

**Extending the coverage of the Freedom of Information (Scotland) Act 2002
to Registered Social Landlords**

**Response by the Council of Mortgage Lenders
to the Scottish Government consultation paper**

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 141 members currently hold around 97% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets across the UK.

2. We welcome the opportunity to respond to the consultation on extending coverage of the Freedom of Information (Scotland) Act 2002 to Registered Social Landlords (RSLs). Our comments in response to the consultation questions and issues arising are as follows:

The proposal to extend FOI legislation to Scottish RSLs

3. We do not agree with the proposal to extend the application of FOI legislation to Scottish RSLs because (1) it is not necessary to do so, as information rights are already very well served by existing regulatory and reporting arrangements; (2) it would be disproportionate to any benefit, particularly for a small number of stock transfer tenants; (3) it would consume substantial RSL resource and effort that could be better directed at meeting the government's social and affordable housing target; and (4) it would be inconsistent to define RSLs as public authorities for FOI purposes at the same time as the government is also legislating to ensure the ONS can define them as private bodies for accounting purposes. These points are expanded further, below.

The rationale for extension and government intervention (paras 2.6; 2.7)

4. We do not agree that there is a need to extend FOI to RSLs or that there are significant instances of loss of information rights that cannot otherwise be addressed by existing arrangements. While we understand the argument that in a small number of instances, stock transfer tenants might have suffered a loss of information rights, we believe their information rights can be just as well served, if not better served, by the existing regulatory and reporting arrangements on RSLs. If necessary, more awareness raising could be done to ensure stock transfer tenants know of and understand the range of information available to them.

5. The current regulatory framework for RSLs, delivered by the Scottish Housing Regulator and, where appropriate, the Care Commission, coupled with an extensive range of ongoing tenant and service user engagement channels and activities provide, in our view, substantial and effective scrutiny of the operations and performance of a Scottish Housing Association.

6. Although we can understand, to some extent, the position that, as recipients of Housing Association Grant (HAG), associations must be accountable for their activities when spending the public purse, we do not see there to be benefit in doing this through the application of FOI legislation.

7. In cases where stock transfer tenants might have lost information rights, we suggest that government might do more to inform and explain how they can find out more from existing sources about matters relating to their new landlord's operations and performance. It could be that transfer association Boards could themselves focus attention on awareness raising for their tenants (if this is not already done).

Timing

8. The proposal that FOI requirements would come into force for Scottish RSLs from 1 April 2018 means that RSLs would be treated for the purposes of the Act as public bodies at a time when other Scottish legislation is seeking to ensure they are treated as private bodies.

9. The Housing (Amendment) (Scotland) Bill, which is expected to be well advanced by early 2018, seeks to implement de-regulatory measures capable of enabling the Office for National Statistics to reverse its September 2016 decision that, because of the level of government control over the sector, RSLs were, in effect, public bodies for financial purposes. Extending government control by applying "public authority" FOI measures to RSLs would be inconsistent with the intention of government to loosen its control over the sector by taking de-regulatory measures in the Bill.

Impacts

10. The proposed extension of FOI to Scottish RSLs would be an unnecessary burden and expense for these organisations at a time when they will be consumed by the task of meeting the government's substantial new social and affordable housing targets. Responding to FOI requests could consume a considerable amount of time, effort and expense when a great deal of the information likely to be requested is already available in Scottish Social Housing Charter returns and the regulator's related analysis and public reporting of this.

11. Additionally, other publications by RSLs such as annual reports, tenant communications and Board minutes contain much information that is of use to those who might be minded to submit an FOI request. Establishing a burdensome FOI regime around RSLs would risk drawing their resources away from their core activity of delivering new housing supply to meet the government's targets.

Contact

12. To discuss this submission further, please contact John.Marr@cml.org.uk

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