profit-distributing RSLs?

- a) No, because we do not agree that such bodies should be registered in the first place.
- b) If profit-making companies are allowed to become social landlords, it is essential that the new SHR should have the same powers as for non profit-distributing bodies. If anything, there is a case for stronger powers of intervention and enforcement in respect of profit making companies.

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Question 2.28

Are the enforcement powers that we have set out for profit-distributing registered landlords the right ones?

- a) No. The draft Bill does not set out any specific enforcement powers for profit-distributing bodies.
- b) Instead, page 43 of the consultation paper suggests the Government may “consider” two types of powers – imposing fines or directing a transfer of assets to another RSL.

Question 2.29

If not, what enforcement powers do you think would be right?

- a) Enforcement powers should ensure equal protection for tenants and for public funds in the event of any failure by a housing provider to meet its obligations.
- b) If the Government cannot assure equal protection for tenants and the public purse, it should abandon this aspect of its proposals.

Question 2.30

Do you agree that RSLs should only have to seek consent for the three areas of rule changes set out in section 2.15 of the consultation paper?

- a) Yes, but further thought should be given about how to manage the risks for RSLs that are constituted as membership organisations.

Question 2.31

If not, what approach would you suggest?

No response.

End of part 2

**GWSF Response to Draft Housing (Scotland) Bill
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Annex A

Draft Equalities Impact Assessment

- a) The draft impact assessment provided as part of the Consultation Paper is generalised, and does not address equalities issues in the context of wider changes that are being promoted as part of the Bill and associated policies.
- b) For example:
- If the proposed role of the new Scottish Housing Regulator is more restricted in relation to local authorities than RSLs, this will have an impact on the way the regulatory system addresses equalities issues in different parts of the social housing sector.
 - The narrow definitions of “value” used in the Consultation Paper and the agenda of the present Scottish Housing Regulator will both place pressure on landlords to cut costs on non-core services or activities. This could result in adverse equalities outcomes, for example by threatening training and employment initiatives targeted at minority groups.
 - Some of our members are concerned that the ending of ring-fenced funding for Supporting People services could have an adverse impact on disadvantaged and/or vulnerable groups. We are not clear whether the new Housing Regulator would have any role in these matters. A number of our members would prefer to see Supporting People administered by central government (a change that has recently taken place in Wales), to safeguard the services provided to vulnerable people.

**Questionnaire submitted by Glasgow and West of Scotland Forum of
Housing Associations, August 2009**

**Glasgow and West of Scotland Forum of Housing Associations
Response to the Draft Housing (Scotland) Bill
August 2009**

Paper 2

Proposals for a Statutory Community Right to Ownership

GWSF Response to Housing (Scotland) Bill

Paper 2: Proposals for a Statutory Community Right to Ownership

1. Summary

- 1.1 This paper proposes that the scope of the present Housing (Scotland) Bill should be broadened, to provide for **a statutory community right to ownership of social housing**.
- 1.2 The purpose of the proposal is to give local communities a statutory right to purchase housing owned by the Glasgow Housing Association (GHA). Communities would exercise this right through the registered social landlords that presently manage their housing.
- 1.3 A statutory community right to ownership framework would be straightforward to introduce. It would incorporate existing legislative provisions governing the transfer of tenanted houses from one registered social landlord to another. The additional matters that would need to be addressed would primarily relate to:
 - Providing a statutory definition of the community right to ownership
 - Specifying the registered social landlords that are subject to the right
 - Specifying the registered social landlords that are entitled to exercise the right on behalf of their local communities
 - Specifying the statutory conditions that would apply to transfers covered by the community right to ownership. For example, in relation to the determination of the purchase price to be paid, taking account of the interests of both seller and purchaser, and the timescales to be met by both parties at each stage of the transfer process.

2. Background to our proposals

- 2.1 Local community ownership of housing is a Scottish success story. It is one of the main things that distinguishes the Scottish housing sector from other parts of the United Kingdom.
- 2.2 Achieving local community ownership through second stage transfers (SSTs) was the guiding policy principle behind the 2003 Glasgow housing stock transfer. Debates in the Scottish Parliament have shown that achieving local community ownership in Glasgow is a high priority for the Scottish Government and for all of the major Scottish political parties.
- 2.3 To date, GHA has been responsible for disposing of its housing stock as a “willing seller”. But after six years, the net result of successive SST programmes approved

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by GHA's Board is that only around 2,000 houses in six Local Housing Organisation (LHO) areas have transferred to local community ownership.

- 2.4 In recent months, the Scottish Government and Glasgow City Council have each emphasised again that GHA was set up as a transitional vehicle. Like Scottish Ministers, GWSF wishes to see a step change in the number and pace of successful SSTs. In those cases where our members have been able to take SST proposals to ballot stage, GHA tenants have voted overwhelmingly in favour of transferring to local community ownership.

3. Future Prospects for local community ownership

- 3.1 Past performance in delivering SSTs has been poor. Future prospects are little better:

- The current Gateways Programme covering around 22,000 houses had an original deadline for completion of October 2010, and has now been extended into 2011. But GHA has not responded to our regular requests that it should publish a programme or timescales for completing individual transfers by the 2010/11 deadline.
- GHA retains sole control over transfer values and the terms and conditions on which transfers will take place. There continue to be unresolved, substantive disagreements between GHA and purchasers regarding valuation methodologies and the resulting transfer prices, terms and conditions. Unless new ways are found of addressing this, it will continue to be a major obstacle to local community ownership.
- The organisations remaining in the Gateways Programme are all existing asset-owning CBHAs. None are the "management only" RSLs that were registered in 2002/03 with the purpose of becoming the future owners of GHA houses.
- At the start of 2006, all but one of the management only RSLs stated their intention of seeking to move to community ownership through the Gateways process. All of these organisations have since withdrawn from the current programme because of the impossibility of making SSTs succeed on the terms set by GHA. There is no longer a clear route to future community ownership for any of these organisations.

- 3.2 For all of these reasons, GWSF believes that a statutory framework giving communities the right to purchase GHA stock is now essential, and that Ministers should announce their intention to include such a framework within the Housing Bill in early 2010.

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4. What a new statutory framework would achieve

4.1 An early announcement of Ministers' intention to legislate would have short-term and longer-term benefits:

- It would introduce a strong incentive for negotiations to be concluded on those transfer proposals that are part of the current Gateways Programme;
- Longer term, a statutory community right to ownership framework would offer a future route to local community ownership for GHA's remaining tenants, for whom the prospects of achieving this are currently non-existent.

4.2 The statutory framework we have proposed in this paper would apply to all houses transferred to GHA by Glasgow City Council in 2003. It would provide a legal right to seek to transfer ownership of GHA houses to local community ownership. The right would be exercised on behalf of local communities through the community-controlled LHOs appointed to manage GHA houses. Transfers would be subject to tenant consultation and ballots in the same way as any other transfer of tenanted houses owned by a local authority or housing association.

4.3 This effect of our proposals would be that:

- The statutory community right to ownership framework would apply to existing SST initiatives that had not been completed by the date of the legislation coming into force;
- It would also apply to all other GHA housing managed by LHOs not in the present SST programme.

4.4 The statutory framework we have proposed is intended to apply specifically to Second Stage Transfers in Glasgow. The underlying principle that transfers of assets should not be determined solely by the present owner of the assets is not novel or unique:

- The Housing (Scotland) Act 1988 introduced a tenants' choice scheme enabling individual tenants to seek to change their landlord
- The Land Reform Act (Scotland) 2003 gives communities in rural Scotland statutory rights to purchase land in which they have registered an interest, if and when that land comes up for sale. Importantly, the land reform legislation provides that the price to be paid by the community must be fair and that firm timescales must be met in completing the purchase.

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5. How a new statutory framework could be developed

- 5.1 As far as possible, our proposals are based on working within the existing legislative framework for transfers of tenanted properties from one RSL to another. This would be the simplest and quickest way of introducing a statutory community right to ownership, rather than devising a new legislative framework from scratch.
- 5.2 Existing legislation and processes provide many of the essential elements for a community right to ownership. For example:
- Section 76 and Schedule 9 of the present Housing (Scotland) Act 2001 provide for tenant consultation, a tenant ballot and obtaining ministerial consent where a registered social landlord intends to dispose of tenanted houses and this would lead to a change of landlord.
 - The present Housing (Scotland) Bill [Section 99 and Chapter 2 of the Bill] proposes some changes to the detail of the requirements relating to tenant consultation and ballot procedures. The Bill also proposes that the new Scottish Housing Regulator rather than Scottish Ministers would become responsible for approving disposals of tenanted houses by RSLs. But the overall effect of the measures in the draft Bill would be broadly the same as the 2001 Act arrangements – they would ensure that that tenant support for any changes had been demonstrated and that tenants’ interest were properly protected.
 - Any RSL seeking to acquire GHA houses under the community right to ownership would need their business plan to be approved by the Scottish Housing Regulator, in accordance with the Regulator’s existing guidance.
- 5.3 A statutory community right to ownership would be framed around these existing requirements. But there would be **three key additional matters** that would need to be addressed through amendments to the present Housing (Scotland) Bill.
- 5.4 These are:
- a) Providing a statutory definition of the RSLs that are the subject of the community right to ownership, and the RSLs that have an entitlement to purchase
 - b) Providing for purchasing organisations to serve notice on the seller that they wish to exercise the community right to purchase

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- c) Defining the statutory conditions that would apply to both seller and purchaser where proposals to acquire tenanted housing are made under the community right to ownership.

5.5 The exact way in which legislation is framed would, of course, be a matter for the Scottish Government and in due course for Parliament. The suggestions we make below are intended to illustrate GWSF's view that it would be relatively straightforward to amend the present Housing (Scotland) Bill for the purposes of introducing a statutory community right to ownership.

6. The RSLs that would be the subject of the community right to ownership, and the RSLs that would have an entitlement to purchase

6.1 If Ministers wished to support our proposals, both of these matters could be dealt with using definitions contained in existing legislation.

6.2 In effect, those RSLs described in Section 68A of the Housing (Scotland) Act 2001 would be the organisations that a) would be subject to the community right to ownership and that b) would have an entitlement to purchase under the community right to ownership.

- Section 177 of the Housing (Scotland) Act 2006 introduced a new Section 68A to the Housing (Scotland) Act 2001. This provides the crucial definitions.
- The new Section 68A defines the powers of Scottish Ministers to direct certain registered social landlords to delegate management functions to other RSLs.
- By extending these definitions to a new right to ownership entitlement, the effect would be to restrict the application of the right to ownership to houses owned by GHA. The right to ownership would not affect houses owned by any other social landlord in Scotland.
- The right to ownership entitlement could be exercised by any registered social landlord, whether it is registered for ownership or management, which already has an entitlement to manage the stock of the original RSL (GHA) under the terms of Section 68A of the 2001 Act.

6.3 The following points should be noted:

- The term 'right to ownership' would apply in exactly the same way as it does under an individual tenant's 'Right to Buy'.
- So, being able to exercise the right would not guarantee the success of a transfer proposal.
 - For example, the purchasing organisation would need to demonstrate its ability to put in place the necessary finances and other resources, in order to be able to

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exercise the right to ownership.

- These issues would be for the purchasing RSL to resolve, subject to any provision within the legislation relating to the purchase price and/or adjudication of that price.
- In addition, any RSL would need their business plan to be approved by the Scottish Housing Regulator. This is already the case, under existing second stage transfer procedures.

6.4 The legislation would also need to address **two further matters**, in defining which RSLs are eligible to be purchasing organisations.

6.5 Firstly, Section 68A of the 2001 Act allows Ministers to issue a direction for a period of up to 5 years.

6.6 Ahead of the present Remodelled Management Agreements expiring, we assume that Ministers will need to decide whether they will seek Parliament's approval for their powers to issue directions to be extended for a further period.

- If not, the legislation introducing the community right to ownership would need to address this;
- This could be accomplished, if necessary, by the new legislation making provision for a registration of interest to exercise the community right to ownership;
- For example, the right of registration could be granted to organisations falling within the terms of Section 68A of the 2001 Act.

6.7 Secondly, the legislation needs to be sufficiently flexible to recognise that some re-configuration of the existing LHO network may take place on a voluntary basis or that this may be necessary in some cases to ensure that viable SST business plans can be developed.

- The legislation could provide such future flexibility, by providing that eligible purchasers are the RSLs described in Section 68A of the 2001 Act, or as otherwise approved by the Scottish Housing Regulator if one or more eligible purchasers decide to work in partnership to develop a proposal under the community right to ownership.
- "Eligible purchasers" in this context would mean any RSL covered by the Section 68A provisions. This would not rule out partnerships involving eligible RSLs that have already completed second stage transfers.

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7. Notice of intent to exercise the community right to ownership

- 7.1 There would need to be a procedure enabling the prospective purchaser to notify tenants and the seller of their intention to purchase houses covered by the community right to ownership.
- 7.2 We suggest that there could be a standard format for doing this, and that this could be described in Regulations prepared by Ministers, or in guidance issued by the Scottish Housing Regulator.
- 7.3 Since the notification would only be a statement of intent rather than a detailed proposal, the issuing of the notification would be a matter for the purchaser and would not need to be approved by the seller.
- 7.4 The effect of notification would be:
- To make the seller aware that subsequent stages of the transfer process would be subject to the community right to ownership provisions, and
 - To permit the purchasing organisation to provide information to tenants about its future intentions.

8. Statutory conditions applying to the terms of transfer

- 8.1 An amended Housing Bill would need to make provision for two aspects of transfers taking place under a community right to ownership:
- How the purchase price would be determined; and
 - The timescales that would apply to the transfer process.
- 8.2 In addition to any conditions specified in the Housing Bill itself, it would be sensible to ensure that Ministers have the powers to issue subsequent Regulations on these or other matters relating to the community right to ownership.

a) Price

- 8.3 The first fundamental issue the legislation should address is price. Reaching agreement on price has been a major obstacle to progress under the present arrangements, So it would be essential for the new legislation to provide a mechanism for addressing this.

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- 8.4 Legislation should not prevent either the seller or the purchaser using their own methods to calculate a price, as at present.
- 8.5 But the success of a community right to ownership will, in our view, depend on an independent party [which could be either the Scottish Housing Regulator (SHR) or Scottish Ministers] having statutory responsibility for determining the final price where this cannot be agreed by the seller and the purchaser.
- 8.6 This could be achieved if the legislation made the following provisions:
- In cases of dispute between the parties, the SHR/Ministers would be responsible for arriving at a final price that would be binding on the seller and purchaser.
 - Before specifying a final price, the SHR or Ministers would be obliged to **a)** refer the matters under dispute to an independent and suitably qualified adjudicator; and **b)** to obtain a valuation provided by the adjudicator or other suitably qualified person to determine the final price, based on the adjudicator's findings.
- 8.7 GWSF fully recognises that financial neutrality to the seller must be assured, since the community right to ownership would involve partial disposals of assets by an existing RSL.
- 8.8 The legislation should recognise this, by offering a definition that articulates the duty of the SHR/Ministers to ensure that the terms of reference for any adjudication or valuation they instruct state clearly that the tenants of neither the seller nor the purchasing landlord should suffer any detriment as a result of the transaction.
- 8.9 We believe that our proposals to introduce objectivity and independence to the process are the key to breaking the present deadlock. We would anticipate that once the principles and methodology of valuation are determined in this way, they are unlikely to be challenged in future, save at the margins.
- 8.10 Our proposals are based on the principle that it is fundamentally unacceptable that one party to the transfer (the seller) should have sole responsibility for determining the purchase price to be paid. Other legislative comparisons support this view:
- Sections 58 and 59 of the Land Reform (Scotland) Act 2003 place responsibility for obtaining valuations with Scottish Ministers, not the seller or the

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purchasing community body. The purpose is to ensure a fair price for both the community and the seller.

- Section 58 of the currently proposed Housing (Scotland) Bill deals with cases where the Scottish Housing Regulator would use its powers to direct an RSL to transfer its assets. Section 58(5) of the Bill makes a new provision regarding valuation in such cases. It states that the SHR would be responsible for obtaining an 'independent valuation' and that the Regulator should be satisfied that transfer price is not less than if the sale was taking place as if by a willing seller to a willing RSL buyer.

b) Transfer processes and timescales

- 8.11 This is the second fundamental issue any legislation should address.
- 8.12 Attempts to achieve second stage transfers through the current non-statutory processes have been characterised by a lack of clear programmes and delays in receiving critical information.
- 8.13 Legislation on a community right to ownership framework must address this. Again, our thinking on this is not new or original. Legislation on the Right to Buy for individual tenants and the community right to buy legislation that applies to rural communities each make specific provision regarding processes and binding timescales. To date, this has been missing from the second stage programme.
- 8.14 Given past experience of housing stock transfers, it is entirely feasible to make similar provisions in legislation for a community right to ownership of social housing. We suggest that milestones, timescales and the obligations of all parties could be set out in Regulations referred to in the primary legislation.

9. Conclusions

- 9.1 The proposals we have set out in this paper offer a positive approach to breaking the deadlock on transferring more GHA houses to local community ownership, in accordance with the wishes of tenants, Scottish Ministers and Glasgow City Council.
- 9.2 We believe that the goal of local community ownership can only now be achieved by introducing a statutory framework, in which local communities have the right to take ownership of their homes through their Local Housing Organisations.

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- 9.3 Such an approach would provide greater certainty for tenants in areas where community-based housing associations are already working towards local community ownership.
- 9.4 It would also offer a positive way forward for Local Housing Organisations that are not yet in this position, by providing a clearer framework within which to plan for organisational capacity-building, business plan development and registration.
- 9.5 We look forward to early discussions with Scottish Ministers about the proposals we have put forward for their consideration.

**Glasgow and West of Scotland Forum of Housing Associations
August 2009**

**Glasgow and West of Scotland Forum of Housing Associations
Response to the Draft Housing (Scotland) Bill
August 2009**

Paper 3

**Enhancing the Role of Community Based Housing
Associations in Regeneration and Neighbourhood
Management**

GWSF Response to Housing (Scotland) Bill

Paper 3: The Role of CBHAs in Regeneration and Neighbourhood Management

1. Summary

- 1.1 In the Housing Bill Consultation Paper, the Scottish Government has stated its wish to lead a national debate about “the role and purpose of social housing, what it should be delivering for current and future tenants, and how it can contribute to wider policy objectives”. The proposals we have set out in this paper are intended as an initial contribution to the debate.
- 1.2 Through the Housing Bill, GWSF would like to see much more explicit recognition of the role that social housing providers such as community-based housing associations (CBHAs) can play in developing safe, popular and sustainable neighbourhoods.
- 1.3 We also want to discuss, with national and local decision-makers, how local communities can play a bigger part within their neighbourhoods, acting through locally owned and resident controlled bodies such as CBHAs and development trusts.
- 1.4 So this paper sets out ideas about how local communities can become more actively involved in the management of their neighbourhoods, by working in partnership with local authorities and others, or through an enhanced role in helping to manage the way services are delivered to local people.

2. CBHAs and Regeneration

- 2.1 CBHAs have played a leading part in promoting community ownership of housing in Scotland for more than 30 years.
- 2.2 We have shown that community ownership of assets can help achieve a wide range of benefits:

- Long-term value for public investment, frequently in areas where previous investment had failed or was wasted
- Physical regeneration and the provision of quality homes in both urban and rural areas
- Active citizenship, leadership and control by local people, with direct accountability to tenants and communities
- Housing services that are locally focused and responsive to tenants’ needs
- Financially sustainable socially businesses
- The development of other assets and services for the benefit of local communities.

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Paper 3: The Role of CBHAs in Regeneration and Neighbourhood Management

- 2.3 In the last decade, many Scottish housing associations have diversified beyond their core landlord role, to address the wider issues in their local communities. This has been a particular priority for CBHAs.
- 2.4 In comparison with other types of housing providers, CBHAs typically work in some of Scotland's most disadvantaged communities. As housing providers, we see at first hand and on a daily basis the effects of poverty, poor health, worklessness and other types of inequality on individuals and whole communities. Because we are community-led and community-controlled organisations, we have a direct interest in wanting to address these issues.

3. Community Regeneration and the Housing Bill

- 3.1 The contribution that CBHAs already make to community regeneration has been acknowledged in the recent Community Empowerment Action Plan, published jointly by the Scottish Government and COSLA.¹ But community regeneration issues do not register as a priority for the present Scottish Housing Regulator, and the Housing Bill Consultation Paper does not identify this as an area for change.
- 3.2 The Community Empowerment Action Plan is clear that empowered and engaged communities will be a key factor in areas such as health and poverty, and in supporting people to become part of the social and economic mainstream.
- 3.3 Fresh thinking is needed on this part of the Housing Bill, because:

- The Bill focuses too narrowly on the interests of tenants as individual consumers.
This is important if landlords are not getting the basics of service delivery right. But it will not help the many social housing tenants receiving a good service from their landlord, who may still be disadvantaged or dissatisfied because of deeper-rooted problems in their local neighbourhoods.
- Neighbourhood management and community regeneration are increasingly important parts of what housing organisations do.
- They are directly relevant to the achievement of the Government's National Objectives.

- 3.4 We would like future work on the Housing Bill to address this in two ways:

¹ Community Empowerment Action Plan, Scottish Government and COSLA, March 2009

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- The outcomes set in the proposed Scottish Social Housing Charter should deal explicitly with issues relating to neighbourhood management, community empowerment and community regeneration;
- The new Scottish Housing Regulator should address these outcomes, and place a positive value on them in its assessment methods.

3.5 In this regard, the statutory duties of the social housing regulator in England include a requirement for it to address the following fundamental objective:

“... to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated”.²

3.6 We would like to see the new Scottish Housing Regulator having a similar statutory objective. This would recognise that addressing these issues is not just incidental part of some housing organisations’ purpose, it is an integral part of what they do.

3.7 Policy-makers and regulators have recently been highly critical about the value provided by the social housing sector.³ So it is no surprise that the Housing Bill and Consultation Paper emphasise the importance of outcomes for tenants and of delivering value for tenants and the taxpayer.

3.8 We do not disagree with these principles, but it is essential that the national debate should address outcomes and the measurement of value in much more meaningful ways.

3.9 Neither present methods for assessing value, nor those proposed in the Consultation Paper, address a wide range of outcomes that CBHAs are either directly responsible for, or to which we contribute through our work with local authorities and others. For example:

- The social and economic value of core landlord and regeneration services in disadvantaged communities
- Local neighbourhood management

² The Housing and Regeneration Act 2008, Section 86

³ See, for example, “Firm Foundations” (Scottish Government, October 2007) and “Social Landlords in Scotland: Shaping up for improvement” (Scottish Housing Regulator, July 2009)

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- The long-term sustainability of investment and benefits of community ownership
- Integrating specialist accommodation and low cost home ownership into existing communities
- Promoting community empowerment and community cohesion
- The quality of partnership working with statutory and voluntary service providers, with direct benefits for individual tenants (for example, linking tenants to other services and opportunities).

3.10 Measuring impact and value in relation to these types of outcomes is undoubtedly challenging, but that is not a reason for ignoring them.

3.11 It is likely that some of these “bigger picture” outcomes would be better addressed through thematic studies or periodic evaluations rather than routine regulatory processes.

3.12 The new Scottish Housing Regulator may not be best placed to make these types of assessments, given the range and complexity of issues involved. In addition, assessments would need to consider the role of local authorities, community health partnerships and community planning partnerships, as well as service providers such as housing associations and voluntary organisations.

4. Improving the Effectiveness of Regeneration and Neighbourhood Management at Local Level

4.1 The Scottish Government/COSLA Community Empowerment Action Plan provides welcome recognition of the value that “anchor” organisations such as CBHAs and development trusts can bring to community empowerment and regeneration.

4.2 The Action Plan is clear that empowered and engaged communities have a key part to play in tackling poor health and poverty, and in supporting people to become part of the social and economic mainstream.

4.3 The Government and COSLA have said that they want to build on existing community empowerment schemes, structures and processes, rather than inventing new ones. In this regard, the Action Plan recognises that community empowerment can take many different forms, for example through:

- Community ownership of assets
- Controlling budgets for the delivery of services at local level

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- Having a stake in shaping the services delivered by others
- Direct delivery and management of public services.

But not all of these types of community empowerment are being used to their full potential at present.

- 4.4 The ideas we have put forward in this part of the paper do not require new money, legislation or a “grand plan”. They are about making sure that the best use is made of existing resources, for the benefit of local communities.
- 4.5 It is also important to stress that a greater role for community-owned and community-led organisations needs to be take account of local Community Planning arrangements and the roles of local authorities and statutory service providers. We are not seeking to supplant those arrangements or roles, nor do we want to over-state what CBHAs can deliver. And while an increased role in local regeneration will be a priority for some CBHAs, this will not be the case for every CBHA.
- 4.6 Our main interest lies in how communities themselves can play a greater role in helping to achieve local outcomes, acting through locally owned and resident controlled bodies such as CBHAs and development trusts.
- 4.7 There is untapped potential for CBHAs and development trusts to play a greater role within local neighbourhoods, or across groups of related neighbourhoods by working together in partnership with each other and with other agencies.
- 4.8 There are many different ways in which this potential could be realised, depending on local circumstances. These could include:

Public services, delivered locally

- Providing physical places where statutory and voluntary agencies can deliver services, information and advice within local communities.
- Helping these agencies make contact with local people.
- In some cases, direct delivery by housing organisations of non-housing services.

Capacity-building work, for communities and individuals

- Supporting individuals, for example through skills and employment programmes, or by providing ongoing support to local people moving through

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employability and training programmes.

- Joining up with other community groups to provide a focal point for community engagement on local public services provision.
- Strengthening community voice in Community Planning Partnerships and in relationships with community planning partnerships, local authorities and community health partnerships.

Meeting gaps in local services or facilities

- Promoting and supporting social enterprises that will generate resources that can be re-invested for the benefit of local communities.

Local management of budgets/resources, where this is appropriate

- Co-ordinating community participation in budget-setting and monitoring how money is spent on public services locally.
- The use of neighbourhood budgets and funding agreements, to give community organisations responsibility and accountability for managing activities at neighbourhood level.
 - For example, the maintenance of public spaces or other physical facilities within a local neighbourhood;
 - Community-led neighbourhood management groupings, in which local people and service providers can work together to ensure that the delivery of local services is effective and efficient.

4.9 There is considerable diversity in what housing associations do in the kind of areas we have listed, depending on their organisational capacity and the needs of their local communities. And the appetite of local authorities and others to devolve different types of activities to local level can vary considerably.

4.10 In raising these issues, we are not arguing that local housing organisations should have a standardised role. But we do think that the role of local housing bodies and other community organisations in contributing to wider neighbourhood management and community regeneration is too ad hoc at present. This is an issue that should be explored further as part of the Government's review of the role of social housing providers and its wider policy on community empowerment.

4.11 To provide some impetus and a clearer policy context, we would like to see the Scottish Government and COSLA providing leadership in this area. For example, by working with organisations like GWSF and Local People Leading to support

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community organisations who wish to develop pilot or demonstration projects for neighbourhood management in their local areas.

4.12 The most important contributions CBHAs have to offer are:

- We are well-established, professionally-managed, regulated bodies;
- Our organisations are locally-owned and community-led and are trusted by local people;
- We have resources, skills and assets which we use solely for the benefit of our local communities, under the leadership of local people;
- We have a physical presence at neighbourhood level, and we are there for the long term;
- We have personal, continuing relationships with tenants, including many people that statutory agencies find harder to reach or to engage with.

5. Conclusions

5.1 The issues set out in this paper are an initial contribution to the national debate the Scottish Government wishes to hold about the future purpose and role of social housing.

5.2 Within the Housing Bill and more generally, we would like to see stronger connections between housing policy and policy on community empowerment and regeneration.

5.3 This would be consistent with the following undertaking provided in the Community Empowerment Action Plan:

“At National level the Scottish Government will ensure that the benefits of community empowerment are understood across its portfolios and that references to the part community empowerment can play in achieving our Strategic Objectives are made in appropriate policies”.

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August 2009**

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Response to the Draft Housing (Scotland) Bill
August 2009**

**Paper 4
Proposals for Promoting and Assisting Scottish Housing
Associations**

GWSF Response to Housing (Scotland) Bill

Paper 4: Promoting and Assisting Registered Housing Associations in Scotland

1. Summary

1.1 In our response to the standard consultation questions on the draft Housing (Scotland) Bill⁴, GWSF has suggested that the new Scottish Housing Regulator should have a statutory duty to promote and assist the development of housing associations registered in Scotland.

1.2 This supporting paper sets out the reasons for our view, and suggests how such a duty on the part of the Scottish Housing Regulator might work in practice.

2. The Social Housing Sector: Current Performance and Future Issues

2.1 In “Firm Foundations”, the Government stated its view that in future the social housing sector will contain “... a range of providers, including local authority landlords, and a variety of RSLs, some large, some specialist and others continuing to build on the strengths of the community based movement”. And we know that tenants, Ministers and all of the main political parties all value the achievements of Scotland’s locally based housing associations.

2.2 So we are concerned that housing and regulation policy now appear to be heading in the direction of trying to fundamentally re-structure the Scottish housing association sector.

2.3 These concerns are based on two recent developments:

- The proposals in the Housing Bill that registration as a social landlord in Scotland will in future be open to profit-making bodies, and to non-Scottish bodies;
- The publication by the Scottish Housing Regulator of a report on Scottish social landlords⁵, which discusses the performance of both housing associations and local authority housing and homelessness services.

2.4 The Regulator’s report is based on selectively evidenced assertions about poor performance and inefficiency. The report paints an overwhelmingly negative picture of the performance of all types of social landlords. But it represents a particular threat to the future of smaller, community-based housing associations.

2.5 The opinions expressed by the Regulator raise some particular issues for CBHAs:

⁴ GWSF consultation response, question 2.2

⁵ Social Landlords in Scotland: Shaping up for Improvement, Scottish Housing Regulator, July 2009

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- The Regulator concludes that “community based or tenant-led organisations do not, in themselves, always secure good outcomes for tenants”.
- It expresses concerns about tenant involvement in the governance of RSLs.
- It suggests that “Governing bodies will need to think beyond themselves and their organisations for the greater good of the tenants and communities they serve”, in considering their housing associations’ future role.
- It suggests that “proactive mergers”, “rationalisation” and “a more strategic view of how to organise housing management in particular local areas” are all key issues for the future.
- The report ends by asking whether the Regulator’s future role should include “... encouraging a mixed economy of providers and greater competition in the development and management of social housing as a way of securing improvement”.

2.6 The Regulator’s report has generated a strong, adverse reaction across the housing sector. For example, COSLA has suggested that the report marks a time for local authorities to “part company” with the Scottish Housing Regulator.⁶

2.7 It is important to place the Regulator’s opinions in a broader context:

- It would clearly be wrong to argue that any one type of landlord will always deliver better outcomes for tenants.
- While the Regulator’s report fails to mention this, inspection results do show that CBHAs are far more likely than other types of landlords to achieve good outcomes for tenants.
- An analysis by GWSF of inspection results carried out at the end of 2007 found that 90% of CBHA housing management services inspected by the regulator were rated as “good” or “excellent”, and that the regulator rated 79% of CBHA maintenance services it had inspected as “good” or “excellent”.⁷
- Despite the Regulator’s views about tenant involvement in the governance of CBHAs, committee members in CBHAs play a decisive role in making sure that CBHAs deliver good outcomes for tenants.

⁶ Quoted in “Public Servant Scotland”, 22 July 2009

⁷ We would have liked to update our analysis, but this has not been possible since the regulator changed its grading system at the end of 2007. It no longer publishes grades for the housing management or maintenance services provided by housing associations.

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- 2.8 CBHAs do not dispute the potential for all parts of the housing sector to continually improve performance and value. But this needs to be based on a better level of mutual understanding between the Regulator and regulated bodies about what efficiency and effectiveness actually mean. A narrow focus on cost-cutting by the Regulator is quite simply wrong.
- 2.9 The Regulator's report is helpful, because it helps to crystallise some key issues about the role of its successor body:
- The present Regulator's report has shown the risks involved in regulators seeking to make policy for the housing sector, when they do not have any proper accountability for such a role;
 - And the report shows that the way regulators communicate and work with regulated bodies is highly important. For example, will the present Regulator's recent report make social landlords more or less likely to look positively at the need for change?

3. A New Relationship Based on Support and Partnership

- 3.1 We would like the new Regulator to work more positively and productively with regulated bodies than its predecessor. On matters such as improving efficiency and performance, partnership working is far more likely to deliver results than an approach based on housing associations having to continually justify their right to a continued existence.
- 3.2 The promotion and development of housing associations was part of the regulator's statutory duties until 2001. Legislation gave the regulator the following responsibilities:
- To promote and assist the development of registered housing associations
 - To facilitate the proper performance of the functions, and to publicise the aims and principles, of registered housing associations.
- 3.3 We would like to see an equivalent statutory duty re-introduced as part of the present Housing Bill, for the following reasons:
- The new Scottish Housing Regulator's main focus should be on outcomes for tenants and communities.

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- To achieve this, we need a regulator that is willing and able to work in partnership with landlords and tenants to achieve improvements and better outcomes.
- Landlords understand that engagement with regulators should be challenging. But it should also be based on regulators understanding and valuing the sector they regulate, and providing practical and useful support to help landlords deliver for their tenants.
- Policy and regulation frameworks for housing need to be much better at recognising the diversity of the housing sector in Scotland. The present Scottish Housing Regulator evidently has concerns that more than 80% of the housing associations it regulates are relatively small organisations, each owning less than 2,000 houses, but that is the reality. In the real world the Regulator should be much more proactive in providing the practical support this part of the sector needs to flourish and thrive.

4. Support and Partnership in Practice

- 4.1 There are a variety of ways in which a statutory duty to promote and support housing associations could work in practice.
- 4.2 If the new Scottish Housing Regulator had such a duty, we would see it working with representative bodies, including GWSF, to agree priority areas for co-operation.
- 4.3 From a CBHA perspective, these are some of the ways in which the Regulator could work with us in more positive and productive ways, without undermining its ability to regulate effectively, in the interests of tenants.
- 4.4 For example:
- Thematic studies on issues such as good practice in neighbourhood management and community regeneration
 - Joint working to promote the raising of standards
 - Developing practical, proportionate tools that help smaller organisations meet regulatory expectations in areas such as self evaluation and performance management
 - Higher levels of face to face engagement between the Regulator and smaller housing associations, rather than reliance on standard information returns in every case

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- Helping the Regulator to adapt its processes and information requirements for smaller organisations
- Working jointly to examine how value and impact can be assessed in more rounded, meaningful ways
- The provision of financial assistance to support performance improvement.

4.5 The draft Housing Bill does not make any provision for financial assistance from the Regulator, but this is provided for in the equivalent legislation for England.⁸

4.6 While we have well-established funding programmes to support work on efficiency in the local authority sector in Scotland, there is nothing comparable for housing associations. The new Scottish Housing Regulator would be well placed to manage programmes of this type in relation to housing associations.

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⁸ The Housing and Regeneration Act 2008, Section 95